

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 11th June, 2012 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor J Wray (Chairman)

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

Officers

Mike Taylor, Rights of Way Manager
Hannah Duncan, Definitive Map Officer
Marianne Nixon, Public Path Orders Officer
Elaine Woods, Highways Solicitor
Rachel Graves, Democratic Services Officer

1 APOLOGIES FOR ABSENCE

Apologies were received from Councillors R Cartlidge and D Druce.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 12 March 2012 be approved as a correct record and signed by the Chairman.

4 PUBLIC RIGHTS OF WAY ANNUAL REPORT 2011-2012 AND WORK PROGRAMME 2012-2013

The Committee received a report which detailed the achievements of the Public Rights of Way service during 2011-2012 and set out the proposed work programme for 2012-2013.

The Rights of Way Manager reported on the work carried out during 2011-2012 by the Network Management and Enforcement Team and the Legal Orders Team.

It was reported that:

- 39 temporary and emergency closures of rights of way had been made
- 529 problems on the network had been logged, with 375 being resolved and 154 unresolved

- 19 public path orders had been confirmed, 19 cases were in the progress, with a backlog of 25 applications
- 4 Orders had been contested and referred to the Planning Inspectorate
- 4 Definitive Map Modification Orders had been confirmed, 10 were in progress, with a backlog of 22
- 2 Definitive Map Anomaly investigations had been completed, with a backlog of over 260

The budget for Public Rights of Way had been reduced and the reactive way that maintenance must work had resulted in funds being completely committed well before the end of the financial year. As a consequence work other than planned pre-allocated commitments had been cut back. A moratorium on all non-essential spending had been imposed in October 2011 until the end of the financial year for the second year in succession. The consequences were that a black log of work was released at the commencement of the new financial year compounding the problem of under funding and speeding the time at which the budget became expired.

RESOLVED:

That the Annual Report for 2011-12 be noted and the proposed work programme for the Public Rights of Way Team 2012-13 be approved.

5 DEFRA CONSULTATION, "IMPROVEMENTS TO THE POLICY AND LEGAL FRAMEWORK FOR PUBLIC RIGHTS OF WAY".

The Committee received a report on the DEFRA consultation "Improvements to the Policy and Legal Framework for Public Rights of Way".

The proposals in the consultation document would affect three areas of rights of way work – Definitive Map Modification Orders and the Definitive Map, Public Path Orders, and the relationship between planning consents affecting rights of way and any necessary consequential public path orders to allow development to proceed.

The principle proposals dealt with measures to bring the Definitive Map up to date and effectively 'close it' to the addition of new routes based on historical evidence. To achieve this, the Countryside and Rights of Way Act 2000 introduced a cut-off date, whereby after 25 years all rights of way already in existence in 1949 and not recorded on the definitive map and statement by 2026 would be extinguished, subject to the exceptions already provided by the Act.

It had become apparent that completion of the definitive map and statement by 2026 would not be a viable proposition unless a streamlined approach to recording of public rights of way was adopted. In order to develop such an approach Natural England had established an independently chaired Stakeholder Working Group to develop a

consensus amongst stakeholders, representing landowners, rights of way users and local authorities, about the best way forward.

The Stakeholder Working Group had published a report “Stepping Forward” in March 2010 which contained a package of 32 proposals designed to improve various processes associated with identifying and recording historical rights of way. The Defra consultation document set out how the Government intended to implement these proposals.

RESOLVED:

That the response to the Consultation, as set out in the “Details and Comments” column in the report, be approved.

6 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PART OF PUBLIC FOOTPATH NO. 14 IN THE PARISH OF SANDBACH

The Committee received a report which detailed a proposal to request the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.14 in the parish of Sandbach.

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 current definitive line of the footpath had been diverted in October 1963 under the Town and Country Planning Act 1962 as part of “The Stopping up of Highways (County of Chester) (No.10) Order 1963”. Due to an error in the Order, the eastern end of the diverted footpath did not meet the public highway. It stopped as it reached a private access track, and there was therefore no legal public access through to Church Lane, Sandbach.

The proposed route had been used as a permissive path for a number of years. It ran along an existing track south west of the present route to join with Church Lane. To re-instate the footpath onto the current legal line, two gates or stiles would be required, whilst the proposed diversion required only one kissing gate.

The proposed diversion would be in the interests of the public as it would resolve the issue of the footpath not meeting the public highway, thereby providing public access through to Church Lane. It was also in the interests of the landowner at Heath Farm as it would move the footpath out of a paddock and allow them greater freedom in utilising the land, as well as increasing privacy and security at the farm by moving the footpath away from their buildings.

The two landowners, Mrs Smith of Heath Farm, Church Lane, Sandbach who owned the land over which the current route ran and Mr Davenport of Top O The Town Farm, Heatley Lane, Broomhall, who owned the land over which the proposed route would run, had both provided written consent and support for the proposal.

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. The diversion would resolve the long standing legal anomaly with the eastern end of the footpath not meeting a public highway. Diverting the footpath would provide a legal, usable route on the ground for the public thereby clarifying the situation for path users and the landowner at Heath Farm. 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: 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. 14 in the parish of Sandbach by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/064, on the grounds that it is expedient in the interests of the public and of the landowner at Heath Farm.
- (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 for any hearing or public inquiry.

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

The Committee received a report which detailed an application from Mrs MF Pallett, Stores Farm Barn, Swineyard Lane, High Legh (the Applicant) requesting the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.18 in the parish of High Legh.

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 section of Public Footpath No.18 High Legh to be diverted ran through the property of the landowner giving rise to concerns relating to security and safety.

It was noted that the North and Mid Cheshire Ramblers Association had expressed concern that a stable and ménage, for which planning permission had been applied for, if built, may cause damage to the surface of the alternative route and affect enjoyability. Following consideration of the response from the local authority, this concern was allayed since if the diversion was considered at a later date under the Town and Country Planning Act 1990 the diversion route options would be less attractive to users. The current proposal would take users across a pasture field to the southern field boundary and then along that boundary between trees to the north of which is the proposed location for the ménage. Therefore, the ménage and stables would not affect the current proposal other than to force the need for a fenced section between points D-B as shown on Plan No.HA/071.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would be of considerable benefit to the landowner in terms of enhancing security and privacy of the 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: 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 High Legh by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No. HA/071, 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.

8 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 60 (PART), PARISH OF WILMSLOW

The Committee received a report which detailed an application from Mr R Fowler (the Agent) of MBW Developments on behalf of Mr RN Scott (the

Applicant) of Moat Hall Farm, Chelford Road, Marthall, Nr Knutsford requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.60 in the parish of Wilmslow.

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 paths.

The land over which the current path and the proposed diversion runs belonged to Mr R Fowler of MBW Developments and the intention was that ownership would transfer to the buyer, Mr Scott on whose behalf Mr Fowler was acting upon. The section of Public Footpath No.60 Wilmslow to be diverted skirted around the north western edge of a small lake. A private dwelling would be built on the land over which the path ran giving rise to concerns relating to security and safety. Planning permission for this development had been granted – Planning Reference: 10/1798M.

The proposed new route would skirt the small lake and would run in a southerly direction and then in a westerly direction as per Plan No. HA/070. The new route would have a recorded width of 2 metres and would be unenclosed although it would be bounded by a hedge part of the route.

It was noted that Wilmslow Parish Council had registered an objection to the proposal but this was withdrawn following reconsideration after discussion with the local authority.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would be of considerable benefit to the landowner in terms of offering enhanced security and privacy once the land over which the path ran was sold for the development of a private dwelling. 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: 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.60 Wilmslow by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No. HA/070 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.

9 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 63 (PART), PARISH OF DISLEY

The Committee received a report which detailed an application from Mr R Maclean (the Agent) of Mattin Maclean Ltd on behalf of Disley Golf Club Ltd, Stanley Hall Lane, Disley requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.63 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 or of the lessee or occupier of the land crossed by the paths.

Disley Golf Club owned the land over which the current path and the proposed diversion ran. The section of Public Footpath No.63 Disley to be diverted ran through unused grounds of Stanley Hall Farm and it was the intention to landscape this land into gardens as part of wider developments to the farm property. This gave rise to privacy and security concerns.

It was noted that the Cheshire East Ramblers and Disley Footpath Society had requested that consideration be given to surfacing of the diversion route between points C-D (shown on Plan No.HA/69) along with installation of steps at point D to ease the short decent from the tarmac road.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the route would be of considerable benefit to the landowner in terms of enhancing the security and privacy of the property. 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.

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.63 Disley by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan

No.HA/069, 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.

**10 TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 257:
APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO.1
(PART) PARISH OF HANKELOW**

The Committee received a report which detailed an application from Mr Andrew Jones (the Agent) of CAS Estates on behalf of Mr Ian Glennister (the Applicant) of Lanyon Bowdler Solicitors, 39-41 Church Street, Oswestry requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to divert Public Footpath No.1 in the parish of Hankelow.

In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as the Planning Authority, can make an Order stopping up or diverting a footpath or part of a 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 that had been granted.

Planning permission had been submitted for proposed barn conversions (Planning Permission Ref: 11/3818N) at Manor Farm, Hall Lane, Hankelow. The existing alignment of the footpath would be directly affected by the proposed construction of a garage block which would be developed in the interest of the Applicant who owned the land over which ran this section of the footpath. The construction of the garage block would obstruct the line of the footpath and therefore a path diversion was required to provide public access around the garage. The length of footpath proposed to be diverted was approximately 30 metres.

The Committee noted that no objections had been received from the informal consultations and concluded that it was necessary to divert part of Public Footpath No.1 Hankelow to allow development to be carried out. 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.

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.1 Hankelow,

as illustrated on Plan No.TCPA/009, on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place on the condition that planning consent is given.

- (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.

The meeting commenced at 2.00 pm and concluded at 3.28 pm

Councillor J Wray (Chairman)