

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 11th September, 2017 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor D Flude (Vice-Chair, in the Chair)

Councillors Rhoda Bailey, S Davies, T Fox, L Gilbert and J Wray

Officers

Mike Taylor, Rights of Way Manager

Marianne Nixon, Public Path Orders Officer

Patricia Evans, Lawyer

Nicky Folan, Lawyer

Rachel Graves, Democratic Services Officer

10 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor M Hardy.

11 DECLARATIONS OF INTEREST

Item 5: Application to Register land in the Parish of Somerford as a town or village green: Councillor J Wray declared that he had previously expressed an opinion in relation to this application and would leave the room during consideration of this item.

12 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 12 June 2017 be confirmed as a correct record and signed by the Chairman.

13 PUBLIC SPEAKING TIME/OPEN SESSION

No members of the public present wished to speak.

14 VILLAGE GREEN APPLICATION - APPLICATION TO REGISTER LAND IN THE PARISH OF SOMERFORD AS A TOWN OR VILLAGE GREEN

Councillor J Wray, having previously declared an interest, left the meeting whilst this application was considered.

During consideration of this application Councillors R Bailey and L Gilbert arrived to the meeting. They did not take part in the discussion or voting on the application.

The Committee considered the report of the Independent Expert on the application to register land adjacent to Chelford Road and Black Firs Lane, Somerford as a village green.

The application was submitted by Mr Nicolas Bell in May 2013. The Right of Way Committee originally received a report on 15 September 2014 and resolved that an independent expert be appointed to consider the application on the basis of written representations and to provide a report to the Committee. On 16 March 2015 a further report to the Committee recommended that the view of the independent expert be accepted and the application be rejected. The Committee resolved as such.

Following the decision, a Judicial Review of the decision was commenced on 15 June 2015 alleging amongst other things that there had been a procedural error as the independent expert had not given the Applicant the opportunity to comment on late evidence submitted by the Highway Authority, and that there should have been a public inquiry held to determine facts. In relation to these two points the Judicial Review application succeeded and the village green application fell to be determined again.

On 13 June 2016, the Committee resolved that an appropriately qualified independent expert be appointed to conduct a non-statutory inquiry to consider the application and provide the Committee with a report and recommendation for determination.

Mr Timothy Jones, Barrister, was appointed as the independent expert and was provided with copies of the application, plan and supporting evidence and also the information that resulted in the Judicial Review and copy of the High Court Decision.

Mr Jones held a non-statutory public inquiry to consider evidence over the course of 8, 9, 10 and 11 May 2017 and had subsequently produced a report. At the inquiry Mr Nicholas Bell represented himself until he withdrew from the Inquiry following giving his own evidence. Mr Christian Hawley of Counsel appeared on behalf of the Highways Authority and Mr Andrew Platt, Solicitor appeared on behalf of Richborough.

Mr Jones in his report concluded that part of the land covered by the application should be excluded from the site as it had been the subject of a trigger event, and in relation to the remainder of the land concluded that:

1. the Applicant had not demonstrated that the use of the land took place as of right
2. the Applicant had not demonstrated that the area specified in the application was a locality or neighbourhood; and

3. the Applicant had not demonstrated that if it had been a locality or neighbourhood that the use would have been significant for at least 20 years.

The Committee considered that report and recommendations of the Independent Expert and unanimously

RESOLVED:

That the report of the Independent Expert, Mr Timothy Jones, be accepted and that the application to register the land adjacent to Chelford Road and Black Firs Lane, Somerford as a village green be rejected for the reasons set out in the Independent Expert's report.

15 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 12 (PART), PARISH OF POTT SHRIGLEY

The Committee considered a report which detailed an application requesting the Council to make an Order to divert part of Public Footpath No.12 in the parish of Pott Shrigley.

In accordance with Section 119(1) of the Highway 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.

During consultation for the Cheshire East Rights of Way Improvement Plan in 2010, Pott Shrigley Parish Council contacted the Public Rights of Way Unit with a suggestion to divert part of Public Footpath No.12 Pott Shrigley. The suggestion was logged and added to the Improvement Plan as an aspiration. In 2012 the landowner of the path, Mrs Veronica Shelly, contacted the Public Right of Way Unit to confirm her support for the proposed diversion and the proposal was added to the waiting list for Highways Act diversions. It had now reached the top of the list and had been initiated in the interests of the public.

The proposed route had been in place as a permissive route for a number of years. This path had a width of two metres with a 1.2 metre compacted stoned surface. It passed through a small wooded area before exiting through a kissing gate onto a layby on Shrigley Road which provided parking and where a parish council notice board was located. The length of the proposed route was approximately 59 metres. The proposed diversion would provide a safer exit point onto Shrigley Road, thereby improving public safety.

The Committee noted that no objections had been received during the informal consultation and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would be of benefit to the public as would provide a safer exit

point onto Shrigley Road. 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.12 in the Parish of Pott Shrigley by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No. HA/116 on the grounds that it is expedient in the interests of the public.
- 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 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO'S 2 AND 3 (PARTS), PARISH OF HULME WALFIELD

The Committee considered a report which detailed an application from Mr Stuart Hough of Bloor Homes, 2-4 Whiteside Business Park, Station Road, Holmes Chapel, Cheshire, requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1990 to divert parts of Public Footpath Nos.2 and 3 in the parish of Hulme Walfield.

In accordance with Section 257 of the Town and Country Planning Act 1990 the Borough Council, as Planning Authority, can make an Order diverting a public 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 which had been applied for or granted.

It was reported that in paragraph 9.4 of the report the wording 'Planning Permission Ref 62/3107C' should read 'Planning Permission Ref 16/3107C'.

Planning permission had been granted on 15 May 2017 for a residential development on land between Gaintswood Lane and Manchester Road, Hulme Walfield - planning reference 16/3107C.

The existing alignment of the footpaths would be directly affected by the construction of the residential development. Bloor Homes owned the land

over which both the current footpaths and proposed diversion route ran. Public Footpath No.2 Hulme Walfield would be specifically obstructed by a water pumping station required for the planned residential development and part of the footpath would also run across the entrance estate road of the new development. Furthermore, topographical changes in the land to the east of the hedge line along which it currently ran would render the land unsuitable to carry the footpath in future.

Part of Public Footpath No.3 Hulme Walfield would also run across the entrance estate road and was required to be diverted to eliminate this and to link to the diversion route of Public Footpath No.2 Hulme Walfield.

The developer was presently installing a footpath along the line of the proposed diversion for Public Footpath No.2 Hulme Walfield to provide users with an alternative footpath whilst the current path was closed on health and safety grounds whilst the development was built. If the diversion was approved, this would become the new route and it was the intention of the developer to upgrade to bridleway status.

The Committee considered the application and concluded that it was necessary to divert parts of Public Footpath Nos. 2 and 3 Hulme Walfield to allow for residential development, as detailed in planning reference 16/3107C. 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 parts of Public Footpath Nos. 2 and 3 Parish of Hulme Walfield, as illustrated on Plan No.TCPA/042, 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 2.30 pm

Councillor D Flude (Vice-Chair, in the Chair)