

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Tuesday, 18th June, 2013 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor J Wray (Chairman)
Councillor Rhoda Bailey (Vice-Chairman)

Councillors S Davies, L Jeuda and A Moran (sub for Cllr M Parsons)

In attendance

Councillor L Brown, Cabinet Support Member for Environment

Officers

Mike Taylor, Rights of Way Manager
Marianne Nixon, Public Path Orders Officer
Elaine Field, Highways Solicitor
Rachel Graves, Democratic Services Officer

1 APOLOGIES FOR ABSENCE

Apologies were received from Councillors D Druce, S Jones and M Parsons.

2 DECLARATIONS OF INTEREST

In relation to Item 5, Councillor A Moran declared a non-pecuniary interest in relation to the Rights of Way Improvement Plan as he was the Chairman and Trustee of the Beam Heath Trust and as landowners had received financial compensation for land over which the Connect2 Crewe to Nantwich Greenway ran.

In relation to Item 7, Councillor J Wray declared a non-pecuniary interest in this application as he was the Ward Councillor for Swettenham but had not taken part in any discussions on the application.

3 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 11 March 2013 be confirmed as a correct record.

4 PUBLIC SPEAKING TIME/OPEN SESSION

One member of the public had registered to speak in relation to Item 7: Application for the Diversion of Public Footpath No.3 (part) in the parish of

Swettenham. The Chairman advised that he would invite them to speak when the application was being considered by the Committee.

5 PUBLIC RIGHTS OF WAY ANNUAL REPORT 2012-13 AND WORK PROGRAMME 2013-14

The Committee received a report which detailed the achievements of the Public Rights of Way service during 2012-13 and set out the proposed work programme for 2013-14.

The Rights of Way Manager reported on the work carried out during 2012-2013 by the Network Management and Enforcement Team and the Legal Orders Team.

It was reported that:

- 52 temporary and emergency closures of rights of way had been made
- 509 problems on the network had been logged and been resolved
- 20 public path orders had been confirmed, 20 cases were in progress, with a backlog of 28 applications
- 4 Orders had been contested and referred to the Planning Inspectorate
- 2 Definitive Map Modification Orders had been confirmed, 10 were in progress, with a backlog of 19
- No Definitive Map Anomaly investigations had been carried out and there was a backlog of over 260+

The Rights of Way Team had experienced a spending freeze in the revenue budget for the third year in succession. However access to capital funds from the Local Transport Plan had been made available to allow the Team to clear the backlog of maintenance issues.

RESOLVED:

That the Annual Report for 2012-13 be noted and the proposed work programme for the Public Rights of Way Team 2013-14 be approved.

6 HIGHWAYS ACT 1980 S.119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO.1 (PART), PARISH OF STAPELEY

The Committee considered a report which detailed an application from Mr T Moses of David Wilson Homes North West, 2nd Floor, 303 Bridgewater Place, Birchwood, Warrington WA3 6XF, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.1 in the parish of Stapeley.

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 David Wilson Homes North West. The section of the path to be diverted ran across a residential development site although it was not directly affected by any of the planned buildings works. Diverting the path through a more landscaped area would create a more pleasant walking experience for future residents and the general public, taking them through trees and grassed areas. The route would end at the start of a new road which, when legally adopted by the Council, would allow users to reach London Road, close to the point at which the current route joined it.

The Committee noted that no objections had been received during the informal consultations and considered that the route would not be substantially less convenient than the existing route. Diverting the footpath would be of benefit to the public as it provided a more pleasant walking experience. 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 were satisfied.

The Committee unanimously

RESOLVED: That

- 1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No.1 Stapeley by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/082, 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.
- 7 HIGHWAYS ACT 1980 S.119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 3 (PART), PARISH OF SWETTENHAM**

The Committee considered a report which detailed an application from Mr M Dentith (agent) Latium Management Services on behalf of Mr B Kennedy (applicant) of Swettenham Hall, Swettenham, CW12 2J2, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.3 in the parish of Swettenham.

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.

Mr C Meewezan spoke in objection to the application as he felt that the current path was a safer route than the proposed diversion. The current route exited onto a wide area which allowed walkers to stand on the highway without being exposed to traffic whilst the proposed route exited onto a bend on a narrower road where there was no footway. He suggested that better signage would solve the problem of walkers using the metalled drive to the Hall.

The report detailed that the land over which the current path and the proposed diversion ran belonged to the applicant. The section of Public Footpath No.3 Swettenham to be diverted entered the grounds of the applicant's property – Swettenham Hall, immediately adjacent to the entrance and metalled access drive to the Hall, causing some users to walk along the metalled access drive to the Hall, all of which was the private property of the applicant, instead of following the footpath.

Moving the crossing point further east of the entrance would clearly separate the footpath from the access drive. This would ensure that path users were clear that the route of the footpath was not along the access drive whilst reinstating the privacy and security required by the applicant.

Objections to the diversion had been received from Congleton Ramblers, Peak and Northern Footpaths Society and Swettenham Parish Council.

The Committee considered the objections received and concluded that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would be of benefit to the landowner in terms of enhancing security and privacy to their property. It was considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order were satisfied.

The Committee by majority

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.3 Swettenham by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/083, on the grounds that it is expedient in the interests of the owner of 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 Council be responsible for the conduct of any hearing or public inquiry.

8 HIGHWAYS ACT 1980 S.119: APPLICATIONS FOR THE DIVERSION OF PUBLIC FOOTPATH NO.13 (PART) AND EXTINGUISHMENTS OF PUBLIC FOOTPATHS NO.11A, 13 (PART) AND 13A/1 PARISH OF MOBBERLEY

The Committee considered a report which detailed an application from Mr R Dingle of LPC Living Ltd (agent) on behalf of Mr T Hamon of Argonaught Holdings, Third Floor, Elizabeth House, Ruettes Brayes, St Peters Port, Guernsey (applicant), requesting the Council make an Order under sections 119 and 118 of the Highways Act 1980 to divert part of Public Footpath No.13 and to extinguish Pubic Footpath Nos.11a, 13 (part) and 13a/1 in the parish of Mobberley.

In accordance with the Highways Act 1980 it was within the Council's discretion to make an Order to divert a Public Footpath under Section 119(1) 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, and to extinguish a Public Footpath under Section 118(1) if it appeared to the Council that it is expedient that a path or way should be stopped up on the grounds that it was not needed for public use.

The land over which the current paths and the proposed diversion and extinguishment ran belonged to Argonaught Holdings Ltd. The section of Public Footpath No.13 Mobberley to be diverted was unavailable at present due to steep gradients, boundaries and over growth. Part of it ran along a river bank and was at risk of potential flooding. Diverting it to align along an existing path that followed the site boundary would resolve these issues and reinstate public right of passage.

The sections of Public Footpath Nos. 11, 13 and 13a/1 to be extinguished ran across an industrial site but were obstructed by buildings and no longer of use to the public. Historically, the proposal to extinguish them was planned at the time of the site development but the orders were never made. Therefore the proposals would rectify this situation whilst protecting the security of the site that was desired by the applicant.

The Committee noted that the Ward Member – Councillor J Macrae, had responded to the proposals. He had no objections to the proposed diversion of Public Footpath No.13 but objected to the extinguishments of Public Footpath Nos. 11a, 13 (part) and 13a/1 on the grounds that the site was currently being consulted upon in the Local Plan process and pre application discussions had taken place with the Council regarding redevelopment for mixed residential and/or employment use. He considered that the public rights of way should not be extinguished at this time and that the future routes within and around the site should be considered as part of the redevelopment plans.

The Committee considered that the proposed diversion for Public Footpath No.13 in the parish of Mobberley would be an improvement to the existing route since it was level underfoot, without barriers and had steps and a footbridge to enable descent and ascent of the steep bank that flanked the small stream. 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.

The Committee considered the objection received from Councillor Macrae and concluded that the proposed extinguishments were in the interests of the landowner to legally meet the requirements first identified when the industrial site was built. There had been no evidence of the public wishing to use the routes in question.

The Committee unanimously

RESOLVED: That

- 1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No.13 in the parish of Mobberley by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/084, on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2 Orders be made under Section 118 of the Highways Act 1980 to extinguish Public Footpath Nos.11a, 13 (part) and 13a/1 in the parish of Mobberley, as illustrated on Plan No.HA/085, on the grounds that they are not needed for public use.
- 3 Public Notice of the making of the Orders be given and in the event of there being no objections within the period specified, the Orders be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 4 In the event of objections to any Order be received, the Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

The meeting commenced at 2.07 pm and concluded at 3.45 pm

Councillor J Wray (Chairman)