

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Thursday, 10th June, 2010 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor S Wilkinson (Chairman)
Councillor R Walker (Vice-Chairman)

Councillors Rhoda Bailey, R Cartlidge, S Davies and S Jones

OFFICERS PRESENT

Mark Wheelton, Leisure Services and Greenspace Manager
Mike Taylor, Greenspace Manager
Amy Rushton, Public Rights of Way Manager
Genni Bulter, Acting Countryside Access Development Officer
Hannah Flannery, Acting Public Rights of Way Officer
Rachel Goddard, Solicitor
Rachel Graves, Democratic Services Officer

1 APOLOGIES FOR ABSENCE

Apoloiges were received from Councillors D Cannon and J Wray.

2 DECLARATIONS OF INTEREST

Councillors R Walker and S Davies both stated that they would not be participating in the debate or voting for Item 14 – Creation Agreement for a New Public Bridleway in the Parishes of Nantwich and Wistaston, as they were members of the Southern Planning Committee and did not wish to predetermine any related planning applications and would leave the meeting prior to consideration of this item.

Councillor Rhoda Bailey declared a personal interest in the meeting proceedings by virtue of her membership of CPRE. In accordance with the code of conduct, she remained in the meeting during consideration of all items of business.

3 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 1 March 2010 be approved as a correct record and signed by the Chairman.

4 PUBLIC SPEAKING TIME/OPEN SESSION

Christine Peat addressed the Committee in support of Item 5 – Creation Agreement for a New Public Bridleway in the Parish of Bollington, whilst Andrew Roberts and Patrick Dawson spoke in opposition to the proposal.

5 HIGHWAYS ACT 1980 - SECTION 25: CREATION AGREEMENT FOR A NEW PUBLIC BRIDLEWAY IN THE PARISH OF BOLLINGTON

The Chairman reported that he had received a letter and photographs from Hilary Beech and a letter from Andrew Roberts, copies of which had been circulated to members of the Committee.

The Committee received a report which detailed a proposal to establish a bridleway to connect Redway in Kerridge to an existing public bridleway in Rainow parish and for the Council to enter into a Creation Agreement with the landowners who had agreed to dedicate the route as a public bridleway.

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 a public right 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.

The majority of the route ran along an existing concrete track over which ran public footpath no. 17 in the town of Bollington. Following a site meeting in October 2008, attended by the landowners of the proposed route, lessors of the land either side of the proposed route, adjacent landowners who have a right of vehicular access along the concrete track, a Public Rights of Way Officer from the former Cheshire County Council, the North West Regional Bridleway Officer from the British Horse Society and the Project Manager of the Kerridge Ridge and Ingersley Vale Countryside and Heritage Project, it was agreed that a 90m section of the proposed route would be created away from the track in order to avoid a tight and steep corner. Further concerns about safety would be addressed through the provision of a verge alongside the concrete track onto which a rider could move should a vehicle approach.

RESOLVED:

That a Creation Agreement under Section 25 of the Highways Act 1980 be entered into with the appropriate persons with capacity to dedicate to create a new public bridleway in the Parish of Bollington, as illustrated in Plan No. HA/009/Outline, and that public notice be given of these agreements.

6 PUBLIC RIGHTS OF WAY ANNUAL REPORT 2009/10 AND WORK PROGRAMME 2010/11

The Committee received a report which detailed the achievements of the Public Rights of Way service during 2009/10 and set out the proposed work programme for 2010/11.

The Public Rights of Way Manager reported that during 2009/10

- the Legal Orders Team had processed more Orders this year than the previous year. However, there was still a backlog of 28 Public Path Orders and 24 Definitive Map Orders and an officer was being recruited on a one year fixed term contract to address this backlog, the cost of this being covered by the income generated.
- Since the disaggregation of the path network into East and West, the Maintenance and Enforcement Team were responsible for an additional 90km each but had not received any corresponding increase in their budget.
- There were no dedicated staff to carry out path inspections under section 58² of the Highways Act 1980 and this was a risk to the Council as previously evidence of surveys being carried out had helped defend against claims for personal injury.
- Random survey results had shown 84% found the footpath network easy to use which was higher than pre Local Government Review survey results.
- One public inquiry had been held, which had found in favour of the Council and the seven Orders which had been referred to the Planning Inspectorate had been successful.
- The budget was falling short of meeting current and future maintenance demands on the network. It was also insufficient budget to permit the recruitment to cover maternity leave in the Legal Orders Team.

The Committee commended the staff in the Public Rights of Way team for the work they had undertaken, which at times was under difficult circumstances.

RESOLVED:

The Annual Report for 2009/10 be noted and the proposed Work Programme for the Public Rights of Way Team 2010/11 be approved.

7 UPDATE ON DEVELOPMENT OF THE RIGHTS OF WAY IMPROVEMENT PLAN (2011 - 2026)

The Committee received a report on the development of the Rights of Way Improvement Plan (ROWIP) 2011-2026.

The current ROWIP covering Cheshire East was prepared by Cheshire County Council and expires in March 2011. A new ROWIP was being developed to reflect the new geographic area of Cheshire East and

coincide with the preparation of the new Local Transport Plan, into which the ROWIP must be fully integrated.

A Project Board and Steering Group have been established to assist with the process of developing the plan. The Project Board consisted of a broad range of officers from different Council services who contributed their expertise and knowledge in helping define the scope and focus of the new ROWIP as well as improving links between departments. The Steering Group consisted of elected Members from the Public Rights of Way Committee, together with the Portfolio Holder for Health and Wellbeing. The Group's role was to direct the project programme and monitor progress against the project time plan.

An extensive consultation process for the ROWIP and the Local Transport Plan had been developed spanning the spring, summer and autumn of this year. This would include engagement through Town and Parish Councils, the Local Area Partnerships, web based consultation and direct contact with user groups and the wider public.

It was intended that the ROWIP strategy would be presented to the Committee at its September meeting seeking recommendations to the Portfolio Holder for approval.

RESOLVED:

That the report be noted.

8 TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 24 (PART) PARISH OF DISLEY

The Committee received a report which detailed an application from United Utilities (the applicant) requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 24 in the parish of Disley.

Section 257 of the Town and Country Planning Act 1990 allowed the Council to make and confirm Orders authorising the stopping up or diversion of a footpath if they were satisfied that it was necessary to do so in order to enable development to be carried out in accordance with planning permission granted.

Planning permission has been granted to the applicant in January 2010 for a new Reservoir Spillway, Barrow Pit area for obtaining spill material use in the embankment stability work, new permanent road access, new fisherman's hut and temporary road access from Red Lane. This work would ensure the safety of the Reservoir during times of flooding.

Part of the current line of Footpath No. 24 Disley lay directly under the site of the construction of part of the new spillway. Also the access road was

being moved and fenced off. Part of the existing footpath ran along the access road and would fall within the fenced off area. The footpath diversion was required to provide public access outside of the United Utilities operational area.

The proposed route would move the footpath to the north of its current location, out of the area of construction and across a pasture field. A kissing gate would be required at its joining with Footpath No. 22.

The Committee noted that no objections had been received. It was considered that the legal test for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

RESOLVED:

- (1) An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 24 Disley, as illustrated on Plan No. TCPA/002, on the grounds that the Borough 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 Acts.
- (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.

9 TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 257: REQUEST TO FORMALLY ABANDON "THE CHESHIRE COUNTY COUNCIL (FOOTPATH NO.49 (PART) PARISH OF HASLINGTON, BOROUGH OF CREWE AND NANTWICH) PUBLIC PATH DIVERSION ORDER 2009"

The Committee received a report which sought approval to formally abandon a diversion order for Footpath No. 49 (part) in the parish of Haslington following a request from Land Recovery Limited, c/o Mineral Planning Group (the applicant).

Cheshire County Council had made an Order on 29 January 2009, following an application from The Mineral Planning Group on behalf of Mr Beecroft of White Moss Quarry to divert Public Footpath No. 49 (part). The diversion related to planning consent no. 7/2008/CCC/8 to develop an aggregate recycling and storage operation at White Moss Quarry and it was believed that Footpath No. 49 would be affected by the proposal.

The diversion order had attracted a large number of objections from local people, largely due to the fact that the original line was an attractive 'green lane' and had perceived high wildlife value. The original line of the path was open and available on the ground and has not, in fact, been affected by the quarry development, as the applicant has undertaken other work to meet other planning obligations which ultimately mitigated against any adverse effect on the path. The applicant's agent had therefore requested that the diversion order be abandoned as it was no longer required.

RESOLVED:

That the diversion order "The Cheshire County Council (Footpath No. 49 (part) Parish of Haslington, Borough of Crewe and Nantwich) Public Path Diversion Order 2009" be abandoned in accordance with the request of the applicant through their agent.

10 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 29 (PART) PARISH OF BRERETON

The Committee received a report which detailed an application from Mrs Emma Bromley-Devenport (the applicant) of Long Lane Farm, Davenport Lane, Brereton requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 29 in the Parish of Brereton.

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 public or of the owners, lessee or occupier of the land crossed by the path.

The applicant owned the land over which the current path and proposed alternative route ran. The existing line of Public Footpath Brereton No. 29 ran through the applicant's garden and extremely close to the applicant's house. The definitive line of the footpath had been partially obstructed for a number of years (before the applicant purchased the property) and diverting the footpath would deal with this long standing issue.

The proposed diversion would leave the driveway and pass through a small wooded area before entering the field south east of Long Lane Farm. It would then run in a south westerly direction along the field boundary and then in a westerly direction across the field to join the existing line of the footpath. The proposed diverted route was slightly longer than the current route; however, it passed through open countryside providing better views than the current route. Moving the footpath out of the garden and away from the house would provide a less intimidating route for users and be of huge benefit to the landowner in terms of privacy and security.

The Committee noted that there were no objections to the proposals and considered that the new route was not substantially less convenient than

the existing route and would be of huge benefit to the landowner. Moving the footpath away from the house and house would allow the applicant to improve her privacy and security considerably and would also deal with the long standing issue of the legal line of the footpath being partially obstructed. It was therefore considered that the proposed route would be more beneficial than the current route and the legal tests for 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 part of Public Footpath No. 29 Brereton, by creating a new section of public footpath and extinguishing the old part, as illustrated on Plan No. HA/016 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 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.

11 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 8 (PARTS) PARISH OF BADDINGTON

The Committee received a report which detailed an application from Messrs Williamson (the applicant) via their Agents – Hibberts LLP Nantwich, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 8 in the parish of Baddington.

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 of the owner, lessee or occupier of the land crossed by the path.

The applicants owned the land over which the current path and the proposed alternative routes ran. The first section (A-B) of the current line of Public Footpath No. 8 Baddington to be diverted ran across land which was currently used as a driveway and which the applicant intended to turn back into garden, by realigning the driveway to the property. The applicant had received planning permission for the driveway alteration (reference P09/0004). The proposed new route of the footpath followed the realigned driveway.

The second section (C-D) of Footpath No. 8 to be diverted took a slight diagonal line across the length of a paddock and was undesirable in terms of land management and was problematic from the point of view of the applicant's wish to possibly extend gardens along the length of part of all of the paddock, from the farm buildings which may be converted into dwellings at a future date. The proposed new route for this section takes a straight line along a wide grass track to the edge of the applicant's property. It would exit into the adjacent field where the applicant would install a new kissing gate.

The Committee noted that there were no objections to the proposals and considered that the proposed routes would be as enjoyable as the existing route. The new route was not substantially less convenient than the existing route and diverting the footpath would be of benefit to the landowners, particularly in terms of current and future land use. It was therefore considered that the proposed route would be as satisfactory as the current route and that the legal tests for 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 part of Public Footpath No. 8, by creating a new section of public footpath and extinguishing the old part, as illustrated on Plan No. HA/015 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 to the Order 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.
- 12 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NOS. 3 AND 9 (PART) PARISH OF HENBURY**

The Committee received a report which detailed an application from Mr Simon Taylor (the applicant) of Henbury House, Pexhill Road, Henbury, Macclesfield requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert Public Footpath No. 3 and part of Public Footpath No. 9 in the parish of Henbury. The applicant owned the land over which the current paths and the proposed alternative routes ran.

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.

Public Footpath No. 3 ran in a south westerly direction from Sandbach Farm to Public Footpath No. 1 Henbury. If the diversion order for Public Footpath No. 9 Henbury was successful this would result in Footpath No. 3 becoming a cul de sac route. It was therefore proposed to divert Footpath No. 3 concurrently with Footpath No. 9.

The proposed route for Footpath No. 3 would run across open pasture, north of Sandbach Farm and would create a link between Footpath No. 9 and Footpath No. 5 (Lingards Farm) where none existed before. It would exit the field approximately 120 metres north of Lingards Farm on Fanshawe Lane. Leaving the field at this point avoided users having to traverse a steep bank down onto Fanshawe Lane.

The section of Public Footpath No. 9 Henbury to be diverted followed the driveway to Sandbach Farm, passing through the farmyard, very close to the house and then across the field to Henbury Moss. Planning permission had recently been granted (application no. 08/1005P) to redevelop Sandbach Farm. The Farm would be reconstructed, together with a new pond and equestrian facilities. The line of the existing footpath would pass through the garden and pond of the new property and very close to the equestrian facilities, where breeding and training of horses would take place.

The proposed route would leave the driveway north of Sandbach Farm, running in a generally south easterly direction across a field to join Public Footpath No. 3. It would cross slightly higher ground than the existing route and provided much improved views of the Cheshire countryside. It would run adjacent to a new landscaped area of woodland. Moving the footpath away from the house and yard would allow the applicant to significantly improve the privacy and security of the property. It would also be a benefit in terms of farm management and avoid any risk of accidents between members of the public and the horses.

The Committee noted that there were no objections had been received and considered that the proposed footpaths would be more enjoyable than the existing routes, providing a much improved open views of the Cheshire countryside. The new routes were not substantially less convenient than the existing routes and diverting the footpaths would be of huge benefit to the landowner, particularly in terms of security and privacy and also in terms of farm management. It was therefore considered that the proposed routes would be more beneficial than the current routes 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. 3 and part of Public Footpath No. 9 Henbury, by creating new sections of public footpath and extinguishing the old parts, as illustrated on Plan No. HA/017 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 Act.
- 3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearings or public inquiry.

13 HIGHWAYS ACT 1980 - SECTION 25 AND SECTION 26: PROPOSAL TO ENTER A CREATION AGREEMENT AND TO MAKE A CREATION ORDER FOR A BRIDLEWAY; PUBLIC FOOTPATH NO. 6 PARISH OF EATON

The Committee received a report which detailed a proposal to enter into a Creation Agreement and make a Creation Order for a bridleway over existing Public Footpath No. 6 Eaton.

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 a public right of way. The Highways Act 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 feature. Under Section 25 there was no statutory right for objection to the proposal. Section 26 of the Highways Act 1980 gave the Council the power to create footpaths or bridleways by order, imposing the path on the landowner.

Cheshire County Council had previously reached an agreement with the landowner, Fairclough Homes, to create a bridleway over Public Footpath No. 6. A formal agreement had been drawn up and signed and sealed by Fairclough Homes but was never signed and subsequently advertised by the County Council. The path had been made up to a bridleway standard on the ground and has been used and accepted by horseriders for the past 5 years.

A short section of the public footpath fell outside the ownership of Fairclough Homes and a Land Registry search had revealed it to be unregistered. This section was approximately 15 metres in length and linked the bridleway to Byway Open to all Traffic No. 8 (Havannah Lane).

It was therefore proposed that the Council entered into a new Agreement on the same basis as the previous one and that a Creation Order be made for the section of the path for which no landowner had been identified.

RESOLVED:

- (1) That a Creation Agreement be entered into under Section 25 of the Highways Act 1980 to create a new public bridleway over public footpath No. 6 in the Parish of Eaton (as shown A-B-C on plan C011A) and that public notice be given of this agreement.
- (2) That a Creation Order be made under Section 26 of the Highways Act 1980 to create a bridleway for an adjoining section of public footpath No.6 (Between point A and Boat 8 on plan C011A) on the grounds that there is a need and it is expedient that the path should be created.
- (3) Public Notice of the making of the Order be given and in the event of there being no objections with the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- (4) In the event of objections to the Creation Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

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

The Committee received a report which detailed a proposal for the Council to enter into creation agreements with the landowner(s) who had agreed to dedicate part of the Connect2 Crewe to Nantwich Greenway off road cycle route as a public bridleway so that pedestrians, cyclists and horseriders could use the 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.

The proposed route ran from off the A51 roundabout (known as the Sainsbury's roundabout) in Nantwich in a north-easterly direction for a distance of approximately 2.5km to its junction with A530 Middlewich Road by Wistaston Green Road (known as the Rising Sun junction). The landowner had agreed to dedicate the proposed route as a public bridleway as part of the Connect2 Crewe to Nantwich Greenway project.

The route would be established to Sustrans' Connect2 Greenway Design Guide standards for multi-users routes: this included a tarmac surface of 2.5 – 3 metres width for cyclists and pedestrians and a verge for equestrian use of 2.5 metre. Parts of the route ran along existing tracks which would be upgraded to this standard.

Three residential properties lay adjacent to the proposed route. Each had been contacted with responses from two having been received to date. The property owners were concerned about the proposals and wished to object given the proximity of the route to their properties and felt that the proposals would reduce the seclusion and privacy of their homes and devalue the properties. The owners had suggested alternative options for the project including possible route amendments. These were being discussed with the landowner, their agents and their tenant with the aim of reaching a conclusion which was reasonably satisfactory to all parties.

RESOLVED:

- (1) 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. 13.10.10, and the public notice be given of these agreement(s).
- (2) The Public Rights of Way Manager be authorised to negotiate the final route of the new bridleway to be included in the creation agreement(s) as the route shown on Plan No. 13.10.10 is illustration only.

(Note: Councillors R Walker and S Davies withdrew from the meeting prior to discussion and voting on this item.)

The meeting commenced at 2.00 pm and concluded at 3.40 pm

Councillor S Wilkinson (Chairman)