

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 5th December, 2016 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor M Hardy (Chairman)
Councillor D Flude (Vice-Chairman)

Councillors Rhoda Bailey, S Davies, T Fox, L Gilbert and J Wray

Officers

Mike Taylor, Rights of Way Manager
Jennifer Tench, Definitive Map Officer
Clare Hibbert, Definitive Map Officer
Marianne Nixon, Public Path Order Officer
Patricia Evans, Planning Lawyer
Rachel Graves, Democratic Services Officer

26 APOLOGIES FOR ABSENCE

There were no apologies for absence.

27 DECLARATIONS OF INTEREST

In the interests of openness, Councillor R Bailey declared, in relation to Item 5 – Application for the Diversion of Public Footpath No.51 (part) Parish of Odd Rode, that she knew two of the landowners.

28 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 12 September 2016 be confirmed as a correct record and signed by the Chairman, subject to the following amendment:

Minute 24 – Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No.8 (part) Parish of Odd Rode

In the first and second paragraphs 'Town and Country Planning Act 1980' be amended to read 'Town and Country Planning Act 1990'.

29 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public present.

30 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 51 (PART), PARISH OF ODD RODE

The Committee considered a report which detailed an application from Ms Janet Yang on behalf of Network Rail Ltd requesting the Council to make an Order to divert part of Public Footpath No.51 in the parish of Odd Rode.

In accordance with Section 119(1) of the Highway 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 current path and the proposed diversion ran was divided between three landowners – the applicant Network Rail, Mr & Mrs A Preston and Miss J Batchelor. The latter two had confirmed their written agreement to the proposed diversion.

The section of Public Footpath No. 51 Odd Rode to be diverted passed beneath the southern span on a railway bridge (points B-C on Plan No. HA/114). Following an inspection of the bridge foundations, staff from Network Rail concluded that the bridge needed to be strengthened. Infilling the southern span and diverting the footpath to run beneath the northern span would be required to effect this (points E-F).

The new route would be 2 metres wide and kissing gates would be installed on each side of the bridge span. The bridge span itself would be renewed as part of the planned works and would measure 2 metres wide x 2.1 metres high. The current overgrown vegetation would be cleared and measures put in place to ensure adequate drainage of the area. The path surface would be grass except beneath the bridge where it would be brushed concrete. Although if necessary a firm aggregate would be laid on the path either side of the bridge.

It was reported that Railway and Canal Historical Society had requested that, due to Public Footpath No.51 following the alignment of the former Hall o'Lees Colliery Tramway, if any possible artefacts from the tramway were uncovered during work that the Society be allowed to inspect them in situ. Network Rail has agreed to this request.

The Committee noted the comments from Odd Rode Parish Council and the Officers response that the diversion would not be certified by the Council as operable to the public unless all agreed works, including clearance of overgrown vegetation, provision of adequate drainage and renewal of the bridge span, were completed.

The Committee noted that no objections had been received during the informal consultation and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the

footpath would be of benefit to Network Rail as it would enable them to undertake the necessary strengthening work to the railway bridge. 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 the Public Footpath No.51 Odd Rode by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No. HA/114, 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 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257 AND HIGHWAYS ACT 1980 SECTION 118: APPLICATION FOR THE EXTINGUISHMENT OF PUBLIC FOOTPATH NO.2 (PART), PARISH OF EDLESTON

The Committee considered a report which detailed an application from Bovis Homes Ltd (Northern Region) requesting the Council make an Order under Section 257 of the Town and Country Planning Act 1990 to extinguish part of Public Footpath No.2 in the parish of Edleston between points A and B as shown on Plan No. TCPA/033. A second application had been made under Section 118 of the Highways Act 1980 to extinguish part of Public Footpath No.2 in the parish of Edleston between points B and C as shown on Plan No. TCPA/033.

In accordance with Section 257 of the Town and Country Planning Act 1990, as amended by Section 12 of the Growth and Infrastructure Act 2013, the Borough Council, as Planning Authority, can make an Order extinguishing 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 which had been granted.

In accordance with Section 118(1) of the Highways Act 1980 it was within the Council's discretion to make an 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.

Planning permission had been granted for outline permission for a residential development of 118 dwellings with associated works – planning reference 14/5841N. The reserved matters application had also been granted permission – planning reference 16/0983N.

The current line of Public Footpath No.2 Edleston between points A and B would, under the approved development, be obstructed by two properties and their gardens, a private driveway and it would also run over what would be an adopted highway. It was considered necessary to extinguish this part of the Footpath to allow for the residential development as detailed in the planning application.

If the Order was made to extinguish this section of the Footpath it would leave a section of cul-de-sac path approximately 44 metres in length, as shown between Points B and C on Plan No. TCPA/033. This section of path fell outside the development area and as it was considered that it would serve no useful purpose to the public, a second application had been made by the Applicant to extinguish this section of public footpath on the grounds that it was not needed for public use. This section of path ran through the garden of the adjacent property Laburnum House. It was believed that this section of footpath had had very little use by the public as it had been a cul-de-sac path since 1958 when the continuation of the path to the north was stopped up by legal order.

Alternative footpaths were available. The Applicant was retaining and improving Public Footpaths Nos. 3 and 4 Edleston on their current alignment and would form part of the open space area on the development. From point C on Plan No. TCPA/033 there was a route through to Queens Drive via Public Footpath No.3 Edleston and Public Footpath No.2 Nantwich. There would also be a pedestrian access from the end of the new estate road to link with Public Footpath No.3 Edleston.

The Committee noted that an objection had been received from Mr Howell of Queens Drive, who was objecting to the proposed extinguishment of Public Footpath No.2 Edleston on the grounds that the path was used and that it was a valuable route to the stream. He stated that from the northern end of Public Footpath No.2 he continued to use routes both east and west along the field edge. It was noted that these routes were not shown on the Definitive Map and that Public Footpath No.2 had been a cul-de-sac route since the connecting northbound footpath had been stopped up by legal order in 1958.

The Committee considered the application and concluded that it would be necessary to extinguish part of Public Footpath No.2 Edleston between points A and B, as illustrated on Plan No. TCPA/033, to allow for the residential development to take place. It was considered that the legal

tests for the making and confirming of an Extinguishment Order under Section 257 of the Town and Country Planning Act 1990 were satisfied.

Although there was an outstanding objection to the extinguishment of Footpath, the Committee concluded that there was little evidence of the public wishing to use the cul-de-sac route. The proposed development would affect the northern section of the Footpath and would leave a redundant section of footpath approximately 44 metres in length. The Committee noted that there were alternative routes available and concluded that the section B to C, as shown on Plan No. TCPA/033 was not needed for public use. It was considered that the legal tests for the making and confirming of a Extinguishment Order were satisfied.

The Committee unanimously

RESOLVED: That

- 1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to extinguish part of Public Footpath No.2 Edleston, between Points A and B as illustrated on Plan No. TCPA/033, on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 2 An Oder is made under Section 118 of the Highways Act 1980 to extinguish part of Public Footpath No.2 Edleston between points B and C, as illustrated on Plan No. TCPA/033, on the grounds that it is not needed for public use.
- 3 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 by the said Acts.
- 4 In the event of objections to the Order being receive and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

**32 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:
APPLICATION FOR THE DIVERSION OF RESTRICTED BYWAY NO.1
(PART) PARISH OF EATON**

The Committee considered a report which detailed an application from Wardell Armstrong LLP acting as agent for Tarmac Trading Ltd requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1990 to divert part of Restricted Byway No.1 in the parish of Eaton.

In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as Planning Authority, could make an Order

diverting a public right of way 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 applied for or granted.

Planning applications had been submitted applying for the extension of Eaton Hall Quarry to the north and south of the existing permitted extraction areas to the north of School Lane - planning reference 16/3298W, and to vary planning permission 5/APP/2004/0012 under section 73 of the Town and Country Planning Act 1990 (as amended) to develop land without compliance to conditions – planning reference 16/3282W. These applications were due to be considered in January 2017.

A large section of the current alignment of Restricted Byway No.1 Eaton is the result of a Town and Country Planning Act Order made under section 257 by the Secretary of State for Transport in 2008. This was undertaken in order to quarry the area under a planning permission granted in 2005. This route extends across the proposed northern extension of Eaton Hall Quarry which is a proven deposit of nationally significant silica sand. The current alignment of the Restricted Byway therefore constrains the extension of the site and if not diverted will effectively sterilise a substantial amount of nationally significant reserves. The planning applications were to extend the scope and timescale for extraction to cover a 25 year period.

The proposed route would be 4 metres wide throughout and run parallel with the field boundary at approximately 4 metres distance to allow for the retaining of existing hedgerows and new planting. There would be no gates or other restrictions along the route and it would be enclosed by hedging/fencing with a rolled sand/earth mix which would be seeded to provide a permanent grass surface.

Consideration had been given to the possibility of undertaking a temporary diversion under section 261 of the Town and Country Planning Act. However it was felt that the permanent diversion proposal offered a better prospect of an improved route in the short and long term.

The Committee considered the application and concluded that it would be necessary to divert part of Restricted Byway No.1 Eaton to allow for the expansion of the existing sand quarry to access significant deposits of silica sand over a twenty five year period. 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 Restricted Byway No.1 Eaton, as illustrated on Plan No. TCPA/034, 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. That this Order be confirmed and made operable on condition that planning permission is granted.

- 2 Public Notice of the making of the Order is 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.

**33 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:
APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATHS NOS.8
AND 9 (PARTS) PARISH OF MOTTRAM ST ANDREW**

The Committee considered a report which detailed an application from Kitson Architecture Ltd, acting as agent for Mottram Hall Limited, requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1990 to divert parts of Public Footpaths Nos.8 and 9 in the parish of Mottram St Andrew.

In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as Planning Authority, could make an Order diverting 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 applied for or granted.

A planning permission had been granted for the extension of Mottram Hall Hotel to provide new meetings rooms with enlargement of existing function suite; an extension to provide 34 new bedrooms; refurbishment of south wing to provide 15 additional bedrooms; alterations to the main entrance/reception area; 52 additional car parking spaces, and a new service hub and yard - planning reference 16/2236M.

The proposed diversions were necessary to accommodate the extension of the hotel and associated diversions of the existing internal road and a new service hub and delivery yard and avoid adverse impact on the older parts of the listed building and to allow large delivery and refuse vehicles to access a central service hub. The diversion was a minor realignment of the Footpaths taking them slightly further to the north to run from the golf course at the eastern end of the site (Point A on Plan No. TCPA/035) along a new pavement adjacent to the internal road and crossing this road to descend diagonally across a banked grassed area to Point C and then alongside the car park to its westerly end through a small wooded area across a stream and rejoining the existing alignment of Footpath No.9 to the east of a golf cart track (Point D)

The current alignment of Public Footpath No.9 Mottram St Andrew had been unavailable for some time and consequently pedestrians had been using a route across the car park in the meantime. The original alignment had been diverted by Macclesfield Borough Council in 1990 when a previous expansion of the Hotel was approved.

The Committee considered the application and concluded that it was necessary to divert part of Public Footpaths Nos.8 and 9 Mottram St Andrew to allow for the construction of an extension to the hotel building and the development of a new service yard and hub. 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 Footpaths Nos.8 and 9 Mottram St Andrew, as illustrated on Plan No. TCPA/035, 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 is 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 2.30 pm

Councillor M Hardy (Chairman)