

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Sub Committee**
held on Monday, 3rd July, 2023 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, A Harrison, D Edwardes and M Edwards

OFFICERS IN ATTENDANCE

Genni Butler, Acting Public Rights of Way Manager
Richard Doran, Green Infrastructure Manager
Vicky Fox, Planning Lawyer
Clare Hibbert, Definitive Map Officer
John Lindsay, Definitive Map Officer
Richard Chamberlain, Public Path Orders Officer
Nikki Bishop, Democratic Services Officer

1 APPOINTMENT OF CHAIR

It was moved and seconded and subsequently carried that Councillor Laura Crane be appointed the Chair of the Public Rights of Way Sub Committee.

RESOLVED:

That Councillor Laura Crane be appointed as Chair.

2 APPOINTMENT OF VICE CHAIR

It was moved and seconded and subsequently carried that Councillor Steve Edgar be appointed as Vice Chair of the Public Rights of Way Sub Committee.

RESOLVED:

That Councillor Steve Edgar be appointed as Vice Chair.

3 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Rob Moreton, Alan Coiley and Kate Parkinson.

Councillors Martin Edwards and David Edwardes were present as substitutes.

4 DECLARATIONS OF INTEREST

In the interests of openness and transparency Councillor Laura Crane declared that, as a Sandbach Ward Member (Wheelock), she had a personal interest in agenda item 8 and had previously discussed the application with the applicant. This interest was neither disclosable pecuniary or prejudicial.

5 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on Monday 13 March 2023 be confirmed as a correct record and signed by the Chair.

6 PUBLIC SPEAKING TIME/OPEN SESSION

Ms Laureen Roberts addressed the Committee in relation to Item 7 - Wildlife and Countryside Act 1981 Part III – Section 53 Application No MA/5/231: Applications to Upgrade Footpaths Nos. 23 and 25 Great Warford to Bridleways. Mrs Roberts submitted the application and spoke in support of the application. Mrs Roberts highlighted that she was the Secretary to the North Cheshire Riders and that the application was originally submitted in June 2004.

Ms Roberts made a number of comments relating to the Officer report and its recommendation to not proceed with a Modification Order. Ms Roberts stated that user evidence was limited as the route had been blocked to users and that witnesses had either not been contactable or sadly passed away due to the length of time it had taken for the application to be considered. It was agreed that Mrs Roberts would submit her full statement in writing to the Chair of the Committee.

7 WILDLIFE AND COUNTRYSIDE ACT 1981- PART III, SECTION 53 APPLICATION NO. MA/5/231: APPLICATIONS FOR THE UPGRADE OF FOOTPATHS NOS.23 AND 25, GREAT WARFORD TO BRIDLEWAY

The Committee considered a report detailing the investigation into an application made by Mrs L Roberts to amend the Definitive Map and Statement by the upgrading of Public Footpaths Nos. 23 and 25 Great Warford to Bridleways.

Section 53 (2)(b) of the Wildlife and Countryside Act 1981 required that the Council should 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, as set out within the Officer report.

The Committee considered the application and noted that consultation letters and a plan of the claimed route had been sent out to the Local Ward Member, Parish Council, User Groups/Organisations, statutory undertakers and landowners on 6 January 2023. Following this consultation, a response from East Cheshire Ramblers was received who commented that they would wish to see the surface improved if the claim to upgrade was successful. One of the landowners responded to request further information and subsequently submitted a strong objection to the application as the landowner kept ponies in the field the path crossed. The landowner also stated that they were not made aware of the claim when they bought their property six years ago and would have concerns about security if the application was to be approved. The Peak and Northern Footpath Society responded to confirm that they had no comment to make on the application. Cadent Gas responded to the consultation to confirm they had no objection to the application.

The Committee considered the evidence submitted and researched in the assessment of the application which consisted of user evidence from two individuals who claimed use on horseback, one had used the route twice in 1980 – 81 and the other had used the route twice during the years 1964 – 1970. Further evidence submitted and researched included references to multiple historical documents including the Tithe Map, Finance Act Map, Field books, County Maps, Ordnance Survey maps and an extract from an Ordnance Survey Hill Sketch. The documents considered during the investigation of the claim did not provide conclusive evidence of public bridleway status.

The Committee noted that the balance of historic evidence did not support the case that a bridleway subsisted along the routes A-B-C-D (Plan No. WCA/030), therefore, it considered that the requirements of Section 53 (3)(c)(ii) had not been met.

The Committee concluded that the evidence in support of the claim, on the balance of probabilities, demonstrated that bridleway rights did not subsist along the claim route.

RESOLVED (by majority):

That the Public Rights of Way Sub Committee agree:

1. That a Modification Order not be made under S53 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to upgrade Public Footpaths Nos. 23 and 25 Great Warford to bridleway.
2. The application be refused on the grounds that there is not sufficient evidence to demonstrate that a bridleway subsists on the balance of probabilities.

8 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53. APPLICATION NO.CO/8/56: APPLICATION TO ADD A PUBLIC FOOTPATH BETWEEN WRIGHT LANE AND FOOTPATH NO.14 SANDBACH

The Committee considered a report detailing the investigation into an application made by Mr T Boxer (Sandbach Footpath Group) to amend the Definitive Map and Statement to add a public footpath between Wrights Lane and Footpath No. 14 in the town of Sandbach.

Section 53 (2)(b) of the Wildlife and Countryside Act 1981 required that the Council should 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, as set out within the officer report.

The Committee considered the application and noted that following consultation with the Local Ward Member, Town Council, user groups/organisations, statutory undertakers and landowners, responses had been received from Sandbach Town Council, Congleton Ramblers and Openreach to confirm that they had no objection to the application. There were no other responses to the consultation.

The Committee considered the evidence submitted and researched in the assessment of the application which consisted of use on foot by individual witnesses over a period of 20 years and historical documents that demonstrated the existence/status of the route over a period of nearly 200 years.

The application, made on 29 September 2021, was accompanied by 19 user evidence forms. Out of the 19, 3 people had not used the route for the required 20-year period. Interviews were undertaken with 10 users who all believed the route to be a footpath, providing evidence of use from 1965 – 2021 on foot. The documentary evidence considered demonstrated the existence of the route from the mid-18th century.

The Committee noted that the balance of user evidence combined with documentary evidence clearly supported the case that a public footpath subsisted along the routes A and B (Plan No. WCA/262/031) and that the requirements of Section 53 (c)(i) had been met.

RESOLVED (unanimous):

The Public Rights of Way Sub Committee

1. Agree that a Modification Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Public Footpath as shown between points A and B on Plan No. WCA/262/031.

2. Agree that 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. Note that 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 PROPOSED DIVERSION OF PUBLIC FOOTPATH NO. 7 IN THE PARISH OF BRINDLEY

The Committee considered the report which outlined an investigation to divert part of Public Footpath No. 7 in the Parish of Brindley following receipt of an application from Mr and Mrs Walker under Section 119 of the Highways Act 1980.

It was recommended to the Committee that a Public Path Diversion 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. 7 in the Parish of Brindley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/150 on the grounds that it was expedient in the interests of the landowners. It was noted that the owner of Brindley House had experienced issues with members of the public straying from the definitive line of the footpath and walking along the public driveway up to the house. The proposed diversion would take users further from the property making it harder for users to stray.

During consultation, the former Ward Councillor Stanley Davies, Brindley Parish Council, user groups, the Council's Nature Conservation Officer and statutory undertakers were engaged and no objections had been raised. The Clerk to the Parish Council responded to confirm that they would support the footpath amendment in order to give more privacy to the landowners whilst ensuring the route is enjoyable for users. The Peak and Northern Footpaths Society Area Officer responded to highlight that they had walked the proposed route and had no objections to make.

RESOLVED (unanimous):

That the Public Rights of Way Sub Committee

1. Agree that a Public Path Diversion 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. 7 in the Parish of Brindley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/150 on the grounds that it is expedient in the interests of the landowners.

2. Agree that 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. Note that in the event of objections 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
PROPOSED DIVERSION OF PUBLIC FOOTPATH NO. 5 IN THE
PARISH OF CREWE**

The Committee considered a report detailing the investigation to divert part of Public Footpath No. 5 in the town of Crewe following receipt of an application from a developer.

In accordance with Section 257 of the Town and Country Planning Act 1990 ("TCPA") 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 of any footpath, bridleway or restricted byway if they are satisfied that:

(a) an application for planning permission in respect of development has been made under Part 3, and;

(b) 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.

Diversion of part of Public Footpath No. 5 had been requested from Bowsal Developments Ltd and Housing 21 to allow for the construction of up to 47 retirement living (extra care) new dwellings and the associated infrastructure. It was noted that Public Footpath No. 5 commenced at its junction with Crewe Bridleway No. 34 and ran to its junction with Herbert Street and that the existing alignment of Public Footpath No. 5 would be directly affected by the construction works and therefore a diversion was required to preserve the public right of way.

The Committee considered the application and noted that no objections had been received from the Local Ward Members for Crewe East, Crewe Town Council, user groups/statutory undertakers, and the Council's Nature Conservation Officer.

The Committee concluded that it was necessary to divert Public Footpath No. 5 in the Town of Crewe as illustrated on Plan No. TCPA/076 to allow the construction works to take place as detailed within planning application 22/4698N.

RESOLVED (unanimous):

That the Public Rights of Way Sub Committee

1. Agree that a public path diversion order be made under section 257 of the Town and Country Planning Act 1990 for Public Footpath No. 5 in the Town of Crewe as shown on Plan No. TCPA/076 on the grounds that Cheshire East Borough Council is satisfied that it is necessary to do so in order to enable development to be carried out.
2. Agree that public notice of the making of the Order be given and in the event of there being no objections within the period specified, and in the event that planning consent has been granted, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
3. Note that in the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

11 PUBLIC RIGHTS OF WAY ANNUAL REPORT 2022-23

The Committee received the Public Rights of Way Annual Report 2022-23. The Committee noted the work of the Public Rights of Way team, including the key achievements and challenges faced as set out within the report.

RESOLVED:

That the Public Rights of Way Annual Report 2022-23 be noted.

The meeting commenced at 2.00 pm and concluded at 3.00pm

Councillor L Crane (Chair)