

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Sub Committee**
held on Monday, 5th December, 2022 in the Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor L Crane (Chair)
Councillor S Edgar (Vice-Chair)

Councillors S Akers Smith, H Faddes, L Gilbert, R Moreton and D Stockton

OFFICERS IN ATTENDANCE

Genni Butler, Acting Public Rights of Way Manager
Richard Doran, Countryside Service Development Manager
Vicky Fox, Planning Lawyer
Clare Hibbert, Definitive Map Officer
Jennifer Ingram, Definitive Map Officer
Karen Shuker, Democratic Services Officer

The Chair welcomed the following two new Officers to the Public Rights of Way Team who would be observing the meeting.

John Lindsay, Definitive Map Officer
Richard Chamberlain, Public Path Orders Officer

11 APOLOGIES FOR ABSENCE

There were no apologies for absence.

12 DECLARATIONS OF INTEREST

In the interests of openness and transparency Councillor R Moreton declared that he knew Mrs Andrea Bossen, the applicant who would be speaking on agenda item 6 in relation to the application for the Deletion of Public Footpath No. 66, Congleton, but he had not discussed the item with her.

13 MINUTES OF PREVIOUS MEETING

RESOLVED

That the minutes of the meeting held on 1 August 2022 be confirmed as a correct record.

14 PUBLIC SPEAKING TIME/OPEN SESSION

Mr David Nixon, Moston Parish Councillor and the applicant in respect of agenda item 5 Wildlife & Countryside Act 1981 – Part III, Section 53. Application No. CO/8/39: Application to add a Public Bridleway between Dragons Lane and Plant Lane, Moston, addressed the Committee.

Mr Nixon complimented the Officers on their work carried out on the investigation into the application and understood the recommendation to add a Restricted Byway based on the balance of probabilities. Mr Nixon informed the Committee that there were concerns raised by the residents of Moston and provided details of the use of the track over the last 80 years which included, the grazing of cattle, walkers and horse riders, but also included anti-social behaviour and drug use. This had resulted in the Parish Council erecting stainless steel posts at either end of the track to prevent vehicular access, but to still allow space for walkers, cyclists and horse riders to access the track. Following the erection of the posts the anti-social behaviour had ceased and in the last 20 years it had never been questioned nor any request made for access by horse and carriage. Following the sale of part of an adjoining field in 2011 development concerns were raised about the nature of the track which was not shown on the Definitive Map. As a result, the application was submitted for a bridleway in 2014. Walkers and horse riders continued to use the track and in 2020 during the lockdown many families started using the track as an exercise route. Quad bikers also started to use the track which discouraged walkers from using it and it started to be used as an outdoor toilet. Environmental Health were unable to help as the track was not on the Definitive Map and horse riding and walking usage had never recovered since then. A bridleway, as applied for, would provide the perfect solution, but the recommendation brought to Committee raises concerns as the post which would allow walkers and hose riders, but protected the track from use by vehicles over the last 20 years, was consider not to be wide enough for a restricted byway. Therefore, if the recommendation were to be approved there would be a cost-effective solution where by one post be removed and the keys held by the Public Rights of Way team or the Parish Council.

Mrs Andrea Bossen, the applicant in respect of agenda item 6 Wildlife & Countryside Act 1981 – Part III, Section 53. Application No. CO/8/54: Application for the Deletion of Public Footpath No. 66, Congleton, addressed the Committee.

Mrs Bossen felt that not all the evidence had been included in the agenda pack, several statements within the report were incorrect and the level of attention to detail in considering the detail and facts was fatally flawed and superficial. Mrs Bossen felt that the report misinformed the reader regarding the submission date of the application, which should have read 2020, not 2022. There were superficial errors and a lack of accuracy contained within statements, assertions, conclusions, and omissions which had been made throughout the document. The report also incorrectly

identified the route crossed through two different land ownerships but according to Land Registry it passed through three ownerships. Mrs Bossen felt that inaccuracies of this type illustrated and verified that the facts had not been accurately or properly identified or reported to Committee members as the information had not appeared to have been checked. The external consultant had stated in the report that they had walked the whole route of Footpath No. 66, which was incorrect as they had only walked the part of the route to be deleted. Mrs Bossen felt that the report made assertions about the Definitive Map process, which had the relevant date as 1 November 1953 for Congleton, and that all the statutory advertising processes had been followed. Mrs Bossen did not believe this was correct and despite research carried out there was no evidence of notices relating to provisional or definitive stages from 1950 to 1953 as per the appendix contained within the report. Mrs Bossen felt that this was misleading and that if evidence of those notices could not be presented to the Committee it could be asserted that Cheshire County Council had acted ultra vires by failing to comply with the statutory advertising process. Mrs Bossen stated that 1971 was the definitive date for Congleton as per the Gazette which was some 20 years later than the date stated in the report. Mrs Bossen felt that the recommendations within the report were misdirection, the report should be dismissed as flawed, and revisited at a later date.

Mr Nixon and Mrs Bossen were thanked for attending and addressing the Committee.

15 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53.APPLICATION NO.CO/8/39: APPLICATION TO ADD A PUBLIC BRIDLEWAY BETWEEN DRAGONS LANE AND PLANT LANE, MOSTON

The Committee considered a report detailing the investigation into an application made by Mr David Nixon in 2014 to amend the Definitive Map and Statement to add a Public Bridleway between Dragons Lane and Plant Lane in the parish of Moston.

Section 53(2)(b) of the Wildlife and Countryside Act 1981 required that the Council should 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: -

One such event, (section 53(3)(c)(i) is where

“(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 on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land

over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.

The evidence could consist of documentary/historical evidence or user evidence or a mixture of both. All the evidence must have been evaluated and weighed, and a conclusion reached whether, on the 'balance of probabilities' the rights subsist. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, were not relevant to the decision.

Where the evidence in support of the application was user evidence, section 31(1) of the Highways Act 1980 applies. This states; -

"Where a way.....has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."

This requires that the public must have used the way without interruption and as of right; that is without force, secrecy, or permission. Section 31(2) states that "the 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question".

The documentary evidence that had been examined included County Maps, Tithe Records, Railway Plan Records (1871), Ordnance Survey Records, Finance Act 1910, Definitive Map Process – National Parks and Access to the Countryside Act 1949, Land Registry information, photographs, and other evidence.

Witness evidence included 11 user evidence forms. In total 7 witnesses were contacted to be interviewed. Interviews with 3 were held face to face and the remaining 4 were conducted as phone interviews. The users all clearly referred to the same route, all believed it to be a bridleway and could give evidence of use from 1936 to 2014 on foot, by horse and by bicycle.

5 of the witnesses mentioned the erection of bollards at either end to prevent the use of the route by vehicles. Upon interviewing it was established that the Parish Council erected the bollards (just over 5ft apart) sometime in the early 2000s to prevent quad bikes and vehicles going down the route and to discourage anti-social behaviour, which there had been an issue with. None of the witnesses mentioned any challenges to use on foot, horse, or bicycle by any landowner, and no one was given permission to use the route or had any connection with the land or landowners in question.

In the relevant 20-year period prior to the application 1994-2014, no challenge to use of the route had been identified and therefore the 20-year period of deemed dedication had been satisfied.

The Committee considered the application and noted that following consultation with the user groups/organisations; statutory undertakers and landowners which included the ward member for Moston, Moston Parish Council, Sandbach Footpath Group and United Utilities that no objections had been received. Mr David Nixon, Moston Parish Council attended the meeting and spoke in respect of access and vehicular use historically and more recently, along the proposed route.

The Committee agreed on the balance of probabilities, that restricted byway rights subsisted along the claimed route. The balance of user evidence supported the case that a public bridleway, at least, subsisted along the routes A-B (Plan No. WCA/025) and combined with the documentary evidence that the route historically was evidenced to have had public road status.

It was considered that the requirements of Section 53(3)(c)(i) had been met and the Committee agreed that a Definitive Map Modification Order be made to record a Restricted Byway between Dragons Lane and Plant Lane and thus amend the Definitive Map and Statement.

RESOLVED (by Majority) 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 to add a Restricted Byway as shown between point A and B on Plan No. WCA/025.
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 Act.
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

16 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53. APPLICATION NO. CO/8/54: APPLICATION FOR THE DELETION OF PUBLIC FOOTPATH NO.66, CONGLETON.

The Committee considered a report detailing the investigation into an application made by Andrea Bossen, the landowner of the property Puddle Bank, Congleton, at the far southern end of Public Footpath No.66. The application was to amend the Definitive Map and Statement to delete part of Public Footpath Congleton No. 66. The report considered the evidence submitted and researched in the application to delete part of Public Footpath No. 66, Congleton. The evidence consisted of a detailed letter from the applicant with reference and statements as to why they believed the route should be deleted. It included reference to historical documents such as the Enclosure Award, sale plans, Tithe Map, Finance Act Map, Peak and Northern Footpath Society reports and more.

The Committee noted that the date of the application made by Andrea Bossen had been incorrectly stated as '2022' in the report and in fact it should have read February 2020.

A site visit was made on 25th August 2022. The route was walked in full south to north and back again and an interview conducted and documented with the applicant. The landowner at the north end at Castle Farm had not responded to the consultation but a brief phone conversation was held as well as speaking to other residents on the ground at Castle Farm on 25th August 2022.

Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Council shall 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: -

One such event, (section 53(3)(c)(iii) requires modification of the map and statement to delete a public right of way where:

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

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.”

The evidence could consist of documentary historical evidence or user evidence or a mixture of both. All the evidence must have been evaluated and weighed before a conclusion was reached. Any other issues, such as safety, security, suitability, desirability, cost or the effects on property or the environment, are not relevant to the decision.

The legal test for deleting a public right of way was different than for claiming a public right of way or for applications to change the status or alignment of a route. In particular, there were specific case law tests and government guidance notes to be considered when examining deletion cases.

The following case law test and government guidance notes needed to be considered when considering deletion cases:

- DEFRA Government Circular 1/09 (1990)
- Trevelyan v SOS [2001] EWCA Civ 266
- Planning Inspectorate Rights of Way Section Advice No 9 (2006).

Documentary evidence submitted included 1798 Enclosure Award, Congleton Tithe Map and Apportionment 1845, Ordnance Survey Records, Bartholomew's Half Inch to a Mile, Finance Act 1910, National Parks and Access to the Countryside Act 1949, Land Registry Information.

Additional documentary evidence provided by the applicant included a photograph, sale particulars for Puddle Bank Farm and Peak and Northern Counties Footpaths Preservation Society reports.

Consultation letters and a plan of the application route had been sent out to the Ward Member, Town Council, user group organisations, statutory undertakers, and landowners on 26th July 2022. Further letters had been sent to the landowners at either end of the application route. There were 5 formal written responses from consultees received which included: -

- The Open Spaces Society representative - sent a brief response to say they would object if a deletion order was made as they did not believe there was any information to support a deletion order.
- The Congleton Ramblers Group representative responded with a table of the groups record of surveying the public footpath in 2013, 2014 and 2018 where it was recorded as an open and available route. They also stated the public footpath was a vital recreation route and had obviously been walked for a long period of time and noted a further inspection in 2019 by the group noting it remained open.
- The Sandbach Footpath Group representative responded to say they objected to the possibility of Footpath No. 66 being deleted as it was a direct and natural link that had been used for many years since the early 1950s and was not a useless route. They mentioned if there had been a problem with people walking near the farm, that the path could be diverted at that location, or a permissive route put in place.
- A local resident responded stating the route was a useful way connecting routes on and around the slopes leading up to Congleton Edge and Mow Cop and mentioned it could be possibly diverted around farm if it was an issue.
- BT Openreach responded to say they have no issues with the application from a utility stance.

Mrs Bossen attended the committee and spoke in support of the application.

In response to questions and comments raised by Members, the Definitive Map Officer reported that:

- In respect of whether another application could be submitted to delete the footpath, it could be considered if it had been shown that some new evidence had come to light not previously considered.
- In respect of timings of objections made during the legal procedures of the Definitive Map process these were in the 1950's/1960's and that no objections had been received during this period.
- The applicant had a right of appeal to the Secretary of State if the application was refused.
- The landowner could apply to have the route diverted if there was a suitable alternative put forward.

- The report included an appendix which listed the evidence provided by the consultant following the investigation, and it was the Definitive Map Officers role to interpret that evidence which had been presented by the consultant.

The report concluded that overall whilst there were always possibilities mistakes could have happened in the past when the Definitive Map was drawn up, in this case it did not appear that sufficient robust evidence had come to light to overturn the Definitive Map and Statement to delete the route.

The Committee considered the comments from the Applicant, the historical evidence and user evidence submitted and the Definitive Map Officer's conclusion and considered that the evidence was not sufficient to overturn the presumption that the Definitive Map was correct. In particular, it was clear that the correct legal procedures were followed during the time of recording Public Footpath No. 66 on the Definitive Map and Statement with no objections being received at the time. In addition, there was also evidence of the public having used the footpath over many years and it served as a key link in the overall network. Therefore, the committee considered that the requirements of Section 53(3)(c)(iii) had not been met in relation to deleting a public footpath and that the Definitive Map and Statement should not be modified.

RESOLVED (by majority)

1. That an Order is not made under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to delete Public Footpath Congleton No. 66 as shown on Plan No. WCA/026.
2. The application be refused on the grounds that there is not any robust evidence to overturn the legal presumption that the Definitive Map and Statement are correct.

17 INFORMATIVE REPORT - WILDLIFE & COUNTRYSIDE ACT 1981- PART III, SECTION 53 -CONTESTED ORDER PINS DECISION FOR APPLICATION NO. CO/8/34: CLAIMED FOOTPATH FROM BYLEY LANE TO CARVER AVENUE, PARISH OF CRANAGE.

The Committee received an information report which detailed the decision made by the Planning Inspectorate on the Order made by the Council to modify the Definitive Map and Statement by adding a footpath in Cranage.

The Committee heard that following the referral of this Order to the Planning Inspectorate following an objection; a site meeting was held with an appointed Inspector. Along with consideration of the submitted evidence and correspondence with the affected parties, the Inspector determined that the Order not be confirmed.

RESOLVED:

That the report be noted.

18 INFORMATIVE REPORT - BRADWALL PERMISSIVE PATH AGREEMENT

The Committee considered a report detailing a new permissive path agreement in the Parish of Bradwall between the Council, Bradwall Parish Council and respective landowners.

Bradwall Parish Council had secured the agreement of third party landowners for the creation of a permissive footpath in the parish as shown on Plan No. PPA/007 appended to the report. The aim of the 273m long path was to form a safe and pleasant off-road link alongside a section of Bradwall Road where there was no footway, limited verges and limited sightlines. There had been an increase in the number of walkers from Sandbach using this road to form circular routes using other public footpaths in the area.

The Parish Council would be bearing all costs of construction, maintenance, and liabilities throughout the duration of the agreement which would be in place for an initial term of 3 years. Cheshire East Council was a signatory to the agreement so that it was formally recorded with the Highway Authority.

RESOLVED

That the report be noted.

19 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.

The Committee noted that in paragraph 6.2.1 of the report it should read that a decision had been taken under delegation which related to:

“Highways Act 1980 Section 119 Proposed Diversion of Public Footpath No.14 in the Town of Alsager (part)”.

RESOLVED

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

The meeting commenced at 2.00 pm and concluded at 3.05 pm

Councillor L Crane (Chair)