

## **CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Public Rights of Way Committee**  
held on Monday, 24th September, 2012 at Committee Suite 1,2 & 3,  
Westfields, Middlewich Road, Sandbach CW11 1HZ

### **PRESENT**

Councillor J Wray (Chairman)  
Councillor D Druce (Vice-Chairman)

Councillors Rhoda Bailey, R Cartlidge, M Parsons, S Davies and L Jeuda

### **In attendance**

Councillor A Thwaite, Cabinet Support Member for Environment

### **Officers**

Mike Taylor, Rights of Way Manager  
Genni Butler, Countryside Access Development Officer  
Jennifer Tench, Definitive Map Officer  
Clare Hibbert, Definitive Map Officer  
Marianne Nixon, Public Path Orders Officer  
Elaine Woods, Highways Solicitor  
Rachel Graves, Democratic Services Officer

### **11 DECLARATIONS OF INTEREST**

There were no declarations of interest.

### **12 MINUTES OF PREVIOUS MEETING**

#### **RESOLVED:**

That the minutes of the meeting held on 11 June 2012 be approved as a correct record and signed by the Chairman.

### **13 PUBLIC SPEAKING TIME/OPEN SESSION**

One member of the public had registered to speak in relation to Item 6: Application to Upgrade Public Footpath No.9 Higher Hurdsfield to Bridleway. The Chairman advised that he would invite them to speak when the application was being considered by the Committee.

### **14 CHARGING POLICY FOR PUBLIC PATH ORDERS, TEMPORARY AND EMERGENCY CLOSURES AND RIGHTS OF WAY SEARCHES**

The Committee considered a report that detailed the fees and charges levied by the Legal Order Team for Public Path Orders, Temporary Closures and other work from 1 October 2012 onwards.

Members were informed that charges were made in accordance with the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 as amended by the Local Authority (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 and DEFRA Rights of Way Circular 1/2009. Charges were also made for written responses for public rights of way searches.

The report detailed the current and proposed charges in respect of the following services:

- Public Path Diversion Orders
- Emergency and Temporary Closures
- Gating Orders
- Property Searches

The fees from applicants paid the salary of the officer dealing with the applications and costs were monitored to ensure that they reflected the true cost of the administrative process. The hourly rate had been calculated at the penultimate spinal column point for grade 8 plus an additional 20% to cover overheads. There was no profit element to the charges and none may be levied.

**RESOLVED:** That

- (1) subject to any departmental review of charging policy or the implementation of statutory regulations relating to local authority charges, the following charges apply from 1 October 2012:
  - a. Public Path Diversion Orders resulting in a confirmed order will be £1575.00 plus the actual advertising costs
  - b. Emergency and Temporary Closure:
    - a. for an emergency 5 day or 21 day closure (not requiring press advertisement) the charge will be £165.03. To extend the closure for a further 21 days will cost £165.03.
    - b. a 6 month temporary closure will be £630.00 plus two advertisements
    - c. for referring an extension to a temporary closure to the Secretary of State the charge will be £311.60 plus the cost of one advertisement
  - c. Gating Orders: the charge will be the same of public path diversion orders - £575.00
  - d. Property Searches: the charge for searches will be £68.00.
- (2) any increase in charges relating solely to inflation be implemented by Officers without the need for Committee approval.

**15 WILDLIFE AND COUNTRYSIDE ACT 1981 PART III SECTION 53:  
APPLICATION TO UPGRADE PUBLIC FOOTPATH NO.9 HIGHER  
HURDSFIELD TO BRIDLEWAY. HIGHWAYS ACT 1980 - SECTION  
118: STOPPING UP OF PART OF PUBLIC FOOTPATH NO.9 HIGHER  
HURDSFIELD**

The Committee received a report detailing an application made by Mr R Spoors of Roewood Lane, Macclesfield to modify the Definitive Map and Statement by upgrading Public Footpath No.9 Higher Hurdsfield to a Public Bridleway.

Mr Spoors addressed the Committee as the applicant and also on behalf of the British Horse Society and two local residents – Judith Mossdrop and Mike Blamey. He spoke in opposition to the proposed Order and asked the Committee to approve an Order to upgrade Public Footpath No.9 to Public Bridleway along the definitive route and not the alternative route suggested.

The application to upgrade Public Footpath No.9 Higher Hurdsfield to a Public Bridleway was submitted in July 2003 – between points A-B-C-H-I-D-J-E on Plan No.WCA/004. The application was supported by 11 user evidence forms and a number of historical documents.

Section 53(2)(b) of the Wildlife and Countryside Act 1981, requires that the Council 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.

There are two events that are relevant to this application section 53(3)(c)(i) and section 53(3)(c)(ii), the first requires modification of the map by addition of a right of way and the second required modification of the map by the upgrading of a right of way: -

- “(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...;
  - (ii) that a highway shown in the map and statement as a highway of particular description ought to be there shown as a highway of a different description.”

Where evidence in support of an application was user evidence, section 31(1) of the Highway Act 1980 applied:-

“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 required 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 “20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question.”

All evidence must be evaluated and weighed and a conclusion reached whether, on the ‘balance of probabilities’ the alleged rights subsist. With regards to the addition of a right of way (section 53(3)(c)(i)) the lesser test of ‘reasonably alleged to subsist’ may be used. Any other issues such as safety, security, suitability, desirability or the effects on property of the environment are not relevant to the decision.

There were a number of dates which could be used as the date the route was ‘brought into question’. Mr Broadbent of Close House Farm stated that in the late 1960s a pole was put across the definitive line of the public footpath. The Council had a letter from a Mr Burch from 1987 stating that the route was “barred in the vicinity of the farm”, which also states that the diverted route was being used as a bridleway. In notes of a meeting between Cheshire County Council and the Ramblers’ Association, the Council confirmed the right of way was still immediately adjacent to Close House Farm and it was not obstructed to walkers. It also stated that “the problem had been caused by horse riding on the path and also on the permissive diversion”. It is thought that by stating the route was not obstructed to walkers that this could imply it was obstructed to horse riders. A letter from Mr Spoor in 1988 stated “the right of way is frequently blocked by a wooden bar at the junction with the alternative tract.” It would appear that from the late 1980s the definitive line of Footpath No.9 became obstructed to horse riders and they had no alternative but to use the footpath diversion, although most were already using the alternative route. Therefore the date of 1987 should be used as the date the original definitive route (the application route) was ‘brought into question’ – the relevant twenty year period to be considered for the user evidence was 1967 to 1987.

An alternative route, between points C-G-D on Plan No.WCA/004, had initially been installed in 1953, by the previous owner (now deceased) of Close House Farm. The purpose of this alternative path was to avoid having people walking the definitive line which ran in front of Close House Farm as the owner had a herd of cows and was concerned about foot and mouth disease. Although not included as part of the application, the user evidence submitted showed that this route had been used by horse riders and therefore must be considered. This section of the path was not currently recorded on the Definitive Map, therefore section 53(3)(c)(i) applied. In 1995 Mrs Broadbent had submitted a Statutory Declaration under section 31(6) of the Highways Act 1980 to state that no additional ways (other than Footpath No.9) had been dedicated as highway. This is sufficient to negate the presumed dedication of this route from this date. Therefore when considering the user evidence for this section the relevant twenty year period to be considered was 1975 – 1995.

The route of Public Footpath No.9 at the northern end between points A and B on Plan No.WCA/004 was physically obstructed during the construction of the Hillside Court Flats on Roewood Lane. The flats were built by Macclesfield Rural District Council in 1973 and unfortunately legal orders stopping up the affected part of the footpath were never published. Since the development users of the right of way have used the adopted highway to access the start of the footpath at point B.

There was also an anomaly at the southern end of the route. The Definitive Map showed the footpath ending at the parish boundary with Macclesfield – point E on Plan No.WCA/004. The section of Roewood Lane, between points E and F was an unadopted highway therefore the route should continue to point F where it met Ecton Avenue.

The report concluded the historical evidence supported the existence of the route but did not help determine the status of the route. Although the Finance Act Working Plan did support the claim that public rights higher than footpath existed along part of the route.

The user evidence for the claimed route past Close House Farm (points C-H-I-D) was not considered sufficient to meet the legal test as only one person had claimed use on horseback during the relevant period 1967-1987 and they may well have used it with permission during this time. The applicant had stated that horse riders would have used the definitive line if not for the obstruction and overgrown state of the path. However from the Council's correspondence files and photographs of the pole it would seem that the definitive line was obstructed to horse riders from the late 1980s and no evidence indicating an earlier obstruction has come to light. In order to show bridleway rights it must be shown that the route was used as such during the relevant twenty year period. The users who claimed to use the definitive line prior to 1967 then chose to use the alternative route and this was before any obstruction.

Under section 31(1) of the Highways Act 1980 public bridleway rights can come into existence by prescription unless there is evidence to the contrary. Mrs Broadbent had claimed she challenged any horse riders seen on the path by her house. None of the witnesses interviewed state they were challenged by her but they were almost all for the majority of the time using the alternative path (C-G-D). None of the witnesses claim to have been challenged on the alternative path and Mrs Broadbent has admitted that horse riders used this path. The user evidence for the alternative path and the remainder of the claimed route was considered sufficient to show bridleway rights. It was believed that the landowner had not negated the presumed dedication of this route.

It was concluded that there was insufficient historical and user evidence to support the existence of bridleway rights along the route C-H-I-D and on the balance of probabilities the requirements of section 53(3)(c)(ii) had not been met and it was recommended that this section remain as Public Footpath on the Definitive Map and Statement.

For sections B-C and D-J-E of the route it was considered that there was sufficient user evidence to support the existence of bridleway rights and on the balance of probabilities the requirements of section 53(3)(c)(ii) had been met. It was therefore recommended that the Definitive Map and Statement be modified to upgrade these sections from a Public Footpath to a Public Bridleway.

For sections C-G-D and E-F of the route it was considered that there was sufficient evidence to support the existence of bridleway rights and that on the balance of probabilities the requirements of section 53(3)(c)(i) had been met. It was recommended that the Definitive Map and Statement be modified to add these sections as a Public Bridleway.

The report concluded that section A-B was not needed for public use as an alternative access was available and recommended that this section be extinguished under section 118 of the Highways Act 1980.

The Committee considered the comments made by Mr Spoors, the historical and user evidence outlined in the report and the Definitive Map Officer's conclusions and by majority:

**RESOLVED:** That

- (1) the application to modify the Definitive Map and Statement to record public bridleway rights between points C-H-I-D, as shown on Plan No.WCA/004, be refused on the grounds that there is insufficient evidence to show the existence of Public Bridleway rights.
- (2) An Order be made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by upgrading to Public Bridleway the route shown between points B-C and D-J-E, as shown on Plan No.WCA/004.
- (3) 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 a Public Bridleway the route shown between points C-G-D and E-F, as shown on Plan No.WCA/004.
- (4) An Order be made under Section 118 of the Highways Act 1980 to stop up part of Public Footpath No.9, as shown between points A-B on Plan No.WCA/004, on the grounds that it is not needed for public use.
- (5) Public Notice of the making of the Orders be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Orders be confirmed in exercise of the powers conferred on the Council by the said Acts.

- (6) In the event of objections to the Orders 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: INVESTIGATION INTO THE ALIGNMENT OF PUBLIC FOOTPATH N O. 12, PARISH OF HOUGH.**

The Committee received a report which detailed an investigation into the alignment of Public Footpath No.12 in the parish of Hough.

Section 53 of the Wildlife and Countryside Act 1981 placed a duty on the Borough Council to keep the Definitive Map and Statement under continuous review. Section 53(3)(c) allowed for an authority to act on the discovery of evidence that suggested that the Definitive Map needed to be amended.

An investigation had been carried out into the alignment of Public Footpath No.12 in the parish of Hough as a result of a query by the landowner of a field where part of the footpath ran. As part of an enforcement procedure the landowner had questioned whether the footpath actually ran on their land as there were discrepancies between the Definitive Map and the early stages of the Definitive Map process.

The contention over the existence and exact route of the footpath had been simmering for many years, with path users experiencing problems since the mid 1980s. In 1986 planning permission, which had been refused by Crewe and Nantwich Borough Council, was granted on appeal for Quarantine Kennels at Hollies Farm. The existence of the footpath must not have been disclosed by this process as the kennels were constructed over the footpath, obstructing the route. It was at this point that it came to light that the original path recorded on the Definitive Map was anomalous as there was a gap between the end of the adopted highway and the commencement of the footpath adjacent to Hollies Farm, which made enforcement to remove the obstruction complicated.

In 1994 research was undertaken into this anomaly and a modification order was made and confirmed which recorded an additional length of path - number 12A, linking footpath 12 to Birch Lane adjacent to Hollies Farm. In 1995 the landowner had inquired about diverting Footpath No.12. However negative comments were received from consultation undertaken and works order was issued to re-open the path by the installation of three stiles, signage and waymarking.

Further problems were reported in 1996 and 1997 about the route not being clearly marked as the existing waymarking was on the wrong side of the hedge. Further waymarking work was issued and on inspection the path was usable. In 1999 there was another complaint about a locked gate and a fence obstructing the footpath. When inspected by the maintenance officer the path was found to be available. At a meeting with

the Public Path Officer the discrepancies between the route shown on the Definitive Map and available on the ground were discussed. They referred to part of the path that ran along the access drive to Yew Tree Farm and then crosses the boundary into the adjacent field. The Definitive Map showed the path continuing on the Yew Tree Farm side of the boundary and not entering that particular field at all. This matter was looked into by the Public Path Officer with reference to internal documents that formed the process of compiling the Definitive map in the 1950s and they wrote to say that the preliminary documents recorded the path in their field and that the Definitive Map was in error.

In successive years problems have been reported mostly relating to route finding and the need for waymarking. The Maintenance and Enforcement Officer had been to visit the site on many occasions and had come into conflict with the landowners who believed that the path did not run in their field but on the southern, Yew Tree Farm side of the boundary. The latest attempt to enforce the line of the footpath earlier this year had led to the investigation to determine the true line of the path.

Section 53(2)(b) of the Wildlife and Countryside Act 1981 required the Council 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. One such event is 53(3)(iii) which was:

“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows 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 relevant evidence in this case was the records produced by the Parish Council and the County Council in the process leading up to the production of the Definitive Map. The first stage of the process was for each parish to survey and record the routes which they believed to be public in their areas. Local user groups also undertook the same process. The maps and descriptions produced were known internally as the ‘walking surveys’. These surveys were then sent to the County Surveyor’s department where they were collated and some re-checked on the ground.

The walking survey records the footpath leaving the track leading to Yew Tree Farm and entering the adjacent field. Barbed wire obstructions are recorded being at the entry and exit to this field. The Draft Map shows the path in this same position. The provisional Map, which was the next stage in the process, shows the path slightly slewed to the south and partly to the southern side of the boundary and partly running along it. The error, or rather inaccuracy, in drafting at this stage probably led to the continuation of the error on the Definitive Map, which compounds the movement of the path in a southerly direction into Yew Tree Farm land.



A local resident, who lived at the Hollies in the 1950s, was interviewed and recalled that the path ran past the Hollies along a cart track but that it did not continue into the farmyard at Yew Tree Farm but turned 90 degrees into the adjacent field and continued along the hedge to join the access to Yew Tree Farm after the next boundary.

The report concluded that the evidence showed that the original intention of the surveys recorded by the Parish Council had evolved and become slightly distorted purely by the map drafting process. There was no administrative history to the alignment changes. This was supported by evidence from a local resident with personal knowledge of the Hollies and the area during the period when the Definitive Map was initially being drawn up.

It was considered that on the balance of probabilities there was sufficient evidence to prove the existence of a public footpath along the route A-B on Plan No.WCA/006 and to prove that no public right of way existed on the line C-D. It was therefore recommended that in line with the requirements of section 53(3)(c)(iii) the Definitive Map and Statement be modified accordingly.

The Committee considered the evidence presented in the report and the concluded that on the balance of probabilities the requirements of section 53(3)(c)(iii) had been met and that the Definitive Map and Statement should be modified to show the route A-B as Public Footpath No.12 Hough and delete the line C-D.

**RESOLVED:** That

- (1) An Order be made under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by showing Public Footpath No.12 on the route indicated between points A-B on drawing number WCA/006 and not on the alignment C-D.
- (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.

**17 LOCAL GOVERNMENT ACT 2000 - SECTION 2: DEED OF DEDICATION FOR NEW PUBLIC FOOTPATHS IN THE PARISH OF GOOSTREY**

The Committee received a report which detailed a proposal to create two public footpaths to establish a public right of way connection between Goostrey Village and the existing rights of way network.

Under Section 2 of the Local Government Act 2000, a local authority had the power to do anything to improve the economic, social or environmental wellbeing for their area. In accordance with this power, the Council may enter into a Deed of Dedication to create a public right of way.

The Goostrey Footpaths Group had for a number of years sought to establish footpath connections from the existing permissive path in Galey Wood, to the north of the village, to Restricted Byway No.11 known as Appleton's Lane. This aspiration was registered during public consultation for the Cheshire East Rights of Way Improvement Plan – reference W64.

Agreement had been reached with the landowner – Cheshire Farms Service, to create a new public footpath and the designation of a currently permissive footpath as a public footpath. The proposed route was detailed on Plan No.LGA/001.

**RESOLVED:**

That public footpaths be created under Section 2 of the Local Government Act 2000 in the Parish of Goostrey, as illustrated on Plan No.LGA/001, and that public notice be given of these public footpaths.

**18 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**

The Committee considered a report which detailed a proposal to upgrade Public Footpath No.10 Pickmere and Public Footpath No.9 Aston by Budworth to Public Bridleway by a Creation Agreement, Deed of Dedication and a Creation Order.

Under Section 2 of the Local Government Act 2000, a local authority had the power to do anything to improve the economic, social or environmental wellbeing for their area. In accordance with this power, the Council may enter into a Deed of Dedication to create a public right of way.

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.

Under section 26(1) of the Highways Act 1980 where it appeared to a local authority that there was 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

If it was 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.

An application had been received in September 2008 to upgrade Public Footpaths No.10 Pickmere and No.9 Aston by Budworth to Public Bridleway. The claim was based on long usage of the footpaths by horse riders. The application was currently number 13 on the Definitive Map Modification Order applications waiting list and it would be a number of years before the application was allocated to an officer to investigate. In view of this it was proposed to proceed with a Creation Agreement, a Deed of Dedication and a Creation Order.

The opportunity to create a Public Bridleway had arisen due to a recent change in the ownership of Walthall Farm. Public Footpath No.9 Aston by Budworth ran over the land of this farm. Walthall Farm had previously been a County Farm, which was sold in November 2010. A condition was placed in the sale particulars that the buyer must enter into a Creation Agreement under section 25 of the Highways Act 1980 to dedicate the section of Public Footpath No.9 Aston by Budworth which ran on their land as a bridleway.

The remainder of Public Footpath No.9 Aston by Budworth ran on Council owned land and this could be dedicated as a public bridleway in a Deed of Dedication under section 2 of the Local Government Act 2000.

However, the land over which the southern section of the proposed route – Public Footpath No.10 Pickmere ran was unregistered. Attempts had been made to discover the landowner for this section of the route; notices were erected on site for 28 days and both adjacent landowners were contacted but no landowner had been forthcoming. It was therefore proposed to make a Creation Order for this section of the route using the provisions of section 26 of the Highways Act 1980.

The Committee noted that no objections had been received from the informal consultation. The need for a bridleway had been demonstrated by the application to upgrade the path. Upgrading the footpaths to public bridleway would provide a safe and convenient route for horse riders and create a link and a circular route. The proposal would give clarity to users

and allow them to proceed with ease and certainty and avoid the need to trespass against the landowners.

**RESOLVED:** That

- (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) 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.
- (3) An Order be made under Section 26 of the Highways Act 1980, as amended by 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.
- (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.
- (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.

**19 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PART OF PUBLIC FOOTPATH NO. 28 IN THE PARISH OF SANDBACH**

The Committee received a report which detailed an application from Mr Ian Whitter of Brook Farm, Wheelock, Sandbach, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.28 in the parish of Sandbach.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order if it appeared to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path.

The applicant owned the land up to the field boundary at point F on Plan No.HA/068 amended. Mr D Witter owned the land over which the section of the footpath and the proposed diversion ran between point F and G on

Plan No.HA/068 amended and had provided written consent and support for the proposal.

Part of the definitive line of Public Footpath No.28 Sandbach had been unavailable for a number of years and an unofficial diversion had been in place. Whilst the unofficial route was not recorded it was thought that it was put in place by Cheshire County Council in order to provide a useable route on the ground for the public after unsuccessful negotiations with the previous landowner at that time.

It was proposed to divert three sections of the footpath. The first section to be diverted ran through the yard at Brook Farm. Diverting the footpath out of the yard would be of benefit to the landowner in terms of farm management, as well as removing any risk of accidents between members of the public and farm machinery. It would also allow the applicant to improve the privacy and security of their property.

The second and third sections to be diverted ran across fields which were currently used for crops and had been unavailable on the ground for a number of years. The proposed diversion would run across land to the north of the fields following the field boundary and be on permanent grassland. Moving the legal line out of the fields would allow the landowner greater freedom in utilising the land and would also provide a more easily accessible route for users as only two gates would be required on this section, whereas seven were required on the existing legal line.

The Ramblers Association had raised concerns about this section of proposed diversion as it was initially proposed to move the paths slightly further north and onto lower ground. They were concerned that the route would be unsuitable for walkers during the winter months. As a result the proposal was amended to move the proposed path onto higher ground - points D-E and points F-G on Plan No.HA/068 amended.

The Committee noted that no objections had been received from the second informal consultations and considered that the proposed route would not be substantially less convenient than the existing route. The diversion would provide a more accessible route for walkers as less path furniture would be required. In addition enhanced views of the surrounding countryside would also provide a benefit to users. Moving the footpath out of the farmyard would provide improved privacy and security for the landowner at Brook Farm. Moving the footpaths out of the fields would allow both landowners greater freedom in utilising the land. It was therefore considered that the proposed routes would be a satisfactory alternative to the current ones and that the legal tests for the making and confirming of a diversion order were satisfied.

**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.28 in the parish of Sandbach by creating a new section of public footpath and extinguishing the current path (as illustrated on Plan No.HA/068 amended) on the grounds that it is expedient in the interests of the public and of the landowner.

- (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.

## **20 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 13 (PART), PARISH OF WARMINGHAM**

The Committee received a report which detailed an application from Mr D Cough of Axis (agent) on behalf of Mr H Torrence of TATA Chemicals Europe Ltd, PO Box 4, Mond House, Winnington Lane, Northwich, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.13 in the parish of Warmingham.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order if it appeared to the Council to be expedient to do so in the interests of the public or of 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 TATA Chemicals Europe Ltd. The section of Public Footpath No.13 Warmingham to be diverted ran through a farmyard where it was obstructed by a building and then it ran across a pasture field which was significantly uneven underfoot due to heavy usage by cattle.

Diverting the path would resolve the obstruction issue and take users away from the farmyard along a route which would be better underfoot and more convenient. The new route would be 2m wide, not be enclosed and would have two kissing gates and a sleeper bridge would be installed. The new route would be more enjoyable for users as it would reduce the need to pass through a yard busy with large livestock and plant/vehicular machinery. Be more convenient since it would not be obstructed and would have a more even surface.

The Committee noted that no objections had been received from the informal consultations and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would enable better land and stock management; safer control of operational machinery and vehicles in a busy farmyard; improve the

privacy and security of property in the farmyard and resolve the issue of the current obstruction by a building in the farmyard. 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.

**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 Warmingham by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/074, on the grounds that it is expedient to do so 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.

**21 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 19 (PART), PARISH OF BUNBURY**

The Committee received a report which detailed an application from Mr & Mrs Stubbs of Greenacres, Wyche Lane, Bunbury, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.19 in the parish of Bunbury.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order 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 Mr & Mrs Stubbs. The section of Public Footpath No19 Bunbury to be diverted ran through the property of the applicants giving rise to concerns relating to privacy and security. Furthermore the current path alignment through the property was obstructed by a building. Diverting the footpath out of the property would offer improved privacy and security whilst resolving the alignment issue.

The proposed new route (D-C on Plan No.HA/073) would follow a current permissive path that ran between the two properties 'Greenacres' and 'Lynton'. The new route had a width of 1.7 metres and was enclosed. The

new route would be more enjoyable for users by reducing the need to pass through a private garden and more convenient since it would not be obstructed.

The Committee noted that no objections had been received from the informal consultations and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would offer improved privacy and security to the applicants' property and resolve the outstanding obstruction issue. It was therefore 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.

**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.19 Bunbury by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/073, on the grounds that 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.

**22 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 9 (PART), PARISH OF RIDLEY**

The Committee received a report which detailed an application from Mr Robert Latham, Ridley Bank Farm, Wrexham Road, Tarporley, requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.9 in the parish of Ridley.

In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as the Planning Authority, can make an Order stopping up or diverting a footpath or part of a 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 that had been granted.

Planning permission had been granted to the applicant in May 21012 (Planning Permission Ref: 12/1235N) for the erection of a cattle shed at



Ridley Bank Farm and the existing alignment of Public Footpath No.9 Ridley would be affected by the construction of the cattle shed.

The proposed route was approximately 407 metres long and would take users away from the cattle shed whilst allowing them to follow a distinct boundary hedge before crossing a pasture field to meet the current footpath in the south west field corner – as shown on Plan No.TCPA/011.

The Committee noted that no objections has been received from the informal consultations and concluded that it was necessary to divert part of Public Footpath No.9 Ridley to allow the development to be carried out. 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.

**RESOLVED:** That

- (1) An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.9 Ridley, as illustrated on Plan No.TCPA/011, 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 and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

**23 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 5 (PART), PARISH OF ODD RODE**

The Committee received a report which detailed an application from Mr Geoffrey Harvey of 14 Salop Place, Kidsgrove, Stoke on Trent, requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.5 in the parish of Odd Rode.

In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as the Planning Authority, can make an Order stopping up or diverting a footpath or part of a 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 that had been granted.

Planning permission had been granted to the applicant in February 21012 (Planning Permission Ref: 11/4517C) for the development of a detached

dwelling at Higher Bank Farm, 54 Scholar Bank, Scholar Green. The existing alignment of Public Footpath No.5 Odd Rode would be affected by the construction of the new dwelling.

Part of the current line of the footpath at Higher Bank Farm was unavailable at several points due to demolition remains and an obstructing building. The planned development would result in the path being further obstructed. Therefore the footpath diversion was required to resolve these issues by providing a public access between the building for which planning consent had been granted and a further building that was intended in the future. The length of the footpath to be diverted was approximately 68 metres.

The Committee noted that no objections has been received from the informal consultations and concluded that it was necessary to divert part of Public Footpath No.5 Odd Rode to allow the development to be carried out. 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.

**RESOLVED:** That

- (1) An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.5 Odd Rode, as illustrated on Plan No.TCPA/010, 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 and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

The meeting commenced at 2.00 pm and concluded at 4.10 pm

Councillor J Wray (Chairman)