

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 13th March, 2017 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

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

Councillors S Davies, T Fox, L Gilbert and J Wray

Officers

Mike Taylor, Rights of Way Manager
Genni Butler, Countryside Access Development Officer
Jennifer Tench, Definitive Map Officer
Clare Hibbert, Definitive Map Officer
Sheila Dillon, Senior Lawyer, Legal Services
Rachel Graves, Democratic Services Officer

34 APOLOGIES FOR ABSENCE

Apologies were received from Councillor R Bailey.

35 DECLARATIONS OF INTEREST

Councillor D Flude, in the interests of openness in relation to Item 5, declared that she made comment on Witters Field in response to the Housing White Paper.

Councillor M Hardy, in the interests of openness in relation to Item 8, declared that he was aware of the history of the site but had not made any comments on the application.

36 MINUTES OF PREVIOUS MEETING

Minute 32 – Town and Country Planning Act 1990 Section 257: Application for the Diversion of Restricted Byway No. 1 (Part) Parish of Eaton

It was reported that an objection had been received to the Order made, and as a result, it was proposed that the line of the route, M to D on Plan TCPA/034B, be amended by moving this section of the path eastwards to avoid the location of clay pigeon shooting. This was agreed by the Committee.

RESOLVED:

That the minutes of the meeting held on 5 December 2016 be confirmed as a correct record and signed by the Chairman.

37 PUBLIC SPEAKING TIME/OPEN SESSION

Councillor D Marren addressed the Committee in relation to Public Footpath No.18 Nantwich, which ran from Beam Street behind the Civic Hall to the Church, and stated that the footpath was obstructed in a number of places - by planting and a tree outside the Library and by car parking spaces and a ticket machine in the car park. Officers had been informed but had failed to remove these obstructions.

In response the Rights of Way Manager stated that they would explore the comments made by Cllr Marren. He noted that planning permission had been granted to extend Nantwich Civic Hall which would require a diversion of the footpath and had been in correspondence with Nantwich Town Council on this.

38 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF AN UNRECORDED FOOTPATH, CHURCH LANE, WISTASTON

The Committee considered a report which detailed an application from Gladman Developments Ltd requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1990 to divert an Unrecorded Footpath on land off Church Lane, Wisataston.

In accordance with Section 257 of the Town and Country Planning Act 1990 the Borough Council, as Planning Authority, can make an Order diverting a public right of way 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 applied for or granted.

Planning approval had been granted for an outline application for a proposed residential development of up to 300 dwellings, site access, public open space, landscaping and associated infrastructure – planning reference 14/3024N.

The footpath was not currently recorded on the Definitive Map but was the subject of a Definitive Map Modification Order application which was submitted in July 2015 by Mr FP Alcock. The application was based on user evidence from ten individuals claiming use for a period spanning more than twenty years and an overall average of 25 years. The application had not yet been investigated as it had been overtaken by the approved development on the site. The Applicant was aware of the informal circular route in existence on the site prior to the application for the Definitive Map Modification Order being submitted, and provision was made within the master planning for this to be incorporated into the

scheme and formalised. This is shown on the Footpaths and Cycleways Plan, which was an approved drawing and which Condition 16 of the planning permission required implementation to substantially accord with.

Councillor Margaret Simon, ward councillor, stated that the unrecorded circular footpath on Witters Field had been present for many years and was well used. She was concerned about the proposed alignment of the path K-E-L. which was in front of the proposed houses and said that residents would like to see the part of the footpath immediately behind the existing houses on Church Lane to give them an element of privacy and not be back to back with the new homes. She asked the Committee not to make a decision now but to allow time for residents to discuss with Gladman to come up with a compromise to suit the residents.

Mr Peter Wainwright spoke in objection to the application. The route around the field was used on a daily basis. The results of a survey of users over a four day period had resulted in a request for the path to continue to circumvent the field and be incorporated in to the estate and that a buffer zone to include the path should be created between the houses and bungalows on Church Lane and the new houses and would not create any greater security issues than already existed with the houses backing onto open fields. He referred to Defra Circular 01/09 which stated that any alternative alignment should avoid the use of estate roads and preference should be given to the use of made up estate paths through landscaped and open spaces away from vehicle traffic.

Mr Kevin Waters spoke in support of the application and stated that the designs for the site recognised the two existing footpaths and presence of an informal circular route. Planning permission granted by Secretary of State outlined required elements of the reserve matters application to be substantially in accordance with already established design principles. This was referred to in two conditions of approval, one of which was Condition 16 in Appendix B to the Decision Letter and related to the Footpaths and Cycleways Plan. The legal test necessary for this diversion to be carried out in accordance with the planning permission granted had been met as the alignment was on the master planning documents approved by the Secretary of State.

The report detailed the proposed route of the path. The proposed diversion was necessary to accommodate the layout of the housing development and infrastructure which would directly affect the footpath. The developer was to provide a new path running around the site along a similar but slightly altered alignment to the one claimed. This would retain the nature of the claimed path as a circular route with the northern and western lengths still running through an undeveloped green zone although the southern alignment would be more urban in character. It had been agreed to provide a green corridor between the proposed houses and the new estate road to accommodate this section of the unrecorded path to better comply with Defra Rights of Way Circular 1/09.

Informal consultation had resulted in two objections and eight individual comments/potential objections and two petitions being received, details of these were included in the report. No comments had been received from the users groups.

The Committee considered the report and the comments made by the public speakers and sought clarification on the status of the present circular path; the history of the site and the extent to which the development layout and consequentially the path alignments had been set in stone by the planning process thus far. It was moved and seconded that the decision on the application be deferred to the next meeting to allow for further discussions with the developer and clarification sought from planning officers in relation to the conditioned plans.

The Committee by majority

RESOLVED: That

- 1 the application be deferred to allow residents to negotiate with the developers on the position of the proposed diversion; and
- 2 advice and clarity be sought from the planning officer regarding diversion which would/would not be in substantial compliance with the conditioned plans.

39 WILDLIFE AND COUNTRYSIDE ACT 1981- PART III, SECTION 53 APPLICATION NO. MA/5/251: APPLICATION FOR THE ADDITION OF A PUBLIC FOOTPATH BETWEEN NUMBERS 95 AND 97 KING STREET TO OLD MARKET PLACE, KNUTSFORD

The Committee considered a report which detailed an investigation into an application for the addition of a public footpath between nos. 95 and 97 King Street to Old Market Place, Knutsford to the Definitive Map and Statement. Additional letters objecting to the application and a statement from Knutsford Town Council, which had been received since the report was written, were circulated to the Committee.

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 the evidence and decide on the outcome whether to make a Definitive Map Modification Order. The event relevant to the application was Section 53 (3)(c)(i), which required modification of the map by change of status of a right of way:

“(c) discovery by the authority of evidence which (when considered with all other relevant evidence) 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...”

The evidence could consist of documentary/historical evidence or user evidence or a mixture of both. All evidence had to be evaluated and weighed and a conclusion reached whether, on the ‘balance of probabilities’ the alleged rights subsist or are reasonably alleged to subsist. Other issues such as safety, security, suitability, desirability or the effects on property or the environment were not relevant to the decision.

John Cummins, on behalf of Matthew Mooney, spoke in objection to the application and stated that during the twenty year period and before, the owners had placed a sign notifying the users there was no right of way over the site. In 2001 Mr Mooney placed a sign over the existing sign reaffirming this. Use of the land for the servicing of adjacent properties had prevented people crossing the way. The area between the properties had previously been used by owners to park their company vehicles.

Councillor T Dean, on behalf of Knutsford Town Council, spoke in support of the application. The Town Council had made the application after being approached by members of the public who were using the path when it was blocked off by a fence – this path offered a more level access to King Street from Old Market Place Car Park. The evidence supplied showed that the path had been used by the public as of right and without interruption for 20 years and was therefore deemed dedicated. The signage referred to was not visible for all to see as it was covered by ivy for the relevant period.

The application had been submitted in May 2016 by Knutsford Town Council. The route applied for ran from King Street to Old Market Place, Knutsford and was based on user evidence from 14 users. The application was submitted following the blocking of the claimed footpath with a fence in 2015 making it inaccessible to the public. A planning application was submitted for an outdoor ground level dining area – planning reference no.16/1717M, which was approved in August 2016. The area to be used as an outdoor dining area would affect the claimed footpath.

Where the evidence in support of the application is user evidence, section 31(1) of the Highways Act 1980 applies:

“where a way... has been actually enjoyed by the public as a 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 it.”

This required that the public must have used the way without interruption and as of right, that is without force, secrecy or permission. The twenty years was to be calculated retrospectively from the date when the right of

the public to use the way was brought into question. In this case the date the route was blocked should be used as the date the way was 'brought into question.' The relevant twenty year period to be considered for user evidence was 1995 to 2015.

The report detailed the investigation of the evidence submitted with the application, together with additional research including historical evidence. The report concluded that a decision on the application had to be made on the basis of user evidence. During the relevant period 1995 to 2015, the user evidence forms and witnesses interviews showed that the route was being used on a fairly regular basis and that there was sufficient user evidence to support the allegation that a public footpath subsisted along the routes A-B-C Plan No. WCA/013. The majority of witnesses had not seen any signs or notices and there was evidence to suggest that the sign had not been visible for a significant length of time. The report concluded that the landowners intentions had not been made clear to the public.

The Committee considered the evidence outlined in the report and the Definitive Map Officer's conclusions along with the additional documents, photographs and comments from the public speakers. The Committee sought clarification on the signage and visibility of it, the reason for the application being brought and the connectivity of claimed footpath. The Committee not being convinced regarding the period for which, and the degree to which, the signage had been obscured concluded that, on the balance of probabilities, the requirements of Section 53(3)(c)(i) had not been met in relation to footpath rights.

The Committee by majority

RESOLVED:

That an Order, under Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981, to add a public footpath between numbers 95 and 97 King Street to Old Market Place, Knutsford, not be made.

**40 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:
APPLICATION FOR THE DIVERSION OF PART OF PUBLIC
FOOTPATH NO. 12 (PART), PARISH OF BUNBURY**

The Committee considered a report which detailed an application from Mr A Peters of Richmond House, Whitchurch Road, Bunbury 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.12 in the parish of 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 applied for or granted.

Planning permission had been granted subject to conditions on 23 January 2017 for the proposed extension and alterations at Richmond House, Whitchurch Road, Bunbury – planning reference 16/3317N.

The existing alignment of the footpath would be directly affected by the proposed new garage. It was proposed to divert approximately 46 metres of the route. The proposed line for the footpath was a short diversion following the garden boundary in a north easterly direction for approximately 21 metres and then in a south easterly direction for approximately 46 metres. The diverted path would have a grass surface and be enclosed with a fence on the southern side of the path and a hedge along the northern boundary. The usable width of the route would be 2.5 metres.

SP Energy Networks had objected to the diversion as they had electricity apparatus affected by the proposed diversion. Following a site meeting, it was agreed that the line of the proposed diversion would be moved slightly so that it was not so close to the electricity apparatus.

The Committee considered the application and concluded that it was necessary to divert part of Public Footpath No.12 Bunbury to allow for the extension and alterations as detailed with planning reference 16/3317N. 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:

- 1 That an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.12 Bunbury, as illustrated on Plan No. TCPA/036, 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.
- 41 **TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:
APPLICATION FOR THE DIVERSION OF UNRECORDED FOOTPATH,
BIRTLES ROAD, MACCLESFIELD**

The Committee considered a report which detailed an application from Bartholomew Homes Ltd requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1990 to divert an unrecorded footpath off Birtles Road, Macclesfield.

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 applied for or granted.

Planning permission had been granted for the construction of 18 no. semi-detached dwellings on land to 70 Birtles Road, Macclesfield – planning reference 15/5838M.

The footpath was not currently recorded on the Definitive Map but was the subject of a Definitive Map Modification Order application which had been submitted in 2008 by the Birtles Conservation Forum. The application had been based on user evidence from 16 individuals claiming use for a period spanning more than twenty years. The developers had agreed at an early stage to accommodate a route through to Drummond Way thereby accepting in principle the likely existence of the claimed public rights. The diversion process would extinguish any rights that may have existed over the claimed route and create a legal and recorded right of way over the new route.

The proposed diversion was necessary to accommodate the layout of the housing development which would directly affect the footpath. Within the limited scope of the site, the diversion would be partly along the footway of the estate road with the rest forming a pedestrian link path through to Drummond Way. The whole of the path would be made up to adoptable standards and be 2 metres wide, surfaced and lit. On completion the full route would be adopted and maintained by the Highways Authority.

The Ramblers' Association had responded with no objections but requested that if possible a route through the site be retained during construction work. This request has been passed to the developers who responded that they would *"use all reasonable endeavours, as far as possible, to maintain access to the footpath during the course of the development."*

The Committee considered the application and concluded that it was necessary to divert the unrecorded path off Birtles Road, Macclesfield to allow for the development as detailed with planning reference 15/5838M. 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:

- 1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert the unrecorded Footpath Off Birtles Road, Macclesfield, as illustrated on Plan No.TCPA/037, on the grounds that the Borough Council is satisfied that it is necessary to do so in order to enable development to be carried out.
- 2 Public Notice of the making of the Order is 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.

42 HIGHWAYS ACT 1980, SECTION 26: PROPOSED CREATION ORDER FOR A PUBLIC FOOTPATH IN THE TOWN OF SANDBACH

The Committee received a report which detailed a proposal to make a Creation Order for a Public Footpath in the town of Sandbach.

Under section 26 of the Highways Act 1980, where it appeared to a local authority that there was a need for a footpath, bridleway or restricted byway over land in their area and they were satisfied that having regard to:

a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public or to the convenience of persons resident in the area; and

b) the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provision as to compensation contained in section 28 of the Act,

it was expedient that the path or way should be created, the authority may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order, create a footpath, bridleway or restricted byway over the land.

Cheshire East Council's Partnerships Team was leading a project to improve public access on a path between Clifton Road and Station Road, Sandbach. The route connected Sandbach station with residential areas. The improvements being proposed included signage, surfacing, lighting and the removal of vegetation. The project involved Network Rail as an adjacent landowner and as a landowner of part of the path and owner of the footbridge over the railway.

The path, whilst appearing to be set out for and used by the public, did not have Public Right of Way status along its full length. In order to rectify this anomaly, to provide clarity for the public and to enable investment to improve the path, it was proposed to add the route as a Public Footpath on the Definitive Map.

The known landowners are Cheshire East Council and Network Rail. Cheshire East Council consent to the Creation Order proposal had been obtained at a meeting of the Cabinet Member for Regeneration on 6 February 2017. Network Rail consent, and agreement not to claim compensation, had been secured from its Liability Negotiations Team.

Part of the route was on unregistered land. Notices had been posted on site during the 6 week informal consultation ahead of the Public Rights of Way Committee, to bring the proposal to the attention of anyone with an interest in the land. No such interest had been raised.

The Committee unanimously

RESOLVED:

That a Creation Order be made under Section 26 of the Highways Act 1980, to create a Public Footpath in the Town of Sandbach, as illustrated on Plan No. HA/113.

The meeting commenced at 2.00 pm and concluded at 3.40 pm

Councillor M Hardy (Chairman)