

## **CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Public Rights of Way Committee**  
held on Monday, 7th December, 2009 at Committee Suite 1,2 & 3, Westfields,  
Middlewich Road, Sandbach CW11 1HZ

### **PRESENT**

Councillor B Moran (Chairman)  
Councillor R Walker (Vice-Chairman)

Councillors D Cannon, R Cartlidge, S Wilkinson and J Wray

### **OFFICERS PRESENT**

Mike Taylor, Greenspace Manager  
Amy Rushton, Public Rights of Way Manager  
Genni Butler, Acting Countryside Access Development Officer  
Hannah Flannery, Acting Public Rights of Way Officer  
Rachel Goddard, Legal Services  
Kathryn McKevith, Legal Services  
Rachel Graves, Democratic Services Officer

### **25 APOLOGIES FOR ABSENCE**

Apologies were received from Councillor Rachel Bailey.

### **26 DECLARATIONS OF INTEREST**

Councillor David Cannon declared a personal interest in the meeting proceedings by virtue of his membership of the PALLGO Rambling Club in Crewe and Nantwich. In accordance with the code of conduct, he remained in the meeting during the consideration of all items of business.

### **27 MINUTES OF PREVIOUS MEETING**

The minutes of the meeting held on 7 September 2009 be approved as a correct record and signed by the Chairman.

### **28 PUBLIC SPEAKING TIME/OPEN SESSION**

Mrs P Bentham addressed the Committee in relation to Item 10 on the agenda – Village Green Application No. 47: Field between Birtles Road and Drummond Way, Whirley, Macclesfield.

### **29 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NOS. 2 AND 3 (PARTS) PARISH OF MILLINGTON**

The Committee considered a report which detailed an application from Dr Dylan Prosser (the applicant) of Sandhole Farm, Millington Hall Lane, Millington Nr Altrincham, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath Nos. 2 and 3 in the Parish of Millington.

In accordance with Section 119 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 of the owner, lessee or occupier of the land crossed by the path.

The applicant owned the majority of the land over which the current line of Footpath No. 3 ran, a small section at the northernmost end of the route ran on the adjacent landowner's field. The land over which both the current and proposed route for Footpath No. 3 was owned by the adjacent landowner. As part of the proposed route for Footpath No. 3 was in the adjacent landowner's field, the applicant had agreed to apply to divert part of Public Footpath Millington No. 2 concurrently with Footpath No. 3 on the adjacent landowner's behalf. Written consent to the proposal had been provided by the adjacent landowner.

The current line of Footpath No. 3 ran straight across the applicant's garden and past the outbuildings of Sandhole Farm. There were three stiles for users to traverse. The proposed route for Footpath No. 3 would run along the boundary fence of Sandhole Farm and into the adjacent landowner's field until it rejoined the existing line of Footpath No. 3. The application had been made in the interest of privacy and security of the application as the proposed route would move the footpath away from the applicant's home and garden. The proposed route would also require less path furniture as the three stiles would be replaced with two kissing gates.

The current line of Footpath No. 2 ran straight across the middle of the adjacent landowner's arable field, which was undesirable in terms of farm management. The proposed route of Footpath No. 2 ran along the boundary of the field and would take walkers closer to Millington Clough, providing a more attractive route along the edge of the woodland and blue bell corpse. This would also provide an improved surface as the ground around the perimeter of the field was firmer than the current route where it could become waterlogged and muddy.

The Committee noted that no objections had been received and considered that the proposed footpaths would be more enjoyable than the existing routes. The new routes were not substantially less convenient than the existing routes and would be of benefit to the landowners in terms of security and privacy and in terms of farm management. It was therefore considered that the proposed routes would be more satisfactory than the current routes and that the legal tests for making and confirming of a diversion order were satisfied.

**RESOLVED:**

- (1) that 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's 2 and 3 Millington as illustrated on Plan No. HA/010 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.

### **30 HIGHWAYS ACT 1980 - SECTION 25: UPDATE ON CREATION AGREEMENT FOR A NEW PUBLIC FOOTPATH IN THE PARISH OF BOLLINGTON**

A new path had been created by volunteers of the Kerridge Ridge and Ingersley Vale (KRIV) Countryside and Heritage Project up to the White Nancy viewpoint in the Parish of Bollington. At the September meeting of the Committee, Members had received a report recommending that the Council enter into creation agreements to create a new public footpath along the route. It had been brought to the attention of Members that a letter had been received from an adjacent landowner in which a number of issues were raised relating to the proposed new footpath. The Committee had resolved:

- (1) that creation agreements be entered into under Section 25 of the Highways Act 1980 to create a new public footpath in the Parish of Bollington, as illustrated on Plan No. HA/008, and that public notice be given of these agreements; and,
- (2) that a meeting take place between the Public Rights of Way Officer, KRIV Project Officer and the adjacent landowner to resolve the areas of concern and that an information report be brought back to the next Public Rights of Way Committee.

Members were updated in relation to resolution (2).

A site meeting had been arranged between the adjacent landowner, the KRIV Countryside and Heritage Project Manager and the Acting Countryside Access Development Officer. Prior to this meeting correspondence had been exchanged which outlined the legal process relating to a creation agreement. It was explained that the landowners on whose land the path ran were entitled to enter into a creation agreement with the Council without consultation of adjacent landowners. It was

further explained that the use of the new footpath would be considered unlikely to affect the adjoining land.

In the light of this discussion, the adjacent landowner cancelled the arranged meeting as they felt that the outstanding issues related solely to the boundary wall, a matter which could be resolved directly by the KRIV Project Manager. The adjacent landowner therefore concluded that the matters raised in the original letter had been adequately addressed.

The two creation agreements had been signed by the landowners, sealed by the Council and duly advertised, resulting in the addition of the public footpath to the Definitive Map and Statement.

It was reported that one of the landowners, who was a signatory to a creation agreement, wished to inform the Committee that the minutes of the last meeting gave an unfairly negative impression of the KRIV project which detracted from the excellent work that the KRIV volunteers had carried out. The Committee agreed that the Chairman would write to the landowner in response to their comment.

**RESOLVED:**

- (1) That the report be noted.
- (2) A letter be sent to the landowner who was a signatory of the creation agreement on behalf of the Committee in response to their comment.

**31 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 1 (PART) PARISH OF PEOVER SUPERIOR**

The Committee considered a report which detailed an application from Mr Leslie Taylor (the applicant) of Twin Oaks Farm, Sandy Lane, Over Peover, Knutsford, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 1 in the Parish of Peover Superior.

In accordance with Section 119 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 of the owner, lessee or occupier of the land crossed by the path.

The existing line of Footpath No. 1 crossed a paddock which was used for horses, foals and sheep grazing and in spring it was used for lambs. The applicant had had frequent problems with walkers and their dogs crossing the paddock and distressing stock. The application was also made in the interest of privacy and security of the applicant as the proposed route for the eastern end of the path moved it further away from the applicant's

house. The majority of the proposed route followed the outside of the boundary of the paddock until it rejoined the existing line of the footpath and was presently used as a permissive route. Moving the footpath would also improve accessibility as two stiles which users currently had to negotiate would be removed.

The Committee noted that no objections had been received and considered that new route was not substantially less convenient than the existing route and would be of benefit to the landowner. Moving the footpath out of the paddock would prevent walkers and their dogs distressing the stock, improving farm management. It would also improve accessibility for walkers as it did not require any further path furniture and removed the need for the two stiles which users have to negotiate on the current route. It was therefore considered that the proposed route would be more satisfactory than the current route and that the legal tests for the making and confirming of a diversion order were satisfied.

**RESOLVED:**

- (1) that 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. 1 Peover Superior as illustrated on Plan No. HA/006 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.

**32 UPDATE ON DEVELOPMENT OF THE RIGHTS OF WAY IMPROVEMENT PLAN (2011-2026) WITHIN THE LOCAL TRANSPORT PLAN 3**

The Committee received a report which gave an update on the development of the Rights of Way Improvement Plan (ROWIP) (2011-2026) within the context of the Local Transport Plan 3 (LTP3).

An initial meeting of Elected Members and officers from across the Council had taken place on 30 October 2009 to launch the process of developing the ROWIP. Representatives had attended from sections of the Council including strategic highways, highways operations, climate change, school travel team, development control, visitor economy and adult services. A member of the Cheshire Local Access Forum was also in attendance. The meeting was used to establish the linkages with other strategies and plans

and to raise the profile and potential of the ROWIP across the organisation.

The project management framework for the ROWIP project was being developed presently and would include a steering group of elected members who sat on the Committee.

The Public Rights of Way Committee would sign off the draft ROWIP strategy document for the period 2011-2026. It was anticipated that this document would be presented to the Committee in autumn 2010. The Committee would also be asked to sign off the draft ROWIP implementation plan for the delivery of projects for the period 2011-2014, which was anticipated would be presented to the Committee in early 2011.

**RESOLVED:**

That the report be noted.

### **33 VILLAGE GREEN APPLICATIONS**

The Committee received a report which sought approval of a procedure for determining village green applications.

The Council was the registration authority for the purposes of village greens and in that capacity was responsible for determining applications received and for the keeping of the register of village greens.

Village greens could be registered either as a result of an application by a third person or by a voluntary registration by the landowner. Approval was being sought to the procedure in relation to applications received from persons other than the landowner.

The report outlined the proposed procedures and options or paths that applications may take. These were:

- Option 1 – Reject application for failing to meet basic statutory requirements
- Option 2 – Accept application as validly made and write a report to the Committee recommending acceptance of the application and registration of the land as village green (in whole or in part)
- Option 3 – Accept application as validly made and write a report to the Committee recommending rejection of the application
- Option 4 – Accept application as validly made, and appoint an independent person either
  - a. to consider the application on the basis of written representations; or

- b. to hold a non-statutory public inquiry and to provide a report to the Committee
- Option 5 – Public Rights of Way Committee holds a hearing itself and then decides whether to accept (in whole or part) or reject the application.

The Committee discussed each of the Options. In relation to Option 4, the Committee considered that the independent person should be a 'suitably qualified' barrister or planning inspector.

**RESOLVED:**

- (1) That the procedure outlined in the Report be noted and adopted for handling existing and future applications in respect of village greens, subject to Option 4 being amended to read 'suitably qualified independent person'.
- (2) That officers arrange the necessary training for the Committee.

**34 VILLAGE GREEN APPLICATION NO. 47 - FIELD BETWEEN BIRTLES ROAD AND DRUMMOND WAY, WHIRLEY, MACCLESFIELD**

The Committee received a report seeking a decision on how to proceed with a village green application (No. 47) in respect of a field between Birtles Road and Drummond Way, Whirley, Macclesfield.

The application had been submitted in October 2008 and the Council, as landowner, had written in objection to the application making certain legal arguments and producing various licences seeking to demonstrate its objection. The applicant had been given the opportunity to comment on the Council's objections.

The applicant had requested that a non-statutory public inquiry be held as the Council was the landowner. However it was considered appropriate to appoint a suitable qualified independent person to consider the matter on written representations as the objections from the Council (as landowner) were not particularly complex and were in the form of correspondence and licences.

It could be possible that the independent person, having received the documents, recommends that an inquiry is held instead. In the event of such a request, the Borough Solicitor could be given delegated authority to determine whether this was appropriate after consulting with the Chairman of the Committee.

**RESOLVED:**

- (1) That the Borough Solicitor be authorised to appoint a suitably qualified independent person to consider the application on the basis of written representations and provide a report.
- (2) That the Borough Solicitor be given delegated authority to determine if a non-statutory public inquiry should take place upon the recommendations of the independent person, after consulting the Chairman of the Committee.

The meeting commenced at 2.00 pm and concluded at 2.55 pm

Councillor B Moran (Chairman)