

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 9th March, 2020 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor S Pochin (Chairman)

Councillors H Faddes, I Macfarlane, D Stockton and L Wardlaw

Officers in Attendance

Genni Butler, Acting Rights of Way Manager

Jennifer Miller, Definitive Map Officer

Marianne Nixon, Public Path Orders Officer

Andrew Poynton, Planning and Highways Lawyer

Rachel Graves, Democratic Services Officer

33 APOLOGIES FOR ABSENCE

Apologies were received from Councillors S Akers Smith and B Puddicombe.

34 DECLARATIONS OF INTEREST

Item 7 – Proposed Diversion of Public Footpath Hatherton No.8 (part):
Councillor S Pochin declared a personal interest as the applicant was a personal friend and stated that she would vacate the chair and leave the meeting when the application was considered.

35 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 2 December 2019 be confirmed as a correct record.

36 PUBLIC SPEAKING TIME/OPEN SESSION

The Chairman advised she would invite those registered to come forward to speak when the relevant application was being considered by the Committee.

**37 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53:
APPLICATION NO. CO/8/52: APPLICATION FOR THE ADDITION OF A
PUBLIC RIGHT OF WAY ALONG A ROUTE KNOWN AS MANOR
DRIVE BETWEEN NANTWICH ROAD (A530) AND KERRIDGE CLOSE,
PARISH OF MIDDLEWICH**

The Committee considered a report which detailed an application made by Mr John Bayley on behalf of the Middlewich Public Rights of Way Group to amend the Definitive Map and Statement by adding a public right of way along a route known as Manor Drive, between Nantwich Road (A530) and Kerridge Close, in the parish of Middlewich.

Under section 53 of the Wildlife and Countryside Act 1981, the Council had a duty to keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events. The event relevant to his application is Section 53(3)(c)(i):

“(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates...”

The evidence could consist of documentary evidence or user evidence or a mixture of both.

The application had been submitted in November 2018 for the addition a bridleway along a route known as Manor Drive in the parish of Middlewich and had been made on the basis of user evidence from ten users, submitted with the application, and 2 further forms submitted later. Although the application stated it was for the addition of a bridleway, Officers considered that the evidence suggested that the status should be that of Restricted Byway. An additional route between Manor Drive and Buckley Close had also been considered as part of the application, based on the user evidence.

Mr John Bayley addressed the Committee and stated that the application had been made because the Middlewich Guardian on 24 August 2017 had printed an article which said that the owners of Manor Lodge wanted to gate the driveway to stop residents from using it as a thoroughfare into Middlewich or on to the canal. The route had been used as link into Middlewich to visit the cemetery, doctors surgery and shops in Middlewich for well over twenty years and the alternative route was a mile longer in length. The owners of Manor Lodge had removed the original gatepost and had relocated them further forward and built walls which they did not have permission to do so.

Mrs Samantha Richards addressed the Committee and informed them that they were not questioning the public right of way, and having listened to public opinion, had decided against installing a gate between the posts but wanted the gateposts to remain as they had been erected to stop lorries turning around outside their home causing damage.

The report before the Committee detailed the investigation carried out into the application and concluded that the user evidence submitted demonstrated regular, continuous and long term use of the claimed route on foot and bicycle. The documentary evidence showed that the route of Manor Drive had been in existence for over a hundred years, most likely since the Manor Hall was built. The historical documents showed that route A-B-C on Plan No.WCA/021 was historically used as private access to the Hall. The nature and purpose of the use of the route then changed with the development of the area from the 1970s onwards. The section of the route between B-C and between points B-D was owned by Cheshire East Council and public use of this section was not disputed. The user evidence showed that use, on both foot and bicycle, had been uninterrupted for a fully twenty year period between 1996 and 2016 in the case of route A-B-C without challenge, permission or secrecy and in the case of B-D between 1997 and 2017.

The Committee considered the user evidence submitted and the Definitive Map Officer's conclusion and considered that there was sufficient user evidence to support the existence of restricted byway rights along routes A-B-C and B-D. The issue of the gateposts was outside the remit of the Committee and they hoped that a resolution could be found that would satisfy both the owners and path users. The Committee considered that, on the balance of probabilities, the requirements of Section 53(3)(c)(i) had been met and that the Definitive Map and Statement should be modified to add the two restricted byways in the parish of Middlewich.

The Committee unanimously

RESOLVED: That

- 1 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 as Restricted Byways the routes shown between points A-B-C and B-D on Plan No. WCA/021.
- 2 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 Order be confirmed in exercise of the power 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 **TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:
APPLICATION FOR THE EXTINGUISHMENT OF PUBLIC
FOOTPATH NO. 20, PARISH OF CONGLETON**

The Committee considered a report which detailed an application received from Miller Homes requesting that the Council make an Order under section 257 of the Town and Country Planning Act 1990 to extinguish Public Footpath No.20 in the parish of Congleton.

In accordance with section 257 of the Town and Country Planning Act 1990, as amended by Section 12 of the Growth and Infrastructure Act 2013, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they were satisfied that it was necessary to do so in order to enable development to be carried out in accordance with planning permission granted.

Planning permission had been granted for the development of a residential scheme composing up to 140 dwellings – planning references 16/0514C and 18/4888C.

Public Footpath No.20 Congleton would be directly affected by the proposed residential development – as shown on Plan No.TCPA/061. The approved planning layout provided alternative linkages to shared use footway/cycleway alongside Back Lane and the shared use footway/cycleway alongside the Link Road.

The Committee considered the application and concluded that it was necessary to extinguish Public Footpath No.20 Congleton to allow for the approved residential development to take place. It was considered that the legal tests for the making and confirming of an Extinguishment 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 extinguish Public Footpath No.20 Congleton, between points A and B as illustrated on Plan No.TCPA/061 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, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

**39 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:
PROPOSED DIVERSION OF PUBLIC FOOTPATH HATHERTON NO. 8
(PART)**

Having declared a personal interest Councillor S Pochin vacated the chair and left the meeting for this item.

In the absence of the Vice Chairman, Councillor I Macfarlane was appointed Chairman for this item.

The Committee considered a report which detailed an application received from Joseph Heler Farms requesting that the Council make an Order under section 257 of the Town and Country Planning Act 1990 to divert a section of Public Footpath No.8 in the parish of Hatherton to enable the building of a Cold Store extension.

In accordance with section 257 of the Town and Country Planning Act 1990, the Borough Council, as planning authority, could make an Order diverting a public footpath if it was satisfied it was necessary to do so with a planning permission which had been applied for or granted.

Planning permission had been granted, subject to conditions, on 11 September 2019 for a Cold Store extension at Laurels Farm, Crewe Road, Hatherton – planning reference 19/2086N.

The existing alignment of Public Footpath No.8 Hatherton would be directly affected by the development. The proposed line for the footpath was a short diversion curving round in a south easterly direction, following the boundary of the cold store extension for approximately 151 metres, as shown on Plan No.TCPA/059 between points A-B. The new path would be unenclosed with a grass surface, no path furniture and a width of two metres. The path would have 2.5 metre ‘grass strips’ on either side and there would be a 2.5 metre native shrub mix border along the full length of the eastern boundary and the majority of the western boundary, as indicated on Drawing No.5412.05 Rev D.

The Committee considered the application and noted the comments received from the Peak and Northern Footpaths Society and the Open Spaces Society along with the Public Rights of Way Officer’s responses.

The Committee concluded that it was necessary to divert part of Public Footpath No.8 Hatherton to allow for the extension to the Cold Store as detailed in the approved 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.

The Committee unanimously

RESOLVED: That

- 1 a Public Path Diversion Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.8 in the parish of Hatherton on the grounds that the Cheshire East 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 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 being received, Cheshire East Council be responsible for the conduct of any hearing or public inquiry.

40 INFORMATIVE REPORT ON CASES OF UNCONTESTED PUBLIC PATH ORDERS DETERMINED UNDER DELEGATED DECISION

The Committee received an information report on the uncontested Public Path Order cases that had been determined under delegated decision.

Two decisions had been taken under delegation, which related to Town and Country Planning Act 1990 Section 257 applications. One was for the diversion of part of Restricted Byway Wilmslow No.22 and the second one for the diversion of parts of Public Footpath Nos.7 and 8 in the parish of Weston.

AGREED:

That the uncontested Public Path Orders determined under delegated decision be noted.

The meeting commenced at 2.00 pm and concluded at 2.58 pm

Councillor S Pochin (Chairman)