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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 7th September, 2009 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

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

Councillors Rachel Bailey, D Cannon, R Cartlidge and S Wilkinson

Councillor in Attendance: Councillor A Knowles, Portfolio Holder Health and Wellbeing

OFFICERS PRESENT:

Mark Wheelton, Leisure Services and Greenspace Manager
Mike Taylor, Greenspace 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
Jennifer Tench, Public Rights of Way Officer
Charles Riley, Solicitor, Places, Regulatory and Compliance
Rachel Graves, Democratic Services Officer

12 APOLOGIES FOR ABSENCE

Apologies were received from Councillor J Wray.

13 DECLARATIONS OF INTEREST

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

14 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 1 June 2009 be approved as a correct record and signed by the Chairman, subject to the following amendments:

Minute 5 – Legal Orders Team: Statement of Priorities for Definitive Map Modification Orders:

Resolution (2) to be amended to read “further reports be brought in six and twelve months on the revised Statement of Priorities and the revised prioritisation system.”

Minutes 6 – Charging Policy for Public Path Orders, Temporary and Emergency Closures and Rights of Way Searches:

Resolution (5) be amended to read “increases in charges relating solely to inflation be implemented by Officers without the need to seek Committee approval.”

15 PUBLIC SPEAKING TIME/OPEN SESSION

The member of public present did not wish to address the Committee.

16 HIGHWAYS ACT 1980 - SECTION 118: EXTINGUISHMENT OF PUBLIC FOOTPATH NO. 4 AND RESTRICTED BYWAY NO. 6 MIDDLEWICH

The Committee considered a report which detailed the proposal to extinguish Public Footpath No.4 and Restricted Byway No. 6 (part) in Middlewich.

In accordance with Section 118(1) of the Highways Act 1980 it was within the Council’s discretion to make an Order if it appeared to the Council that it was expedient that a path or way should be stopped up on the ground that it was not needed for public use.

Public Footpath No. 4 and Restricted Byway No. 6 (part) were currently obstructed by a large housing estate, constructed some time in the 1960s by Middlewich Estates Limited. The obstruction of these rights of way had occurred as the Planning Authority at the time had failed to ensure that the proper legal processes were followed and did not make a stopping-up order to legally extinguish the line of the footpath/restricted byway, prior to the development being carried out.

The situation had come to light in 2006 when an owner of an affected property attempted to sell their house and the vendor’s solicitor conducted a legal search to see if it was affected by a public right of way. At the time, Cheshire County Council confirmed to all parties concerned that no enforcement action would be taken on the legal lines of these routes. Despite this, the sale fell through.

It was agreed that Congleton Borough Council, as the successor Planning Authority, should take responsibility for the matter and undertake to legally extinguish the lines of the public rights of way affecting the properties, under section 118 of the Highways Act 1980. The Borough Council consulted the affected property owners but had progressed the matter no further and following Local Government Reorganisation, the matter was passed to the Public Rights of Way Team for resolution.

It was noted that no objections had been received. The Committee considered that Public Footpath No. 4 and Restricted Byway No, 6 (part) were not needed for public use, as alternative access was available via the adopted road network of the housing estate. It was in the interest of all the owners affected by these rights of way that they were legally extinguished to avoid any future attempts at conveyance being jeopardised.

RESOLVED:

- (1) that an Order be made under Section 118 of the Highways Act 1980 to extinguish Public Footpath No.4 and part of Restricted Byway No. 6 Middlewich, as illustrated by the markings A-B-C on Plan No. HA/207/FP4_RB6/004, on the grounds that they are not needed for public use.
- (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 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.

17 HIGHWAYS ACT 1980 - SECTION 118: PROPOSED EXTINGUISHMENT OF PUBLIC FOOTPATH NO. 17 (PART) SANDBACH

The Committee considered a report which detailed the proposal for extinguishing part of Public Footpath No. 17 in the Parish of Sandbach.

In accordance with Section 118(1) of the Highways Act 1980 it was within the Council's discretion to make an Order if it appeared to the Council that it was expedient that a path or way should be stopped up on the ground that it was not needed for public use.

Part of Public Footpath No. 17 in Sandbach ran across the gardens and dwellings of four properties in Laurel Close, which were constructed in the 1980s. The situation had been brought to light by a recent search on No. 4 Laurel Close which had caused concern to the potential purchaser. A thorough search of available documentation has shown that the path was not diverted or extinguished at the time of the development. On an adjacent development a further section of the same path was legally diverted onto the highway network. In order to regularise the situation and prevent further problems arising at the point of sale, Cheshire East Council was applying for an extinguishment order for this part of Footpath No. 17.

The Committee noted that no objections had been received and considered that Public Footpath No. 17 (part) was not needed for public use as an alternative route was available via the adopted footway between Laurel Close and the continuation of Footpath 17 and connecting Footpath

No. 18. It was in the interests of the owners of properties nos. 2 to 8 Laurel Close affected by the right of way that it was legally extinguished to avoid the difficulties experienced when a house sale was in prospect.

RESOLVED: That

- (1) an Order be made under section 118 of the Highways Act 1980 to extinguish part of public footpath no.17 Sandbach, as illustrated on Plan No. HA/262/FP17/011, on the grounds that it is not needed for public use.
- (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.

18 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 20 (PART) PARISH OF SUTTON

The Committee considered a report which detailed an application from Mr and Mrs Egerton (the applicant) of Hartsgrove Cottage, Sutton, Macclesfield, requesting the Council to make an order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 20 in the Parish of Sutton.

In accordance with Section 119 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 path.

The applicant owned the land over which the current path ran and the majority of the land over which the proposed diversion would run. A small section of the proposed route at the easternmost end of the proposed route ran in the adjacent landowner's field and written consent had been provided. The current line of the footpath took walkers in very close proximity to the applicant's home and immediately past the windows of the property. The footpath formed part of the Gritstone Trail, which was a well used route. The proposed diversion was already in use as a permissive route.

It was noted that no objections had been received for the proposal. The Committee considered that the proposed route would be more enjoyable than the existing route with improved views. Moving the footpath out of the applicant's garden and away from their home provided a less intimidating route for users. The proposed route would also benefit the

applicant in terms of security and privacy. It was therefore considered that the proposed route would be more satisfactory than the current route and the legal tests for making and confirming 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. 20 Sutton, as illustrated on Plan No. HA/284/FP20/003, 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 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.

19 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 13 (PART) PARISH OF WRENBURY CUM FRITH

The Committee considered a report which detailed an application from Mr P B Hockenhull (the applicant) of Frith Farm, Wrenbury, Nantwich requesting the Council to make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 13 in the Parish of Wrenbury cum Frith.

In accordance with Section 119 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 path.

The applicant owned the land over which the current path lay and the proposed diversion would lie. The existing line of the Public Footpath No. 13 ran along the rear of a range of traditional buildings which had recently been granted planning permission for four dwellings. A condition was placed on the planning permission that the applicant apply to divert the footpath under the Highways Act. The current line of the footpath would run through the gardens of the four dwellings and the proximity of the footpath to the dwellings would lead to loss of privacy and security of future inhabitants. The current line of the footpath had also been partially obstructed by a slurry pit for a number of years and diverting the route would avoid this obstruction.

The Committee noted that no objections had been received and considered that the proposed footpath would be more enjoyable than the

existing route and provide improved views. Moving the footpath out of the farmyard and the gardens would provide a less intimidating route for users. The new route was not substantially less convenient than the existing route and would also benefit the landowner and future inhabitants of the four dwellings in terms of security and 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. 13 Wrenbury cum Frith, as illustrated on Plan No. HA/005, 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 in the said Acts.
- (3) in the event of any objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

20 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 4 (PART) PARISH OF BRERETON

The Committee received a report which detailed an application from Mr and Mrs H McCormick (the applicant) of Barn 2, Dairy House Farm, Brereton requesting the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 4 in the Parish of Brereton.

In accordance with Section 119 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 path.

The applicant owned part of the land over which the current footpath ran, the remaining part belonging to the owner/occupiers of Barn 1. The land over which the proposed diversion ran is partly owned by the applicant and partly owned by Mr and Mrs Harris of Dairy House Farm. Mr and Mrs Harris had written to confirm they had no objections to the diversion of the footpath on their land. The current line of Footpath No. 4 took the public diagonally across the garden of the applicant's property and Barn 1. When purchasing the property it was only in the very late stages that the applicant was made aware that the path entered the property. The path

was inconvenient and affected the applicant's privacy as they spent time as a family outside and their children played in the area. The line walked on the ground was not the same as the legal line as the legal line also affected the garden of Barn 1 but the walked line was solely within the garden of the applicant.

The diversion would benefit the landowners as the public would no longer need to walk through their garden. The proposed diversion was already in place as a permissive route. The proposed route was similar in length and offered easier access with only one kissing gate rather than two pedestrian gates on the current route.

The Committee noted that no objections had been received to the proposal and considered that the proposed footpath would be more enjoyable than the existing route and that the new route was not substantially less convenient than the existing route. The proposed route would also benefit the landowners in terms of their 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. 4 Brereton, as illustrated on Plan No. HA/012 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.

21 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO.3 PARISH OF MOTTRAM ST ANDREW

The Committee considered a report which detailed an application from Mr M Battersby and Miss R Fallows (the applicant) of Lower Gadhole Farm, Greendale Lane, Mottram St Andrew requesting the Council to make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 3 in the Parish of Mottram St Andrew.

In accordance with Section 119 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 path.

The applicant owned the land over which the current path lay and over which the proposed diversion would run. The current line of Footpath No. 3 ran through a busy stud yard which was used for the breeding and training of young sport horses. Moving the footpath out of the yard would be of benefit in terms of the farm management and also avoid any conflict or risk of accidents between members of the public and the horses. Horses in training could be easily disturbed and upset and this had led to the injury of pedestrians in the past. Diverting the footpath would improve safety for users.

The Committee noted that objections to this proposal had been received but considered that the proposed footpath would be more enjoyable than the existing route as it provided improved views for walkers and a more easily accessible route. Moving the footpath out of the stud yard would benefit the landowner in terms of farm management and privacy and security. The new route was not substantially less convenient and would provide a less intimidating route for walkers. It was therefore considered that the proposed footpath 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:

- (1) that 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. 3 Mottram St Andrew, as illustrated on Plan No. HA/007, on the grounds that it is expedient and 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.

**22 TOWN AND COUNTRY PLANNING ACT 1980 - SECTION 257:
APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 7
(PART) PARISH OF WARMINGHAM**

The Committee considered a report which detailed an application from EDF Energy Limited (the applicant) requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 7 in the Parish of Warmingham.

In accordance with Section 257 of the Town and Planning Act 1990, the Borough Council, as the Planning Authority, could 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.

The existing line of Footpath No. 7 would be directly affected by the conversion of the existing brine cavities to gas storage due to the need to create drilling compounds and soil storage areas around each well head for a number of years and the requirement for an enlarged fenced compound around each converted well head. The land was owned by British Salt Limited and Mrs Diane Nelson, who had consented to the proposed diversion.

Planning permission had been granted to the applicant on 31 March 2009 to allow for the extension of the gas processing plant and link to the National Transmission System, electricity and manifold compounds, conversion of ten brine cavities to gas storage and associated infrastructure at land at Hill Top Farm, Hole House Farm, Spring Moss Farm and Parkfield Farm, Warmingham, Cheshire.

The current line of the Footpath passed in close proximity to the existing Brine Well Heads Nos. 9, 7 and 5 and their associated infrastructure. The areas surrounding the enclosed compounds would be required for future maintenance access and the site would become a Control of Major Accident Hazards Regulations 1999 (COMAH) site, due to the storage of large quantities of gas within the site. It was considered necessary to divert the footpath away from the operational well head compounds for gas storage cavities. The proposed route would move the footpath way from the proposed gas well head infrastructure, crossing agricultural fields to the west of the development. Three kissing gates would be required where it crossed the field boundaries.

The Committee noted that no objections had been received. It was considered that the legal test for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

RESOLVED:

- (1) that an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 7 Warmingham, as illustrated on Plan No. TCPA/001, 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 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.

23 HIGHWAYS ACT 1980 - SECTION 25: CREATION AGREEMENT FOR A NEW PUBLIC FOOTPATH IN THE PARISH OF BOLLINGTON

The Committee considered a report which outlined a proposal that the Council enter into a creation agreement with the landowners to dedicate the new path constructed by volunteers of the Kerridge Ridge and Ingersley Vale (KRIV) Countryside and Heritage Project up to the White Nancy viewpoint in the Parish of Bollington.

Under Section 25 of the Highways Act 1980, the Council had the power to enter into an agreement with any person having the capacity to dedicate a public footpath. The Highways Act 1980 required the authority to have regard to the needs of agriculture and forestry and to the desirability of conserving flora, fauna and geographical and physiographical features.

The KRIV project was a community initiative that aimed to retain and restore industrial heritage features that were found in the local landscape and specifically to improve public access to that landscape. The project was a partnership between local residents, Bollington Town Council, Rainow Parish Council, the former Macclesfield Borough Council, the Bollin Valley Partnership and Groundwork.

The new path had been constructed in order to help relieve the pressure of the estimated 40,000 – 50,000 visitors who walked up to the White Nancy View Point each year. The path comprised of approximately 199 steps faced with stone or wood and had a soil and woodchip surface. The new path offered an alternative route to the existing right of way which climbed open hillside, thereby creating a circular route with a mix of landscape characteristics.

The KRIV Project Chairman had agreed that any maintenance tasks and costs associated with the proposed footpath would be covered by the KRIV project until June 2015. Thereafter, any maintenance work would be resourced by the Public Rights of Way unit of the Council.

The Committee was informed that, since the writing of the report, a letter had been received from a neighbouring landowner objecting to the footpath in its present place and raising other points of concerns including damage to a dry stone wall belonging to that landowner. The Committee noted that there was no formal objection procedure for creation agreements and suggested that the Public Rights of Way Officer met with the KRIV Project Officer and the landowner to try to resolve the outstanding issues.

RESOLVED

- (1) that creation agreement be entered into under Section 25 of the Highways Act 1980 to create a new public footpath in the Parish of Bollington, as illustrated on Plan No. HA/008, and that public notice be given of these agreements.
- (2) a meeting take place between the Public Rights of Way Officer, KRIV Project Officer and neighbouring landowner to resolve the areas of concern and an information report be brought back to the next Public Rights of Way Committee.

24 UPDATE ON DEVELOPMENT OF THE RIGHTS OF WAY IMPROVEMENT PLAN (2011-2026) WITHIN THE LOCAL TRANSPORT PLAN 3

The Committee received a report which gave an update on the development of the Rights of Way Improvement Plan (ROWIP) (2001-2026) within the context of the Local Transport Plan 3 (LTP3).

The new ROWIP for the Cheshire East Borough would focus on the post-LGR needs for the new Borough. It was a statutory requirement that the ROWIP be fully integrated with LTP3. The national transport goals enshrined in LTP3 were as follows:

- reducing carbon emissions
- supporting economic growth
- promoting equality of opportunity
- contributing to better safety, security and health and
- improving quality of life and a healthy natural environment

Natural England had published a good practice note on ROWIP and LTP3 integration. The document promoted the optimisation of the role that rights of way could play in the wider transport system and highlighted the benefits of the integration of the two plans:-

- a more holistic approach to transport, addressing the rights of way network as an integral part of urban and rural transport systems;
- strengthening of the long term sustainability of the rights of way network as its role in the wider transport network is recognised;
- securing more direct and integrated funding and delivery;
- encouragement of new ways of working with internal and external partners including local access forums;
- promoting a shift to 'active travel' in which walking and riding are considered as a choice of transport modes;
- advantage in delivering positive benefits for people and the natural environment – a more active lifestyle in a greener, healthier, low carbon, quieter and safer environment.

The timetable and project plan for the development of the ROWIP was being drawn up to align with those of the LTP3 project. A steering group

was being established to monitor the development of the ROWIP and its integration with LTP3. Representatives from the Public Rights of Way Committee would be part of the Steering Group. The Committee would receive regular updates on the progress with the ROWIP.

RESOLVED:

That the report be noted.

The meeting commenced at 2.00 pm and concluded at 2.40 pm

Councillor B Moran (Chairman)