

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 11th March, 2013 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor J Wray (Chairman)
Councillor Rhoda Bailey (Vice-Chairman)

Councillors R Cartlidge, W S Davies and L Jeuda

In attendance

Councillor K Edwards

Officers

Mike Taylor, Rights of Way Manager
Jennifer Tench, Definitive Map Officer
Marianne Nixon, Public Path Orders Officer
Elaine Field, Highways Solicitor
Rachel Graves, Democratic Services Officer

32 APOLOGIES FOR ABSENCE

Apologies were received from Councillors D Druce and M Parsons.

33 DECLARATIONS OF INTEREST

With reference to Item 7, Councillor John Wray declared a non-pecuniary interest in this application as he was the Ward Councillor for Smallwood and had been present at the Parish Council meeting when the application had been discussed but had not taken part in any discussion.

34 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 17 December 2012 be confirmed as a correct record.

35 PUBLIC SPEAKING TIME/OPEN SESSION

Councillor K Edwards used public speaking time to respond to a comment made at the last Council meeting about the need for a Public Rights of Way Committee. He felt that the Public Rights of Way network was a vital resource for Cheshire East, providing economic, leisure and health benefits. It was important that decisions relating to the network were

made by a single committee of the Council, which allowed for clear and transparent decision making.

The Rights of Way Manager responded that public rights of way decisions were often contentious and generated considerable local interest and by taking decisions publicly and transparently the committee process helped to defuse local concerns.

36 HIGHWAYS ACT 1980 SECTION.119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 7 (PART) PARISH OF GOOSTREY

The Committee received a report which detailed an application from Mr S Lea of Foxwood Farm, Over Peover requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert two parts of Public Footpath No. 7 in the parish of Goostrey.

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 first section of the footpath to be diverted followed a southerly then south-south-easterly direction to the corner of the field (shown as solid line A-B on Plan No.HA/077). The proposed new route for this section would follow an existing farm track. The landowner believed that the public already used the farm track. The track was part concrete and part grass surface. It was preferable to the landowner if the public walked on the track rather than across the grass field used for grazing.

The section second of path to be diverted – shown as solid line C-D on Plan No.HA/077, cut across a field which was used for crops. The proposed new route would continue along the field edge from point C to E and exit onto Red Lane via a kissing gate. In terms of farm management it was in the interests of the landowner that the path was diverted.

The Committee noted that no objections had been received from the informal consultations. Diverting the footpath in the two places would be of benefit to the landowner in terms of land management. 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 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.7 Goostrey, as illustrated on Plan No.HA/077, by creating two new sections of public footpath and extinguishing

two sections of the current path 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 and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

37 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATHS NO. 5 AND 19 (PARTS), PARISH OF PRESTBURY

The Committee received a report which detailed an application from Mr A Ellis of Dowd Town Planning (Agent) on behalf of Mr Tom O'Connor (Applicant), of Unit 10, Sandfold Lane, Levenshulme, Manchester, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpaths No.5 and 19 in the parish of Prestbury.

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.

Mr O'Connor owned the land over which the current paths and the proposed diversions ran. The sections of each of Public Footpaths No.5 and 19 Prestbury to be diverted ran close to and between the buildings at Top o' th' Hill Farm. It was the intention to redevelop farm buildings to provide two dwellings and to use surrounding land for agricultural purposes. Diverting the footpaths to a new route would offer greater privacy and security to the new properties and take users away from the access track on which vehicular use was likely to increase.

It was noted that the East Cheshire Ramblers had requested that the boggy sections of the diversion route be surfaced appropriately or raised above the waterline if necessary and this had been agreed with the applicant. No other objections had been received during the informal consultation. The Committee considered that the proposed route would not be substantially less convenient than the existing route and that diverting the footpaths would be of benefit to the landowner in terms of enhancing the security and privacy of property and promoting good land management. It was therefore considered that the proposed route would provide a satisfactory alternative to the current route 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 Footpaths No.5 and 19, Parish of Prestbury by creating new sections of each public footpath and extinguishing the current path sections, as illustrated on Plan No.HA/076 on the grounds that it is expedient in the interests of the owner of the land crossed by the paths.
- 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.

38 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATHS NO.6 AND 21 (PARTS), PARISH OF SMALLWOOD

The Committee received a report which detailed an application from Mr WS Thompson, Spen Moss Farm, Spen Moss, Smallwood, Sandbach, requesting the Council to make an Order under section 119 of Highways Act 1980 to divert part of Public Footpaths No.6 and 21 in the parish of Smallwood.

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.21 Smallwood to be diverted ran through the property of Spen Moss Farm, passing by a lake, close to the applicant's home and also ran through areas where they kept horses. Diverting the path to a new route would offer greater privacy and security to the property and enable better management of livestock.

The section of Public Footpath No.6 Smallwood to be diverted ran through fields, passing through a small paddock en route. Diverting this section out of the paddock would aid with better management of livestock and the proposed route by default providing a more direct route across fields from Spen Moss lane.

Mr Thompson owned the land over which the current paths and the proposed diversions ran except for a section of the proposed diversion that ran along Spen Moss lane. Research had revealed that this section was unregistered. If the landowner emerged claiming compensation due to

loss caused by a public footpath on their lane, Mr Thompson had provided written agreement to compensate them accordingly.

The Committee noted that no objections had been received from the informal consultations and considered that the proposed routes would be an improvement to the existing routes. Diverting the footpaths would be of benefit to the landowner in terms of enhancing the security and privacy of their property and improving livestock management. It was therefore considered that the proposed routes would provide a satisfactory alternative to the current routes 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 Footpaths No.6 and No.21 Parish of Smallwood by creating new sections of each public footpath and extinguishing the current path sections as illustrated on Plan No.HA/078 on the grounds that it is expedient in the interests of the owner of the land crossed by the paths.
- 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.

39 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATHS NO.10 AND 29 (PARTS), PARISH OF WINCLE

The Committee received a report which detailed an application from Mrs Lahelma-Barnsley, Hawkslee House, Minn End Lane, Wincle, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpaths No.10 and 29 in the parish of Wincle.

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.

In relation to the part of Public Footpath No.29 Wincle to be diverted, Mrs Lahelma-Barnsley owned the land over which the footpaths ran but not the land onto which it was proposed they be diverted. This was Public

Highway and as such, the Local Authority had agreed to the path being diverted onto it.

With respect to the part of Public Footpath No.10 Wincle proposed for diversion, Mrs Lahelma-Barnsley owned part of the land over which this currently ran and neighbours Mr JHE Berry of Hawkslee Farm and Mr K Van Roy of Kiss Wood Farm, owned the rest of the land. The proposed diversion for this footpath would run over land solely owned by Mr Van Roy and he had granted permission for this.

Diverting parts of Public Footpaths No.10 and 29 Wincle would improve privacy and security to the residents of Hawkslee and Hawkslee Farm whilst eliminating the need for users to walk through the gardens of these properties. It would also take users away from the current part of Public Footpath No.10 which ran along a stream bed and was very slippery underfoot. The stream provided drainage for surface water on Minn End Lane and could not be obstructed, making it unavoidably wet and muddy all year round. The new route would follow a track which had a semi surfaced section and a grassed section.

The Committee noted that no objections had been received during informal consultations and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpaths would be of considerable benefit to the landowner and their neighbour in terms of enhancing the security and privacy of the property. It was therefore considered that the proposed routes would be a satisfactory alternative to the current ones 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 parts of Public Footpaths No.10 and No.29 Parish of Wincle by creating new sections of each public footpath and extinguishing the current path sections, as illustrated on Plan No.HA/079, on the grounds that it is expedient in the interests of the owner of the land crossed by the paths.
- 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.

40 TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 257 AND 261: PROPOSED TEMPORARY DIVERSION OF FOOTPATH NO.29 PARISH OF SIDDINGTON AND FOOTPATH NO.23 PARISH OF LOWER WITHINGTON

The Committee received a report which detailed an application from Sibelco UK Ltd requesting the Council to make an Order under sections 257 and 261 of the Town and Country Planning Act 1990 to temporarily divert Public Footpaths No.23 Lower Withington and No.29 Siddington.

In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as the Planning Authority, can make an Order diverting a footpath or part of a footpath if it was satisfied that it was necessary to do so to enable development to be carried out in accordance with a planning permission that had been granted.

In accordance with Section 261 of the Town and Country Planning Act 1990, the Borough Council, as Planning Authority, can make an order to divert a footpath if it was satisfied that it was necessary to do so for the purpose of enabling minerals to be worked. The Council also had to be satisfied that the footpath concerned could be restored, after the minerals had been worked, to a condition not substantially less convenient to the public.

Public Footpaths No.23 Lower Withington and No.29 Siddington were currently the subject of a temporary diversion order made in 2007 and due to expire on 11 March 2013.

The definitive line of the footpaths ran across an area identified for sand quarrying, which originally received planning permission in January 2007. It was anticipated that quarrying would cease in 2011 and final restoration be completed in January 2013. However, due to the recession and economic uncertainty, this area of quarrying had not been completed in the predicted timescales.

Sibelco UK submitted a planning application for an extension in time for working and restoring the quarry (reference 10/3078W). In June 2011 the Council's Planning Committee had granted planning permission subject to the updating of the s.106 agreement tied to the original consent in 2007. The s.106 agreement is still being negotiated and planning permission will only be issued following completion of the agreement. The proposed temporary diversion order can only be made once the planning permission has been issued. Approval to make an Order was being sought so that the Order may be progressed swiftly following the grant of planning permission.

When the planning permission for the extension to the life of the quarrying is in place the continued diversion of the footpaths was required in order to enable the extraction to go ahead. It was anticipated that restoration would be completed by 31 December 2018. By which time the Definitive

footpaths would be available on their original alignment and would follow a route around a newly constructed lake and nature conservation area.

It was considered that the legal tests for the making and confirming of a Diversion Order under section 257 and 261 of the Town and Country Planning Act 1990 were satisfied.

RESOLVED: That

- 1 Subject to the granting of planning permission pursuant to application ref 10/3078W, an Order be made under Section 261 and 257 of the Town and Country Planning Act 1990 to divert Public Footpaths No.29 Siddington and No.23 Lower Withington, as illustrated on Plan No.TCPA/012, on the grounds that the Borough Council is satisfied that it is necessary to do so for the purpose of enabling minerals to be worked and that the footpaths concerned can be restored, after the minerals have been worked, to a condition not substantially less convenient to the public. An Order will not be made until the planning permission has been issued.
- 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 Act.
- 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.

**41 TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 257:
PROPOSED PUBLIC PATH STOPPING UP ORDER - PUBLIC
FOOTPATH NO. 1 BASFORD (PART)**

The Committee received a report which detailed an application requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to stop up part of Public Footpath No.1 in the parish of Basford.

In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as the Planning Authority, can make an Order stopping up or diverting a footpath or part of a footpath if it was satisfied that it was necessary to do so to enable development to be carried out in accordance with a planning permission that had been granted.

Planning Application Ref 12/4115N had been submitted by Cheshire East Borough Council for a dual carriageway road, known as Crewe Green Link Road (South), linking the A500 with the A5020. Phase 2 of the development involved a connecting spur road which crossed the line of Public Footpath No.1 in Basford.

Planning permission was granted in January 2013 with the following condition: - *“Development shall not begin on phase 2 of the development until details of proposals for the stopping-up of the affected section of public footpath Basford FP1 have been submitted to and approved in writing by the Local Planning Authority.*

Development of phase 2 not commence until this footpath has been stopped-up in accordance with the approved details.

Reason: In the interests of the PROW and pedestrian safety, and in accordance with Policies RT.9 (Footpaths and Bridleways) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.”

In order to facilitate the development of the proposed Crewe Green Link Road (South), a Compulsory Purchase Order titled “The Cheshire East Borough Council (Crewe Green Link Road South) Compulsory Purchase Order 2013” had been made under the Highways Act 1980 and the Acquisition of Land Act 1981 on 18 January 2013. The area of land to be acquired pursuant to the Compulsory Purchase Order included the land where the stretch of footpath FP1 Basford was to be stopped up.

The Statement of Reasons accompanying the Compulsory Purchase Order stated *“the western spur from the central roundabout as its terminus intersects a Public Right of Way (footpath FP1 Basford). It is proposed that the route will be unchanged, except during construction when a temporary diversion will be required, however a stopping up order is to be progressed to cover the section inside the highway boundary which have highways rights affecting it following construction of the spur road.”*

The design of the spur road, a 30mph single carriageway, would accommodate the onward passage of pedestrians using Public Footpath No1 Basford, in order that use of the footpath was not hindered. A stopping-up of the section of footpath was required so that duplicate rights were not in evidence over the same land.

It was noted that no objections referencing the impact of the proposed road on the Public Footpath were received during the consultation on the planning application. It was considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied. In the event of objection being received against the proposed stopping up Order, the Council would request the Secretary of State to determine the stopping up Order in parallel with the determination of the Compulsory Purchase Order.

RESOLVED: That

- 1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to stop up part of Public Footpath No.1 Basford, as illustrated on Plan No.TCPA/013, on the grounds that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted.

- 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 Act.
- 3 In the event of objections to the Order being received and no resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry. Should this situation arise, the Council would request that the Secretary of State consider the Order in parallel with the Compulsory Purchase Order related to the scheme.

The meeting commenced at 2.05 pm and concluded at 3.15 pm

Councillor J Wray (Chairman)