

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 15th June, 2015 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor M Hardy (Chairman)
Councillor D Flude (Vice-Chairman)

Councillors Rhoda Bailey, S Davies, T Fox and J Wray

Officers

Mike Taylor, Public Rights of Way Manger
Marianne Nixon, Public Path Orders Officer
Clare Hibbert, Definitive Map Officer
Benedict King, Locum Solicitor
Rachel Graves, Democratic Services

1 APOLOGIES FOR ABSENCE

There were no apologies for absence.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 16 March 2015 be confirmed as a correct record and signed by the Chairman.

4 PUBLIC SPEAKING TIME/OPEN SESSION

One member of the public had registered to speak in relation to Item 7. The Chairman advised that he would invite them to speak when the application was being considered by the Committee.

5 TERMS OF REFERENCE AND MEMBERSHIP

RESOLVED:

That the Terms of Reference and membership of the Public Rights of Way Committee be noted.

6 PUBLIC RIGHTS OF WAY ANNUAL REPORT 2014-2015 AND WORK PROGRAMME 2015-2016

The Committee received a report which detailed the achievements of the Public Rights of Way service during 2014-15 and set out the proposed work programme for 2015-16.

The Rights of Way Manager reported on the work carried out during 2014-15 by the Network Management and Enforcement Team and the Legal Orders Team.

It was reported that:

- 238 planning application consultations and 142 rights of way searches completed
- 52 temporary and emergency closures of rights of way had been made
- 661 problems on the network had been logged in 2014-15
- 5 public path orders had been confirmed, 22 cases were in progress, with a backlog of 43 applications
- 1 orders had been contested and would be referred to the Planning Inspectorate
- 4 Definitive Map Modification Orders had been confirmed, 7 were in progress, with a backlog of 23
- 2 Definitive Map Anomaly investigations had been carried out and there was a backlog of 400+

The budget for Rights of Way services had remained as set throughout the year allowing the Team to both plan spending and clear some of the previous backlog that had arisen between 2010 and 2013.

RESOLVED:

That the Annual Report for 2014-2015 be noted and the proposed Work Programme for the Public Rights of Way Team 2015-2016 be approved.

7 WILDLIFE AND COUNTRYSIDE ACT 1981 - PART III, SECTION 53. APPLICATION NO. CN/7/22: APPLICATION FOR THE ADDITION OF A PUBLIC FOOTPATH BETWEEN PUBLIC FOOTPATH AUDLEM NO. 28 AND CHESHIRE STREET, AUDLEM

The Committee received a report which detailed an investigation into an application to for the addition of a public footpath between Public Footpath No.28 and Cheshire Street, Audlem.

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 (3)(c) allowed the Authority to act on the discovery of evidence that suggests that the Definitive Map and Statement 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. The event relevant to this application was Section (3)(c)(i), which required modification of the map by the addition of a right of way: -

- “(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-
- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.”

Where the evidence in support of the application is user evidence, Section 31(1) of the Highways Act 1980 applied –

“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.”

Section 31(2) states that “the 20 years is calculated retrospectively from the date when the right of the public to use the way is brought into question.”

The application had been submitted in April 2005 by Audlem Parish Council to modify the Definitive Map and Statement for the parish of Audlem by adding a currently unrecorded route as a Public Footpath. The route applied for ran from Public Footpath No.28 Audlem, on the towpath to the south east of the Shroppie Fly Public House and ran in a generally north easterly direction to join Cheshire Street, Audlem – points A-B-D-E on Plan No.WCA/008. An additional loop had also been claimed, from point D running north westerly through the pub car park then northerly up a grassy slope to point C, then turning south easterly along the top of a bank through a wooded area back to point B. The application was based on user evidence; a total of 10 user evidence forms were submitted with the application.

John White, North and Mid Cheshire Ramblers, spoke in support of the application and confirmed that he had used the claimed route as the Ramblers had used the car park as a start point for their walks.

A detailed investigation of all the evidence submitted with the application had been undertaken, together with additional research. In addition to the user evidence, an investigation of the available historical documentation had been undertaken to establish whether the claimed route had an earlier origin.

From the historical documentation investigation, no evidence of the route claimed was found on the 18th and 19th Century County Maps, the Audlem Tithe Map and Apportionment 1846, the Ordnance Survey Maps 6” to 1 mile, 1st, 2nd and 3rd Editions and the Ordnance Survey Maps 25” to 1

mile, 1st, 2nd and 3rd Editions. The claimed route was not recorded in the Audlem Parish Survey completed in 1952 for the Definitive Map and Statement.

A total of ten user evidence forms were submitted, all claiming the use of the route on foot. Officer had interviewed seven of the witnesses. Use of the route ranged from 1969 until the application was submitted in April 2005. The frequency of use varied between daily, weekly and occasionally. The route was used as a link to access the Shroppie Fly public house, canal and the village shops on Cheshire Street. It was also used recreationally and for leisure purposes, such as a dog walk.

The relevant twenty year period to be considered for this application was 1985 to 2005. From the information on the user evidence forms, eight witnesses stated use of the claimed route on foot for the full 20 year period and two stated use for part of this period.

Seven witnesses were interviewed by officer and had signed statements. Five of the seven interviewed claimed to have used the route on foot for the full twenty year period and two stated use for part of the period. All the witnesses were consistent in describing the route they used – from Cheshire Street, across the playing fields (at the tennis court side, behind the goal posts) and down the steps at The Shroppie Fly to the towpath. None of the witnesses interviewed had been stopped or challenged when walking this path. All of them stated that they did not have permission to use the route, they had just assumed it was a public path.

Only two witnesses interviewed claimed to have used the loop B-C-D and this was only occasional use. Consequently this evidence was not sufficient to show rights had been acquired.

Cheshire East Council's Park Management had been consulted and had concerns that if an Order was made and confirmed, as events were held on the playing field occasionally, these could potentially obstruct the footpath. They were also concerned that a public footpath would cause operational difficulties between walkers and those playing formal sports on the playing field. The Definitive Map Modification application process looked at unrecorded existing public rights and not dedicated new public rights, and health and safety issues could not be taken into account.

Cheshire East Council's insurance team had also been consulted and stated that they had no issue from an insurance point of view but suggested that if the application was successful suitable warning signs for drivers using the car park to watch out for pedestrians and vice versa would be appropriate.

The Canal and River Trust, Punch Partnership Ltd and one of the landowners had not objected to the application. One landowner had commented on the accuracy of the Plan as it showed the claimed path

passing through a fenced off area. It was confirmed that the Plan would be amended to show the correct line of the claimed path if approved.

The report concluded that there was sufficient user evidence to support the existence of a footpath along the route A-B-D-E but insufficient use for the route B-C-D.

The Committee considered the historical and user evidence outlined in the report and the Definitive Map Officer's conclusions and considered that there was sufficient user evidence to support the existence of footpath rights along the route A-B-D-E but there was insufficient evidence to support the existence of footpath rights along route B-C-D. The Committee considered that, on the balance of probabilities, the requirements of Section 53(3)(c)(i) had been met in the first instance and that the Definitive Map and Statement should be modified to add the claimed route as a Public Footpath.

The Committee unanimously

RESOLVED: That

- 1 The application to modify the Definitive Map and Statement to record a footpath between points B-C-D, as shown on Plan No.WCA/008, be refused on the grounds that there is insufficient evidence to show the existence of Public Footpath rights.
 - 2 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 as a Public Footpath, the route shown between points A-B-D-E on Plan No.WCA/008.
 - 3 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 powers conferred on the Council by the said Act.
 - 4 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.
- 8 HIGHWAYS ACT 1980 S.119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 8 (PART), PARISH OF CREWE**

The Committee considered a report which detailed an application from Mr S Wheeler of Race Farm, Waldrons Lane, Coppenhall, Crewe requesting the Council make an Order to divert part of Public Footpath No.8 in the parish of Crewe.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order to divert a public footpath 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 land over which the current path and the proposed diversion ran belonged to the Applicant. The section of Public Footpath No.8 Crewe to be diverted entered a field and ran along the eastern boundary close to the Applicant's property before entering a fenced section leading to an exit stile at the north eastern field corner (points A-C on Plan No.HA/101). Diverting this section of footpath to run along the northern field boundary would afford the applicant improved security and privacy by taking path users further away from the Applicant's property buildings and adjacent land.

The proposed new route would start at the junction with Waldrons Road, north of the start point for the current route, from where it would enter into a fenced section of path via a kissing gate. It would run along this fenced section in a generally east, south easterly direction along the northern field boundary to join the current footpath immediately before the stile at the north eastern field corner (point D-C on Plan No.HA/101).

The fenced section would have a width of 2.5 metres and have a grass surface. A drain would be installed at the beginning of the new route from Waldrons Road to resolve current drainage issues and this would be covered and the path surface levelled.

Relocating the start point of the footpath along Waldrons Road would not significantly affect connectivity to the wider path network.

The Committee noted that no objections had been received during the informal consultations and considered that the proposed route would not be substantially less convenient than the existing route. The Peak and Northern Footpath Society had noted the need for regular maintenance of this footpath. Diverting this part of the Footpath would be of considerable benefit to the landowner in terms of offering enhanced security and privacy to their property. It was therefore considered that the proposed route would be a satisfactory alternative to the current route and that the legal tests for the making and confirming of a diversion order were satisfied.

The Committee unanimously

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.8 Crewe by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/101, 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.

9 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 3 (PART), PARISH OF BOLLINGTON

The Committee received a report which detailed an application from Mr Dominic Shaw (agent) of Bower Martin Partnership on behalf of Rowlinson Constructions Ltd, London House, London Road, Poynton, requesting the Council make an Order under Section 257 of the Town and Country Planning Act 1980 to divert part of Public Footpath No.3 in the parish of Bollington.

Further to this, for the reasons of public interest, Cheshire East Council proposed that the diversion of a further two parts of Public Footpath No.3 Bollington be included within this Order providing the proposals were unopposed following informal consultation.

In accordance with Section 257 of the Town and Country Planning Act 1980, the Borough Council, as the Planning Authority, can make an Order diverting 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 yet to be granted to Rowlinson Constructions Ltd for a residential development. The application was cited as Planning Permission Ref: 14/3844M. The details of the application were for the development of 33 new residential dwellings including 8 apartments, improvements to land levels, amenity, infra-structure and landscaping to suit. The Growth and Infrastructure Act 2013 allowed for the consideration of the request to divert a public footpath prior to the obtaining planning consent.

Part of the current line of Public Footpath No.3 Bollington would be obstructed by buildings within the proposed residential development and therefore a footpath diversion was required to preserve public access around the residential development. The land over which the current route ran and over which the proposed route would run was entirely owned by Rowlinson Constructions Ltd.

The length of footpath proposed for diversion (points A-B-C) was approximately 170 metres. The proposed new route would be shorter than the current route by approximately 31 metres and would take users along

a route that skirted the north and west of the residential development following the meandering River Dean to meet the current route. The new route would have a width of 2 metres and have a grass surface.

It was considered desirable to raise the footpath onto a bank to help minimise flood risk. However, recently, the Council had been informed that the Environment Agency required an 8 metre clearance zone on either side of a river to allow access for maintenance etc. and raising the bank for the footpath would affect this zone. Further discussions would be required to determine whether a raise bank would therefore be possible. Were it not, then it should be noted that the opposite bank of the river is lower than that onto the development and proposed new route would be located so would naturally hold any flood water.

The existing alignment of the footpath sections proposed for diversion by Cheshire East Council were currently obstructed by the River Dean, which over the years had changed course. The land over which these sections ran and over which the proposed route would run belonged to Mr GA Waller, who had given his written agreement to allow the paths to be diverted. The proposed route would take users along the southern river bank, following the alignment currently used by the public on an informal basis. The route would be 2 metres wide and have a grass surface.

Rowlinson Constructions Ltd had agreed to allow these proposals to be progressed with their diversion proposals provided that their application was not affected nor any additional costs incurred to them.

Informal consultation had been completed on the section of path to be diverted for the housing development. The users groups had been consulted and members of The Peak and Northern Footpath Society and the East Cheshire Ramblers Group had registered no objections to the proposals. The informal consultation was still being carried out on the sections of paths to be diverted as proposed by the Council.

The Committee concluded that it was necessary to divert part of Public Footpath No.3 Bollington to allow for the development of 33 new residential dwellings. 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 190 were satisfied.

The Committee unanimously

RESOLVED: That

- 1 On condition that approval is granted for Planning Application 14/3844, an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert parts of Public Footpath No.3 Bollington, as illustrated on Plan No.TCPA/023A, on the grounds that the Borough 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 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.

10 VILLAGE GREEN APPLICATION - LAND AT PICKMERE INFORMAL RECREATION OPEN SPACE, JACOBS WAY, PICKMERE, KNUTSFORD

The Chairman reported that the map at page 93 of the agenda pack was not relevant to this application and had been included in error.

The Committee considered the report of the Independent Person on the application to register land at Pickmere Informal Recreation Open Space, Jacobs Way, Pickmere, Knutsford as a new village green under section 15 of the Commons Act 2006.

The Public Rights of Way Committee, at its meeting on 8 December 2014 had considered the application and resolved:

- "a the Head of Legal Services be authorised to appoint an independent expert to consider the application on the basis of written representations and provide a report.*
- b. The Head of Legal Services be given delegated authority to determine if a non-statutory public inquiry should take place upon the recommendations of the Independent Expert, after consulting the Chairman of this Committee."*

On 11 March 2015, the Head of Legal instructed Mr James Marwick of Counsel:

- a. to consider the Application and provide the Head of Legal with a written preliminary review as to whether the matter can be dealt with by way of written representations in the first instance.*
- b. If, after considering the Application, counsel is of the view that the Application can be dealt with by way of written representations, to sit as an independent expert to consider the Application on the basis of written representations and prepare a report, to go the Council's Public Rights of Way Committee, recommending whether the Application should be approved or not;*

- c. *after considering the Application, counsel is of the view that the Application needs to be dealt with by way of a non-statutory public inquiry, he is to advise the Head of Legal Services in a telephone conference as to the reasons why an inquiry is necessary and, subject to further confirmation from the Head of Legal, to sit as an inspector for the non-statutory inquiry for the purpose of considering the evidence and to prepare a report and recommendation to go the Council's Public Rights of Way Committee on whether the Application should be approved or not.*

Mr Marwick provided a report on 24 March 2015 which advised that the legal question of whether the user of the land was 'by right' or 'as of right' was likely to be determinative of the application. He advised that the application could be dealt with by way of written representations and invited the parties to submit further representations and replies on the question of whether the use was 'as of right'.

Further evidence, responses and replies were made in April and were passed to Mr Marwick for consideration. In accordance with instructions, Mr Marwick provided a report dated 15 May 2015, in which he concluded that use of the land had not been "as of right" but permissive for a large balance of the requisite 20 year period and recommended that the application be rejected. The report was circulated to all parties on 3 June 2015, with an invitation to submit any further representations by 10 June 2015.

Members of the Committee considered the report of the Independent Person and during discussions asked questions about transfer of the land to the Parish Council pursuant to a section 106 agreement, the permitted use of the land under this agreement, permissive access, and the impartiality of the Independent Person.

The Committee unanimously

RESOLVED:

That the report of the Independent Person – Mr James Marwick, be accepted and that the application to register the land at Pickmere Informal Recreation Open Space, Jacobs Way, Pickmere, Knutsford, as a village green be rejected for the reasons as stated in the Independent Person's report.

The meeting commenced at 2.00 pm and concluded at 3.25 pm

Councillor M Hardy (Chairman)