

## **CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Public Rights of Way Committee**  
held on Monday, 11th March, 2019 at Committee Suite 1,2 & 3, Westfields,  
Middlewich Road, Sandbach CW11 1HZ

### **PRESENT**

Councillor S Pochin (Chairman)  
Councillor D Flude (Vice-Chairman)

Councillors Rhoda Bailey, T Fox and L Gilbert

### **Officers in attendance**

Genni Butler, Acting Public Rights of Way Manager  
Laura Allenet, Public Path Orders Officer  
Jennifer Miller, Definitive Map Officer  
Marianne Nixon, Public Path Orders Officer  
Andrew Poynton, Planning and Highways Lawyer  
Rachel Graves, Democratic Services Officer

### **42 APOLOGIES FOR ABSENCE**

Apologies were received from Councillor S Davies.

### **43 DECLARATIONS OF INTEREST**

There were no declarations of interest.

### **44 MINUTES OF PREVIOUS MEETING**

#### **RESOLVED:**

That the minutes of the meetings held on 3 December 2018 be confirmed as a correct record and signed by the Chairman.

### **45 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.

**46 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53:  
APPLICATION NO. CN/7/25 - APPLICATION FOR THE ADDITION OF A  
PUBLIC FOOTPATH CONNECTING PUBLIC FOOTPATH NO.14 AND  
PUBLIC FOOTPATH NO.15 IN THE PARISH OF BUNBURY.**

The Committee considered a report which detailed an application for the addition of a Public Footpath connecting Public Footpath No.14 and Public Footpath No.15 in the parish of Bunbury.

Under section 53 of the Wildlife and Countryside Act 1981, the Council had a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Section 53 (3) (c) allowed for an authority to act on the discovery of evidence that suggested that the Definitive Map needed to be amended.

In August 2006 Bunbury Parish Council's Footpath Officer had made an application to modify the Definitive Map and Statement by the addition of a Public Footpath linking Public Footpath No.14 and Public Footpath No.15. Due to a backlog of Definitive Map Modification Order applications, the application was not investigated straight away but was registered and placed on the waiting list of outstanding applications.

In 2014 Officers became aware of a planning application which would affect Public Footpaths Nos.14 and 15 Bunbury and also the unrecorded footpath that was the subject of the undetermined Definitive Map Modification Order application.

Following meetings and discussions between Officers, the landowners and the developers, two applications were submitted in 2016 under the Town and Country Planning Act 1990 section 257. One was for the diversion of Footpath No.14 and the other was the extinguishment of the unrecorded footpath. With the diversion of Footpath No.14 and the retention of the existing route of Footpath No.15 it was considered there would be a suitable route through the site. The Public Rights of Way Committee gave approval for both Orders to be made at their meeting on 12 September 2016.

An objection was received to the Extinguishment Order for the unrecorded path and following referral to the Planning Inspectorate for determination, the Order was subsequently confirmed on 23 October 2018.

As the Extinguishment Order had been confirmed, this negated the need to investigate the Definitive Map Modification Order application. However, the Committee was still required to make a decision on the Parish Council's application.

The Committee considered the report and concluded that the application should be refused on the grounds that the footpath had been extinguished by Legal Order.

The Committee unanimously

**RESOLVED:**

That the application to modify the Definitive Map and Statement to record public footpath rights between points A-B, as shown on Plan No.WCA/017, be refused on the grounds that the footpath has been extinguished by Legal Order.

**47 HIGHWAYS ACT 1980 S119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 4 (PART), PARISH OF POOLE**

The Committee considered a report which detailed an application by Mr and Mrs Oglesby of Poole Hall, Nantwich, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.4 in the parish of Poole.

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 length of Public Footpath No.4 Poole to be diverted and the proposed diversion belonged wholly to the applicants. The proposed section of the footpath to be diverted crossed a field that was used as beef cattle grazing. The applicants were finding that users of the footpath did not like walking through a field of cattle and tended to walk up the private driveway, close to the front of the house and onwards along an estate track. The applicants had installed clear signage of the footpath route and had challenged users multiple times but still found it happened.

The proposed diversion would move the footpath along the field edge, as shown between Points A-C-B on Plan No.HA.139. It was proposed that the full length of the diversion would be enclosed with Cheshire railings and have a width of 2.5 metres. By enclosing the route it would eliminate any interaction between the cattle and users in the field and hopefully reduce any trespassing on the applicant's land. The proposed diversion route from Points C-B would take users along the tops of the valley bank and give improved views of the listed bridge and the countryside.

The Committee noted the comments made by the Peak and Northern Footpath Society and the Open Spaces Society 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 be in the interest of the applicants as it would allow better land management and privacy and security of their 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.4 in the parish of Poole by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/139, 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.

**48 TOWN AND COUNTRY PLANNING ACT 1990 S 257: APPLICATION FOR THE EXTINGUISHMENT OF PUBLIC FOOTPATH NO. 14 (PART), PARISH OF SANDBACH**

The Committee considered a report which detailed an application from Persimmon Homes (North West) Ltd, requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to extinguish part of Public Footpath No.14 in the parish of Sandbach.

In accordance with Section 257 of the Town and Country Planning Act 1990, as amended by Section 12 of the Growth and Infrastructure Act 2013, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they were satisfied that it was necessary to do so in order to enable development to be carried out in accordance with planning permission granted.

Trevor Boxer, Chairman of Sandbach Footpath Group spoke in objection to the extinguishment application and said that Public Footpath No.14 Sandbach was an important footpath as it was a link to the wider footpath network and open countryside and stated that the line of the footpath should have been incorporated into the development landscape rather than being extinguished. As planning permission had been granted

several years ago and work started on the site, the application appeared to be retrospective.

Adele Jacques, Persimmons, spoke to support the application. The section of Public Footpath No.14 to be extinguished was in the centre of the site and extinguishment was required to enable development to be carried out. The two cul-de-sac ends of the footpath would be linked by adopted highway – a section 38 document was with the Council for signing. Areas of open space and new footpaths were being created in the development and it had not been possible for the application to be submitted until negotiations with the landowner had been completed.

It was reported in paragraphs 5.5, 7 and 8.2 of the Report that 'Mill Lane' should read 'Church Lane'.

Planning permission had been granted in November 2013 for outline application for residential development – planning reference 12/4874C. A reserve matters application for the first development phase was granted in July 2015 – planning reference 13/5239C. A full planning application for the second phase was granted in October 2017 – planning reference 13/5242C.

A section of Public Footpath No.14 Sandbach would be obstructed by the proposed residential development – between points A and B as shown on Plan No.TCPA/055. An application had been made to extinguish this section of the Public Footpath. This would result in two cul-de-sac paths running between point A and Hawthorn Drive and between point B and Church Lane. The two paths would be legally connected in due course by a section of new estate road, Larch Drive, once it was formally adopted by the Council.

The objections and comments from the Ward Councillor S Corcoran, Sandbach Town Council and the Open Spaces Society were set out in the report, along with the PROW Officer's response. The objections and comments from Sandbach Footpath Group were circulated at the meeting.

It was reported that the concrete foundations set in place on the line of Public Footpath No.14 had been investigated by the Public Rights of Way team and was found not to be an obstruction - as long as the building was not built upwards it was not considered as an obstruction.

Whilst it was noted that the impact on the footpath by the development, and any mitigation action taken to include the footpath within the development, could not be considered against the current proposal to extinguish the section of footpath to enable the development to go ahead as these matters had been for resolution when the planning application was determined, the Committee was sympathetic to the views of the Sandbach Footpath Group and were disappointed that the developer had not provided a more satisfactory solution to the matter earlier on.

The Committee concluded that it was necessary to extinguish part of Public Footpath No.14 Sandbach to allow for the residential development, as detailed within planning references: 12/4874C and 13/5239C. It was considered that the legal test for the making and confirming of an Extinguishment Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

**RESOLVED:** That

- 1 That an Order be made under Section 257 of the Town and Country Planning Act 1990 to extinguish part of Public Footpath No.14 in the parish of Sandbach, between points A and B as illustrated on Plan No.TCPA/055, 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, 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 2.54 pm

Councillor S Pochin (Chairman)