

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 15th September, 2014 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor M Hardy (Chairman)
Councillor Rhoda Bailey (Vice-Chairman)

Councillors A Barratt, W S Davies, K Edwards, M Parsons and J Wray

Officers

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

13 APOLOGIES FOR ABSENCE

There were no apologies for absence.

14 DECLARATIONS OF INTEREST

Item 7 - Councillor J Wray declared that he had attended a parish council meeting when this application had been discussed. He had not taken part in the discussions and had kept an open mind.

Item 7 - In the interest of openness Cllr Rhoda Bailey declared that she knew the applicant's father.

15 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 16 June 2014 be confirmed as a correct record and signed by the Chairman.

16 PUBLIC SPEAKING TIME/OPEN SESSION

Two members of the public had registered to speak in relation to Items 6 and 7. The Chairman advised that he would invite them to speak when these applications were being considered by the Committee.

17 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 11, PARISH OF SHAVINGTON CUM GRESTDY AND PUBLIC FOOTPATH NO. 21 (PART), PARISH OF WYBUNBURY

The Committee received a report which detailed an application from Ms Miranda Steadman (agent) on behalf of Mactaggart & Mickel, 1 Atlantic Quay, 1 Robertson Street, Glasgow, G2 8JB requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1990 to divert Public Footpath No.11 in the parish of Shavington and part of Public Footpath No.21 in the parish of Wynbunbury.

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 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 permission had been granted to the Applicant on 23 January 2014 – planning permission ref: 12/3114N, for residential development on land south of Newcastle Road at Shavington and Wybunbury.

The current line of Public Footpath No.11 Shavington cum Gresty and part of the current line of Public Footpath 21 Wybunbury would be obstructed by the planned residential development. A footpath diversion was required to preserve the public right of way between Stock Lane and Newcastle Road. The land was owned by Graham Ward Farms Ltd, Netherset Hey Farm, Netherset Lane, Madeley, Crewe and written consent had been given to permit the diversion on the land by Graham Ward.

The new route would have a width of 2 metres throughout and have a hard surface suitable for use by all user types. Users would be protected from vehicles upon approach to Newcastle Road by a form of path furniture such as a gate or barriers. Furthermore, a tarmac area at the roadside would provide a safe visible place from which to assess traffic before crossing the road.

The local Councillors had been consulted.

Councillor D Brickhill had registered an objection on a number of concerns including anti social behaviour, provide perfect location for drug sales and drug taking, become foul from dog faeces, the route was longer than the present route, and it emerged onto Newcastle Road 50 metres away from the continuation of the footpath on the other side of the road.

In response, the Council explained that detailed planning measures would be in place to mitigate against the speculative problems relating to drug use/sales, dog fouling and residential disturbance. Furthermore, a measure of natural surveillance would be present since the majority of houses face onto the proposed path (as shown on Plan No.TCPA/20 overlaid with the developer's plan) and the path would run through an open landscaped area. With regard to placing the new route on estate road(s), this would affect a net loss to the network of countryside paths. The requirement for the public to walk a further 50 metres to connect to the footpath on the other side of the road was not considered to be marginal and would not add significantly to journey times.

Councillor J Clowes had not objected to the proposal but had expressed concerns about its relationship with the various planning applications underway that stemmed from the approved outline plan. Wybunbury Parish Council registered support for these concerns and objected to the proposed diversion. Discussions with the Parish Council were still ongoing.

It was emphasised that the approved outline plan would not change so the housing development would be developed as shown on the plan and the proposed diversion would be preserved within that plan.

The various planning applications underway that stemmed from the approved outline plan were to resolve issues relating to the detail of the outline plan such as housing type (two or three storey) for example but would not alter the outline plan or the proposed diversion.

An objection had been received from National Grid and discussions were underway to resolve this as if a diversion order was made, existing rights of access for the statutory undertakers to their apparatus and equipment were protected.

No objections were received from the User Groups, although the Peak and Northern Footpath Society registered a conditional acceptance stating once it was confirmed that access between points C-D-E, as shown on Plan No.TCPA/020 would be non-vehicular.

The Committee considered the objections and comments received and concluded that it was necessary to divert Public Footpath No.11 Shavington cum Gresty and part of Public Footpath No.21 Wybunbury to allow the development to be carried out. 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.

The Committee unanimously

RESOLVED: That

1. An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert Public Footpath No.11 Parish of Shavington cum Gresty and part of Public Footpath No.21 Parish of Wybunbury, as illustrated on Plan No.TCPA/020, on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
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.

**18 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:
APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO.11
(PART), PARISH OF KNUTSFORD**

The Committee received a report which detailed an application from Mr Steve Bowers (agent) of CBO Transport Ltd on behalf of Mr H Brooks (applicant) of The Tatton Estate, Peover Estate Office, nr Knutsford, requesting the Council to make

an Order under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.11 in the parish of Knutsford.

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 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.

The applicant had applied for planning permission for the erection of a high quality residential development with associated woodland buffer, ecological mitigation and enhancements and open spaces – planning reference 13/2935M. Planning permission had not yet been granted for this application.

The existing alignment of Public Footpath No.11 Knutsford would be directly affected by the construction of the planned residential development. The land was owned by the same owners as The Tatton Estate. It would be necessary to realign the path via diversion to preserve right of passage between points A and B, as shown on Plan No.TCPA/021. The new route would have a width of 2.5 metres with a 1.2 metre wide timer lined surface (type to be confirmed) running along the centre. It would run through a landscaped area and would have grass to either side.

John White, Ramblers Footpath Secretary and Mid Cheshire Footpaths, spoke in relation to the application, stating that the footpath was an important path as it linked the urban area with countryside and was part of the North Cheshire Way and asked that any diversion proposed should keep the character of the present footpath.

Consultation had not elicited objections to the proposals from the local ward councillors and statutory undertakers. The CTC had questioned the possibility that the proposed route may be suitable as a cycle route if upgraded as would provide a link to either Broadoak Lane or the B5085. The Council had explained that it was only part of the footpath that was being diverted and that the remainder of the footpath crossed pasture land and belonged to another landowner.

The Committee was concerned how the proposed footpath diversion would fit in with the layout and design of the development as no details on this had been presented to the Committee. It was agreed that the application be approved, subject to the Chairman and Vice Chairman seeing and agreeing that the proposed footpath route through the development was the best option.

The Committee unanimously

RESOLVED: That delegation be given to the Chairman and Vice Chairman to

1. approve that an Order be made under Section 257 of the Town and Country Planning Act 1990, on condition that approval is granted for Planning Application 13/2935M to divert part of Public Footpath No.11 Knutsford, as illustrated on Plan No.TCPA/021, on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.

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.

19 VILLAGE GREEN APPLICATION: LAND ADJACENT TO CHELFORD ROAD AND BLACK FIRS LANE, SOMERFORD

The Committee received a report seeking a decision on how to proceed with village green application in respect of land along the verge of Black Firs Lane and Chelford Road, Somerford.

The Council was the registration authority for village greens and the responsibility for the function was delegated to the Public Rights of Way Committee under the Council's Constitution.

An application had been submitted on 3 May 2013 by Mr Nicholas Bell. The Application Land was shown on Appendix A to the report. The evidence in support of the application contained several witness statements stating various uses and several photographs.

Mr Bell, the father of the applicant, attended the meeting and spoke in support of the application.

Cheshire East Council, as highways authority, had written objecting to the application making certain legal arguments.

Richmond Estates Limited had recently obtained planning permission for residential development of the land bound by the Application Land and had written in objecting to the application. The planning application had been submitted after the date of the village green application. They had also obtained counsel opinion, which recommended that the application be dealt with by an independent person on the basis of written representation.

Legislation introduced by the Growth and Infrastructure Act 2013 had changed the criteria for registration of new village greens, which applied to applications received after 25 April 2013. The new legislation excluded the right to apply for village green status where a prescribed event, known as a trigger event, had occurred within the planning system in relation to that land.

Part of the application land may be affected by a trigger event as it had been identified as land for housing and employment and included in Cheshire East Council's Local Plan Development Strategy and Emerging Policy Principles document, which was consulted on in January and February 2013.

It was proposed that the applicant and the objectors be given an opportunity to make representations on the potential trigger event before the application be considered by an independent person based on written representations. It was moved and seconded that the time allowed for the representations to be submitted be amended from fourteen days to twenty eight days.

It was possible that the independent person, having received the documents, recommends an inquiry be held instead. In the event of such a request it was recommended that delegated authority be given to the Head of Legal Services, in consultation with the Chairman of the Public Rights of Way Committee, to determine if a non statutory public inquiry should take place.

RESOLVED: That

1. the Head of Legal Services offer the applicant and the objectors twenty eight days to make representations on the potential trigger event which may affect part of the land subject to the village green application.
2. following expiration of the twenty eight day period, the Head of Legal Services be authorised to appoint an independent expert to consider the application on the basis of written representations and provide a report.
3. the Head of Legal Services be given delegated authority to determine if a non-statutory public inquiry should take place upon the recommendation of the independent expert, after consulting the Chairman of the Public Rights of Way Committee.

The meeting commenced at 2.00 pm and concluded at 3.15 pm

Councillor M Hardy (Chairman)