

CHESHIRE WEST AND CHESTER COUNCIL

DELEGATED REPORT

Application Number SD/026A/FP21 Beeston

Description An application has been received requesting that the council make a public path diversion order under section 119 of the Highways Act 1980

Site address Public Footpath No 21 Beeston

Applicant Name Mr A Latham, Beeston Gate Farm, Whitchurch Rd, Beeston

Ward Tattenhall Ward

Ward Members Councillor Mike Jones

Case Officers Adele Mayer, Greenspace Officer (e mail adele.mayer@cheshirewestandchester.gov.uk) or tel: 01606 271822

Date 14th August 2014

Recommendation

- (1) That an Order be made under Section 119 of Highways Act 1980, diverting Footpath No.21 (part) in the Parish of Beeston as shown on Plan No SD/026A by a black broken line on the grounds between A and B that it is expedient to do so in the interests of the owner and occupiers of the land concerned.

- (2) That the Development Planning Manager be authorised to take any action considered necessary in respect of the confirmation of the Order hereby authorised to be made.
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1. Site Description

- 1.1 Footpath No 21 Beeston runs from the A49 at Ordnance Survey Grid Reference SJ 5574 5893 in a westerly direction to a junction with Footpath No22 Beeston at OSGR SJ 5502 5892. The section of path affected by the proposal runs from the A49 at OSGR SJ 5574 5893 (point A on plan SD 026A) running in a westerly direction to a field boundary at OSGR SJ 5539 5896 (point B on plan).

2. Background

- 2.1 An application has been submitted by the landowner, Mr Latham, Beeston Gate Farm, Whitchurch Road, Beeston, requesting that the council make an order to divert part of Footpath No 21. The section of path proposed to be stopped up is shown on the attached plan by a solid black line between A and B on plan SD/026A ("The Plan").
- 2.2 The landowner owns the land over which the current path runs and over which the diversion will run. The application has been made in the interests of the landowner.
- 2.3 The applicant states the purpose for making the request is to regularise a situation that existed when the property was purchased in the 1990's. The current line of the path runs through an area used as garden (planning permission for change of use granted in 2011; 11/02935/cou) and garden sheds. A new fenceline has been installed to divide the land. An alternative

access had been made available north of the legal line of the path by a former tenant.

- 2.4 The proposal to divert part of Footpath 21 has been made under the council's protocol to allow diversion of a path that has been historically obstructed. The Council has a protocol that in certain circumstances the Council would invite an application for an obstructed path to be diverted rather than seeking removal of the obstructions. It was a protocol of the former Cheshire County Council, (adopted in 2006 and carried over as a policy of the Cheshire West and Chester Council on Local Government Reorganisation in 2009) that in certain circumstances the Council would invite an application for an obstructed path to be diverted rather than seeking removal of the obstructions. The 2006 report stated at paragraph 8 "There are occasions however where it may be impractical to remove an obstruction. In these circumstances the protocols require that the offender is committed to an application to divert the path". In this case, such an application has been received.
- 2.5 Footpath 21 runs over a short length of pasture grass. There will be no change to the surface of the section of Footpath 21 diverted within the property boundary. There are no recorded limitations. Where gates are needed for stock control purposes as indicated on the plan by "kg", they will be installed under license and according to the Council's furniture standards.
- 2.7 The length of the section of Footpath 21 to be stopped up is approximately 356 metres (A-B on plan) and the length of the new route approximately 351 metres (C-B on plan). The section of path between the current and proposed termination points is highway verge (ie A-C).
- 3. Consultation**
- 3.1 Beeston Parish Council has written to state that they unanimously agreed with the requested changes to the line of the path.
- 3.2 There is no objection from the Council's environmental advisory team.

- 3.3 The Ward Councillor has been consulted. The Ward Councillor has knowledge of this route and is aware that the alternative is already in use. Support is given to a “sensible proposal”.
- 3.4 Statutory undertakers have been consulted and no objections have been received. If a diversion order is made, existing rights of way access for the statutory undertakers to their equipment and apparatus are, in any case, protected.
- 3.5 User groups have been consulted. The Peak and Northern Footpath Society has no objection to the proposed diversion.

4. Relevant Legislation

- 4.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council’s discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of owners and occupiers of the land concerned for the reasons set out in paragraphs 6.1 and 6.2 below and thus that the test for the making of an order has been satisfied.
- 4.2 It is also necessary to consider whether the tests for confirming the Order are likely to be satisfied so as not to make an order that is manifestly incapable of confirmation. At the confirmation stage, the following factors must be taken into account in addition to those matters referred to in paragraph 4.1 above.
- 4.2.1 Whether the path is substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:-

- 4.2.2 The effect that the diversion would have on the enjoyment of the path or way as a whole.
 - 4.2.3 The effect that the coming into operation of the Order would have as respects other land served by the existing public right of way.
 - 4.2.4 The effect that any new public right of way created by the Order would have as respects the land over which the rights are so created and any land held with it.
- 4.3 In addition to the matters contained in S119 of the Highways Act 1980, the Council in preparing this report and recommendation, has had regard to a number of other considerations required by law including:-
- 4.3.1 the needs of agriculture and forestry and the desirability of conserving biodiversity, flora, fauna and geological and physiological features.
 - 4.3.2 requirements in relation to disability discrimination, equality, and the prevention of crime and disorder.
 - 4.3.3 all material provisions of the Council's Rights of Way Improvement Plan.
- 4.4 Where objections to an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. Where there are no outstanding objections to an Order, it is for the Council to determine whether the Order should be confirmed

5. Relevant Policies

The following policies and protocols are relevant to this application.

5.1.1 Rights of Way Improvement Plan 2011-16

Statement of Action E05 "we will follow the Equalities Act 2010 to comply with standards for mobility and visually impaired users where appropriate and reasonable"

5.1.2 “Structures on rights of Way” 29th July 2009 Committee report and
“Authorising Structures (gaps, gates and stiles) on rights of way” October
2012 Defra guidance

6. Assessment and Issues

- 6.1 The purpose of the diversion is to alter the definitive line of the footpaths to increase the privacy and security of the property. Making use of the councils’ protocols to divert around obstructions will also enable the landowners to avoid action by the council to remove the garden sheds. It is in the interests of the landowner and in this respect it is considered that the proposal satisfies the tests set out in paragraph 4.1 above.
- 6.2 The length of the diversion has been considered both with regard to the comparative length of the diversion and also with comparison to the through route it serves. The section of Footpath 21 proposed to be stopped up is comparable in length to the alternative route and runs over similar surfacing, therefore it is considered that it is substantially as convenient as the current route and satisfies the terms of the legislation.
- 6.3 There are no significant differences in the views enjoyed by the current routes in comparison with the proposed alternatives.
- 6.4 In respect of the expediency of confirming the order taking into account the matters mentioned in paragraphs 4.2.3 and 4.2.4 above, it is considered that there are no material impacts on land currently served by the path or to be crossed by the new path which affects the expediency of confirming the proposed order.
- 6.5 In respect of the matter mentioned in paragraph 4.3.1 regard has been paid to the needs of agriculture and the applicant’s requirement to increase security and retain the current fence line.

6.6 In respect of the matter mentioned in paragraph 4.3.3 and 5.1.1 regard is paid to Statement of Action E05 of the Rights of Way Improvement Plan 2011-2016 regarding equality legislation and for that purpose, in the event of an Order being confirmed the limitations of a kissing gate will be installed in accordance with council protocols and will be under license at the point shown in the Plan.

7. Conclusion

7.1 The proposal to divert has been consulted upon and the responses received have been in support of the diversions.

7.2 After careful consideration of the application and the relevant law and policies it is considered that it is expedient to divert part of Footpath No 21, Beeston as illustrated between A and B on The Plan.

10. Associated documents

Application File SD 026/FP21 Beeston