

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 9th December, 2013 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor D Druce (Chairman)
Councillor Rhoda Bailey (Vice-Chairman)

Councillors S Davies, L Jeuda, S Jones and J Wray

In Attendance

Councillor L Brown, Cabinet Support Member for Environment

Officers

Mike Taylor, Rights of Way Officer
Genni Butler, Countryside Access Development Officer
Hannah Duncan, Definitive Map Officer
Clare Hibbert, Definitive Map Officer
Jennifer Tench, Definitive Map Officer
Rachel Goddard, Solicitor
Rachel Graves, Democratic Services Officer

23 APOLOGIES FOR ABSENCE

Apologies were received from Councillor M Parsons.

24 DECLARATIONS OF INTEREST

There were no declarations of interest.

25 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 16 September 2013 be confirmed as a correct record and signed by the Chairman.

26 PUBLIC SPEAKING TIME/OPEN SESSION

Three members of the public had registered to speak in relation to Items 7, 8 and 10. The Chairman advised that he would invite them to speak when these applications were being considered by the Committee.

**27 WILDLIFE AND COUNTRYSIDE ACT 1981 - PART III, SECTION 53:
APPLICATION TO ADD A BYWAY OPEN TO ALL TRAFFIC, RED
LANE, DISLEY**

Note: Councillor L Jeuda arrived at the meeting during consideration of this item but did not take part in the discussion or vote on the matter.

The Committee received a report which detailed an investigation into an application to add a Byway Open to all Traffic, known as Red Lane, in the parish of Disley to the Definitive Map and Statement.

Under section 53 of the Wildlife and Countryside Act 1981, the Borough Council had a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Section 53(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 that evidence and decide on the outcome whether to make a Definitive Map Modification Order or not.

The application had been registered in November 2002 by Disley Parish Council. Red Lane formed an access route to a large number of properties and also to St Mary's Church. Three public footpaths joined Red Lane and two public footpaths ran from the end of the claimed section of Green Lane. The application suggested that there had been a route from Lyme Hall to St Mary's Church and Disley village since at least the 16th century. The application also referred to historical documents including Tithe Map, County Maps, Ordnance survey maps, Railway Plans and the Finance Act. Four user evidence forms were also submitted claiming use of the route on foot, on horse and by vehicle as far as the gates to Lyme Park for a period of 25, 26, 27 and 43 years. A further evidence form was submitted in 2007 claiming 20 years use on foot and 10 years in a vehicle to access properties.

An objection to the claim was lodged with the Council when the application was made by a resident of Red Lane referring to the private maintenance of the Lane to which they had contributed over many years.

An investigation into the claim was initially commenced in 2007. Consultation was undertaken with adjacent property holders and all interested parties at that time, which resulted in comments referring to the private maintenance of the lane and the cost of repairs at various times. There was also concern about visitors to Lyme Park parking their cars along Red Lane and causing obstruction issues. Others objected as the route for vehicles would be a dead end and serve no purpose except to increase parking problems. The case officer undertaking the investigation left Cheshire County Council in September 2007 and the file had remained largely dormant until now.

A detailed investigation of the evidence submitted with the application had been undertaken, together with additional research. The application had

been made based on historical evidence and user evidence from five witnesses and one statutory declaration. In addition to the submitted evidence, a detailed investigation of the available historical documentation had been undertaken to try and establish the history and original status of the claimed route.

Red Lane had appeared on a number of historical documents of good provenance. The Tithe Map of 1850 listed the lane as a public road along with other connecting routes that were not wholly in Lyme Park and private. The route had appeared consistently on early County Maps and on many was referenced as a 'cross road'. These early records raised a reasonable presumption that the route was a through route and of higher status than footpath.

However, the Stockport, Disley and Whalley Bridge Railway Plan of 1853 recorded the route onto which Red Lane joined as its westerly end as private road and the owner as Thomas Legh. The railway proposal was enacted by parliament and the subsequent construction of railway altered the alignment of the adjoining road and changed the nature of the 'through road' that Red Lane might otherwise have been. The 1872 Ordnance Survey map showed how the alignment of the road had changed and most of the old route was subsumed under parkland. The Stockport Corporation Water Plan of 1904 referred to Red Lane as 'Private Road and Public Footpath'.

The Legh Estate papers had shown a consistent picture through letters and other documents that Red Lane was considered to be a Private Road maintained by the Estate. The Disley Rural District Council minutes and papers gave the same picture. There was evidence from minutes and estate papers of a complaint about the condition of the road resulting in the County Council serving notice on the Estate and frontagers in 1946 to effect repairs to the road as it was not 'publicly maintainable'.

In order to show public vehicular rights had been acquired along Red Lane through usage, a twenty year period must be identified during which use of the route by vehicles had been established. In this case signs have been in evidence along Red Lane at various times. Mr Gresty, of 19 Red Lane, claimed to have put signs in approximately 2002 and also recalls a 'No through road' sign on the wall at the Doctors Surgery. A sign stating 'No Right of Way for vehicles' and other information was in place towards the Lyme Park end of the lane and according to Mr Gresty had been since approximately 1992. If this date is taken as the first date of challenge to motorised vehicle users then the period for these purposes must be taken at 1972 to 1992. There had been no challenge to pedestrians or other users therefore use on foot or horseback could be considered up to the date of the application, which is the period 1982 to 2002.

Three people had claimed to use the lane during the relevant period but not for the full twenty year period and had been for the purpose of parking and walking to Lyme Park or to visit residents or to attend the Church.

In the Legh Estate papers from 1933 there was correspondence stating that people parking in the lane who had no business there could be served with an injunction from the County Court. This demonstrated the intent of the Legh Estate not to allow public vehicular use of the lane but whether that intent was made clear to the public was difficult to ascertain.

The user evidence showed that all but one of the six witnesses had used Red Lane on foot during the period 1982 to 2002, with use being to access Lyme Park and also to access the other public footpaths that led into the claimed route. The use had been very frequent in some instances i.e. every day to 20 times per year. There was no indication from the historic documents that pedestrian use by the public had ever been discouraged or prevented.

The route as a public footpath was quite widely documented throughout the Legh Estate Papers and in a number of other documents from the 19th century. The number of connecting footpaths gave rise to a strong presumption of use of Red Lane as a footpath was demonstrated in the user evidence provided. Use of a bridleway had been catalogued but was demonstrated by only one of the users and did not provide a strong enough basis on which to base a reasonable allegation. The report concluded that for Red Lane there was insufficient historical and user evidence to support the existence of a byway open to all traffic.

The Committee considered the evidence presented by the officer and detailed in the report and considered that there was insufficient evidence historical and user evidence to support the existence of a byway open to all traffic along A-B-C and B-D on plan number WCA/010. However, the Committee considered that on the balance of probabilities the requirements of Section 53(3)(c)(i) had been met in regard to the existence of public pedestrian rights and therefore recommended that these sections should be subject to a Definitive Map Modification Order to add them as Public Footpaths to the Definitive Map and Statement.

The Committee **RESOLVED:** That

- (1) The application to modify the Definitive Map and Statement to record a byway open to all traffic between points A-B-C and B-D, as shown on plan number WCA/010, be refused on the grounds that there is sufficient evidence to show the existence of Public Byway Open to All Traffic rights.
- (2) 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 a Public Footpath along the route shown between points A-B-C on plan number WCA/010.
- (3) 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 a Public Footpath along the route shown between points B-D on plan number WCA/010.

- (4) 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 Orders be confirmed in exercise of the power conferred on the Council by the said Acts.
- (5) In the event of objections to the Orders being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

28 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PART OF PUBLIC FOOTPATH NO. 4 IN THE PARISH OF ROPE

The Committee considered a report which detailed an application from Mr and Mrs Shaw of Puseydale Farm, Shavington (the Applicant), requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.4 in the parish of Rope

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 legal definitive line of Rope Footpath No.4 was currently unavailable. It had been obstructed by fences for a number of years, before the current owners purchased the property. Walkers were currently using a route which ran parallel to the definitive line on land adjacent to Mr and Mrs Shaw's property. This anomaly was brought to light when the Applicants submitted a planning application for a new dwelling which, if approved, would be built on the definitive line of the public footpath (as indicated on plan no. HA/092).

To enable development to take place, under normal circumstances the footpath could be diverted under the Town and County Planning Act 1990 section 257. However, this legislation can only be used to divert the section of path directly affected by the development. Mr and Mrs Shaw wished to divert a longer section of the path than that which was directly affected. It was therefore proposed to divert the path under the Highways Act 1980 section 119.

The application, under the Highways Act, had been made in the interests of the privacy and security of the applicant. The proposal would move the footpath away from the applicants' home and the proposed new dwelling. Moving the footpath to the field boundary would also be of benefit in terms of farm/land management. Horses were kept in the paddocks to the north west of Puseydale Farm and moving the footpath to the paddock boundary would enable the landowners to separate walkers from the animals, removing the risk of conflict between members of the public and the horses. The diverted

footpath would be unenclosed. It would have a width of two metres and a grass/natural earth surface.

The Committee noted that no objections had been received during the informal consultations and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would offer improved privacy and security to the Applicant's property and also benefit land management. 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.

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. 4 in the parish of Rope, by creating a new section of public footpath and extinguishing the current path (as illustrated on Plan No. HA/092) 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.

29 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 72 (PART) PARISH OF RAINOW, AND PUBLIC FOOTPATH NO. 13 (PART) PARISH OF MACCLESFIELD FOREST

The Committee considered a report which detailed a proposal initiated by the Public Rights of Way Unit recommending that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.72 in the parish of Rainow and part of Public Footpath No.13 in the parish of Macclesfield Forest.

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.

Mr Colin Pickford addressed the Committee and spoke in support of the application.

Complaints had been received from members of the public that the definitive line of the footpath was not available on the ground. An alternative route was in use but this situation was confusing for users of the footpath. It was believed that due to a drafting error during the Definitive Map process the path available on the ground was not consistent with the route shown on the Definitive Map. At the point where Public Footpath No.72 Rainow and Public Footpath No.13 Macclesfield Forest met on the parish boundary (point C on Plan No.HA/091), the definitive line was not available on the ground. There was a very steep embankment and a stream with no means to cross. Further south (point K on Plan No.HA/091) is where it was believed that historically the crossing point had always been as here the path was easier to negotiate and there was currently a stile and stepping stones to cross the stream.

Three landowners were affected by the proposed diversion. The current definitive line of Public Footpath No.72 Rainow ran on land belong to Mr Charles Pickford of Dane Bent Farm, Rainow. The proposed diversion would move the footpath onto land belonging to Mr Colin Pickford of Thornsett Farm, Rainow. Both landowners were in agreement with the proposals. The current definitive line and the proposed diversion of Public Footpath No.13 Macclesfield Forest ran on land belonging to Mr John Illingworth of Wickenford Farm, Macclesfield Forest.

The proposed diversion of Public Footpath No.73 Rainow would divert the path to cross the parish boundary at Point K, where it was proposed to install an 8 metre bridge to enable users to cross the stream.

The proposed diversion of Public Footpath No.13 Macclesfield Forest would follow the line that was currently used by walkers and was similar in description to the Parish Walking Survey of the 1950s. This diversion was partly in the landowner's interest as the current route appeared to go through a manège area and therefore the diversion was for stock management reasons.

The Committee noted that no objections had been received during the informal consultations and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpaths would resolve the anomaly and offer improved land and stock management capability for one of the landowners. 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.

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.72 Rainow and part of Public Footpath No.13 Macclesfield Forest by creating a new section of public footpath and extinguishing the current paths, as illustrated on Plan No.HA/091, on the grounds that it is expedient in the interests of the owner or the land crossed by the path and of the public.

- 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 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 73 (PART), PARISH OF RAINOW

The Committee considered a report which detailed an application from Mr Colin Pickford of Thornsett Farm, Pedley Hill, Rainow (the Applicant), requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.73 in the parish of Rainow.

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.

Mr Neil Collie, East Cheshire Ramblers, spoke on the application and was concerned that the proposed diversion involved a steep climb for some 30m, which was contrary to the general direction of the existing path which followed the contours and was therefore significantly less convenient than the existing definitive line through the farmyard.

Mr Colin Pickford, Applicant, spoke in support of the application as the diversion would allow for better farm management and improve safety and security around the farm.

The land over which the section of current path to be diverted and the proposed diversion ran belonged to the Applicant. The current route ran through the farm yard and the diversion was required for farm management reasons. The diversion would allow the landowner to improve security around the farm and would have a benefit to his privacy.

The proposed new route would have width of 2 metres, would not be enclosed and would have a grass surface. Two pedestrian gates would be required instead of the five field gates on the current route, which were used to control livestock around the farm yard.

The Committee considered the report and the comments received on the application from Rainow Parish Council, Cheshire East Ramblers and Alderley Edge Wilmslow and District Footpath Preservation Society and concluded that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would offer improved land and stock management for the applicant and increase safety for path users. 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.

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.73 by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/090, 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.

**31 LOCAL GOVERNMENT ACT 2000 SECTION 2: DEED OF DEDICATION
- THE CARRS, WILMSLOW**

The Committee received a report which detailed a proposal to create a new public bridleway under Section 2 of the Local Government Act 2000 in a deed of dedication.

For a number of years Cheshire East Borough Council and local user groups had been working to improve access within the public open space known as The Carrs. The creation of a multi-user route through the park had been registered by the local user groups during consultation for the Council's Rights of Way Improvement Plan.

The current path was unsurfaced, uneven and suffered from flooding due to high water table levels. In addition, bank erosion by the River Bollin was likely to result in sections of the current path being unavailable in future. The proposed multi-user route would be located away from such areas to protect the investment being made. The proposed path would create a year-round and accessible path for people visiting the park. It

was planned that the path would be surfaced with a bitumen and chip surface.

The route would offer an off-road link for pedestrians and cyclists from Wilmslow Town Centre and railway station towards places of interest, such as the National Trust property at Styal, and places of employment such as Stamford Lodge and Manchester Airport.

The proposal had been submitted in a bid to Natural England's Paths for Communities Fund in order to create a year-round multi-user surface through the public open space. One of the stipulations of the Paths for Communities funding stream was that the path created was dedicated as a public right of way, thereby securing public access for perpetuity. Funding had also been secured for the project through a Section 106 planning contribution.

The classification of public bridleway meant that the public right of way would be available to pedestrians, horseriders and cyclists. There was some concern that the use of the route by horse riders would create potential conflict with other users and damage the surface of the route. The proposed route was a cul-de-sac route connecting with existing public footpaths within the park. Cyclists would be allowed to use these connecting footpaths on a permissive basis by the Council as the landowner. However, horseriders would not be permitted to use them. Whilst no physical barrier was proposed to restrict onward access for horseriders, it was anticipated that the attractiveness of the proposed bridleways to this category of user would be minimal. Should the issue arise in the future, the Council could investigate the use of a traffic regulation order to restrict the access of horseriders along the route.

The Committee unanimously

RESOLVED:

That a public bridleway over Cheshire East Borough Council owned land be dedicated to the public under Section 2 of the Local Government Act 2000 in the parish of Wilmslow, as shown on Plan No.LGA/006a, and that public notice be given of this public bridleway.

32 CHANGES TO RIGHTS OF WAY LAW AND PROCEDURES, THE GROWTH AND INFRASTRUCTURE ACT 2013

The Committee received an information report on the changes to Rights of Way Law and Procedures under the Growth and Infrastructure Act 2013.

Mr C Meewezen spoke on the changes enabling local authorities to make orders under section 257 of the Town and Country Planning Act 1990.

Amendments had been made to the Town and Country Planning Act 1990 to allow competent authorities to make stopping up and diversions orders

if they were satisfied that a planning application had been made and if the application was granted it would be necessary to stop up or divert the path in order to enable the development to go ahead.

Additionally any order so made could not be confirmed unless the Secretary of State or the Order Making Authority were satisfied that planning permission had been granted and that it was necessary to stop or divert the path in order to enable the development to go ahead.

RESOLVED:

That the report be noted.

The meeting commenced at 2.03 pm and concluded at 3.08 pm

Councillor D Druce (Chairman)