

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 4th December, 2017 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor M Hardy (Chairman)
Councillor D Flude (Vice-Chairman)

Councillors Rhoda Bailey, T Fox, L Gilbert and J Wray

Councillor in Attendance

Councillor G Williams

Officers

Mike Taylor, Public Rights of Way Manager
Clare Hibbert, Definitive Map Officer
Jennifer Tench, Definitive Map Officer
Andrew Poynton, Planning and Highways Lawyer
Rachel Graves, Democratic Services Officer

17 APOLOGIES FOR ABSENCE

Apologies were received from Councillor S Davies.

18 DECLARATIONS OF INTEREST

No declarations of interest were made.

19 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 11 September 2017 be confirmed as a correct record and signed by the Chairman.

20 PUBLIC SPEAKING TIME/OPEN SESSION

No members of the public present wished to speak.

21 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 49 (PART), PARISH OF RAINOW

During consideration of this application Councillor J Wray arrived to the meeting. He did not take part in the discussion or voting on the application.

The Committee considered a report which detailed an application from Mr and Mrs Weaire of Wayside Cottage, Hough Hole, Rainow (the Applicant) requesting the Council to make an Order to divert part of Public Footpath No.49 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 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 majority of the land over which the section of path to be diverted, and the proposed diversion, belonged to Mr W B Moss. Mr Moss had provided written consent for the proposal. The Applicant owned the remainder of the land at Wayside Cottage.

The proposals were in the interests of the applicants as it would move the footpath away from their home, thereby greatly improving privacy and security.

The section of Public Footpath No.49 Rainow to be diverted ran in very close proximity to the Applicants property, before exiting through a 2.5ft wicket gate onto the adjacent landowner's pasture. The path then travelled up a hill to meet Public Bridleway No.43 Rainow. The pasture had a cross gradient slope of approximately 1:3-1:4, with a slope of approximately 1:5. This made for uncomfortable and sometimes difficult walking for users, especially in wet and windy weather.

The proposed diversion would run along an existing track to meet Public Bridleway No.43 to the west and parallel to the current line of the path. It would pass through a 10ft field gate, which would be replaced with a 2 in 1 gate if the Order was made, to the south of Wayside Cottage, as indicated on Plan HA/117. The path would then climb the hill at a gradient of 1:5 but with no cross gradient for users.

The Committee noted that no objections had been received during the informal consultation and noted the queries from Cheshire Ramblers and responses provided, as set out in the report.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would be of benefit to the applicant as moving the footpath away from their home would improve privacy and security. 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 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.49 in the parish of Rainow by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/117, 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.

22 TOWN & COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATHS NOS. 4 AND 6 (PARTS), SHAVINGTON CUM GRESTY

The Committee considered a report which detailed an application from Taylor Wimpey, Manchester Ltd requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpaths No.4 and 6 in the parish of Shavington cum Gresty.

In accordance with Section 257 of the Town and Country Planning Act 1990 the Borough Council, as Planning Authority, can make an Order diverting a public 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 which had been applied for or granted.

It was reported that in paragraph 2.1 of the report the wording "TCPA/043A" should read "TCPA/043", and in paragraph 3.2 "Unrecorded Footpath" should be deleted and replaced with "Shavington Footpaths 4 & 6 (parts)".

Planning permission had been granted for reserved matters in respect of appearance, landscaping, layout and scale for the construction of 275 dwellings including landscaping, recreation and amenity open space on land at Crewe Road, Shavington - planning reference 15/4046N.

The existing alignment of the two footpaths would partly be subsumed by housing and partly by the internal road layout. The proposed diversion would take the footpath into the peripheral landscaped/green areas of the development and would form an attractive informal recreational route.

Footpath No.4 Shavington would remain on its current alignment from the Crewe Road end, running alongside the new access road to the site with a green landscaped zone in between. Where it entered the development the section of path A-B, as shown on Plan TCPA/43, would be diverted to run along line A-D to link with Footpath No.6.

From where Footpath No.6 entered the site at the southern boundary to its junction with Footpath No.4 at Point B and the connecting section of Footpath No.4 running northerly from Point B to Point C, would be diverted along the line marked D-E-C on plan TCPA/43. The proposed new route would be twice the length of the current section of footpath and would fulfil a recreational function, offering opportunities for short walks on the rural fringe and access to longer walks via the connecting rights of way network. There would be several connecting paths linking into adjacent cul de sacs and estate roads. The direct alignment that the current footpath provided would be served by an estate road with a footway thus continuing the functional route northwards to West Lane via the unaffected section of Footpath No.4.

The whole of the proposed route would be constructed to a 2 metre width with timber edging and a compacted stone surface.

Taylor Wimpey had requested that the Order making stages for these paths be phased if approved; in the first instance making an Order to divert Footpath No.4 part section A-B onto section A-D. This was to be the first phase of development and whilst this was undertaken, it was proposed that the line D-B-C be kept open. A second Order would then be made to divert Footpath No. 4 part and No. 6 part D-B-C in preparation for the second stage of development to commence.

The Committee noted the comments from Shavington cum Gresty Parish Council and the response provided by the Public Rights of Way Team.

The Committee considered the application and concluded that it was necessary to divert parts of Public Footpaths No.4 and 6 Shavington cum Gresty to allow for construction of 275 houses and associated infrastructure, as detailed in planning reference 15/4046N. 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 is made under Section 257 of the Town and Country Planning Act 1990 to divert parts of Public Footpaths No.4 and No.6, as illustrated on Plan No.TCPA/043, on the grounds that the Borough Council is satisfied that it is necessary to do so in order to enable development to be carried out.

- 2 Public Notice of the making of the Order is 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.

**23 WILDLIFE & COUNTRYSIDE ACT 1981- PART III, SECTION 53:
APPEAL OUTCOME FOR APPLICATION NO. MA/5/251: APPLICATION
FOR THE ADDITION OF A PUBLIC FOOTPATH BETWEEN NO. 95 AND
97 KING STREET TO OLD MARKET PLACE, KNUTSFORD**

The Committee received an information report on the outcome of an appeal by Knutsford Town Council against the Council's decision not to make an Order to modify the Definitive Map and Statement.

An application had been made by Knutsford Town Council to modify the Definitive Map and Statement by adding an unrecorded route as a Public Footpath, which ran from King Street between numbers 95 and 97 to Old Market Place. The application was based on user evidence. The Public Rights of Way Committee had considered the application at its meeting on 13 March 2017 and resolved to refuse the application.

On 27 April 2017 the Council was informed by the Planning Inspectorate that Knutsford Town Council had submitted an appeal against the decision. All interested parties were informed that they may submit evidence in respect of the appeal and were given details on when and where they could view the appeal documents. The Council submitted an appeal file which included a statement setting out the reasons for refusing the application and all the documents/evidence that were accessed to make the decision.

The Inspector issued a decision notice on 21 July 2017 and allowed the appeal. The Inspector found that the available evidence of public use of the claimed route on foot, in the period 1995 to 2015, could raise a presumption in accordance with the provisions of the 1980 Act, that it had been dedicated as a public footpath.

Cheshire East Council was directed to make order under section 53(2) and schedule 15 of the Act to modify the Definitive Map and Statement to add a public footpath.

RESOLVED:

That the report be noted.

The meeting commenced at 2.00 pm and concluded at 2.33 pm

Councillor M Hardy (Chairman)