

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 12th September, 2016 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, M Deakin (Substitute for Cllr L Gilbert) ,
T Fox and J Wray

Councillor in Attendance

Councillor G Williams

Officers

Mike Taylor, Public Rights of Way Manager
Jennifer Tench, Definitive Map Officer
Marianne Nixon, Public Path Order Officer
Patricia Evans, Planning Lawyer
Rachel Graves, Democratic Services Officer

18 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor L Gilbert.

19 DECLARATIONS OF INTEREST

In the interest of openness, Councillor R Bailey declared that she was the ward member for Item 7 - Application for Diversion of Public Footpath No.8 (part) in the parish of Odd Rode. She had attended a Parish Council meeting when this application was considered but had not taken part in the discussion.

20 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 13 June 2016 be confirmed as a correct record and signed by the Chairman.

21 PUBLIC SPEAKING TIME/OPEN SESSION

One member of the public had registered to speak in relation to Item 7 – Application for the Diversion of Public Footpath No.8 (part) in the parish of Odd Rode. The Chairman advised that he would invite them to speak when the application was being considered by the Committee.

22 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 56, PARISH OF BOLLINGTON

Councillor J Wray arrived at the meeting during consideration of this item and did not take part in the debate or vote.

The Committee considered a report which detailed an application from Mrs A Theobald of 2 Berristall Rise, Bollington, Macclesfield requesting the Council to make an Order to divert Public Footpath No.56 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 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 part of the current path and part of the proposed diversion ran was owned by the Applicant. The remaining parcels of land over which the path ran were separately owned by Mr Kershaw of 3 Berristall Road and Mrs Gray of 1 Berristall Rise. Both of whom had given written agreement to the proposed diversion.

The present line of Public Footpath No.56 Bollington ran through the garden of No.3 Berristall Rise before crossing the unadopted road, Berristall Rise, and then passing through the garden of No.2 Berristall Rise before exiting into a pasture field.

The proposed new route would follow the unadopted road and then along the perimeters of the Applicant's garden to re-join the current line of the path. The new route would be 2 metres wide throughout and would have surfaces of tarmac and grass. The diversion would eliminate the unintentional use of the owner's domestic steps to their house and the driveway leading to them.

The Committee noted the comments made by Bollington Town Council, Peak and Northern Footpath Society and East Cheshire Ramblers requesting adequate signage to ensure users were clear about where to walk.

The Committee noted that no objections had been received during the informal consultation and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would be of benefit to the landowner in terms of improving privacy and security to their property. It was considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for 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 Public Footpath No.56 Bollington by creating a new public footpath and extinguishing the current path, as illustrated on Plan No.HA/112, 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.

23 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO 13 (PARTS), PARISH OF MOSTON AND PUBLIC FOOTPATH NO 9 (PART), PARISH OF WARMINGHAM

Correction to the Report – the application related to Public Footpath No.9 (part) in the parish of Warmingham, and not Public Footpath No.8 as stated in parts of the report.

The Committee considered a report which detailed an application from Mr D Hancock of Brook Farm, Clay Lane, Moston, Sandbach requesting the Council to make an Order to divert part of Public Footpath No.13 in the parish of Moston.

Further along this Footpath two short sections had been walked for a considerable period of time on a different alignment to the definitive alignment so the Council proposed to divert these sections, which composed of parts of Public Footpath No.13 Moston and Public Footpath No.9 Warmingham, such that they align along the walked route.

In accordance with Section 119(1) of the Highway Acts 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.

An area of land within a field over which ran part of Public Footpath No.13 Moston currently suffered seasonal flooding. It was proposed to divert the footpath to run in a different direction across a drier area within the field to assure its availability for users during wetter weather, as shown A-C on

Plan No.HA/111. The Applicant owned the land over which ran the current route and the proposed new route.

The two path sections proposed to be diverted by the Council would follow the route currently being walked on the ground. The first section of Public Footpath No.13 to be diverted, Points D-E, was owned by Mr A Whittaker who had given written consent to the diversion. The proposed route started at Point D and followed the hedge boundary, instead of twice crossing it, to Point E. It would however cross a field boundary en-route at Point F.

The second proposed diversion (Points G-J-I) composed of short sections of Public Footpath No.9 Warmingham and Public Footpath No.13 Moston. Mr JR Derbyshire owned the land over which the part of Public Footpath No.9 Warmingham ran and had given written consent for the diversion.

The Committee noted that the National Grid had placed a holding objection pending further information about any work on the new diversion routes. No work would be required in the vicinity of their apparatus and so the objection had been withdrawn.

The Committee considered that the proposed routes would be an improvement to the existing routes. Diverting the footpaths would be of benefit to the landowner and public to assure availability during wetter weather and move the alignment onto the currently walked route. It was considered that the proposed routes would provide a more 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 is made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert parts of Public Footpath No.13 parish of Moston and part of Public Footpath No.9 Parish of Warmingham, by creating new sections of each public footpath and extinguishing the current sections, as illustrated on Plan No.HA/111 on the grounds that it is expedient in the interests of the owners of the land crossed by the paths and the public.
- 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.

**24 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:
APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 8
(PART), PARISH OF ODD RODE**

The Committee considered a report which detailed an application from Mark Taylor, 9 Primitive Street, Mow Cop, Stoke on Trent requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1980 to divert part of Public Footpath No.8 in the parish of Odd Rode.

In accordance with Section 257 of the Town and Country Planning Act 1980, the Borough Council, as 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.

A planning application had been submitted applying for the erection of a new implement, produce and hay store – planning reference 16/3010C. Planning permission had not yet been granted.

The existing alignment of Public Footpath No.8 Odd Rode would be directly affected by the proposed development, and therefore a footpath diversion would be required to preserve public access through the site. The proposed diversion would run along the field boundary behind the new store before diagonally crossing the field to re-join the current route of the Public Footpath.

Mark Taylor, applicant, addressed the Committee and stated that the diversion was required to allow for erection of a new store and that the proposed new route would be maintained to a high standard.

The Congleton Ramblers had registered an objection to the diversion on the basis that they understood that the Town and Country Planning Act permitted diversions only to the extent required for the development to proceed and stated that the proposed route should run to the eastern corner of the proposed barn and then back to its original course.

In response to this objection, discussions with the Institute of Public Rights of Way and Access had concluded that there was nothing within the legislation of section 257 of the Town and Country Planning Act 1990 to state that diversions undertaken to allow development must be the shortest route possible. It was important to offer a proposal that was in the best interests of the public and not one that will be shortest if this did not serve those interests.

Odd Rode Parish Council had objected to the proposed route as it passed close to properties by the field boundary and could cause issues of privacy and security.

In the light of this objection, Officers had further discussed the proposed diversion with the Applicant and a revised route had been agreed moving the diversion away from the boundary near the houses and towards the store – as shown on revised Plan No.TCPA/032.

The Committee consider the application and concluded that it would be necessary to divert part of Public Footpath No.8 Odd Rode to allow for the new store to be erected. 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.

The Committee unanimously

RESOLVED: That

- 1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.8 Odd Rode, as illustrated on revised Plan No.TCPA/032, on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place. That this Order be confirmed and made operable on condition that planning permission is granted.
- 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 events 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.

25 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 14 (PART), AND EXTINGUISHMENT OF AN UNRECORDED FOOTPATH BETWEEN PUBLIC FOOTPATH NO.14 AND 15, PARISH OF BUNBURY

The Committee considered a report which detailed an application from Crabtree Homes Ltd on behalf of Mr and Mrs Goodyer 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.14 in the parish of Bunbury and also to extinguish an unrecorded footpath which ran between Footpath Nos.14 and 15 Bunbury.

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

A planning application had been submitted applying for outline permission for a proposed residential development for 15 dwellings with associated works – planning reference 16/2010N. Planning permission had not yet been granted.

The present alignment of Public Footpath No.14 and the unrecorded path would be affected by the proposed development. The proposed diversion would run along the boundary of the site - shown on Plan No.TCPA/031 between points A-E-F-G-C, and would have a width of 2.5 metres. The proposed surface of the path would be agreed with the developer.

The unrecorded footpath was the subject of the Definitive Map Modification Order Application, which had been made by Bunbury Parish Council in August 2006 and was based on user evidence. The application had not yet been investigated and was currently on the waiting list of outstanding applications. As the claimed footpath cut through a number of the plots within the proposed development, the applicants were applying to extinguish this footpath. With the proposed diversion of Public Footpath No.14 and the retention of the existing route of Public Footpath No.15 Bunbury, there would remain a suitable footpath link around the site.

Bunbury Parish Council had raised an objection to the proposal on the basis that the diversion would not be required if the planning application was refused. In response, Officers had been explained that the current legislation allowed developers to apply for public path diversions/extinguishment Orders prior to the granting of planning permission. If planning permission was refused and the Order was not required, then the Order would not be confirmed and the application to modify the Definitive Map would remain on the waiting list to be determined.

The Committee considered the application and concluded that it would be necessary to divert part of Public Footpath No.14 Bunbury and extinguish the unrecorded path to allow for the development to take place. 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.

The Committee unanimously

RESOLVED: That

- 1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.14 Bunbury, and extinguish an unrecorded footpath between points H and D, as illustrated on Plan No. TCPA/031, on the grounds that the Borough Council was satisfied that it is necessary to do so to allow development to take place. That this Order be confirmed and made operable on condition that planning permission is granted.

- 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.

The meeting commenced at 2.00 pm and concluded at 2.43 pm

Councillor M Hardy (Chairman)