

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 10th September, 2018 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor S Pochin (Chairman)
Councillor D Flude (Vice-Chairman)

Councillors Rhoda Bailey, S Davies and T Fox

Councillors in Attendance

Councillor G Williams, Deputy Portfolio Holder for Environment

Officers in Attendance

Genni Butler, Acting Public Rights of Way Manager
Marianne Nixon, Public Path Orders Officer
Laura Brown, Public Path Orders Officer
Sarah Fraser, Public Path Orders Officer
Andrew Poynton, Planning and Highways Lawyer
Rachel Graves, Democratic Services Officer

14 APOLOGIES FOR ABSENCE

Apologies were received from Councillor L Gilbert.

15 DECLARATIONS OF INTEREST

In the interest of openness, Councillor S Pochin declared that she knew the applicants for Item 5 - Application for the Diversion of Public Footpath No.18 (part) in the parish of Bunbury and for Item 7 – Proposed Diversion of Public Footpath No.12 (part) in the parish of Wardle and that she had not discussed the applications with them.

16 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 11 June 2018 be confirmed as a correct record and signed by the Chairman.

17 PUBLIC SPEAKING TIME/OPEN SESSION

The Chairman advised that she would invite those registered to speak to come forward to speak when the application was being considered by the Committee.

18 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 18 (PART), PARISH OF BUNBURY

The Committee considered a report which detailed an application from Mr & Mrs Langley of Oaklands, Bunbury requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.18 in the parish of Bunbury.

In accordance with Section 119(1) of the Highways Act 1980, it was within the Council's discretion to make an Order to divert a public footpath if it appeared to the Council to be expedient to do so in the interests of the public or the owner, lessee or occupier of the land crossed by the path.

The land over which the length of Public Footpath No.18 Bunbury to be diverted ran and the proposed diversion ran belonged to the applicants. The proposal had been put forward in the interest of the applicants due to reasons of security and for better livestock and land management. The applicants kept beef cattle on their land and had encountered issues in the past with cattle contracting neosporosis, which is passed to cattle in dog faeces and leads to females aborting their calves. The proposed diversion would enable users to be kept separate from any livestock, including cows, calves and bulls, as the route would be enclosed from the agricultural land. The proposed diversion would also move the current definitive line away from the silage store and the feeders for the livestock, which was an area well used by the livestock and was susceptible to muddy conditions in the winter.

The Committee noted the comments from Spurstow Parish Council objecting to the diversion and the Public Rights of Way Officer's response.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would move the footpath from the field and improve land management for the applicant. It was considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a Diversion Order were satisfied.

The Committee unanimously

RESOLVED: That

- 1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No.18 in the Parish of Bunbury by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No. HA/132, on the grounds that it is expedient in the interests of the landowners.

- 2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

19 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 4 (PART), PARISH OF PEOVER SUPERIOR

The Committee considered a report which detailed an application from Mr B Kettle of Wharfe Home Planning (agent) on behalf of Mr D Cox of Paradise House, Holmes Chapel Road, Over Peover, requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1980 to divert part of Public Footpath No.4 in the parish of Peover Superior.

In accordance with Section 257 of the Town and Country Planning Act 1990 the Borough Council, as Planning Authority, can make an Order diverting a public footpath if it was satisfied that it was necessary to do so to enable development to be carried out in accordance with a planning permission which had been applied for or granted.

Planning permission had been granted for the construction of an agricultural barn – planning reference 16/2659M. Construction of the barn had commenced when it was found to be incorrectly positioned and obstructing Public Footpath No.4. The Council's Planning Enforcement Team took enforcement action to prevent any further construction of the barn until either the barn was moved to the correct location or until the footpath was diverted. The decision was taken by the applicant to apply for an Order to divert the footpath.

The proposed diversion route would move the footpath so that it ran to the south of the barn. The new route would have a surface consisting in part a semi-surfaced track and part grass.

Mr B Kettle, agent for the applicant, spoke in support of the application and stated that it had been a genuine mistake that the line of the footpath had been obstructed by the barn construction and asked that the Committee approved the application to divert the Public Footpath. He thanked the Public Rights of Way Officers and Enforcement Officers for their assistance in resolving the issue.

The Committee noted that North and Mid Cheshire Ramblers had requested that adequate signage be installed. The Committee considered the application and concluded that it was necessary to divert part of Public Footpath No.4 to allow for the construction of an agricultural barn, as

detailed in planning application 16/2659M. It was considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

RESOLVED: That

- 1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 4 in the Parish of Peover Superior, as illustrated on Plan No. TCPA/050, on the grounds that the Council is satisfied that it is necessary to do so to allow development to take place.
- 2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
- 3 In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

20 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.12 (PART) IN THE PARISH WARDLE

The Committee considered a report which detailed an application from Mr P Posnett requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1980 to divert part of Public Footpath No.12 in the parish of Wardle.

In accordance with Section 257 of the Town and Country Planning Act 1990 the Borough Council, as Planning Authority, can make an Order diverting a public footpath if it was satisfied that it was necessary to do so to enable development to be carried out in accordance with a planning permission which had been applied for or granted.

Planning permission had been granted for the approval of reserved matters seeking approval for a new spine road and other associated infrastructure works - planning application 18/2028N.

The existing alignment of Public Footpath No.12 Wardle would be directly affected by the development and infrastructure within the planning consent, resulting in the partial obstruction of the footpath by a new substation and spine road.

The current alignment of the section of path to be diverted ran along a field boundary and a dirt track. The proposed diversion points A-D, as shown on Plan TCPA/051, would run along a new stone surfaced maintenance

track which would be used for access to the new foul pumping station and would be 4 metres in width. From points D-C, as shown on Plan TCPA/05, the surface would be a sealed surfaced footpath of a width of 3 metres and would run along the boundary of the adjoining land at a distance of 7 metres from the road edge. This road would remain private and would not be adopted highway.

The Open Spaces Society had submitted comments in response to the informal consultation relating to the use of the maintenance track and had objected to the proposed diversion along the roadside. Based on their comments the applicant had revised the alignment of points D-C so that it ran further away from the edge of the road at a distance of 7 metres.

The Committee considered that application and concluded that it was necessary to divert part of Public Footpath No.12 to allow for the development approved in planning application 18/2028N. It was considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

RESOLVED: That

- 1 a Public Footpath Diversion Order be made under Section 257 of the Town and Country Planning Act 1990 on the grounds that Cheshire East Borough Council is satisfied that it is necessary to do so in order to enable development to be carried out.
- 2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
- 3 In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

21 TOWN & COUNTRY PLANNING ACT 1990 SECTION 333(7): APPLICATION FOR VARIATION OF TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257 CHESHIRE EAST BOROUGH COUNCIL (UNRECORDED FOOTPATH CHURCH LANE, PARISH OF WISTASTON) PUBLIC PATH DIVERSION ORDER 2017

The Committee considered a report which detailed an application by Mr Clarke of Bloor Homes North West requesting the Council to make a Variation Order to the Town and Country Planning Act 1990 Section 257 Cheshire Borough Council (unrecorded Footpath Church Lane, Parish of Wistaston) Public Path Diversion Order 2017.

In accordance with Section 333(7) of the Town and Country Planning Act 1990 the Borough Council, as Planning Authority, can make a Public Path Variation Order provided the same procedures are carried out under which the Order was originally made.

On 12 June 2017 the Committee had resolved to make a Diversion Order for the previously unrecorded footpath now known as Wistaston Footpath No.17. The Order was duly made, signed and sealed on 22 June 2017 and confirmed on 24 August 2017.

Planning permission had now been granted for the approval of details of the appearance, landscaping, layout and scale being matters reserved under approval APP/R0660/W/15/3136524 – planning reference 17/6042N.

A Variation Order was now requested to reflect the slight changes identified in the practical alignment of Public Footpath No.17 in the 2017 Order, as the development proposals now consented by the reserved matters application had altered slightly from those originally proposed at the outline stage.

The proposed variation of the diverted path was shown by a bold blue dashed line between points M-N-H-I on Plan TCPA/048. The proposed Variation Order would not significantly change the nature, widths, surface or general orientation of Wistaston Footpath No.17 but would instead alter the practical alignment of several sections of the footpath.

It was proposed that the existing lines of Points H-N and N-G, as shown on Plan TCPA/048, would be slightly amended to align with what was agreed with in the approved reserved matters planning application. The existing line of Points I-H would conflict with several small bodies of water that required a minimum 8 metres undeveloped buffer zone, deemed necessary to mitigate the impact of the development upon protected species and the biodiversity of the area. The proposed Variation would therefore move the alignment of the path between these points approximately 8 metres to the east of its current alignment and the ponds.

The Committee considered the application and concluded that it was necessary to divert parts of Public Footpath No.17 Wistaston to allow for the approved reserved matters, as detailed in planning application 17/6042N. It was considered that the legal tests for the making and confirming of a Variation Order under section 333(7) of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

RESOLVED: That

- 1 A Public Path (Variation) Order be made under section 333(7) of the Town and County Planning Act 1990 to vary the Cheshire East

Borough Council (unrecorded Footpath Church Lane, Parish of Wistaston) Public Path Diversion Order 2017 on the grounds that the Borough Council is satisfied that it is necessary to do so in order to enable development to be carried out.

- 2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
- 3 In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

22 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.2 (PART) IN THE PARISH WISTASTON

The Committee considered a report which detailed an application from Mr Clarke of Bloor Homes North West requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1980 to divert part of Public Footpath No.2 in the parish of Wistaston.

In accordance with Section 257 of the Town and Country Planning Act 1990 the Borough Council, as Planning Authority, can make an Order diverting a public footpath if it was satisfied that it was necessary to do so to enable development to be carried out in accordance with a planning permission which had been applied for or granted.

Planning permission had been granted for the approval of details of the appearance, landscaping, layout and scale being matters reserved under approval APP/R0660/W/15/3136524 – planning application reference 17/6042N.

The existing alignment of Public Footpath No.2 Wistaston would be affected by residential development and infrastructure of the approved planning application resulting in the partial obstruction of the footpath by the construction of the planned residential dwellings. A diversion was required to preserve the Public Right of Way.

The proposal to divert the path between Points B-C-D, as shown on Plan TCPA/049, would move the current line approximately 13 metres east of its current alignment onto the actual walked line of the path. The section from Point A to C would be two metres wide, timber edged and surfaced with self-binding gravel. The section between Points C-D-E would be concrete edged and surfaced with tarmac as it would offer access to the proposed play area of the development.

The Committee considered the application and concluded that it was necessary to diver part of Public Footpath No.2 Wistaston to allow for the

approved development as detailed in planning reference 17/6042N. It was considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

RESOLVED: That

- 1 a Public Path Diversion Order be made under section 257 of the Town and Country Planning Act 1990 on the grounds that Cheshire East Borough Council is satisfied that it is necessary to do so in order to enable development to be carried out.
- 2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
- 3 In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

23 TOWN & COUNTRY PLANNING ACT 1990 SECTION 333(7): APPLICATION FOR VARIATION OF TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257 CHESHIRE EAST BOROUGH COUNCIL (RESTRICTED BYWAY NO.1 (PT), PARISH OF EATON) PUBLIC PATH DIVERSION ORDER 2017

The Committee considered a report which detailed an application by Mr Fyles of Tarmac Trading Ltd requesting the Council to make a Variation Order to the Town and Country Planning Act 1990 Section 257 Cheshire Borough Council (Restricted Byway No.1 (pt) Parish of Eaton) Public Path Diversion Order 2017.

In accordance with Section 333(7) of the Town and Country Planning Act 1990 the Borough Council, as Planning Authority, can make a Public Path Variation Order provided the same procedures are carried out under which the Order was originally made.

On 5 December 2016 the Committee had resolved to make a Diversion Order to divert part of Restricted Byway No.1 which was affected by an extension of the sand quarry. The Order was made, signed and sealed on 12 January 2017. An objection was subsequently received from an adjacent landowner concerning the proximity of part of the new route to the trajectory of clays from their shooting range. Consequently a second Order was made on 6 July 2017 altering the section of route affected. No objections were received to this Order and over the following months the construction of the path was commenced.

Following a site visit it was noted that the alignment of the route on the ground had not been installed as per the approved Order. The route on the ground had been put in to a 4 metre width with a double post and wire fence line. The sections of path that did not follow the approved Order were between points G - H, H - I and M - N, as shown in red on Plan TCPA/052.

A Variation Order was now required to reflect the changes identified by the site visit and thereby alter the legal alignment of the route in the second Diversion Order of 2017. The proposed Order would not significantly change the nature, width, surface or general direction of the route of Restricted Byway No.1.

The sections G – H and H – I had both been constructed to follow the boundary of ponds and field edges. Sections M – N had been sited closer to the northern boundary of a rectangle of woodland. It may be the case that variation to this section would not be required if on consultation with the adjacent landowner it transpired that this alignment was still too close to the clay shoot. If this was the case the route would be altered to reflect the route of the second 2017 Diversion Order.

The Committee considered the application and concluded that it was necessary to divert parts of Restricted Byway No.1 Eaton to enable the approved development to be carried out. It was considered that the legal tests for the making and confirming of a Variation Order under section 333(7) of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

RESOLVED: That

- 1 A Public Path (Variation) Order be made under section 333(7) of the Town and Country Planning Act 1990 to vary the Cheshire East Borough Council (Restricted Byway No.1 (pt), Parish of Eaton) Public Path Diversion Order 2017 to reflect the alignment of the route set out and available on the ground.
- 2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
- 3 In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

24 PUBLIC RIGHTS OF WAY PROPOSED FEES AND CHARGES 2019-20

The Committee received a report which detailed the proposed fees and charges for 2019-20 for charged-for services provided by the Public Rights of Way team.

An annual review of the fees and charges are conducted as part of the budget setting process of the Council. The charges for 2019-20 had been increased by inflation and rounded. In addition, the fees and charges had been amended to reflect changes in legal process enacted by legislation.

Approval for the changes had been obtained from the Portfolio Holder/Head of Service who had the appropriate delegated powers. The revised fees and charges schedule had been submitted as part of the Council's budget setting process, which would be finalised by full Council in February 2019.

RESOLVED:

That the report be noted.

The meeting commenced at 2.00 pm and concluded at 2.55 pm

Councillor S Pochin (Chairman)