

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Sub Committee**
held on Monday, 13th March, 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 S Akers Smith, H Faddes, L Gilbert, R Moreton and D Stockton

OFFICERS IN ATTENDANCE

Richard Doran, Countryside Service Development Manager
Genni Butler, Acting Public Rights of Way Manager
Laura Allenet, Public Path Orders Officer
Claire Hibbert, Definitive Map Officer
Jennifer Ingram, Definitive Map Officer
John Lindsay, Definitive Map Officer
Vicky Fox, Planning and Highways Lawyer
Nikki Bishop, Democratic Services Officer
Karen Shuker, Democratic Services Officer

20 APOLOGIES FOR ABSENCE

There were no apologies for absence.

21 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 item 8 however this interest was neither disclosable pecuniary or prejudicial.

22 MINUTES OF PREVIOUS MEETING

RESOLVED

That the minutes of the meeting held on 5 December 2022 be confirmed as a correct record.

23 PUBLIC SPEAKING TIME/OPEN SESSION

Mr David Nixon, Moston Parish Councillor, addressed the Committee in relation to item 7 - Wildlife & Countryside Act 1981 - Part III, Section 53.

Application No. CO/8/41: Application for the addition of a Public Bridleway, Watch Lane, Moston.

Mr Nixon complimented Officers on their work carried out on the investigation into the application and stated that he understood the recommendation to add a Restricted Byway based on the balance of probabilities.

Mr Nixon informed the Committee that there were concerns amongst local residents of Moston in relation to antisocial behaviour, fly tipping and the use of drugs in the area of Watch Lane which became prevalent in 2000. Since the installation of a barrier by Elworth Angling Society close to the Red Lane end of Watch Lane the issues with antisocial behaviour, fly tipping and the use of drugs ceased in this area of the application. However, these issues were still prevalent in the area close to Watch Lane Farm where no barrier had been installed. Mr Nixon stated that there were also issues with vehicles becoming stuck on this part of Watch Lane and suggested that signage was needed.

Mr Nixon stated that there was now a sense of relief within the local community that the investigation found no evidence of challenge to public use, apart from the erection of signs and bollards to prevent vehicular access. Local residents were pleased that the barrier installed by the Elworth Angling Society would not need to be removed. Mr Nixon stated that he and local residents would like to see a similar barrier installed near Watch Lane Farm.

24 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: PROPOSED DIVERSION OF PUBLIC FOOTPATH NO. 36 IN THE TOWN OF SANDBACH (PART)

The Committee considered a report detailing the investigation to divert part of Public Footpath No. 36 in the town of Sandbach following receipt of an application from Network Rail to reconstruct a footbridge over the railway to the north of Sandbach Station.

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.36 had been requested to allow for the proposed works to reconstruct the footbridge as detailed in Planning Application 22/1649C (which had subsequently been approved). It was noted that the existing alignment of Public Footpath No.36 would be directly affected by the construction of a new footbridge over the railway therefore the 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 Ward Member for Sandbach Elworth, Sandbach Town Council, the user groups, statutory undertakers, and the Council's Nature Conservation Officer. Peaks and Northern Footpaths Society had subsequently submitted comments confirming that they were content with the proposals.

The Committee concluded that it was necessary to divert part of Public Footpath No.36 in the Town of Sandbach to enable the proposed works to be carried out.

RESOLVED (unanimous)

That

1. A Public Path Diversion Order be made under Section 257 of the Town and Country Planning Act 1990 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. 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. In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

25 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53. APPLICATION NO. MA/5/245. APPLICATION FOR THE ADDITION OF PUBLIC FOOTPATHS AT PLUMLEY NATURE RESERVE / LIME BED

The Committee considered a report detailing the investigation into an application made by Plumley with Toft and Bexton Parish Council in 2010 and registered in 2011, to amend the Definitive Map and Statement to add various public footpaths to the site known as Plumley Nature Reserve / Plumley Lime beds.

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 during the consultation period with the Chelford Ward Member; Plumley with Toft and Bexton Parish Council, landowners, user groups/organisations and statutory stakeholders no objections were raised. However; landowner 2 had subsequently voiced concerns around the environment and conditions of the site and had since expressed further concerns around health and safety and antisocial behaviour.

It was highlighted by the Cheshire East Council Nature Conservation Officer that the application site was designated as a Site of Special Scientific Interest. A local resident also responded to put on record their agreement for a footpath on the site.

The Committee considered the evidence submitted which consisted of user evidence forms, a sales particular document and photographs. A total of 12 user evidence forms were submitted demonstrating use on foot. Out of the 12 witnesses, only two were available for interview. Use had covered a 57 period in total with 10 of the 12 witnesses having used the route during the relevant period of 1989 to 2009, when the use was challenged by locked gates and signage. All the use appears to have been "as of right" rather than "by right" without any interruption for a full 20-year period.

Where the evidence in support of the application is user evidence, section 31(1) of the Highways Act 1980 applies. This states; -

"Where a way.....has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."

This requires that the public must have used the way without interruption and as of right; that is without force, secrecy or permission. Section 31(2) states that "the 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question".

The Committee agreed that, on the balance of probabilities, the requirements of Section 53(3)(c)(i) had been met and that a Definitive Map Modification Order should be made to add the public footpaths (outlined in Plan No. WCA/028) at the Plumley Nature Reserve / Lime Beds site and thus amend the Definitive Map and Statement. However it was considered there was not enough evidence, of use of the spurs D-X and F-Y.

RESOLVED (unanimous):

That

- 1) An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement

by adding Public Footpaths at the Plumley Nature Reserve / Plumley Lime beds site as shown between points A-B-C-D-A and A-E-F-G on Plan No. WCA/028.

- 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.

26 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53. APPLICATION NO. CO/8/41: APPLICATION FOR THE ADDITION OF A PUBLIC BRIDLEWAY, WATCH LANE, MOSTON

The Committee considered a report detailing the investigation into an application made in 2014 by Mr David Nixon to amend the Definitive Map and Statement to add a Public Bridleway at Watch Lane in the Parish of Moston.

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, Moston Parish Council, user groups/organisations, statutory undertakers and landowners that two responses had been received. Moston Parish Council indicated their strong support for the application. The Green Lane Association responded to state that the claimed route had been part of the Ordinary Road Network since the earliest map (Swire and Hutchings' Map 1830) and that the Definitive Map Modification Order determination should not be concluded with the recording of a Public Right of Way, but rather the Council's Highways records should reflect the existence of a public all-purpose carriageway. Subsequently, an email had been received from the Treasurer of Elworth Angling Society representing the club and its members. He stated that when approached in 2014 the view of the Angling Society was that it would have little detriment to the Society if the path was made into a public footpath or bridleway as use by the public was sporadic. However, the Treasurer stated that the Society had concerns around the increase of use and that there were issues with irresponsible dog walkers and consequently, the Elworth Angling Society objected to the application.

The Committee considered evidence submitted and researched in the assessment of the application which consisted of use on foot, horseback and pedal cycle by individual witnesses over a period of over twenty years. The documentary evidence considered in this case demonstrated the existence of the route known as Watch Lane as a bounded lane which included the claimed route that was clearly part of the Ordinary Road Network from early commercial maps.

Councillor Gilbert referred to the length of highway that would remain adopted (western end of Watch Lane) and the issues this could give rise to in the future. Officers confirmed that signage could be installed at Crabmill Lane to make it clear this is not a through route for vehicles.

The Committee concluded that the evidence in support of the claim, on the balance of probabilities, that restricted byway rights subsist along the claimed route.

RESOLVED (by majority)

That

- 1) An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to add a Restricted Byway as shown between points A and B on Plan No. WCA/027.
- 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.

27 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53. APPLICATION NO.CO/8/49: APPLICATION TO ADD A PUBLIC FOOTPATH BETWEEN DINGLE LANE AND FOOTPATH NO.11 SANDBACH

The Committee considered a report detailing the investigation into an application made by Mr Trevor Boxer (Sandbach Footpath Group) to amend the Definitive Map and Statement to add a public footpath between Dingle Lane and Footpath No.11 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 Sandbach Ward Members, Town Council, user groups/organisations, statutory undertakers and landowners that no objections had been received.

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

Members sought reassurance that this particular application had not been prioritised over other more applications where use had been challenged. Officers confirmed that the applicant had made an application to the Secretary of State in 2021 because the application had not been determined within 12 months. A direction to determine the application by February 2023 was received.

Members queried the application process involving witnesses aged 70+. It was confirmed that within the Statement of Priorities under which all applications are considered, there was an allocation given to those witnesses aged 70 and above.

Committee Members concluded that the balance of user evidence combined with documentary evidence clearly supported the case that a public footpath subsisted along the routes A-B (Plan No WCA/262/029) and therefore the requirements of Section 53(c)(i) had been met.

RESOLVED (unanimous)

That

- 1) An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to add a footpath as shown between point A and B on Plan No. WCA/262/029 at Appendix 3.
- 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 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.

28 INFORMATIVE REPORT: SECRETARY OF STATE DECISIONS FOR HIGHWAYS ACT 1980 S119 DIVERSION OF FOOTPATH NO. 4 PARISH OF POOLE, DIVERSION OF FOOTPATH NO. 5 IN THE PARISH OF ADLINGTON AND DIVERSION OF FOOTPATH NO. 2 IN THE PARISH OF EATON.

The Committee received an informative report detailing a decision made by the Planning Inspectorate on behalf of the Secretary of State on the Orders made by the Council to divert Footpath No. 4 in the Parish of Poole, Footpath No. 5 in the Parish of Adlington and Footpath No. 2 in the Parish of Eaton under the Highways Act 1980 s119.

Committee Members noted that:

- Footpath No.4 (Part) Parish of Poole for a Public Path Diversion Order was confirmed by the Planning Inspectorate on 15 March 2022.
- Footpath No.5 (Part) Parish of Adlington for a Public Path Diversion Order was confirmed by the Planning Inspectorate on 1 June 2022.
- Footpath No.2 (Part) Parish of Eaton for a Public Path Diversion Order was modified and confirmed as unopposed on 3 November 2022.

RESOLVED:

That the report be noted.

29 INFORMATIVE REPORT: SECRETARY OF STATE DECISION FOR WILDLIFE AND COUNTRYSIDE ACT 1981 - PART III, SECTION 53. APPLICATION TO UPGRADE PUBLIC FOOTPATHS NOS. 8 MARBURY CUM QUOISLEY AND NO. 3 WIRSWALL TO BRIDLEWAYS

The Committee received an informative report detailing the decision made by the Planning Inspectorate on behalf of the Secretary of State on the Order made by the Council to upgrade Public Footpaths Nos. 8 Marbury cum Quoisley and No. 3 Wirswall to Bridleways under the Wildlife and Countryside Act 1981 section 53.

The Committee noted that the Order was confirmed by the Planning Inspectorate on 6 August 2020 and that Public Footpaths No. 8 and No. 3 were now open as Bridleways.

RESOLVED:

That the report be noted.

30 INFORMATIVE REPORT: PUBLIC RIGHTS OF WAY FEES AND CHARGES 2023-24

The Committee received an information report which outlined the fees and charges for 2023-24 for charged-for services provided by the Public Rights of Way team.

RESOLVED:

That the report be noted.

The meeting commenced at 2.00 pm and concluded at 2.50 pm

Councillor L Crane (Chair)