

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 16th March, 2015 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, S Davies, L Jeuda, M Parsons and J Wray

Officers

Mike Taylor, Public Rights of Way Manager
Marianne Nixon, Public Path Orders Officer
Mark Jones, Legal Team Leader
Peter Jones, Lawyer
Rachel Graves, Democratic Services Officer

30 APOLOGIES FOR ABSENCE

Apologies were received from Councillor K Edwards.

31 DECLARATIONS OF INTEREST

Item 7: Village Green Application Land Adjacent to Chelford Road and Black Firs Lane, Somerford - Councillor J Wray declared that he had previously expressed an opinion in relation to this application and would leave the room during consideration of this item.

Item 7: Village Green Application Land Adjacent to Chelford Road and Black Firs Lane, Somerford - In the interest of openness Cllr Rhoda Bailey declared that she knew the applicant's father.

32 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 8 December 2014 be confirmed as a correct record and signed by the Chairman.

33 PUBLIC SPEAKING TIME/OPEN SESSION

No members of the public present wishing to speak.

34 HIGHWAYS ACT 1980 S.119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 13 (PART), PARISH OF OVER ALDERLEY

The Committee considered a report which detailed an application from Mr and Mrs K Oakes of Haymans House, Hocker Lane, Over Alderley requesting the Council make an Order to divert part of Public Footpath No.13 in the parish of Over Alderley.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order to divert a public footpath 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 land over which the section of the current path to be diverted and the proposed diversion ran belonged to Mr and Mrs Oakes. The first part of Public Footpath No.13 Over Alderley to be diverted ran along the drive to the property of the applicants, which was a semi-surfaced track (points A – B on Plan No. HA/099). The proposed new route for this section was to the left of the current route, alongside the access track on the field side. This part of the diversion was in the landowner's interest as would allow them to improve their privacy and security.

The proposed new route was currently used by the public as a footpath, and according to the public rights of way records this section of Public Footpath No.13 had been maintained in an offline position by the previous authority, Cheshire County Council. Discussions had been held with the landowners in 2007/08, when they were informed that the correct alignment, according to the Definitive Map, was along the access track. They had concerns in relation to privacy and security if the route was realigned and as long as they could remember the route had always been in the field, along the field edge. They therefore agreed to apply for a diversion order. It had only recently come to light that even though works were carried out by Cheshire County Council to install new path furniture, the legal order diverting the route had not been made. The new route would have a width of 2 metres, except for one point where it was restricted to 1.3 metres between the fence and a tree. The route would not be enclosed and the three kissing gates would remain in situ.

The second part of Public Footpath No.13 to be diverted was around a quarry area (points C-D-E on Plan No.HA/099) It was proposed to divert this section in the interests of the public, as the definitive line of the footpath was within the boundaries of the quarry and at some point had been quarried away. To make this route available would be a danger to the public, due to the proximity of the path to the quarry. The proposed diversion was currently used by walkers and was 2 metres wide with a grassed surface.

The Committee noted that no objections had been received during the informal consultations and considered that the proposed routes would not be substantially less convenient than the existing routes. Diverting the two

parts of the footpath would provide improved privacy and security for the landowner and be safer for the public by keeping them away from the quarry area. It was therefore considered that the proposed routes would be a satisfactory alternative to the current routes 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.13 by creating a new section of public footpath and extinguishing the current paths, as illustrated on Plan No.HA/099 on the grounds that it is expedient in the interests of the public and owners 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.

35 HIGHWAYS ACT 1980 S.119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 21 (PART), PARISH OF LOWER WITHINGTON

The Committee considered a report which detailed an application from Mr Anthony Cotter (agent) of Midas Investment Management Ltd, Basement Office, 21 Brompton Square, London, SW3 2AD on behalf of Mr Mark Sheppard whose family owned Mallerstang, Congleton Lane, Chelford, Cheshire requesting the Council to make an Order to divert part of Public Footpath No.21 in the parish of Lower Withington.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order to divert a public footpath 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 land over which the current path and the proposed diversion ran belonged to the Applicant's family. Virtually the entire length of Public Footpath No.21 was to be diverted - points A-B-C on Plan NO. HA/100, with the exception of a stretch running over the pedestrian footbridge and on to the Parish Boundary. This section of the path ran through arable fields in close proximity to the applicant's property and diverting it would provide improved privacy and security for the applicant by taking users further away from their property.

The proposed new route would follow a generally south, south easterly direction from the bridge over the stream towards Mill Lane (points C-D-E-F-G on Plan No.HA/100). The new route would follow a woodland path skirting a pond en route and then ascending to a more grassed surface along the edge of a field. It would follow this for a short section before descending to cross an 8m timber footbridge over a boggy area past a second pond. It would then ascend once more to reach the boundary fence between the woodland and adjacent field to the west and would run along this fence line within the woodland. On reaching 5 'earth and timber' steps, it would descend to Mill Lane where it would terminate.

Although not currently certified as meeting Council standards, the new proposed route had been installed on the ground by the applicant and was currently private, although by permission could be used by the public. The landowner had agreed to provide a sum of money to provide for the future increased maintenance liability of the path due to the increased length and structures present.

It was recognised that this new route was much longer than the current path section to be diverted. However looking at the wider path network, the new route would provide users with an alternative to having to use Congleton Lane to reach Lower Withington Bridleway No.8 and Lower Withington Public Footpath No.22 and would be of a similar distance.

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 routes. Diverting the path would provide a 'barrier free' route and would be more enjoyable as it passed thorough natural woodland which was more scenic than the current route through fields. It would also provide a link to the wider path network. The diversion would afford improved privacy and security for the applicant. It was therefore considered that the proposed routes would be a satisfactory alternative to the current routes 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.21 Lower Withington by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No. HA/100, on the grounds 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.

36 VILLAGE GREEN APPLICATION - LAND ADJACENT TO CHELFORD ROAD AND BLACK FIRS LANE, SOMERFORD

Having declared that he had previously expressed an opinion in relation to this application, Cllr John Wray left the room before consideration of the report.

The Committee considered the report of the Independent Person on the application to register land adjacent to Chelford Road and Black Firs Lane in Somerford as a new village green under section 15 of the Commons Act 2006.

The Public Rights of Way Committee at its meeting on 15 September 2014 had considered the application and resolved:

That 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.

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.

The Head of Legal Services be given delegated authority to determine if 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.

An email had been sent to the applicant and objectors on 17 September 2014 asking for their comments on the trigger event by 16 October 2014. Further information in relation to the trigger event was sent to the applicant and objectors on 10 October 2014. Comments were subsequently received from Richborough Estates, Somerford Parish Residents Action Group, the Applicant and the Cheshire East Council as Highways Authority.

On 27 November 2014, James Marwick, Barrister of Trinity Chambers, Newcastle upon Tyne was provided with all necessary documentation and instructed to consider the Application. It is of the view that the Application could be dealt with by way of written representations and without the need

for a non-statutory public inquiry to sit as an independent person to consider it and thereafter to prepare a report to go to the Public Rights of Way Committee recommending whether the Application should be approved or not.

In accordance with instructions, Mr Marwick produced a report dated 12 February 2015, in which he concluded that

- a. a 'trigger event' had occurred excluding the part of the land which falls within the area of land identified in the Development Strategy document from registration. This had the consequence of severing the parts of the land which were registrable in two; namely the remaining part of the claimed land on Black Firs Land and the Chelford Road section.
- b. rejecting the Applicant's argument to the contrary; there was strong evidence that the Land in its entirety was highway maintainable at public expense so as to justify proceeding on the basis that on balance, it was Highway Land.
- c. having considered all the evidence relied upon in support of the application, practically all the user evidence relied on by the Applicant could be regarded as having been enjoyed pursuant to the public's highway rights and therefore must be discounted as qualifying user as any use by right rather than as of right was to be discounted from consideration.
- d. the evidential position was not rectifiable at a public inquiry for the reason set out in his report and he was satisfied that his conclusion was one properly reached without the need for a public inquiry.

The Head of Legal Services was satisfied that the Independent Person's conclusion that the evidential position was not rectifiable at a public inquiry, and determined on 6 March 2015, in accordance with the delegated authority, that it was not necessary to hold a public inquiry.

Mr Marwick's report was circulated to the parties on 25 February 2015 advising that the application would be considered at the meeting of the Public Rights of Way Committee on 16 March 2015 and the parties were invited to make any representations in relation to the report by 4 pm on 4 March 2015.

Richborough Estates had responded on 26 February 2015 advising that the report was considered to be the most thorough and detailed - it had analysed all issues relating to the application, reached a reasoned conclusion and as a result, the recommendations therein were agreed.

The Applicant, Mr Bell responded on 2 March 2015 stating that he would like to address the Committee in relation to the application but would not be able to attend on 16 March due to being on holiday. He requested that

the application be considered at the next meeting of the Committee so as to afford him an opportunity to attend and make submissions.

The Independent Person's view was that there was no obligation to postpone the Committee meeting as the applicant had been afforded the opportunity to make representations in writing based upon the report, which was the central item to be considered by the Committee, and every opportunity to make relevant submissions had been afforded during preparation of the report. Mr Marwick also pointed out that the Committee had a discretion whether or not to receive written representations made after the 4 March as part of their decision making process.

The Chairman drew the Committee's attention to an email sent to them that morning by Mr Bell, which had attached a letter along with representations drafted by Vivian Chapman QC and a tab 5 Plan. Copies of the documents were provided for Members at the meeting.

In his letter Mr Bell strongly objected to the content of the Independent Person's report and raised the following points:

- failure to instruct an independent expert as Mr Marwick was already acting as the Council's legal adviser to relation to the application before he was instructed as the Independent Person
- conflict of interest as Cheshire East Council as the Council was the Highway's Authority and also the Registration Authority
- financial conflict as the Council would receive S106 money from a housing development which could be affected by the outcome of the application
- conflicting expert opinions of the Independent Person and the QC instructed by Somerford Parish Council
- unresolved factual dispute of whether the land in question is part of the public highway which ought to be dealt with at a public inquiry

Mr Bell asked that the Committee decline to accept the Independent Person's report, determine that a public inquiry was necessary, refer the application for determination by a neighbouring authority or instruct another independent person to determine the application. He also requested that the application be adjourned to allow his attendance to make oral representations.

Members of the Committee considered the report of the Independent Person and the documents submitted by Mr Bell and during the discussions asked questions about the impartiality of the Independent Person; the conflicting expert opinions; the unresolved issue of highways land: who were the owners of land and sub soil: the trigger event; the lateness of representations; the size of area involved; the clash of Council interests; and the appointment of another independent person.

It was moved and seconded that the application be deferred to allow the Applicant to attend a meeting and address the Committee and on the vote it was declared lost.

The Committee then consider the recommendation of the report and by majority

RESOLVED:

That the report of the Independent Person – Mr James Marwick, be accepted and that the application to register the land adjacent to Chelford Road and Black Firs Lane, Somerford as a village green be rejected for the reasons as stated in the Independent Person's report.

37 VILLAGE GREEN APPLICATION: RELATING TO LAND TO THE NORTH OF CRESSWELLSHAWE ROAD, ALSAGER WHICH IS COMMONLY REFERRED TO AS "WOOD PARK

The Committee received a report seeking a decision on how to proceed with a village green application in respect of land to the north of Cresswellshawe Road, Alsager – commonly referred to a Wood Park.

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 18 September 2012 by Andrew Barnard of 15 Cresswellshawe Road, Alsager. The application was supported by 22 supporting witness statements. The notice of application was advertised on 28 February 2013 after which a consultation exercise was carried out with an end date of 31 May 2013, which was extended at the request of Cheshire East Council as landowner to 12 July 2013. A response was received from Alsager Town Council expressing support otherwise there were no further comments either in support or against the application. However on 15 July 2013 the Council as landowner confirmed that it supported the application.

For various reasons the village green application was not progressed for a number of months. As a result of this delay, in November 2014 it was decided that the applicant and landowner would be written to in order to ask whether they would like to submit any comments in relation to the application before it moved to the next stage. The deadline for submission of comments was 15 December 2014. The Council as landowner objected on the basis that the application was not in accordance with the requirements of Section 15 Commons Act 2006 in that it had not been made by the inhabitants of a locality or neighbourhood and that the applicant's use of the land was not as of right but by right as Open Space by virtue of Section 10 of the Open Spaces Act 1906.

Regulation 6(2)(b) of the Regulations provide that the registration authority *may* consider any statement that it receives on or after the expiration of the consultation period and before the authority disposes of the application. Should the registration authority intend to take any such statements into consideration, the applicant must be given an opportunity to consider the statement and to deal with any of the issues raised.

The applicant was written to on 16 December 2014 inviting them to submit any comments on the Council landowner's objections by 16 January 2015. The applicant expressed his individual concerns around the fact that the registration authority would be asked to exercise its discretion to receive the Council's objection after the expiration of the consultation period and that they struggled to understand how any application by a member of the public would stand the tests of 'neighbourhood' and 'as of right'. It was also advised that they would consult with the supporters of the application. Nothing further had been received from the applicant.

As the Council was both the registration authority and the landowner, it was recommended that the Head of Legal be authorised to appoint an independent person to consider the application on the basis of written evidence. It may be possible that the independent person, having received the evidence, recommends that a non-statutory public inquiry is held. 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.

The Committee unanimously

RESOLVED: That

- 1 the Head of Legal be authorised to appoint an independent person to consider the application on the basis of written evidence and provide a report.
- 2 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 with the Chairman of the Public Rights of Way Committee.

38 VILLAGE GREEN APPLICATION: RELATING TO LAND AT BANKY FIELDS, CONGLETON CW12 4BW

The Committee considered a report seeking a decision on how to proceed with a village green application in respect of land at Banky Field, Conlgeton.

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 8 March 2013 by Mr Gordon Mellor. The Application Land was shown on the Appendix to the Report. The application was supported by 13 supporting statements from local residents.

A consultation exercise was carried out between 12 September 2013 and 6 December 2013. No comments were received either in support or against the application. For various reasons the village green application was not progressed for a number of months. As a result of this delay, in November 2014 it was decided that the applicant and all known landowners would be written to in order to ask whether they would like to submit any comments in relation to the application before it moved to the next stage. Following this, an objection was received from Cheshire East Council as landowner and a letter in support of the application from Mr and Mrs Bird.

The Council objected on the basis that the application was not in accordance with the requirements of Section 15 Commons Act 2006 in that it had not been made by the inhabitants of a locality or neighbourhood and that the applicant's use of the land was not as of right but by right, as Open Space by virtue of Section 10 of the Open Spaces Act 1906 and or as licensees of the garages on the application land.

Regulation 6(2)(b) of the Regulations provide that the registration authority *may* consider any statement that it receives on or after the expiration of the consultation period and before the authority disposes of the application. Should the registration authority intend to take any such statements into consideration, the applicant must be given an opportunity to consider the statement and to deal with any of the issues raised.

The applicant was written to on 6 December 2014 inviting them to submit any comments in relation to the statements by 16 January 2015. The applicant responded that they objected to the fact that the registration authority would be asked to exercise its discretion to receive the Council's objection after the expiration of the consultation period and had raised the matter with their MP, Fiona Bruce and local ward members. As a result of a request from Fiona Bruce, the period for responses to the objection was extended until 30 January 2015. The applicant responded on 26 January 2015 arguing that the Council's objection contains misrepresentations and lacks logic in its conclusion.

As the Council was both the registration authority and the landowner, it was recommended that the Head of Legal be authorised to appoint an independent person to consider the application on the basis of written evidence. It may be possible that the independent person, having received the evidence, recommends that a non-statutory public inquiry is

held. 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.

The Committee unanimously

RESOLVED: That

- 1 the Head of Legal be authorised to appoint an independent person to consider the application on the basis of written evidence and provide a report.
- 2 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 with the Chairman of the Public Rights of Way Committee.

39 PUBLIC INQUIRY TO DETERMINE DEFINITIVE MAP MODIFICATION ORDER: ADDITION OF PUBLIC FOOTPATH NO 15, PARISH OF WYBUNBURY MODIFICATION ORDER 2013

The Committee received an information report on the outcome of a public hearing to determine a Definitive Map Modification Order.

The Public Rights of Way Committee at its meeting on 17 December 2012 approved an Order for the addition of Public Footpath No.15 in the parish of Wybunbury to the Definitive Map and Statement as it was considered that there user evidence was sufficient to support the existence of a public footpath.

A Modification Order was made on 21 February 2013 and advertised on 4 April 2013. Nine formal objections were received to the Order, one of which was later withdrawn. The objections were not challenging the duration or frequency of use by the public but were mostly concerned over the recorded width of one section of the footpath. Some objectors also referred to an additional path which went diagonally across the field owned by Natural England (from point F on the Order plan in a north-easterly direction) and these objectors claimed the Order route should follow this line rather than along the field edge.

As the remaining eight objections were not withdrawn consequently a file of the relevant information was submitted to the Planning Inspectorate in March 2014. A public inquiry was held on 4 March 2015 at Wybunbury Village Hall. Of the eight objectors only Mrs B Colbert and her son Mr P Colbert were present, representing themselves. Cheshire East Council was represented by Miss Ruth Stockley of Counsel (Kings Chambers, Manchester). The appointed inspector was Mr Alan Beckett.

It was the Council's approach that the evidence was sufficient to justify making an Order to record the claimed route as a public footpath. The basis of the evidence in support of the Order was that of user evidence. It was the Council's case that under Section 31 of the Highways Act 1980, the way had been used on foot for a full period of 20 years without force, secrecy or permission and without sufficient evidence to indicate that there had been no intention to dedicate during that period.

Mrs Colbert had disputed the width of the path for the section between the edge of the barn and point F on Plan No. WCA/005A and contended that for this section the width of the path should be recorded as being between 1.3 metres and the maximum width suggested by evidence. It was also submitted that where the path dog-legged around the eastern end of the barn the path would not have been 2.3 metres as a field gate had stood in the centre of the end of the barn to control the movement of livestock.

The hearing was closed and concluded on 4 November 2014 following an accompanied site visit. The Inspector issued a decision letter on 26 November 2014 in which he confirmed the Order, with one modification. This was to record a stile at SJ 6991 4995 and this had been inserted into Part II of the Schedule under the heading 'Limitations or Conditions of Use.' The Inspector's overall conclusion was that the evidence was sufficient to show that, on the balance of probabilities, a public footpath subsisted over the Order route.

RESOLVED:

That the report be noted.

The meeting commenced at 2.00 pm and concluded at 3.15 pm

Councillor M Hardy (Chairman)