

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 16th September, 2013 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor D Druce (Chairman)
Councillor Rhoda Bailey (Vice-Chairman)

Councillors S Davies, L Jeuda, M Parsons and J Wray

In Attendance

Councillor L Brown, Cabinet Support Member for Environment

Officers

Mike Taylor, Rights of Way Manager
Hannah Duncan, Definitive Map Officer
Jennifer Tench, Definitive Map Officer
Marianne Nixon, Public Path Orders Officer
Elaine Field, Highways Solicitor
Rachel Graves, Democratic Services Officer

9 APOLOGIES FOR ABSENCE

Apologies were received from Councillor S Jones.

10 DECLARATIONS OF INTEREST

There were no declarations of interest.

11 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 18 June 2013 be confirmed as a correct record.

12 PUBLIC SPEAKING TIME/OPEN SESSION

A member of the public had registered to speak in relation to Item 5: Application for the Extinguishment of part of Public Footpath No.29 in the parish of Sandbach, and in relation to Item 6: Application for the Diversion of Public Footpath No.16 (part) in the parish of Betchton. The Chairman advised that he would invite them to speak when these applications were being considered by the Committee.

Cllr K Edwards, Bollington Town Council, reported that Bollington Walking Festival would be taking place 19-27 October 2013 and also that Bollington had become an accredited as a 'Walkers are Welcome' town. This was a nationwide initiative to encourage towns and villages to be welcoming to walkers.

13 HIGHWAYS ACT 1980 SECTION 118: APPLICATION FOR THE EXTINGUISHMENT OF PART OF PUBLIC FOOTPATH NO. 29 IN THE PARISH OF SANDBACH

The Committee received a report which detailed an application from Mr Frank Murray of Ipstones Developments Ltd, 54 St Edwards Street, Leek (the Applicant) requesting the Council to make an Order under section 118 of the Highways Act 1980 to extinguish part of Public Footpath No. 29 in the parish of Sandbach.

In accordance with Section 118 (1) it is 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.

Mr C Meewezen spoke on to this application and stated that Congleton Ramblers had reported the path as being obstructed in 1993 and 1998 but no action had been taken. He asked that consideration be given to diverting the footpath and stated that the alternative route was not a suitable alternative route.

The short section of Public Footpath Sandbach No.29 proposed to be extinguished had been unavailable since the mid 1990's. The majority of Public Footpath No.29 had been diverted in July 1994 by Congleton Borough Council under the Town and Country Planning Act 1990 to accommodate the housing development built between Moston Road, Elton Road and Salt Line Way. It appeared that at the time, Congleton Borough Council had intended to divert the remainder of the footpath but the legal process was not undertaken.

An initial consultation for a proposed diversion of the footpath following the alignment originally proposed by Congleton Borough Council was carried out in April 2013. The proposed diversion ran along an existing passageway between the rear of the houses on Chesterton Grove and the Applicant's property for approximately 96 metres. This section had a width of 1 metre. There was a short section of tarmac path which ran for approximately 33 metres along the footway between the properties at Nos.17 and 19 Milton Way and rejoined with the existing line of the Public Footpath Sandbach No.29.

There were three objections to this proposal, from the Ramblers Association, one of the landowners affected and an adjacent landowner. The Council was unable to resolve these objections and it was felt that if

the Council was to proceed with the proposal to divert the footpath, it was likely that this would fail.

In view of this and after extensive discussions with two of the landowners, it was agreed that the Council would accept and progress an application to extinguish this section of footpath as it appeared that it was no longer needed for public use. There was an alternative route available via the adopted footway between Milton Way and Moston Way.

The majority of the footpath it was proposed to extinguish crossed an industrial development site owned by the Applicant, who was also concerned that this could be potentially dangerous for any walkers using the route. Part of the remainder of the path crossed the gardens of two residential properties.

Objections to the proposal to extinguish the path had been received from Sandbach Town Council, Peak and Northern Footpaths Society and Congleton Ramblers Group.

The Committee noted that although there were currently outstanding objections to the proposals, the path had not been available for use for at least 14 years and no evidence of the public wishing to use the route since the late 1990s had been received. As there was alternative route available it was concluded that the footpath was not needed for public use and that the legal test for the making and confirming of an extinguishment order were satisfied.

The Committee by majority

RESOLVED: That

- (1) an Order be made under section 118 of the Highways Act 1980 to extinguish part of Public Footpath No.29 Sandbach, as illustrated on Plan No.HA/086 on the grounds that it is not needed for public use.
- (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.

14 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 16 (PART), PARISH OF BETCHTON

The Committee considered a report which detailed an application from Mr & Mrs K Beattie of Randle Rode Farm, Newcastle Road, Betchton, Sandbach (the Applicant), requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.16 in the parish of Betchton.

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.

Mr C Meewezen spoke on the application as it was thought that the proposed path would be narrower than the minimum width proposed. He was also concerned about the steep drop down to the road and asked about the maintenance of the proposed diversion route as it was at present overgrown.

The Congleton Ramblers Association had registered objections as represented by Mr Meewezen, and the Peak and Northern Footpath Society supported these views although they had not registered formal objection. Betchton Parish Council had registered that they did not object to the proposal.

The land over which the section of path to be diverted, and the proposed diversion belonged to the Applicant. The section to be diverted was enclosed between temporary fencing and bisected a field used for livestock, yet the area to the eastern edge of the path was not currently used. Diverting the path to the eastern field edge would enable better use of the field in terms of livestock management and would also separate the livestock from the public.

It was confirmed that the minimum width of the path would be 1.75 metres wide and this width would be stipulated in the Order. The Council would not certify the path as 'fit for public use' unless it accurately reflected the Order specifications including path width.

The Committee discussed the objections received and concluded that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would offer improved land and stock management capability for the landowner. 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 by majority

RESOLVED: That

- (1) providing that the Applicant agrees to enter into a maintenance agreement with the Council, 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.16 Betchton by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/088, 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.

15 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO.40 (PART), PARISH OF MOBBERLEY

The Committee considered a report which detailed an application from Mr & Mrs L Nardo (the Applicants) of Two Hoots Barn, Yew Tree Farm, Knutsford Road, Mobberley, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert Public Footpath No.40 in the parish of Mobberley.

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.

In paragraph 10.3 in the report it should have stated 'Mr & Mrs Nardo' and not 'Mr & Mrs Stubbs'.

The land over which the current path and the proposed diversion ran belonged to the Applicants. The section of Public Footpath No.40 Mobberley to be diverted ran through the property of the applicants giving rise to concerns relating to privacy and security. The new route would take users away from the close proximity of the property buildings and would be more direct and pleasurable route across pasture land, with kissing gates instead of stiles.

The Committee noted that no objections had been received during 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 Applicant's

property. 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 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.40 Mobberley by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/089, 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.

16 HIGHWAYS ACT 1980 SECTION 25: PROPOSED DEDICATION OF PUBLIC BRIDLEWAY NO 83, ALONG GRAVEYARD LANE, BETWEEN NEWTON HALL LANE AND MOSS LANE, IN THE PARISH OF MOBBERLEY

The Committee considered a report which details an application submitted in May 2003 by the Alderley Edge, Wilmslow and District Footpaths Preservation Society to modify the Definitive Map and Statement by the addition of a Bridleway along Graveyard Lane in the parish of Mobberley. The application was made under the Wildlife and Countryside Act 1981 for a Definitive Map Modification Order.

In 2007 investigations began into this application. It was discovered that the lane had been diverted on the ground at its eastern end. It was therefore decided that a Creation Agreement be sought with the landowners to avoid potentially complicated legal orders. Ownership of the whole lane was not established and therefore the Creation Agreements were taking into account the provisions of the '*Ad Medium Filum Via*' doctrine – that is that the owners of the land adjacent to the lane own up to the centre line of the lane.

In April 2007 the Cheshire County Council Rights of Way Committee gave approval to enter into Creation Agreements with the landowners, under section 25 of the Highways Act 1980 for the dedication of Graveyard Lane as Public Bridleway No.83 Mobberley.

Following the Committee's decision Agreements were drafted with each landowner and sent to them for signing. Unfortunately the Officer who was dealing with this then left the Authority before the process was completed. There was also staff changes within the legal department who were assisting with this and regrettably the case was not concluded. All but one landowner had returned their Agreements but the documents were not sealed and the process was not completed.

It was now considered appropriate that new Agreements be drafted with the landowners. All eight landowners have been contacted and have signed a certificate to say that they agree to enter into a Creation Agreement with respect to this route.

The Alderley Edge, Wilmslow and District Footpaths Preservation Society have agreed to withdraw their Definitive Map Modification Order application should the Bridleway be created by Agreement.

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 25 of the Highways Act 1980 there was no statutory right for objection to the proposals.

The Committee unanimously

RESOLVED:

That a Creation Agreement be entered into with the landowners and adjacent landowners under Section 25 of the Highways Act and under such terms as may be agreed by the Public Rights of Way Manager to create a new bridleway, to be known as Bridleway No.83 Mobberley, as illustrated on Plan No.HA/081 between points A to D; and public notice be given to these agreements.

17 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO.91 (PART), PARISH OF WILMSLOW

The Committee received a report which detailed an application from Mr D Short (agent) of The Emerson Group on behalf of Greystone UK Limited, 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.91 in the parish of Wilmslow.

In accordance with Section 257 of the Town and Country Planning 1990, the Borough Council, as the Planning Authority, can make an Order diverting a footpath if it is satisfied that it is necessary to do so to enable development to be carried out in accordance with a planning permission that had been granted.

Planning permission was granted to the Applicant following appeal on 30 May 2013 – Planning Permission Ref: 12/1578M, for the development of a care home village comprising of a gated community of residential dwellings and a care home.

The existing alignment of the footpath would be directly affected by the development of residential dwellings which would form part of a care community within the wider development of a Care Community Village. The footpath diversion was required to preserve the public right of way between Coppice Way and Hall Lane by diverting it around the western perimeter of the care community. The land was currently owned by the RK Wadsworth Will Trust and written permission to divert the path on their land as proposed had been submitted by Mr T Rickard on behalf of the trustees.

The Committee concluded that it was necessary to divert part of Public Footpath No.91 Wilmslow 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.

The Committee unanimously

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.91 Wilmslow, as illustrated on Plan No.TCPA/016, 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 any objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

18 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO.11 (PART), PARISH OF BASFORD AND EXTINGUISHMENT OF PUBLIC FOOTPATH NO.2, PARISH OF SHAVINGTON CUM GRESTD

The Committee received a report which detailed an application from Goodman Limited (the Applicant) 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.11 in the parish of Basford and to extinguish Public Footpath No.2 in the parish of Shavington cum Gresty.

In accordance with Section 257 of the Town and Country Planning 1990, the Borough Council, as the Planning Authority, can make an Order diverting a footpath if it is satisfied that it is 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 for 'Outline Application for Warehousing and Distribution (B8), Manufacturing (B2) and Light Industrial/Office (B1) Development, Construction of Access Roads, Footpaths and Rail Infrastructure, Import of Soil Materials, Heavy Goods Vehicle and Car Parking and Landscaping/Habitat Mitigation' and 'Outline application for residential development (up to 370 units), Offices (B1), local centre comprising food and non-food retail (A1) and restaurant/public house (A3/A4), hotel (C1), car showroom and associated works including construction of new spine road with accesses from Crewe Road and A500, creation of footpaths, drainage including formation of SUDS, foul pumping station, substation, earthworks to form landscaped bunds, provision of public open space and landscaping'.

The proposed diversion of Public Footpath No.11 Basford was necessary to accommodate the storm water balancing ponds. The proposed diversion would leave the new adopted highway and pass between two of the ponds before rejoining the existing line of Basford FP11.

The proposed extinguishment of Public Footpath No. 2 Shavington cum Gresty was necessary to accommodate the proposed local centre (food retail, restaurant/public house) and spine road. Public access would remain along the new roads on pavements which would be adopted.

The Committee concluded that it was necessary to divert part of Public Footpath No.11 Basford and extinguish Public Footpath No.2 Shavington cum Gresty 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.

The Committee unanimously

RESOLVED: That

- (1) An Order is made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.11 Basford and extinguish Public Footpath Shavington cum Gresty No.2, as illustrated on Plan No.TCPA/0014, 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.

**19 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:
APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 2,
PARISH OF SHAVINGTON CUM GRESTD**

The Committee received a report which detailed an application from Mr Peter Barlow of Wainhomes (North West) Ltd (the Applicant), 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.2 in the parish of Rope.

In accordance with Section 257 of the Town and Country Planning 1990, the Borough Council, as the Planning Authority, can make an Order diverting a footpath if it is satisfied that it is necessary to do so to enable development to be carried out in accordance with a planning permission that had been granted.

Planning permission was granted to the Applicant following appeal to the Applicant on 28 November 2012 – Planning Permission Ref: 11/4549N, for the development of 80 residential dwellings.

Part of the current line of Public Footpath No.2 Rope would be obstructed by the residential buildings. Therefore a footpath diversion was required to preserve public right of access from Rope Lane to Public Footpath No.7 Shavington cum Gresty.

The proposed new route would take users through the new development allowing them passage between Rope Lane and Public Footpath No.7 Shavington cum Gresty. The route would be 2 metres wide throughout and would be tarmaced.

The Committee noted that the Ward Member – Councillor D Brickhill, had responded to the proposal, raising concerns associated with difficulties caused by antisocial behaviour on the current path and requested that consideration be given to the path being closed/extinguished.

Shavington cum Gresty Parish Council had registered objection to the proposal, raising similar concerns about antisocial behaviour and also concern about the drainage ditch on the current route. They also raised questions about the planning process in relation to the path diversion.

The Committee considered the objections from Councillor Brickhill and Shavington cum Gresty Parish Council and concluded that it was necessary to divert part of Public Footpath No.2 Rope 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.

The Committee by majority

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.2 Rope, as illustrated on Plan No.TCPA/015, 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.

20 LOCAL GOVERNMENT ACT 2000 SECTION 2: DEED OF DEDICATION FOR A NEW PUBLIC FOOTPATH IN THE PARISH OF KNUTSFORD

The Committee received a report which detailed a proposal to create a public footpath under Section 2 of the Local Government Act 2000 in a Deed of Dedication.

A Definitive Map Modification application had been received in August 2004 to add a footpath from King Edward Road to Princess Street in Knutsford. The application was based on long usage of the route by local residents.

The land over which the proposed footpath ran was owned by Cheshire East Borough Council. Due to the lengthy and costly timescales involved when dealing with Definitive Map Modification applications, it was considered that the most efficient and cost effective way to proceed with this was by means of a Deed of Dedication under the Local Government Act 2000 Section 2.

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 proposed footpath would be approximately 80 metres in length and run through the tarmac car park, linking King Edward Road and Princess Street, as shown on Plan No.LGA/005.

No objections had been received from consultation with Knutsford Town Council, Cheshire East Council Highway & Transport and Assets and local user groups.

The Committee unanimously

RESOLVED:

That a public footpath be created under Section 2 of the Local Government Act 2000 in a Deed of Dedication, in the parish of Knutsford, as illustrated between points A to B on Plan No.LGA/005 and that public notice be given of this dedication.

21 TECHNICAL AMENDMENT TO THE DIVERSION OF PUBLIC FOOTPATH NO. 3 IN THE PARISH OF SWETTENHAM

The Committee received an information report on a technical amendment to the diversion route of Public Footpath No.3 in the parish of Swettenham.

The Committee, at its meeting on 16 June 2013, had resolved that an Order should be made to divert part of Public Footpath No.3 in the parish of Swettenham. During initial consultation period prior to the Committee meeting, a number of statutory consultees opposed the diversion on the basis that it would bring users directly onto Swettenham Hall Lane. This exit point being considered less safe than the current exit point into the turning circle at the entrance of Swettenham Hall.

Given the strength of objection and concern it has been agreed with the applicant that the diversion be amended to bring users to an exit point in the turning circle. The revised exit point is on Plan No.HA/083A between points D-E.

This amendment did not significantly change the walking experience that would be provided by the new route both in terms of enjoyment and convenience, and it was not intended that any further consultation be undertaken before the Order was made.

RESOLVED:

That the report be noted.

22 PUBLIC PATH ORDERS FOR PUBLIC FOOTPATH NO'S 10 AND 29 IN THE PARISH OF WINCLE UNDER THE HIGHWAYS ACT 1980

The Committee received an information report on a change in the legal processing of the diversion of Public Footpath Nos. 10 and 29 in the parish of Wincle.

In paragraphs 10.2 and 10.3 of the report it should have said Public Footpath No. 29 in the parish of Wincle and not Public Footpath No.10.

The Committee, at its meeting on 11 March 2013, resolved that an Order be made to divert parts of Public Footpaths No.10 and 29 in the parish of Wincle. Upon making the Orders it was noted that the diversion route for Public Footpath No.29 would take the route along Minn End Lane, which was an existing Highway. Legally this was unacceptable since a public footpath cannot be diverted onto an existing highway.

To rectify this situation it was proposed that this section of Public Footpath No.29 be extinguished under section 118 of the Highways Act 1980. This is a legal administrative processing change and did not affect the changes on the ground for this path that was approved at the March committee meeting. The principle objectives of the diversion remained the same and the walking enjoyment/experience of users remained the same.

RESOLVED:

That the report be noted.

The meeting commenced at 4.00 pm and concluded at 5.55 pm

Councillor D Druce (Chairman)