

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Sub Committee**
held on Monday, 6th December, 2021 in the Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor L Crane (Chair)
Councillor S Edgar (Vice-Chair)

Councillors H Faddes, L Gilbert, R Moreton and D Stockton

OFFICERS IN ATTENDANCE

Genni Butler, Acting Public Rights of Way Manager
Vicky Fox, Planning Lawyer
Jennifer Ingram, Definitive Map Officer
Marianne Nixon, Public Path Orders Officer
Andrew Poynton, Planning and Highways Lawyer
Karen Shuker, Democratic Services Officer

9 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor S Akers-Smith.

10 DECLARATIONS OF INTEREST

No declarations of interest were made.

11 MINUTES OF PREVIOUS MEETING

That the minutes of the meeting held on 13 September 2021 to be confirmed as a correct record.

12 PUBLIC SPEAKING TIME/OPEN SESSION

There were no public speakers.

13 WILDLIFE & COUNTRYSIDE ACT 1981- PART III, SECTION 53 REF. NO. MA/5/267, TO AMEND THE ALIGNMENT OF FP15 IN THE PARISH OF DISLEY

The Committee considered a report which detailed the investigation to amend the Definitive Map and Statement by modifying the alignment of Public Footpath No. 15 in the Parish of Disley.

Under Section 53(2)(b) of the Wildlife and Countryside Act 1981, the Council had a duty to keep the Definitive Map and Statement under

continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events:-

One such event under section 53(3)(c)(iii) was where

“(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

The evidence could consist of documentary/historical evidence or user evidence or a mixture of both. All the evidence must have been evaluated and weighed and a conclusion reached whether, on the ‘balance of probabilities’ the particulars proposed to be amended would be a correct record of the public’s rights. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, would not be relevant to the decision.

Documentary evidence included Ordnance Survey Maps, O.S County Series 25” to 1 mile, 1st, 2nd and 3rd Editions, Conveyance from the Deeds to the property ‘Pemberley’ 1920, 1934 and the documents produced as part of the Definitive Map process under the National Parks and Access to the Countryside Act 1949.

The affected landowners, Ward Councillor, Parish Council and user groups had been consulted and no objections to an Order being made had been received.

The Committee considered the documentary evidence and the Definitive Map Officer’s conclusion and considered that the particulars proposed to be amended would be a correct record of the public’s rights. The Committee considered that on the balance of probabilities there was sufficient evidence to show that the correct alignment of Public Footpath No.15 Disley was along the proposed route.

The Committee unanimously

RESOLVED: That

- (1) An Order be made under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by amending the alignment of Public Footpath No.15 Disley, from the current route as shown between points A-B on Plan No. WCA/024, to its correct alignment between points C-D on Plan No. WCA/024;
- (2) Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or

any objections received being withdrawn, the Order be confirmed in exercise of the power 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 hearing or public inquiry.

14 HIGHWAYS ACT 1980 S119 APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO 4 (PARTS), PARISH OF HENHULL

The Committee considered a report which detailed the investigation to divert parts of Public Footpath No4 in the Parish of Henhull.

An application had been received from Stone MC Ltd on behalf of a consortium of housing developers (the north west divisions of Taylor Wimpey, Redrow Homes and David Wilson Homes), requesting that the Council make an order under section 119 of the Highways Act 1980 to divert two sections of Public Footpath No. 4 in the Parish of Henhull.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make the 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.

A former application for this diversion had been made in 2018 under section 257 of the Town and Country Planning Act 1990 (TCPA 90 s257) as it was considered necessary to do so to enable the Kingsbourne residential development in Nantwich, to go ahead as detailed in the outline planning application (13/2471N), and the reserved matters application, 16/4601N. Specifically, it was necessary to divert one section of Footpath No. 4 Henhull to enable the building of a house, garage and gardens whose footprints lay across the current definitive alignment of the footpath section such that they would otherwise unlawfully obstruct it.

The diversion proposal was progressed, and an Order had been made. The Order remained unopposed following formal advertising and the next stage of the process was to install the diversion route before the final administrative stages of the diversion process could be completed.

A site inspection revealed that before the diversion was completed, on the alignment of the current route to be diverted, a house, garage, and gardens had been constructed. This had voided the diversion under TCPA 90 s257 because the legal test was no longer applicable as it was then no longer necessary to divert the footpath to enable construction of the house, garage, and gardens since they had already been constructed. Development had already gone ahead.

Consequently, the incomplete diversion under TCPA 90 s257 was abandoned, and the developers sought the same diversion under the legislation of section 119 of the Highways Act 1980, to rectify the situation.

Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request if it considered it expedient in the interests of the landowner to make an order to divert the footpath.

The land over which run both the sections of footpath to be diverted, and the diversion routes, was owned by the applicant.

It was noted that two sections of Henhull Footpath No.4 were proposed for diversion, both linked by a short section of the current footpath.

No objections had been received following a consultation and engagement exercise with the ward Councillor, Parish and Town Councils, user groups, statutory undertakers, and the Council's Nature Conservation Officer.

The Committee considered that the proposed route would not be substantially less convenient than the existing route and diversion of two footpath sections would benefit the landowner by realigning the footpath as per the permitted development that had been granted, and by resolving an obstruction issue. 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) That an Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert parts of Public Footpath No.4 Henhull by creating a new public footpath and extinguishing the current path as illustrated on Plan No. HA/147 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 and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

15 TOWN AND COUNTRY PLANNING ACT 1990 S257 APPLICATION FOR THE DIVERSION OF PUBLIC BRIDLEWAY NO'S 10 AND 11 (PART), PARISH OF ARCLID

The Committee considered a report which detailed the investigation to divert Public Bridleway No.10, and part of Public Bridleway No.11 in the Parish of Arclid. The proposal had been put forward as an application had been received from Bathgate Silica Sand Ltd, following planning consent.

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:

“(1A) Subject to section 259, a competent authority may by order authorise the stopping up or diversion in England of any footpath, bridleway or restricted byway if they are satisfied that—

an application for planning permission in respect of development had been made under Part 3, and if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.

It was considered necessary to divert Public Bridleway No. 10 and part of Public Bridleway No. 11 in the Parish of Arclid to enable the sand excavations to go ahead as detailed within the Planning Application, reference no. 19/3951W.

The new bridleway sections would be installed to the same specification as the current routes to be diverted. The land over which the new alignments would run was pastureland and arable farmland. The sand excavations would change the nature of the land but, once completed, a comprehensive restoration plan would be undertaken to restore and relandscape the area. The land was owned by the applicant.

No objections had been received following a consultation and engagement exercise with the Ward Councillor, neighbouring ward Councillors, Parish Council, user groups, the statutory undertakers and the Council's Nature Conservation Officer.

The Committee considered the application and concluded that it was necessary to divert Public Bridleway No.10 and part of Public Bridleway No.11 in the Parish of Arclid to enable the sand excavations to go ahead as detailed within the approved planning application.

The Committee unanimously

RESOLVED: that

- (1) That an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert Public Bridleway No 10 and

part of Public Bridleway No. 11 in the Parish of Arclid, as illustrated on Plan No TCPA/068 on the grounds that the 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 Act.
- (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.

16 TOWN AND COUNTRY PLANNING ACT 1990 S257 APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO'S 43 AND 46 (PARTS), PARISH OF POYNTON WITH WORTH

The Committee considered a report detailing the investigation to divert parts of Public Footpath No's 43 and 46 in the Parish of Poynton with Worth. The proposal had been put forward as an application had been received from Elan Homes, following a planning consent (Planning reference: 17/547M).

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:

“(1A) Subject to section 259, a competent authority may by order authorise the stopping up or diversion in England of any footpath, bridleway or restricted byway if they are satisfied that—

an application for planning permission in respect of development has been made under Part 3, and if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.

It was reported that in paragraphs 5.5 and 5.6 of the report, it should read that Elan Homes purchased land off Hazelbadge Road directly from the landowner. Persimmon Homes never owned the land.

Diversion of parts of Public Footpath No.s 43 and 46 had been requested since their current alignment would otherwise be obstructed by several of the residential properties within the development

The land over which run both the sections of footpath to be diverted and the diversion routes, were owned by the applicant.

The Committee considered the application and noted the comments received from Poynton Town Council, the East Cheshire Ramblers, the Peak and Northern Footpath Society (PNFS), along with the Public Rights of Way Officer's responses and noted further information reported verbally.

At paragraph 6.11 of the report, the Peak and Northern Footpath Society questioned the height of the new diversion route for Poynton with Worth Footpath No.43 above the brook and it was reported that this would be approximately 2.6 metres and that tree roots growing within the riverbank would help to stabilise it.

Further to paragraph 6.12 of the report, it was clarified that the alignment of the new route for Poynton with Worth Footpath No. 43, would connect to Poynton with Worth Footpath No.88 as shown at point E on Plan No. TCPA/067.

The Committee concluded that it was necessary to divert part of Public Footpath No's 43 and 46 in the Parish of Poynton with Worth to enable the residential development to go ahead as detailed within Planning Application: 17/6471M.

The Committee unanimously

RESOLVED: That

- (1) That an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No's 43 and 46 in the Parish of Poynton with Worth, as illustrated on Plan No TCPA/067 on the grounds that the 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 Act.
- (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.

17 APPLICATION FOR THE STOPPING UP OF A STRIP OF LAND TO THE REAR OF 205A MOW COP ROAD, MOW COP UNDER THE PROVISIONS OF SECTION 116 HIGHWAYS ACT 1980.

The Committee considered a report in respect of an application for the stopping up for a strip of land to the rear of 205A Mow Cop Road, Mow Cop under the provisions of Section 116 Highways Act 1980.

Following an application being lodged for registration of a piece of land to the rear of 205A Mow Cop Road, Mow Cop in 2018 the Council lodged an objection with the Land Registry on the basis that the land formed part of the width of Footpath No.59 Odd Rode. Negotiations led to the Council agreeing to suspend any enforcement act whilst the applicant sought to resolve the matter.

A further application was received in 2020 from the applicant.

Section 116(1) of the Highways Act 1980 states:

“Subject to the provisions of this section, if it appears to a magistrates’ court, after a view, if the court thinks fit, by any two or more of the justices composing the court, that a highway (other than a trunk road or a special road) as respects which the [highway] authority have made an application under this section—

(a) is unnecessary

.....

the court may by order authorise it to be stopped up or, as the case may be, to be so diverted.

”

A “highway” is defined under section 328(1) of the Highways Act 1980 as:

“the whole or a part of a highway”. It therefore follows that “part of a highway” can apply to the width of a highway.

The Committee noted that the land in question had been unavailable for a significant length of time, no services were under the land, the public would not suffer any detriment compared to the current position should an Order be approved. The footpath would have historically connected with a path to the rear of “the Mill” which had been converted to shared open space for the occupants: the purpose for which the land was used, to transport materials and people to and from the mill, had ceased.

The Committee considered the application and noted the comments received from Odd Rode Parish Council, the Peak and Northern Footpaths Society and the Open Spaces Society.

The Committee concluded that the strip of land was considered unnecessary in accordance with Section 116(1)(b) of the Highways Act 1980 and that the proposals were consistent with the Council’s Policy on obstructions (where long standing and impractical to remove) and were in accordance with Section 116 of the Highways Act 1980.

The Committee unanimously

RESOLVED: That

the Public Rights of Way Sub Committee declare unnecessary the area of highway land shown on the plan in Appendix 2 and authorise the submission of an application to the Magistrates’ Court, for all highway rights to be stopped-up over this area, in accordance with Section 116 of the Highways Act 1980.

The meeting commenced at 2.00 pm and concluded at 2.45 pm

Councillor L Crane (Chair)