

# Public Rights of Way Committee

## Agenda

---

<b>Date:</b>	<b>Monday, 7th December, 2009</b>
<b>Time:</b>	<b>2.00 pm</b>
<b>Venue:</b>	<b>Committee Suite 1,2 &amp; 3, Westfields, Middlewich Road, Sandbach CW11 1HZ</b>

---

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 - 12)

To approve the minutes of the meeting held on 7 September 2009 as a correct record.

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

In accordance with Procedure Rules Nos.11 and 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 should provide 3 clear working days notice, in writing, if they wish to ask a question at the meeting, in order for an informed answer to be given. It is not required to give notice of the intention to make use of public speaking provision, however, as a matter of courtesy, a period of 24 hours notice is encouraged.

---

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 529742

**E-Mail:** [rachel.graves@cheshireeast.gov.uk](mailto:rachel.graves@cheshireeast.gov.uk)

5. **Highways Act 1980 - Section 119: Application for the Diversion of Public Footpath Nos. 2 and 3 (parts) Parish of Millington** (Pages 13 - 20)

To consider the application for the diversion of Public Footpath Nos. 2 and 3 (parts) in the Parish of Millington.

6. **Highways Act 1980 - Section 25: Update on Creation Agreement for a New Public Footpath in the Parish of Bollington** (Pages 21 - 24)

To receive an update on the Creation Agreement for a New Public Footpath in the Parish of Bollington.

7. **Highways Act 1980 - Section 119: Application for the Diversion of Public Footpath No. 1 (part) Parish of Peover Superior** (Pages 25 - 32)

To consider the application for the diversion of Public Footpath No. 1 in the Parish of Peover Superior.

8. **Update on Development of the Rights of Way Improvement Plan (2011-2026) within the Local Transport Plan 3** (Pages 33 - 36)

To consider a report on the development of the Rights of Way Improvement Plan (2011-2026) within the Local Transport Plan 3.

9. **Village Green Applications** (Pages 37 - 42)

To consider a report seeking approval of a procedure for the determining of village green applications.

10. **Village Green Application No. 47 - Field between Birtles Road and Drummond Way, Whirley, Macclefield** (Pages 43 - 48)

To consider a report on how to proceed with a village green application.

**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Public Rights of Way Committee**  
held on Monday, 7th September, 2009 at Committee Suite 1,2 & 3,  
Westfields, Middlewich Road, Sandbach CW11 1HZ

**PRESENT**

Councillor B Moran (Chairman)  
Councillor R Walker (Vice-Chairman)

Councillors Rachel Bailey, D Cannon, R Cartlidge and S Wilkinson

Councillor in Attendance: Councillor A Knowles, Portfolio Holder Health and Wellbeing

**OFFICERS PRESENT:**

Mark Wheelton, Leisure Services and Greenspace Manager  
Mike Taylor, Greenspace Manager  
Amy Rushton, Interim Public Rights of Way Manager  
Genni Butler, Acting Countryside Access Development Officer  
Clare Hibbert, Public Rights of Way Officer  
Hannah Flannery, Acting Public Rights of Way Officer  
Jennifer Tench, Public Rights of Way Officer  
Charles Riley, Solicitor, Places, Regulatory and Compliance  
Rachel Graves, Democratic Services Officer

**12 APOLOGIES FOR ABSENCE**

Apologies were received from Councillor J Wray.

**13 DECLARATIONS OF INTEREST**

Councillor D Cannon declared a personal interest in the meetings proceedings by virtue of his membership of the PALLGO Rambling Club in Crewe and Nantwich. In accordance with the code of conduct, he remained in the meeting during the consideration of all items of business.

**14 MINUTES OF PREVIOUS MEETING**

**RESOLVED:**

That the minutes of the meeting held on 1 June 2009 be approved as a correct record and signed by the Chairman, subject to the following amendments:

Minute 5 – Legal Orders Team: Statement of Priorities for Definitive Map Modification Orders:

Resolution (2) to be amended to read “further reports be brought in six and twelve months on the revised Statement of Priorities and the revised prioritisation system.”

Minutes 6 – Charging Policy for Public Path Orders, Temporary and Emergency Closures and Rights of Way Searches:

Resolution (5) be amended to read “increases in charges relating solely to inflation be implemented by Officers without the need to seek Committee approval.”

### **15 PUBLIC SPEAKING TIME/OPEN SESSION**

The member of public present did not wish to address the Committee.

### **16 HIGHWAYS ACT 1980 - SECTION 118: EXTINGUISHMENT OF PUBLIC FOOTPATH NO. 4 AND RESTRICTED BYWAY NO. 6 MIDDLEWICH**

The Committee considered a report which detailed the proposal to extinguish Public Footpath No.4 and Restricted Byway No. 6 (part) in Middlewich.

In accordance with Section 118(1) of the Highways Act 1980 it was within the Council’s discretion to make an Order if it appeared to the Council that it was expedient that a path or way should be stopped up on the ground that it was not needed for public use.

Public Footpath No. 4 and Restricted Byway No. 6 (part) were currently obstructed by a large housing estate, constructed some time in the 1960s by Middlewich Estates Limited. The obstruction of these rights of way had occurred as the Planning Authority at the time had failed to ensure that the proper legal processes were followed and did not make a stopping-up order to legally extinguish the line of the footpath/restricted byway, prior to the development being carried out.

The situation had come to light in 2006 when an owner of an affected property attempted to sell their house and the vendor’s solicitor conducted a legal search to see if it was affected by a public right of way. At the time, Cheshire County Council confirmed to all parties concerned that no enforcement action would be taken on the legal lines of these routes. Despite this, the sale fell through.

It was agreed that Congleton Borough Council, as the successor Planning Authority, should take responsibility for the matter and undertake to legally extinguish the lines of the public rights of way affecting the properties, under section 118 of the Highways Act 1980. The Borough Council consulted the affected property owners but had progressed the matter no further and following Local Government Reorganisation, the matter was passed to the Public Rights of Way Team for resolution.

It was noted that no objections had been received. The Committee considered that Public Footpath No. 4 and Restricted Byway No, 6 (part) were not needed for public use, as alternative access was available via the adopted road network of the housing estate. It was in the interest of all the owners affected by these rights of way that they were legally extinguished to avoid any future attempts at conveyance being jeopardised.

**RESOLVED:**

- (1) that an Order be made under Section 118 of the Highways Act 1980 to extinguish Public Footpath No.4 and part of Restricted Byway No. 6 Middlewich, as illustrated by the markings A-B-C on Plan No. HA/207/FP4\_RB6/004, on the grounds that they are not needed for public use.
- (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, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

**17 HIGHWAYS ACT 1980 - SECTION 118: PROPOSED EXTINGUISHMENT OF PUBLIC FOOTPATH NO. 17 (PART) SANDBACH**

The Committee considered a report which detailed the proposal for extinguishing part of Public Footpath No. 17 in the Parish of Sandbach.

In accordance with Section 118(1) of the Highways Act 1980 it was within the Council's discretion to make an Order if it appeared to the Council that it was expedient that a path or way should be stopped up on the ground that it was not needed for public use.

Part of Public Footpath No. 17 in Sandbach ran across the gardens and dwellings of four properties in Laurel Close, which were constructed in the 1980s. The situation had been brought to light by a recent search on No. 4 Laurel Close which had caused concern to the potential purchaser. A thorough search of available documentation has shown that the path was not diverted or extinguished at the time of the development. On an adjacent development a further section of the same path was legally diverted onto the highway network. In order to regularise the situation and prevent further problems arising at the point of sale, Cheshire East Council was applying for an extinguishment order for this part of Footpath No. 17.

The Committee noted that no objections had been received and considered that Public Footpath No. 17 (part) was not needed for public use as an alternative route was available via the adopted footway between Laurel Close and the continuation of Footpath 17 and connecting Footpath

No. 18. It was in the interests of the owners of properties nos. 2 to 8 Laurel Close affected by the right of way that it was legally extinguished to avoid the difficulties experienced when a house sale was in prospect.

**RESOLVED:** That

- (1) an Order be made under section 118 of the Highways Act 1980 to extinguish part of public footpath no.17 Sandbach, as illustrated on Plan No. HA/262/FP17/011, on the grounds that it is not needed for public use.
- (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.

**18 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 20 (PART) PARISH OF SUTTON**

The Committee considered a report which detailed an application from Mr and Mrs Egerton (the applicant) of Hartsgrove Cottage, Sutton, Macclesfield, requesting the Council to make an order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 20 in the Parish of Sutton.

In accordance with Section 119 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 of the owner, lessee or occupier of the land crossed by the path.

The applicant owned the land over which the current path ran and the majority of the land over which the proposed diversion would run. A small section of the proposed route at the easternmost end of the proposed route ran in the adjacent landowner's field and written consent had been provided. The current line of the footpath took walkers in very close proximity to the applicant's home and immediately past the windows of the property. The footpath formed part of the Gritstone Trail, which was a well used route. The proposed diversion was already in use as a permissive route.

It was noted that no objections had been received for the proposal. The Committee considered that the proposed route would be more enjoyable than the existing route with improved views. Moving the footpath out of the applicant's garden and away from their home provided a less intimidating route for users. The proposed route would also benefit the

applicant in terms of security and privacy. It was therefore considered that the proposed route would be more satisfactory than the current route and the legal tests for making and confirming a diversion order were satisfied.

**RESOLVED:** That

- (1) an Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No. 20 Sutton, as illustrated on Plan No. HA/284/FP20/003, 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 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.

**19 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 13 (PART) PARISH OF WRENBURY CUM FRITH**

The Committee considered a report which detailed an application from Mr P B Hockenhull (the applicant) of Frith Farm, Wrenbury, Nantwich requesting the Council to make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 13 in the Parish of Wrenbury cum Frith.

In accordance with Section 119 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 of the owner, lessee or occupier of the land crossed by the path.

The applicant owned the land over which the current path lay and the proposed diversion would lie. The existing line of the Public Footpath No. 13 ran along the rear of a range of traditional buildings which had recently been granted planning permission for four dwellings. A condition was placed on the planning permission that the applicant apply to divert the footpath under the Highways Act. The current line of the footpath would run through the gardens of the four dwellings and the proximity of the footpath to the dwellings would lead to loss of privacy and security of future inhabitants. The current line of the footpath had also been partially obstructed by a slurry pit for a number of years and diverting the route would avoid this obstruction.

The Committee noted that no objections had been received and considered that the proposed footpath would be more enjoyable than the

existing route and provide improved views. Moving the footpath out of the farmyard and the gardens would provide a less intimidating route for users. The new route was not substantially less convenient than the existing route and would also benefit the landowner and future inhabitants of the four dwellings in terms of security and privacy. It was therefore considered that the proposed route would be more satisfactory than the current route and that the legal tests for the making and confirming of a diversion order were satisfied.

**RESOLVED:** That

- (1) an Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No. 13 Wrenbury cum Frith, as illustrated on Plan No. HA/005, 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 in the said Acts.
- (3) in the event of any objections to the Order being received, 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 PUBLIC FOOTPATH NO. 4 (PART) PARISH OF BRERETON**

The Committee received a report which detailed an application from Mr and Mrs H McCormick (the applicant) of Barn 2, Dairy House Farm, Brereton requesting the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 4 in the Parish of Brereton.

In accordance with Section 119 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 of the owner, lessee or occupier of the land crossed by the path.

The applicant owned part of the land over which the current footpath ran, the remaining part belonging to the owner/occupiers of Barn 1. The land over which the proposed diversion ran is partly owned by the applicant and partly owned by Mr and Mrs Harris of Dairy House Farm. Mr and Mrs Harris had written to confirm they had no objections to the diversion of the footpath on their land. The current line of Footpath No. 4 took the public diagonally across the garden of the applicant's property and Barn 1. When purchasing the property it was only in the very late stages that the applicant was made aware that the path entered the property. The path

was inconvenient and affected the applicant's privacy as they spent time as a family outside and their children played in the area. The line walked on the ground was not the same as the legal line as the legal line also affected the garden of Barn 1 but the walked line was solely within the garden of the applicant.

The diversion would benefit the landowners as the public would no longer need to walk through their garden. The proposed diversion was already in place as a permissive route. The proposed route was similar in length and offered easier access with only one kissing gate rather than two pedestrian gates on the current route.

The Committee noted that no objections had been received to the proposal and considered that the proposed footpath would be more enjoyable than the existing route and that the new route was not substantially less convenient than the existing route. The proposed route would also benefit the landowners in terms of their privacy. It was therefore considered that the proposed route would be more satisfactory than the current route and that the legal tests for the making and confirming of a diversion order were satisfied.

**RESOLVED:** That

- (1) an Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No. 4 Brereton, as illustrated on Plan No. HA/012 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.

**21 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO.3 PARISH OF MOTTRAM ST ANDREW**

The Committee considered a report which detailed an application from Mr M Battersby and Miss R Fallows (the applicant) of Lower Gadhole Farm, Greendale Lane, Mottram St Andrew requesting the Council to make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 3 in the Parish of Mottram St Andrew.

In accordance with Section 119 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 of the owner, lessee or occupier of the land crossed by the path.

The applicant owned the land over which the current path lay and over which the proposed diversion would run. The current line of Footpath No. 3 ran through a busy stud yard which was used for the breeding and training of young sport horses. Moving the footpath out of the yard would be of benefit in terms of the farm management and also avoid any conflict or risk of accidents between members of the public and the horses. Horses in training could be easily disturbed and upset and this had led to the injury of pedestrians in the past. Diverting the footpath would improve safety for users.

The Committee noted that objections to this proposal had been received but considered that the proposed footpath would be more enjoyable than the existing route as it provided improved views for walkers and a more easily accessible route. Moving the footpath out of the stud yard would benefit the landowner in terms of farm management and privacy and security. The new route was not substantially less convenient and would provide a less intimidating route for walkers. It was therefore considered that the proposed footpath would be more satisfactory than the current route and that the legal tests for the making and confirming of a diversion order were satisfied.

**RESOLVED:**

- (1) that an Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No. 3 Mottram St Andrew, as illustrated on Plan No. HA/007, on the grounds that it is expedient 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.

**22 TOWN AND COUNTRY PLANNING ACT 1980 - SECTION 257:  
APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 7  
(PART) PARISH OF WARMINGHAM**

The Committee considered a report which detailed an application from EDF Energy Limited (the applicant) requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 7 in the Parish of Warmingham.

In accordance with Section 257 of the Town and Planning Act 1990, the Borough Council, as the Planning Authority, could make an Order diverting a footpath if it was satisfied that it was necessary to do so to enable development to be carried out in accordance with a planning permission that had been granted.

The existing line of Footpath No. 7 would be directly affected by the conversion of the existing brine cavities to gas storage due to the need to create drilling compounds and soil storage areas around each well head for a number of years and the requirement for an enlarged fenced compound around each converted well head. The land was owned by British Salt Limited and Mrs Diane Nelson, who had consented to the proposed diversion.

Planning permission had been granted to the applicant on 31 March 2009 to allow for the extension of the gas processing plant and link to the National Transmission System, electricity and manifold compounds, conversion of ten brine cavities to gas storage and associate infrastructure at land at Hill Top Farm, Hole House Farm, Spring Moss Farm and Parkfield Farm, Warmingham, Cheshire.

The current line of the Footpath passed in close proximity to the existing Brine Well Heads Nos. 9, 7 and 5 and their associated infrastructure. The areas surrounding the enclosed compounds would be required for future maintenance access and the site would become a Control of Major Accident Hazards Regulations 1999 (COMAH) site, due to the storage of large quantities of gas within the site. It was considered necessary to divert the footpath away from the operational well head compounds for gas storage cavities. The proposed route would move the footpath way from the proposed gas well head infrastructure, crossing agricultural fields to the west of the development. Three kissing gates would be required where it crossed the field boundaries.

The Committee noted that no objections had been received. It was considered that the legal test for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

**RESOLVED:**

- (1) that an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 7 Warmingham, as illustrated on Plan No. TCPA/001, 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 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 25: CREATION AGREEMENT FOR A NEW PUBLIC FOOTPATH IN THE PARISH OF BOLLINGTON**

The Committee considered a report which outlined a proposal that the Council enter into a creation agreement with the landowners to dedicate the new path constructed by volunteers of the Kerridge Ridge and Ingersley Vale (KRIV) Countryside and Heritage Project up to the White Nancy viewpoint in the Parish of Bollington.

Under Section 25 of the Highways Act 1980, the Council had the power to enter into an agreement with any person having the capacity to dedicate a public footpath. The Highways Act 1980 required the authority to have regard to the needs of agriculture and forestry and to the desirability of conserving flora, fauna and geographical and physiographical features.

The KRIV project was a community initiative that aimed to retain and restore industrial heritage features that were found in the local landscape and specifically to improve public access to that landscape. The project was a partnership between local residents, Bollington Town Council, Rainow Parish Council, the former Macclesfield Borough Council, the Bollin Valley Partnership and Groundwork.

The new path had been constructed in order to help relieve the pressure of the estimated 40,000 – 50,000 visitors who walked up to the White Nancy View Point each year. The path comprised of approximately 199 steps faced with stone or wood and had a soil and woodchip surface. The new path offered an alternative route to the existing right of way which climbed open hillside, thereby creating a circular route with a mix of landscape characteristics.

The KRIV Project Chairman had agreed that any maintenance tasks and costs associated with the proposed footpath would be covered by the KRIV project until June 2015. Thereafter, any maintenance work would be resourced by the Public Rights of Way unit of the Council.

The Committee was informed that, since the writing of the report, a letter had been received from a neighbouring landowner objecting to the footpath in its present place and raising other points of concerns including damage to a dry stone wall belonging to that landowner. The Committee noted that there was no formal objection procedure for creation agreements and suggested that the Public Rights of Way Officer met with the KRIV Project Officer and the landowner to try to resolve the outstanding issues.

**RESOLVED**

- (1) that creation agreement be entered into under Section 25 of the Highways Act 1980 to create a new public footpath in the Parish of Bollington, as illustrated on Plan No. HA/008, and that public notice be given of these agreements.
- (2) a meeting take place between the Public Rights of Way Officer, KRIV Project Officer and neighbouring landowner to resolve the areas of concern and an information report be brought back to the next Public Rights of Way Committee.

**24 UPDATE ON DEVELOPMENT OF THE RIGHTS OF WAY IMPROVEMENT PLAN (2011-2026) WITHIN THE LOCAL TRANSPORT PLAN 3**

The Committee received a report which gave an update on the development of the Rights of Way Improvement Plan (ROWIP) (2001-2026) within the context of the Local Transport Plan 3 (LTP3).

The new ROWIP for the Cheshire East Borough would focus on the post-LGR needs for the new Borough. It was a statutory requirement that the ROWIP be fully integrated with LTP3. The national transport goals enshrined in LTP3 were as follows:

- reducing carbon emissions
- supporting economic growth
- promoting equality of opportunity
- contributing to better safety, security and health and
- improving quality of life and a healthy natural environment

Natural England had published a good practice note on ROWIP and LTP3 integration. The document promoted the optimisation of the role that rights of way could play in the wider transport system and highlighted the benefits of the integration of the two plans:-

- a more holistic approach to transport, addressing the rights of way network as an integral part of urban and rural transport systems;
- strengthening of the long term sustainability of the rights of way network as its role in the wider transport network is recognised;
- securing more direct and integrated funding and delivery;
- encouragement of new ways of working with internal and external partners including local access forums;
- promoting a shift to 'active travel' in which walking and riding are considered as a choice of transport modes;
- advantage in delivering positive benefits for people and the natural environment – a more active lifestyle in a greener, healthier, low carbon, quieter and safer environment.

The timetable and project plan for the development of the ROWIP was being drawn up to align with those of the LTP3 project. A steering group

was being established to monitor the development of the ROWIP and its integration with LTP3. Representatives from the Public Rights of Way Committee would be part of the Steering Group. The Committee would receive regular updates on the progress with the ROWIP.

**RESOLVED:**

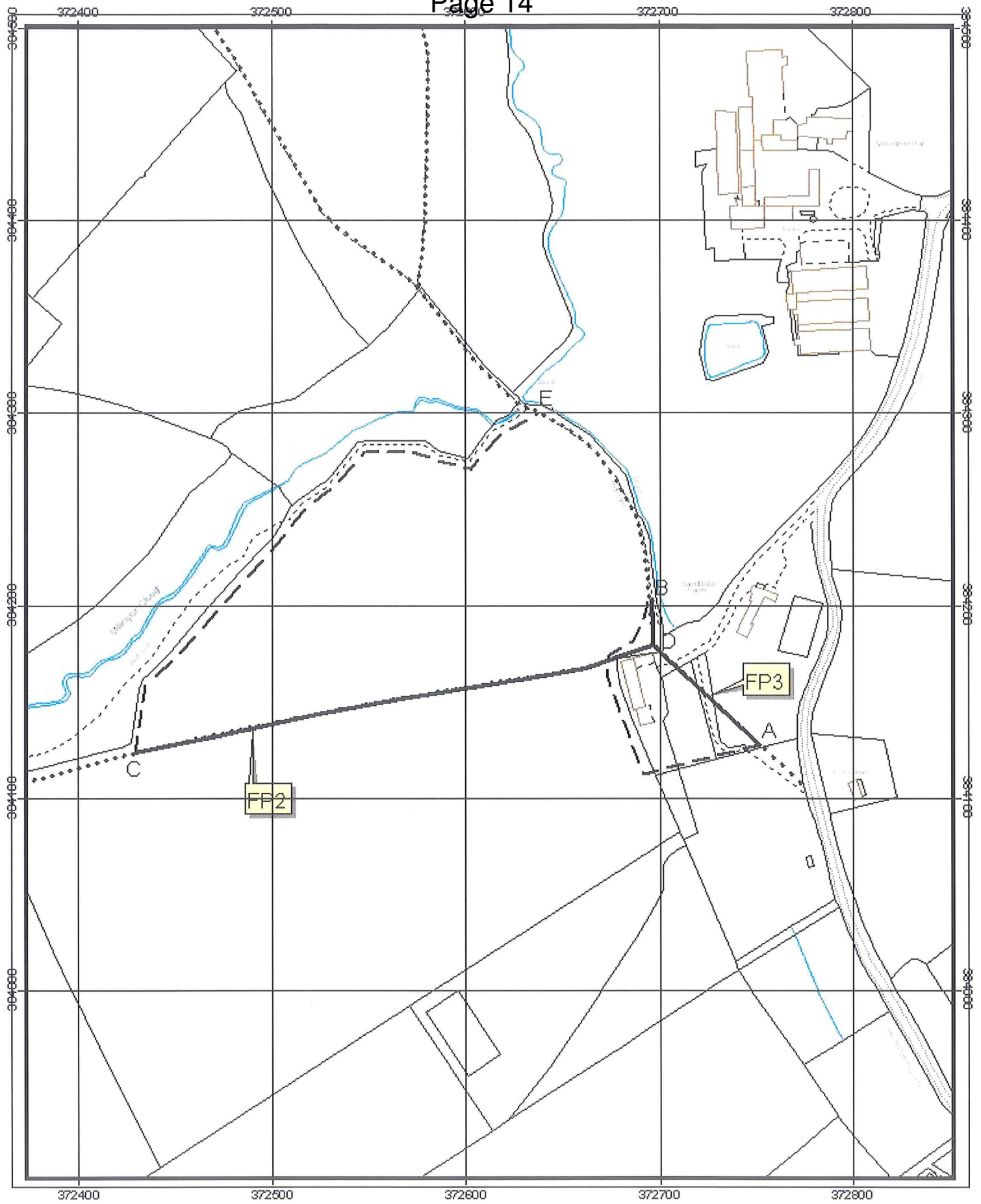
That the report be noted.




The meeting commenced at 2.00 pm and concluded at 2.40 pm

Councillor B Moran (Chairman)

**HIGHWAYS ACT 1980 – Section 119**

**Application for the Diversion of Public  
Footpath Nos. 2 and 3 (Part) Parish of Millington**



-  Proposed Diversion
-  Rights of Way to be Stopped Up
-  Other Rights of Way

Plan No. HA/010



Proposed Diversion of Public Footpaths Millington Nos. 2 and 3

Scale  
1:2500

© Crown copyright  
All rights reserved  
Cheshire East Council  
Licence 100019382.2009

THIS IS A WORKING COPY  
OF THE DEFINITIVE MAP  
IT IS NOT THE DEFINITIVE MAP  
AND SHOULD NOT BE USED  
FOR LEGAL PURPOSES



# **CHESHIRE EAST COUNCIL**

## **REPORT TO: RIGHTS OF WAY COMMITTEE**

---

**Date of meeting:** 7 December 2009  
**Report of:** Greenspaces Manager  
**Subject/Title:** Highways Act 1980 – Section 119  
Application for the Diversion of Public Footpath Nos.  
2 And 3 (Parts) Parish of Millington

---

### **1.0 Report Summary**

- 1.1 The report outlines the investigation of an application to divert part of Public Footpath No's 2 and 3 in the Parish of Millington. This includes a discussion of consultations carried out in respect of the application and the legal tests for a diversion order to be made. The 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 footpaths.

### **2.0 Recommendations**

- 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 part of Public Footpath No's 2 and 3 Millington as illustrated on Plan No. HA/010 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 landowners for the reasons set out in paragraphs 11.6 and 11.8 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 There are no objections to this proposal. It is considered that the proposed footpaths will be more enjoyable than the existing routes. The new routes are not 'substantially less convenient' than the existing routes and will be of benefit to the landowners in terms of security and privacy and in terms of farm management. It is therefore considered that the proposed routes will be more satisfactory than the current routes and that the legal tests for the making and confirming of a diversion order are satisfied.

#### **4.0 Wards Affected**

4.1 Bucklow

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

5.1 Councillor Andrew Knowles  
Councillor George Walton  
Councillor Jamie Macrae

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

6.1 Not applicable.

**7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)**

7.1 Not applicable.

**8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)**

8.1 Not applicable.

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

9.1 If any objections are received to the published Order, any ensuing hearing or inquiry may find against any decision of the Committee and entail additional legal support and use of resources.

**10.0 Risk Management**

10.1 Not applicable.

**11.0 Background and Options**

11.1 An application has been received from Dr Dylan Prosser, Sandhole Farm, Millington Hall Lane, Millington, Nr Altrincham, WA14 3RW ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No's 2 and 3 in the Parish of Millington.

11.2 Public Footpath No. 3 Millington commences at its junction with Millington Hall Lane (UW2104) at O.S. grid reference SJ 7277 8410 and runs in a generally north westerly direction to Boothbank Lane (C116) at O.S. grid reference SJ 7212 8485. The section of path to be diverted is shown by a solid black line on Plan No. HA/010 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-B.

11.3 Public Footpath No. 2 Millington commences at its junction with Public Footpath No. 3 Millington at OS grid reference SJ 7269 8417 and runs in a generally westerly direction to Chapel Lane (C114/05) at OS grid reference SJ 7219 8402. The section of path to be diverted is shown by a solid black line on Plan No. HA/010 running between points D-C. The proposed diversion is illustrated with a black dashed line on the same plan, running between points E-C.

11.4 The applicant owns the majority of the land over which the current line of Footpath No. 3 runs, a small section at the northernmost end of the route runs on the adjacent landowner's land. The land over which both the current and proposed route for Footpath No. 2 and a section of the proposed route for Footpath No. 3 is owned by the adjacent landowner. As part of the proposed route for Footpath No. 3 is in the

adjacent landowner's field, the applicant has agreed to apply to divert part of Public Footpath Millington No. 2 concurrently with Footpath No. 3 on the adjacent landowner's behalf. Written consent to the proposal has been provided by the adjacent landowner. 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(s) to make an order diverting the footpath.

- 11.5 The current line of Public Footpath No. 3 Millington (A-B) runs in a north westerly direction straight across the applicant's garden and past the outbuildings of Sandhole Farm. There are three stiles for users to traverse.
- 11.6 The proposed route for Public Footpath No. 3 Millington (A-B) would run in a west south westerly then north westerly direction, along the boundary fence of Sandhole Farm and then into the adjacent landowner's field until it rejoins with the existing line of Footpath No. 3. The application has been made in the interests of the privacy and security of the applicant, the proposal would move the footpath away from the applicant's home and garden. The proposed route would also require less path furniture, three stiles would be replaced with two kissing gates. The width of the proposed route would be two metres.
- 11.7 The current line of Public Footpath No. 2 Millington (D-C) runs straight across the middle of the adjacent landowner's arable field. This is undesirable in terms of farm management. It is a 'cross-field' footpath with a maintainable width of 1 metre.
- 11.8 The proposed route for Public Footpath Millington No. 2 (E-C) runs along the boundary of the field, this would be of huge benefit to the landowner in terms of farm management. It would also take walkers much closer to Millington Clough, providing a more attractive route along the edge of the woodland and blue bell copse. The wildlife and wildflowers of the clough cannot be viewed from the current route of Footpath No. 2. It would also provide an improved surface, the ground around the perimeter of the field (where the proposed route would run) is firmer than the current route where it can become waterlogged and muddy. There would be a usable width of two metres.
- 11.9 The local Councillors have been consulted about the proposal, no objections have been received.
- 11.10 Millington Parish Council have been consulted and have responded to state that they have no objection to the proposal.
- 11.11 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.

- 11.12 The user groups have been consulted. The Ramblers Association have no objection to the proposed route for Footpath No. 3 but have mixed opinions and views on the proposed route for Footpath No. 2. For users travelling from the West heading in an easterly direction intending to join Footpath No. 3 it could be considered that the route is less convenient. But for users travelling from the West in a North Westerly direction the proposed route could be considered to be more convenient. They also state that moving the footpath along the field boundary would lead to a loss of open views, but the proposed route along Millington Clough is a very attractive route, particularly in the Spring. As previously stated, it also has an improved surface and a width of 2 metres, the current route has a usable width of 1 metre. Consequently, they have stated that they are unlikely to object if an Order is made but ask that the committee consider the different points of view for themselves.
- 11.13 The applicant has canvassed the opinion of local people who regularly use the footpaths and has obtained 69 signatures in support of the application.
- 11.14 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 11.15 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversions are an improvement on the old routes.

## **12.0 Overview of Year One and Term One Issues**

- 12.1 Not applicable.

## **13.0 Access to Information**

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

Name: Hannah Flannery  
Designation: (Acting) Public Rights of Way Officer  
Tel No: 01606 271809  
Email: [hannah.flannery@cheshireeast.gov.uk](mailto:hannah.flannery@cheshireeast.gov.uk)

PROW File: 208D/393

This page is intentionally left blank

## **CHESHIRE EAST COUNCIL**

### **REPORT TO: PUBLIC RIGHTS OF WAY COMMITTEE**

---

**Date of Meeting:** 7 December 2009  
**Report of:** Mike Taylor, Green Spaces Manager  
**Subject/Title:** Highways Act 1980 – Section 25  
Update on Creation Agreement for a new public footpath  
in the Parish of Bollington

---

#### **1.0 Report Summary**

1.1 A new path has been constructed by volunteers of the Kerridge Ridge and Ingersley Vale (KRIV) Countryside and Heritage Project up to the White Nancy viewpoint in the Parish of Bollington. At the September Committee meeting, it was recommended to Members that the Council enter into agreements to create a new public footpath along the route. It was brought to the attention of Members that a letter had been received from an adjacent landowner in which a number of issues were raised relating to the proposed new footpath.

1.2 Members therefore resolved:

- (1) that creation agreements be entered into under Section 25 of the Highways Act 1980 to create a new public footpath in the Parish of Bollington, as illustrated on Plan No. HA/008, and that public notice be given of these agreements; and,
- (2) that a meeting take place between the Public Rights of Way Officer, KRIV Project Officer and the adjacent landowner to resolve the areas of concern and that an information report be brought back to the next Public Rights of Way Committee.

This report gives an update to Members on the resolution of the issues referred to in resolution (2).

#### **2.0 Recommendations**

2.1 That the report be noted.

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

3.1 No decision is required by Members.

#### **4.0 Wards Affected**

4.1 Bollington and Disley Ward.

**5.0 Local Ward Members**

- 5.1 Councillor Matthew Davies  
Councillor Harold Davenport  
Councillor Diana Thompson.

**6.0 Policy Implications including - Climate Change  
- Health**

- 6.1 As reported to the Committee on 7 September 2009.

**7.0 Financial Implications for Transition Costs (Authorised by the  
Borough Treasurer)**

- 7.1 None arising.

**8.0 Financial Implications 2009/10 and Beyond (Authorised by the  
Borough Treasurer)**

- 8.1 As reported to the Committee on 7 September 2009.

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

- 9.1 As reported to the Committee on 7 September 2009.

**10.0 Risk Management**

- 10.1 No risks are foreseen.

**11.0 Background and Options**

- 11.1 The background and options were set out in the report presented to the Committee on 7 September 2009.

- 11.2 Following the receipt of a letter raising a number of issues with the proposal to dedicate a new public footpath, Members resolved to pass the motion to enter into the creation agreement subject to the resolution of the issues raised in the letter.

- 11.3 A site meeting was therefore arranged between the adjacent landowner, the KRIV Countryside and Heritage Project Manager and the (Acting) Countryside Access Development Officer. Prior to meeting, correspondence was exchanged which outlined the legal process relating to a creation agreement. It was explained that the landowners on whose land the path runs are entitled to enter into a creation agreement with the Council without consultation of adjacent landowners. It was further explained that the use of the new footpath would be considered unlikely to affect the adjoining land.

- 11.4 In light of this discussion, the adjacent landowner cancelled the arranged meeting as they felt that the outstanding issues related solely to the boundary wall, a matter which could be resolved directly by the KRIV Project Manager.
- 11.5 The adjacent landowner therefore concluded that the matters raised in the original letter had been adequately addressed.
- 11.6 The two creation agreements have been signed by the landowners, sealed by the Council and duly advertised, resulting in the addition of the public footpath to the Definitive Map and Statement.
- 11.7 One of the landowners who forms a signatory to a creation agreement wishes to inform the Committee that the minutes of the last meeting gave an unfairly negative impression of the KRIV project which detracted from the excellent work that the KRIV volunteers have carried out.

## **12.0 Overview of Year One and Term One Issues**

- 12.1 None arising.

## **13.0 Access to Information**

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

Name: Genni Butler

Designation: (Acting) Countryside Access Development Officer

Tel No: 01606 271817

Email: [genni.butler@cheshireeast.gov.uk](mailto:genni.butler@cheshireeast.gov.uk)

This page is intentionally left blank

**HIGHWAYS ACT 1980 – Section 119**

**Application for the Diversion of Public  
Footpath No. 1 (Part) Parish of Peover Superior**

375800

375700

375600

374800

374700

375800

375700

375600

374900

374800

-  Path to be stopped up
-  Proposed Diversion
-  Other Rights of Way

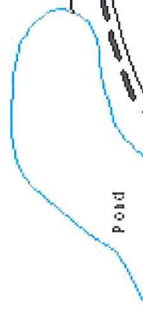
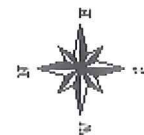


THIS IS A WORKING COPY  
OF THE DEFINITIVE MAP  
IT IS NOT THE DEFINITIVE MAP  
AND SHOULD NOT BE USED  
FOR LEGAL PURPOSES

© Crown copyright  
All rights reserved  
Cheshire East Council  
Licence 100019682.2009

Scale  
1:1250

Proposed Diversion of Public Footpath  
Peover Superior No. 1 (Part)



Existing kissing gate

A

B

Twit Oaks Farm

# **CHESHIRE EAST COUNCIL**

## **REPORT TO: RIGHTS OF WAY COMMITTEE**

---

**Date of meeting:** 7 December 2009  
**Report of:** Greenspaces Manager  
**Subject/Title:** Highways Act 1980 – Section 119  
Application for the Diversion of Public Footpath No. 1  
(Part) Parish of Peover Superior

---

### **1.0 Report Summary**

- 1.1 The report outlines the investigation of an application to divert part of Public Footpath No. 1 in the Parish of Peover Superior. This includes a discussion of consultations carried out in respect of the application and the legal tests for a diversion order to be made. The 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 footpath.

### **2.0 Recommendations**

- 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 part of Public Footpath No. 1 Peover Superior as illustrated on Plan No. HA/006 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 paragraphs 11.4 and 11.5 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 There are no objections to this proposal. The new route is not 'substantially less convenient' than the existing route and will be of benefit to the landowner. Moving the footpath out of the paddock will prevent walkers (and their dogs) distressing the stock, improving farm management. It will also improve accessibility for walkers, it does not require any further path furniture and removes the need for the two stiles which users have to negotiate on the current route. It is therefore considered that the proposed route will be more satisfactory than the current route and that the legal tests for the making and confirming of a diversion order are satisfied.

#### **4.0 Wards Affected**

4.1 Bucklow.

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

5.1 Councillor Andrew Knowles  
Councillor George Walton  
Councillor Jamie Macrae

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

6.1 Not applicable.

**7.0 Financial Implications for Transition Costs (Authorised by the  
Borough Treasurer)**

7.1 Not applicable.

**8.0 Financial Implications 2009/10 and beyond (Authorised by the  
Borough Treasurer)**

8.1 Not applicable.

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

9.1 If any objections are received to the published Order, any ensuing hearing or inquiry may find against any decision of the Committee and entail additional legal support and use of resources.

**10.0 Risk Management**

10.1 Not applicable.

**11.0 Background and Options**

11.1 An application has been received from Mr Leslie Taylor of Twin Oaks Farm, Sandy Lane, Over Peover, Knutsford, WA16 9ET ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 1 in the Parish of Peover Superior.

11.2 Public Footpath No. 1 Peover Superior commences at its junction with Public Bridleway Peover Superior No. 2 at OS grid reference SJ 7582 7456 and runs in a generally north westerly direction to the parish boundary at OS grid reference SJ 7531 7467. The section of path to be diverted is shown by a solid black line on Plan No. HA/006 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, again running between points A-B.

11.3 The applicant owns the land over which the current path lies and the proposed diversion would lie. 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 diverting the footpath.

11.4 The existing line of Public Footpath Peover Superior No. 1 (A-B) crosses a paddock, which is used for horses, foals and sheep grazing. In the spring it is used for lambs. The applicant has had frequent

problems with walkers and their dogs crossing the paddock and distressing the stock. The application has also been made in the interests of the privacy and security of the applicant as the proposed route for the eastern end of the path moves it further away from the applicant's house.

- 11.5 The majority of the proposed route follows the outside of the boundary of the paddock until it rejoins the existing line of the footpath and is presently in use as a permissive route. It has a part stoned/part earth and natural vegetation surface, with a width of approximately 1.5 – 2 metres. The part of the route that follows the paddocks boundary is enclosed by conifer trees, which serve as a windbreak for the paddock. The applicant keeps these trees cut back to prevent the route from becoming dark. Moving the footpath would also improve accessibility, it removes the need for the two stiles which users currently have to negotiate. The proposed route is slightly longer than the existing route, 153 metres, the existing route is 136 metres.
- 11.6 The local Councillors have been consulted about the proposal. No response has been received.
- 11.7 Peover Superior Parish Council have been consulted about the proposal. No response has been received.
- 11.8 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.
- 11.9 The user groups have been consulted. The Peak and Northern Footpaths Society have responded to state that they have no objection to the proposal and that the proposed route 'is a good line and avoids the house'.
- 11.10 The Ramblers Association initially objected to the proposal, on the basis that; "the proposed diverted line (marked as permissive on the ground) is between two lines of conifer trees and is dark with no views to the South". However, following a site meeting with the applicant, the Ramblers Association have withdrawn their objection stating; "if the two conifer hedges bordering the proposed diversion are kept in a similar state to today that the diversion would be acceptable".
- 11.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 11.12 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion is an improvement on the existing route.

## **12.0 Overview of Year One and Term One Issues**

12.1 Not applicable.

## **13.0 Access to Information**

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

Name: Hannah Flannery

Designation: (Acting) Public Rights of Way Officer

Tel No: 01606 271809

Email: [hannah.flannery@cheshireeast.gov.uk](mailto:hannah.flannery@cheshireeast.gov.uk)

PROW File: 239D/388

This page is intentionally left blank

## **CHESHIRE EAST COUNCIL**

### **REPORT TO: PUBLIC RIGHTS OF WAY COMMITTEE**

---

<b>Date of Meeting:</b>	<b>7 December 2009</b>
<b>Report of:</b>	<b>Mike Taylor, Green Spaces Manager</b>
<b>Subject/Title:</b>	<b>Update on development of the Rights of Way Improvement Plan (2011-2026) within the Local Transport Plan 3</b>

---

#### **1.0 Report Summary**

- 1.1 This report provides an update to Members on the development of the Rights of Way Improvement Plan (ROWIP) (2011-2026) within the context of the Local Transport Plan 3 (LTP3).

#### **2.0 Recommendations**

- 2.1 That the report be noted.

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

- 3.1 No decision is required by Members at present.

#### **4.0 Wards Affected**

- 4.1 All.

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

- 5.1 All Members.

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

- 6.1 As previously reported, the development of the ROWIP 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), the Local Area Agreement (National Indicator 8 Adult participation in sport and active recreation) and the Health and Wellbeing Service commitment to the Change4Life initiative.
- 6.2 In addition, the ROWIP, as an integrated part of the LTP3, will be set within the context of the Local Area Agreement indicators concerning air quality and CO<sub>2</sub> emissions.

**7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)**

7.1 None arising.

**8.0 Financial Implications 2009/10 and Beyond (Authorised by the Borough Treasurer)**

8.1 Some consultation costs during the current financial year are anticipated, as yet unknown.

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

9.1 As previously reported, it is a statutory duty under section 60 of the Countryside and Rights of Way Act 2000 for every local highway authority to prepare and publish a Rights of Way Improvement Plan.

9.2 Non compliance with the requirement for the full integration of the ROWIP with the LTP3 could result in criticism from statutory monitoring bodies and agencies.

**10.0 Risk Management**

10.1 No matters arising.

**11.0 Background and Options**

11.1 The background to the ROWIP has been reported to previous meetings of the Committee.

11.2 An initial meeting of Elected Members and officers from across the Council was held on 30<sup>th</sup> October 2009 to launch the process of developing the ROWIP. Representatives attended from sections of the Council including strategic highways, highways operations, climate change, school travel team, development control, visitor economy and adult services. A member of the Cheshire Local Access Forum was also in attendance. The meeting was used to establish the linkages with other strategies and plans and to raise the profile and potential of the ROWIP across the organisation.

11.3 The project management framework for the ROWIP project is being developed presently and will include a steering group of elected members who sit on this Committee.

11.4 The role of this Committee will therefore be to sign off the draft ROWIP strategy document for the period 2011-2026. It is anticipated that this document will be presented to the Committee in autumn 2010. The Committee will also be asked to sign off the draft ROWIP implementation plan for the delivery of projects for the period 2011-

2014 which it is anticipated will be presented to the Committee in early 2011.

## **12.0 Overview of Year One and Term One Issues**

12.1 Not applicable.

## **13.0 Access to Information**

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

Name: Genni Butler  
Designation: (Acting) Countryside Access Development Officer  
Tel No: 01606 271817  
Email: [genni.butler@cheshireeast.gov.uk](mailto:genni.butler@cheshireeast.gov.uk)

This page is intentionally left blank

## **CHESHIRE EAST COUNCIL**

### **REPORT TO: RIGHTS OF WAY COMMITTEE**

---

**Date of Meeting:** 7 December 2009  
**Report of:** Borough Solicitor  
**Subject/Title:** Village Green Applications

---

#### **1.0 Report Summary**

- 1.1 This report seeks approval of a procedure for determining village green applications.

#### **2.0 Decision Requested**

- 2.1 That the procedure outlined in this report be noted and adopted for handling existing and future applications in respect of village greens.
- 2.2 That officers arrange the necessary training for the Committee.

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

- 3.1 The Council is the registration authority for the purposes of village greens and in that capacity it is responsible for determining applications received and for the keeping of the register of village greens.

#### **4.0 Wards Affected**

- 4.1 Various

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

- 5.1 N/A

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

- 6.1 N/A

#### **7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)**

- 7.1 N/A

**8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)**

- 8.1 There will be costs to the Council associated with obtaining Counsel's Advice or in appointing an independent person to consider written representations or hold a public inquiry. There may be costs of hiring a venue for an inquiry if the Council's own premises are unavailable.
- 8.2 We are not aware of an existing budget. We envisage that any costs detailed shown in 8.2 will be charged to Legal Services initially with a corresponding recharge to the relevant service during 2009/10.

**9.0 Legal Implications**

- 9.1 The report as a whole contains legal implications, however, the following paragraphs are of a general nature.
- 9.2 The Council is the registration authority for the purposes of village green applications and the keeping of the register of village greens. This was previously a function of County Councils, but following local government reorganisation, it became a function of this Council.
- 9.2 In recent years there has been much case law and legislation surrounding village greens and both case law and legislation continue to evolve. New legislation in the form of the Commons Act 2006 ("the Act") was partially introduced in 6 April 2007 specifically section 15 which changed the criteria for registration of new village greens. New procedures for dealing with village green applications were also introduced in April 2007 by regulation (albeit these are interim). The procedure outlined in this report will be applicable to all applications received, regardless of whether they were received before or following 6 April 2007.
- 9.3 Village greens can be registered either as a result of an application by a third person or by a voluntary registration by the landowner. The procedure detailed in this Report will relate only to applications received from persons other than the landowner.
- 9.4 It is commonly understood that the Council may hold a public inquiry as a result of an application being received and it is often referred to as 'non-statutory' because the legislation in respect of village greens does not specifically provide for inquiries to be held. The Local Government Act 1972, however, does enable local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions. In appropriate cases, the holding of an inquiry (or requesting consideration by written representations) would facilitate the determining of the village green application. The holding of an inquiry is at the discretion of the Committee.
- 9.5 The burden of proof that the application meets the statutory tests is upon the applicant, on the balance of probabilities. It is open to the Committee to register only part of the land within the application as village green, provided it does not cause irremediable prejudice to anyone.

- 9.6 In deciding upon applications, the Committee should consider the advice given to it by its officers and by any independent person appointed and decide the application in the light of all of evidence submitted and the advice received, and acting in accordance with the principle of natural justice and good administration.
- 9.7 Once registered as a village green, it will be subject to the statutory protection of section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 2006. Section 12 protects greens from injury or damage and interruption to their use or enjoyment as a place for exercise and recreation. Section 29 makes encroachment or inclosure of a green, and interference with or occupation of the soil, unlawful unless it is with the aim of improving the enjoyment of the green.
- 9.8 There is no right of appeal against the Committee's decision not to register land as village green. The route for any challenges would be via judicial review.
- 9.9 Prior to any application being determined by the Council, it is possible for an objector/landowner to apply to the High Court to seek a declaration that the land is not a green (or as to whether it is capable of being registered). Should this occur it would clearly impact upon the application of any procedure.

## **10.0 Risk Management**

- 10.1 it is important that the Council makes its decisions in a way that demonstrates fairness and complies with the rules of natural justice. It is easier to achieve this by adopting an appropriate procedure and ensuring that it is followed. Sometimes this may involve the use of independent advisers.

## **11.0 Background and Options**

- 11.1 The Council is the registration authority for village greens and responsibility for this function was delegated to the Rights of Way Committee under the Council's Constitution.
- 11.2 The Council currently has three village green applications, all of which were submitted to the former County Council. One of those applications is on hold at the request of the applicant whilst the other two applications are being progressed and are at slightly different stages of consideration. One of those applications is the subject of a report elsewhere on the Agenda for this Meeting. Given the existence of these applications it is necessary to provide the Committee with a proposed procedure specifying the various options or paths the application may take. The Committee will then be able to make decisions upon individual applications with an understanding of the various options available to it.
- 11.3 The procedure is set out as Options below. Members should note, that whenever the word 'application' is used within this report it includes the evidence and any other documents submitted by the applicant in support of the application;

Option 1 – Reject application for failing to meet basic statutory requirements

Reasons for rejection at this stage would relate to failing to meet the basic statutory requirements for an application, for example, not completing the correct form, the form being unsigned, the absence of a statutory declaration, the plan not being in accordance with legislative requirements or other such requirements.

This would not require any decision of the Committee and practically, would involve the Council's Legal Officer returning the application to the applicant giving them an opportunity to attend to any missing requirements before resubmitting their application.

Option 2 – Accept application as validly made and write a report to the Committee recommending acceptance of the application and registration of the land as village green (in whole or in part).

This assumes that the application has met all of the statutory requirements and there are no remaining requirements to be addressed by the applicant under Option 1.

This would tend to be in more straightforward cases where the applicant has proved the application meets the statutory tests for registration and any objections received have not been sufficient to prevent the matter being proved by the applicant on the balance of probabilities. A report would be taken to the Committee recommending acceptance of the application (which could recommend acceptance of the land in whole or in part) and the Committee would make its decision.

Option 3 - Accept application as validly made and write a report to the Committee recommending rejection of the application.

This assumes that the application has met all of the statutory requirements and there are no remaining requirements to be addressed by the applicant under Option 1.

A rejection of the application would usually be on the grounds that

- a) the application is such that it does not meet the statutory tests for registration;
- b) any objections received have been sufficient to demonstrated that it does not meet the statutory tests for registration; or
- c) there is a legal issue which means as a matter of law the application cannot succeed

or a combination of any or all of a), b) and c).

It is possible, for example, for a legal point to arise, which if correct, means that the application cannot succeed and in such circumstances it may not

have been necessary for the legal officer to have considered the application any further in arriving at his recommendation.

In accordance with the Interim Regulations, the applicant would be given a reasonable opportunity of dealing with any objections or other matter relating to the application which appears to the Council to afford possible grounds for rejection of the application. In the interests of fairness, any response would then be sent to the objector(s) for comment and any such response received from the objector(s) would be sent to the applicant for final comment.

Under this option, a report would be taken to the Committee recommending rejection of the application and the Committee would make its decision.

Option 4 - Accept application as validly made, and appoint an independent person either:

- a. to consider the application on the basis of written representations;  
or
- b. to hold a non-statutory public inquiry  
and to provide a report to the Committee.

This assumes that the application has met all of the statutory requirements and there are no remaining requirements to be addressed by the applicant under Option 1.

The factors which may be relevant in deciding whether to appoint an independent person may be (not an exhaustive list):

- the complexity of the evidence (both within the application and received from objectors)
- where the evidence is very finely balanced
- where the land within the application is owned by the Council
- where the Council has some other interest in the land within the application such as being a sponsor of proposed development on the land.

The above factors, however, would not be determinative of the appointing of an independent person, which is at the discretion of the Committee.

There are no legislative requirements as to the procedure to be taken in written representation or at an inquiry, however, in practice inquiries generally would be expected to follow the rules relating to planning inquiries, thus involving oral evidence and cross-examination. The procedure at the inquiry, however, is at the discretion of the person appointed. The 'independent person' would usually be a barrister with experience in the field, although in some instances local authorities have appointed, planning inspectors as the 'independent person'. It is possible that the independent person, having been asked to consider the matter on written representation, advises an inquiry is more appropriate. In those

individual cases, it is suggested that where such a recommendation has been given by the independent person, the Borough Solicitor be given delegated authority to determine if an inquiry should take place, after consulting the Chairman of this Committee.

The independent person would then prepare a report, concluding with a recommendation as to whether the application should be accepted (in whole or in part) or refused. It is common for this report to be made available and parties may be given an opportunity to comment on it if it is considered desirable. The independent person's report would be presented to the Committee, together with a report from the Borough Solicitor and the Committee would make its decision.

Option 5- PROW Committee holds a hearing itself and then decides whether to accept (in whole or in part) or reject the application.

In such circumstances, the Committee would hear from both the applicant and any objectors, would provide an opportunity for questions, the Committee would retire to consider the matter and return to provide its decision in public. If this Option is one which Members may choose in respect of any application, it will be necessary to consider a procedure to be followed at such hearings to enable all parties to understand their roles. It would also require additional Members' training to enhance existing skills and knowledge. These additional requirements would be the subject of future reports to the Committee.

- 11.4 Again, the Borough Solicitor may seek Counsel's advice at any point during the stages of the application on matters of law or evidence.
- 11.5 In detailing the options, it is not intended to prevent any issues relevant to the application being raised at anytime as they arise. For example, it is possible that an independent person in the course of an inquiry may observe a failure in the basic statutory requirements.

## **12.0 Overview of Year One and Term One Issues**

12.1 N/A

## **13.0 Access to Information**

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

Name: Kathryn McKevith

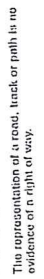
Designation: Solicitor

Tel No: 01244 973959

Email: [kathryn.mckevith@cheshireeast.gov.uk](mailto:kathryn.mckevith@cheshireeast.gov.uk)

**Village Green Application No 47**

**Field between Birtles Road and Drummond Way,  
Whirley, Macclesfield**



This is the map referred to in paragraph 49 of the application of P. Benham

# **CHESHIRE EAST COUNCIL**

## **REPORT TO: RIGHTS OF WAY COMMITTEE**

---

**Date of Meeting:** 7 December 2009  
**Report of:** Borough Solicitor  
**Subject/Title:** Village Green Application No 47 - Field between Birtles Road and Drummond Way, Whirley, Macclesfield

---

### **1.0 Report Summary**

- 1.1 This report seeks a decision on how to proceed with a village green application (No. 47) in respect of a field between Birtles Road and Drummond Way, Whirley, Macclesfield.

### **2.0 Decision Requested**

- 2.1 That the Borough Solicitor be authorised to appoint an independent person to consider the application on the basis of written representations and provide a report.
- 2.2 That the Borough Solicitor be given delegated authority to determine if a non-statutory public inquiry should take place upon the recommendation of the independent person, after consulting the Chairman of this Committee.

### **3.0 Reasons for Recommendations**

- 3.1 An application has been received in respect of a field between Birtles Road and Drummond Way, Whirley, Macclesfield and given the issues involved in this particular application it would assist the Committee in deciding upon the application to receive the report of an independent person. The land the subject of the application was in the ownership of the former Macclesfield Borough Council and is now in the ownership of the Council.

### **4.0 Wards Affected**

- 4.1 Broken Cross

### **5.0 Local Ward Members**

- 5.1 Councillor Ainsley Arnold  
Councillor John Goddard  
Councillor John Narraway

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

6.1 N/A

**7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)**

7.1 N/A

**8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)**

8.1 There will be costs incurred by the Council in appointing an independent person to consider written representations. We envisage that any such costs will be charged to Legal Services initially with a corresponding recharge to the relevant service during 2009/10.

**9.0 Legal Implications**

9.1 The Council is the registration authority for the purposes of village green applications and the keeping of the register of village greens. This was previously a function of County Councils, but following local government reorganisation, it became a function of this Council.

9.2 In recent years there has been much case law and legislation surrounding village greens and both case law and legislation continue to evolve. New legislation in the form of the Commons Act 2006 ("the Act") was partially introduced in 6 April 2007, specifically section 15 which changed the criteria for registration of new village greens. New procedures for dealing with village green applications were also introduced in April 2007 by regulation (albeit these are interim).

9.3 Village greens can be registered either as a result of an application by a third person or by a voluntary registration by the landowner.

9.4 It is commonly understood that the Council may hold a public inquiry as a result of an application being received and it is often referred to as 'non-statutory' because the legislation in respect of village greens does not specifically provide for inquiries to be held. The Local Government Act 1972, however, does enable local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions. In appropriate cases, the holding of an inquiry or consideration of written representations by an independent person would facilitate the determining of the village green application. The holding of an inquiry is at the discretion of the Committee.

9.5 The burden of proof that the application meets the statutory tests is upon the applicant, on the balance of probabilities. It is open to the Committee to register only part of the land within the application as village green, provided it does not cause irremediable prejudice to anyone.

- 9.6 In deciding upon applications, the Committee should consider the advice given to it by its officers and by any independent person appointed and decide the application in the light of all of evidence submitted and the advice received, and acting in accordance with the principle of natural justice and good administration.
- 9.7 Once registered as a village green, it will be subject to the statutory protection of section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 2006. Section 12 protects greens from injury or damage and interruption to their use or enjoyment as a place for exercise and recreation. Section 29 makes encroachment or inclosure of a green, and interference with or occupation of the soil, unlawful unless it is with the aim of improving the enjoyment of the green.
- 9.8 There is no right of appeal against the Committee's decision not to register land as village green. The route for any challenges would be via judicial review.

## **10.0 Risk Management**

- 10.1 if the Council chose to determine the application without independent input, as it is the landowner, it may increase the risk of challenge.

## **11.0 Background and Options**

- 11.1 The Council is the registration authority for village greens and responsibility for this function was delegated to the Rights of Way Committee under the Council's Constitution.
- 11.2 The application was submitted in October 2008 by Mrs Peggy Bentham representing the Birtles Conservation Forum and the land is shown on Appendix A attached. Although two parcels of land have been outlined by the applicant, it is understood that the application relates to both parcels. The evidence in support of the application contains several witness statements stating various uses and several photographs.
- 11.3 The Council, as landowner, has written in objection to the application making certain legal arguments and producing various licences seeking to demonstrate its objection.
- 11.4 The applicant has been given the opportunity to comment on the Council's objection and a response has been received.
- 11.5 The applicant has requested a non statutory public inquiry on the basis that the Council is also the landowner. It is not automatically necessary for the Committee to appoint an independent inspector to consider the matter whenever the land is in the ownership of the Council. Members should be aware that in any such application where the Council is also the owner, separate roles are maintained within the Council between the legal and administrative departments. However, it is considered appropriate in this case to appoint an independent person, but to consider the matter on written representations rather via an inquiry.

- 11.6 Whilst the applicant has requested a non-statutory public inquiry, this course of action is not being recommended in this report because it is considered that given the nature of the objections from the Council (as landowner), which are not particularly complex, and that the evidence submitted in objection is in the form of correspondence and licences, this application could be considered on written evidence. It may be possible that the independent person, having received the documentation, recommends an inquiry is held instead. In the event of such a request, delegated authority is sought so that the Borough Solicitor can determine whether this is appropriate after consulting with the Chairman of this Committee.

## **12.0 Overview of Year One and Term One Issues**

- 12.1 N/A

## **13.0 Access to Information**

Village Green Application No 47

Correspondence and evidence from the Council as objector

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

Name: Kathryn McKeivith

Designation: Solicitor

Tel No: 01244 973959

Email: [kathryn.mckevith@cheshireeast.gov.uk](mailto:kathryn.mckevith@cheshireeast.gov.uk)