

# **Public Rights of Way Committee**

## **Agenda**

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<b>Date:</b>	<b>Monday 12th December 2011</b>
<b>Time:</b>	<b>2.00 pm</b>
<b>Venue:</b>	<b>Committee Suite 1 &amp; 2, Westfields, Middlewich Road, Sandbach CW11 1HZ</b>

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The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

### **PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT**

1. **Apologies for Absence**

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item on the agenda

3. **Minutes of Previous meeting** (Pages 1 - 15)

To approve the minutes of the meeting held on 19 September 2011 as a correct record

4. **Public Speaking Time/Open Session**

Members of the public may speak on a particular application after the Chairman has introduced the report, provided notice has been given in writing to Democratic Services by 12 noon, one clear working day before the meeting. A total of 6 minutes is allocated for each application, with 3 minutes for objectors and 3 minutes for supporters. If more than one person wishes to speak as an objector or supporter, the time will be allocated accordingly or those wishing to speak may agree that one of their number shall speak for all.

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For any apologies or requests for further information, or to give notice of a question to be asked by a member of the public

**Contact:** Rachel Graves

**Tel:** 01270 686473

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Also in accordance with Procedure Rule No.35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the Committee. Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice of the intention to speak, however, as a matter of courtesy, a period of 24 hours notice is encouraged.

Members of the public wishing to ask a question should provide at least 3 working days notice in writing, and should include the question with that notice. This will enable an informed answer to be given.

5. **Highways Act 1980 - Section 119: Proposed Diversion of Public Footpath Nos. 23(part) & 24(part) and the Extinguishment of Public Footpath 22(part), Parish of Disley** (Pages 16 - 23)

To consider an application for the diversion of Public Footpath Nos.23 and 24 (parts) and the extinguishment of Public Footpath No.22 (part) in the parish of Disley

6. **Highways Act 1980 - Section 119: Application for the Diversion of Public Footpath No. 20, Parish of Newbold Astbury** (Pages 24 - 29)

To consider an application for the diversion of Public Footpath No.20 in the parish of Newbold Astbury

7. **Highways Act 1980 - Section 25: Creation Agreement for a New Public Bridleway in the Parishes of Nantwich and Wistaston** (Pages 30 - 34)

To consider a report on the proposal to enter into a creation agreement for the dedication of a public bridleway in the parishes of Wistaston and Nantwich

8. **Definitive Map Modification Orders: Revised Statement of Priorities** (Pages 35 - 40)

To consider a report seeking approval for a revised “statement of priorities” for dealing with a potentially large volume of Definitive Map Modification Order applications and matters requiring detailed investigations

9. **Addition to the Definitive Map Wildlife and Countryside Act 1981 Section 53: Application to Add a Bridleway between Goldford Lane, Larkton and Long Lane, Bickerton** (Pages 41 - 58)

To receive an information report on a recent determination of an application by Cheshire West and Chester Council

10. **Public Inquiry to Determine Definitive Map Modification Order  
Upgrading of Public Footpaths Nos 29, 15 (part), 14, 10 (part), 9 (part) and  
27 Parish of Chorley & Nos 40 (part) and 42 Parish of Wilmslow to  
Bridleway**  
(Pages 59 - 66)

To receive an information report on a recent public inquiry and the outcome

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**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Public Rights of Way Committee**  
held on Monday, 19th September, 2011 at Committee Suite 1,2 & 3,  
Westfields, Middlewich Road, Sandbach CW11 1HZ

**PRESENT**

Councillor J Wray (Chairman)

Councillors Rhoda Bailey, R Cartlidge, M Parsons, S Davies and L Jeuda

**Officers**

Mark Wheelton, Leisure Services and Greenspaces Manager

Mike Taylor, Greenspaces Manager

Marianne Nixon, Definitive Map Officer

Clare Hibbert, Definitive Map Officer

Hannah Duncan, Definitive Map Officer

Genni Butler, Countryside Access Development Officer

Rachel Goddard, Solicitor

Rachel Graves, Democratic Services

**13 APOLOGIES FOR ABSENCE**

No apologies were received.

**14 DECLARATIONS OF INTEREST**

All Members of the Committee declared that they had received correspondence regarding Item 13 – Village Green Application No.47 – Field between Birtles Road and Drummond Way, Whirley, Macclesfield.

**15 MINUTES OF PREVIOUS MEETING****RESOLVED:**

That the minutes of the meeting held on 13 June 2011 be approved as a correct record and signed by the Chairman, subject to the following amendment:

Item 7 - Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No.6 (part) Parish of Sandbach.

Paragraph 3 line 2 - 'Sandbach Rugby Union Footpath Club' be amended to read 'Sandbach Rugby Football Club'

**16 PUBLIC SPEAKING TIME/OPEN SESSION**

Members of the public spoke following the Chairman's introduction of the relevant item of business.

**17 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:  
APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 8  
(PART) PARISH OF ALPRAHAM**

The Committee received a report which detailed an application from P&L Agriconsulting (the Agent) on behalf of Mr David Symms (the Applicant) requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to divert Public Footpath No.8 in the parish of Alpraham.

In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as Planning Authority, can make an Order stopping up a footpath or part of a footpath if it was satisfied that the 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 on 22 June 2011 – Planning Permission Ref: 11/1061N, to the Applicant for the development of a slurry lagoon to store slurry and dirty water from Rookery Farm.

The existing alignment of Public Footpath No.8 would be directly affected by the development of the slurry lagoon which was required by the Applicant to enable compliance with Nitrate Vulnerable Zone Regulations that regulate environmental nitrate concentrations.

The current line of Public Footpath No.8 lay directly on the site designated for development of the slurry lagoon and therefore a footpath diversion was required to provide public access around the new lagoon. The length of footpath proposed to be diverted was approximately 79 metres.

The Committee noted that no objections had been received from the informal consultations and concluded that it was necessary to divert part of Footpath No.8 Alpraham to enable the development of the slurry lagoon to go ahead. It was considered that the legal tests for making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

**RESOLVED:**

- 1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.8 Alpraham, as illustrated on Plan No.TCPA/058, on the grounds that the Cheshire East 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 Act.

- 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.

**18 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:  
APPLICATION FOR THE DIVERSION OF PUBLIC BRIDLEWAY NO. 7  
(PART) PARISH OF ALPRAHAM**

The Committee received a report which detailed an application from P&L Agriconsulting (the Agent) on behalf of Mr David Symms (the Applicant) requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to divert Public Bridleway No.7 in the parish of Alpraham.

In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as Planning Authority, can make an Order stopping up a footpath or part of a footpath if it was satisfied that the 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 on 22 June 2011 – Planning Permission Ref: 11/1061N, to the Applicant for the development of a milking parlour at Rookery Farm.

The existing line of Public Bridleway No.7 would be directly affected by the development of the milking parlour which was required by the Applicant to enable the milking of an increasing number of cows.

Part of the current line of Public Bridleway No.7 lay directly on the site designated for development of the milking parlour and therefore a bridleway diversion was required to provide public access around the new milking parlour. The length of bridleway proposed to be diverted was approximately 180 metres.

The Committee noted that no objections had been received from the informal consultations and concluded that it was necessary to divert part of Bridleway No.7 Alpraham to enable the development of the milking parlour. It was considered that the legal tests for making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied. The Committee also requested that Plan No. TCPA/059 was amended to show correctly the unaffected public rights of way.

**RESOLVED:**

- 1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Bridleway No.7 Alpraham, as illustrated on Plan No.TCPA/059 as amended by the Greenspaces Manager as authorised by the Committee, 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 Act.
- 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.

**19 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:  
PROPOSED DIVERSION OF PUBLIC FOOTPATH NO. 6 (PART)  
PARISH OF KNUTSFORD**

The Committee received a report which detailed an application from Knight Frank (the Applicant) on behalf of the Crown Estate (the landowner) requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to divert Public Footpath No.6 in the parish of Knutsford.

In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as Planning Authority, can make an Order stopping up a footpath or part of 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.

Planning permission had been granted on 24 June 2011 – Planning Permission Ref: 11/0613M, to the Applicant for permission to change the use of a redundant barn at Blackhill Farm, Bexton Road to provide four dwellings including the demolition of outbuildings.

The existing alignment of the footpath would be adversely affected by the creation of a residential courtyard with parking spaces and vehicular movements to the front of the dwellings. The land to be developed and the surrounding fields were all owned by the Crown Estate.

The length of the path to be closed was approximately 100 metres in length. The proposed route for the footpath was approximately 139 metres long and would move the footpath to the outside of the south easterly and south westerly boundaries of the site, along the edge of the adjacent arable field. The field edge would be levelled/rolled to provide an even surface and a gap would be left to the side of the current field gate where the path left Bexton Road.

The Committee noted that no objections had been received from the informal consultations and concluded that it was necessary to divert part of Footpath No.6 Knutsford to allow the development of the existing redundant barn. It was considered that the legal tests for making and



confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

**RESOLVED:**

- 1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.6 Knutsford, as illustrated on Plan No.TCPA/006, on the grounds that Cheshire East 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 Act.
- 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.

**20 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PART OF PUBLIC FOOTPATH NO. 11 PARISH OF MOBBERLEY**

The Committee received a report which detailed a proposal to request the Council to make an Order under section 119 of the Highways Act 1980 to divert Public Footpath No.11 in the parish of Mobberley to resolve long-standing problems with the definitive line of footpath and create an accessible, usable route on the ground for the path users.

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 current definitive line of footpath had been unavailable for approximately 20-30 years. It was difficult for the public to use due to the nature of the terrain and it was possible that the path had been originally incorrectly recorded on the Definitive Map and Statement. Re-instating the footpath on its definitive alignment would be very costly to the public purse. An 8 metre footbridge across Mobberley Brook plus steps up a very steep bank would be required, costing in the region of £15-20,000. In addition, a stile would need to be installed where the path crossed the driveway and entered the field at the northern section of the route.

Mr and Mrs A Edgar owned the land over which the current route and the proposed route would run and they had provided written consent and supported the proposal.

The proposed route would run through a pleasant wooded area with open views of the Cheshire countryside to the west. It would then require steps, surfacing and revetment as the route ran adjacent to the river before descending a slope to join an access track. Stone steps would be installed on the descent, providing a low maintenance, long lasting and resilient surface. No path furniture would be required. The works on the proposed route would cost approximately £5000.

It was noted that Peak & Northern Footpaths Society and the Ramblers Association supported the proposed diversion. No objections had been received from the initial informal consultations. The Committee considered that the proposed route would be a satisfactory alternative to the current one and would resolve the long standing problem with the footpath and create an accessible, usable route on the ground where none had existed for several decades. The legal tests for the making and confirming of a diversion order were satisfied.

**RESOLVED:**

- 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. 11 in the parish of Mobberley by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/052, 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.

**21 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PART OF PUBLIC FOOTPATH NOS. 12 AND 33 PARISH OF MACCLESFIELD FOREST**

The Committee received a report which detailed an application from Mr CR Hobson, 27 Ryle Street, Macclesfield (the applicant) requesting the Council to make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath Nos.12 and 33 in the parish of Macclesfield.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make the Order if it appeared to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path.

The Applicant owned the land over which the current paths and proposed alternative routes ran. The existing route of Public Footpath No.12 ran in very close proximity to Higher Ballgreave Farm, which was undesirable in terms of privacy and security. Higher Ballgreave Farm was an old unoccupied property owned by the Applicant, who was preparing to renovate the property and eventually intended to live there. The length of Footpath No.12 proposed to be diverted was 189 metres.

The current route of Public Footpath No.33 began at its junction with Footpath No.12 to the rear of Higher Ballgreave Farm and also ran in close proximity to the property. The length of Footpath No.33 proposed to be diverted was 170 metres.

The proposed route for Footpath No.12 would run in a southerly direction to the east of and to the front of the property. Due to the natural gradient here, the route would not be visible from the property as it would be on lower ground than the farm. Diverting the footpath onto this route would provide impressive views for walkers of the surrounding Cheshire countryside which are not visible from its current alignment.

The new route for Footpath No.33 followed the natural terrace along the hillside that ran to the west of and to the rear of Higher Ballgreave Farm. This provided a more level surface for users and also improved panoramic views of the surrounding countryside.

The Committee noted that no objections had been received from the informal consultations and considered that the proposed routes would not be substantially less convenient than the existing routes. Diverting the footpaths would be of considerable benefit to the landowner in terms of privacy and security. It was therefore considered that the proposed routing would be a satisfactory alternative to the current ones and that the legal tests for the making and confirming of a diversion order were satisfied.

**RESOLVED:**

- 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 Nos.12 and 33 Macclesfield Forest by creating a new section of public footpath and extinguishing the current paths as illustrated on Plan No.HA/038 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.

**22 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PART OF PUBLIC FOOTPATH NO. 16 PARISH OF ASTON BY BUDWORTH**

The Committee received a report which detailed an application from Mr M Preston, 43 Redacre Close, Dutton, Cheshire (the applicant) requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.16 in the parish of Aston by Budworth.

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 path and alternative route ran. Public Footpath No.16 Aston by Budworth ran across land at Walthall Farm, Colliers Lane, Aston by Budworth. This Farm was previously a County Farm which was sold to the Applicant in November 2010. The legal line of the footpath had been obstructed by a slurry pit and fence for many years and a permissive route had been in place. A condition had been placed in the sale particulars for the farm that the buyers must apply for a diversion of the footpath and that the Council would indemnify the new owners against the cost of the diversion.

The Committee noted that no objections had been received from the informal consultations and considered that diverting the route would solve the long standing problem with the footpath. Diverting the footpath onto the proposed route would create a legal, accessible, usable footpath on the ground where none had existed for many years. It would also be of benefit to the landowner as moving the footpath away from the farmyard would help them to improve the privacy and security of their property. 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.

**RESOLVED:**

- 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.16 in the parish of Aston by Budworth by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/053 on the grounds that it is expedient in the interests of the public and 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.

**23 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 51 PARISH OF RUSHTON SPENCER, COUNTY OF STAFFORDSHIRE, TO BECOME PUBLIC FOOTPATH NO. 83 PARISH OF CONGLETON**

The Committee received a report which detailed an application from Mr & Mrs C Goodfellow, Bridestone, Dial Lane, Congleton (the applicant) requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.51 in the parish of Rushton Spencer, County of Staffordshire to become Public Footpath No.83 in the parish of Congleton.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make the Order if it appeared to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. Section 120 of the Highways Act 1980 made additional provision in the exercise of powers of Highways Authorities under section 119. Section 120(1) provided that where a footpath lies partly within and partly outside the area of a council, powers conferred under section 119 extend to the whole path "as if it lay wholly within their area". Section 120(1) requires consultation with, and the consent of, the council in whose area the other part of the path was.

The Applicant owned the land over which the current path lay and the over which the proposed diversion ran. Following a site meeting with the landowners, user groups and a representative from Staffordshire County Council it was agreed that Cheshire East Council would act as the agent and progress the application.

Rushton Spencer Public Footpath was previously a cul de sac route. An application had been received in April 2001 to add Public Footpath No.82 Congleton to the definitive map. An Order was made and received a number of objections and a public inquiry was held in January 2011. The Order was subsequently confirmed by the Planning Inspectorate subject to modifications. An objection was received to the modified Order based on a number of technical errors and was currently being dealt with by the Planning Inspectorate using the written representations procedure. Congleton Public Footpath No.82 created a link between Rushton Spencer Public Footpath No.51 and Rushton Spencer Public Footpath No.50.

The definitive line of Rushton Spencer Public Footpath No.51 ran along the drive to the quarry and Bridestones Farm. It then ran through a large pipe which was installed by the previous landowner a number of years ago and was an illegal obstruction. When the path left the pipe it then passes through a working farmyard where livestock were kept for six months of the year. This could be intimidating for some walkers and caused issues with animal waste creating a muddy surface which was difficult to cross. The Applicants had also had issues with walkers wandering away from the definitive line of the footpath and entering the busy quarry yard. The length of the footpath to be diverted was approximately 375 metres.

The Committee noted that no objections had been received from the informal consultations and considered that the proposed route would not be substantially less convenient than the existing route. Moving the footpath away from the farm and quarry would help the landowners with the running of their businesses and allow them to increase the privacy and security of the site. The proposed route would offer a less intimidating footpath for walkers and provided enhanced, panoramic views of the Cheshire countryside and the Bridestones monument. 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.

**RESOLVED:**

- 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.51 Rushton Spencer to become Public Footpath No.83 Congleton by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No.HA/055 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.

**24 EVALUATION OF NANTWICH RIVERSIDE LOOP PROJECT**

The Committee received a report which summarised the findings of an evaluation of the Nantwich Riverside Loop project, which was completed in May 2011.

The Nantwich Riverside Loop was a three-mile circular walking route which had been designed to encourage people to walk a bit further than

they normally walk. The route, signposted in both directions, ran along the River Weaver, then across fields to the Shropshire Union Canal where it followed the improved towpath up to the aqueduct over the Chester Road, before returning to the town via the historic Welsh Row

The Riverside Loop was a partnership project involving Cheshire East Council and British Waterways with support from voluntary organisations including Riverside Concern, Nantwich in Bloom, Nantwich Civic Society, Shropshire Union Canal Society, Nantwich Town Council, Acton, Edleston and Henhull Parish Council. The towpath improvement works were funded by a grant secured from Waste Recycling Environmental Ltd (WREN).

To guide walkers around the Loop a new leaflet had been published. The leaflet included a map, directions and information on the history of the riverside, canal and other features along the route. An evaluation card had been inserted in the first tranche of leaflets to gather evidence as to the value of the route and the usefulness of the leaflet.

Eighty responses had been received so far and of these responses:

- 95% said that the leaflet encouraged them to walk the route
- 90% said that having walked the route they are more likely to explore other walks in the area
- 94% said they preferred to find information on walks in a leaflet
- 29% stated the internet as a preferred source of information
- 94% said they feel healthier having been out for a walk
- 98% know that walking could improve their physical and mental health
- 68% of respondents reported that they were trying to exercise more or had been recommended by their doctor or health professional to exercise more

**RESOLVED:**

That the report and conclusions therein be noted and the development of future similar projects be supported.

**25 VILLAGE GREEN APPLICATION NO.47 - FIELD BETWEEN BIRTLES ROAD AND DRUMMOND WAY, WHIRLEY, MACCLESFIELD**

The Committee received a report which detailed an application by Birtles Conservation Forum to register the field between Birtles Road and Drummond Way, Whirley, Macclesfield as a new village green under section 15 of the Commons Act 2006.

The village green application was dated 30 September 2008 and had been submitted to Cheshire County Council on 2 October 2008 by the Birtles Conservation Forum. Cheshire East Council was the successor authority to Cheshire County Council.

The application was made pursuant to section 15(2) of the Commons Act 2006, which required the applicant to demonstrate that the land was used:

- a. for lawful sports and pastimes for a period of at least 20 years and that this use continued to the date of the application
- b. by a significant number of the inhabitants of a locality or of a neighbourhood within a locality
- c. as of right

Macclesfield Borough Council, as owner of the land, had objected to the application and Cheshire East Council, as its successor as landowner, had objected in that capacity. Cheshire East Council was also the Registration Authority for Village Greens.

The Public Rights of Way Committee, at its meeting on 7 December 2009, had adopted a procedure for dealing with village green applications. In pursuance of that procedure, the Committee had decided in relation to this Application to authorise the Borough Solicitor to appoint a suitably qualified independent person to hold a non statutory public inquiry. Douglas Edwards QC was appointed as the Inspector. Both the applicant and objector supported the choice of Inspector.

A public inquiry was held on 12 to 14 October and 21 October 2010. Mrs Peggy Bentham represented the applicant and Miss Ruth Stockley of counsel represented the objector. The inquiry was held in order to hear all the evidence from both the applicant and objector. It was agreed between parties that the qualifying period for the purpose of the application was a 20 year period between 30 September 1998 and 30 September 2008.

The Inspector's Report, outlining his conclusions and providing his recommendation, was attached to the report. The report took account of the written information produced to the Inspector and evidence received during the Inquiry. The Inspector had given less weight to written evidence than to oral evidence which had been tested by cross examination at the Inquiry.

The Inspector had found as a matter of fact that there were periods, albeit short, when the land was fenced off by the objector to prevent access. He had also found on a balance of probabilities that a temporary access for construction traffic had been laid across the land in 1999 to 2000.

The Inspector concluded that from the early to mid 1990s there had been significant use of the land as a cut through connecting Birtles Road and Drummond Way and that this had given rise to the path or track which was now a noticeable feature on the land. Beyond use of the track and its margins, the Inspector had found that evidence of use of the remainder of the land so as to support the Applicant's case was distinctly lacking. He had concluded that use of the land beyond the path and its margins had not occurred to any material extent during the qualifying period at least until the clearance work of the last year to 18 months.



The Applicant had advanced Whirley as a neighbourhood rather than a locality but the Inspector had not found evidence supportive of this.

The Inspector had found that fencing had been erected to exclude trespassers and repeatedly damaged and removed. There was evidence of a contest between users and the landowner which led him to conclude that any use of the land for lawful sports and pastimes after the erection of the fences should be regarded as forcible and not as of right.

The Inspector found that beyond the path which crossed the land and its margins, the use of the land was limited to the occasional trespasser and did not comprise anything approaching use by the general community for recreation purposes. Furthermore the Inspector found that there had not been use by a significant number of the inhabitants of a neighbourhood within a locality for the whole of the qualifying period and he could not find evidence to support the Applicant's contention that Whirley was a neighbourhood or to support it being a locality.

Based on his findings the Inspector recommended to the Registration Authority that the application should be rejected.

Mrs Peggy Bentham, on behalf of the Birtles Conservation Forum, had registered to speak in support of the application but unfortunately was unable to attend the meeting. On her behalf, her speech and the text of two emails dated 14 February and 18 September 2011 were read out to the Committee.

During discussion, Members asked questions about the appointment of the Inspector, the conduct of the hearing and whether witnesses were under oath, the recording of evidence presented at the public inquiry, the quality of the documents produced at the inquiry, the placing of the picnic bench on the land and the state of the land at present

The Chairman asked Members to consider the report's recommendation and to decide whether to accept the Inspector's recommendation that the Committee reject the application to register the land as a village green.

Members voted by majority to reject the application

**RESOLVED:**

The Committee agreed to accept the recommendation of the Inspector to reject the application to register as a village green the field between Birtles Road and Drummond Way, Whirley, Macclesfield, on the grounds that the statutory criteria for registration under section 15 of the Commons Act 2006 have not been satisfied because

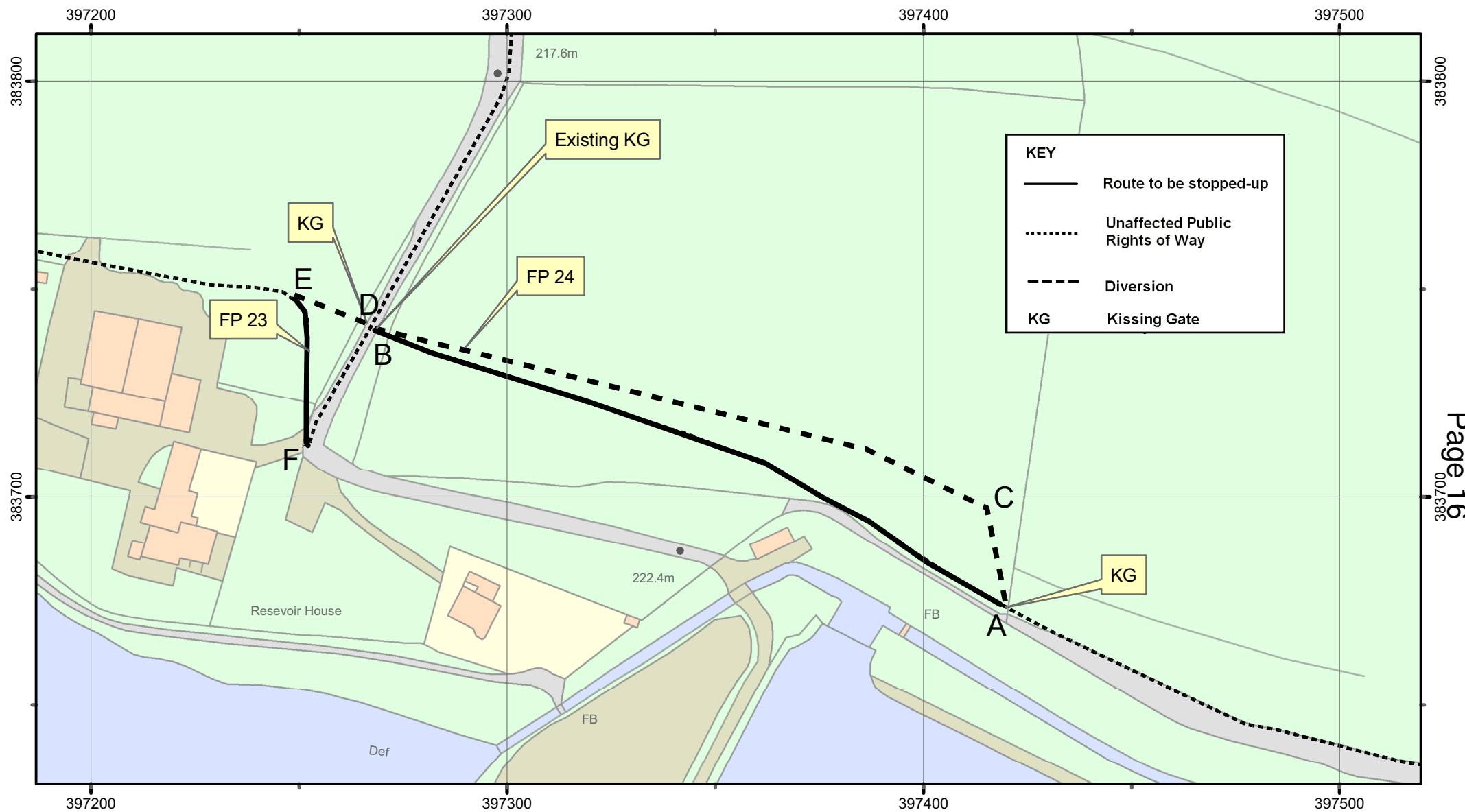
1. the Applicant has not demonstrated that the land was capable of being use or was used as of right during the qualifying period by reason of the fencing works carried out by the landowner, and

2. on the balance of probabilities, it has not been demonstrated that the land was used for lawful sports and pastimes to any material extent during the qualifying period, and
3. the Applicant has not demonstrated a qualifying neighbourhood.

The meeting commenced at 2.00 pm and concluded at 3.40 pm

Councillor J Wray (Chairman)

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# Proposed Diversion of FP 22 (Pt), 23 (Pt) & 24(Pt), Parish of Disley

Plan No.  
HA/060

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Cheshire East Council. 100049045 2011.

## **CHESHIRE EAST COUNCIL**

### **Public Rights of Way Committee**

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**Date of Meeting:** 12 December 2011  
**Report of:** Greenspaces Manager  
**Subject/Title:** Highways Act 1980 – Section 119:  
Proposed Diversion of Public Footpaths Nos. 23 (part) & 24 (part) and the Extinguishment of Public Footpath No. 22 (part), Parish of Disley

---

#### **1.0 Report Summary**

- 1.1 The report outlines the investigation to divert parts of Public Footpaths Nos. 23 & 24 and to stop up part of Footpath no. 22 (part), in the Parish of Disley. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been applied for by United Utilities following major works to Bollinhurst Reservoir and the construction of a new spillway which have altered the ground levels of an adjacent path. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert and extinguish the sections of footpath concerned.

#### **2.0 Recommendation**

- 2.1 An Order be made under Section 119 of the Highways Act 1980 to divert parts of Public Footpaths Nos. 23 & 24, Disley and a separate order be made concurrently to extinguish a residual part of Footpath no. 22, in the parish of Disley as illustrated on Plan Nos. HA/060 and HA/061 on the grounds that it is expedient in the interests of the owner of the land crossed by the path and the public and that under section 118 of the Highways Act, part of Footpath no. 22, is not needed for use.
- 2.2 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.
- 2.3 In the event of objections to the Orders being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

#### **3.0 Reasons for Recommendations**

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or

occupier of the land crossed by the path. Also in accordance with Section 118(1) of the Highways Act 1980 it is within the Council's discretion to make an extinguishment Order if it appears to the Council that it is expedient that a path or way should be stopped up on the grounds that it is not needed for public use. It is considered that the proposed diversion is in the interests of the landowner and the public for the reasons set out in paragraph 10.3 below and it is also considered that the section of FP 22 shown on Plan no. HA/061 is not needed for use as it will become a cul-de-sac as a consequence of the proposed diversion as set out in paragraph 10.4 below.

3.2 Where objections to the making of a diversion Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:

- Whether the path is substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:

- The effect that the diversion would have on the enjoyment of the path or way as a whole.
- The effect that the coming into operation of the Order would have as respects other land served by the existing public right of way.
- The effect that any new public right of way created by the Order would have as respects the land over which the rights are so created and any land held with it.

3.3 In relation to any outstanding objections to the extinguishment order, the Secretary of State in considering whether to confirm the Order would also have regard to:

- The extent (if any) to which it appears to him...that the path or way would, apart from the order, be likely to be used by the public, and
- The effect which the extinguishment of the right of way would have as respects land served by the path or way, and
- The material provision of any rights of way improvement plan prepared by any local highway authority which includes land over which the order would extinguish a public right of way.

3.4 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Orders in accordance with the matters referred to in paragraph 3.2 & 3.3 above.

- 3.5 No objections to the proposal have been received through the informal consultation process. The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will be of benefit to the landowner in terms of land use in that they would have to undertake extensive re-profiling of the landscape and earth movement to reinstate the current line which would be expensive and unreasonable. It is in the interests of the public because the diversion of footpath 23 will allow for the removal of a sharp angle in the path network creating a more straightforward and shorter alignment. The extinguishment of a residual part of footpath no.22, that would no longer be required, would be necessary to 'tidy up' the legal process. It is therefore considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion and an extinguishment order are satisfied.

#### **4.0 Wards Affected**

- 4.1 Disley

#### **5.0 Local Ward Members**

- 5.1 Councillor H Davenport

#### **6.0 Policy Implications including – Carbon Reduction – Health**

- 6.1 The proposal supports the following policies and initiatives of the Cheshire East Rights of Way Improvement Plan 2011-2026:
- Policy H3: Public rights of way and green infrastructure: Protect and enhance our public rights of way and green infrastructure and endeavour to create new links where beneficial for health, safety or access to green spaces. Initiative: 'Leisure routes for cyclists, horse riders and walkers'
  - Policy H2: Promotion of active travel and healthy activities: Work in partnership to promote walking, cycling and horse riding as active travel options and healthy activities. Initiative 'Public information on the public rights of way network'
- 6.2 The development of new walking, cycling and horse riding routes for local residents and visitors alike is aligned with the health and wellbeing objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Health and Wellbeing Service commitment to the Change4Life initiative.

#### **7.0 Financial Implications**

- 7.1 Not applicable.

#### **8.0 Legal Implications (Authorised by the Borough Solicitor)**

- 8.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local authority to confirm the

order itself, and may lead to a hearing/an inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

## **9.0 Risk Management**

9.1 Not applicable

## **10.0 Background and Options**

- 10.1 An application has been received from United Utilities ('the landowners') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpaths No. 23 & 24 (parts) in the Parish of Disley.
- 10.2 Public Footpath No. 24 Disley commences at Cock Head Farm at OS grid reference SJ 9725 8371 at its junction with FP's 22 & 23 and runs in a generally east south easterly direction to its junction with Mudhurst Lane (C413) at OS grid reference SJ 9821 8291. Public Footpath No. 23 commences at the westerly end of Red Lane at OS grid reference 9669 8410 and runs in a south easterly direction to its junction with FP's 22 & 24 at Cockhead Farm at OS grid reference SJ 9725 8371. The sections of paths to be diverted are shown by a solid black line on Plan No. HA/060 between points A and B and between points D and E. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-C-B for footpath no. 24 and D-E for footpath no. 23.
- 10.3 Footpath no. 24 was the subject of a diversion order under section 257 Town & Country Planning Act 1990 in 2010 when United Utilities were constructing a new spillway which would directly affect the line of part of the footpath. There was a significant amount of earth movement required in order to complete the construction and when the re-profiling was completed, the newly diverted line of the footpath was obstructed by fencing erected to surround a very steep depression/valley that had resulted from the earth workings. This proposed diversion will address that problem by moving the path slightly further to the north to achieve higher and more level ground. It will curve south, south easterly at its eastern end to regain the original line of the footpath at the stone wall field boundary where a kissing gate will be installed.
- 10.4 It is proposed to also divert a short part of footpath no. 23 that connects with footpath no. 24 at its western end. This short diversion will create a direct east west alignment to the connecting paths and avoid the necessity for walking a short sharp angle in a generally south westerly then northerly direction. United Utilities have approached the landowner, Geoff Lane, and received his permission to divert the path across a short section of his field to meet the existing line of footpath no. 23 (Point E on Plan no. HA/060). It is proposed to install a kissing gate at point D where the path crosses the access track.
- 10.5 As a result of these diversions a residual length of Public Footpath no. 22 will remain leading south from point A to point B, both shown on Plan No. HA/06.



It is proposed to extinguish this length of path as once the diversions are in effect, this section will no longer be needed for use by the public.

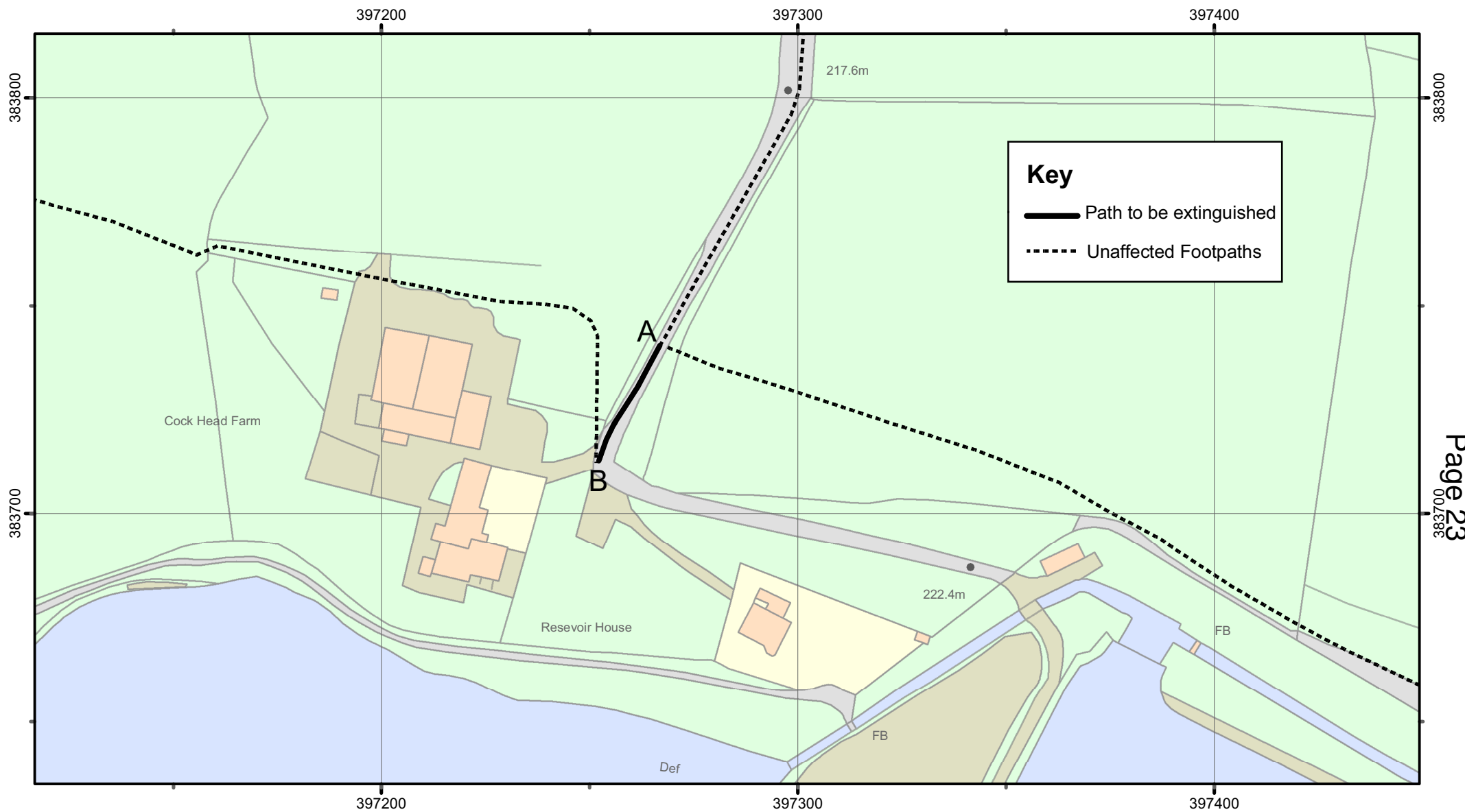
- 10.6 The local Councillor has been consulted about the proposal. No response has been received.
- 10.7 Disley Parish Council have been consulted and responded that they felt that the diversion will be a 'positive improvement'. United Utilities and two Rights of Way Officers attended a meeting of Disley Footpaths Society in September to discuss this proposal and they were also consulted. No written response has been received but they appeared to be happy with the proposal at the meeting.
- 10.8 The statutory undertakers have also been consulted and have no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.9 The user groups have been consulted.
- 10.10 An assessment in relation to Equality Act 2010 Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be easier to use than the existing route due to the steep slopes on the current route caused by the earth movements.

#### **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

Name: Clare Hibbert  
Designation: Definitive Map Officer  
Tel No: 01270 686083  
Email: [clare.hibbert@cheshireeast.gov.uk](mailto:clare.hibbert@cheshireeast.gov.uk)

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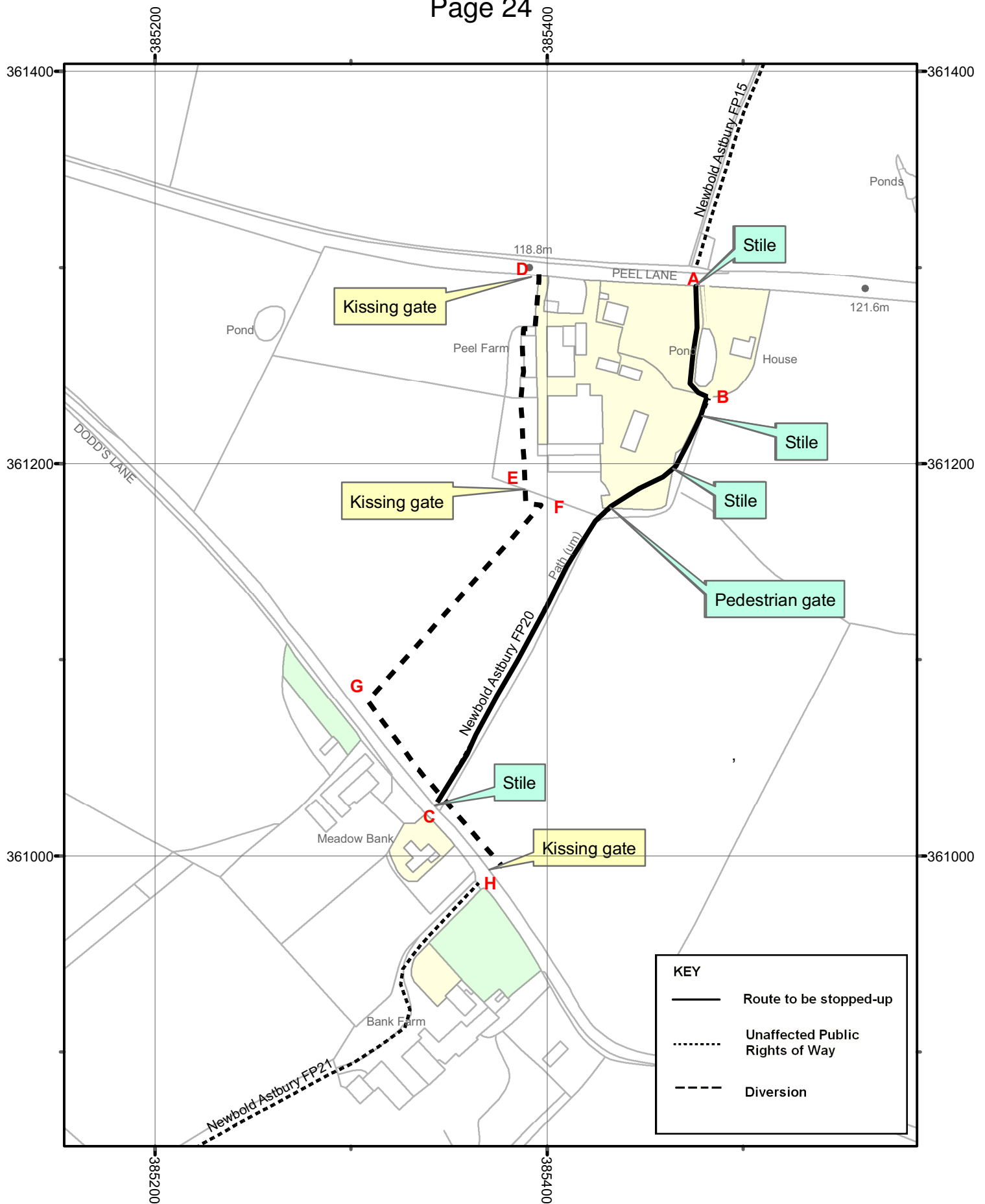
## Proposed Extinguishment of FP 22(Pt), Parish of Disley

Plan No.  
HA/061

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Highways Act 1980 s.119  
The Cheshire east Borough Council  
(Footpath No. 20 Parish of Newbold Astbury)  
Public Footpath Diversion Order 2011

Plan No.  
HA/062



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## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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**Date of Meeting:** 12 December 2011  
**Report of:** Greenspaces Manager  
**Subject/Title:** Highways Act 1980 - Section 119:  
Application for the Diversion of Public Footpath No. 20,  
Parish of Newbold Astbury

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#### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert Public Footpath No. 20 in the Parish of Newbold Astbury. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as an application has been made by the landowner concerned. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

#### 2.0 Recommendation

- 2.1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert Public Footpath No.20 Newbold Astbury by creating a new public footpath and extinguishing the current path as illustrated on Plan No. HA/062 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 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.
- 2.3 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.

#### 3.0 Reasons for Recommendations

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 10.5 & 10.6 below.
- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering

whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:

- Whether the path is substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:

- The effect that the diversion would have on the enjoyment of the path or way as a whole.
- The effect that the coming into operation of the Order would have as respects other land served by the existing public right of way.
- The effect that any new public right of way created by the Order would have as respects the land over which the rights are so created and any land held with it.

3.3 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.2 above.

3.4 No objections to the proposal have been received through the informal consultation process. The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will be of benefit to the landowner, particularly in terms of current stock management within a busy livery and improved privacy and security to the applicant's adjacent property. It is therefore considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.

#### **4.0 Wards Affected**

4.1 Odd Rode

#### **5.0 Local Ward Members**

5.1 Councillor R Bailey and Councillor A Barratt

#### **6.0 Policy Implications including – Carbon Reduction – Health**

6.1 Not applicable

#### **7.0 Financial Implications**

7.1 Not applicable

## **8.0 Legal Implications (Authorised by the Borough Solicitor)**

- 8.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/an inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

## **9.0 Risk Management**

- 9.1 Not applicable

## **10.0 Background and Options**

- 10.1 An application has been received from Mr & Mrs N Plant of Peel Farm, Peel Lane, Astbury, Cheshire, CW12 4RJ, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert Public Footpath No. 20 in the Parish of Newbold Astbury.
- 10.2 Public Footpath No. 20, Newbold Astbury, runs in a generally south south westerly direction from Peel Lane to Dodd's Lane. Commencing at its junction with Peel Lane (C 319) at OS grid reference SJ 8547 6129, it passes through the garden of Peel House skirting to the west and then south of a small lake to exit the south eastern corner of the garden. It then bears across a concrete yard and then a car park area (also concrete) before entering a pasture field where it follows the eastern field boundary to terminate on Dodd's Lane at OS grid reference SJ 8534 6102.
- 10.3 The path to be diverted is shown by a solid black line on Plan No. HA/062 running between points A-B-C. The proposed diversion is illustrated on the same plan by a black dashed line running between points D-E-F-G-H.
- 10.4 Mr & Mrs Plant own the land over which the current path and the proposed diversion run. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request, if it considers it expedient in the interests of the landowner to make an order to divert the footpath.
- 10.5 The section of Public Footpath No. 20, Newbold Astbury currently runs through the applicant's garden leading to privacy and security issues. Furthermore, it then runs through their busy livery yard creating a hazardous environment for walkers to pass through as the walker is in close confinement with large livestock.
- 10.6 The proposed new route (D-E-F-G-H on plan HA/062) would start at the entrance to Peel Farm (point D), immediately entering a field and then skirting the western boundary of the livery yard to a field boundary (point E). It would then enter another field to continue skirting the livery yard boundary until reaching a field corner (point F). Here, it would move away from the livery yard following a south westerly direction along the eastern field boundary to reach the south east field corner (point G) and exit into a 'corridor' section that

would run in an easterly direction along the south of fields until opposite the drive of Bank Farm. At this point it would exit the 'corridor' to terminate on Dodd's Road (point H).

- 10.7 The path would be fenced and have a recorded width of 2.5 metres throughout and would have three kissing gates as marked on the plan HA/062.
- 10.8 The new route would take users out of the applicants' garden and busy livery yard and would be easier to navigate with more open and scenic views and reduced interaction with livestock.
- 10.9 Ward Councillors have been consulted about the proposal. No comments were received.
- 10.10 Newbold Astbury Parish Council has been consulted and members have registered no objection to the diversion.
- 10.11 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.12 The user groups have been consulted and no objections have been received. The Congleton Ramblers Association registered their support for this diversion stating that it would be an improvement, especially with the replacement of four stiles and a gate with three kissing gates.
- 10.13 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.14 An assessment in relation to Equality Act 2010 Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion is not substantially less convenient than the old route.

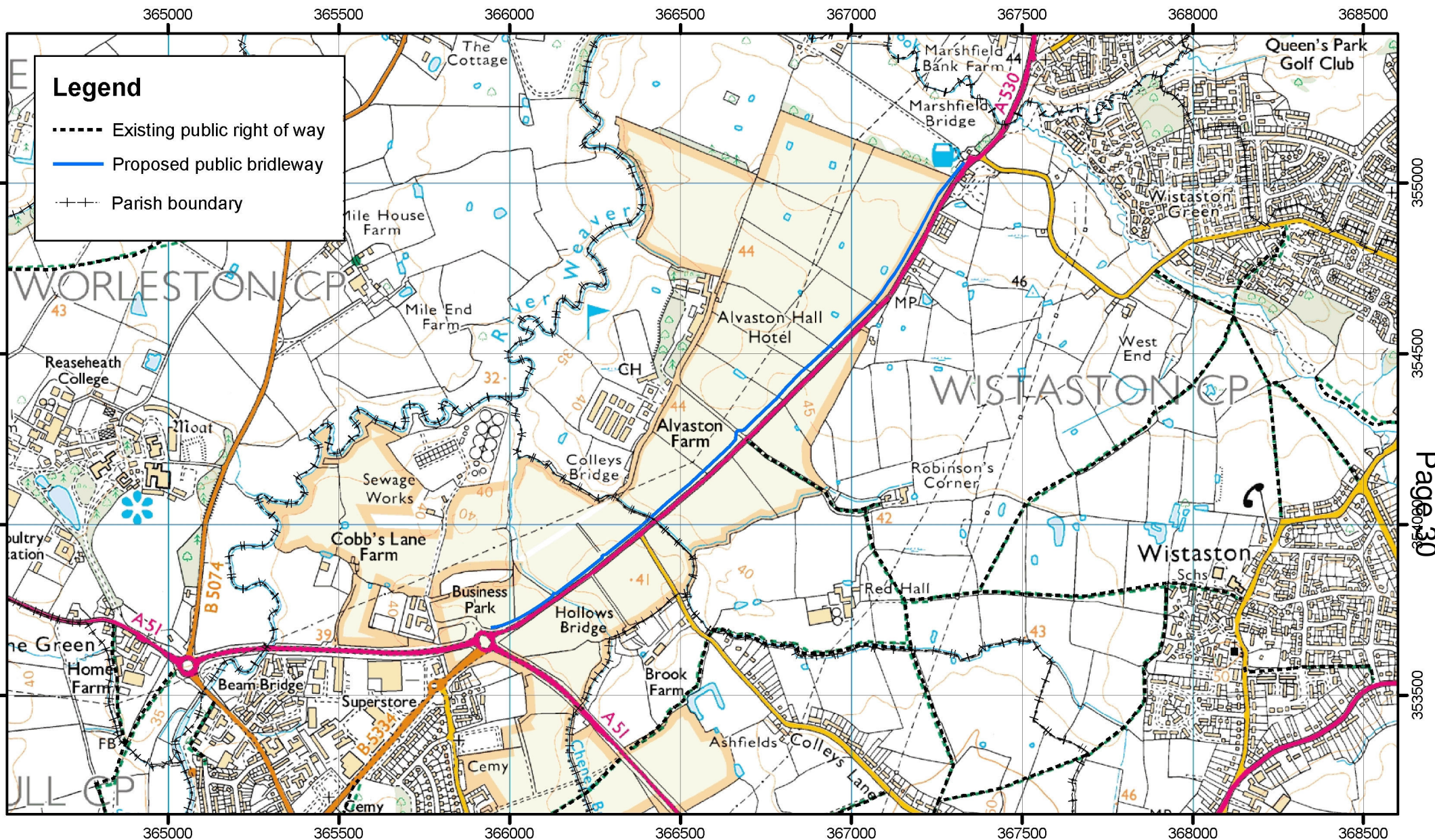
## **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

Name: Marianne Nixon  
Designation: Public Path Orders Officer  
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PROW File: 222D/439



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## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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<b>Date of Meeting:</b>	12 December 2011
<b>Report of:</b>	Greenspaces Manager
<b>Subject/Title:</b>	Highways Act 1980 – Section 25 Creation Agreement for a New Public Bridleway in the Parishes of Nantwich and Wistaston

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#### **1.0 Report Summary**

- 1.1 The Connect2 Crewe to Nantwich Greenway project proposes to create an off-road cycle route between the two towns. In June 2010 the Public Rights of Way Committee resolved that the Council enter into creation agreements with the landowner who has agreed to dedicate part of this route as a public bridleway so that pedestrians, cyclists and horse riders may use the route. Following further negotiations with the landowner, tenants and nearby residents, a revised route is now proposed.

#### **2.0 Recommendations**

- 2.1 That creation agreement(s) under Section 25 of the Highways Act 1980 be entered into with the appropriate person(s) with capacity to dedicate to create a new public bridleway in the Parishes of Nantwich and Wistaston, as illustrated on Plan No. HA/023(2), and that public notice be given of these agreement(s).

#### **3.0 Reasons for Recommendations**

- 3.1 The landowner has agreed to dedicate the proposed route as a public bridleway as part of the Connect2 Crewe to Nantwich Greenway project.
- 3.2 Consultation undertaken for the statutory Rights of Way Improvement Plan identified the need for an increase in the number of bridleways available for local people to use. This need has arisen due to the lack of bridleways in the Borough and the high traffic volume and speed on rural roads on which users have to ride.

#### **4.0 Wards Affected**

- 4.1 Nantwich North & West and Wistaston.

**5.0 Local Ward Members**

- 5.1 Councillor P Butterill and Councillor A Moran,  
Councillor M Simon and Councillor J Weatherill.

**6.0 Policy Implications including - Carbon Reduction  
- Health**

- 6.1 Projects completed under the Rights of Way Improvement Plan (ROWIP) are aligned with the health and wellbeing objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the commitment to the Change4Life initiative.
- 6.2 In addition, the ROWIP, as an integrated part of the Local Transport Plan, is set within the context of indicators concerning sustainable transport, air quality and CO<sub>2</sub> emissions.

**7.0 Financial implications**

- 7.1 None arising.

**8.0 Legal Implications (Authorised by the Borough Solicitor)**

- 8.1 Under Section 25 of the Highways Act 1980, a local authority has power to enter into an agreement with any person having the capacity to dedicate a public right of way. The path will become a public bridleway and maintainable at the public expense on a specific date as stated in the agreement.
- 8.2 The Highways Act 1980 requires the authority to have regard to the needs of agriculture and forestry (including the breeding and keeping of horses), and to the desirability of conserving flora, fauna and geographical and physiographical features. In this case, the route alignment and necessary works have been amended and agreed with the landowner.
- 8.3 Under Section 25 of the Highways Act 1980, there is no statutory right for objection to the proposal.
- 8.4 Planning permission for this element of the Connect2 Crewe to Nantwich Greenway project is being sought by Highways. This is due to the considerable length of the route and the fact that the route will, once legally established, be surfaced with bitumen tarmacadam.

**9.0 Risk Management**

- 9.1 No risks are foreseen.

## **10.0 Background and Options**

- 10.1 The proposed route runs from OS grid reference SJ 6594 5367 off the A51 (known as the Sainsbury's roundabout) in the Town of Nantwich and travels in a generally north-easterly direction for a distance of approximately 1.9 km to its junction with the A530 Middlewich Road by Wistaston Green Road (known as the Rising Sun junction) in the Parish of Wistaston, at OS grid reference SJ 6729 5501, as shown in Plan No. HA/023(2) (showing the indicative route subject to final negotiations with the landowner(s)).
- 10.2 The route will be established to Sustrans' Connect2 Greenway Design Guide standards for multi-user routes: this includes a tarmac surface of 2.5 - 3 metres width for cyclists and pedestrians and a verge for equestrian use of 2.5 metres width.
- 10.3 The Connect2 Crewe to Nantwich Greenway project is being funded by external grants secured from a range of sources including Sustrans Connect2, North West Development Agency, Department for Transport Links to School, Waste Recycling Environmental and planning gain. The project, including the proposed public bridleway element, has the support of the above bodies.
- 10.4 The proposed bridleway element forms the central spine of the Connect2 project. Works have already been undertaken on the project in Nantwich (a new bridge over the River Weaver and cycle route links from Welsh Row and from the A51 to the Barony Park) and in Crewe (cycle route links from Queens Park to Wistaston Green Road via King George V playing fields and Valley Brook public open space areas).
- 10.5 The landowner is in support of the proposed creation agreements.
- 10.6 Nantwich Town Council, Wistaston Parish Council and the local Members have been consulted; Wistaston Parish Council responded to say that no objections were raised. No other responses have been received.
- 10.7 A stakeholder group has been established. A number of events have been held to promote the Connect2 project: a public consultation event was held at the Nantwich Festival in October 2009 at which a questionnaire survey returned 99% of respondents in support of the project.
- 10.8 In June 2010, the Public Rights of Way Committee resolved to enter into a creation agreement with the landowner(s) to establish the route as a public bridleway.
- 10.9 Following continued negotiations with the landowner, tenants and adjacent residents, a revised route is now proposed. This route, shown in the appended plan, avoids the areas of contention around Alvaston

Hall and adjacent properties that were raised regarding the initial proposed route.

#### **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

Name: Genni Butler  
Designation: Countryside Access Development Officer  
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Email: [genni.butler@cheshireeast.gov.uk](mailto:genni.butler@cheshireeast.gov.uk)



## **CHESHIRE EAST COUNCIL**

### **Public Rights of Way Committee**

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**Date of Meeting:** 12 December 2011  
**Report of:** Greenspaces Manager  
**Subject/Title:** Definitive Map Modification Orders:  
Revised Statement of Priorities

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#### **1.0 Report Summary**

- 1.1 The report seeks approval from Members for a revised “statement of priorities” for dealing with a potentially large volume of Definitive Map Modification Order (DMMO) applications and matters requiring detailed investigations.

#### **2.0 Recommendations**

- 2.1 That the revised Statement of Priorities outlined in the appendix be approved.

#### **3.0 Reasons for Recommendations**

- 3.1 A revision to the existing Statement of Priorities approved by the Public Rights of Way Committee in June 2009 is required in order to reflect the new Rights of Way Improvement Plan, dated 2011 and the recent Sustainable Community Strategy (2010) within the DMMO prioritisation system and it will also take into account the Equality Act 2010

#### **4.0 Wards Affected**

- 4.1 All

#### **5.0 Local Ward Members**

- 5.1 All Members

#### **6.0 Policy Implications including - Carbon Reduction - Health**

- 6.1 The recommendation would bring the Definitive Map Modification Order Statement of Priorities in line with the Rights of Way Improvement Plan and Sustainable Community Strategy of the Council and also take account of the Equality Act 2010.

#### **7.0 Financial Implications**

- 7.1 None arising.

**8.0 Legal Implications (Authorised by the Borough Solicitor)**

8.1 As referred to within the report.

**9.0 Risk Management**

9.1 None arising.

**10.0 Background and Options**

- 10.1 Cheshire East Council, as Surveying Authority, has a duty to keep the Definitive Map & Statement under continuous review and make modifications as required. The Secretary of State recommends that Surveying Authorities should periodically publish a statement of priorities for dealing with Definitive Map Modifications Orders (Circular 2/93 para.24<sup>1</sup>).
- 10.4 Under Section 53 of the Wildlife & Countryside Act 1981 ("the Act"), the Council is under a duty to keep the Definitive Map & Statement under continuous review and to make modifications as required. Changes are effected by means of DMMOs which may be triggered by the Council on the discovery of evidence which shows that the map and/or statement is in error, or by any individual making a formal application for a DMMO under the provisions of Schedule 14 to the Act and presenting evidence to show that a route is incorrectly shown or there is an omission in the legal record.
- 10.5 The Secretary of State recognises that the task of bringing Definitive Maps up to date is considerable and Surveying Authorities have been recommended to publish periodic statements of their priorities for doing so, this being a demonstration of an Authority's acknowledgement of its duty, and of a determination to get on with the work. Under Schedule 14 of the Act (paragraph (3)(2)) an applicant has a right of appeal to the Secretary of State if an application is not determined within 12 months of registration.
- 10.6 In considering such appeals from applicants, the Secretary of State takes account of any statement of priorities adopted by the Authority, the reasonableness of such priorities; action taken by the authority or expressed intention of further action on the application and the importance of the case compared to others. A successful appeal will result in the Secretary of State making a direction to an Authority to determine an application.
- 10.7 Many Local Authorities operate a prioritisation system for DMMOs which takes account of the objectives of their ROWIP. This has the advantage of being defensible (all ROWIPs are subject to wide consultation and input from a diverse range of groups) and of actually helping with the implementation of that document and offering a wider benefit; DMMOs may add routes which are useful to the public, by providing a link to a school, say, or by providing access for a group of users with little current provision, such as horse riders or cyclists.

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<sup>1</sup> Now replaced by Circular 1/09



- 10.8 The current statement of priorities is based on the former Cheshire County Council's Rights of Way Improvement Plan and a purely chronological scheme for those applications made prior to the instigation of Cheshire East Council.
- 10.9 Under Section 53 of the Countryside and Rights of Way Act 2000 there is a proposal that footpaths and bridleways that were in existence before 1949 but not recorded on the definitive map by 2026 will be extinguished. Claims will still be allowed based on user evidence but not purely on historic evidence. A pilot project called 'Discovering Lost Ways' was initiated in 2004 for which Cheshire and Wiltshire were the demonstration authorities. The project was not deemed a success so was not rolled out across the country, however the route information collated is useful and is held by the authority and could provide good base information upon which a claim could be substantiated. Therefore where a claim coincides with a 'lost way' additional points will be allocated in the prioritisation scheme.
- 10.10 The proposal to extinguish unrecorded routes which could only be substantiated on historical evidence is still under discussion by a Stakeholders Working Group (chaired by DEFRA) with the intent of finding the most effective and reasonable way to implement this section. When their findings are finally implemented it is expected that there may be a considerable influx of applications based on documentary evidence. It will be beneficial to have a workable and justifiable method in place to assess such applications.
- 10.11 At present Cheshire East have 23 outstanding DMMO applications. Under the Annual Report and Work Programme put before Committee in June this year it was hoped that 6 applications would be determined in the following year. To date no applications have been considered by committee however there has been progress in confirming previously made DMMO's (one after an inquiry and a second after being submitted to PINs, the objector withdrew. Two further applications are under investigation and two other issues are being determined, one by Public inquiry in February 2012 and the second through negotiation with a new landowner.

## **PROPOSED NEW CRITERIA FOR PRIORITISATION**

- 10.12 The method for prioritising Schedule 14 applications and investigations which may lead to changes in the Definitive Map and Statement needs to be: -
- Simple, transparent and fair, and applicable to potentially large numbers of applications.
  - It must allow some flexibility and not be a "bottleneck" or a constraint to the development of new initiatives or to the Council's legal duty to maintain and enforce public rights of way.
  - It must be seen to be reasonable and justifiable in view of the statutory right to seek a direction from the Secretary of State for the Council to determine the application after 12 months.
  - It is also desirable and expedient in the context of the Rights of Way Improvement Plan to be able to reflect improvements to the network and consequently benefit to the public.

- 10.13 It is evident that some means of ranking or weighting of applications is required to enable the Council to effectively target its resources.
- 10.14 There must also be some recognition of the length of time on a waiting list. It would be generally unacceptable and a breach of the Council's duty to determine registered claims for any particular application to be of such a low priority that there was no realistic chance of it being determined.
- 10.15 A new scoring system is proposed within the Statement of Priorities, whereby all new Schedule 14 applications and internally generated cases will be given a score, based on applying the system shown in the Appendix. All DMMO case work would thus be prioritised according to that score. The criteria are based on the objectives of the Council's Rights of Way Improvement Plan and Sustainable Community Strategy.
- 10.16 The only instance where a score would not need to be applied or taken into account, if already applied, would be in the case where a route is under threat of development and therefore potentially lost. In these instances the application would be taken out of turn and processed as a priority.
- 10.17 In the interests of fairness to existing applicants, however, the scoring system includes recognition of the amount of time for which applications have been on the register.
- 10.18 Age and Equality Impact Assessment  
In consideration of the fact that the user evidence frequently presented to substantiate applications is from individuals of advancing years, it is proposed to give additional weight to applications where the witnesses are aged over 70. In undertaking this, consideration has been given to the Equality Act 2010

## **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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## Cheshire East Council

**DEFINITIVE MAP MODIFICATION ORDERS:  
REVISED STATEMENT OF PRIORITIES  
December 2011****Background**

Cheshire East Council, as Surveying Authority for the Definitive Map and Statement, has a duty to keep it under continuous review and make modifications as required. The Secretary of State recommends that Surveying Authorities should periodically publish a statement of priorities for dealing with Definitive Map Modification Orders.

A revised prioritisation system is described here. It is based (with modifications) on the policies and objectives of the Cheshire East Rights of Way Improvement Plan (ROWIP) 2011-2026 and the priorities of the Cheshire East Sustainable Community Strategy 2010 – 2025, plus 4 other considerations.

The scoring system is designed to permit a systematic yet flexible approach to dealing with a potentially large volume of applications and matters requiring detailed investigations.

**N.B. Any claimed route threatened by development will be taken out of turn regardless of the score it initially received.**

The higher the total score for a route, the higher priority it will be given for processing.

**Application of scoring**

- 0 = objective not met
- 1 = not met, but potential to meet
- 2 = partially met
- 3 = met
- 4 = met, with potential added value

Ref.	ROWIP policy/objective	Score (0-4)
H2	<b>Promotion of active travel and healthy activities:</b> Working in partnership to promote walking, cycling and horseriding as active travel options and healthy activities	
H3	<b>Public rights of way and green infrastructure:</b> Protect and enhance our public rights of way and green infrastructure and endeavour to create new links where beneficial for health, safety or access to green spaces	
S7	<b>Walking:</b> Working with stakeholders to improve facilities for walking so that it is attractive for shorter journeys	
S8	<b>Cycling:</b> Working with stakeholders to improve facilities for cycling so that it is attractive for shorter journeys	
	Application coincides with existing ROWIP suggestion which has come from interest groups (e.g. users, Parish Council, landowners) (automatically add 4 points).	
<b>Sustainable Community Strategy policy</b>		
SC2	<b>Create conditions for business growth: make the most of our tourism, heritage and natural assets:</b> <ul style="list-style-type: none"> <li>- Develop and exploit the potential of heritage assets and themes, including rail &amp; engineering, silk &amp; textiles, food &amp; produce, canals, historic estates &amp; gardens and the salt industry, to benefit the economy directly or in generating a positive image of Cheshire East, its towns and rural areas</li> </ul>	
SC3	<b>Unlock the potential of our towns: deliver sustainable growth for our towns:</b> <ul style="list-style-type: none"> <li>- Improve links into towns to provide access to key services for nearby village and rural areas, balancing access and parking provision against the environmental impact of traffic</li> </ul>	
SC5	<b>Ensure a sustainable future: improve transport connections and accessible services:</b> <ul style="list-style-type: none"> <li>- Create better integration between different modes of transport...including safe routes to schools, cycle routes....</li> <li>- Improve facilities for cycling and walking so that it is attractive to cycle or walk for shorter journeys</li> </ul>	
SC7	<b>Drive out the sources of poor health: focus local actions on the wider determinants of health:</b> <ul style="list-style-type: none"> <li>- Invest in 'green infrastructure' to encourage active and healthy lifestyle choices</li> </ul>	
<b>Other considerations</b>		
	Application has been on waiting list for more than 1 year prior to December 2011 <sup>i</sup> (automatically add 3 points for every year on the waiting list since receipt date of full application prior to December 2011).	
	Application would resolve a mapping anomaly (automatically add 5 points).	
	Claimed route coincides with a Discovering Lost Ways case route (automatically add 3 points).	
	Applicant or witnesses over the age of 70 (automatically add 2 points per witness/applicant)	
<b>TOTAL</b>		

<sup>i</sup> December 2011 being the date when Cheshire East Council adopted this scoring system within its Statement of Priorities.

## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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**Date of Meeting:** 12 December 2011  
**Report of:** Greenspaces Manager  
**Subject/Title:** Addition to the Definitive Map  
Wildlife and Countryside Act 1981 - Section 53:  
Application to Add a Bridleway between Goldford Lane,  
Larkton and Long Lane, Bickerton.

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#### **1.0 Report Summary**

- 1.1 This report is an informative item to brief members on a recent determination of an application by Cheshire West and Chester Council.

#### **2.0 Recommendation**

- 2.1 No decision is required by Committee.

#### **3.0 Reasons for Recommendations**

- 3.1 N/A

#### **4.0 Wards Affected**

- 4.1 Wrenbury

#### **5.0 Local Ward Members**

- 5.1 Councillor S Davies

#### **6.0 Policy Implications including - Climate change - Health**

- 6.1 Not Applicable

#### **7.0 Financial Implications**

- 7.1 Not Applicable

#### **8.0 Legal Implications (Authorised by the Borough Solicitor)**

- 8.1 Under section 53 of the Wildlife & Countryside Act 1981 (WCA), the Council has a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Under schedule 14 of the WCA, applications can be

made to an authority submitting evidence that suggests that the Definitive Map needs to be amended. The authority must investigate and determine that evidence and decide on the outcome whether to make a Definitive Map Modification Order or not. Cheshire West and Chester Council have determined that an order be made to add a bridleway to the Definitive Map and Statement. Part of the route is within the boundary of Cheshire East Council in the parish of Bickerton.

## **9.0 Risk Management**

9.1 None

## **10.0 Background and Options**

- 10.1 This application was made to Cheshire County Council in 2007 for a bridleway to be added to the Definitive Map and Statement along a route commonly known as 'Dean's Lane'.
- 10.2 At the time of Local Government Re-organisation this application was allocated to Cheshire West and Chester as the applicant resided in that authority.
- 10.3 Cheshire West and Chester (CWAC) sought agreement from Cheshire East PROW to investigate and determine this application with a view to making an order that will modify both definitive maps. CWAC have determined this application in accordance with their 'call-in' procedure. This procedure involves a report being prepared and published for a period of 28 days during which a member of the Public Rights of Way Committee can call it in to be discussed at Committee. If not called in the Head of Culture and Recreation can confirm the recommendation made in the report as a decision of the Council. This report was approved on the 3<sup>rd</sup> October.
- 10.4 A Definitive Map Modification Order was made on the 25<sup>th</sup> November and will be advertised in early December for the statutory 42 days.
- 10.5 The basis of the claim for a bridleway was user evidence submitted by twelve people spanning a period from 1953 to the date of the application in 2007. All the witnesses had used the way openly and without permission. They recall there being bridle signs at each end of the track.
- 10.6 The lane used to be enclosed by a hedge each side but these boundaries were removed by the landowners in 1972. Cheshire County Council received complaints at this time and they reached agreement with the landowners at the behest of users to install bridle gates to maintain access. Further obstructions occurred and the County Council threatened enforcement action to reinstate use.
- 10.7 Additional historical research was undertaken into the route which revealed it to be partly recorded on an estate map of 1735 and County Maps from the early 19<sup>th</sup> century. The route was also shown on Tithe Maps and Ordnance Survey mapping from the 1840's through to the current day.

10.8 In conclusion it was considered that the tests relating to section 53 of the Wildlife & Countryside Act 1981 i.e. whether the available evidence is considered sufficient to reasonably allege that a public path subsists and whether there has been the expiration of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path; had been met.

10.9 The report and plan are attached as appendices.

#### **11.0 Access to Information**

The report prepared by Cheshire West and Chester relating to this investigation can be inspected by contacting the PROW team at:

Name: Clare Hibbert

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**CHESHIRE WEST AND CHESTER BOROUGH COUNCIL**

**OFFICER DELEGATED DECISION REPORT**

<b>Application Number</b>	<b>CH-6-36</b>
<b>Description</b>	<b>Wildlife and Countryside Act 1981 – Section 53 Addition of a bridleway to the Definitive Map of Public Rights of Way</b>
<b>Location</b>	<b>Between Goldford Lane, Larkton and Long Lane, Bickerton between points A &amp; B on Drawing No. MO/547.</b>
<b>Applicant Name</b>	<b>V Garner, Malpas</b>
<b>Ward</b>	<b>Broxton Ward and Wrenbury Ward (CE)</b>
<b>Ward Members</b>	<b>Councillor Ann Wright and Councillor (CE) Stanley Davies</b>
<b>Case Officer</b>	<b>Adele Mayer, Greenspace Technical Officer adele.mayer@cheshirewestandchester.gov.uk 01606 271822</b>
<b>Date</b>	<b>23<sup>rd</sup> August 2011</b>

**Recommendation:-**

- (1)** That an Order be made under section 53(2) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of a bridleway as shown between Points A-B on drawing No. MO/547 and that the requisite notice of the making of an Order be given.
- (2)** That the Head of Culture and Recreation be authorised to take any action considered necessary in respect of the confirmation of the Order hereby authorised to be made.

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**1. BACKGROUND**

- 1.1** In September 2007 Cheshire County Council received an application under Section 53(5) the Wildlife and Countryside Act 1981("the 1981 Act") requesting

that a Definitive Map Modification Order be made to add a bridleway to the Definitive Map and Statement ("the DM"). The application seeks the addition of a bridleway along the route shown between points A and B on the attached plan, Drawing No. MO/547 ("the Plan").

- 1.2 The application was made on the basis provided for in Section 53(3)(b) of the 1981 Act, namely that a sufficient period of time has elapsed during which the public has used the claimed route such that it can be presumed that the route has been dedicated as a public right of way.
- 1.3 The claim in question was registered under the two newly created unitary authorities, Cheshire West and Chester Borough Council (CWAC) and Cheshire East Borough Council (CE). CWAC have the written authority from CE to proceed with this application on their behalf. A list of addresses that would normally be consulted by CE was provided and notification of the investigation was sent out to all relevant and interested parties.
- 1.4 The northern section of the land in question is unregistered although the adjacent landowner of Larkton Hall has been consulted on the application. The southern part is within the title for Pool Farm, Bickerton and both sections are understood to have been in family ownership for a period longer than the years under this claim. In 1972 both farms took down boundaries to what had been a double hedged/walled trackway. The county council received objections at the time and were involved at the behest of users and agreement was reached to install bridle gates between extant hedges/boundary.  
*"The longstanding controversy regarding the removal of boundary hedges , erection of gates etc...has now been resolved...Mr D Johnson, Larkton Hall, agreed to remove a linear fence which reduced the width of the route...As part of the deal Mr Johnson is to be provided with a self closing bridle gate which he is prepared to erect himself.."*(internal memo from Director of Countryside and Recreation, 8.10.1975). The route was also signed at either end as bridleway
- 1.5 A barbed wire fence was erected by Mr Johnson of Larkton Hall in 1975 and enforcement action threatened under s143 of the Highways Act 1959 to remove the fence; *"the strip of land which has been wired off is considerably less than the width of the former lane. The wire fence therefore should be set back to allow a width of 15"* (letter from County Secretary and Solicitor 20.01.1975) Enforcement action was also threatened against Mr R W Bourne Esq of Pool Farm about a steel gate in disrepair *"I am writing to give you notice that unless the obstruction is removed by repairing the gate so that the public can use the path without hindrance, the Authority will have to consider taking legal action to achieve this"* (letter from County Secretary and Solicitor, 20.01.1975)

- 1.6** If the Order sought is made and confirmed the effect will be to add a public right of way on foot, on horse back and leading a horse to the DM from Goldford Lane, Larkton at OS grid reference SJ 5022 5218 (point A on the Plan) running for approximately 603 metres in a southerly direction to a point on Long Lane, Bickerton at OS grid reference SJ 5071 5186 (point B on the Plan). The surface is pasture. There are gates at either end and also two wooden bridle gates at the ownership boundary.

## **2. THE LEGAL TESTS**

- 2.1** Section 53(2)(b) of the 1981 Act imposes a duty on the Council to keep the DM under continuous review and make any modifications to it that are necessary as a result of the occurrence of certain events. Section 53(3) sets out the events in question. Section 53(3)(b) provides that a route should be added to the DM when:-

*“the expiration...of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path...”*

- 2.2** There are two ways in which a sufficient “period of enjoyment” can be demonstrated in order to raise a presumption or inference that the way has been dedicated for the purposes of Section 53(3)(b). Firstly, this can be achieved by meeting the requirements set out in Section 31 of the Highways Act 1980 (“the 1980 Act”). Additionally, or in the alternative, the requisite “period of enjoyment” can be demonstrated by satisfying the requirements of “common law”, or law established through a series of cases that have been decided by the courts.

- 2.3** In addition, section 53 (3)( c)(i) provides that a route should be added to the DM where the discovery of evidence by the Council , when considered with all other relevant evidence available shows:-

*“that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right is a public path”*

- 2.4** The available evidence must be evaluated and weighed and a conclusion reached as to whether on the balance of the probabilities public rights subsist or are reasonably alleged to subsist and any other issues such as safety, suitability, desirability or the effects on property or the environment are not relevant to the decision.

### **3. SECTION 31 HIGHWAYS ACT 1980 (“S31”)**

- 3.1** In order to satisfy the requirements of S31, use of the way by the public must have been for a period of at least 20 years. Section 31(2) provides that the 20 year period is to be calculated retrospectively from the date upon which the right of the public to use the way is brought into question.
- 3.2** The application to modify the DM which was made in September 2007. Section 31 (7A) of the 1980 Act (as amended by section 69 of the Natural England and Rural Communities Act 2006) provides for the application to apply as the matter bringing the right of public to use the way into question. The period of twenty years was calculated from September 2005 to September 2007.
- 3.3** S31 also requires that the public use made of the route during that 20 year period was uninterrupted, and that the use was made “as of right”, that is to say without secrecy or force, and without the permission of the landowner.
- 3.4** If uninterrupted user, “as of right”, for the 20 year period can be shown, then it is presumed that a public right of way has been dedicated unless there is sufficient evidence to show that the landowner did not intend to dedicate the route as a public right of way. Evidence of this nature will typically be of steps undertaken by the landowner in relation to the period of time in question to prevent use by the public or to disabuse the public of the notion that their use of the way was “as of right”.

### **4. COMMON LAW**

- 4.1** The rules relating to presumed dedication under common law dedication differ slightly from the rules under S31. The differences are however only material when presumed dedication under S31 cannot be demonstrated. If, for example, reliance was required on some period of use less than 20 years duration, or if reliance was placed on a period of user expiring at some point before an identifiable act which brings into question the public’s right to use the way, then resort to the common law rules of dedication may be necessary.
- 4.2** It is however the case in this application that the evidence available is considered to satisfy the statutory test, and in so doing that it also satisfies the common law requirements. There is, therefore, for the purposes of this report no need to distinguish between the two tests for the purposes of the conclusions drawn.

## 5. USER EVIDENCE

- 5.1** The application for the Order was accompanied by witness evidence forms from eight persons who have claimed to use the way. This user is summarised in the chart at Appendix A. Twelve user evidence forms were submitted, six of the witnesses have been interviewed. Four witnesses claimed use solely on horseback, 8 on foot and with a horse and one additionally claimed use by bicycle. The user evidence submitted collectively covers a period of continuous use from 1953 to the date of submission of the application in 2007.
- 5.2** All witnesses claimed that the way was used openly and without permission. None of the witnesses report any attempt to prevent or dissuade them from using the way until the middle gates became too difficult to use at the same time as holding a horse c.2007.
- 5.3** It is claimed that the route was used for recreational purposes, walking the dog or hacking with a horse, although one user claimed the route was used on the way to school in a period before 1964. Of those who had used the route one user stated the track *“was a well-known cut through to Bickerton Hill. As children me and my pony riding friends regularly used it as a short cut from Bickerton and Cholmondeley.”* Only one user claimed to have used the route daily on foot, other use on horseback was occasional or monthly.
- 5.4** None of the witnesses recalled there ever being any signs indicating that the route was not a public right of way. Witnesses reported a bridle sign at both ends of the track, one of which at Long Lane still stands. The witnesses interviewed claimed that at Goldford Lane there had been a bridle gate up to c2008 when it was replaced with a pedestrian kissing gate. Internal council records show that the kissing gate was installed to facilitate access to a public footpath at the same point on the highway as the claim.
- 5.5** Four witnesses described the route in the 1950's-1970's as bounded by a hedge on both sides. Three of the witnesses referred to what they referred to in their opinion as remnant stone walling apparently collapsed from the original boundary walling.
- 5.6** The claimed use on a bicycle was for a short period from c1966-1974 and was occasional use. Whilst requisite use by bicycle can give rise to a claim for a restricted byway, the necessary circumstances for such a claim to arise are not present in the current case.
- 5.7** The claimed use in a vehicle was occasional use by one witness between 1975 and 1980. One witness claimed to have seen a tractor using the route in the 1950's; the style of tractor of that date being of such width that the track could

accommodate the vehicle. Whilst requisite use by motor vehicle could not give rise only with exception for a Byway Open to All Traffic, the necessary circumstances for such a claim to arise are considered not to be present in the current case.

- 5.8** The witness evidence submitted with the application is sufficient to show that the public enjoyed use of the way on foot and on horseback that they did so “as of right” uninterrupted over the 20 year period in question. Furthermore, the user evidence submitted discloses no basis upon which to assert that there was, during that period any evidence that there was no intention on behalf of the landowner to dedicate the way.

## **6. FURTHER INVESTIGATIONS**

- 6.1** To corroborate the witness evidence submitted, further investigations were undertaken. Details of all evidence taken into consideration is summarised in Appendix B
- 6.2** The standard reference documents comprising historical maps and records have been consulted in connection with this application. The earliest map and document being an estate map and perambulation of the boundaries of the manor of Bickerton for Philip Egerton drawn up in 1735. Both documents list the field to the south-west of Deans Lane as “*deans flat*” which is an indication of the antiquity of the name, the map shows a bounded track on the northern section of the route and a single boundary to open fields on the southern section. A slightly later, although undated estate map for “*Larton Hall*” estate, shows the whole of the route as a bounded track. The map labels adjacent land as being in the ownership of “the late Sir Philip Egerton Esq” and is thought to date c late 18<sup>th</sup> century/early 19<sup>th</sup> century.
- 6.3** The claimed route is depicted on OS plans which are good documentary evidence of the physical record of the existence of the route. It is shown on the 1” scale map of 1842 and subsequent editions at different scales show the route between boundaries and apparently open at each end.
- 6.4** The route is shown on earlier county commercial maps, Burdetts map of 1777, Greenwoods of 1819 and Swire and Hutchings map dated 1830. Where a key is available, the route is depicted as a “cross road”, comparable to other highways which are public highways. Taken together, the maps are good evidence that the lane was physically on the ground and suggests that it was part of the local highway network.
- 6.5** Tithe maps were prepared to commute the payment of tithe taxes to a monetary payment. The purpose of the mapping was not to record public highways, but since the process was part of a statutory process under the Tithe Commutation Act of 1836, the veracity of the maps carries some weight. The map for Larkton parish dated 1842

shows the northern section of the route to the parish boundary, whereas the Bickerton map dated 1839 does not show the route, or does not show a bounded route.

- 6.6** The Finance Act 1910, repealed 1914, was almost a domesday record of England at that date. Landowners would be taxed on the sale of land and so as a consequence, they were able to apply for a deduction for public rights of way crossing their land, and the maps that were drawn up would be expected not to include public highways "*land held by or on behalf of a rating authority*" (s31(5) of the Act). The working maps for the claimed route shows the northern half of the route excluded from hereditaments but similarly to the Tithe map, the base mapping does not depict a bounded lane nor is a length of route excluded from the hereditament nor is there a deduction for a public right of way.
- 6.7** The parochial parish council meeting minutes for Bickerton parish have been publicly archived. It is recorded on 28<sup>th</sup> February 1972 that complaint was made against the ploughing of Dean's Lane, "*as the ends of the lane have not been fenced off, and access for the public has not been prevented, there is virtually no difference*". This is corroborated from evidence of the witnesses.
- 6.8** The council holds its own internal records including correspondence relating to complaints. Letters and memorandum for 1975 document complaints against the landowners adjacent to the lane as described above in 1.5. The county council issued a type of "self-closing" bridle gate to Mr Johnson of Larkton Hall, as problems seemed to have arisen following a change in farming practice from the ploughing referred to in correspondence dated 1972 and a few years later in 1975 when stock control gates and fencing were needed. Some degree of acknowledgement or acquiescence to the existence of a public right is also considered to exist insofar as the self-closing wooden bridle gate is still in situ.
- 6.9** An officer from the council undertook a site visit to the termination points for the claimed route on 14<sup>th</sup> January 2008 and physical conditions and signs noted. A bridle gate at the Goldford Lane junction with the route and a metal finger post for the public footpath. At the southern junction on Long Lane, there was a field gate, a wooden bridleway sign which had inscribed on it "*bridleway to Goldford Lane*". Access to the whole route was not available.
- 6.10** The registered landowner and adjacent owner were notified when the application was made in 2007. Notice of the application was advertised on site to landowners unknown from 10<sup>th</sup> May 2011 for 28 days. No other landowner has stepped forward and those known have been unable to provide any evidence to negate an intention to dedication or that any steps had been taken to prevent public use or disabuse the public of the presumption that a right of way existed. Both landowners have raised concerns that the recording and opening of a bridleway would create a risk of spreading disease between two herds of cattle. A letter submitted on behalf of

Larkton Hall estate states “*both farms have dairy cattle and it is essential they don’t mix for health reasons..*” Whilst these concerns are not considerations for an application under this part of the act, the council would need to pay consideration to those concerns in the event that an order is made.

- 6.11 An assessment of the consultation carried out by the Historic Environment Officer was carried out and revealed a record documenting the earliest date for the name *le dene* in 1306 in the Cholmondeley deeds. The lane lies on the township/parish boundary “*often marked by banks, ditches, stones and species rich hedgerows..*”. In itself the information is testament to the antiquity of the route.
- 6.12 The ward councillors for Malpas and for Wrenbury Ward (CE) attended a site meeting on 6<sup>th</sup> June 2011 and took the opportunity to view the claimed route and made comments on the affect of such a claim with regard to stock control. They are in support of both councils taking such action as deemed necessary to support both farms affected in the event that an order is made and successfully confirmed.
- 6.13 The parish council for Broxton were represented by a member at a site meeting held on 6<sup>th</sup> June 2011 and have made no adverse comments other than supporting the concerns of the landowners with regard to the safety and security of the herds.

## **7. Conclusion**

- 7.1 An application was duly made and registered in 2007 requesting that an order be made to add a bridleway from Goldford Lane, Larkton to Long Lane, Bickerton based on witness evidence. The evidence of the witnesses is considered sufficient to raise a presumption of dedication in law, and it is considered that there is insufficient evidence of any acts or intention which would negate that presumption.
- 7.2 Investigation of the application revealed documentary support for the existence of the route prior to the claim. The route is either partly or wholly shown in an estate map of 1735, county maps of the early nineteenth century, Tithe maps from that period and Ordnance Survey mapping shows the lane from the 1840’s through to the current mapping. The records for the Finance Act 1910 show the northern section was excluded from hereditament which is strong evidence that the way was considered to be public. The documentary evidence when considered with all other available evidence is considered to be sufficient to reasonably allege that a public path subsists.
- 7.3 The correspondence from the former Cheshire County Council legal service indicates that there had been a period during the 1970’s whereby public use was acknowledged by the council and by landowners and led to the installation of gates and setting of widths. It is also concluded that a case under common law could be met.



- 7.4** It is concluded therefore that on account of the expiry of the duration of a period of 20 years user, between 1987 and 2007, of the way by the public “as of right”, and in the absence of any evidence of a lack of intention to dedicate and the supporting documentary evidence, the requirements of section 53 of the 1981 Act are, on the balance of probabilities, satisfied and the requirements for the making and confirmation of the order sought would appear to have been met.
- 7.5** Accordingly, it is considered that the Definitive Map and Statement for the Rural District of Tarvin should be modified by addition of a public bridleway as shown between A-B on the plan MO/547 and the Cheshire East Definitive Map and Statement should be modified by the addition of a public path as shown between B-C on the plan MO/547.

**8. Associated documents**

Application file CH-6-36. Appendix A user summary. Appendix B relevant documentary evidence

name	use	2005	2000	1995	1990	1985	1980	1975	1970	1965	1960	1955	1950	frequency
Anderson	horse									1965	1960			20 times pa
Knight	foot	2007		1998										6-8 times pa
	horse	2007		1998										
Jones	foot	2007					1984							occasionally
	horse	2007			1994									
Garner	foot	2004/2007	2003/4	1999										occasionally
	horse	2004/2007	2003/4	1999										
Hunter Johnston	Horse	2005	2000											6-10 times pa
R Garner	horse	2006	2003/2004	1999										occasionally
Batty	horse	2005	2000											occasionally
Mayers	foot		2000			1987								occasionally
	horse		2003	1998										
Yauld	foot										1964		1953	weekly
	cycle										1964		1953	
Hall	horse				1991						1961			weekly
Mitchell	foot			1995						1966				occasionally
	horse			1995						1966				
	cycle								1974	1966				
	vehicle						1980	1975						
J Mitchell	horse		2003						1971					12 times pa
APPLICATION RECEIPT		13.09.2007												

## Appendix B Documentary Evidence

### 1. Communications Received

Application No. 6/36 made by Mrs V Garner, Malpas, registered 13.09.07

Cheshire East Council letter 13.10.2010

CWAC Specialist Environmental Services e-mail 10.01.2010

Wright Manley (agent for Larkton Hall) letter 21.09.2007, 07.02.2011; telephone 10.01.2011

Mr & Mrs Bourne, Pool Farm e-mail 11.01.2011, 14.05.201; telephone 16.05.2011

Glyn Davies, Broxton PC telephone 06.06.2011

### 2. Witness Evidence

J Anderson interview 03.03.11; E Batty interview 03.03.2011; V Knight interview 25.02.2011; B Yaud interview 03.03.2011; N Jones interview 03.03.201; J Mayers interview 03.03.2011; statements from V Garner, R Garner, T Hall, J I Mitchell, J Mitchell, A Hunter-Johnston

### 3. Other Evidence taken into consideration

Notes and photographs of site visit made by A Mayer, 14<sup>th</sup> January 2008

### 4. Documentary Evidence

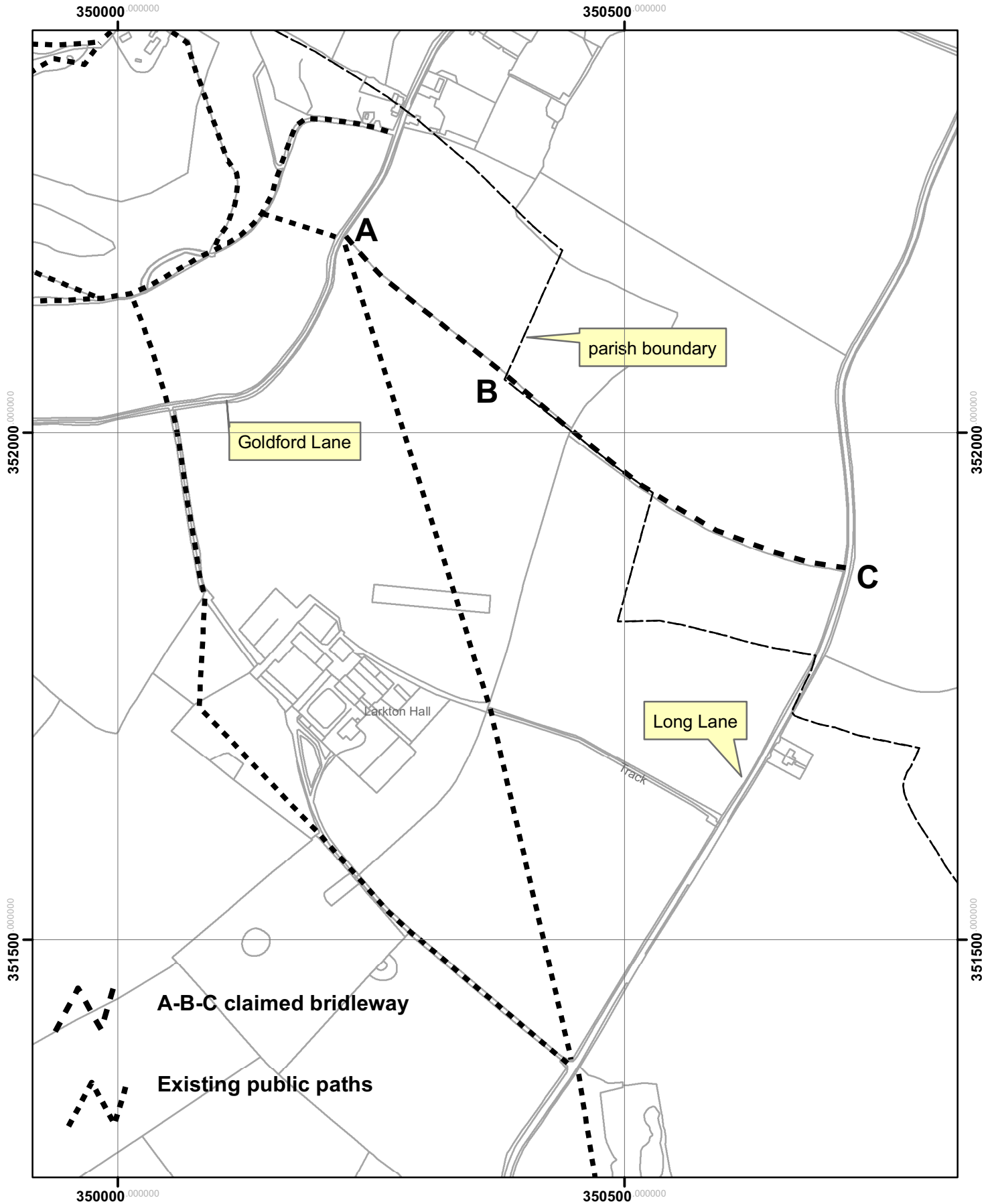
**CRO= Cheshire Record Office**

**CWAC= internal records**

Date	Ref	Des	
22 October 1735	CRO DEO 211/9	Perambulation Bickerton manor boundary, Philip Egerton Esq. Survey Matthew Meakin	Map missing. "from there along the [hedge] side to Malpas Road and so along the road to malpas for three chains Then on the west side of Deans flat (being Lord Cholmondeley's land) to the south west corner therefor Then on the west side of [two] fields of lord Cholmondeley called [] to a new mear stone ,marked G which parts those townships viz Bikerton Larkton and Egerton then pointing south east to a mere stone in small moor"
1735	CRO DEO 1/5	Bickerton manor map August 1735 by W Williams	Bank House tenement John Alderhead 1) house ") big role croft 3) lower house croft Particulars of the Freeholds in Bickerton; Lord Colmondely 18) Jo Douns house yard; 19 - , 20) in the towns 21) riding 220 Dean Flatt 23)

			mrs jones 28) big nightmoor field 29) big rushey lake
Early 19 <sup>th</sup> c	DCH/C/193	Survey of Larton estate	Deans Lane is uncoloured; A11 Deans field/A6 Little Flash Field/A Riddings/A9 Thunderbolt field/A1 Dotted traces for footpaths, stiles drawn in at boundaries – inclu at north boundary of Deans field short path and stile
1819	CRO PM 13	Swire & Hutchings county map	Shows deans lane, north of Larkton Hall
1777	CRO PM 12/10	Burdett Map	Shows Deans Lane
1839	CRO EDT 46/2	Tithe Award Bickerton (Malpas)	Poor draughting; partial linework at hill edge. The lane is not shown except as a line
1842	CRO EDT 100/6	Tithe award Larkton (Malpas)	Deans Lane is shown; no bar across junction with goldford lane. Uncoloured.
1910	NVA NVB	Finance Act, Larkton	Notation on map LIV-IJ Sup Crewe; on the RD boundary – Tarvin/ 357 – A shone, Mqs Cholm, house and buildings/6 - Bickerton R Bourne, Sir Philip Egerton Esq
1840	CWAC 1" series	Ordnance Survey	
1874	CRO OS LIV 15	Main highways coloured	Cross highways uncoloured – deans lane and other public highways; no conclusion. Entrance to deans lane is broken line
1898	CRO OS LIV 15	FP is labelled, uncoloured,	Deans Lane is named (as other lanes are) parcel numbers are 46; 10
1910	CRO OS LIV 15	3 <sup>rd</sup> edition	
1972	Parish Council	Bickerton Parish Council parochial meeting minutes	
1970's	CWAC	Correspondence	
	Land registry	Title register CH 299561 and 547602	

# Wildlife and Countryside Act 1981 Schedule 14; Application to add a bridleway to the Definitive Map and Statement between Goldford Lane, Larkton and Long Lane, Bickerton



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Plan No MO/547  
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## **CHESHIRE EAST COUNCIL**

### **Public Rights of Way Committee**

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<b>Date of Meeting:</b>	12 December 2011
<b>Report of:</b>	Greenspaces Manager
<b>Subject/Title:</b>	Public Inquiry to Determine Definitive Map Modification Order Upgrading of Public Footpaths Nos 29, 15 (part), 14, 10 (part), 9 (part) and 27 Parish of Chorley & Nos 40 (part) and 42 Parish of Wilmslow to Bridleway

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#### **1.0 Report Summary**

- 1.1 This report is an informative item to brief members on a recent public inquiry and the outcome.

#### **2.0 Recommendation**

- 2.1 No decision is required by Committee.

#### **3.0 Reasons for Recommendations**

- 3.1 N/A

#### **4.0 Wards Affected**

- 4.1 Wilmslow West & Chorley; and Mobberley.

#### **5.0 Local Ward Members**

- 5.1 Councillors G Barton and W Fitzgerald  
Councillor J Macrae.

#### **6.0 Policy Implications including – Carbon Reduction - Health**

- 6.1 Not Applicable

#### **7.0 Financial Implications**

- 7.1 Not Applicable

#### **8.0 Legal Implications (Authorised by the Borough Solicitor)**

- 8.1 Under section 53 of the Wildlife & Countryside Act 1981 (WCA), the Council has a duty, as surveying authority, to keep the Definitive Map and Statement

under continuous review. Under schedule 14 of the WCA, applications can be made to the authority submitting evidence that suggests that the Definitive Map needs to be amended. The authority must investigate and determine that evidence and decide on the outcome whether to make a Definitive Map Modification Order or not. When an order is made it is advertised and may be subject to objections. If objections are not withdrawn the Council cannot then confirm the order itself and must submit the order to the Secretary of State (Planning Inspectorate) for determination. Where a Parish/Town Council objects to an order it is policy for a local public inquiry to be held. The Council must provide a suitable venue and legal support to facilitate an inquiry.

## **9.0 Risk Management**

9.1 None

## **10.0 Background and Options**

- 10.1 Two applications were made to Cheshire County Council in 2008 to amend the Definitive Map and Statement by upgrading a number of public footpaths to public bridleways. The first application (application no. 1) concerned a route from Knutsford Road to Moor Lane. The second application (application no.2) concerned footpath no. 42 in the parish of Wilmslow, known as 'Filter Bed Lane' this footpath runs between Upcast Lane and Clay Lane. They are shown on the Plan No. MO/001.
- 10.2 Cheshire East Borough Council considered this application in a report put before the Rights of Way Committee in March 2010. The making of an order was approved with the exception of the part of Clay Lane marked H-F on Plan No. MO/001. A Modification Order to upgrade the remainder of the route was made on the 29 April 2010. Eight formal objections (14 people) were submitted to the order which were not withdrawn.
- 10.3 The objections were based on various reasons; in summary the main points were, the route is too narrow; concern over the conflict between walkers and horses; surfacing issues; some of the use has been 'permissive'; there have been notices stating the route is a footpath; the user evidence is exaggerated; some landowners stated to have challenged horse riders and question the period and frequency of use.
- 10.4 As the objections were not withdrawn consequently a file of the relevant information was submitted to the Planning Inspectorate in January 2011.
- 10.5 A public inquiry was held on 6 and 7 September 2011 at the Wilmslow Parish Hall, which continued on 8 September 2011 at the Chorley Village Hall. The Council were represented by a barrister, Estelle Dehon from chambers in London and the objectors were represented by Mr Nigel Farthing Solicitor of Birketts LLP. The appointed Inspector was Mark Yates.
- 10.6 The inquiry heard evidence from the Council's Definitive Map Officer - Jennifer Tench, and from fourteen witnesses in support of the order and from



six in opposition. The basis of the evidence in support was that under section 31 of the Highways Act 1980, the ways had been used on horseback for a full period of 20 years without force, secrecy or permission and without sufficient evidence to indicate that there has been no intention to dedicate during that period. If these criteria are fulfilled then the ways are deemed to have been dedicated as bridleways. The relevant 20 year period was taken as being from 1986 to 2006 (when a locked gate was erected preventing use on horseback).

- 10.7 The evidence in opposition to the order was that there was not sufficient evidence of use on horseback during the relevant period and that landowners Mr Morris and Mr Clayton had challenged horse riders. The evidence of the users indicated that most of them were challenged or were aware of horse riders being challenged, in the immediate locality of Lea Farm. These challenges were the reason why the section of route H-F on Plan No. MO/001 was not included in the order.
- 10.8 Mr Morris claimed to own the land between points G and H on the order plan (Plan No. WCA/002), however no proof of title in relation to any of the land crossed by the order route was presented at the inquiry. The users at the inquiry were unaware that Mr Morris owned land crossed by the order route. There was no evidence to suggest that challenges were issued by, or on behalf of, Mr Morris between points G and H.
- 10.9 The inquiry was closed and concluded on 8 September 2011. The Inspector issued a decision letter on the 26 October 2011 in which he confirmed the order. The balance of the argument weighed in favour of the footpaths having been deemed to have been dedicated as bridleways. There was insufficient evidence to show a lack of intention, by any of the landowners to dedicate the route as a bridleway, to satisfy the requirements of section 31 of the Highways Act 1980.
- 10.10 The Council has now advertised the confirmation of the order and allowed 42 days for a High Court challenge to be made. This period expires on the 22 December 2011. A challenge can only be made on the basis that the Inspector in reaching his decision has wrongly applied the relevant law.

## **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

Name: Jennifer Tench

Designation: Definitive Map Officer

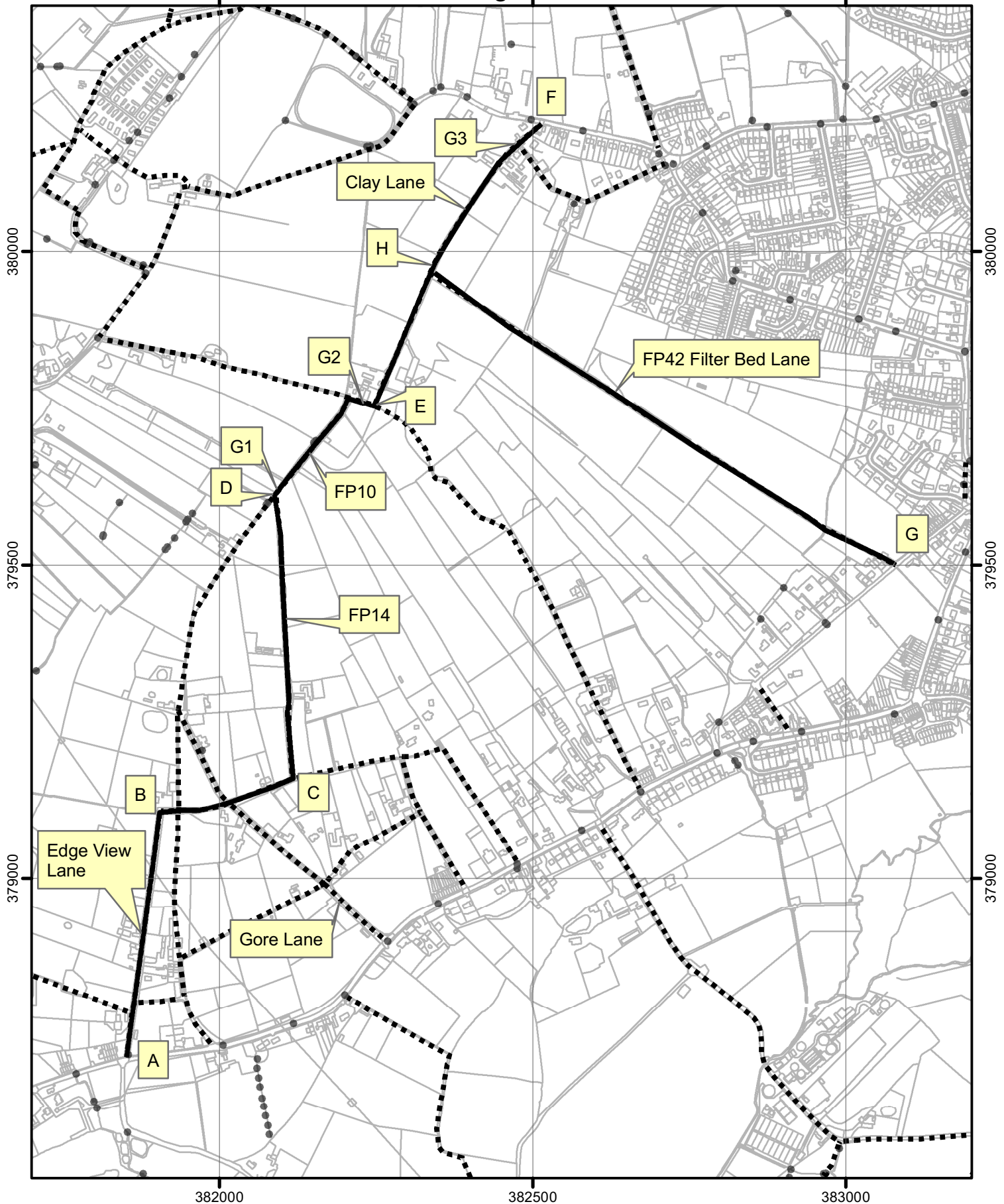
Tel No: 01270 686158

Email: [jennifer.tench@cheshireeast.gov.uk](mailto:jennifer.tench@cheshireeast.gov.uk)

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382000

383000



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Claimed bridleways between  
Knutsford Road and Moor Lane  
and Filter Bed Lane  
(MA 5/239 & 241)

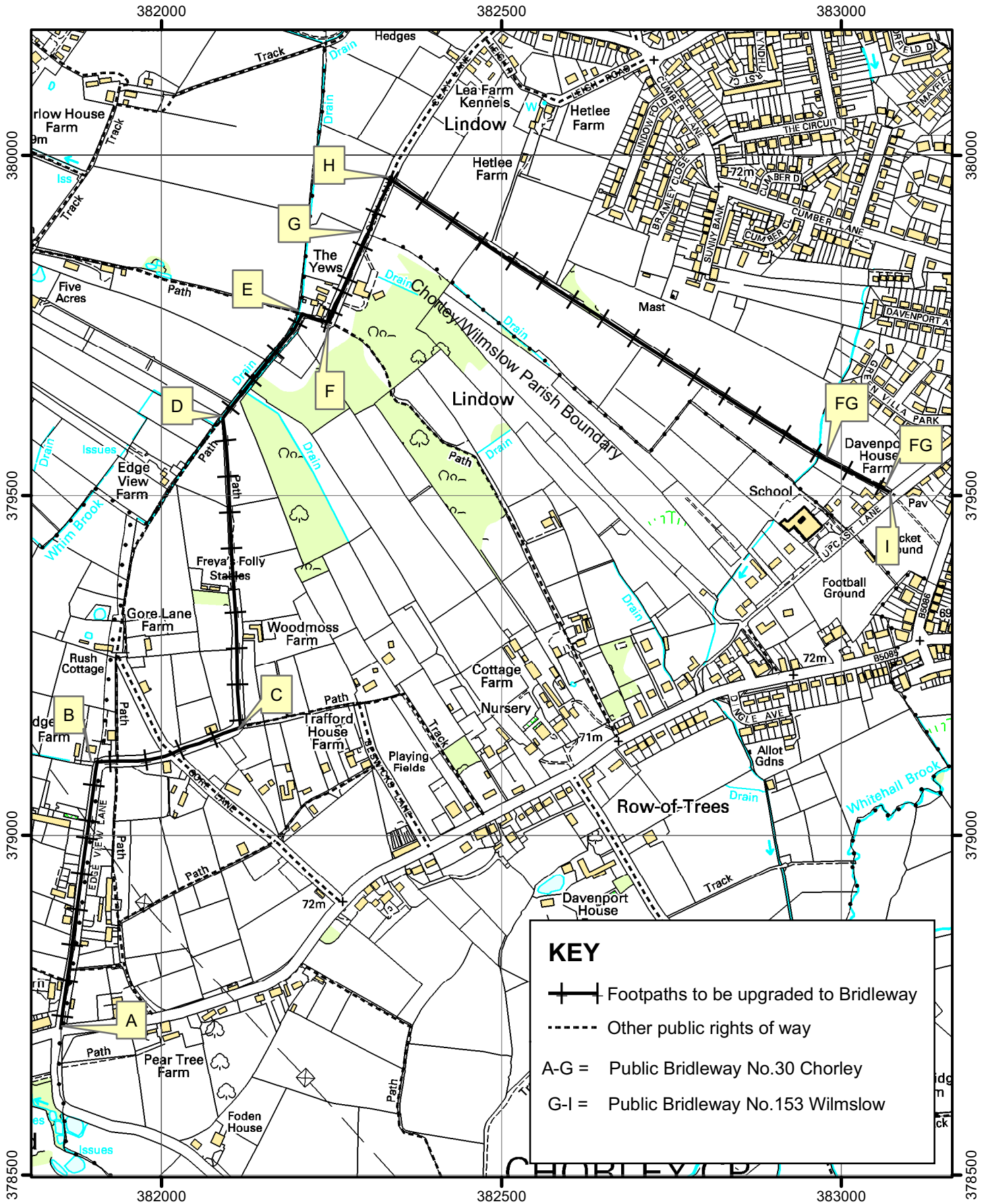
Plan No.  
MO/001

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Wildlife and Countryside Act 1981

The Cheshire East Council (Definitive Map and Statement for the former Borough of Macclesfield (Upgrading of FPs 29, 15 (part), 14, 10 (part), 9 (part) and 27 Parish of Chorley & Nos 40 (part) and 42 Parish of Wilmslow) Modification Order 2010

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Plan No.  
WCA/002



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