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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 1st June, 2009 at Main Hall, Sandbach Town Hall, High
Street, Sandbach

PRESENT

Councillor B Moran (Chairman)
Councillor R Walker (Vice-Chairman)

Councillors Rachel Bailey, D Cannon, R Cartlidge, Wilkinson and J Wray

OFFICERS PRESENT:

Guy Kilminster, Head of Health and Wellbeing
Mark Wheelton, Leisure Services and Greenspace Manager
Mike Taylor, Greenspaces Manager;
Amy Rushton, Interim Public Rights of Way Manager
Genni Butler, Acting Countryside Access Development Officer
Clare Hibbert, Public Rights of Way Officer
Hannah Flannery, Acting Public Rights of Way Officer
Charles Riley, Solicitor Places, Regulatory and Compliance
Rachel Graves, Democratic Services Officer.

1 APOLOGIES FOR ABSENCE

There were no apologies for absence.

2 DECLARATIONS OF INTEREST

Councillor David Cannon declared a personal interest in the meetings proceedings by virtue of his membership of the PALLEO Rambling Club in Crewe and Nantwich. In accordance with the code of conduct, he remained in the meeting during consideration of all items of business

3 PUBLIC SPEAKING TIME/OPEN SESSION

No members of the public present wished to address the Committee.

4 PUBLIC RIGHTS OF WAY POSITION STATEMENT

The Committee considered a report which briefed them on the work planning targets and current workload of the Public Rights of Way Team for the forthcoming year.

The work undertaken by the Rights of Way Team fell into three areas of work:

- Protection and maintenance of the network

- Development of access and production and implementation of the Rights of Way Improvement Plan
- The processing of legal orders associated with changes to the path network

Members noted the Appendices to the Report, which outlined the work programme for the Network Management Team, listed the projects undertaken in 2008/09 as part of the Rights of Way Improvement Plan and detailed the outstanding workload for definitive map and legal orders work.

It was noted that the Rights of Way Team had been operating towards targets for 2008/09 set by the Cheshire County Council Rights of Way Committee in April 2008. The targets had been set in the context of the former Countryside Agency (now Natural England) National Targets for public rights of way, which had as their aim that the rights of way network in England and Wales should be:

- Legally defined
- Properly maintained
- Well publicised

These targets would remain as the targets for Cheshire East.

Although Councils were no longer required to report on Best Value Performance Indicator 178 (the percentage of PROW network deemed “easy to use”), the national group, the County Surveyors’ Society is keen that authorities continue to collect this data and in Cheshire it had been collected as local indicator LTP 13. This performance indicator would continue as a means of benchmarking progress and the first of two annual random surveys for Cheshire East would be implemented by the team in June.

RESOLVED:

That the “Milestones” approach to setting work programme targets and gathering local performance indicators be endorsed and the workload of the Public Rights of Way Team be noted.

5 LEGAL ORDERS TEAM: STATEMENT OF PRIORITIES FOR DEFINITIVE MAP MODIFICATION ORDERS

The Committee considered a report seeking approval for a revised “statement of priorities” for dealing with a potentially large volume of Definitive Map Modification Order applications and matters requiring detailed investigations.

The Council as Surveying Authority for the Definitive Map and Statement had a duty to keep it under continuous review and make modifications as required. It was recommended that Surveying Authorities should periodically publish a statement of priorities for dealing with Definitive Map Modification Orders. The former Cheshire County Council Rights of Way Committee had approved interim statements of priorities in 2000, 2004 and most recently in January 2006.

The workload of the Legal Orders Team had increased in recent years due to national initiatives, such as the Rights of Way Improvement Plan, and local pressures such as the need for the completion of a consolidated Definitive Map

and Statement. The current system of prioritisation was complex in that it attempted to combine a chronological approach with other qualitative criteria and as a result was difficult to apply and had never been fully implemented. A revised system of priorities was therefore proposed to permit a systematic but flexible approach to dealing with a large volume of DMMO applications and matters requiring detailed investigation.

Members endorsed the revised system of priorities, as detailed in Appendix 2 to the Report, and requested an interim report be brought to Committee in six months outlining how the revised system was working. A further report should be carried out and brought to Committee in twelve months time reviewing the revised system.

RESOLVED: That

- (1) the revised Statement of Priorities , as outlined in Appendix 2, be approved.
- (2) further reports be brought in six and twelve months on the revised Statement of Priorities.

6 CHARGING POLICY FOR PUBLIC PATH ORDERS, TEMPORARY AND EMERGENCY CLOSURES AND RIGHTS OF WAY SEARCHES

The Committee considered a report that detailed the fees and charges levied by the Legal Orders Team for Public Path Orders, Temporary Closures and other work from 1 April 2009 onwards.

Members were informed that charges were made in accordance with the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 as amended by the Local Authorities (Charges for Overseas Assistance and Public Paths Order) Regulations 1996. Charges were also made for written responses for public rights of way searches.

The report detailed the current and proposed charges in respect of the following services:

- Public Path Diversions Orders
- Emergency and Temporary Closures
- Gating Orders
- Property Searches

It was noted that a review of charges and staff costs had taken place in July 2008 to reflect full cost recovery. The hourly rate was calculated at the average spinal point for grade 8 plus an additional 26% to cover overheads. Value Added Tax (VAT) was added at 15%, except for searches. From 1 April 2009 a mandatory increase of 2.5% on all rechargeable services was to be levied by the Council and this had been reflected in the proposed charges. There was no profit element to the charges and none may be levied.

RESOLVED:

That subject to any departmental review of charging policy, or the implementation of statutory regulations relating to local authority charges, the following charges apply:

- (1) Public Path Diversion Orders: for a straightforward public path diversion application resulting in a confirmation order, the charge from 1 April will be £1134.69 plus VAT plus the actual advertising costs.
- (2) Emergency and Temporary Closures:
 - (a) for an emergency 5 day or 21 day closure (not requiring press advertisement), the charge will be £165.03 plus VAT and a further £82.51 plus VAT to extend the closure for a further 21 days. A temporary closure extended for up to 6 months will be £165.03 plus VAT plus advertising costs.
 - (b) a 6 month temporary closure will be £415.13 plus VAT plus two advertisements.
 - (c) an administration charge of £311.60 plus VAT for referring an extension to a temporary closure to the Secretary of State for Environment, Food and Rural Affairs
- (3) Gating Orders: the charge will be £1134.68 plus VAT plus actual advertising costs.
- (4) Property Searches: the charge for searches will be £61.50.
- (5) increases in charges relating solely to inflation be implemented by Officers without the need to Committee approval.

7 ADOPTION OF AND AMENDMENTS TO THE PUBLIC RIGHTS OF WAY ENFORCEMENT PROTOCOL

The Committee considered a report on the Public Rights of Way Enforcement Protocol, including its effectiveness and to seek approval for its adoption in the new authority, with proposed amendments.

In July 2000, a comprehensive protocol in relation to enforcement for Rights of Way was adopted by the former Cheshire County Council Rights of Way Committee. Details of the protocol were incorporated into a booklet "Public Paths a Guide to Problems and Protocols" (also know as the A-Z). As a result of case law and changes to legislation, the Protocol was amended in July 2001, January 2003 and July 2007.

It was proposed that the Enforcement Protocol and Booklet be adopted by Cheshire East Council. A number of changes to the protocol and booklet were suggested for the next reprint and Appendix 5 to the Report detailed these.

The Committee supported the setting out of a clear, unambiguous protocol on enforcement which would enable the Rights of Way team to carry out their duties effectively, in an even handed, fair, consistent manner. Members asked that wording in relation to Cross Compliance be made more persuasive and reporting offenders to the Rural Payments Agency would not be undertaken, in normal circumstances, as a first resort. It was agreed that wording would be circulated outside of the meeting for agreement.

RESOLVED: That

- (1) the enforcement protocols, as detailed in Appendices 1-4 of the Report, be approved.
- (2) the amendments to the protocol, as contained in Appendix 5 to the Report be approved, subject to the Committee's agreement outside of the meeting to the revised wording for the Cross Compliance section.
- (3) further amendments to the protocol and booklet "Public Paths A Guide to Problems and Protocols" be submitted to the Public Rights of Way Committee for approval from time to time.

8 UPDATE ON THE CURRENT RIGHTS OF WAY IMPROVEMENT PLAN (2006-2011) AND AN INTRODUCTION TO THE NEXT (2011-2026)

The Committee considered a report on the progress of the current Cheshire County Council Rights of Way Improvement Plan (2006-2011) and which provided an introduction to the next Cheshire East Rights of Way Improvement Plan (2011-2026).

It was noted that Section 60 of Countryside and Rights of Way Act 2000 required local authorities to prepare and publish a rights of way improvement plan (ROWIP) and to access and review the plan at intervals of not less than 10 years. The aim of the ROWIP was to assess:

- the extent to which local public rights of way meet the present and likely future needs of the public
- the opportunities provided by local rights of way for exercise and other forms of open-air recreation and the enjoyment of the authority's area
- the accessibility of local rights of way to blind and partially sighted persons and others with mobility problems.

It was a statutory requirement that the ROWIP be fully integrated with the Local Transport Plan being developed for the period 2011-2026.

RESOLVED: That

- (1) the report be noted.
- (2) a report on the progress of the Rights of Way Improvement Plan and the Local Transport Plan be brought to the next meeting of the Committee.

9 HIGHWAYS ACT 1980 – SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 1 (PART) PARISH OF BATHERTON

The Committee considered a report that detailed an application from Mr G Horton (the applicant) of Millbank Farm, Batherton, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 1 in the parish of Batherton.

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 the owner, lessee or occupier of the land crossed by the path.

The current definitive line of footpath No. 1 ran through the applicant's garden and was currently obstructed by a wall and fence. The applicant had constructed the wall and created the garden many years ago without realising that this was the definitive line of the route as people had always walked diagonally across the field in a more direct route. It was only recently that they had been made aware of the correct line of the footpath. The proposed diversion ran along the outside of the garden wall and then cut diagonally across the field to rejoin the definitive line. The route was more direct and was currently in use by walkers.

It was noted that no objections had been received. The Committee considered that the proposed footpath would be more enjoyable than the existing route in terms of amenity and that the new route was not substantially less convenient than the existing route. The proposed route would also benefit the landowner in terms of his privacy. It was therefore considered that the proposed route would be more satisfactory than the current route and that the legal tests for the making and confirming of a diversion order were satisfied.

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 Public Footpath No. 1 Batherton as illustrated on Plan No. HA/043/FP1/001 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.

10 HIGHWAYS ACT 1980 – SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 26 (PART) PARISH OF BOLLINGTON

The Committee considered a report that detailed an application from Mrs C Drake of Swanscoe Farm, Kerridge (the applicant) requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 26 in the parish of Bollington.

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 the owner, lessee or occupier of the land crossed by the path.

The application had been made in the interest of the landowner due to security and safety concerns. The current line of the footpath took the public down the driveway towards Swanscoe Farm, through the working farm yard, alongside a barn and then continued in a northerly direction along a field edge. The applicant had been the victim of burglary on a number of occasions and had already taken other preventative measures and now wished to secure the area around the property and outbuildings. The applicant also had safety concerns about the public walking through a working farm yard. The diversion would benefit the applicant as the public would no longer need to walk through the farm yard. The proposed route was currently in use as a permissive footpath running through an adjacent field. It was similar in length, offered easier access with two pedestrian gates rather than field gates and stiles and provided a better view.

It was noted that no objections had been received. The Committee considered that the proposed footpath was not substantially less convenient than the existing route. The proposed route would also benefit the landowner in terms of security and safety. It was therefore considered that the legal tests for the making and confirming of a diversion order had been satisfied.

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 Public Footpath No. 26 Bollington as illustrated on Plan No. HA/028/FP26/002 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.

11 PROPOSAL FOR PERMISSIVE PATHS FOR HORSE RIDERS IN THE PARISH OF PECKFORTON

The Committee considered a report on a proposed agreement to grant permissive paths for horse riders on condition of liability for the surface of the routes and liability for personal injury of users being assumed by the Council.

A permissive path agreement was essentially a private agreement between the Council and the individual concerned. The Countryside Access Development Team had been approached by the Habitats and Hillforts Landscape Partnership Team with regard to a proposal to create two permissive paths for horse riders through the Peckforton Estate. The Habitats and Hillforts Landscape Partnership Scheme was a partnership of local organisations and residents who were working together to improve the hillforts of the sandstone ridge which ran through Cheshire.

The Council's Risk Management and Insurance advisors had indicated that the addition of the proposed permissive paths for horse riders would not incur any additional costs in relation to the Council's insurance.

It was noted that work on surface drainage and furniture improvement would be undertaken with funding from the Habitats and Hillforts Landscape Partnership Scheme in order to bring the proposed routes up to a suitable standard for horse riders. There was a 100 metre section of cobbles on a gradient on one of the proposed routes. Signage and mounting blocks would be installed to recommend to users that they dismount to cross this section.

The Committee considered that the proposed permissive paths for horse riders would offer users a traffic-free route for the riding and enjoyment of the area. The need for which had been identified in the Rights of Way Improvement Plan. The proposal was also in line with the published Equestrian Strategy of the former Cheshire County Council and also met one of the aims of the Habitats and Hillforts Landscape Partnership Scheme.

RESOLVED:

That the Council enter into a permissive path agreement with the landowner to create permissive paths for horse riders in the parish of Peckforton.

The meeting commenced at 2.00 pm and concluded at 3.55 pm

Councillor B Moran (Chairman)