

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 12th December, 2011 at Committee Suite 1 & 2, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor J Wray (Chairman)
Councillor D Druce (Vice-Chairman)

Councillors Rhoda Bailey, R Cartlidge, S Davies, L Jeuda and M Parsons

Officers

Mike Taylor, Greenspaces Manager
Marianne Nixon, Public Path Orders Officer
Clare Hibbert, Definitive Map Officer
Jennifer Tench, Definitive Map Officer
Julie Openshaw, Legal Team Leader (Places Regulatory and Compliance)
Rachel Graves, Democratic Services Officer

26 APOLOGIES FOR ABSENCE

There were no apologies for absence.

27 DECLARATIONS OF INTEREST

No declarations of interest were made.

28 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 19 September 2011 be approved as a correct record and signed by the Chairman.

29 HIGHWAYS ACT 1980 - SECTION 119: PROPOSED DIVERSION OF PUBLIC FOOTPATH NOS. 23(PART) & 24(PART) AND THE EXTINGUISHMENT OF PUBLIC FOOTPATH 22(PART), PARISH OF DISLEY

The Committee received a report which detailed an application from United Utilities requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpaths No.23 and 24 (parts) in the parish of Disley.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order if it appeared to the Council to be expedient to do so in the interests of the public and or the owner, lessee or occupier of the land crossed by the paths. Also in accordance with Section 118(1) of the Highways Act 1980 it was within the Council's

discretion to make an extinguishment Order if it appeared to the Council that it was expedient that a path or way should be stopped up on the grounds that it was not needed for public use.

Public Footpath No.24 was the subject of a diversion order under section 257 of the Town and Country Planning Act 1990 in 2010 when United Utilities were constructing a new spillway which directly affected the line of the footpath. There was a significant amount of earth movement required in order to complete the construction and when the re-profiling was completed, the newly diverted line of the footpath was obstructed by fencing erected to surround a very steep depression/valley which had resulted from the earth workings. The proposed diversion would address the obstruction by moving the path slightly further to the north to achieve higher and more level ground.

It was also proposed to divert a short part of Public Footpath No.23, which connected to Footpath No.24 at its western end. This short diversion would create a direct east west alignment to the connecting paths and avoid the necessity of walking a sharp angle in the path. United Utilities had approached the Landowner and had received his permission to divert the path across a short section of his field.

As the result of these diversions a residual length of Public Footpath No.22 would remain and it was proposed to extinguish this length of path as once the diversions were in effect, this section would no longer be needed for use by the public.

The Committee noted that no objections had been received from the informal consultations and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would be of benefit to the landowner in terms of land use in that they would have to undertake extensive re-profiling of the landscape and earth movement to reinstate the current line which would be expensive and unreasonable. It was in the interest of the public as the diversion of Public Footpath No.23 would allow for the removal of a sharp angle in the path network, creating a more straightforward and shorter alignment. The extinguishment of a residual part of Public Footpath No.22 would be necessary to tidy up the legal process. It was therefore 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 and an extinguishment order were satisfied.

RESOLVED:

- 1 An Order be made under Section 119 of the Highways Act 1980 to divert parts of Public Footpath Nos.23 and 24 Disley and a separate Order be made concurrently to extinguish a residual part of Public Footpath No.22 in the parish of Disley, as illustrated on Plans Nos.HA/060 and HA/061, on the grounds that it is expedient in the interests of the owner of the land crossed by the path and the public

and that under section 118 of the Highways Act , part of Public Footpath No.22, is not needed for use.

- 2 Public Notice of the making of the Orders be given and in the event of there being no objections within the period specified, the Orders be confirmed in the exercise of the powers conferred on the Council under the said Acts.
- 3 In the event of objections to the Orders being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

30 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 20, PARISH OF NEWBOLD ASTBURY

The Committee received a report which detailed an application from Mr & Mrs N Plant of Peel Farm, Peel Lane, Astbury, Cheshire (the Applicant), requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert Public Footpath No.20 in the parish of Newbold Astbury.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order 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 Applicant owned the land over which the current path and the proposed diversion ran. The section of Public Footpath No.20 to be diverted currently ran through the Applicant's garden leading to privacy and security issues. It then went through their busy livery yard creating a hazardous environment for walkers to pass through as the walker was in close confinement with large livestock.

The proposed new route would take users out of the applicant's garden and livery yard and would be easier to navigate with more open and scenic views and reduce interaction with livestock. The paths would be fenced and have a recorded width of 2.5 metres throughout and would have three kissing gates. The proposed new route was marked as D-E-F-G-H on Plan No.HA/062.

The Committee noted that no objections had been received from the informal consultations and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would be of benefit to the landowner, particularly in terms of current stock management within a busy livery and improved privacy and security to the Applicant's adjacent property. It was therefore 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.

RESOLVED:

- 1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert Public Footpath No.20 Newbold Astbury by creating a new public footpath and extinguishing the current path, as illustrated on Plan No.HA062, on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 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.

31 HIGHWAYS ACT 1980 - SECTION 25: CREATION AGREEMENT FOR A NEW PUBLIC BRIDLEWAY IN THE PARISHES OF NANTWICH AND WISTASTON

The Connect2 Crewe to Nantwich Greenway project proposed to create an off-road cycle route between the two towns. In June 2010 the Public Rights of Way Committee had resolved that the Council enter into creation agreements with the landowners who had agreed to dedicate part of this route as public bridleway so that pedestrians, cyclists and horse riders could use the route.

Since this decision further negotiations with the landowners, tenants and nearby residents had taken place and a revised route was now proposed. This route avoided the areas of contention around Alvaston Hall and adjacent properties that were raised regarding the initial proposed route.

Under Section 25 of the Highways Act 1980, the Council had the power to enter into an agreement with any person having the capacity to dedicate public rights of way. The Highways Act 1980 required the authority to have regard to the needs of agriculture and forestry and to the desirability of conserving flora, fauna and geographical and physiographical features. Under Section 25 there was no statutory right for objection to the proposal.

RESOLVED:

That creation agreement(s) under Section 25 of the Highways Act 1980 be entered into with the appropriate person(s) with capacity to dedicate to create a new public bridleway in the Parishes of Nantwich and Wistaston, as illustrated on Plan No.HA023(2), and that Public Notice be given to these agreement(s).

32 DEFINITIVE MAP MODIFICATION ORDERS: REVISED STATEMENT OF PRIORITIES

The Committee received a report which sought approval for a revised statement of priorities for dealing with a potentially large volume of Definitive Map Modification Order applications and matters requiring detailed investigations.

Cheshire East Council, as Surveying Authority, had a duty to keep the Definitive Map and Statement under continuous review and make modifications as required. Changes are effected by means of Definitive Map Modification Orders which may be triggered by the Council on the discovery of evidence which shows that the map and/or statement was in error, or by an individual making a formal application for a Definitive Map Modification Order under the provisions of Schedule 14 of the Wildlife and Countryside Act 1981. The Secretary of State recommends that Surveying Authorities periodically publish a statement of priorities for dealing with Definitive Map Modification Orders.

The current statement of priorities was based on the former Cheshire County Council's Rights of Way Improvement Plan and a purely chronological scheme for those applications made prior to the instigation of Cheshire East Council.

A new scoring system was proposed within the Statement of Priorities, whereby all new Schedule 14 applications and internally generated cases would be given a score. All Definitive Map Modification Order case work would be prioritised according to that score. The criteria were based on the objectives of the Council's Rights of Way Improvement Plan and Sustainable Community Strategy.

The only instance where a score would not need to be applied or taken into account, if already applied, would be in the case when a route was under threat of development and therefore potentially lost. In these instances, the application would be taken out of turn and processed as a priority.

In the interests of fairness to existing applicants, the scoring system included recognition of the amount of time for which the applications had been on the register.

Also in consideration of the fact that user evidence frequently presented to substantiate applications was from individuals of advancing years, it was proposed to give additional weight to applications where the witnesses were aged over 70. In undertaking this, consideration had been given to the Equality Act 2010.

RESOLVED:

That the revised Statement of Priorities for dealing with Definitive Map Modifications Orders be approved.

33 ADDITION TO THE DEFINITIVE MAP WILDLIFE AND COUNTRYSIDE ACT 1981 - SECTION 53: APPLICATION TO ADD A BRIDLEWAY BETWEEN GOLDFORD LANE, LARKTON AND LONG LANE, BICKERTON

The Committee received an information report on a recent determination of an application to add a bridleway between Goldford Lane, Larkton and Long Lane, Bickerton to the Definitive Map by Cheshire West and Chester Council.

The application had been made to Cheshire County Council in 2007 for a bridleway to be added to the Definitive Map and Statement along a route commonly known as Dean's Lane. At the time of Local Government Re-organisation the application was allocated to Cheshire West and Chester as the applicant resided in that authority.

Cheshire West and Chester Council (CWAC) sought agreement from Cheshire East Public Rights of Way to investigate and determine the application with a view to making an order that would modify both definitive maps. CWAC had determined the application in accordance with their 'call-in' procedures. This procedure involved a report being prepared and published for a period of 28 days during which a member of their Public Rights of Way Committee could call it in for discussion at a meeting of the Committee. If not called in, the Head of Culture and Recreation could confirm the recommendations made in the report as a decision of the Council.

The application was not called in and the report was approved on 3 October 2011. A Definitive Map Modification Order was made on 25 November and will be advertised in early December for the statutory 42 days.

RESOLVED:

That the report be noted.

34 PUBLIC INQUIRY TO DETERMINE DEFINITIVE MAP MODIFICATION ORDER - UPGRADING OF PUBLIC FOOTPATHS NOS 29, 15 (PART), 14, 10 (PART), 9 (PART) AND 27 PARISH OF CHORLEY & NOS 40 (PART) AND 42 PARISH OF WILMSLOW TO BRIDLEWAY

The Committee received an information report on a recent public inquiry to determine Definitive Map Modification Order – upgrading of Public Footpaths Nos.29, 15 (part), 14, 10 (part), 9 (part) and 27 in the parish of Chorley and 42 in the parish of Wilmslow to Bridleway.

Two applications had been made to Cheshire County Council in 2008 to amend the Definitive Map and Statement by upgrading a number of public footpaths to public bridleways. The first application concerned a route from Knutsford Road to Moor Lane. The second application concerned

footpath No.42, known as Filter Bed Lane, which ran between Upcast Lane and Clay Lane.

These applications were considered at the Public Rights of Way Committee in March 2010, when the making of an Order was approved with the exception of part of Clay Lane. A Modification Order to upgrade the remainder of the route was made on 29 April 2010. Eight formal objections were submitted to the Order which were not withdrawn.

A public inquiry was held on 6 – 8 September 2011. The Inspector heard evidence from the Council's Definitive Map Officer and from fourteen witnesses in support of the Order and from six in opposition.

The evidence in support was that under section 31 of the Highways Act 1980 the ways had been used for horseback for a full period of 20 years without force, secrecy or permission and without sufficient evidence to indicate that there had been no intention to dedicate during that period. If these criteria were fulfilled then the ways are deemed to have been dedicated as bridleway.

The evidence in opposition to the Order was that there was not sufficient evidence of use on horseback during the relevant period and that landowners Mr Morris and Mr Clayton had challenged horse riders. The evidence of the users indicated that most of them were challenged or were aware of horse riders being challenged in the immediate locality of Lea Farm. These challenges were the reason why part of Clay Lane was not included in the Order.

The Inspector issued a decision letter on 26 October 2011 in which the Order was confirmed. The balance of the argument weighed in favour of the footpaths having been deemed to have been dedicated as bridleways. The Council had advertised the confirmation of the Order and must allow 42 days for a High Court challenge to be made. This period would expire on 22 December 2011.

RESOLVED:

That the outcome of the Public Inquiry be noted

The meeting commenced at 2.00 pm and concluded at 2.45 pm

Councillor J Wray (Chairman)