

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 24 September 2012
Report of: Public Rights of Way Manager
Subject/Title: Local Government Act 2000 Section 2 and Highways Act 1980 Sections 25 and 26:
Deed of Dedication for a New Public Bridleway in the Parish of Aston by Budworth, Dedication of a New Public Bridleway in the Parish of Aston by Budworth and Creation of a New Public Bridleway in the Parish of Pickmere.

1.0 Report Summary

- 1.1 An application was received in September 2008 to upgrade Public Footpaths Pickmere No. 10 and Aston by Budworth No. 9 to Public Bridleways (by Definitive Map Modification Order). It will be a number of years before the application is allocated to an officer and in view of this it is proposed to proceed with a bridleway creation agreement and a creation order.
- 1.2 The landowner at Walthall Farm who owns the section of the route between points C and D on plan no. HA/067 (Public Footpath Aston by Budworth No. 9) has agreed to dedicate this section of the route as a bridleway under section 25 of the Highways Act.
- 1.3 The remainder of Public Footpath Aston by Budworth No. 9 (between B and C on plan no. HA/067) runs on council owned land and this can also be dedicated as a public bridleway in a Deed of Dedication under the Local Government Act 2000 (LGA 2000) section 2.
- 1.4 The land over which the southern section of the route, Public Footpath Pickmere No. 10 runs, (between points A and B on plan no. HA/067) is unregistered and it is proposed to make a Creation Order for this section of the route, using the provisions of section 26 of the Highways Act 1980.

2.0 Recommendations

- 2.1 A Creation Agreement be entered into with the landowner under Section 25 of the Highways Act 1980 and under such terms as may be agreed by the Public Rights of Way Manager to create a new public bridleway as illustrated on Plan No. HA/067 between points C to D, and that public notice be given of this agreement.
- 2.2 A public bridleway be created under Section 2 of the Local Government Act 2000 in a Deed of Dedication, in the Parish of Aston by Budworth, as illustrated between points B to C on Plan No. HA/067, and that public notice be given of this dedication

- 2.3 An Order be made under Section 26 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to create a Public Bridleway in the Parish of Pickmere as illustrated between points A and B on Plan No. HA/067 on the grounds that there is a need for a public bridleway over the land to which this order relates, and that it is expedient that the way should be created.
- 2.4 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.
- 2.5 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 and the payment of compensation.

3.0 Reasons for Recommendations

- 3.1 Under section 25 of the Highways Act 1980 a local authority may enter into an agreement with any person having the capacity to dedicate a public footpath or bridleway.
- 3.2 Section 2 of the Local Government Act 2000 provides local authorities with a power to take any steps which they consider are likely to promote or improve the economic, social or environmental well-being of their local community.
- 3.3 In accordance with Section 26 (1) of the Highways Act 1980 where it appears to a local authority that there is a need for a footpath or bridleway over land in their area and they are satisfied, having regard to:
- The extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area, and
 - The effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation.
- 3.4 If it is expedient that the path or way should be created, the authority may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order, create a footpath or bridleway over the land.
- 3.5 It is considered expedient to create/dedicate the bridleways as shown on plan no. HA/067 between points A to D. The requirement for a horse route has been demonstrated by the application to upgrade the path. Upgrading the footpaths to public bridleways will provide a valuable safe and convenient route for horse riders and create a link and a circular route from Frog Lane to Budworth Road. Currently horse riders have no recorded rights to use the

route. The proposal will give clarity to users and allow them to proceed with ease and certainty and avoid the need to risk a trespass against the landowners. Due to the lengthy and costly timescales involved when dealing with Definitive Map Modification Orders, a dedication agreement, deed of dedication and a creation order were considered the most efficient and cost effective way to proceed with this proposal.

- 3.6 In considering these proposals, regard has been given to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features and it is considered that there will be no adverse effects on the basis that the proposed scheme will be upgrading an existing footpath.

4.0 Wards Affected

- 4.1 High Legh.

5.0 Local Ward Members

- 5.1 Councillor S Wilkinson.

6.0 Policy Implications

- 6.1 The proposal supports the following policies and initiatives of the Cheshire East Rights of Way Improvement Plan 2011-2026:

- Policy H3: Public rights of way and green infrastructure: Protect and enhance our public rights of way and green infrastructure and endeavour to create new links where beneficial for health, safety or access to green spaces. Initiative: 'Leisure routes for cyclists, horse riders and walkers'

- Policy H2: Promotion of active travel and healthy activities: Work in partnership to promote walking, cycling and horse riding as active travel options and healthy activities. Initiative 'Public information on the public rights of way network'

- 6.2 The development of new walking, cycling and horseriding routes for local residents and visitors alike is aligned with the Council's objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Council's commitment to the Change4Life initiative.

7.0 Financial Implications

- 7.1 The only works required on the route are the replacement of the signs from footpath, to bridleway. These will cost approximately £120. Thereafter, any maintenance works required will be resourced by the public rights of way team. The proposed bridleways are not routes which will require regular or extensive maintenance works.

- 7.2 An agreement under section 25 of the Highways Act 1980 may be on such terms as may be agreed with the landowner and this may include financial payments. However, at present it is not anticipated that there will be any such payments in relation to this agreement on the basis that there is an existing footpath in situ and that there is unlikely to be any loss incurred by the landowner.
- 7.3 In progressing a public path creation order under section 26 of the 1980 Act there is a statutory procedure which must be followed which requires various notices to be published in a local paper, site notices to be erected and notices to be served on specified persons/bodies. The cost of making the order (if unopposed) is likely to be in the region of £700.
- 7.4 Anyone who suffers from depreciation in value of their land, or who suffers damage by being disturbed in their enjoyment of land as a result of the coming into operation of a public path creation order, under section 28 of the 1980 Act may claim compensation for their loss. Any such claims must be made within 6 months of the order coming into operation. (Again, on the basis that this is merely an update of an existing footpath no claims are anticipated.)

8.0 Legal Implications

- 8.1 Under section 25 of the Highways Act 1980 a local authority may enter into an agreement with any person having the capacity to dedicate a public footpath or bridleway.
- 8.2 The path will become a public bridleway and maintainable at the public expense on the date that the Dedication Agreement is sealed.
- 8.3 Under Section 25 of the Highways Act 1980, there is no statutory right for objection to the proposal.
- 8.4 Under Section 2 of the Local Government Act 2000, a local authority has the power to enter into a Deed of Dedication to create a public right of way.
- 8.5 The path will become a public bridleway and maintainable at the public expense on the date that the Deed of Dedication is sealed.
- 8.6 Under Section 2 of the Local Government Act 2000, there is no statutory right for objection to the proposal.
- 8.7 The use of the powers under Section 2 of the Local Government Act 2000 fall within the general powers of this Committee which are described in the Constitution: "The Public Rights of Way Committee shall discharge all the functions of the Council in relation to all matters relating to public rights of way."
- 8.8 Under section 26 of the Highways Act 1980, once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes

the power of the local highway authority to confirm the order itself, and may lead to a hearing/an inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

9.0 Risk Management

9.1 Not applicable.

10.0 Background and Options

- 10.1 An application was received in September 2008 to upgrade Public Footpaths Pickmere No. 10 and Aston by Budworth No. 9 to Public Bridleways. The claim is based on long usage of the footpaths by horse riders and the application is currently at No. 13 on the Definitive Map Modification Order applications waiting list. It will be a number of years before the application is allocated to an officer and in view of this it is proposed to proceed with a Creation Agreement, a Deed of Dedication and a Creation Order. This opportunity has arisen due to a recent change in ownership at Walthall Farm.
- 10.2 Public Footpath No. 10 Pickmere commences on Frog Lane at OS grid reference SJ 6897 7792 and runs in a generally north westerly direction for approximately 160 metres to its junction with Public Footpath Aston by Budworth No. 9 at OS grid reference SJ 6887 7805. The section of the route to be created as a bridleway is shown on Plan HA/067 running between points A-B.
- 10.3 Public Footpath No. 9 Aston by Budworth commences at its junction with Public Footpath No. 10 Pickmere at OS grid reference SJ 6887 7805 and runs in a generally north westerly and then generally northerly direction for approximately 808 metres to OS grid reference SJ 6854 7870. The section of the route to be dedicated as a bridleway is shown on Plan HA/067 running between points B-D.
- 10.4 Walthall Farm was previously a County Farm which was sold in November 2010. A condition was placed in the sale particulars to the farm that the buyers must enter into a Creation Agreement under the Highways Act 1980 section 25 to dedicate the section of Public Footpath Aston by Budworth No. 9 which runs on their land (between points C and D plan no. HA/067) as a bridleway.
- 10.5 The remainder of Public Footpath Aston by Budworth No. 9 (between points B and C on plan no. HA/067) runs on council owned land and this can be dedicated as a public bridleway in a Deed of Dedication under the Local Government Act 2000 (LGA 2000) section 2.
- 10.6 However, the land over which the southern section of the route, Public Footpath Pickmere No. 10 runs, (between points A-B on plan no. HA/067) is unregistered. Attempts have been made to discover the landowner for this section of the route; notices were erected on site for 28 days and both adjacent landowners have been contacted, but no landowner has been forthcoming. It

is therefore proposed to make a Creation Order for this section of the route using the provisions of section 26 of the Highways Act 1980. This section of the route is approximately 161 metres, the length of the proposed bridleway in its entirety is 969 metres. There are provisions within section 28 of the Highways Act 1980 for compensation to be paid when a creation order is made. However in the absence of a landowner the risk of compensation is negligible. Furthermore the minimal changes to the path as a consequence of a change from footpath to bridleway any compensation if it were payable would be insignificant.

- 10.7 Under section 26 of the Highways Act 1980 the Council must consider that there is a need for the bridleway. The requirement for a horse route has been demonstrated by the application to upgrade the path and the use demonstrated in that application. The proposal will give clarity to users and allow them to proceed with ease and certainty and add a useful route for cyclists and horseriders to the local network.
- 10.8 Although the majority of the route can be dedicated as a public bridleway by a creation agreement and under the LGA 2000, uncertainty over the ownership of the small section of the land at the southern end of the route means that a public path creation order is the best way to achieve completion of the route.
- 10.9 The local Councillor has been consulted about the proposal. Councillor Wilkinson is fully supportive of the proposal.
- 10.10 Pickmere Parish Council and Aston by Budworth Parish Council have been consulted. Aston by Budworth Parish Council has responded to state that they have no objection to the proposal.
- 10.11 Cheshire Farms Service have been consulted and have confirmed that the proposal is consistent with the estate management objectives and actions implemented in the disposal of Walthall Farm and that the Council, as owner of the land between sections B-C on plan no. HA/067, has no objection to the proposal.
- 10.12 The statutory undertakers have also been consulted and have no objections to the proposal. If a dedication agreement, deed of dedication and a creation order are made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.13 The user groups have been consulted. No comments have been received.
- 10.14 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Hannah Duncan
Designation: Definitive Map Officer
Tel No: 01270 686062
Email: hannah.duncan@cheshireeast.gov.uk