

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 17th December, 2012 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor J Wray (Chairman)

Councillors Rhoda Bailey, R Cartlidge, S Davies , L Jeuda, F Keegan (Sub for Cllr Druce) and M Parsons

In attendance

Councillor G Wait, Cabinet Support Member for Environment

Officers

Mike Taylor, Rights of Way Manager
Genni Butler, Countryside Access Development Officer
Hannah Duncan, Definitive Map Officer
Jennifer Tench, Definitive Map Officer
Marianne Nixon, Public Path Orders Officer
Elaine Field, Highways Solicitor
Rachel Graves, Democratic Services Officer

24 APOLOGIES FOR ABSENCE

Apologies were received from Councillor D Druce.

25 DECLARATIONS OF INTEREST

There were no declarations of interest.

26 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 24 September 2012 be approved as a correct record and signed by the Chairman.

27 WILDLIFE AND COUNTRYSIDE ACT 1981 PART III SECTION 53 - APPLICATION NO. CN/7/26: APPLICATION FOR THE ADDITION OF A PUBLIC FOOTPATH BETWEEN PUBLIC FOOTPATH NO. 4 AND PUBLIC FOOTPATH NO. 11, PARISH OF WYBUNBURY

The Committee received a report detailing an application made by Mr K Billington of Main Road, Wybunbury to modify the Definitive Map and Statement for the parish of Wybunbury by adding a currently unrecorded route as a Public Footpath.

The application for the addition of a public footpath between Public Footpaths No. 4 and 11 - between points A-B-C-D-E-F-G-H on Plan No. WCA/005 - was made in 2007. The application was supported by 31 user evidence forms.

Points C-F of the claimed route ran behind the plot of The Hollies 14 Main Road. The owner, Mrs Colbert, also owned the field to the back of the property – to the north of the claimed route. Part of the claimed route itself between points A-F was not registered with the land registry. Mrs Colbert had showed Officer the barn at the end of her garden, adjacent to which was the claimed route. It was stated that the barn had been unstable since 2007 when scaffolding was erected at the side of the barn to repair the roof. Her late husband had blocked off the route and put up signs warning of the danger and advising that the path was closed. It was this action which had prompted the application as it was discovered that the path was not recorded on the Definitive Map.

Natural England owned the land between points F-G-H and the Reserve Manager had stated that they had no objection to the path. They would also like to fence off the footpath between points F and G as this would avoid problems with dogs running after the cattle they grazed on the land.

Section 53 (2)(b) of the Wildlife and Countryside Act 1981, required that the Council 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, accordance with section 53(3)(c)(i), was

“(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....”

The evidence could consist of documentary/historical evidence or user evidence or a mixture of both. All the evidence had to be evaluated and weighed and a conclusion reached whether, on the ‘balance of probabilities’ the alleged rights subsist or are reasonably alleged to subsist. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, were not relevant to the decision.

As the evidence in support was of 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.”

This required that the public must have used the way without interruption and as of right: that was without force, secrecy or permission. Section 31(2) stated 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.”

Mrs Colbert had provided copies her late husband’s diary entries. The diary entries showed dates when he closed the footpath for various reasons. The earliest date was 31 December 1990 when it was stated that the footpath was “closed all day”. It was believed the date of 1990 should be used as the date the route was ‘brought into question’ and therefore the relevant twenty year period to be considered for the user evidence was 1970 to 1990.

The report concluded that the first part of the claimed route existed in 1846 as shown on the Wybunbury Tithe Map. The entire claimed route was shown on the 1st and 2nd editions of the 25” Ordnance Survey Maps. However although this was good evidence of the physical existence of the route, these Maps did not denote the status of the route and can therefore only be regarded as supporting evidence. The Parish Walking Survey, dated 1951, described the route in the schedule and stated that it appeared to be well used. It was therefore surprising that the route was not included in the Draft Definitive Map.

The user evidence submitted showed considerable use over a period spanning 60 years. The relevant period to be considered was 1970-1990. Twelve witnesses had been interviewed and six of these claimed use of the route for the full twenty year period and a further five for part of this period.

Under section 31(1) of the Highways Act 1980 public footpath rights could come into existence by prescription unless there was evidence to the contrary. Therefore the landowner must provide evidence to that effect, which was normally evidence of a challenge or notices put up during the relevant twenty year period. Mrs Colbert had not claimed that they ever challenged anyone seen on the path by their property. None of the witnesses interviewed stated that they were challenged anywhere on the route. There was no evidence of any notices until the route was blocked in 2006/2007. There was no evidence of a challenge of any kind to the public during the relevant period.

The Committee considered the historical and user evidence outlined in the report and the Definitive Map Officer’s conclusions and concluded that there was sufficient user evidence to support the existence of footpath rights and therefore, 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.

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-F-G-H, on Plan No.WCA/005.
- (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.

28 HIGHWAYS ACT 1980 SECTION 119: PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.10 (PART) PARISH OF CHORLEY

The Committee received a report which detailed an application from Mr D Hobbs (agent) on behalf of Mr and Mrs Sarwar (applicant and landowner) requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.10 in the parish of Chorley.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order 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 existing alignment of the footpath ran directly through the garden of Rush Cottage. This alignment had not been available to the public for many years. An alternative route had been available to the public between the boundary of the garden and the boundary of the adjacent property, Gore Lane Farm. It was this second route that was revealed as the definitive line of the footpath on a search undertaken with Macclesfield Borough Council when the property was bought. The Applicants had been of the belief that this was the correct route until it came to the attention of the Network Management and Enforcement Officer that the definitive line was unavailable.

The Applicants felt that to re-open the definitive line would greatly detract from the privacy and security of the property. They also felt that they had the search done in good faith and consequently Cheshire East Council, as successor authority to Macclesfield Borough Council, had undertaken to process the diversion order at no cost to the Applicant.

Chorley Parish Council had originally objected to the proposal on the grounds that the proposed route was too narrow and bounded on one side

by high leylandii trees which encroached onto the path and considered that the trees needed to be removed to make the proposal acceptable. Lengthy negotiations ensued with the agent and the landowner and several site visits were held. However the Applicants were very reluctant to remove the trees as they believed it would affect their privacy and security. After a site visit with the Parish Council and Agent, a compromise was agreed that involved the removal of a section of the trees at the narrowest point of the path for a length of approximately 22 metres therefore allowing additional width and removing the problem of future encroachment. The Parish Council agreed to withdraw any objection to an Order on the basis of this agreement.

The Committee noted that no other objections had been received from the informal consultations and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would be of benefit to the landowner in terms of privacy and security. It was therefore 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.

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 Chorley, as illustrated on Plan No. HA/057 by creating a new section of public footpath and extinguishing the current path on the grounds that it is expedient in the interest of the owner of the land crossed by the path.
- (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 and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

29 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 10 (PART) PARISH OF CONGLETON

The Committee received a report which detailed an application from Ms S Shaw of Bloor Homes, 2-4 Whiteside Business Park, Station Road, Holmes Chapel, 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 Congleton.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order if it appeared to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path.

The section of Public Footpath No.10 Congleton to be diverted ran through the gardens of two new residential dwellings on a new Bloor Homes development giving rise to concerns relating to security.

The proposed new route – A-B-C on Plan No.HA/075, would follow a current permissive path behind the gardens. The land over which the proposed diversion ran belonged to the Church of the Latter Day Saints and they had given written agreement for the diversion.

The Committee noted that no objections had been received from the informal consultations. Diverting the footpath would be of benefit to the landowner in terms of providing privacy and security to the properties. 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 an order were satisfied.

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 Congleton by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/075 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- (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.

30 LOCAL GOVERNMENT ACT 2000 SECTION 2: DEED OF DEDICATION FOR A NEW PUBLIC FOOTPATH IN THE PARISH OF POYNTON WITH WORTH

The Committee received a report which detailed a proposal to create a public footpath and two link footpaths under Section 2 of the Local Government Act 2000 in a Deed of Dedication.

A Definitive Map Modification application had been received in October 2002 to add a footpath and two short link footpaths in Poynton with Worth

to the Definitive Map and Statement. The application was based on long usage of the routes by local residents.

The land over which the proposed footpaths ran was owned by Cheshire East Borough Council. Due to the lengthy and costly timescales involved when dealing with Definitive Map Modification applications, it was considered that the most efficient and cost effective way to proceed with this was by means of a Deed of Dedication under the Local Government Act 2000 Section 2.

Under Section 2 of the Local Government Act 2000, a local authority had the power to do anything to improve the economic, social or environmental wellbeing for their area. In accordance with this power, the Council may enter into a Deed of Dedication to create a public right of way.

The proposed footpath was approximately 340 metres in length and ran through a small wooded area, linking Anglesey Drive and Towers Road (Poynton with Worth Footpath No.65) and ran parallel to London Road North (as shown on Plan No. LGA/002). Two short footpath links joining with London Road North and London Road North Service Road were also proposed.

Services in Cheshire East Council including Highways and Transport, Legal Services, Asset Management, Streetscape and Bereavement Services had been consulted and had responded that they had no objection to the proposal.

RESOLVED:

That a public footpath and two link footpaths be created under Section 2 of the Local Government Act 2000 in a Deed of Dedication, in the parish of Poynton with Worth, as illustrated between points A to B on Plan No.LGA/002, and that public notice be given to this dedication.

31 LOCAL GOVERNMENT ACT 2000 - SECTION 2: DEED OF DEDICATION FOR NEW PUBLIC RIGHTS OF WAY IN THE PARISH OF HOLMES CHAPEL

The Committee received a report which detailed a proposal to create new public rights of way on Cheshire East Council owned open space in the parish of Holmes Chapel under Section 2 of the Local Government Act 2000.

Under Section 2 of the Local Government Act 2000, a local authority had the power to do anything to improve the economic, social or environmental wellbeing for their area. In accordance with this power, the Council may enter into a Deed of Dedication to create a public right of way.

For a number of years Cheshire East Council, Holmes Chapel Parish Council and Cranage Parish Council had been working together on a project to improve access between the two parishes and within the public open space land known as Dane Meadow. This project had been logged during consultation for the Council's Rights of Way Improvement Plan.

The first phase of the project was currently being developed and included a bid to Natural England's Paths for Communities Fund in order to improve the surfaces of, and access furniture on, the paths within the public open space. One of the stipulations of the funding stream is that the improved paths were dedicated as public rights of way, thereby securing public access rights for perpetuity.

It was planned that the proposed public bridleway would be surfaced in order to enable maintenance vehicles and disabled users to access the level part of Dane Meadow adjacent to the river. The proposed footpath on the east of the site would be improved to a bound gravel surface, whilst those on the west would remain as grass paths or woodland paths as at present. The proposed routes of the public rights of way were shown on Plan No.LGA/003.

The landowner, Cheshire East Council, was in support of the proposed dedication. At a meeting on 22 October 2012, the Cabinet Member for Prosperity and Economic Regeneration had given approval for the proposal, subject to the Council and Holmes Chapel Parish Council entering into an agreement for the maintenance of the improved surfaces of the paths.

Services within Cheshire East Council including Asset Management, Countryside Development, Parks Development and Streetscape had been consulted and were supportive of the proposal. Holmes Chapel Parish Council, Cranage Parish Council and the local Ward Members had also been consulted.

RESOLVED:

That, subject to the entering into of a maintenance agreement with Holmes Chapel Parish Council, rights of way over Council owned land be dedicated to the public under Section 2 of the Local Government Act 2000 in the Parish of Holmes Chapel, the indicative lines of which are shown on Plan No.LGA/003, and public notice be given of these public rights of way.

The meeting commenced at 2.00 pm and concluded at 2.40 pm

Councillor J Wray (Chairman)