

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 3rd December, 2018 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor D Flude (Vice-Chair, in the Chair)

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

Councillor in attendance

Councillor G Williams, Deputy Portfolio Holder for Environment

Officers in attendance

Genni Butler, Acting Public Rights of Way Manager

Laura Allenet, Public Path Orders Officer

Sarah Fraser, Public Path Orders Officer

Clare Hibbert, Definitive Map Officer

Marianne Nixon, Public Path Orders Officer

Andrew Poynton, Planning and Highways Lawyer

Rachel Graves, Democratic Services Officer

25 APOLOGIES FOR ABSENCE

Apologies were received from Councillor S Pochin.

26 DECLARATIONS OF INTEREST

There were no declarations of interest.

27 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 10 September 2018 be confirmed as a correct record and signed by the Chairman.

28 PUBLIC SPEAKING TIME/OPEN SESSION

The Chairman advised that she would invite those registered to speak to come forward to speak when the application was being considered by the Committee.

29 **WILDLIFE & COUNTRYSIDE ACT 1981- PART III, SECTION 53:
APPLICATION NO. CO/8/34, FOR THE ADDITION OF PUBLIC RIGHTS
OF WAY, BYLEY LANE TO CARVER AVENUE, IN THE PARISH OF
CRANAGE**

The Committee considered a report which detailed an investigation into an application for the addition of public rights of way from Byley Lane to Carver Avenue in the parish of Cranage to the Definitive Map and Statement.

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 or not.

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.

Where the evidence in support of the application is user evidence, section 31(1) if 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.”

If the statutory test failed, the issue of common law dedication could be considered: that was whether the available evidence showed that the owner of the land over which the way passed had dedicated it to the public. Under Common Law the onus of proof was on the claimant to show that the landowners, who must have the capacity to dedicate, intended to dedicate a public right of way; or that public use has gone on for so long that it could be inferred; or that the landowners were aware of and acquiesced to public use. There is no fixed period of use, and depending on the facts of the case, may range from a few years to several decades.

Cranage Parish Council had submitted an application to modify the Definitive Map and Statement to Cheshire County Council in March 2007 for the addition of footpaths from Carver Avenue to Byley Lane – route A-B-C-D; route A-B-G; route G-F; route E-C and route E-D as shown on Plan No.WCA/016. The application was supported by 19 user evidence form, 4 of those being minors at the time their evidence was submitted. The application was made because of the installation of fencing across the paths.

In April 2007 a meeting had been held between representatives of the Parish Council, landowners, the local County Councillor and an Officer from Cheshire County Council to discuss the possibilities for securing use of the footpaths through other means and in July 2007 the Parish Council confirmed that permissive path agreements would be the best way forward. However, this line of action does not appear to have been pursued since that time.

Cranage Parish Council had sought a direction from the Secretary of State for a decision to be made on the application as it was still awaiting investigation. A direction dated 16 March 2108 was received, which directed the Council to determine the application no later than 6 months from the date of direction.

Following a tendering exercise an external consultant was appointed to investigate the application on behalf of the Council.

Councillor Rachel Hurst, on behalf of Cranage Parish Council, addressed the Committee and commented that the evidence tended to show that the public use of the application routes began when the land was owned by the government department and was therefore Crown Land. The application should be considered on common law principles that the public rights of way had come into existence through long use and not under the statutory assumptions. The 1934 dedication by the Health Board was not relevant as they had failed to renew the declaration and had lost the protection. The user evidence showed that on the balance of probabilities that route A-B-C-B had been used consistently since the 1950s without interruption from the landowners.

The report before the Committee detailed the investigation carried out into the application.

In addition to the user evidence submitted, an investigation was undertaken to establish whether the claimed routes were of historical origin. Investigation was undertaken to see if the routes were shown on the Tithe Maps, Ordnance Survey Maps, aerial photographs, plans submitted under the Rights of Way Act 1932, the surveys and plans undertaken for the National Parks and Access to the Countryside Act 1949 and other documents. It was found that these documents did not show any evidence to suggest that public rights existed along the claimed routes.

Investigation of the 19 user evidence forms submitted showed clear use of the route A-B-C-D with 9 witnesses claiming use of the route on foot, cycle or horseback. Evidence of use of the other routes was fewer in number. The letters written by children who were under 16 at the time of the application indicated that their use was predominately play and recreation. There was therefore, insufficient evidence of use along the alignment of the routes to include the children's evidence.

In order to show that public rights of way have been acquired along the claimed routes, a twenty year period must be identified during which use of the route by the public had been established. It was considered that the date of the application – March 2007, would have brought the right to use the routes into question and therefore the relevant twenty year period would be 1987 to 2007. However until 2001 the land in question was classed as Crown Land and section 327 of the Highways Act 1980 indicates that the Act does not apply to land belonging to any government department unless there is an agreement between the highway authority and the government department that the Act shall apply. The land affected by the application was owned by the Health Authority from at least 1934 until 2001. The use of the routes was challenged from at least 2005 when the first section of fencing was installed. The use of the routes had therefore only been available to use 'as of right' by the public from 2001 to 2005 and in some cases to 2007, depending on when the fencing was installed on the route in question. There was therefore insufficient years of use available to satisfy the 20 year test as the period of use outside of the ownership of the Health Authority was only 4-6 years.

The land, as Crown Land, had been under the ownership of Hospital and Health Authorities from at least 1934, when the Cheshire Joint Board for the Mentally Defective had deposited a plan which did not depict or admit that any rights of way existed. However, the Board did not submit a further statement and plan ending the protection of the land from public rights of way claims.

The land was sold in 2001 and divided into smaller plots and some of the land was sold again in 2006. The land was now owned by several landowners. However some sections were still unregistered.

The landowners in general accepted and agreed that route A-B-C-D was used by the public, although some landowners may have been of the belief that it was on a permissive basis. There was less evidence of use of the other routes which had been challenged by fencing and also private signs in a couple of locations.

Under Common law there can be a presumption of dedication over Crown Land. Whilst it appeared that there had been use of the claimed routes, the existence of the deposited plan by the Hospital Board demonstrated that there was no intention to dedicate a public right of way. When the land was sold there was no indication of the existence of public rights of way. With reference to route A-B-C-D the use of the alignment and width

of the route was challenged as a path was accommodated on a revised alignment by the installation of fencing in approximately 2007. Its use was also challenged by a letter stating objection to the establishment of formal footpaths in 2006 and the later development of garages and boundary. Use of this route, as applied for in the application, was therefore challenged, showing a negative intention to dedicate.

The Officer's report concluded that there was insufficient documentary and historic evidence to show that public rights of way existed along the alignment of the claimed routes and that as the land was Crown land prior to 2001, there was insufficient evidence of use since that time for a full 20 years to support the dedication of the routes as public rights of way.

The report concluded that there was insufficient evidence to show that public rights were deemed to exist under Common Law dedication during the time of ownership by the Crown and since 2001 by subsequent landowners.

The Committee considered the comments from the parish council, the historical evidence, the user evidence submitted, the landowner evidence submitted and the Definitive Map Officer's conclusion and considered that there was insufficient evidence to show that public footpath rights existed along the routes claimed.

The Committee by majority

RESOLVED:

That application CO/8/34 to record public footpaths between points A-B-C-D; B-G; G-F; E-C and E-D, as shown on Plan No.WCA/016, be refused on the grounds that there is insufficient evidence to show that public footpath rights exist along these routes.

30 HIGHWAYS ACT 1980 SECTION 119: PROPOSAL FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 10 (PART) IN THE PARISH OF ALSAGER

The Committee considered a report which detailed an application requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.10 in the parish of Alsager.

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.

Sally Young spoke in objection to the application and stated she had concerns about the proposed width of the footpath and route it was to take and its effect on the enjoyment of the public open space. She was

concerned that the 2 metre width of the path would encourage motorised use and this would lead to accidents with path users. Work had been carried out on the banks of the brook where the new houses had been built and she asked why this could not be done on this section to allow retention of the present line of the path.

The proposed section of Public Footpath No.10 Alsager to be diverted commenced at a junction with the footway extending from the houses to the rear of Swettenham Close and ran in a generally south westerly direction where it connected with an un-adopted section of Hall Drive before continuing southwards towards Public Footpath No.8 Alsager. At present that section of footpath extended within very close proximity to the Valley Brook, it was narrow with a mud, and in some places, a compacted stone surface.

The diversion was proposed in the interests of the public because the legal line of the footpath had been cut across by the meanders of Valley Brook in places and in other stretches ran very close to the banks of the brook. The proposed diversion would move the path approximately 5-6 metres away from the banks of the brook, which would enable the protection of the public footpath from further erosion. The new route would be 2 metres wide and have a recycled self-binding aggregate surface.

The Committee noted the suggestion received from Ansa, who manage the Public Open Space through which the Public Footpath ran, that the walked line of the footpath be 'made good' following the diversion of the path and that a quote had been obtained for the work, which would be funded from s106 developer contributions.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would enable investment in the surface of the Footpath to make it more accessible. It was considered that the proposed route would be a satisfactory alternative to the current one 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.10 in the parish of Alsager by creating a new section of Public Footpath and extinguishing the current path, as illustrated on Plan No.HA/126 on the grounds that it is expedient in the interests of 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.

31 HIGHWAYS ACT 1980 SECTION 119: PROPOSAL FOR THE DIVERSION OF PUBLIC FOOTPATH NO.2 (PART) IN THE PARISH OF EATON

The Committee considered a report which detailed an application from Mr Bell of Wheelwrights Cottage requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.2 in the parish of Eaton.

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 section of the current path to be diverted and the proposed path ran belonged to the applicant. The section of footpath to be diverted ran through the middle of a cultivation field and on into the grounds and gardens of Wheelwrights Cottage and exiting into pasture land. The path passed close to the Cottage and at present there was a permissive path in place to the west of the definitive line that followed the garden boundary. The permissive path also ran in very close proximity to the Cottage.

The proposed diversion - points A-F-G-H-I-J-E on Plan No.HA/135, would be made in the interests of the landowner as it would divert walkers away from the middle of a cultivation field which would improve their land management and away from the Cottage, residential garden and existing outbuildings, thus improving the privacy and security of the property as a whole.

An objection to the proposed diversion had been received from the Open Spaces Society and the Peak and Northern Footpaths Society and East Cheshire Ramblers had submitted comments, all relating to whether the proposed new route would be substantially as convenient as the existing route and on the effect of the embankment and temporary fencing on the enjoyment of the route.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would improve land management and privacy and security of the property. It was considered that the proposed route would be a satisfactory alternative to the current one 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.2 in the parish of Eaton by creating a new section of Public Footpath and extinguishing the current path, as illustrated on Plan No.HA/135, on the grounds that it is expedient to do so in the interests of the owner of the land affected by the Public Right of Way.
- 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.

32 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 2 (PART), PARISH OF ARCLID

The Committee considered a report which detailed an application from Mr N Forster and Mr R Pace of Crane Hire Direct Ltd, Old Smithy Garage, Newcastle Road, Arclid requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.2 in the parish of Arclid.

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.

Public Footpath No.2 Arclid ran across the curtilage of the garage forecourt at Pace's Garage/Crane Hire Direct. It was partly obstructed by a large garage and had been for several decades. The remainder of the route ran across the garage forecourt which was used by heavy crane and other machinery.

Mr R Pace of Pace's Garage/Crane Hire Direct was in the process of selling the land and business. The proposed new landowner - Mr N Forster, had made the application with the current landowner's agreement and permission to try to resolve the long standing obstruction. The land over which the diversion would run belonged to the applicants' adjacent landowner. Written permission for the proposal had been provided by the adjacent landowner.

The proposed diversion would run to the rear of the garage and then turn towards Newcastle Road – as shown on Plan No.HA/133. Other than the short section of path behind the garage, which was 1.2-1.5 metres wide due to existing constraints, the path would be enclosed by a post and rail fence on the southern side of the route and security fencing on the northern side of the route, with a width of 2 metres.

Separating walkers from the garage forecourt would provide a benefit to the landowners in terms of security and privacy for the business and moving walkers away from heavy plant and machinery would be of benefit in terms of health and safety.

The Committee noted that no objections had been received during the informal consultation process and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would resolve a long standing problem and provide a legal, usable route on the ground where none had existed for many years. It was considered that the proposed route would be a satisfactory alternative to the current one 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.2 in the parish of Arclid by creating a new section of public footpath and extinguishing the current line, as illustrated on Plan No.HA/133, on the grounds that it is expedient in the interests of the landowner.
- 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.

33 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 29 (PART), PARISH OF BRERETON

The Committee considered a report which detailed an application from Ms Briggs of Fir Farm, Brereton, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.29 in the parish of Brereton.

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 section of Public Footpath No.29 Brereton to be diverted and the proposed diversion would run belonged to the applicant. The section of footpath ran along a sealed surface private shared drive and then across a storage yard which was used to store large trailers and immobile old machinery as part of a business need. The definitive line of the footpath was obstructed in the storage yard. In line with Cheshire East PROW policy if an obstruction was impractical to remove the landowner was required to apply for a diversion rather than remove the obstruction and also provide an alternative route. A permissive route, which followed the boundary of the yard, had been in place for some time and had been accepted as an alternative route by the public.

The landowner had submitted a planning application for a new access road and the proposed new route of the public footpath would run along the southern side of the new access road - Points C-D on Plan No.HA/136, and then along the permissive route from Points D-B.

The Committee noted the comments made by the Peak and Northern Footpath Society and supported by the Open Spaces Society in relation to the exit point of the footpath being moved to further along a very busy road and the Public Rights of Way Officer's response.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would remove the footpath from the yard and remove the interaction between users and large vehicles. It was considered that the proposed route would be a satisfactory alternative to the current one 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.29 in the parish of Brereton by creating a new section of public footpath an extinguishing the current path, as illustrated on Plan No.HA/136, on the grounds that it is expedient in the interests of the landowners.
- 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.

34 HIGHWAYS ACT 1980 SECTION 118: APPLICATION FOR THE EXTINGUISHMENT OF PUBLIC FOOTPATH NO. 1 (PART), PARISH OF HOLMES CHAPEL

The Committee considered a report which detailed an application requesting the Council to make an Order under section 118 of the Highways Act 1980 to extinguish part of Public Footpath No.1 in the parish of Holmes Chapel.

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

Public Footpath No.1 Holmes Chapel had been registered as an anomaly for a number of years as a short section – points A to B on Plan No.HA/134, had been unavailable since the mid-1990s when the housing development was built and was obstructed by the house and gardens of 16 Lochmaben Close. It appeared that Congleton Borough Council may have intended to divert this section of the footpath to follow the footway that ran through an area of greenspace adjacent to this property but the legal process was not undertaken. In early 2018 the owner of 16 Lochmaben Close, Holmes Chapel submitted a planning application for a single story side and rear extension to the property which would further obstruct the definitive line of the footpath.

When the houses were built the adopted footway was created, FY342, which the majority of the footpath follows. This footway is the route which users now follow and ensured that a legal route for the public was maintained. This subsequently meant that the short section of Public Footpath No.1 Holmes Chapel was no longer required for public use and an extinguishment was sought by the Council to resolve the long standing anomaly and provide clarity to the affected landowner.

The Committee noted the objections received from the Open Spaces Society and the Public Rights of Way Officer's comment that none of points raised had any impact on, or affected the proposal to extinguish part of the Public Footpath No.1 Holmes Chapel.

The Committee considered the application and concluded that the proposed extinguishment met the legal tests for the making and confirming of an Extinguishment Order.

The Committee unanimously

RESOLVED: That

- 1 An Order be made under section 118 of the Highways Act 1980 to extinguish part of Public Footpath No. in the parish of Holmes Chapel, as illustrated on Plan No.HA/134, 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 in the said Acts.
- 3 In the event of objections to the Order be received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

35 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 4 (PART), PARISH OF RIDLEY

The Committee considered a report which detailed an application from Strutt and Parker on behalf of Cheshire Farm Services 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. 4 in the parish of Ridley.

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 public 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 which had been applied for or granted.

Planning permission had been applied for to convert a barn into two residential properties - planning reference 18/3879N, which would result in the obstruction of the Public Footpath No.4 Ridley by one of the properties.

The existing alignment of Public Footpath No.4 Ridley was currently obstructed by the barn to be converted and the conversion would not be able to go ahead unless the footpath was diverted to preserve the right of way for the public from Whitchurch Road to the fields lying to the east of the planned development. At present there was an alternative route to enable users to pass the barn along its northern side.

The proposed diversion route would move the footpath so that it ran around the western and northern perimeters of the development and on into the pasture fields behind – points D-E-F-C on Plan No.TCPA/054.

The Committee noted the comments received from the Peak and Northern Footpath Society and the Public Rights of Way officer's response to these.

The Committee considered the application and concluded that it was necessary to divert part of Public Footpath No.4 to allow for development to be carried out if planning permission was granted. 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 by majority

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.4 in the parish of Ridley, as illustrated on Plan No.TCPA/054, on the grounds that the 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, and on condition that permission is granted for the planned development, 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 and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

36 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.4 (PART) IN THE PARISH OF CHOLMONDESTON

The Committee considered a report which detailed an application from Mrs McDonald of The Byre, Daisy Bank Farm, Cholmondeston 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.4 in the parish of Cholmondeston.

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 public footpath if it was satisfied it was necessary to do so to enable development to be carried out in accordance with a planning permission which had been applied for or granted.

Planning permission had been granted for a single storey side extension, garage conversion and internal alterations - planning reference 18/1947N.

The existing alignment of Public Footpath No.4 Cholmondeston would be directly affected by the development and infrastructure within the planning consent, resulting in partial obstruction of the footpath by the new extension and associated parking arrangements.

The length of the footpath to be diverted commenced at its junction with a stone surfaced driveway and then ran through the back gardens of the properties and on into neighbouring fields – points A-B-C-D on Plan TCPA/053. The definitive line was currently obstructed by a number of substantial garden fences, a pergola and established hedges and shrubs between points B-C. There was currently a permissive route on the site which had been used and accepted by the public and which continued alongside the gardens of the property and entered the field between points C and E on the plan TCPA/053.

The proposed diversion would move the footpath away from the property; points A-E-D on Plan No.TCPA/053, and allow users to walk directly across the adjacent field instead of taking the definitive route which was a less direct route.

The Committee considered the application and concluded that it was necessary to diver part of Public Footpath No.4 to allow for the development approved in planning permission 18/1947N. 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 A Public Footpath Diversion Order be made under Section 257 of the Town and Country Planning Act 1990 on the grounds that Cheshire East 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 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 being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.
- 37 **INFORMATIVE REPORT - TOWN & COUNTRY PLANNING ACT SECTION 257: PUBLIC PATH DIVERSION ORDER, MOTTRAM ST ANDREW FP'S 8 & 9(PARTS) ABANDONED ORDER**

The Committee received an information report on the abandonment of an Order to divert parts of Public Footpaths Nos.8 and 9 in the parish of Mottram St Andrew.

The Committee, at its meeting on 5 December 2016, had resolved that an Order be made to divert parts of Public Footpaths Nos. 8 and 9 in the parish of Mottram St Andrew as it was necessary to do so to allow for an extension to Mottram Hall Hotel, an associated diversion of the existing internal road and new service hub and delivery yard in line planning approval 16/2236M.

Following a period of uncertainty as to when the development works would commence and the new route constructed it had been confirmed that there had been some restructuring within the parent company of the hotel and the that the development in accordance with the approved planning permission would not now go ahead.

As the purpose of the diversion under section 257 of the Town and Country Planning Act 1990 was to enable development to be carried out, where the approved development was not undertaken the diversion was no longer necessary and therefore could not be confirmed.

AGREED:

That the report be noted.

38 INFORMATIVE REPORT - HIGHWAYS ACT 1980 PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.16 (PART) IN THE PARISH OF WILMSLOW

The Committee received an information report on the remaking of the Public Order for part of Public Footpath No. 16 Wilmslow to reflect a change in the relevant administrative boundary.

The Committee, at its meeting on 11 June 2018, had resolved that an Order be made to divert part of Public Footpath No.16 in the parish of Wilmslow. The Order was made on 2 August 2018 and referred to the diversion being in the parish of Wilmslow. However since the time the Definitive Map and Statement was produced the administrative boundary for the footpath had changed and a new Order was required to be made to show the correct parish boundary, which placed Public Footpath No.16 in the parish of Styal. Statutory consultations would be repeated once the new Order had been made.

AGREED: That

1 the report be noted; and

2 the existing Order be abandoned and a new Order be made.

39 INFORMATIVE REPORT - HIGHWAYS ACT 1980 PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.12 (PART) IN THE PARISH OF LOWER WITHINGTON

The Committee received an information report on the remaking of a Public Path Order for part of Public Footpath No.12 Lower Withington to reflect a change in the alignment of the diverted path.

The Committee, at its meeting on 12 March 2018, had resolved that an Order be made to divert part of Public Footpath No. 12 Lower Withington. Following the formal consultation on the Order, 3 objections had been received to the alignment of the path between points A-E-F-G, as shown on Order Plan No.HA/120/A.

In order to resolve the objections the applicant had agreed to change the alignment of the path to the other side of the hedge - revised alignment of the path detailed on Plan No.HA/120/B between points A-E-F. Statutory consultations would be repeated once the new Order had been made.

AGREED: That

1 that the report be noted, and

2 the existing Order be abandoned and a new Order be made.

40 INFORMATIVE REPORT - TOWN & COUNTRY PLANNING ACT S.257, PUBLIC PATH DIVERSION ORDER, PEOVER SUPERIOR FOOTPATH NO. 4 (PART)

The Committee received an information report on a change to the planning reference against which the Public Path Order for the diversion of part of Public Footpath No.4 Peover Superior would be made and confirmed.

The Committee, at its meeting on 10 September 2018, had considered an application to divert part of Public Footpath No.4 Peover Superior which had been made in response to enforcement action taken by the Council to stop any further construction of an agricultural barn in a position that did not comply with the approved planning application 16/2695M and resolved that an Order be made to divert the footpath to enable the construction of the barn to be completed.

Subsequently, as well as choosing to divert part of Public Footpath No.4, the applicant had submitted a new planning application to seek permission to allow the completion of the barn in its existing position in order to

comply with the planning enforcement requirements. As a result of this, the diversion Order would now be made and confirmed in reference to the new planning application 18/5249M should the planning permission be granted.

AGREED:

That the report be noted.

41 UNCONTESTED PUBLIC PATH ORDERS: CHANGE TO SCHEME OF DELEGATION

The Committee received an information report on the change to the scheme of delegation for the determination of uncontested Public Path Orders applications.

The Constitution Committee considered the proposal to amend the scheme of delegation, at its meeting on 20 September 2018, and resolved *“that Council be recommended to approve that the scheme of delegation be amended to enable the Executive Director Place to determine, in consultation with the Chairman and Vice Chairman of the Public Rights of Way Committee, any Public Path Order applications that are not contested or contentious at the pre-order consultation stage.”*

The recommendation was considered by full Council on 18 October 2018 and it was resolved that *“approval be granted for the scheme of delegation to be amended to enable the Executive Director Place to determine, in consultation with the Chairman and Vice Chairman of the Public Rights of Way Committee, any Public Path Order applications that are not contested or contentious at the pre-order consultation stage.”*

The Constitution has been amended accordingly and the Local Scheme of Delegation under the cascade principle enabled the Public Rights of Way Manager to make the delegated decision. The Public Rights of Way Committee would be informed of decisions taken under the delegation.

AGREED:

That the report be noted.

The meeting commenced at 2.00 pm and concluded at 3.31 pm

Councillor D Flude (Vice-Chair, in the Chair)