

**MINUTES OF A MEETING OF THE RIGHT OF WAY COMMITTEE held on  
3 April 2006 at County Hall, Chester**

PRESENT: Councillors:

B Hardern (in the Chair)  
D A Andrews  
J E Burke  
K J Edwards  
R A Giltrap  
A W Hooton  
B Jones  
K Oliver  
A Needham  
S R Wilkinson

LOCAL MEMBERS: Councillor Mrs S A Harris

**9 PROCEDURAL MATTERS**

**RESOLVED:**

That the minutes of the Right of Way Committee meeting held on 23 January 2006 be confirmed as a correct record.

**10 PUBLIC RIGHT OF WAY ANNUAL REPORT 2005/6 AND WORK  
PROGRAMME 2006/7**

The decision paper recorded the achievements of the County Council in terms of its public right of way functions during the year 2005/6 and set out the proposed work programme for the year 2006/7.

It was noted that the new Corporate Plan would relate to the pre-existing objectives identified in the annual report. The targets detailed in the report were those approved at consultations.

The ongoing issues relating to GIS updates from the Ordnance Survey were a matter of concern, as it would affect the ability of the Right of Way Unit (and other Environment Services) to perform their functions. The Local Access Forum was also feeding into the decision making on work programming.

The new format of the report was commended by members.

**RESOLVED:**

That the report be noted and the work programmed for 2006/7 be approved.

**11 HIGHWAYS ACT 1980 (GATING ORDERS) (ENGLAND) REGULATIONS  
2006 SI 2006/537**

Section 2 of the Clean Neighbourhoods and Environment Act 2005 amended the Highways Act 1980 and gave authority to Councils enabling them to place gates across rights of way which could be locked at certain times with the intention of preventing anti-social behaviour. There were three tests which had to be satisfied in order for the authority to propose a Gating Order. Following consultations, the Orders can be confirmed even in the face of objections, provided that those objections were not from the local Ambulance, Police, or Fire Services or another local council. The question of funding for the provision of gates and for pursuing the Orders was left to the Council's discretion.

Members questioned how the Orders would operate and noted certain instances where it would be appropriate.

**RESOLVED:**

That the report be noted.

**12 COUNTY COUNCIL PUBLIC RIGHTS OF PROSECUTIONS**

The Decision Paper detailed the purpose of the County Council's Right of Way Enforcement Protocol insofar as it related to prosecutions.

It listed the objectives in using prosecution as part of the Enforcement Protocol and emphasised the Protocol had been extremely beneficial in enabling officers to deal with issues of obstruction of the public right of way network.

The Committee noted that prosecutions were rare but remained a valuable tool in asserting and protecting the rights of the public to use the network.

**RESOLVED:**

That the report be noted.

**13 COUNTRYSIDE AND RIGHTS OF WAY ACT 2000 – S16 DEDICATIONS:  
COUNTRYSIDE AGENCY PILOT PROJECT**

The Countryside Agency and Defra were looking at ways of extending countryside access beyond the areas with statutory rights such as mountain, moor, heath and down. Work had been proceeding to assess the possibility of coastal access and linear routes for cycling or canoeing were also being looked into.

The Countryside Agency had launched a new project to research the use of S16 of the CROW Act as a way to voluntarily secure and extend access to

land. It had been looking for local organisations or partnerships to host a demonstration project. Cheshire County Council had developed a bid to host a pilot project, which would be led by a project officer for two years. The bid was submitted at the end of March 2006.

The project officer post which was required would be fully funded by the Countryside Agency, with the only resources required from the County Council being office support and redundancy costs.

Members felt that the project was a worthwhile one, and showed that the County Council had excellent standards and record in this field. They felt that it was still worthwhile despite the resource implications.

**RESOLVED:**

That the proposal be supported if the bid was successful.

**14 PRE-EMPTIVE TRAFFIC REGULATION ORDERS ON PUBLIC RIGHTS OF WAY**

Definitive Map modifications which were likely to result in a recording of a By-Way Open to All Traffic (BOAT) commonly caused local residents to express considerable concern about the consequences of such modifications, possibly because of a perception that the designation would encourage the route to be used extensively by motor vehicles.

From time to time, objectors to a BOAT Order will request the County Council to make a concurrent (or pre-emptive) Traffic Regulation Order (TRO) in order to ensure that motor vehicles will not be able to use the route if it is added to the Definitive Map and Statement.

It had been the experience of officers that, in instances where BOATs have been added to the Definitive Map and Statement, or where Roads Used as Public Paths have been reclassified as BOATs, the feared consequences had not occurred and a proper maintenance and management plan had created pleasant multi-user routes. The Council had a duty as Highway Authority to maintain all highways recorded as publicly maintainable and to assert and protect the rights of the public to use those routes in accordance with their status.

Recent government advice was that pre-emptive TROs can be made in tandem with modification orders so as to restrict certain types of vehicles or to restrict vehicular traffic altogether in areas where there was a really serious problem.

It was noted that if a TRO was promoted and approved, the approximate cost would be £3,000 and there was no guarantee that it would be enforceable.

Members debated two areas where the making of a TRO has been suggested by objectors to Orders. They did, however, note that the making of a TRO was a last resort in the process.

**RESOLVED:**

That the report be approved.

**15 WILDLIFE AND COUNTRYSIDE ACT 1981 – PART III, SECTION 53:  
APPLICATION 4/54 – APPLICATION FOR THE ADDITION OF A PUBLIC  
FOOTPATH FROM THE GRANGE TO THE A559 CHESTER ROAD,  
HARTFORD PARISH, BOROUGH OF VALE ROYAL**

An application had been submitted in June 2001 by Mr D Cooney, to modify the Definitive Map and Statement by the addition of a Public Footpath from the Grange along the Grange Farm access drive to the A559 Chester Road, in the Parish of Hartford.

The application had been based on user evidence, originally submitted by ten individuals claiming the use of the route on foot. Nine of the ten individuals claimed use for a period in excess of twenty years. Use of the route was challenged by the erection of a locked gate across the farm drive sometime in 2002/3. The gate remained in place, although a gap at the side of the gate had enabled witnesses to continue to use the route.

In February 2006 the landowners blocked off the claimed route at both ends with mental fencing, at the request of Vale Royal Borough Council's Enforcement Officer.

Following consultations two letters of objection were received on behalf of the previous landowners and objections were also noted from the current landowners. The Parish Council and local Member support the application. There was no response from the Borough Council.

Documentary evidence appeared to show that a route existed in the location in 1846, although there was no indication of status. The user evidence in support of the application satisfied the requirements of Section 31(1) of the Highways Act 1980. Of the 16 witnesses that were interviewed, 12 stated twenty or more years uninterrupted use of the route.

A request had been received for deferment of the item from the current landowner, although following a debate, Members felt that there would be sufficient opportunity for objection to the application following the notice of the making of the order.

**RESOLVED:** That:

(1) An Order be made under Section 53(3)(b) and 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to

show the claimed route as a Public Footpath, as shown between points A and B on Drawing No. MO/522; and

(2) Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the County Council by the said Act.

**16 WILDLIFE AND COUNTRYSIDE ACT 1981 – PART III, SECTION 53:  
APPLICATION 8/30 – ADDITION OF A FOOTPATH FROM HOWEY HILL  
TO PUBLIC FOOTPATH NO. 5 CONGLETON, BOROUGH OF  
CONGLETON**

An application had been registered in 2002 by Mr Peter Coleshaw, a resident of Howey Hill, Congleton, to modify the Definitive Map and Statement by the addition of a footpath from the southern end of Howey Hill to Public Footpath No. 5 Congleton. The application had been made based on user evidence submitted by six individuals claiming use of the route for a period in excess of twenty years. Two further witness statements and names of other witnesses had been brought forward.

It had been claimed that use of the route by the public was brought into question by parked vehicles obstructing the junction of Howey Hill with the adopted highway and one witness thought that they were stopped from using the path when a cattle feeder was placed near the stile at the end of Howey Hill. These incidents occurred during 2000-2001.

The investigation found no recorded landowner for the claimed route from Howey Hill for a distance of approximately 82 metres. To comply with paragraph 2(2) of schedule 14 of the Wildlife and Countryside Act 1981 notices advertising the application had been posted on site. The documentary evidence suggested that this section of path was a public highway and had been a part of Howey Hill from at least 1831.

The landowner of the remainder of the claimed route, a distance of approximately 106 metres to Public Footpath No. 5, had provided a stile for users and in 2002 permissive waymarkers had been attached to this stile which had brought the use of the way into question. The Highways Act 1980 contained the provision that where a way over land had been enjoyed by the public as of right for a full period of twenty years, the way was deemed to have been dedicated as a highway. Following consultations no objections had been received, and there had been no overt challenge to users at any time.

**RESOLVED:** That:

(1) An Order be made under section 53 (3) (b) and 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to show the claimed route as a Public Footpath as shown between Points A, B and C on drawing No. MO 519; and

(2) Public notice of the making of an Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the County Council by the said Act.

**17 WILDLIFE AND COUNTRYSIDE ACT 1981 – PART III, SECTION 53:  
APPLICATION 6/18 – 6/22: APPLICATION FOR THE ADDITION OF SIX  
FOOTPATHS ON LAND AT CHESTER GOLF CLUB, CHESTER CITY**

An application had been submitted in February 2000 by Mr D Fallon on behalf of the Ramblers Association, to modify the Definitive Map and Statement by the addition of six footpaths over land at Chester Golf Club, Chester City. The land affected being owned by Brewers Hall Estate Company Limited. The application had been made following an application for planning permission being made by Brewer's Hall Estate Company Limited in 1999, for the land over which part of the route is claimed. A large amount of user evidence and documentary evidence had been obtained in order to consider the application.

Following consultations the Brewer's Hall Estate Company and their tenants Chester Golf Club have both objected to the application.

The evidence in respect of most of the routes was sufficient to show that, on the balance of probabilities, public footpaths were reasonably alleged to subsist along those routes and therefore the legal test contained in Section 31 of the Highways Act 1980 was satisfied. The evidence in respect of route D-X on the plan attached to Decision Paper was not sufficient to show that the alleged public footpath subsisted or was reasonably alleged to subsist and therefore the application in respect of that route should be refused.

**RESOLVED:** That :

- 1) An Order be made under Section 53(3)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to show the claimed routes A-B, C-F, E-G (north and south) and G-H as public footpaths, as shown on Drawing No MO/523;
- 2) Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the powers conferred on the County Council by the said Act; and
- 3) That the application for route D-X be refused on the grounds that insufficient evidence has been submitted to show that public footpath rights subsist or are reasonably alleged to subsist on the route shown on Drawing No MO/523.

**18 HIGHWAYS ACT 1980 – SECTIONS 25 AND 26. CREATION OF NEW PUBLIC BRIDLEWAY (PROW NO. 30) PARISH OF CHORLEY, BOROUGH OF MACCLESFIELD**

The County Council's Right of Way Improvement Plan had identified as a key priority to work in partnership with land managers to create new off road riding opportunities for horse riders and cyclists.

In March 2005, Mrs Margaret Rainey of Lingard's Farm, Foden Lane, Chorley, approached the Public Rights Of Way Team with a view to dedicating a piece of her land for the purposes of creating a new public bridleway. The proposed new route would form a link between two existing quiet lanes (Foden Lane and Carr Lane) and two sections of the proposed route were already recorded as public footpaths – public footpath no. 18 and no. 8 Chorley. The full circuit would be approximately 3.4 kilometres in length. External funding was required to help to put the proposed new route in good order.

Funding was sought from the Rural Enterprise Programme called "Saddle Up!" and from Waste Recycling Environmental Limited. Subsequent to these applications, the landowners employed their own contractor to quote for some additional drainage on the land. The contractor informed the landowner that the bridleway cannot be constructed without significant additional drainage works, which would increase the overall project costs significantly. This would require additional funding, for which there was no obvious source.

Officers considered that the project would create a useful off road riding opportunity and would act as a "flag ship" project which could influence other landowners in the area. Representations received identified a need for the provision in this area of the country, which had a high equestrian population, few connected bridleways and one of the best known riding schools in the county. There was considerable support for the proposal. Objections had been raised by some residents at the prospect of cyclists and horse riders using Carr Lane, primarily on road safety grounds. The County Council's view was that this was not an issue.

Members considered the proposal and acknowledged the landowners willingness to dedicate the route, but had considerable concerns over beginning the proposal without sufficient funding being available.

**RESOLVED;**

That the matter be deferred until appropriate funding was available.

**19 DIVERSION OF PUBLIC FOOTPATH NO. 4 (PART) PARISH OF HIGH LEGH, BOROUGH OF MACCLESFIELD (HIGHWAYS ACT 1980 – SECTION 119) – MINOR AMENDMENT TO COMMITTEE PLAN**

On 12 July 1004 the Rights of Way Committee approved an application by Mr D J Pimblott of Moss Farm, Peacock Lane, High Legh for an Order under S119 of the Highways Act 1980 to divert part of Footpath no. 4 High Legh.

The applicants had requested that an amended route be put to Committee for approval in response to a change in the situation on the ground. The previous route ran through adjacent fields and would have required two gates. The amended route, which was six to seven metres shorter, followed the line of the new access road to barns that had recently been converted and then followed the boundary wall of the one of the properties along a field edge. The new route would require only one gate.

**RESOLVED:**

That the change in the route of the proposed diversion as shown on plan no. SD/492A be approved.

**20 HIGHWAYS ACT 1980 – SECTION 119. APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO.14 (PART) PARISH OF BUNBURY, BOROUGH OF CREWE AND NANTWICH**

An application had been received from Castlemead Homes Limited requesting that the Council make an Order to divert part of Public Footpath no. 14 in the Parish of Bunbury.

The applicants had developed the site to provide six homes. The line of the footpath ran alongside the external wall of the new house at plot 6 and had cut across the rear garden. The application had been made in order to address this situation in the interests of the privacy and security of the plot.

The previous line of the path ran between the house and the hedge and was narrow, dark and oppressive. It was foreseeable that there could be problems with anti-social behaviour or criminal activity in this secluded area and maintenance problems in relation to over growth of the hedge which may make the route impassable at times. The proposed diversion followed a more attractive and open route and represented less of a maintenance burden.

It was proposed that the new path should run up the estate road and into an open field. The applicant amended its original proposal so that the path would run on grassed verge thereby separating pedestrian and vehicular traffic.

Following extensive consultations, the Parish Council objected strongly to the application on the basis that the route was “historic” and there was no strong reason for the diversion.

It was considered that the proposed diversion was in the interests of the landowner and there was a public interest element. Where objections subsist, the Order will fall to be confirmed by the Secretary of State.

It was considered that the vehicular use of the estate road would be minimal being restricted to occupiers of the estate and their visitors.



**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. 14 Bunbury as illustrated on plan no. SD/523 (plan B), 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 their 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; and
- (3) in the event of objections to the Order being received, the applicant be responsible for the conduct and financing of any hearing or public inquiry.

**21 HIGHWAYS ACT 1980 – SECTION 119. APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 4 (PART) PARISH OF PEOVER INFERIOR, BOROUGH OF MACCLESFIELD**

An application had been received from Mr John Liptrott of Cherry Tree Farm, Booth Bed Lane, Allostock requesting that the Council make an Order to divert part of Public Footpath no. 4 in the Parish of Peover Inferior. The application had been made in the interests of the privacy and security of Lower Peover Hall which was being improved by the applicant for resale. The footpath ran along the Drive and past the front of the building. The applicant contended that the diversion of the path would allow a new owner to gate the driveway, thus affording greater security.

It was proposed that the diverted footpath would run along a surfaced track around a pond to the front of the Hall. The applicant intended to demolish two barns which would otherwise obscured views of the Hall. The applicant believed that the diversion would present an opportunity for walkers to appreciate open views across fields to the north whilst still being able to enjoy a good view of the Georgian Peover Hall.

Following consultations the user groups and Parish Council objected to the proposal on the grounds of the route being longer and less convenient than the original, although it was considered that the application satisfied the legal test for making such an Order as it was in the interests of the landowner to diver the footpath further away from the Hall and Drive thereby increasing privacy and security.

It had subsequently been learned that the applicant had obstructed the right of way by erecting a wall across it. Members were reminded that it was not normal practice to consider application for a diversion where the applicant has obstructed a right of way.

**RESOLVED:**

That the matter be deferred whilst negotiations with the Landowner take place.

**22 URGENT BUSINESS**

There were no items of urgent business brought forward to the meeting.