

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 14th March, 2016 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor M Hardy (Chairman)
Councillor D Flude (Vice-Chairman)

Councillors Rhoda Bailey, W S Davies, M Deakin, T Fox and J Wray

Officers

Mike Taylor, Public Rights of Way Manager
Jennifer Tench, Definitive Map Officer
Marianne Nixon, Public Path Orders Officer
Patricia Evans, Planning Lawyer
Rachel Graves, Democratic Services Officer

24 APOLOGIES FOR ABSENCE

There were no apologies for absence.

25 DECLARATIONS OF INTEREST

No declarations of interest were made.

26 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 7 December 2015 be confirmed as a correct record and signed by the Chairman.

27 PUBLIC SPEAKING TIME/OPEN SESSION

Two members of the public had registered to speak in relation to Item 5. The Chairman advised that he would invite them to speak when the application was being considered by the Committee.

28 HIGHWAYS ACT 1980 S.119 AND S25: APPLICATION FOR THE DIVERSION OF PUBLIC BRIDLEWAY NO 5 AND PUBLIC FOOTPATH NO 9 (PARTS) AND CREATION OF A NEW PUBLIC FOOTPATH, PARISH OF MARTHALL

The Committee considered a report which detailed an application from Mike Walker (a Public Rights of Way Consultant) on behalf of Mr R Brighouse of Mount Pleasant, Marthall, Knutsford, requesting the Council

to make an Order to divert part of Public Bridleway No.5 and part of Public Footpath No.9 and create a new Public Footpath 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 to divert a public path 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 25 of the Highways Act 1980 the Council can enter into a Creation Agreement with the owner of the land to create a new public footpath.

Mr John White, North and Mid Cheshire Ramblers, addressed the Committee and asked about the informal consultation process as the comments he had submitted had not been included in the Report. He was concerned about the nature of the surface on the proposed diversion route and that drainage would need to be improved.

Mr Brighouse, the Applicant, addressed the Committee and stated he would work with the Council to solve any surface and drainage issues.

The Applicant owned the land over which the current and the proposed diversions ran. Mount Pleasant Farm had been demolished and had permission for the erection of a substantial new single residential dwelling to occupy the site, together with garaging, stables, a manege and small golf course. Both public rights of way passed very close to the property.

The existing section of Public Bridleway No.5 Marthall to be diverted passed across the frontage of the property and directly crossed, what would be, dual access roads to the house and its facilities. Diverting the path to a new route would offer greater privacy and security to the property as well as increasing the safety for users by removing potential conflict with vehicles crossing at two separate points in front of the property. The new route would have a width of 4 metres with no requirement for any gates and for part of its length would have a stone based surface.

The existing section of Public Footpath No.9 Marthall to be diverted ran through fields and passed adjacent to the northern side of the new dwelling and then across fields behind. Diverting this section would also afford greater privacy. The new section of public footpath would have a width of 3 metres and would have kissing gates rather than stiles along its route.

A new section of footpath would be created linking from point M of the proposed new route for Public Footpath No.9 and would run north westerly to join Public Footpath No.6 at point J. This path would have a width of 3 metres.

The Committee noted that no objections had been received during the informal consultation and considered that the proposed routes would not be substantially less convenient than the existing routes. Diverting the

Bridleway and Footpath would be of benefit to the landowner in terms of privacy and security to their property and the creation of a new direct link to Public Footpath No.6 Marthall would be a useful addition to the local public rights of way network. It was therefore considered that the proposed routes were a satisfactory alternative to the current routes and that the legal tests for the making and confirming of the 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 Bridleway No.5 and Public Footpath No.9 in the parish of Marthall by creating new sections of each path and extinguishing the current path sections, as illustrated on Plan No.HA/108, on the grounds that it is expedient in the interests of the owner 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.
- 4 An agreement under Section 25 of the Highways Act 1980 be entered into with the landowner, Mr R Brighouse, to create a length of public footpath as detailed in the report and as illustrated on Plan No.HA/108.

29 HIGHWAYS ACT 1980 S.119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 24 (PART), PARISH OF BOLLINGTON

The Committee considered a report which detailed a joint application from Mr & Mrs Earl of Sycamore Quarry and Mr Beardmore of Endon Quarry, Windmill Lane, Kerridge, Macclesfield, requesting the Council to make an Order to divert part of Public Footpath No.24 in the parish of Bollington.

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.

The land over which the section of current path to be diverted and the proposed diversion ran belonged to the Applicants, with the exception of

approximately 10 metres of the current route which belonged to Mr D Tooth, who had provided his written consent to the diversion.

The current definitive line of the section of Public Footpath No.24 to be diverted was partly not available on the ground. Part of the route was extremely steep and went through a wooded area and a post and wire fence. A further section ran through the actually working quarry and the route had been quarried away. The southern section also had a very steep gradient and was in close proximity to the edge of the working quarry and large earth moving machinery.

The proposed route of the diversion was currently being used as a permissive path, although improvements would need to be made with steps being installed and the path resurfaced as required. The new route would have a width of 2 metres and would be enclosed for approximately 75 metres of its length between post and wire fences and would be a stone/earth surface.

The Committee noted the comments received from Bollington Town Council Cllr Ken Edwards and East Cheshire Ramblers, and the complaint from Mr G Williams along with the Public Rights of Way Unit response.

The Committee considered that the proposed route would not be substantially less convenient than the existing route and that diverting the footpath would be in the interest of the landowners as it would allow them to continue with their current quarrying permissions. 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 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.24 Bollington by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/104, 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.

30 HIGHWAYS ACT 1980 S.119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 3 (PART), PARISH OF ALPRAHAM

The Committee considered a report which detailed an application from Clare Goodman (Public Rights of Way Consultant) on behalf of Carol Hutchison, Elm Tree Cottage, Alpraham, requesting the Council to make an Order to divert part of Public Footpath No.3 in the parish of Alpraham.

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.

The land over which the current path and the proposed diversion ran belonged to the Carol Hutchison. Diverting the path would enable the applicant to better manage land, livestock (horses) and operations within the grounds of their stables whilst providing users with a more convenient route as it would have less path furniture to negotiate and also eliminate the need to negotiate the livestock. The entire length of the new route would have post and rail fencing installed along one side and be bounded by an existing hedge along the other.

The pedestrian gate on the new route, at point F, would be set back from the lane to give users an area of verge from which to stand and view oncoming traffic. It would also be graded sufficiently so that there was no steep drop onto the area of verge.

The Committee noted that no objections had been received during the informal consultations and considered 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 aiding with land management, livestock and offered enhanced 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 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.3 Alpraham by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/107, 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.

31 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 24 (PART), PARISH OF PRESTBURY

The Committee received a report which detailed an application from J Hinds (agent) of Savills UK Ltd on behalf of Kings School, Cumberland Street, Macclesfield, requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1980 to divert part of Public Footpath No.24 in the parish of Prestbury.

In accordance with Section 257 of the Town and Country Planning Act 1980, the Borough Council, as Planning Authority, could make an Order diverting a footpath if it was satisfied that it was necessary to do so to enable development to be carried out in accordance with a planning permission that had been granted.

A planning application had been submitted for the construction of a new school comprising classrooms, libraries and supporting facilities together with additional playing fields and various associated outbuildings, infrastructure, car parking and access – Planning reference 15/4286M. Planning permission had not yet been granted and therefore any Order made would be only made operable on condition that planning permission was granted.

The existing alignment of Public Footpath No.24 would be obstructed by the proposed new school building and therefore a public footpath diversion would be required to preserve public access around the school. The length of footpath proposed to be diverted was approximately 210 metres of which 60 metres would be directly affected by the development. The proposed new route would be 3 metres wide with a 1.2 metre wide stone surface with timber edging, laid within the 3 metre width. Either side of the stoned surface would be grass. A post and three rail sawn fence with sheep netting would be installed to the west of the footpath to prevent interaction between school personnel and path users such that security and privacy for both would be enabled. Agricultural gates would be installed within the fence for use by school staff to access the footpath and surrounding land for maintenance and other operational requirements.

Prestbury Parish Council had been consulted on the proposed diversion and had registered objection on the basis that it was not justifiable at this time. However, after discussion to explain that the path would need to be diverted if the development was granted planning permission and that the diversion need to be considered at this time the Parish Council agreed to

reconsider the proposal again. It was reported that the Parish Council would not be meeting until after the Committee had considered the application.

Other than Prestbury Parish Council, no other objections had been registered, although the East Cheshire Group of the Ramblers made this conditional on granting of planning permission.

The Committee considered the application and concluded that it would be necessary to divert part of Public Footpath No.24 Prestbury if planning permission was granted 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.

As Prestbury Parish Council had indicated that they would respond to the informal consultation and to allow for their response to be considered, the Committee was therefore asked to delegate the decision to the Public Rights of Way Manager, in consultation with the Chairman and Vice Chairman to allow the response to be considered in reaching a final decision.

The Committee unanimously

RESOLVED: That

- 1 the decision be delegated to the Public Rights of Way Manager, in consultation with Chairman and Vice Chairman.
- 2 If an Order is made, 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.
- 4 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.

32 TOWN AND COUNTRY PLANNING ACT 1990 S257: APPLICATION FOR THE EXTINGUISHMENT OF PEDESTRIANS ROUTES, FORMER VICTORIA COMMUNITY HIGH SCHOOL, WEST STREET, CREWE

The Committee considered a report which detailed an application from IBI Group acting as Agent for the Crewe Engineering and Design TC, requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1980 to extinguish four lengths of pedestrian routes that crossed the site of the former Victoria Community School on West Street, Crewe.

In accordance with Section 257 of the Town and Country Planning Act 1980, the Borough Council, as the Planning Authority, can make an Order extinguishing a pedestrian route that it considers to be a public right of way if it is satisfied that it was necessary to do so in order to enable development to be carried out in accordance with a planning permission that had been applied for or granted.

Planning permission had been granted for the demolition of former Newdigate and Meredith Buildings and the erection of a 3622 sqm. new educational building and associated car parking and landscaping work, alongside the refurbishment of the Oakley Building for use by the UTC former Victoria Community High School and the Oakley Centre, West Street, Crewe - Planning Application 15/4389N. The paths to be extinguished currently passed through the proposed new college building and also passed through the area of the site which was to be defined by a secure perimeter, ensuring the safeguarding of pupils.

The history of the site dated back to the late 1970s when sections of the existing streets were stopped up by Magistrate's Court Order to prepare the way for the development of the new Victoria Community High School. No formal access provision was set out through the school site; however it was not enclosed and remained highly permeable effectively allowing rights of access for pedestrians to develop. The School stopped being an educational site in about 2009/2010 when it merged with another school and moved to a new site to become the Sir William Stanier Community School. Since that time two of the buildings have been derelict and the Oakley Centre had been used by Cheshire East Council as a Community Centre.

When the current development was in the planning stage, the Public Rights of Way department was approached for their comments on the status of the routes through the site. It was considered that public rights of way had probably accrued. Signs located on the site by Cheshire County Council stating 'Private Property, Right of Way' gave a strong indication that access had been acknowledged by the County as landowner. On this basis it was recommended to the partnership working in conjunction to develop the University Technology College, that the routes should be formally closed.

At the same time it was agreed that one pedestrian route through the site was essential requisite in designing the new layout. The route along the frontage of the site running east to west was a strange anomaly as it fell mostly within the school site landholding and yet also effectively served as the northern footway for West Street. It was therefore essential that this route was retained for the public.

The pedestrian routes were currently the subject of a temporary closure order whilst site preparation works were underway and asbestos was removed from the buildings. The order came into force on 7 December 2015 and expires after 6 months. If the developer wished to extend this

period of closure, an application must be made to the Department of Transport at least 4 weeks before the current expiry date.

The Committee considered the application and concluded that it was necessary to extinguish the sections of pedestrian routes, as illustrated on Plan No. TCPA/027, to allow for the demolition of existing buildings and the construction of a new educational building and associated car parking and landscaping. It was considered that the legal tests for the making and confirming of an Extinguishment 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 extinguish the pedestrian routes, illustrated on Plan No. TCPA/027, on the grounds that the Borough Council is satisfied that it is necessary to do so in order to enable development to be carried out.
- 2 Public Notice of the making of the Order is 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 3.20 pm

Councillor M Hardy (Chairman)