

## **CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Public Rights of Way Committee**  
held on Monday, 9th September, 2019 at Committee Suite 1,2 & 3,  
Westfields, Middlewich Road, Sandbach CW11 1HZ

### **PRESENT**

Councillor S Pochin (Chairman)  
Councillor B Puddicombe (Vice-Chairman)

Councillors S Akers Smith, S Edgar, H Faddes, I Macfarlane and D Stockton

### **Officers in Attendance**

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

### **14 APOLOGIES FOR ABSENCE**

Apologies were received from Councillor L Wardlaw.

### **15 DECLARATIONS OF INTEREST**

In the interests of openness, Councillor S Edgar declared that he was the Ward Councillor for Item 8 – Application for the Diversion of Public Footpath Nos.12, 13, 24 and 26 (parts) Parish of Barthomley and stated that he had not been involved in any discussions on the application.

### **16 MINUTES OF PREVIOUS MEETING**

#### **RESOLVED:**

That the minutes of the meeting held on 10 June 2019 be approved as a correct record.

### **17 PUBLIC SPEAKING TIME/OPEN SESSION**

There were no members of the public present who wished to speak.

**18 WILDLIFE AND COUNTRYSIDE ACT 1981- PART III, SECTION 53:  
APPLICATION NO.5/235 FOR THE ADDITION OF A PUBLIC  
FOOTPATH BETWEEN MEADOW LANE AND DRYHURST LANE, IN  
DISLEY**

The Committee considered a report which detailed an application made by Mr JP Bell on behalf of Disley Footpaths Society to amend the Definitive Map and Statement by adding a Public Footpath.

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. The Authority must investigate and determine the evidence and decide whether to make a Definitive Map Modification Order or not.

One such event under section 53 (3)(c)(i) was where:

*“(c)the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) 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, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.”*

The application had been submitted in July 2007 for the addition of a public footpath which provided pedestrian access between Meadow Lane and Dryhurst Lane in Disley. The application was made on the basis of user evidence initially from five witnesses, with five further evidence forms being submitted. Since 2007 three of the original witnesses had died, so a further four names were put forward as potential witnesses at the start of the consultation period in March 2019.

For public pedestrian rights to have come into being through long use, a twenty year period must be identified during which time use can be established. Where no challenges to the use had occurred, the period can be taken as twenty years immediately prior to the date of the application: in this case it would be 1987 to 2007.

The report before the Committee detailed the investigation carried out into the application and concluded that the user evidence submitted demonstrated regular, continuous and long term use of the claimed route. Documentary evidence from Ordnance Survey Maps and Disley Parish Council minutes June 1989 to December 1992 supported the contention that the route had been available. Use of the claimed route had been

uninterrupted for the full twenty year period between 1987 and 2007 and had been without challenge, permission or secrecy.

The Committee considered the user evidence submitted and the Definitive Map Officer's conclusion and considered that there was sufficient user evidence to support the existence of footpath rights. The Committee considered that, on the balance of probabilities, the requirements of Section 53(3)(c)(i) had been met and that the Definitive Map and Statement should be modified to add the claimed route as a Public Footpath.

The Committee unanimously

**RESOLVED:** That

- 1 an Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding as a Public Footpath the route shown between points A-B on Plan No.WCA/020,
- 2 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.
- 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.

**19 WILDLIFE AND COUNTRYSIDE ACT 1981 - PART III, SECTION 53: APPLICATION NO. CN/7/30 APPLICATION TO CLAIM PUBLIC FOOTPATH RIGHTS FORMING A CIRCULAR ROUTE AT 'WITTERS FIELD' LINKING PUBLIC FOOTPATH. NO. 2 WISTASTON AT TWO SEPARATE POINTS**

The Committee considered a report which detailed an application to amend the Definitive Map and Statement by the addition of a Public Footpath.

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 July 2015 an application was made by Mr Alcock to add a circular route around a field – 'Witters Field', linking to Public Footpath No.2 Wistaston. The field was the subject of a planning application. Following refusal by the Council, the planning application was granted on appeal – planning reference 14/3024N. Following meetings between Officers and the

developers an application to divert the claimed path was submitted in January 2017 under the Town and County Planning Act 1990 section 257. The application being required as the approved outline development proposal would directly affect the claimed route.

The original application was deferred by the Public Rights of Way Committee due to a significant number of objections and an amended proposal was consulted on and approved by the Committee on 12 June 2017. The Order was confirmed in August 2017. When the reserved matters application was submitted it was found that some slight amendments along the alignment of the western and northern edges were required and a Variation Order was consulted on and made in November 2018.

The route set out in the Variation Order had now been constructed and Public Footpath No.17 recorded on the Definitive Map and Statement. Throughout the process the applicant – Mr Alcock, was consulted and was aware that the premise of the claim has been achieved, if by other legal means.

The application for the Definitive Map Modification Order however was still required to be determined. The report recommended that the application to amend the Definitive Map and Modification Order be refused as the footpath had been legally recorded through the Diversion and Variation Order process.

The Committee considered the report and concluded that the application should be refused on the grounds that the footpath had been legally recorded through other legal processes.

The Committee unanimously

**RESOLVED:**

That the application to modify the Definitive Map and Statement to record public footpath rights between Points A-B-C-D-E-F as shown on Plan No.WCA/019 be refused on the grounds that the footpath has been legally recorded through a Diversion and Variation Order process.

**20 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 45 (PART), PARISH OF MOBBERLEY**

The Committee considered a report which detailed an application from Dr J Easton of Newton Farm, Graveyard Lane, Mobberley requesting the Council to make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No.45 in the parish of Mobberley.

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.45 Mobberley to be diverted and the proposed diversion belonged wholly to the applicants. The current line of the Public Footpath ran along the private drive and parking area for Newton Farm.

A permissive path was in place at the Farm which took users away from the private buildings and driveway. The proposed diversion would follow the line of the permissive path – Points A-C-D on Plan No.HA/142. The diversion would be in the interests of the landowner as it would improve the privacy and security of the property and also allow for animals to be kept securely and away from users of the footpath.

In response to the informal consultation, the Peak and Northern Footpath Society had responded that they were satisfied that the proposed route was as convenient as the current route, with no loss of views or features of interest.

The Committee discussed the application and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would improve the 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.45 in the parish of Mobberley by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/142, 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.

**21 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NOS. 12, 13, 24 AND 26 (PARTS), PARISH OF BARTHOMLEY**

The Committee considered a report which detailed an application from the Duchy of Lancaster requesting the Council to make an Order under Section 119 of the Highways Act 1980 to divert parts of Public Footpaths No.12, 13, 24 and 26 in the parish of Barthomley on the land at Flash House Farm.

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 Committee was informed that since the publication of the report there had been changes to the proposals and the proposal to divert part of Public Footpath No.24 Barthomley between points I and N had been withdrawn. The revised Plan No.HA/143(2) illustrated the proposed diversions for consideration by the Committee.

The land over which the lengths of Public Footpath Nos. 12, 13, 24 and 26 Barthomley to be diverted and the proposed diversions belonged wholly the applicants. There was currently a tenant farmer at the property and the proposed diversions had been agreed with them.

The current definitive line of Public Footpath Nos 13 and 12 Barthomley (points A-B-C on Plan No.HA/143(2) – highlighted in red) were left running through the middle of a field after the M6 Side Road Orders was made. It was proposed that the path be moved to along the field boundary (points A-D), which would allow the landowner to manage the land more efficiently and it would also be more convenient for users due to the length and better alignment.

The section of Public Footpath No.26 Barthomley to be diverted, between points E-F (highlighted in green on Plan No.HA/143(2)) ran along a private driveway for Scotts Green Cottage, then through a gate before crossing a field and then a stream. It was proposed to move the path away from the drive and to cross the stream at the location of the current footbridge, which had previously been off the definitive line. The diversion would increase the privacy and security for the residents of Scotts Green Cottage.

The section of Public Footpath No.12 Barthomley to be diverted (shown in blue on Plan No.HA/143(2)) was currently obstructed by two farm buildings and a permissive route was currently in place. In line with Cheshire East Public Rights of Way Policy, if an obstruction was substantial or impractical to remove the landowner was required to apply for a diversion

rather than remove the obstruction and also provide an alternative route. The proposed diversion would follow the current permissive route.

The section of Public Footpath No.24 Barthomley to be diverted (shown in orange on Plan No.HA/143(2)) was currently obstructed prior to its junction with Public Footpath No.12 Barthomley. The proposed diversion would follow the permissive route, which was also the route currently walked by most users. This would improve land management and also ensure that the footpath were not obstructed by long term, substantial obstructions.

The Committee noted the comments made by the Peak and Northern Footpath Society and the Public Rights of Way Officer's response.

The Committee considered that the proposed routes would not be substantially less convenient than the existing routes. Diverting the footpaths would be in the interests of the applicant as it would allow better land management and privacy and security of the properties. It was considered that the proposed routes would be satisfactory alternatives to the current ones 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 parts of Public Footpath Nos. 12, 13, 24 and 26 in the Parish of Barthomley by creating new sections of Public Footpath and extinguishing the current paths, as illustrated on Plan No.HA/143(2), 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.

**22 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 13 (PART), PARISH OF POTT SHRIGLEY**

The Committee considered a report which detailed an application from Mr Bourne of Red Acre Hall Farm, Pott Shrigley requesting the Council to make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No.13 in the parish of Pott Shrigley.

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.13 Pott Shrigley to be diverted and the proposed diversion belonged wholly to the applicant. The present line of the Public Footpath ran through a yard which was used to manage the movement of livestock and also through an enclosed courtyard which was often used for livestock control and also contained the entrance to the farm house, passing very close to the front door and windows of the dwelling.

A permissive footpath has been in place at the farm for the past 30 years – route A-C-B on Plan No.HA/144, and many of the walking guides in the area describe the permissive footpath instead of the definitive line. Diverting the Public Footpath onto the permissive route would increase privacy for the landowner and also enable the use of the courtyard to manage livestock in a more efficient way. Moving users out of the farm yard would also increase their safety as many users preferring to avoid such areas in which livestock were held.

In response to the informal consultation on the proposal, comments had been received from Peak and Northern Footpath Society on the surface of the proposed route between Points A and C. They had also commented, along with East Cheshire Ramblers, on the need for signage on the route if the Order was confirmed.

The Committee noted the User Groups comments and considered that the proposed route would not be substantially less convenient than the existing route as it had been used as a permissive path for a long time. Diverting the footpath was in the interest of the landowner as it would increase their privacy and improve the efficiency of livestock management. It may also be safer for users of the public footpath. 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.13 in the parish of Pott Shrigley by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/144, 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.

**23 INFORMATIVE REPORT: UNCONTESTED PUBLIC PATH ORDERS DETERMINED UNDER DELEGATED DECISION**

The Committee received an information report on the uncontested Public Path Order cases that had been determined under delegated decision.

One decision had been taken under delegation, which related to a Town and Country Planning Act 1990 Section 257 application for the diversion of part of Public Footpath No.9 in the parish of Mottram St Andrew.

**AGREED:**

That the uncontested Public Path Order determined under delegated decision be noted.

The meeting commenced at 2.00 pm and concluded at 2.45 pm

Councillor S Pochin (Chairman)