

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 1st March, 2010 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, S Wilkinson and J Wray

OFFICERS PRESENT

Guy Kilminster, Head of Health and Wellbeing
Mark Wheelton, Leisure Services and Greenspace Manager
Mike Taylor, Greenspace Manager
Amy Rushton, Public Rights of Way Manager
Hannah Flannery, Acting Public Rights of Way Officer
Clare Hibbert, Public Rights of Way Officer
Ginika Ogidi, Solicitor
Rachel Graves, Democratic Services Officer

35 APOLOGIES FOR ABSENCE

There were no apologies for absence.

36 DECLARATIONS OF INTEREST

Councillor David Cannon declared a personal interest in the meeting 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 consideration of all items of business.

37 MINUTES OF PREVIOUS MEETING

RESOLVED:

The minutes of the meeting held on 7 December 2009 be approved as a correct record and signed by the Chairman.

38 PUBLIC SPEAKING TIME/OPEN SESSION

Tori Rigby, Heidi Gilks and John Mellersh addressed the Committee in relation to Item 7 on the agenda – Application to upgrade Public Footpaths between Knutsford Road, Chorley and Moor Lane, Wilmslow to Public Bridle Status and Application to upgrade Public Footpath No 42 to Public Bridleway Status, Parish of Wilmslow.

39 PROPOSED POLICY FOR STRUCTURES (PATH FURNITURE) FOR PUBLIC RIGHTS OF WAY

The Council had the discretionary power to authorise the erection of structures (stiles and gates) on public rights of way where it was satisfied that these were necessary to prevent the ingress or egress of animals on land which was used, or was being brought into use, for agriculture or forestry or for the breeding or keeping of horses.

In February 2009 the Department of Environment, Food and Rural Affairs had issued draft guidance relating to structures on public rights of way.

As a result of the guidance and in anticipation of the final guidance, the informal policies on structures currently operating in the Rights of Way Team had been reviewed. It was hoped that the adoption of a formal policy in relation to structures on public rights of way would lead to greater consistency and reduce the possibility of legal challenge e.g. under the Disability Discrimination Act 1985 & 2005. It was also hoped that the adoption of the Policy would lead to greater use of the network because of increased accessibility.

The policy would cover newly authorised structures and structures which were put in place following the making of a Public Footpath Order. Wherever possible, structures would comply with the British Standard BS5709:2006 and where a new path was created; gates or gaps would be used rather than stiles as boundary structures. Applications for the erection of structures by owners, lessee or occupiers of agricultural land would be given permission for the erection of gate rather than a stile and where an existing stile was to be replaced the Council would use its best endeavours to ensure that the stile was replaced with a gate or a gap.

A draft of the policy had been considered by the Cheshire Local Access Forum at its meeting on 18 December 2009. The Forum had a range of views on the draft policy and a number of their suggestions had been incorporated into the Cheshire East Standard for Path Furniture on Public Rights of Way, namely that galvanised steel structures should also be available powder coated in green or black and that on stiles the standard anti-slip treatment for the step boards, where required, should be a 'spray and chip' type treatment rather than chicken wire.

RESOLVED:

- 1 That the proposed policy relating to structures erected on Public Rights of Way be approved. The policy to include newly authorised structures and structures which are put in place following the making of a Public Path Order (usually Diversion Orders made under the Highways Act 1980 and Town & Country Planning Act 1990), and to comprise of four principles:

- Wherever possible structures erected on Public Rights of Way will comply with the British Standard BS5709:2006. If this is not possible structures to comply with the Cheshire East Standard for Path Furniture
- Where a new path is created following the making of a Public Path Order, gates or gaps will be used rather than stiles as boundary structures, Gates or gaps to comply with either BS5709:2006 or the Cheshire East Standard for Path Furniture
- Where an application is made under s147 Highways Act 1980 by an owner, lessee or occupier of agricultural land for the erection of a structure to prevent the ingress or egress of animals, permission will be given for the erection of a gate and not a stile. The gate must comply with either BS5709:2006 or the Cheshire East Standard for Path Furniture
- Where an owner, lessee or occupier which to replace an existing stile on their land, the Council will use its best endeavours to facilitate a less restrictive option by replacing the stile with a gate or gap.

2 That the Cheshire East Standard for Path Furniture for the specification of structures to be used by the Council on Public Rights of Way be approved.

40 PRIORITISATION SYSTEM FOR DIFFERENT CATEGORIES OF MAINTENANCE AND ENFORCEMENT ISSUES ON PUBLIC RIGHTS OF WAY

The Council had statutory obligations under various sections of the Highways Act 1980 to deal with obstructions and other types of problems on the public rights of way network.

Following the creation of Cheshire East Borough Council, the maintenance and enforcement team were currently managing around 100km of additional path each within their areas. This had resulted in stretching officers to the limit and meant that some problems reported were not being investigated for several weeks, and others such as minor, non statutory complaints not at all.

Officers had been prioritising their own workload on a largely 'common sense' basis, with complaints with a possible impact on public safety being prioritised first, then obstructions and finally minor non-statutory matters. Due to the budget shortfall facing the Council, it was unlikely that any extra staffing would be available.

It was proposed that a system be introduced by which officers could prioritise different types of complaints. Priority 1 would be for public safety issues, with and complaints being investigated/responded to in 24-72 hours from receipt of complaints. Priority 2 would be for obstructions and

statutory duties, with and complaints being investigated/responded to in 2-4 weeks from receipt of complaint. Priority 3 would be for maintenance issues and minor compliance issues, with and complaints being investigated/responded to in 4-6 weeks from receipt of complaint. Priority 4 would be for non-statutory requests/enquires and these would be dealt with at the discretion of the relevant officer.

The new system would be publicised on the Council's website and through the Cheshire East Public Rights of Way Forum to make the public and user groups aware of the timescales in which reported problems will be investigated against.

RESOLVED:

That the prioritisation system for different categories of complaints on the public rights of way network be approved.

41 WILDLIFE AND COUNTRYSIDE ACT 1981 – PART III, SECTION 53: APPLICATION TO UPGRADE A PUBLIC FOOTPATH BETWEEN KNUTSFORD ROAD, CHORLEY AND MOOR LANE, WILMSLOW TO PUBLIC BRIDLEWAY STATUS (PUBLIC FOOTPATH NOS. 29, 15 (PART), 14, 10 (PART), 9 (PART), 27 PARISH OF CHORLEY AND FOOTPATH NO. 40 (CLAY LANE) PARISH OF WILMSLOW); AND APPLICATION TO UPGRADE PUBLIC FOOTPATH NO. 42 (FILTER BED LANE) TO PUBLIC BRIDLEWAY STATUS, PARISH OF WILMSLOW

The Committee received a report which detailed two applications from The Border Bridleways Associations to modify the Definitive Map and Statement by upgrading a number of public footpaths to public bridleways.

Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that Cheshire East Borough Council shall keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events.

One such event requiring modification of the map by the upgrading of public rights of way is the discovery of evidence by the Council which, when considered with all other relevant evidence available, shows “that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.”

This was commonly demonstrated by user evidence. All evidence must be evaluated and weighed and a conclusion reached whether, on balance of probabilities, either the alleged rights subsist or are reasonably alleged to subsist. Any other issues such as safety, security, suitability, desirability or the effects on property or the environment are not relevant to the decision.

Where evidence in support of the application was 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 it”

This required that the public must have used the way without interruption and as of right: this is without force, secrecy or permission. Section 31(2) states that “the 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought in question.”

Application No. 1 had been submitted by The Border Bridleways Association in January 2008 to modify the Definitive Map and Statement by upgrading a number of footpaths to public bridleways. The public footpaths together made up a route from Knutsford Road to Moor Lane. A further application had been submitted in May 2008 (Application 2) to modify the Definitive Map and Statement by upgrading Public Footpath No. 42 in the parish of Wilmslow, known as Filter Bed Lane. This footpath ran between Upcast Lane and Clay Lane.

Both applications were based on user evidence. For Application No. 1 user evidence forms were received from 31 individuals and for Application No. 2 user evidence forms were received from 23 individuals. Nineteen individuals claimed to have used both routes and because of the close proximity of the routes, it had been decided to investigate both applications at the same time.

In relation to Application No. 1, the witness evidence submitted showed use of the claimed route on horseback between 1945 and 2007. Public access on horseback appeared to be brought into question in 2006 when a landowner locked a gate across the route. Therefore the relevant 20 year period to be considered was 1986 to 2006. Officers had interviewed 11 witnesses and of these, 3 witnesses had used the route for the relevant 20 year period. A further two witnesses had used the route cumulatively over the period and one had used the route for 19 years. Of the 11 witnesses interviewed, 7 stated that they had been challenged at Studholme Kennels and the remaining 4 were aware of others being stopped. None of the witnesses recalled being challenged by anyone else.

For Application No. 2, the user evidence covered a cumulative period of over 48 years from 1960 to 2008. As there was no evidence of the route being brought into question, the relevant period is calculated from the date of the application; therefore the 20 year period to be considered was 1988 to 2008. The cumulative use of the route on horseback over this period could be considered sufficient to show that public bridleway rights had come into existence by prescription. None of the witnesses stated that they had been challenged when riding on Filter Bed Lane and many had

said that they used this route as an alternative to going past Studholme Kennels.

The Committee considered the evidence presented in the report and taking into account that under section 31(1) of the Highways Act 1980 public bridleway rights can come into existence by prescription unless there was evidence to the contrary came to the agreement that due to the challenges at Studholme Kennels, for this section of the route there was sufficient evidence to show that the landowner had rebutted the presumed dedication, by indicating that he had no intention to dedicate the way as a bridleway. As there was no witness evidence to having been challenged anywhere else along either of the claimed routes, the user evidence for the remainder of the route was considered sufficient to show public bridleway rights. The Committee therefore considered that there was sufficient user evidence to support the existence of public bridleway rights along the route A-B-C-D-E-H-G on drawing no. MO/001 and that on the balance of probabilities the evidence provided showed inter alia that a right of way which was not shown on the Definitive Map and Statement was reasonably alleged to subsist and the requirements of Section 53 (3) (c) (ii) had been met and that the Definitive Map and Statement should be modified to upgrade the route from a Pubic Footpath to a Public Bridle Way.

RESOLVED:

- 1 That an Order be made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by upgrading to Public Bridleway, the route as shown between points A-B-C-D-E-H-G on drawing number MO/002.
- 2 The application to modify the Definitive Map and Statement to record public bridleway rights between points H and F, as illustrated on drawing number MO/001 be refused on the grounds that there is sufficient evidence to show that the landowner has rebutted the presumed dedication by indicating he had no intention to dedicate the way.
- 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 power 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.

**42 HIGHWAYS ACT 1980 – SECTION 119 AND SECTION 25:
APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATHS NO. 3
AND NO. 4 (PARTS) PARISH OF WINCLE AND CREATION OF PUBLIC
FOOTPATH NO. 41 PARISH OF WINCLE**

The Committee received a report which detailed an application from Mr Simon Holding (the applicant) of Buttlerland Farm, Wincle, Macclesfield requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpaths No. 3 and No. 4 in the parish of Wincle.

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

The applicant owned the land over which the current paths and the proposed alternative routes ran. The first section of the current line of Footpath No. 3 to be diverted ran immediately past the applicant's back door and kitchen windows, which created a significant loss of privacy and caused security issues for the applicant. Moving this section of the footpath would allow the applicant to improve the privacy and security of his property considerably. The second section of Footpath No. 3 to be diverted cut across the corner of a field and was undesirable in terms of farm management.

The current line of Footpath No. 4 ran along the driveway to the applicants home and then through a very busy working farmyard which was used by heavy farm machinery, tractors and livestock. This created privacy and security issues for the applicant and the various plan and machinery operated in and around the farm buildings could be hazardous for walkers. Diverting this section of Footpath No. 4 would allow the applicant to improve the privacy and security of his property, improve farm management and provide a safety benefit to users.

If the diversion orders for Footpath Nos. 3 and 4 were confirmed, the applicant had agreed to dedicate an additional footpath on his land, which would be a useful link to Public Footpath No. 2 Wincle (Minn End Lane) for walkers.

Under section 25 of the Highways Act 1980 a local authority may enter into an agreement with any person having the capacity to dedicate a public footpath or bridleway.

The Committee noted that there were no objections to the proposals and considered that the proposed footpaths would be more enjoyable than the existing routes and the proposed dedication of a footpath would offer advantages to users, providing a useful link to Minn End Lane. The new routes were not substantially less convenient than the existing routes and diverting the footpaths would be of huge benefit to the landowners,

particularly in terms of security and privacy and also in terms of farm management. It was therefore considered that the proposed routes would be beneficial than the current routes and 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 Footpaths No. 3 and No. 4 Wincle, as illustrated on Plan No. HA/013, on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2 A creation agreement be entered into with the applicant under Section 25 of the Highways Act 1980 to create a new public footpath (No. 41) as illustrated on Plan No. HA/013 between points I-J.
- 3 Public Notice of the making of the Order be given and in the event of there being no objections to the Order within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts. There is no statutory objection process for the creation agreement.
- 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.

43 HIGHWAYS ACT 1980 – SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 46 (PART) PARISH OF CONGLETON

The Committee received a report which detailed an application from Mr James Morton (applicant) of Pool Bank Mill, Weathercock Lane, Timbersbrook, Congleton requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 46 in the parish of Congleton.

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

The applicant owned part of the land over which the current route and proposed route ran and was in the process of purchasing the land in front of Pool Mill Bank from Messrs P and B Dean (adjacent landowners) to construct a new driveway for access to his property. The adjacent landowners have provided written consent and support for the proposal. Mr G Robinson owned the field to the south west of Timbers Brook over

which part of the current path lay and he had provided written consent and support for the proposal.

The footpath formed part of the Gritstone Trail and was a well used route. The existing line of the footpath ran directly in front of the applicant's home and immediately past the windows of the property. It also ran in very close proximity to the two adjacent landowners' properties, Pool Bank Cottage and Pool Bank House.

The proposed route also crossed Mr Robinson's field. This section of the diversion was also in the interests of the landowner, as moving the footpath south of the current line of the route would take users away from the reservoir area where Mr Robinson had encountered problems with people damaging fencing as they attempted to enter the area. It would also provide an improved surface for users as the land over which the proposed route would run in this field was much drier and less boggy than the current route.

The Committee noted that no objections had been received and considered that the new route was not substantially less convenient than the existing route and would be of benefit to the landowners. Moving the footpath away from the applicant and adjacent landowners' properties would allow them to improve their privacy and security considerably. The section of the diversion in the field, between the two kissing gates, was also in the interests of the landowner as moving the footpath would improve the security of the land around the reservoir. It would also provide an improved surface for users. It was therefore considered that the proposed route would be beneficial than the current route and that the legal tests for 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. 46 Congleton, as illustrated on Plan No. HA/014, on the grounds that it is expedient in the interest 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.

The meeting commenced at 2.00 pm and concluded at 3.40 pm

Councillor B Moran (Chairman)