

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 16th June, 2014 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor M Hardy (Chairman)
Councillor Rhoda Bailey (Vice-Chairman)

Councillors A Barratt, S Davies, M Parsons and J Wray

In attendance

Councillor L Brown, Deputy Portfolio Holder Service Commissioning

Officer

Mike Taylor, Rights of Way Manager
Clare Hibbert, Definitive Map Officer
Jennifer Tench, Definitive Map Officer
Elaine Field, Highways Solicitor
Rachel Graves, Democratic Services Officer

1 APOLOGIES FOR ABSENCE

Apologies were received from Councillor Ken Edwards.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 18 March 2014 be confirmed as a correct record and signed by the Chairman.

4 PUBLIC SPEAKING TIME/OPEN SESSION

No members of the public present wished to speak.

5 PUBLIC RIGHTS OF WAY ANNUAL REPORT 2013-2014 AND WORK PROGRAMME 2014-2015

The Committee received a report which detailed the achievements of the Public Rights of Way service during 2013-14 and set out the proposed work programme for 2014-15.

The Rights of Way Manager reported on the work carried out during 2013-14 by the Network Management and Enforcement Team and the Legal Orders Team.

It was reported that:

- 46 temporary and emergency closures of rights of way had been made
- 611 problems on the network had been logged in 2013-14
- 10 public path orders had been confirmed, 18 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 18
- No Definitive Map Anomaly investigations had been carried out and there was a backlog of 260+

The budget for Rights of Way services had remained as set during 2013-14 allowing the Team to both plan spending and clear some of the previous backlog. The outcome of the BVPI 178 Ease of Use survey was 83%.

RESOLVED:

That the Annual Report for 2013-14 be noted and the proposed work programme for the Public Rights of Way Team for 2014-15 be approved.

6 WILDLIFE AND COUNTRYSIDE ACT 1981 - PART III, SECTION 53: APPLICATION TO UPGRADE PUBLIC FOOTPATHS NOS.6 & 7(P.T) ARCLID AND NO.16 SMALLWOOD TO BRIDLEWAYS.

The Committee received a report which detailed an investigation into an application to amend the Definitive Map and Statement by upgrading Public Footpath Nos. 6 and 7 Arclid and No.16 Smallwood to bridleways.

Under Section 53 of the Wildlife and Countryside Act 1981, the Borough Council had a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Section 53 (3)(c) allowed the authority to act on the discovery of evidence that suggests that the Definitive Map and Statement needed to be amended. The authority must investigate and determine that evidence and decide on the outcome whether to make a Definitive Map Modification Order.

The application had been made in January 2005 by Mrs P Amies, on behalf of the Border Bridleways Association, to modify the Definitive Map and Statement by upgrading three footpaths to bridleways in the parishes of Arclid and Smallwood. The route applied for was currently recorded as Public Footpath No.7 (part) Arclid between points A-B-C-D-F on Plan No.WCA/007; Public Footpath No.6 Arclid between D-E and Public Footpath No.16 Smallwood between points F-G. A considerable amount of historical evidence had been supplied with the application including

extracts from County Maps, Tithe Maps, Ordnance Survey Maps, the Finance Act, the 1950's Parish Survey and several Road and motoring maps. Also submitted were six user evidence forms from individuals who claimed use of the route or part of it on horseback, one also claimed cycle use and another vehicular use. The periods of use varied between 9 years and 57 years and were stated to be frequently, weekly or monthly. The earliest use was from 1918 and it extended until 1997. Three of the forms were completed in 1997, two in 2000 and one in 2004. One of the witnesses had since died, one stated that they no longer wanted to be involved and three did not return contact after they were written to.

Objections to the application had been received from the land owners DM Beresford & Partners Ltd and lessee Archibald Bathgate Group Ltd, who had planning permission to undertake sand extraction between point B to points E and F. There were proposals to divert the paths affected as part of the restoration scheme. The land between points F and G were owned by Mr Bracegirdle, who had also lodged an objection to the application.

A detailed investigation of the evidence submitted with the application had been undertaken, together with additional research. The application was made on the basis of historical evidence and user evidence from 6 witnesses.

The Tithe Maps for Arclid and Betchton showed a consistent alignment corresponding with Footpath Nos.6 and 7 Arclid, with the route shown coloured and bounded on both maps. The route was recorded as 'road' on the Arclid map. The route on the Smallwood Tithe map was not the exact alignment of Footpath No.16 and was not separately described but included in surrounding hereditaments. The claimed route appeared in a similar way on three of the County Maps and on Bryant's map Footpath Nos.6 and 7 were annotated Bridle Road. The route easterly was not clearly depicted. These early records raised a reasonable presumption that at least part of the route was a through route and of a higher status than footpath.

The 1840's 1st Edition Ordnance Survey was consistent with the Tithe and County maps clearly depicting a bounded lane along the line of the Footpath Nos.6 and 7, with the continuation easterly not shown across the first field. The County series OS Map from 1872 showed a pecked double line for the easterly extension of the route of what is now Footpath No.16. The alignment of the Arclid section was mostly shown as a bounded lane and described as a road in the book of reference.

Evidence from sales catalogues from neighbouring properties in the early 1900's provided evidence of the believed status of the route. It was annotated road along the section of Footpath No.7 and the continuation towards Footpath No.16 Smallwood was annotated as footpath on one of the sales plans.

The Finance Act plans were prepared to a statutory process and were generally regarded as good evidence of public rights. The claimed route was shown on the plans and included in the surrounding hereditaments and the field books recorded exemptions for footpaths.

The minutes of Congleton Rural District Council suggested that the route between Dean Hill and Arclid was considered to be road. The detail of the minute related to Hood Lane and it was not known to what condition the road was repaired; it was accepted that it was at least a bridleway and was publicly repairable.

The Bartholomew's Road Map 1937 edition was supported by the Cyclist's Touring Club, so generally believed to show routes open to cyclists. The Map showed a continuous route from point A to point E (on Plan No.WCA/007) and continuing down Hood Lane. This was depicted as 'Other Road.' There was no route shown easterly into Smallwood to the A50.

There was additional evidence of a presumption of the use of the route as a bridleway in the original survey reports which led to the compilation of the Definitive Map. These were written by local people with knowledge of the local area and indicate that the path was capable of being used by horseriders even if it was recorded as footpath at the Draft stage of the Definitive Map process.

Of the six users evidence forms submitted, all six claimed to have ridden the route with a horse, one had also cycled and another used the route with a vehicle. Different routes had been used by the witnesses; two had used the whole claimed route, three had used a route incorporating A-B-C-D to E and a sixth one had used the route from Hood Lane and then E-D-F-G. The use of the route varied from 9 years to 57 years. Three of the user's period of use fell within 1973 to 1993, the twenty year period identified for this application. Frequency varied between 2/3 times per week to monthly. Only one witness was interviewed, whose knowledge of the route and the local area was quite extensive.

The evidence collected was very detailed and specific to the claimed route but did not cover the period 1973 to 1993. The use that did cover some of this period i.e. from the early 1980's to 1997 did not refer to the whole route but incorporated the sections between A-B-C-D-E – Footpath Nos.6 and 7 Arclid. Use of the section covering Footpath No.16 Smallwood was from an earlier time period, concentrated around the 1940's and 1950's.

The report concluded that there was on the balance of probabilities evidence to support the allegation that a bridleway subsisted along the route A-B-C-D-E (Plan No.WCA/007) . However it was considered that there was insufficient historical and user evidence to support the existence of bridleway rights along D-F-G.

The Committee considered the historical and user evidence outlined in the report and the Definitive Map Officer's conclusions and considered that

there was insufficient evidence to support the existence of bridleway rights along route D-F-G. The Committee considered that the requirements of Section 53(3)(c)(ii) had been met for route A-B-C-D-E and that the Definitive Map and Statement be modified to upgrade Public Footpath Nos.7 (part) and 6 Arclid to bridleway.

The Committee by majority **RESOLVED:** That

- (1) the application to modify the Definitive Map and Statement to record a bridleway between points D-F-G, as shown on Plan No.WCA/007, 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 Public Footpath Nos.7 (part) and 6 Arclid to bridleway along the route shown between points A-B-C-D-E on Plan No.WCA/007.
- (3) Public Notice of the making of the Order be given and, in the event of there being no objections within the specified period, and any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Acts.
- (4) 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 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 53 (PART), PARISH OF ALDERLEY EDGE

The Committee considered a report which detailed an application from Mr and Mrs P Gouge (the Applicant) of Bracken Hill, Mottram Road, Alderley Edge, Cheshire, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.53 in the parish of Alderley Edge.

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 was owned by the Applicant. The section of the path to be diverted took users up a steep and narrow access drive, which leads to the Applicant's property and grounds. Users left the drive just before entering the grounds as the path passed through a gap to follow the property boundary. The use of the drive and the closeness of the woodland path to the property had given rise to concerns about privacy and security. Furthermore, there

were safety concerns about the users and vehicles on the narrow access drive.

The Applicant had planning permission to develop a natural garden within the field (area bounded by points A-B-C-F-E-D-A on Plan HA/094) and it was the intention in future to apply for change of use of this land to allow a more landscaped private garden. Therefore the proposed diversion had been aligned to skirt the boundary of this development area (points D-E-F-C) so that users would not be required to pass through it from point D to point C.

It was proposed that the new route would be enclosed to a width of 2.5 metres and a stoned surface provided within this width. A pedestrian gate would be installed at point D to protect users at the junction with Mottram Road.

The Committee noted that following discussions and negotiations between the landowner and user group representatives during the information consultations, no objections had been received to the proposals before the Committee and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would eliminate the need for users to negotiate vehicles on the steep narrow access drive and would allow users to pass through the property without the need to pass through private grounds and the curtilage of the proposed garden thus allowing greater privacy and security for the Applicant. 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.53 Alderley Edge by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/094, on the grounds that it is expedient in the interests of the owners 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.

8 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NOS. 4 AND 5 (PARTS), PARISH OF SMALLWOOD

The Committee considered a report which detailed an application from Mrs J Darlington (the Applicant) of The Diary, Bears Head Farm, Newcastle Road, Smallwood, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath Nos.4 and 5 in the parish of Smallwood.

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 Applicant owned the land over which the current paths and the proposed diversion ran. The sections of each of Public Footpath Nos.4 and 5 Smallwood to be diverted were currently unavailable for public use but if made available, the Applicant would benefit from their diversion to a new route to enable better management of land and livestock. Diverting the footpaths to a new route would also offer greater privacy and security to the Applicant's property.

The new route would be enclosed between fences, have a grass track and be 2.5 metres in width. There would be kissing gates at three points along the route.

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 footpaths would be more convenient for users since it would have kissing gates instead of a solid electric gate and would run in a more direct route through the Applicant's property which would reduce interaction between users, the Applicant and their livestock. The diversion would be in the interests of the landowner as it would enable the Applicant to better manage their land and livestock. It was therefore considered that the proposed routes would be a satisfactory alternative to the current route 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 parts of Public Footpath Nos.4 and 5 Parish of Smallwood by creating new sections of each public footpath, and extinguishing the current path sections, as illustrated on Plan No.HA/096, on the grounds that it is expedient in the interests of the owners of the land crossed by the paths.

- (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.

9 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 9 (PART), PARISH OF MINSHULL VERNON

The Committee received a report which detailed an application from Mr R Windsor (agent) of Windsor & Company Chartered Surveyors, on behalf of the Reverend P Goggins of St Peter's Church, Bradfield Green, Minshull Vernon, Crewe, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.9 in the parish of Minshull Vernon.

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 proposed diversion ran belonged to St Peter's Church, Bradfield Green, Minshull Vernon. The section of footpath to be diverted ran along the access drive of The Old Vicarage. Diverting the path would improve management of the property by taking users along a fenced path aligned approximately 6 metres to the south of the current footpath so reducing interaction with vehicles using the drive. It would also offer improvement to the privacy and security to the property.

The new route would have surfaces of semi-surfaced track and grass and would be enclosed to a width of 2 metres except between points C-D-B where it would be enclosed to a width of 2.5 metres. This fenced section would be entered via a gap at point C. The length of the new route would be approximately 61 metres.

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 enable better management of the property and improve privacy and security. 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.9 Minshull Vernon by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/097, 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.

10 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 4 (PART), PARISH OF MARTHALL

The Committee received a report which detailed an application from Mr P Jenkins (agent) on behalf of Mr Lilley of Amplepaint Ltd, Pinfold Stables, Pinfold Lane, Marthall, Knutsford (the Applicant), requesting the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.4 in the parish of Marthall.

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 the Applicant. The section of Public Footpath No.4 Marthall to be diverted ran through pastureland which was used for horses. Diverting the path would enable the Applicant to better manage the land, livestock and operations within the grounds of his stables business whilst providing users with a more convenient route.

The proposed new route would be 2 metres wide and unenclosed except for the sections between points H-I and J-K when it would be enclosed by fencing to a width of 2.5 metres. The surface of the new route would be grass and semi surfaced track.

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 enable better land and livestock management for the landowner and provide a more convenient route for users as it would have

one pedestrian gate rather than five stiles to negotiate. 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.4 Marthall by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/095, 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 events 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.

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

The Committee received a report which detailed an application from Mr S Starkey (agent) of Rostons Ltd on behalf of Mr R Brooks, J Brooks & Partners, Village Farm, Winsford Road, Wettenhall, 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 Wettenhall.

In accordance with Section 257 of the Town and Country Planning Act 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 to the Applicant on 30 April 2014 – Planning Permission Reference No.14/1259N, for the installation of a silage clamp.

The Environment Agency had ordered J Brooks & Partners to construct a new silage clamp to comply with Nitrate Vulnerable Zone Regulations and Silage Slurry and Agricultural Fuel Oil Regulations.

The only practical location where expansion of the farm could take place to accommodate the clamp was adjacent to the existing silage clamps.

However, placement at this point would directly affect the alignment of Public Footpath No.9 Wettenhall. Part of the path would be obstructed by the south eastern corner of the footprint of the planned silage clamp. The Regulations stated that there must be a clearance zone around the silage clamp. To enable better management of both land and farm operations in relation to the use of the silage clamp, it was proposed that the current route of the path be diverted to cross the same field in a parallel alignment further south.

The Committee concluded that it was necessary to divert part of Public Footpath No.9 Wettenhall to allow for the installation of a silage clamp. 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.9 Wettenhall, as illustrated on Plan No.TCPA/019, 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.

12 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 3 (PART) PARISH OF ALSAGER

The Committee received a report which detailed an application from Seddon Homes 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.3 in the parish of Alsager.

In accordance with Section 257 of the Town and Country Planning Act 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 to the Applicant – Planning Permission Ref:12/1670C, for the erection of 30 Dwellings (including 9 Affordable Dwellings), Vehicular Access and Associated Landscaping.

The existing alignment of the footpath would be obstructed by a number of properties and their gardens when the development was built. The proposed diversion, as illustrated on Plan No.TCPA/018, ran along the northern boundary of the site in a westerly direction from Hassall Road. This section of the path would have a width of 2.5 metres where it was enclosed and 2 metres where unenclosed. It would have a stone surface with timber edging. A chicane barrier would be installed where the path met Hassall Road.

The proposed route then turned to run in a south westerly direction in the adjacent field to the development to rejoin the existing line of the Public Footpath No.3 Alsager. The adjacent landowner, Mr Heler, had provided written support and consent for the diversion. A kissing gate would be installed at the field boundary to improve accessibility for walkers, who were currently required to navigate a stile on the existing line of the footpath.

The Committee concluded that it was necessary to divert part of Public Footpath No.3 Alsager 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.3 Alsager, as illustrated on Plan No.TCPA/018, 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 3.25 pm

Councillor M Hardy (Chairman)