

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Sub Committee**
held on Monday, 14th March, 2022 in the Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor L Crane (Chair)
Councillor S Edgar (Vice-Chair)

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

OFFICERS IN ATTENDANCE

Genni Butler, Acting Public Rights of Way Manager
Vicky Fox, Planning and Highways Lawyer
Clare Hibbert, Definitive Map Officer
Andrew Poynton, Planning and Highways Lawyer
Karen Shuker, Democratic Services Officer

18 APOLOGIES FOR ABSENCE

There were no apologies for absence.

19 DECLARATIONS OF INTEREST

No declarations of interest were made.

20 MINUTES OF PREVIOUS MEETING

That the minutes of the meeting held on 6 December 2021 be confirmed as a correct record.

21 PUBLIC SPEAKING TIME/OPEN SESSION

There were no public speakers.

22 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53. APPLICATION NO. CN/7/27: APPLICATION FOR THE UPGRADING OF PUBLIC FOOTPATH NO.15 PECKFORTON TO A RESTRICTED BYWAY.

The Committee considered a report which detailed the investigation to amend the Definitive Map and Statement to upgrade public footpath Peckforton no.15 to a Restricted Byway.

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 and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events:-

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

“(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

- (ii) 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;
The evidence can consist of documentary/historical evidence or user evidence or a mixture of both. All the evidence must be evaluated and weighed, and a conclusion reached whether, on the ‘balance of probabilities’ the rights 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 the evidence in support of the application is user evidence, section 31(1) of the Highways Act 1980 applies. This states; -

“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 requires that the public must have used the way without interruption and as of right; that 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 into question”.

Documentary evidence included County Maps 18th/19th Century, Tollemache Estate Map c.1831, Title Records, Quarter Sessions, Ordnance Survey Records, Bartholomew’s Half Inch to a Mile, Pre Definitive Map Records, Definitive Map Process – National Parks and Access to the Countryside Act 1949, Land Registry Information and photographs submitted by witnesses.

It was noted that from the application submitted in January 2012 the user evidence forms demonstrated that the dominant users were considered to be cyclists, there had been no equestrian evidence put forward. There had been no direct challenge to cyclists who had used the route until notices advertising a permissive bridleway agreement in 2021 stated ‘no cyclists’.

The affected landowners, Ward Councillor, Parish Council, users groups, statutory undertakers, landowners and agent had been consulted and no objections to the application had been received.

Mr Matthews attended the meeting and spoke and answered questions in respect of access and vehicular use along the proposed route.

The Committee considered the user evidence submitted and the Definitive Map Officer's conclusion. It was considered that the requirements of Section 53(3)(c)(ii) had been met in relation to restricted byway rights and that the Definitive Map and Statement should be modified to show Public Footpath no.15, Peckforton as a Restricted Byway.

The Committee unanimously

RESOLVED: That

- (1) 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 public footpath Peckforton no.15 to a restricted byway as shown on Plan No. WCA/023;
- (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.

23 INFORMATIVE REPORT - HIGHWAYS ACT 1980 S119 PUBLIC PATH DIVERSION ORDER, MOBBERLEY FOOTPATH NO. 46 (PART)

The Committee received an information report which detailed the minor changes to the alignment of a proposed footpath diversion previously approved by the Committee on 12 March 2018. The resultant Order made was to divert part of Mobberley Public Footpath No.46 under section 119 of the Highways Act 1980.

Following an inspection which found that the path installed did not exactly match the route shown on the Order plan a revised diversion route was proposed. The revised diversion would follow a similar trajectory a little over 30 metres away from the route on the previous Order plan and with a width of 2.5 metres. It was noted that the diversion route had been installed and in use on the ground for a number of years and no issues had been raised.

RESOLVED:

That the report be noted.

24 PUBLIC RIGHTS OF WAY PROPOSED FEES AND CHARGES 2022-23

The Committee received a report which detailed the proposed fees and charges for 2022-23 for charged-for services provided by the Public Rights of Way team.

The annual review of fees and charges had been conducted as part of the budget setting process of the Council. The charges for 2022-23 had been increased by inflation and rounded up.

It was noted that the following amendments had been made:

- The previous fee for a referral of a case to the Planning Inspectorate in relation to objections to Public Path Orders had been withdrawn following updated legal advice.
- The discretionary zero cost for charitable organisations who sought temporary closures of Public Rights of Way would be withdrawn, in order to achieve full cost recovery.

The Sub-Committee advised that it would be helpful to signpost charitable organisations to the Communities Team following the withdrawal of the discretionary zero cost, to check whether they would be eligible for any grants.

RESOLVED:

That the report be noted.

The meeting commenced at 2.00 pm and concluded at 2.40 pm

Councillor L Crane (Chair)