

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 12th March, 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, W Livesley and M Parsons

Officers

Mike Taylor, Greenspaces Manager

Hannah Duncan, Definitive Map Officer

Marianne Nixon, Public Path Orders Officer

Clare Hibbert, Definitive Map Officer

Julie Openshaw, Legal Team Leader (Places Regulatory and Compliance)

Rachel Graves, Democratic Services Officer

35 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors R Cartlidge and D Druce.

36 DECLARATIONS OF INTEREST

Councillor J Wray declared that he was the Ward Member for Item 6 – Diversion of Public Footpath No.2 (part) in the parish of Arclid, and Item 7 – Claimed Footpath at Malkins Bank Golf Course, Parish of Hassall.

37 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 12 December 2011 be approved as a correct record and signed by the Chairman.

38 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NOS. 20 AND 28 (PARTS), PARISH OF KETTLESHULME

The Committee received a report which detailed an application from Mr NJ Fogg, Tunstead Knoll Farm, Kettleshulme (the Applicant) requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert parts of Public Footpaths Nos. 20 and 28 (parts) in the parish of Kettleshulme.

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 Applicant owned the land over which the current paths and the proposed diversions ran. The sections of each Public Footpath Nos. 20 and 28 Kettleshulme to be diverted ran through the property of the landowner giving rise to concerns relating to security and safety.

The proposed new route would be in two sections. With reference to Plan HA/065, the new route for Kettleshulme Footpath No.20 would, from point A in the pasture field, pass through a pedestrian gate (accessed by steps) to cross a second pasture field following a generally south easterly direction. On reaching steps, it would pass through a second pedestrian gate onto a stone surfaced track (point D) and would follow this track in a southerly direction to steps at point J. From here it would skirt a garage building by following an easterly direction to point K and then a south, south westerly direction to end by passing through sparse trees to terminate at point L on the metalled farm drive.

The new route for Kettleshulme Footpath No.28 would, from point F, leave the metalled farm drive to pass through a kissing gate and down steps into a pasture field to the south of the drive (point M). It would then cross the pasture field in a south, south westerly direction to pass through a metal kissing gate at point N before continuing in the same direction to terminate at point I.

The two new path sections would connect via a short stretch of existing line of Kettleshulme Footpath No.20.

The new path would have a width of 2m and would not be enclosed on either side except for a short section (D-J-K-L) which would be enclosed to a width of not less than 2.5m. One kissing gate and three pedestrian gates would be installed along with steps as appropriate on steeper gradients.

Of benefit to the public, the new route would be significantly more enjoyable as it would pass through more open and scenic landscape – reducing the need to pass between the farm buildings and along the private access track used by vehicles. The new route for Public Footpath No.20 would be approximately 61 metres shorter than the current route.

The Committee noted that no objections had been received from the informal consultations and considered that the proposed routes would not be substantially less convenient than the existing route. Diverting the footpaths would be of considerable benefit to the landowner in terms of enhancing the security and privacy of the property. The new routes would be more enjoyable as they passed through more open and scenic landscape. It was therefore considered that the proposed routes would be a satisfactory alternative to the current ones and that the legal tests for the making and confirming of a diversion order were satisfied.

RESOLVED:

- 1 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 Footpaths Nos. 20 and 28, Parish of Kettleshulme, by creating new sections of each public footpath and extinguishing the current path sections, as illustrated on Plan No. HA/065, on the grounds that it is expedient in the interests of the owner of the land crossed by the paths.
- 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.

39 TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 2 (PART) PARISH OF ARCLID

The Committee received a report which detailed an application from Rowland Homes Ltd and Messrs Pace (the applicant) requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1990 to divert Public Footpath No. 2 in the parish of Arclid.

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 granted on 16 November 2011 – Planning Permission Ref: 11/2394C, to the Applicant for the redevelopment of industrial/commercial premises and two detached garages and erection 18 dwellings (13 market/5 affordable), provision of Public Open Space and formation of replacement access for the dwelling Fairfield. The consent was granted subject to the prior signing of a Section 106 agreement and a number of conditions.

The current definitive line of the footpath had been unavailable for several decades. The path was obstructed by a large building and then ran across the forecourt of the garage site to the A50 Newcastle Road. A permissive route had been in place for many years. The section of footpath to be diverted was approximately 63 metres. When the development takes place, the current definitive line would be obstructed by two houses and run across the cartilage of a number of properties in the development.

The proposed route would leave Newcastle Road and run along a pavement for approximately 35 metres before turning to run in a south westerly direction across a public open space for approximately 17metres. As it left the open space, it then crossed a road and ran between houses for approximately 32 metres. It then turned to run in a south easterly direction for approximately 17 metres to rejoin the existing line of Public Footpath No.2 at the stile which led into the adjacent landowner's field.

The section of footpath from Newcastle Road to the southern side of the road (before it runs between the houses) would have a width of 2 metres. The section between the houses would have a width of 3 metres and then the final section which runs in a south easterly direction at the rear of two houses would have a width of 2.5 metres. The majority of the diverted paths surface would be tarmac, the short section through the public open space would be gravel. The length of the proposed route was approximately 102 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. 2 Arclid to allow the 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:

- 1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.2 Arclid, as illustrated on Plan No.TCPA/008, on the grounds that the Borough Council is satisfied that it is necessary 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 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.

**40 WILDLIFE AND COUNTRYSIDE ACT 1981 - PART III SECTION 53:
INVESTIGATION INTO CLAIMED FOOTPATH AT MALKINS BANK
GOLF COURSE, PARISH OF HASSALL, FROM MILL LANE TO
BRIDLEWAY NO.15, HASSALL**

The Committee received a report which detailed an investigation into a claimed footpath at Malkins Bank Golf Course, parish of Hassall, from Mill Lane to Bridleway No. 15 Hassall.

Under section 53 of the Wildlife and Countryside Act 1981, the Borough Council had a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Section 53(c) allowed for an authority to act on the discovery of evidence that suggested that the Definitive Map needed to be amended. The authority must investigate and determine that evidence and decide on the outcome whether to make a Definitive Map Modification Order or not.

With reference to Plan No.WCA/003, the claimed route commenced at Point A and ran in a northerly then north easterly direction crossing a stream and then running generally easterly to the north of the stream and continuing to its junction with Bridleway No.15. The surface was grassed. When the path left Mill Lane there was a post and rail fencing preventing access and further along the road to the south east there was a gap in the fencing/hedge. There was no bridge where the path crossed the stream although the remnant of a sleeper bridge can be seen.

The claim for the footpath came to the attention of Cheshire County Council in approximately 2005 when an inquiry was made by Mr C Meewezen regarding whether a right of way existed at Malkins Bank Golf Course and consequently an application pack to make a claim to record the footpath was sent out to Mr Meewezen. The existence of the footpath was being concurrently pursued by Mr Meewezen with the then landowner Congleton Borough Council.

In order to address this situation Congleton Borough Council instigated a Footpath Task Group who contributed to a report put by the Health Scrutiny Committee before the Council's Executive in April 2006. The report accepted that there was no evidence that the claimed route had been stopped up or diverted since 1941 and considered that there was no evidence to suggest the route was currently being used and that the 'used route' was some distance away. The report considered that the public attempting to use the route would be at considerable risk as it ran through the 6th and 7th fairways of the Golf Course. The report concluded that it was felt that the need of the public had been addressed by the previous dedication of a bridleway running north to south across the course (Bridleway 15) and that the correct procedure to have a footpath recognised was to submit any relevant evidence with an application for the Definitive Map Modification Order to the Public Rights of Way Team at the County Council.

Officers in the Public Rights of Way Team had now carried out additional research to see if available historical documentation supported the existence of the footpath or showed the route had been formally closed by statutory procedure.

It was found that the Bryant's Map of 1831 showed part of the route by a double pecked line indicated on the key as 'Lanes and Bridleways'. The Tithe Map and Award of Hassall dated 1841 showed most of the route in question as a double pecked line. A small part of the route had an apportionment number 14a which was described as Road and Waste, whilst the greater part fell under apportionment number 16 and was described as Meadow. The entire route appeared to be faintly shaded. The Ordnance Survey Map 1" to 1 Mile 1842 'Old Series' showed most of the route and was similarly depicted as on the Tithe Map.

The North Staffordshire Railway – Liverpool Extension 1845 plan depicted an intended railway which was subsequently built. The plan showed a corridor of land defining the limits of deviation either side of the intended railway, with plot numbers for the land and public and private routes. The part of the route shown within the limits of deviation is within plot number 172 which was recorded as 'Grass field and footpath'. This was the second route contained within this plot.

The ICI (Alkali Ltd) Statutory Declaration dated 1941, with a map dated 1935, indicated their areas of land ownership in Wheelock and Hassall. This document was deposited under the provisions of the Rights of Way Act 1932 which allowed land owner to declare those rights of way that they accepted affected their land at the date of deposit with a statement that they did not intend to dedicate any further rights of way. The document shows that the footpath in question had been dedicated as a public right of way.

The Cheshire County Council Green Book of annotated O.S Maps showed the claimed route with a reference to the Rights of Way Act 1932 deposited plan. There was also a reference to a file number within which there was a memorandum, dated 3 November 1955, from the County Surveyor to Congleton Rural District Council referring to the footpath as being shown on the map deposited by ICI and that "it will be necessary at some future date to make arrangements to have it included as a public footpath. It is well defined by stiles at either end and is a grass footpath in a good and clean condition."

No evidence had been found that the footpath had been formally extinguished. The Quarter Sessions Highway Index had been viewed at the Record Office and a wide search of the online records of the London Gazette had been undertaken. Nothing relating to a path closure on this route had been discovered.

The Committee considered that the evidence to support the claimed footpath showed, on the balance of probabilities that a reasonable

allegation had been made that public footpath rights subsisted along the claimed route. It was considered that there was sufficient evidence to prove the existence of a public footpath along the route A-B on Plan No.WCA/003 and therefore in line with the requirements of Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 recommended that the Definitive Map and Statement be modified to add the route depicted on the 1935 statutory declaration map as a public footpath.

RESOLVED:

- 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 a Public Footpath on the route shown between points A-B on drawing number WCA/003.
- 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.

The meeting commenced at 2.00 pm and concluded at 2.35 pm

Councillor J Wray (Chairman)