

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 8th December, 2014 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor Rhoda Bailey (Vice-Chair, in the Chair)

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

Officers

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

20 APOLOGIES FOR ABSENCE

Apologies were received from Councillor M Hardy.

21 DECLARATIONS OF INTEREST

There were no declarations of interest.

22 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 15 September 2015 be confirmed as a correct record and signed by the Chairman.

23 PUBLIC SPEAKING TIME/OPEN SESSION

The Chairman advised that she would invite the two speakers to address the Committee when the relevant application was being considered.

24 HIGHWAYS ACT 1980 SECTIONS 118 AND 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 16 (PARTS), PARISH OF BRERETON AND PUBLIC FOOTPATH NO. 9 (PART), PARISH OF SANDBACH AND FOR THE EXTINGUISHMENT OF PUBLIC FOOTPATH NO. 9 (PART), PARISH OF SANDBACH

The Committee considered a report which detailed an application from Mrs J Davenport of The Old Vicarage, Chelford Lane, Over Peover, Nr Knutsford requesting the Council make an Order to divert part of Public Footpath No.16 in the parish of Brereton (B-C-D on Plan No. HA/098) and on condition that this diversion was successful, to make an Order to

extinguish Public Footpath No.9 (part) in the parish of Sandbach (D-E-F) under sections 119 and 118 respectively of the Highways Act 1980.

The report also detailed an application received from Mr Malcolm Sloane (agent) of Sloane Mead on behalf of Archibald Bathgate Group Ltd, Arclid Quarry, Congleton Road, Sandbach requesting the Council make an Order to divert part of Public Footpath No.9 in the parish of Sandbach (G-H-I-F). Further the landowner had given permission to allow the Public Rights of Way Team to request the Council to include in the Order a diversion of part of Public Footpath No.16 in the parish of Brereton (A-B). The two diversions would be dependant on each other so that the part of Public Footpath No.16 Brereton would only be diverted if the diversion of part of Public Footpath No.9 Sandbach was approved.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order to divert a public footpath 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 accordance with Section 118(1) of the Highways Act 1980 it was within the Council's discretion to make an Order to extinguish a public footpath if it appeared to the Council that it was expedient to do so on the grounds that it was not needed for public use.

Mr C Meewezen, spoke on behalf of Congleton Ramblers, stating that they supported the proposed Public Footpath No.16 Brereton diversions and the extinguishment suggested by Mrs Davenport in relation to Public Footpath No.9 Sandbach. However they objected to the diversion to Public Footpath No.9 Sandbach proposed by Mr Malcolm Sloane on behalf of Archibald Bathgate Group Ltd as the proposed new route would be less convenient and a less enjoyable route and therefore failed the legal test.

Cheshire East Council had proposed the diversion of part of Public Footpath No.16 Brereton (A-B) as this part of the path was obstructed by ponds and in places by dense hedge growth. Historically it would appear that this part of Public Footpath No.16 Brereton may have been inaccurately recorded on the definitive map as the ponds were of some antiquity since it was unlikely that the path and ponds coexisted. Removing the obstructions or legally moving the line of the Footpath by a Definitive Map Modification Order to a usable line would prove costly to the Council and would take much longer to effect. The proposed diversion would run in a similar alignment but along the south of the hedge boundary. The land belonged in part to Safeguard Limited and in part to Archibald Bathgate Ltd. Permission to divert the footpath had been given by Safeguard Limited via their agents, Strutt and Parker. Permission had been given by Archibald Bathgate Ltd on condition of the success of the diversion of part of Public Footpath No.9 Sandbach.

Mrs Davenport had proposed to divert part of Public Footpath No.16 Brereton from point B to point D. The path ran through fields into the grounds of Arclid Hall Stud Farm. The new route would run across a pasture field (points D-F) to the south of the property grounds and would afford improved security and privacy to the property buildings and enable better management of land and livestock. This diversion would also resolve path obstructions along parts B- C and also resolve existing alignment issues.

This proposed diversion would create a situation where two public footpaths cross the same field in close proximity to pass between points D-F as part of Public Footpath No.9 Sandbach already crossed the field between points D-E-F. It was considered that two path sections providing similar routes were unnecessary. Therefore since Public Footpath No.9 Sandbach was not as direct as the proposed diversion route of Public Footpath No.16 Brereton, it was proposed that this be extinguished on the basis that this was no longer needed for public use, on condition that Mrs Davenport's proposed diversion of Public Footpath No.16 Brereton was successful.

Mr Sloane on behalf of Archibald Bathgate Ltd had proposed a diversion of part of Public Footpath No.9 Sandbach (G-F) to improve the security and privacy of sand quarry working and excavation areas by taking users further away from these areas. The proposed diversion would start at point G and would immediately leave the green track via a kissing gate into a field to the north. It would then follow the eastern field boundary in a northerly direction to exit through a gap into a section field (point J). It would then follow a short section in an easterly direction before again at point K running in a northerly direction until it joined the proposed diversion route for Public Footpath No.16 Brereton at point L.

It has been agreed with Mr Sloane that the Council's proposed diversion of Public Footpath No.16 Brereton would be dependent on the success of Mr Sloane's proposal to divert the section of Public Footpath No.9 Sandbach, as the Council's diversion would place a longer stretch of public footpath on land owned by Archibald Bathgate Group Ltd.

In relation to Public Footpath No.16 Brereton, the Committee noted that no objections had been received during the informal consultation period. The Committee considered that the proposed routes for Public Footpath No.16 Brereton would be a significant improvement to the existing route and the diversion of the two sections to realign the path would be of considerable benefit to both the public and the landowner. It was considered that the proposed routes would be satisfactory alternatives to the current ones and that the legal tests for the making and confirming of the relevant diversions orders were satisfied.

The Committee concluded that with the diversion of Public Footpath No.16 Brereton into the same field as the section of Public Footpath No.9 Sandbach, this section of Public Footpath No.9 Sandbach (D-F) would no

longer be needed for public use and considered that the legal tests for the making and confirming of an extinguishment order were satisfied.

The Committee noted the objection by Congleton Ramblers to the diversion route for Public Footpath No.9 Sandbach proposed by Mr Sloane on behalf of Archibald Bathgate Ltd and noted that the proposed route would follow field boundaries making navigation easier for path users and that there would be less and more easily accessible path furniture. Looking at the path length in total from Congleton Road to Newcastle Road the proposed diversion would increase by just 147m which was not considered as significant. The Committee concluded that the proposed diversion would be an improvement on the existing route and would benefit the landowner in terms of enhancing privacy and security to their sand quarrying operations. 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 the diversion order were satisfied.

The Committee unanimously

RESOLVED: That

- 1 Two Orders 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 parish of Brereton (as proposed by Mrs Davenport)
- Part of Public Footpath No.16 parish of Brereton and part of Public Footpath No.9 parish of Sandbach (as proposed by Cheshire East Council and Mr M Sloane on behalf of Archibald Bathgate Ltd respectively)

Diversions to be made by creating new sections of public footpath and extinguishing the current path sections, as illustrated on Plan No. HA/098, on the grounds that it is expedient in the interests of the owners of the land crossed by the paths.

Subject to an Order being made to divert part of Public Footpath No.16 in the parish of Brereton (proposed by Mrs Davenport) that a subsequent Order be made under Section 118 of the Highways Act 1980 to extinguish Public Footpath Path No.9 (part) in the parish of Sandbach (also proposed by Mrs Davenport), as illustrated on Plan No. HA/098, on the grounds that it will be no longer be needed for public use.

- 2 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.

- 3 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.

25 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 19 (PART), PARISH OF RAINOW

The Committee received a report which detailed an application from Mr R Gascoigne (agent) of Emery Planning Partnership Ltd on behalf of Mr W Horne, Further Harrop Farm, Bakestonedale Road, Rainow, 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.19 in the parish of Rainow.

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 the 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 on 16 October 2014 by the Peak District National Park. The application is cited as Planning Permission Ref: NP/CEC/0814/0898 Erection of agricultural livestock building, associated alterations to immediate site levels, alteration to farm track along with part diversion of footpath (Rainow FP19).

The existing alignment of Public Footpath No.19 Rainow would be directly affected by the construction of the planned sheep shed. Therefore a footpath diversion was required to provide public access around the sheep shed.

The proposed new route would be approximately 48 metres long, just 5 metres longer than the current route and would take users around the sheep shed. The route would be 2 metres wide throughout and would have a similar grass surface to the current route since it would cross the same pastureland no more than approximately 12 metres to the west of the current route.

As part of the informal consultation the users groups had been consulted and no objections received. East Cheshire Ramblers had suggested that a shallow depth of top soil be removed along the new route and replaced with stone to provide a solid foundation walkable in all seasons whilst acting initially as a clear indication of the line of the new footpath. This would be on the understanding that in time grass would grow over the stoned section so the footpath would blend back into the surrounding pastureland. Given that the new route would run across similar ground to the current route and no issues had been reported to date, stoning of the new route was not deemed to be necessary. East Cheshire Ramblers had

also suggested that the new route be waymarked. The need for waymarking would be reviewed in due course.

The Committee concluded that it was necessary to divert part of Public Footpath No.19 Rainow to allow for the erection of a sheep shed. 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.19 Rainow, as illustrated on Plan No. TCPA/022, 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.

26 VILLAGE GREEN APPLICATION - LAND ADJACENT TO NO. 16 BELL AVENUE, SUTTON, MACCLESFIELD

The Committee received a report seeking a decision on how to proceed with a village green application in respect of land adjacent to No.16 Bell Avenue, Sutton, Macclesfield.

The Council was the registration authority for village greens and the responsibility for the function was delegated to the Public Rights of Way Committee under the Council's constitution.

An application had been submitted on 8 March 2013 by Sutton Parish Council. The Application Land was shown on Appendix A to the report. The evidence in support of the application contained six witness statements stating various uses. The application was based on the use of land "as of right" for pastimes such as a children's play area, walking and exercising of dogs, bicycle riding, football and general recreation.

Simon Richardson, spoke on behalf of Peaks & Plains Housing Trust, stating that they supported the report's recommendation to appoint an Independent Person to consider the application.

Following the statutory consultation process, the Council had received a further 82 letters/forms in support of the application and one letter of objection from Peaks & Plains Housing Trust, who owned the land.

The landowners' objection was based on a number of factual and legal submissions, including:

- The use of the land by a "significant" number of inhabitants
- The "neighbourhood/locality" that use the land
- That the use of the land is not use "as of right"
- The actual use of the land.

The applicant had disputed the factual grounds on which the objections were based.

Although the Council did not have a legal interest in the land, they did have an interest in Peaks & Plains Housing Trust. In such cases it was considered appropriate that an independent person be appointed to consider the application.

An non-statutory public inquiry was not being recommended because it was considered that given some of the objections were of a legal nature, it may be possible for the application to be considered on the written evidence in the first instance. It may be possible that the independent person, having received the documentation, recommends an inquiry is held instead. In the event of such a request it was recommended that delegated authority be given to the Head of Legal Services, in consultation with the Chairman of the Public Rights of Way Committee, to determine if a non-statutory public inquiry should take place.

The Committee unanimously

RESOLVED: That

- 1 That the Head of Legal Services be authorised to appoint an independent expert to consider the application on the basis of written representations and provide a report.
- 2 That Head of Legal Services be given delegated authority to determine if a non-statutory public inquiry should take place upon the recommendation of the independent expert, after consulting with the Chairman of the Public Rights of Way Committee.

27 VILLAGE GREEN APPLICATION - LAND AT PICKMERE INFORMAL RECREATION OPEN SPACE, JACOBS WAY, PICKMERE, KNUTSFORD

The Committee considered a report seeking a decision on how to proceed with a village green application in respect of land at Pickmere Informal Recreation Open Space, Jacobs Way, Pickmere, Knutsford.

The Council was the registration authority for village greens and the responsibility for the function was delegated to the Public Rights of Way Committee under the Council's Constitution.

An application had been submitted on 5 February 2013 by Mrs Catherine Plowden. The Application Land was shown on Appendix A to the report. The evidence in support of the application contained several witness statements stating various uses and several photographs. The application was based on the use of the land for pastimes and sports such as dog walking, children play areas, bird watching, picnics, football, cricket, flying kites, sledging and general recreation.

Following the statutory consultation process, the Council received a further 18 letters in support of the application, one letter of objection from a local resident and an objection from Pickmere Parish Council as landowner.

The landowners' objection was based on a number of factual and legal submissions, including:

- The use of the land is not use "as of right"
- The length of use and the ability to use the land.

The applicant had disputed the factual and legal grounds on which the objections were based.

It was recommended that an independent person be appointed to consider the application. A non-statutory public inquiry was not recommended because it was considered that given that some of the objections were of a legal nature, it may be possible for the application to be considered on the written evidence in the first instance. It may be possible that the independent person, having received the documentation, recommends an inquiry is held instead. In the event of such a request it was recommended that delegated authority be given to the Head of Legal Services, in consultation with the Chairman of the Public Rights of Way Committee, to determine if a non-statutory public inquiry should take place.

The Committee unanimously

RESOLVED: That

- 1 The Head of Legal Services be authorised to appoint an independent expert to consider the application on the basis of written evidence and provide a report.
- 2 The Head of Legal Services be given delegated authority to determine if a non-statutory public inquiry should take place upon the recommendation of the independent expert, after consulting with the Chairman of the Right of Way Committee.

28 PUBLIC HEARING TO DETERMINE DEFINITIVE MAP MODIFICATION ORDER: UPGRADING OF PUBLIC FOOTPATH NO.9 (PART) TO BRIDLEWAY AND ADDITION OF PUBLIC BRIDLEWAY NO 12, PARISH OF HIGHER HURDSFIELD AND ADDITION OF PUBLIC BRIDLEWAY NO 98, PARISH OF MACCLESFIELD

The Committee received an information report on the outcome of a public hearing to determine a Definitive Map Modification Order.

The Committee, at its meeting on 24 September 2012, approved an Order upgrading Public Footpath No.9 in the parish of Higher Hurdsfield to Public Bridleway, with the exception of the route past Close House Farm (C-H-I-D on Plan No. WCA/004). This part of the route was refused on the grounds that there was insufficient evidence to show the existence of bridleway rights. Approval was also given for the making of an Order for the additional of two further sections of bridleway between points C-G-D and E-F.

A Modification Order was made on 17 January 2013 and advertised on 6 February 2013. Four formal objections were submitted to the Order and not withdrawn. Three objections were based on the fact the Council had omitted the section past Close House Farm. The fourth objection related to the way in which the Order schedule recorded the width of the bridleway at a point where a large oak tree narrowed the path. A further representation was received not objecting to the Order but stating that they would object if the Order was modified to include the section past Close House Farm.

The appointed Inspector was Sue Arnott and a public hearing was held on 9 September 2014 at Macclesfield Town Hall. It was the Council's approach that the evidence was sufficient to justify making an Order to record the claimed bridleway but not over the entire length of the route. The historical evidence was not strong enough to support the existence of a status higher than that of footpath, which was already recorded on the definitive map. The evidence in opposition was that the historical evidence showed dedication of the full length of Footpath No.9 as a bridleway.

The Inspector addressed the historical evidence submitted by the Applicant, as well as the additional evidence gathered by the Council during the investigation. The Inspector also addressed the user evidence and looked at the use on horseback for both the Order route and that of the route past Close House Farm. She also addressed the landowner's intentions and whether there was any evidence to show a lack of intention to dedicate a public right of way for horses.

The hearing was closed and concluded on 9 September following an accompanied site visit. The Inspector issued a decision letter on the 14 November 2014 in which she confirmed the Order, with no modifications. The balance of the argument weighed in favour of the Order route having been deemed to have been dedicated as a bridleway.

RESOLVED:

That the report be noted.

29 PUBLIC HEARING TO DETERMINE PUBLIC PATH EXTINGUISHMENT ORDER: THE CHESHIRE EAST BOROUGH COUNCIL (PUBLIC FOOTPATH NO. 29 (PART) PARISH OF SANDBACH) PUBLIC PATH EXTINGUISHMENT ORDER 2013

The Committee received an information report on the outcome of a Public Hearing to determine a Public Path Extinguishment Order.

At the meeting of the Committee in September 2013 an Order had been approved to extinguish part of Public Footpath No.29 in the parish of Sandbach. Two objections to the Order were received from Congleton Ramblers and Peak & Northern Footpath Society. As the objections were not withdrawn, a file of the relevant information was submitted to the Planning Inspectorate in April 2014.

The appointed Inspector was Michael Lowe and a public hearing was held on 30 September 2014. The basis of the evidence in support of the Order was that the lack of complaints about the long standing obstruction was a good indication that the footpath was not needed and that the alternative, more attractive and safer route was satisfactory. The evidence in opposition was that Public Footpath No.29 was a more attractive route for walkers in comparison to the alternative route and that it would be a more direct route for some residents to access the local shop and wider countryside. The Ramblers had gathered 24 signatures on a petition in support of this.

The Hearing was closed and concluded on 30 September and the Inspector issued a decision letter on 18 November 2014 in which he did not confirm the Order. The balance of the argument weighed in favour of retaining the footpath as the Inspector believed that a significant number of local residents on the estate would find the footpath a convenient route to the local shop and other locations if it were available and attached considerable weight to this factor.

RESOLVED:

That the report be noted.

The meeting commenced at 2.05 pm and concluded at 3.33 pm

Councillor Rhoda Bailey (Vice-Chair, in the Chair)