

# **CHESHIRE EAST COUNCIL**

## **Minutes of a meeting of the Public Rights of Way Sub Committee**

held on Monday, 13th September, 2021 at Council Chamber,  
Municipal Buildings, Earle Street, Crewe CW1 2BJ

### **PRESENT**

Councillor S Edgar (Chair)

Councillors S Akers Smith, H Faddes, L Gilbert, R Moreton, D Stockton and N Mannion

### **OFFICERS IN ATTENDANCE**

Richard Doran, Countryside Service Development Manager  
Jennifer Ingram, Definitive Map Officer  
Marianne Nixon, Public Path Orders Officer  
Andrew Poynton, Planning and Highways Lawyer  
Karen Shuker, Democratic Services Officer

#### **1 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillor L Crane.

#### **2 DECLARATIONS OF INTEREST**

No declarations of interest were made.

#### **3 MINUTES OF PREVIOUS MEETING**

#### **RESOLVED**

That the minutes of the meeting held on 8 March 2021 be confirmed as a correct record.

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

There were no public speakers.

#### **5 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53 APPLICATION NO. MA/5/249, FOR THE ADDITION OF A PUBLIC FOOTPATH BETWEEN FP13 LYME HANDLEY ON THE MACCLESFIELD CANAL TO FP13 LYME HANDLEY TO THE SOUTH EAST OF THROSTLENEST FARM, AND ALSO A LINK FOOTPATH FROM FP13 TO FP8 LYME HANDLEY**

*Councillor Stockton joined the meeting during this item.*

The Committee considered a report which detailed the investigation of an application made to amend the Definitive Map and Statement for the Parish of Lyme Handley by adding a footpath.

Under Section 53(2)(b) of the Wildlife and Countryside Act 1981, the Council had a duty to keep the Definitive Map and Statement under continuous review. Section 53 (c) allowed the Authority to act on the discovery of evidence that suggested that the Definitive Map and Statement 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 evidence could consist of documentary/historical evidence or user evidence or a mixture of both. Where the 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.”*

The application had been submitted in March 2015 by Mr David Kitching. The application was supported by user evidence from sixteen witnesses; with a further witness, the spouse of one witness, who had not previously completed a user evidence form, who gave evidence to Officers during an interview.

The report before Committee detailed the investigation carried out into the application. Documentary evidence from Ordnance Survey Maps and the Lyme Handley Tithe Map supported evidence that public rights existed along the definitive route of Footpath No.13 and part of the claimed footpath.

Fourteen of the sixteen witnesses had claimed use of the route on foot for the whole 20 year period, and all had completed standard user evidence forms. The relevant 20 year period was 1994 to 2014. The route had been used for a variety of recreational purposes; dog walking; visiting friends

and leisure/exercise. The witnesses stated that they had not been challenged and there was no evidence of any challenge to the public during the relevant period. All the witnesses who had been interviewed had used the route A-B-C-D; most had used D-E, but not many had mentioned the link to Footpath No.8 Lyme Handley (between point C-H on Plan No. WCA/022).

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 the Definitive Map and Statement should be modified to add the claimed route between points A-B-C-D-E on Plan No. WCA/022 as a Public Footpath.

The Sub Committee by majority

**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 as shown between points A-B-C-D-E on Plan No. WCA/022;
- 2 The application to modify the Definitive Map and Statement to record public footpath rights between points C and H as illustrated on Plan No. WCA/022 be refused on the grounds that there is insufficient evidence of use of that section.
- 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.

**6 INFORMATIVE REPORT - DIVERSION OF HENHULL FP4 (HA80 S119) PPO**

The Committee received an information report which detailed why an unopposed Order made to divert part of Henhull Public Footpath No.4 under section 257 of the Town and Country Planning Act (TCPA 90 s257) had to be abandoned and that the same diversion of the footpath was progressing under section 119 of the Highways Act 1980 (HA80 s119).

An application had been made in 2017 requesting the Council make an Order under section 257 of the Town and Country Planning Act 1990 which would divert parts of Public Footpath No.4 in the Parish of Henhull. The proposal was approved by the Public Rights of Way Committee on 12<sup>th</sup> March 2018 and the subsequent Order remained unopposed following

formal advertising and the Council had been awaiting contact from the developers regarding the installation of the new diversion routes.

In December 2020, a site visit had revealed that a house, part of a garage and garden, had been built on the one of the footpath sections proposed for diversion, and residents had moved in. The development had gone ahead prior to the conclusion of the legal process for the footpath diversion meaning that the legal test of the TCPA 90 s257 legislation had not been met and the diversion was voided.

The developers had abandoned the diversion of parts of Henhull Footpath No.4 under TCPA 90 s257 and had re-applied for the same diversion to be progressed under the HA80 s119.

Following the conclusion of the pre-Order consultation stage, the diversion would be decided accordingly through the PROW Sub Committee or via delegated decision.

## **RESOLVED**

That the report be noted.

## **7 INFORMATIVE REPORT - PUBLIC RIGHTS OF WAY ANNUAL REPORT 2020/21 AND WORK PROGRAMME 2021/22**

The Committee considered a report which detailed the achievements of the Public Rights of Way team during 2020-21 and set out the proposed work programme for the year 2021-22.

The Countryside Service Development Manager reported on the work carried out during 2020-21 by the Network Management and Enforcement Officers, Technical Administration Officer, Public Path Orders Officers and Definitive Map Officers. Specific performance was detailed in the Appendices to the report.

The budget for Public Rights of Way during the 2020-21 financial year had remained as forecast throughout the year which had allowed the Team to plan spending efficiently throughout the year. However, budgets over recent years had remained static in contrast to increased costs from suppliers such as timber and metal path furniture. A business case had been successful in securing a small amount of additional revenue for 2021-22.

It was also noted that extreme weather events, specifically the rainfall experienced in January 2021, coupled with the increased usage during the Covid-19 lockdowns had put path surfaces under pressure.

It was noted that during 2020-21 the team assessed 349 planning applications which was a 10% increase on the previous year. There had

been 195 temporary closures processed an increase from the 135 of the previous year.

The Public Rights of Way Team had continued to deliver an excellent service across all functions despite a number of long term absences in the team and challenges caused by the Covid-19 pandemic. Office based tasks had been relocated to home-based remote working which had its own challenges such as working space, broadband, home schooling and access to historic documents, files and office functions. The good condition of the network was highly regarded by user groups, the processing of legal orders continued to serve both users and landowners, and the high standard of response and service from the team as a whole was widely recognised.

Future working arrangements would be likely to involve a form of hybrid office/home working and although the longer-term implications of Covid-19 would become clearer with time, it would certainly involve a continued reduction in income.

The implementation of the Deregulation Act 2015 represented a risk to the capability of the team to meet their duties of the Highway Authority with regards to Public Rights of Way. The effect of the Act once implemented would require an appraisal of processes and policies for dealing with Definitive Map Modification Orders and Public Path Orders. Tight timescales would be introduced by the legislation requiring application processing within specified time limits and additionally the processing of Public Path Orders would become a duty rather than a discretionary service.

Additional resources would be required to continue maintaining the PROW network and services going forward. The increased use of the network and demand for legal process, together with increased supplies and service costs meant that a growth bid had been submitted through the medium-term financial strategy budget setting process to seek additional resources.

## **RESOLVED**

That the report be noted.

### **8 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 delegate decision.

One decision had been taken under delegation which related to Town and Country Planning Act 1990 Section 257 for the Proposed Diversion of Public Footpath No.9 in the Parish of High Legh (Part).

**AGREED**

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

The meeting commenced at 2.00 pm and concluded at 2.50 pm

Councillor S Edgar (Chair)