

Public Rights of Way Committee

Agenda

Date:	Monday, 1st March, 2010
Time:	2.00 pm
Venue:	Committee Suite 1,2 & 3, Westfields, Middlewich Road, Sandbach CW11 1HZ

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 - 8)

To approve the minutes of the meeting held on 7 December 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

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5. **Proposed Policy for Structures (Path Furniture) for Public Rights of Way**
(Pages 9 - 30)

To consider a report on the proposed policy for structures for Public Rights of Way.

6. **Prioritisation System for Different Categories of Maintenance and Enforcement Issues on Public Rights of Way** (Pages 31 - 36)

To consider a report on a new prioritisation system for responding to different categories of complaints on the public rights of way network.

7. **Wildlife and Countryside Act 1981 – Part III, Section 53: Application to Upgrade a Public Footpath between Knutsford Road, Chorley and Moor Lane, Wilmslow to Public Bridleway Status (Public Footpath Nos. 29, 15 (Part), 14, 10 (Part), 9 (Part), 27 Parish of Chorley and Footpath No. 40 (Clay Lane) Parish of Wilmslow); and Application to Upgrade Public Footpath No. 42 (Filter Bed Lane) to Public Bridleway Status, Parish of Wilmslow** (Pages 37 - 78)

To consider the application for the upgrade of a Public Footpath between Knutsford Road, Chorley and Moor Lane, Wilmslow to Public Bridleway Status (Public Footpath Nos. 29, 15 (Part), 14, 10 (Part), 9 (Part), 27 Parish of Chorley and Footpath No. 40 (Clay Lane) Parish of Wilmslow); and Application to Upgrade Public Footpath No. 42 (Filter Bed Lane) to Public Bridleway Status, Parish of Wilmslow.

8. **Highways Act 1980 – Section 119 and Section 25: Application for the Diversion of Public Footpaths No. 3 and No. 4 (Parts) Parish of Wincle and Creation of Public Footpath No. 41 Parish of Wincle** (Pages 79 - 86)

To consider the application for the diversion of Public Footpath No. 3 and 4 (Parts) in the Parish of Wincle and the creation of Public Footpath No. 41 in the Parish of Wincle.

9. **Highways Act 1980 – Section 119: Application for the Diversion of Public Footpath No. 46 (Part) Parish of Congleton** (Pages 87 - 94)

To consider the application for the diversion of Public Footpath No. 46 (part) in the parish of Congleton.

CHESHIRE EAST COUNCIL

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

PRESENT

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

Councillors D Cannon, R Cartlidge, S Wilkinson and J Wray

OFFICERS PRESENT

Mike Taylor, Greenspace Manager
Amy Rushton, Public Rights of Way Manager
Genni Butler, Acting Countryside Access Development Officer
Hannah Flannery, Acting Public Rights of Way Officer
Rachel Goddard, Legal Services
Kathryn McKevith, Legal Services
Rachel Graves, Democratic Services Officer

25 APOLOGIES FOR ABSENCE

Apologies were received from Councillor Rachel Bailey.

26 DECLARATIONS OF INTEREST

Councillor David Cannon declared a personal interest in the meeting 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.

27 MINUTES OF PREVIOUS MEETING

The minutes of the meeting held on 7 September 2009 be approved as a correct record and signed by the Chairman.

28 PUBLIC SPEAKING TIME/OPEN SESSION

Mrs P Bentham addressed the Committee in relation to Item 10 on the agenda – Village Green Application No. 47: Field between Birtles Road and Drummond Way, Whirley, Macclesfield.

29 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NOS. 2 AND 3 (PARTS) PARISH OF MILLINGTON

The Committee considered a report which detailed an application from Dr Dylan Prosser (the applicant) of Sandhole Farm, Millington Hall Lane, Millington Nr Altrincham, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath Nos. 2 and 3 in the Parish of Millington.

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 majority of the land over which the current line of Footpath No. 3 ran, a small section at the northernmost end of the route ran on the adjacent landowner's field. The land over which both the current and proposed route for Footpath No. 3 was owned by the adjacent landowner. As part of the proposed route for Footpath No. 3 was in the adjacent landowner's field, the applicant had 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 had been provided by the adjacent landowner.

The current line of Footpath No. 3 ran straight across the applicant's garden and past the outbuildings of Sandhole Farm. There were three stiles for users to traverse. The proposed route for Footpath No. 3 would run along the boundary fence of Sandhole Farm and into the adjacent landowner's field until it rejoined the existing line of Footpath No. 3. The application had been made in the interest of privacy and security of the application as the proposed route would move the footpath away from the applicant's home and garden. The proposed route would also require less path furniture as the three stiles would be replaced with two kissing gates.

The current line of Footpath No. 2 ran straight across the middle of the adjacent landowner's arable field, which was undesirable in terms of farm management. The proposed route of Footpath No. 2 ran along the boundary of the field and would take walkers closer to Millington Clough, providing a more attractive route along the edge of the woodland and blue bell corpse. This would also provide an improved surface as the ground around the perimeter of the field was firmer than the current route where it could become waterlogged and muddy.

The Committee noted that no objections had been received and considered that the proposed footpaths would be more enjoyable than the existing routes. The new routes were not substantially less convenient than the existing routes and would be of benefit to the landowners in terms of security and privacy and in terms of farm management. It was therefore considered that the proposed routes would be more satisfactory than the current routes and that the legal tests for 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'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) Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- (3) In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

30 HIGHWAYS ACT 1980 - SECTION 25: UPDATE ON CREATION AGREEMENT FOR A NEW PUBLIC FOOTPATH IN THE PARISH OF BOLLINGTON

A new path had been created 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 meeting of the Committee, Members had received a report recommending that the Council enter into creation agreements to create a new public footpath along the route. It had been 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. The Committee had 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.

Members were updated in relation to resolution (2).

A site meeting had been arranged between the adjacent landowner, the KRIV Countryside and Heritage Project Manager and the Acting Countryside Access Development Officer. Prior to this meeting correspondence had been exchanged which outlined the legal process relating to a creation agreement. It was explained that the landowners on whose land the path ran were 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.

In the 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. The adjacent landowner therefore concluded that the matters raised in the original letter had been adequately addressed.

The two creation agreements had 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.

It was reported that one of the landowners, who was a signatory to a creation agreement, wished 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 had carried out. The Committee agreed that the Chairman would write to the landowner in response to their comment.

RESOLVED:

- (1) That the report be noted.
- (2) A letter be sent to the landowner who was a signatory of the creation agreement on behalf of the Committee in response to their comment.

31 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 1 (PART) PARISH OF PEOVER SUPERIOR

The Committee considered a report which detailed an application from Mr Leslie Taylor (the applicant) of Twin Oaks Farm, Sandy Lane, Over Peover, Knutsford, requesting the Council to 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.

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 existing line of Footpath No. 1 crossed a paddock which was used for horses, foals and sheep grazing and in spring it was used for lambs. The applicant had had frequent problems with walkers and their dogs crossing the paddock and distressing stock. The application was also made in the interest of privacy and security of the applicant as the proposed route for the eastern end of the path moved it further away from the applicant's

house. The majority of the proposed route followed the outside of the boundary of the paddock until it rejoined the existing line of the footpath and was presently used as a permissive route. Moving the footpath would also improve accessibility as two stiles which users currently had to negotiate would be removed.

The Committee noted that no objections had been received and considered that new route was not substantially less convenient than the existing route and would be of benefit to the landowner. Moving the footpath out of the paddock would prevent walkers and their dogs distressing the stock, improving farm management. It would also improve accessibility for walkers as it did not require any further path furniture and removed the need for the two stiles which users have to negotiate on the current route. 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:

- (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. 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) 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.

32 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) (2011-2026) within the context of the Local Transport Plan 3 (LTP3).

An initial meeting of Elected Members and officers from across the Council had taken place on 30 October 2009 to launch the process of developing the ROWIP. Representatives had 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.

The project management framework for the ROWIP project was being developed presently and would include a steering group of elected members who sat on the Committee.

The Public Rights of Way Committee would sign off the draft ROWIP strategy document for the period 2011-2026. It was anticipated that this document would be presented to the Committee in autumn 2010. The Committee would also be asked to sign off the draft ROWIP implementation plan for the delivery of projects for the period 2011-2014, which was anticipated would be presented to the Committee in early 2011.

RESOLVED:

That the report be noted.

33 VILLAGE GREEN APPLICATIONS

The Committee received a report which sought approval of a procedure for determining village green applications.

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

Village greens could be registered either as a result of an application by a third person or by a voluntary registration by the landowner. Approval was being sought to the procedure in relation to applications received from persons other than the landowner.

The report outlined the proposed procedures and options or paths that applications may take. These were:

- Option 1 – Reject application for failing to meet basic statutory requirements
- 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)
- Option 3 – Accept application as validly made and write a report to the Committee recommending rejection of the application
- 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
- Option 5 – Public Rights of Way Committee holds a hearing itself and then decides whether to accept (in whole or part) or reject the application.

The Committee discussed each of the Options. In relation to Option 4, the Committee considered that the independent person should be a 'suitably qualified' barrister or planning inspector.

RESOLVED:

- (1) That the procedure outlined in the Report be noted and adopted for handling existing and future applications in respect of village greens, subject to Option 4 being amended to read 'suitably qualified independent person'.
- (2) That officers arrange the necessary training for the Committee.

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

The Committee received a report seeking 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.

The application had been submitted in October 2008 and the Council, as landowner, had written in objection to the application making certain legal arguments and producing various licences seeking to demonstrate its objection. The applicant had been given the opportunity to comment on the Council's objections.

The applicant had requested that a non-statutory public inquiry be held as the Council was the landowner. However it was considered appropriate to appoint a suitable qualified independent person to consider the matter on written representations as the objections from the Council (as landowner) were not particularly complex and were in the form of correspondence and licences.

It could be possible that the independent person, having received the documents, recommends that an inquiry is held instead. In the event of such a request, the Borough Solicitor could be given delegated authority to determine whether this was appropriate after consulting with the Chairman of the Committee.

RESOLVED:

- (1) That the Borough Solicitor be authorised to appoint a suitably qualified independent person to consider the application on the basis of written representations and provide a report.
- (2) That the Borough Solicitor be given delegated authority to determine if a non-statutory public inquiry should take place upon the recommendations of the independent person, after consulting the Chairman of the Committee.

The meeting commenced at 2.00 pm and concluded at 2.55 pm

Councillor B Moran (Chairman)

CHESHIRE EAST COUNCIL

REPORT TO: RIGHTS OF WAY COMMITTEE

Date of meeting:	1 March 2010
Report of:	Greenspaces Manager
Title:	Proposed Policy for Structures (Path Furniture) for Public Rights of Way

1.0 Report Summary

- 1.1 The Council has the discretionary power to authorise the erection of structures (stiles and gates) on public rights of way where it is satisfied that these are necessary to prevent the ingress or egress of animals on land which is used, or is being brought into use, for agriculture or forestry or for the breeding or keeping of horses. Structures that were in place when the Definitive Map was first compiled (in the 1950s) are deemed to be automatically authorised, but any additional structures, including those on any sections of path created through a public path diversion or creation order, offer the opportunity for the Council to define a specification.
- 1.2 In February 2009 the Department for Environment, Food and Rural Affairs issued draft guidance relating to structures on Public Rights of Way.
- 1.3 As a result of the production of this and in anticipation of the final guidance, the informal policies on structures currently operating in the Rights of Way Team were reviewed. It is hoped that the adoption of a formal policy in relation to structures on Public Rights of Way will lead to greater consistency and reduce the possibility of legal challenge. It is also hoped that the adoption of the policy will lead to greater use of the network because of increased accessibility.

2.0 Recommendations

- 2.1 That Members approve the proposed policy relating to structures erected on Public Rights of Way. This includes newly authorised structures and structures which are put in place following the making of a Public Path Order (usually Diversion Orders made under the Highways Act 1980 and Town and Country Planning Act 1990). The policy comprises the following four principle points: -
 - Wherever possible, structures which are erected on Public Rights of Way will comply with the British Standard BS5709:2006. Where this is not possible, structures will comply with the local "Cheshire East Standard for Path Furniture" identified in the Appendix to this report.

- Where a new path is created following the making of a Public Path Order, gates or gaps will be used rather than stiles as boundary structures. Gates or gaps must comply with either BS5709:2006 or the “Cheshire East Standard for Path Furniture”.
 - Where an application is made under s147 Highways Act 1980 by an owner, lessee or occupier of agricultural land for the erection of a structure to prevent the ingress or egress of animals, permission will be given for the erection of a gate and not for a stile¹. The gate must comply with either BS5709:2006 or the “Cheshire East Standard for Path Furniture”.
 - Where an owner, lessee or occupier wishes to replace an existing stile on their land, the Council will use its best endeavours to facilitate a less restrictive option by replacing the stile with a gate or a gap².
- 2.2 That Members approve the appended local “Cheshire East Standard for Path Furniture” for the specification of structures to be used by the Council on Public Rights of Way in the future.

3.0 Reasons for Recommendations

- 3.1 The decision to adopt this policy will help to fulfil the Corporate aims of improving the health and wellbeing of the community by improving accessibility to the Rights of Way network and thus encouraging greater use. The policy is in line with the statement of intent 11.5 in the ROWIP to ensure the option of ‘least restrictive access’ and the policy will go some way to fulfilling the Council’s obligations under Disability Discrimination legislation.
- 3.2 It is hoped, therefore, that the adoption of a formal policy in relation to structures on Public Rights of Way will lead to greater consistency and reduce the possibility of legal challenge. It is also hoped that the adoption of the policy will lead to greater use of the network because of increased accessibility.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All Members

¹ Provided that the criteria of s147 are met and it is considered appropriate to authorise a structure. Authorisation may be subject to such conditions as Officers see fit.

² See note on historic structures at 11.6 below.

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

- 6.1 A decision to adopt this policy will align 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 The policy is in line with the statement of intent 11.5 in the Rights of Way Improvement Plan (ROWIP) to ensure the option of 'least restrictive access'. It also accords with the British Standard on Gaps, Gates and Stiles BS5706:2006 and it is hoped that this policy will go some way to fulfilling the Council's obligations under current Disability Discrimination legislation.

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 The costs of installing furniture on a new path as the result of the making of a Public Path Order will be borne by the applicant except where the Order is made in the interests of the public.
- 8.2 Under s146(4) of the Highways Act 1980, the Council is obliged to contribute 25% of the costs reasonably incurred by a landowner in the installation of a gate or stile across a footpath, bridleway or restricted byway. Where a new structure is authorised under s147 Highways Act 1980, the costs of the structure will normally be borne by the applicant, with the costs of installation borne by the Council. Effectively this is a 75%/25% split of the total costs and thus meets the Council's obligations under s146(4). Installation by the Council's contractors will also ensure that the furniture is installed well and in the correct location.
- 8.3 Where budgets allow, Officers will exercise their discretion in offering more than the statutory 25% contribution, as this has proven to be an effective incentive towards securing more accessible structures on the network.

9.0 Legal Implications (Authorised by the Borough Solicitor)

The relevant legal considerations are set out below.

- 9.1 The Disability Discrimination Act 1995 and 2005 (DDA) places a duty on the Council to promote equality of opportunity for access to services and to encourage participation by people with disabilities, and makes it unlawful to discriminate against people with disabilities in the provision of goods, facilities and services without a justifiable reason. The Council is required to consider

the needs of disabled users in the work it carries out and to review existing policies, procedures and practices that make it impossible or unreasonably difficult for people with disabilities to use or access a provided service.

- 9.2 In producing a Rights of Way Improvement Plan (ROWIP) an Authority must give specific consideration to the accessibility of local Rights of Way to blind or partially sighted people or those with mobility problems (DEFRA, Statutory Guidance 2002).
- 9.3 The Highways Act 1980 (s146 (1)&(4)) states that any stile, gate or other similar structure across a footpath, bridleway or restricted byway shall be maintained by the owner of the land in a safe condition, and to the standard of repair required to prevent unreasonable interference with the rights of the persons using the footpath, bridleway or restricted byway. The appropriate authority shall contribute not less than a quarter of any expenses shown to their satisfaction to have been reasonably incurred in compliance with subsection (1) above and may make further contributions of such amount in each case, having regard to all the circumstances they consider reasonable.
- 9.4 The Highways Act 1980 (s147(1) & (2)) states that:

“The following provisions of this section apply where the owner, lessee or occupier of agricultural land.....represents to a competent authority, as respects a footpath or bridleway that crosses the land, that for securing that the use, or any particular use, of the land for agriculture shall be efficiently carried on, its expedient that stiles, gates or other works for preventing the ingress or egress of animals should be erected on the path or way.”

and

“Where such a representation is made the authority to whom it is made may, subject to such conditions as they may impose for maintenance and for enabling the right of way to be exercised without undue inconvenience to the public, authorise the erection of the stiles, gates or other work.”

Section 69 of the Countryside and Rights of Way Act 2000 adds a new section (147ZA) to the Act which empowers a highway authority to enter into an agreement with the owner, etc, to carry out work for replacing or improving a stile or gate that will result in it being safer or more convenient for persons with mobility problems, and the authority agrees to pay the whole or part of the cost.

- 9.5 The Highways Act 1980 (s137) states that:
- “(1) If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.”

10.0 Risk Management

- 10.1 It is anticipated that the adoption of this policy will reduce the risk of legal challenge against the Council and against landowners under the DDA. It may also reduce the likelihood of objections to Public Path Orders, which are time consuming and costly to deal with.
- 10.2 Because it is less likely that an accident will occur with a gate than with a stile, it is reasonable to assume that the adoption of the policy will reduce the potential risk for landowners in relation to the possibility of claims being made against them for personal injury.

11.0 Background and Options

- 11.1 The Department for Environment, Food and Rural Affairs' draft guidance on structures on Public Rights of Way documented the conclusions of a subgroup of the Rights of Way Review Committee, which was convened in order to address the implications of the DDA for structures on public rights of way. The subgroup comprised representatives from:-

- Department for the Environment, Food and Rural Affairs
- Ramblers' Association
- Byways and Bridleways Trust
- Institute of Public Rights of Way and Access Management
- County Surveyors' Society
- British Horse Society
- Natural England
- Open Spaces Society

Drafts of the document were also circulated to the Disabled Ramblers and to the Fieldfare Trust in the course of development. This guidance gives advice to local authorities, relevant bodies and interested individuals on recording, authorising, managing and maintaining, structures on public rights of way.

- 11.2 As a result of the production of the guidance the informal policies adopted by the Rights of Way Team were reviewed. As stated in the introduction to this report, it is hoped that the adoption of a formal policy in relation to structures on Public Rights of Way will lead to greater consistency and reduce the possibility of legal challenge. It is also hoped that the adoption of the policy will lead to greater use of the network because of increased accessibility.

Fundamental to this is the understanding that any restriction imposed by a structure on the free exercise of public rights of the lawful user on any right of way is an offence under section 137 of the 1980 Act and also a common law nuisance **unless** :

- it is recorded on the Definitive Map and Statement as a limitation;
- it meets the specification and constraints of an authorisation made under section 66, 115B, or 147 of the 1980 Act or;
- it can be shown to have existed at the time that the way was dedicated (i.e. represents an unrecorded limitation).

11.3 Four areas were looked at in detail:

- The erection of path furniture (i.e. stiles and gates etc.) on new paths following the making of a Public Path Order (usually a diversion made under the Highways Act 1980 or the Town and Country Planning Act 1990).
- The erection of path furniture on Rights of Way as a result of an application for authorisation made under s147 Highways Act 1980.
- The replacement of existing path furniture on the network.
- The specification of structures.

Each area will be looked at in turn.

11.4 Structures erected following the making of a Public Path Order:

Members will be aware that it is possible for members of the public to apply to divert Public Rights of Way provided that certain legal criteria are met and the correct legal process is followed. Where a path is diverted, the new route provided must not be substantially less convenient or enjoyable than the original. The new route must also be brought up to a suitable standard having regard to the DDA and the Statement of Intent 11.5 in the ROWIP: *"We will ensure that wherever landowner/environmental constraints allow the option of "least restrictive access" is applied whenever new path furniture is installed."*

In practice this means that gates will be erected or gaps will be left in boundary structures (e.g. fences or hedges) on newly diverted paths. Because they are more difficult to use and prohibit some individuals from walking Rights of Way, stiles will only be installed in exceptional circumstances; for instance, if ground conditions make it impossible for gates to be installed. Stiles cannot be used where, for instance, the landowner simply has a preference for stiles over gates, or because there are other stiles on the same route.

Diversion Orders will only be confirmed and made operative once suitable works are carried out on the new path, including the erection of gates rather than stiles.

11.5 Applications made under s147 Highways Act 1980:

Under s147 a Competent Authority (in this case Cheshire East Borough Council as Highway Authority) has the discretion to allow the erection of structures across footpaths or bridleways in order to prevent

the ingress or egress of animals. The application can only be made by the owner, lessee or occupier of agricultural land.

Structures cannot be erected across Rights of Way for other reasons for example; personal/individual privacy or security.

Where structures are authorised by the Council under s147, this may be done on a conditional basis, for example; for enabling the Right of Way to be exercised without undue inconvenience to the users. In order to increase accessibility therefore, it is suggested that where a structure is licensed under s147 a gate should be used rather than a stile. Again, stiles will only be installed in exceptional circumstances for instance, if ground conditions make it impossible for gates to be installed.

Authorisation for structures may be revoked if the conditions of authorisation are breached, or if there is no longer a need for the structure (e.g. the land ceases to be used for the keeping of stock).

11.6 The Replacement of Existing Path Furniture:

It is the responsibility of the landowner concerned to ensure that path furniture which is already in place on the network is maintained in a safe condition and to a suitable standard, so as to prevent unreasonable interference with the public using the path (s146 Highways Act 1980).

It is not possible for the Council to insist that existing stiles are replaced with gates, however, in accordance with the aims of the ROWIP and the DDA, Officers will endeavour to persuade landowners to replace stiles with gates where possible, employing the “least restrictive option”.

In undertaking this, Officers will be aware that some historic structures may be listed, and that others which are not listed may nonetheless be considered by local people to constitute “heritage features”. In such cases, local feeling will need to be balanced against the needs of people with limited mobility and a record kept of how the decision to replace, or not to replace, was made.

If a suitable funding source can be found, for example, it may be possible to resurrect the popular ‘Kissing Gate Scheme’ whereby Parish Councils could secure landowner agreement and nominate paths in their area to have the stiles replaced with Kissing Gates, which were provided by the Council. Alternatively, an increase in the Public Rights of Way Team’s materials budget would allow gates to be funded.

11.7 Specification of Structures:

British Standard for Gaps, Gates and Stiles BS5709:2006 covers most, but not all, structures on Public Rights of Way. One of the eight “rules” for the application of the standard refers to the use of “least restrictive

option” and says that “the selection of a gap, gate or stile which permits people to use a path crossing a field boundary such as a hedge or fence shall result in as little restriction as possible for potential users whilst meeting the actual agricultural needs of the landowners”.

Wherever possible, Officers will utilise British Standard specification furniture; however, not all path furniture is specified by the standard and not all British Standard path furniture will be appropriate in every situation; for instance, where environmental conditions make installation difficult. There are also situations where the Council uses path furniture which is more accessible and an improvement on the British Standard. For example, the BS5709:2006 specification for a “narrow stile” is narrower than the usual stile which we would use on Rights of Way and is therefore more difficult to use.

It is therefore suggested that the Council adopts a “local standard”. The DEFRA draft guidance on Structures on Rights of Way states:

“The sole duty placed upon highway authorities that is discussed within this document (other than those that have existed for some time under the 1980 and 1981 Acts) is to meet the requirements of the DDA. Although recommendations are put forward here it is for each authority to specify their policies, procedures and standards to a level such that they can demonstrate adherence to the DDA”.

A local “Cheshire East Standard for Path Furniture” would therefore accord with this guidance. A list of specifications for structures which are commonly used on Public Rights of Way in Cheshire East is appended to this report. Many of the structures comply with BS5709:2006, some improve on it, and some are not covered by the British Standard.

11.8 Consultations

- 11.9 As set out at 6.1, this policy represents a local response to the objectives of the DEFRA guidance on structures. The guidance was prepared with input from various bodies representing a variety of user groups.

On a local level, the policy accords with the principles of the Cheshire ROWIP, which was subject to a wide public consultation, including specific focus groups with people with mobility difficulties and learning disabilities. One of the recommendations arising from that research was that the Council should:

“...ensure that PROW have the easiest to use physical barriers (where these are unavoidable) such as kissing gates or wicket gates, paying attention to the types of latches used.”

- 11.10 A draft of the policy was also presented to the Cheshire Local Access Forum on 18 December 2009. The Local Access Forum is a statutory advisory body representing a range of users of rights of way (including

people with disabilities), elected Members and landowners. Highway Authorities must have regard to their advice in matters relating to access to the countryside.

11.11 The Forum had a range of views on the draft policy: -

- There were some comments for and against the use of galvanised steel structures in the countryside. Some members were against the use of galvanised steel on account of its appearance. Other members were supportive of galvanised steel because of its durability and better value for money than timber. The Forum noted that galvanised steel structures may be powder-coated black or green, though this is more expensive.
- The Forum also thought that there should be an exception to the general principle of replacing stiles with more accessible structures where a stile constitutes a heritage feature (e.g. some stone “squeeze” stiles are part of historic dry stone walls). In practice, it will be difficult to determine when a stile may or may not constitute a heritage feature unless it is listed. Where heritage may be an issue, officers will check whether a particular structure is listed; if not, then replacement will be a decision for the landowner and the maintenance officer to make together, taking into account the character of the surrounding area and local feeling.
- The Forum felt that the standard for a stile should mention that anti-slip treatments are available for the tread-boards.
- There was general support for the principle of increasing the accessibility of the path network for people with limited mobility. One member felt that where proactive stile replacement was undertaken, this should be done in priority areas first, on well-used paths. This is the type of approach that has been applied in previous years under the ‘kissing gate scheme’ and can be applied again if funds are found to run a similar scheme in the future.

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:

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Designation: PROW Manager

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APPENDIX

CHESHIRE EAST STANDARD FOR PATH FURNITURE ON PUBLIC RIGHTS OF WAY

The following specifications were created by our supplier for gates and barriers (Centrewire). Our stile kits are provided by a specialist timber supplier. Cheshire East will use other suppliers from time to time, as best value dictates, but always to the specifications set out here. Galvanised steel structures are also available powder-coated in green or black, at extra cost.

1) Kissing gates

WOODSTOCK KISSING GATE



Description: Galvanised steel hoops, 'MARLOW' heavy-duty galvanised mesh gate with integral H-frame posts, self closing gate system, and auto latch.

Dimensions: Height 1m-1.2m, maximum length in fenceline 2m, width across hoops 1.2m.

Comment: Heavy-duty gate, stock proof in both directions. Gate and hoops are easy to install. The Woodstock gate has been developed for situations where the requirement to retain stock on both sides is paramount. Its design will also accommodate exceptionally heavy usage.

WOODSTOCK KISSING GATE – for medium Mobility Vehicles, BRITISH STANDARD



Description: Galvanised steel hoops, 'MARLOW' heavy-duty galvanised mesh gate with integral H-frame posts, self closing gate system.

Dimensions: Height 1m-1.2m, maximum length in fenceline 2.6m, width across hoops 1.7m.

Comment: Heavy-duty gate, stock proof in both directions. Large circular hoops allow easy manual wheelchair and standard pushchair access. Gate and hoops are easy to install. This design inhibits the passage of motorbikes.

STONOR KISSING GATE



Description: Galvanised steel hoops, 'STRATFORD' meshed gate with integral H frame posts, self closing gate system, auto latch.

Dimensions: Height 1m-1.1m, maximum length in fenceline 1.7m, width across hoops 1.2m, width of gate panel 0.9m.

Comment: H frame provides rigidity and ease of installation. The gate self-closes and latches automatically. This design is based on the highly successful Woodstock, but has been developed for sites where space is limited.

OXFORD KISSING GATE



Description: Treated timber morticed posts, rails, gate post and gate, 45° self closing gate system.

Dimensions: Height 1m-1.2m, length in fenceline 2.3m, width 1.4m.

Comment: Rounded kissing posts are smooth to the touch. The posts and morticed rails give an attractive appearance. Twin posts at the apex provide more space and greater flexibility in the layout. The appearance of this gate makes it widely selected for sensitive landscape situations or where there is a strong preference for timber.

OXFORD KISSING GATE – for Medium Mobility Vehicles, BRITISH STANDARD



Description: Treated timber morticed posts, rails, gatepost and gate, 45° self-closing gate system.

Dimensions: Height 1m-1.2m, length in fenceline 2.75m, width 1.6m.

Comment: Rounded kissing posts are smooth to the touch. The posts and morticed rails give an attractive appearance. Layout of posts allows wheelchair and pushchair passage and also provides some flexibility on site. The gate is used on routes suitable for pushchairs, manual wheelchairs, and smaller motorized wheelchairs. This specification has the advantage of deterring motorbike usage.

2) Bridle gates

CHILTERN BRIDLE GATE – Two-way opening, BRITISH STANDARD



Description: Galvanised steel meshed gate, integral H-frame posts. Two-way self-closing gate system, easy latch, integral gate stop.

Dimensions: Height 1.2m, width post-to-post 1.9m, gate 1.5m.

Comment: H-Frame system provides permanent alignment of latch and gate and is also simple to install. Easy latch and self-closing gate system enables the gate to be easily opened from horseback. The two-way opening system allows all users to go through the gates in either direction without having to back up. The controlled speed closing option allows the gate to take up to 6 seconds to close according to local conditions and requirements, and should be set accordingly on installation.

HENLEY BRIDLE GATE – Two-way opening, BRITISH STANDARD



Description: Timber gate and Gate posts, easy latch, 180° self-closing gate system and two way catch.

Dimensions: Height 1.2m, width post-to-post 2.1m, gate 1.6m.

Comment: The two-way catch together with the easy latch and 180° self closing gate system makes this gate ideal for users of mobility vehicles. Pedestrians will also find the easy latch particularly simple to operate.

3) Two Way Gates

Two-way gates provide the best access for all because users can pass through in a forward direction from both sides. This particularly benefits users of mobility vehicles as it avoids the awkward manoeuvring associated with one way gates and with kissing gates. Two-way gates provide the least restrictive option on footpaths and bridleways where a simple gap cannot be used. Where stock control is required, the gates can be self-closing from both sides and additional security can be provided by means of a double 'refuge'.

MILTON KEYNES GATE – Two way opening, BRITISH STANDARD



Description: Galvanised steel meshed gate, integral H-frame posts, two-way self-closing gate system, low easy latch, integral gate stops.

Dimensions: 2 options: Height 1.2m, width post-to-post 1.5m, gate 1.2m. OR Height 1.2m, width post-to-post 1.9m, gate 1.5m with controlled speed mechanism.

Comment: The easy latch and self-closing two-way gate system enables this gate to be simply opened in either direction by pedestrians or users with mobility vehicles. The standard gate closing speed (approx 3 seconds from fully open) is very positive to take account of high winds or overgrown vegetation etc. The controlled speed closing option (available only on 1.5m gate) allows the gate to take up to 6 seconds to close according to local conditions and requirements.

ASTON – Two way opening, BRITISH STANDARD



Description: Timber gate and Gate posts, easy latch, 180° self-closing gate system and two way catch.

Dimensions: Height 1.2m, width post-to-post 1.7m, gate 1.2m.

Comment: The two-way catch together with the easy latch and 180° self closing gate system makes this gate ideal for users of mobility vehicles. Pedestrians will also find the easy latch particularly simple to operate.

4) Two in One Gates

YORK TWO-IN-ONE GATE, BRITISH STANDARD



Description: Galvanised tubular steel field gate in two sections. The main section can be locked with a heavy duty drop bolt to prevent unwanted vehicle access while the section allowing public access is free to open. The complete gate as one unit will open as required.

Dimensions: Field gate installed height 1.2m. Width of main section as required. Width of public access section 1.525m.

Comments: The public access gate can be one-way or two-way opening, and is self-closing.

BRISTOL TWO-IN-ONE GATE, BRITISH STANDARD



Description: Galvanised tubular steel field gate with integral self closing pedestrian step through gate and auto-latch.

Dimensions: Field Gate installed height 1.2m. Width as required. Integral step through gate. Height 0.95m. Width 0.7m. Step over Height 0.2m.

Comment: With pedestrians able to pass through the self closing step gate, the field gate can remain closed or even locked if required. An old idea applied to field gates. It is particularly suitable where there is insufficient room for separate field and kissing gates.

5) Pedestrian Gates

MARLOW GATE, BRITISH STANDARD



Description: Heavy duty galvanised mesh gate with integral H-frame posts, Self closing gate system, and Auto latch.

Dimensions: 2 options, Height 1.1m, width post-to-post 1.3m, gate 1m.
Height 1.1m, width post-to-post 1.5m, gate 1.2m

Comment: H-Frame system provides permanent alignment of latch and gate and is also simple to install. Heavy duty gate makes it suitable in areas of heavy usage. Self-closing gate system and auto latch ensures that the gate is stock proof in both directions. Extra strong hinge system to combat vandalism.

STRATFORD PEDESTRIAN GATE



Description: Galvanised steel meshed gate, integral H-frame posts, Self closing gate system, integral gate stop and Auto latch.

Dimensions: Height 1.0-1.1m, width post-to-post 0.95m, gate 0.7m.

Comment: Designed as a narrow and lightweight gate, the STRATFORD provides good access for pedestrians. The H-frame construction makes installation simple and gives permanent alignment to the gate. This design is appropriate where space is at a premium or an economic solution is required.

6) Access Barriers/Bollards

MOTORBIKE INHIBITOR



Description: Two galvanised tubular panels partly sheeted.

Dimensions: Installed height of 1.6m.

Comment: This design has been tested and been proved to inhibit motorbikes whilst allowing access to pedestrians and users of most sizes of mobility vehicles.

HORSE FRIENDLY VEHICLE BARRIER



Description: Galvanised tubular steel barrier with timber cladding rails. Hanging Stile 50mm x 50mm Box Section. Slam Stile 50mm x 50mm Box Section.

Dimensions: Width as required, with a minimum of 10' (3m). Maximum installed height at centre should be 25cm. The size of the central gap is 1.2m width at the bottom and 2.0m at the top.

Comment: The timber cladding rails have been incorporated in the design to dampen the noise of contact with hooves. This design is not suitable over hard surfaces, e.g. concrete or tarmac.

HEAVY DUTY HORSE FRIENDLY VEHICLE BARRIER



Description: Manufactured from 100mm x 50mm RHS, and hot dipped galvanised after manufacture.

Dimensions: Width as required, with a minimum of 10' (3m). Maximum installed height at centre should be 25cm. The size of the central gap is 1.2m width at the bottom and 2.0m at the top.

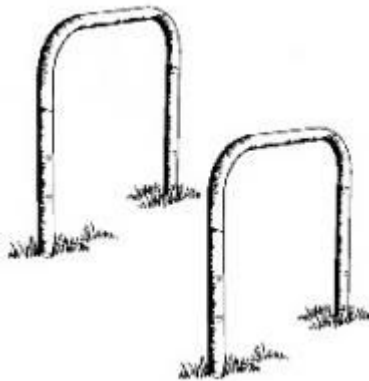
Comment: The timber cladding rails have been incorporated in the design to dampen the noise of contact with hooves. This design is not suitable over hard surfaces, e.g. concrete or tarmac.

HEAVY DUTY VEHICLE BARRIER – TRIANGULAR



Description: Manufactured from 100mm x 50mm RHS, and hot dipped galvanised after manufacture. The padlock security system is incorporated into the slam post thus allowing the barrier to be used either left or right handed.

FOOTPATH BARRIER



Description: Galvanised steel barrier.

Dimensions: Height 1m, length 1m.

Comment: The individual barriers can be used in a variety of configurations depending on the location. The barriers can be used to prevent vehicular access and also as a safety device where paths meet roads.

RETRACTABLE BOLLARDS - STEEL RETRACTABLE BOLLARD



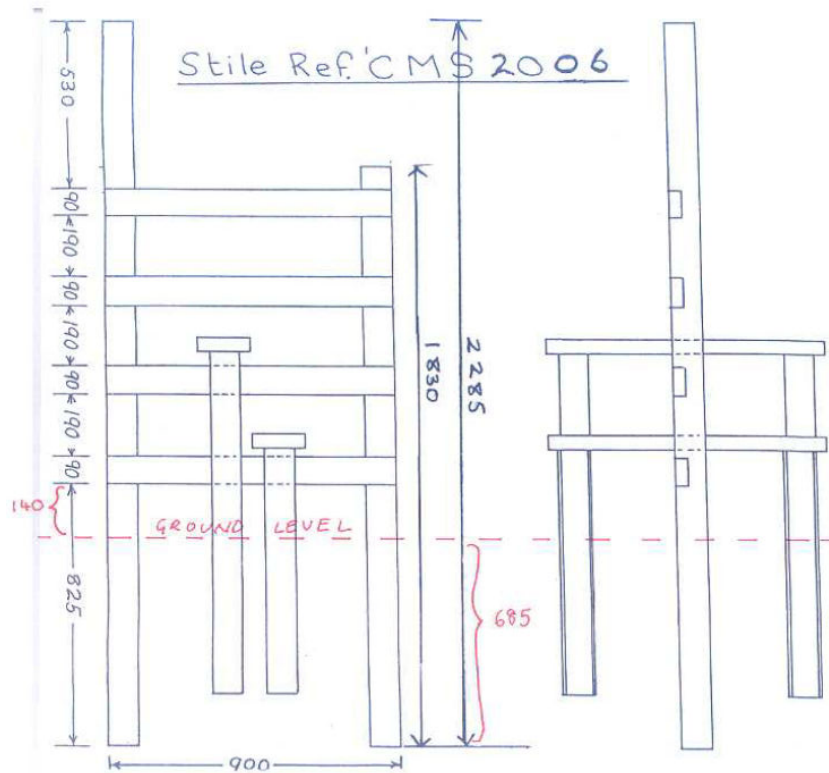
Description: 114.3mm dia retractable bollard with steel ground socket.

Dimensions: Height options when raised (A) = 350 – 400mm to suit 'Kent Carriage Gap', and (B) 600mm at full height.

Comment: A strong and effective system to prevent unwanted vehicular access whilst enabling simple operation by authorised users.

7) Stiles

Medium Width Stile:



Description: Timber stile with two step boards and upright for ease of use.

Dimensions: Width between uprights 900mm. Large upright 2285mm, shorter upright 1830. Step boards 900x200x50mm.

Comment: An alternative to the British Standard for a “narrow stile”, providing greater width and ease of use, used as appropriate taking into account space and environmental conditions. The standard anti-slip treatment for the step boards, where this is required, is a “spray-and-chip” type treatment, as opposed to chicken wire.

CHESHIRE EAST COUNCIL

REPORT TO: RIGHTS OF WAY COMMITTEE

Date of meeting: 1 March 2010
Report of: Greenspaces Manager
Title: Prioritisation System for Different Categories of Maintenance and Enforcement Issues on Public Rights of Way

1.0 Report Summary

- 1.1 This report proposes a new prioritisation system (**Appendix 1**) for responding to different categories of complaints on the public rights of way network. Such systems are used by many Local Authorities to help maintenance and enforcement officers better manage their workloads and to inform the public of how quickly different sorts of issues are investigated.

2.0 Recommendations

- 2.1 That Members approve the proposed prioritisation system.

3.0 Reasons for Recommendations

- 3.1 The decision to adopt this system will help the maintenance and enforcement officers prioritise the investigation of different categories of problem reports. This is particularly useful in the current budget situation, in which there are insufficient staff resources to investigate all reports received immediately. It will also provide the public with a transparent and realistic explanation of how quickly they may expect their complaints to be investigated.
- 3.2 It should be noted that the system provides standard response times for investigating a complaint, not for issuing the work to fix the problem; this depends on contractor availability and resources available.

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 None arising

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 None arising

9.0 Legal Implications (Authorised by the Borough Solicitor)

9.1 The Council has statutory obligations under various sections of the Highways Act 1980 to deal with obstructions and other types of problem on the public rights of way network. The proposed prioritisation system reflects these.

10.0 Risk Management

10.1 The proposed prioritisation system takes into account the likelihood of claims for personal injury arising from certain types of complaint (e.g. collapsed bridges) and this is reflected in the response times proposed.

11.0 Background and Options

11.1 The maintenance and enforcement team are currently managing around 100km of additional path each within their areas compared with 2008/9, an increase of around 15%. This has had the effect of stretching officers to the limit and means that some problems reported are not investigated for several weeks, and others (usually minor, non-statutory complaints) not at all.

11.2 Officers are prioritising their own workload on a largely 'common sense' basis; complaints with a possible impact on public safety are prioritised first, (e.g. collapsed bridges, dangerous animals); obstructions come soon after (e.g. a fence or wall erected across the line of a path); and minor non-statutory matters (e.g. suggestions for additional waymarking) come last of all.

11.3 Whilst in an ideal world every matter that was reported to the team would be investigated within a few working days, this is not realistic given current staffing levels. The budget shortfall facing the Council makes it unlikely that staffing levels will increase. Therefore a system by which officers can prioritise different types of complaint is proposed (**Appendix 1**), which aims to be both transparent and realistic.

- 11.4 It is proposed to publicise this system on the Council's website to make the public aware of the sorts of timescales problems will be investigated against. User groups will be made aware of it through our regular liaison meetings and (when established) the Cheshire East Rights of Way Forum.

12.0 Consultations

- 12.1 N/A

13.0 Overview of Year One and Term One Issues

- 13.1 None arising

14.0 Access to Information

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

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Designation: PROW Manager

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Appendix 1

Prioritisation of PROW problem categories

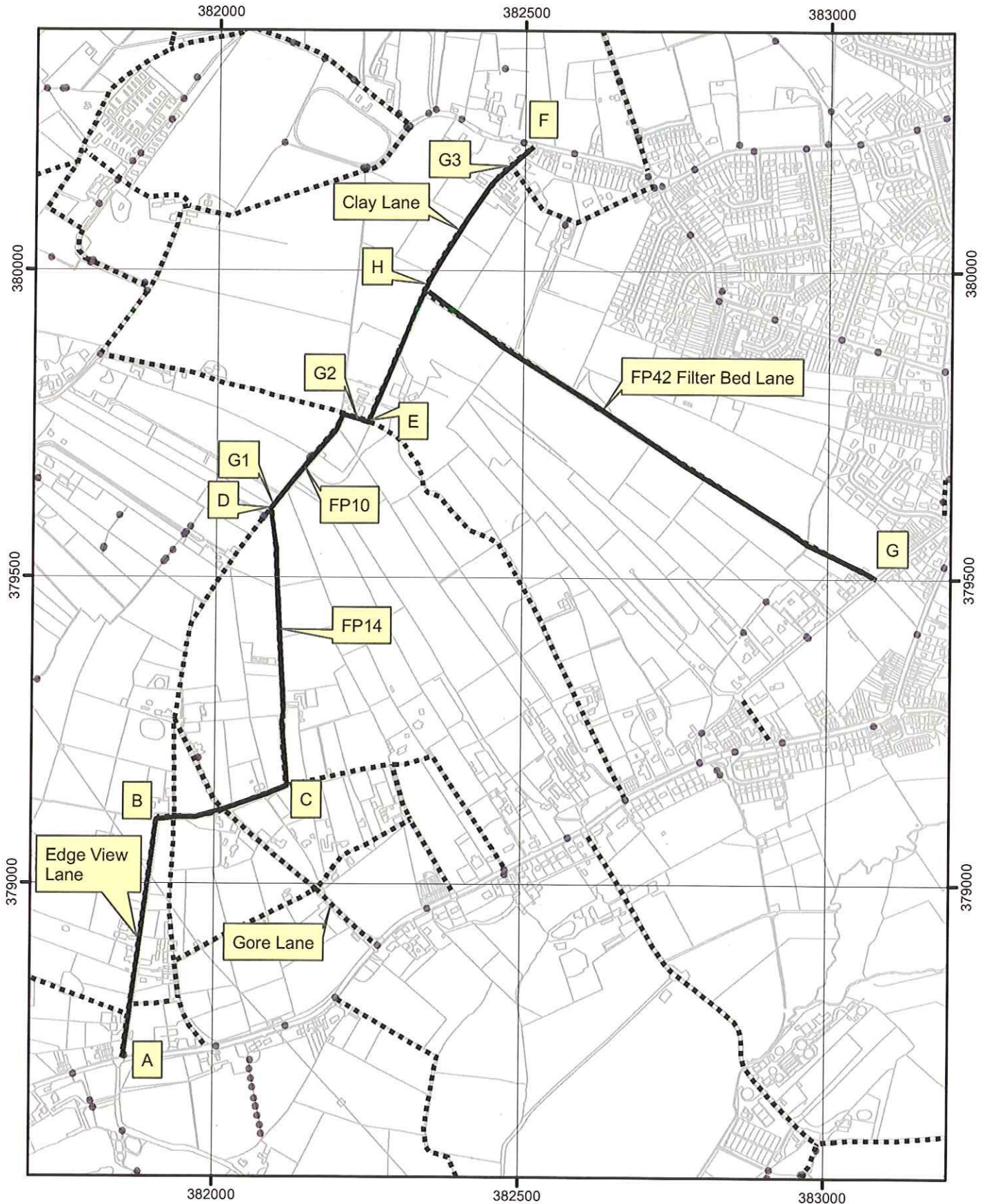
Priority 1	Public Safety Issues Examples: Any issue with potential to cause injury; dangerous bridges, bulls & other dangerous animals, dangerous structures. This category of issue will be investigated/responded to in 24-72 hours from receipt of complaint.
Priority 2	Obstructions and statutory duties Examples: physical obstructions which prevent the public from using a path, serious disturbance to path surface, encroachment, intimidation, misleading signs, badly overgrown vegetation. Missing fingerposts. This category of issue will be investigated/responded to in 2-4 weeks from receipt of complaint.
Priority 3	Maintenance issues and minor compliance issues Examples: Improving stiles/gates, drainage problems, surfacing improvements, waymarking. This category of issue will be investigated/responded to in 4-6 weeks from receipt of complaint.
Priority 4	Non-statutory requests/enquiries Examples: Requests for additional signing, improvements not covered by higher priorities. This category of issue will be dealt with at the discretion of the relevant officer. In some cases, suggestions for improvements will be referred to the Countryside Access Development Officer for inclusion on list of ROWIP suggestions.

N.B. The timescales given here are for an officer to look at the problem, not to issue the work to fix it or to temporarily close the path. Work timescales are dependent on urgency, contractor availability and resources.

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Wildlife and Countryside Act 1981 – Part III, Section 53

Application to Upgrade a Public Footpath between Knutsford Road, Chorley and Moor Lane, Wilmslow to Public Bridleway Status (Public Footpath Nos. 29, 15 (Part), 14, 10 (Part), 9 (Part), 27 Parish of Chorley and Footpath No. 40 (Clay Lane) Parish of Wilmslow); and Application to Upgrade Public Footpath No. 42 (Filter Bed Lane) to Public Bridleway Status, Parish of Wilmslow



1:8,000

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

Plan No.
MO/001

This is a working copy of the definitive map
and should not be used for legal purposes



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Cheshire East Council. 100049045 2010.

CHESHIRE EAST COUNCIL

REPORT TO: RIGHTS OF WAY COMMITTEE

Date of meeting: 1 March 2010
Report of: Greenspaces Manager
Subject/Title: Wildlife and Countryside Act 1981 – Part III, Section 53
Application to Upgrade a Public Footpath between Knutsford Road, Chorley and Moor Lane, Wilmslow to Public Bridleway Status (Public Footpath Nos. 29, 15 (Part), 14, 10 (Part), 9 (Part), 27 Parish of Chorley And Footpath No. 40 (Clay Lane) Parish Of Wilmslow); and Application to Upgrade Public Footpath No. 42 (Filter Bed Lane) to Public Bridleway Status, Parish of Wilmslow

1.0 Report Summary

- 1.1 The report outlines the investigation of two applications, made by the Border Bridleways Association, to upgrade a number of Public Footpaths to Public Bridleway status in the Parish of Chorley and the Parish of Wilmslow. This includes a discussion of the consultations carried out in respect of the applications, the historical evidence, witness evidence and the legal tests for a Definitive Map Modification Order to be made. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to upgrade the footpaths.

2.0 Recommendations

- 2.1 An Order be made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by upgrading to Public Bridleway, the route as shown between points A-B-C-D-E-H-G on drawing number MO/001;
- 2.2 The application to modify the Definitive Map and Statement to record public bridleway rights between points H and F as illustrated on drawing number MO/001 be refused on the grounds that there is sufficient evidence to show that the landowner has rebutted the presumed dedication by indicating he had no intention to dedicate the way;
- 2.3 Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Act.
- 2.4 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 The evidence in support of this application must show, on the balance of probabilities that a reasonable allegation has been made that public bridleway rights subsist along the claimed routes. It is considered that there is sufficient user evidence to support the existence of public bridleway rights along the route A-B-C-D-E-H-G on drawing no. MO/001. On the balance of probabilities, the requirements of Section 53 (3)(c)(ii) have been met and it is recommended that the Definitive Map and Statement should be modified to upgrade the route from a Public Footpath to a Public Bridleway.
- 3.2 User evidence is considered under section 31(1) of the Highways Act 1980, public bridleway rights can come into existence by prescription unless there is evidence to the contrary. For the section of the claimed route between points H and F, as illustrated on drawing number MO/001, it is considered there is sufficient evidence to show that the landowner has rebutted the presumed dedication, by indicating he had no intention to dedicate the way as a bridleway. The requirements of Section 53 (3)(c)(ii) have therefore not been met and it is recommended that the application is refused for this section of the claimed route.

4.0 Wards Affected

- 4.1 Alderley.

5.0 Local Ward Members

- 5.1 Councillor Carolyn Andrew
Councillor Liz Gilliland
Councillor Frank Keegan.

**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 the Committee fails to make a decision as to whether there should be a modification order, the applicant may make representations to the Secretary of State for a direction that the application be determined within a specified period. If the Committee decides not to make an order, the applicant may appeal against the decision.
- 9.2 The legal implications are contained within the report.

10.0 Risk Management

- 10.1 Not applicable.

11.0 Background and Options

11.1 Introduction

- 11.1.1 An application was submitted in January 2008 (Application No.1) by The Border Bridleways Association, to modify the Definitive Map and Statement by upgrading a number of public footpaths to public bridleways. The public footpaths together make up a route from Knutsford Road to Moor Lane. Drawing No MO/001 shows the claimed route between points A-B-C-D-E-F (OS Grid References SJ 8185 7871 to SJ 8251 8020).
- 11.1.2 A further application was submitted in May 2008 (Application No.2) by The Border Bridleways Association to modify the Definitive Map and Statement by upgrading Public Footpath No. 42 in the Parish of Wilmslow. Known as 'Filter Bed Lane' this footpath runs between Upcast Lane and Clay Lane. Drawing No MO/001 shows the claimed route between points G-H (OS Grid References SJ 8307 7950 to SJ 8233 7996).
- 11.1.3 Both applications are based on user evidence, although historical evidence has also been considered. For application no.1 user evidence was received from 31 individuals; for application no.2, 23 individuals completed user evidence forms. Nineteen individuals had used both claimed routes and because of the close proximity of the routes it was decided to investigate both applications at the same time.

11.2 Description of the Claimed Routes

- 11.2.1 The claimed route of application no.1 begins at point A (on drawing no. MO/001) at the junction of Knutsford Road and Edge View Lane. The claimed route runs along Edge View Lane in a generally northerly direction to point B. Edge View Lane is unadopted, the surface is compacted stone. At point B the claimed route turns in a generally easterly direction to point C; the route then continues in a generally northerly direction to point D. The surface between point B and the junction with Gore Lane is metalled; then from this point to roughly half way between points C and D, next to Freya's Folly Stables, the surface is compacted stone. The section of footpath no. 14 from Freya's Folly

Stables to point D is much narrower than the rest of the route (approximately 1-1.5 metres), it is unsurfaced and there are a number of large trees in the centre of the path. Following many complaints about the surface of this section of the route, works to improve it have recently been completed; vegetation was cleared and it now has a compacted stone surface. This area from Freya's Folly to point D was originally open woodland and the footpath was unfenced. Sometime in the 1980's many trees were felled and the footpath was fenced off. At point D the claimed route joins the end of Clay Lane. The claimed route continues in a north easterly direction to The Yews at point E. This section has been improved by the landowners over the years and is currently a wide stone surface track with a ditch at the side. From point E the route continues in a north easterly direction to join Moor Lane at point F, Clay Lane is unadopted and this section also has a compacted stone surface. Near to point F, adjacent to Lea Farm Kennels (now known as Studholme Kennels) is a metal field gate with a kissing gate to the side (point G3 on drawing no. MO/001). This is currently the only gate on the claimed route; a gate has been in place at this location since approximately 1980. During the last few years there have also been gates at points G1 and G2, but these have now been removed.

- 11.2.2 The claimed route of application no.2 begins at point G (on drawing no. MO/001) on Upcast Lane. The claimed route follows the full length of Footpath No. 42 Wilmslow in a north westerly direction to join Clay Lane at point H. The claimed route is known as 'Filter Bed Lane', it is unadopted and the surface is compacted stone. There is a wooden field gate at point G (on drawing no. MO/001) this has generally been left open by the adjacent landowner Dr Thompson of Davenport House Farm.

11.3 *The Main Issues*

- 11.3.1 Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Cheshire East Borough Council shall keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events.

- 11.3.2 One such event (section 53(3)(c)(ii)) requiring modification of the map by the upgrading of a right of way, is the discovery of evidence by the Council which, when considered with all other relevant evidence available, shows:-

“that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;”

This is commonly demonstrated by user evidence. All the evidence must be evaluated and weighed and a conclusion reached whether, on the balance of probabilities, either the alleged rights subsist or are reasonably alleged to subsist. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.

- 11.3.3 Where the evidence in support of the application is user evidence, section 31(1) of the Highways Act 1980 applies, this states:-

“Where a way.....has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”

This requires that the public must have used the way without interruption and as of right; that is without force, secrecy or permission. Section 31(2) states that “the 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question”.

- 11.3.4 Use of the route by horse riders appears to have been brought into question for the first time in 2006. It was at this time a gate for stock control was authorised by the Council on the claimed route at point G1 (on drawing no. MO/001). The landowner of part of Clay Lane and adjacent fields, Joanna Hodgson, has stated that horse riders began to leave the gate open, so she put a lock on the gate preventing horse riders from using the route. This action has brought into question the right of horse riders to use the route. The gate adjacent to the kennels on Clay Lane has never been locked, as it is used for access to The Yews, it is therefore not classed as a challenge to horse riders. Therefore the relevant twenty year period to be considered for application no.1 is 1986 to 2006. For application no.2 there does not appear to have been a challenge to use on horseback therefore the period is calculated from the date of the application; therefore the twenty year period to be considered for application no.2 is 1988 to 2008.

- 11.3.5 In the case of *Godmanchester Town Council, R (on the application of) v Secretary of State for the Environment, Food and Rural Affairs (2007)*, the House of Lords considered the proviso in section 31(1) of the Highways Act 1980:

“...unless there is sufficient evidence that there was no intention during that period to dedicate it”.

The proviso means that presumed dedication of a way can be rebutted if there is sufficient evidence that there was no intention to dedicate the way, during the relevant twenty year period. What is regarded as ‘sufficient evidence’ will vary from case to case. The Lords addressed the issue of whether the “intention” in section 31(1) had to be communicated to those using the way, at the time of user, or whether an intention held by the landowner but not revealed to anybody could constitute “sufficient evidence”. The Lords also considered whether use of the phrase “during that period” in the proviso, meant during the whole of that period. The House of Lords held that a landowner had to communicate his intention to the public in some way to satisfy the requirement of the proviso. It was also held that the lack of intention to dedicate means “at some point during that period”, it does not have to be continuously demonstrated throughout the whole twenty year period.

11.4 Consultations

- 11.4.1 With regard to application no.1 consultation letters were sent to the Local Members; Chorley Parish Council (there is no parish council in Wilmslow); User Groups/Organisations; Utility Companies; all landowners/adjacent landowners and properties along the claimed route.
- 11.4.2 There has been no response from the Local Members or from Chorley Parish Council.
- 11.4.3 Responses were received from United Utilities, National Grid and BT all stating they have no objection to the application. A response was also received from Natural England stating they have no comment to make in relation to this application because they do not feel that the proposals are likely to significantly affect the natural environment.
- 11.4.4 Comments have been received from both the CTC Right to Ride representative and the Chairman of Cycle Wilmslow stating that they would support the application to upgrade the route to a bridleway.
- 11.4.5 A response has been received from the Peak and Northern Footpaths Society. With regard to Footpath No. 14 Chorley they state that the physical condition of the path would suggest that it is unlikely there has been any horse traffic along it. They comment on the poor surface and narrow width of the path and the fact there are mature trees down the middle of the path. With regard to Footpath No. 40 Wilmslow the response refers to a High Court injunction, this is discussed below at paragraph 11.7.12.
- 11.4.6 In a letter dated 14th October 2009 the Alderley Edge, Wilmslow and District Footpaths Preservation Society object to the application. They comment that any change in status to bridleway would be detrimental to the unique character of the area. They state they have a deep concern for the future enjoyment of local footpaths by all walkers. They note that the footpaths subject to this application are illegally used by horse riders and have been for many years; however they state this has not been without challenge and state members have on numerous occasions pointed out to horse riders that they are on a footpath, not a bridleway.
- 11.4.7 In a letter dated 22nd October 2009 The Ramblers Association East Cheshire Group have commented on the application. They state that most of the proposed route is on public footpaths along tracks that are wide enough for vehicular traffic; the exception is part of Footpath No. 14 Chorley. They state footpath 14 is unsurfaced between trees and vegetation and prone to being boggy due to the underlying peat. They state their main concern is that the surface and width of the whole route should be suitable for walkers, cyclists and horse riders. They also comment that the affected footpaths have been inspected on an annual basis since the mid 1980's; their records show the paths have been signed as footpaths both by yellow way markers and, where appropriate, by footpath finger posts. It is also stated that some

members have concerns about the possibility of conflict between different classes of users.

- 11.4.8 As stated in paragraph 11.3.2 above, issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.
- 11.4.9 With regard to application no.2 consultation letters were sent to the Local Members; User Groups/Organisations; Utility Companies; all known landowners/adjacent landowners along the claimed route. In addition notices have been placed at each end of the claimed route as the applicant was unable to identify the owner of 2 or 3 adjacent fields to the northern side of the route.
- 11.4.10 Responses to the consultation for application no.2 were received from United Utilities, National Grid and BT all stating they have no objection to the application. A response was also received from Natural England stating they have no comment to make in relation to this application because they do not feel that the proposals are likely to significantly affect the natural environment. The Peak and Northern Footpath Society has no objection to this application. The Mid Cheshire Footpath Society has responded to say they have no comment to make. There has been no response from the Local Members.
- 11.4.11 The representative for CTC Right to Ride has responded to say they fully support the application. The chairperson of Cycle Wilmslow has stated they support the expansion of safer routes for cycling, particularly those avoiding motor traffic. They state they support the application as conversion of Footpath no. 42 would create a useful link in the network as it ties in well with existing bridleways and restricted byways in the area. Emails have also been received from 10 individuals writing in support of the application.
- 11.4.12 In a letter dated 21st January 2010 the Alderley Edge, Wilmslow and District Footpaths Preservation Society object to the application. Their comments are the same as those referred to for application no.1 in paragraph 11.4.6 above.
- 11.4.13 In a letter dated 30th January 2010 The Ramblers Association East Cheshire Group have commented on the application. They state that the proposed route is on a public footpath along a track that is wide enough for vehicular traffic. They state their main concern is that the surface and width of the route should be suitable for walkers, cyclists and horse riders. They are particularly concerned that the northern end of footpath 42 is currently waterlogged; drainage and surfacing works are planned for this section of the path. They also comment that their records show the path has been signed as a footpath both by yellow way markers and, where appropriate, by footpath finger posts. It is also stated that some members have concerns about the possibility of conflict between different classes of users.

11.5 *Letters in Support of the Application*

11.5.1 In addition to the user evidence discussed below, a total of 23 letters have been received in support of application no.1. A list of the correspondence received can be found in **Appendix 1** with a brief description of the comments contained in each letter. The principle reason given by supporters in favour of the route being upgraded is that it provides a safe off-road route. As stated in paragraph 11.4.11 above, a total of 10 emails have been received from individuals writing in support of application no.2.

11.6 *Objections*

11.6.1 In addition to the objections received from landowners below, a further 6 objections to the application have also been received, these objections are in relation to application no.1. Details of these can be found at **Appendix 2**.

11.6.2 Mr Mellersh lives on Gore Lane, he does not own any affected land but lives close to the claimed route of application no.1. Mr Mellersh has submitted three letters with additional documents included. In the first letter dated 1st June 2008 he raises concerns for pedestrian safety particularly on the narrow section of footpath no. 14, between Freya's Folly Stables and Clay Lane. He states when he first came to live in Gore Lane in 1972 the footpath (between points C and D on Plan no. MO/001) was no more than 3 feet wide. He says it was widened 16 years ago when the Shire horse stables were established and the owner widened the footpath to allow access for his horse box. The footpath between Freya's Folly Stables and point D remains much as it has always been, although he states the passage of horses has increased dramatically. Also included is a copy of a letter to the applicant in which he again points out the narrow width of footpath no. 14 and the difficulties encountered when a horse meets pedestrians and/or their dogs. He states the potential for an accident is high. He has included photographs of the narrow section of footpath referred to and a chronology of recent challenges to horse riders dating from February 2008 to April 2008.

11.6.3 In the second letter dated 12th October 2009 Mr Mellersh states he strongly objects to the application; firstly from his experience of the route since 1972 he disputes the amount of use claimed by riders and states that the physical condition of the footpaths could not have allowed for the amount of use. Secondly he states that the bridleway rights claimed by riders do not subsist as there are only 4 unchallenged riders in the 20 year period prior to 2006. His third objection again relates to the conflict of use; he states that the increase in horse traffic would threaten the safe passage of the increasing number of walkers with children and dogs. Mr Mellersh then goes on to describe the condition of the footpaths in 1973 in particular the area between Freya's Folly Stables and point D (on Plan no. MO/001) is described as 'the bog' consisting of a mixture of dense oak/birch planting and soggy heath land, this stretched to the ditch to the north of footpath no. 10 (Clay Lane). Footpath no. 14 was unfenced and ill-defined. It is also described how the woods currently boarding footpath no. 10 extended to the ditch to the north of the path; this path was also narrow and muddy. A livery stable opened in

Edge View Lane in the mid 1990's and it is stated that horses were seen from that location in Gore Lane but not on footpath no. 14, probably due to the poor condition. Included with his letter Mr Mellersh has compiled a bar chart of the user evidence, this information is taken from the user evidence forms completed by persons claiming to have used the route on horseback and submitted with the application. He claims that the conditions he describes could not possibly have supported the amount of passage claimed for the year 1973 nor does it accord with his recollections. He suggests that 4 unchallenged riders over the twenty year period from 1986 to 2006 would not be sufficient to upgrade the route.

11.6.4 The third letter from Mr Mellersh dated 1st November 2009 makes comments on the statement made by Mrs Margaret Rainey. Mrs Rainey is one of the witnesses; she completed a user evidence form and was subsequently interviewed by Officers. After the interview witnesses sign a statement as a record of what was said at the interview. In his letter Mr Mellersh points out what he believes is an inconsistency between Mrs Rainey's evidence form and her statement. He also believes it is unlikely that she was not challenged at all during the period 1986-2006; when landowners Mr Morris and Mr Hall have written to say they have challenged riders (see their evidence below). In response Officers have said that all statements are taken at face value and it is suggested any further questioning of individual statements could be undertaken at a public inquiry.

11.6.5 The remaining 5 letters of objection are summarised in **Appendix 2**.

11.7 Evidence of Landowners/Occupiers

11.7.1 A total of 14 landowners/adjacent landowners have responded to the consultation regarding application no.1. Seven of the 14 have been interviewed by Officers; the remainder have submitted their comments in writing. Three of the seven landowners/adjacent landowners interviewed are in support of the application (Mr Karl Eckert, Mrs Gilks and Mr Eyres). One landowner, Mr Roy Hughes has written in support of the application, the remaining ten landowners object to the application.

11.7.2 Mr and Mrs Hodgson own part of footpath no.10 (Clay Lane) and adjacent land from which they run their business 'White Peak Alpacas'. In a letter dated 24th February 2008 they oppose the application to upgrade the route to bridleway status. They explain that when they purchased the land in 2002 footpath no.10 was "a single path of deep, mudfilled potholes, prone to flooding....overhung with Willow and Alder branches". Since then they have trimmed back trees; opened the ditches and removed silted-up pipes to drain the path; and laid stone along the whole track. They state this was done so they could access their land on the other side of the track with farm tractors and equipment, and move their alpacas to and from the same land; and at the same time make it a more pleasant walk for the many people who use it. In 2006 Cheshire County Council authorised a gate across the lane for the purpose of stock control, as Mr and Mrs Hodgson were grazing the alpacas off the sides of the track. The position of this gate is indicated by 'G1' on

drawing no. MO/001. Mr and Mrs Hodgson describe an incident where a horse rider left the gate open, they state since then they have locked the gate to prevent their animals from escaping.

- 11.7.3 Joanna Hodgson has also submitted a letter dated 13th October 2009. She states she is the oldest daughter of Mrs Eckert of 'The Yews' Clay Lane and lived at The Yews herself up to the age of 24. She describes how footpath 10 (between points D-E on drawing no. MO/001) was inaccessible in the winter months due to it being bog land and very overgrown. She states her mother has lived at The Yews for 69 years and describes in the early years how deliveries of coal were left at the top of the lane, next to Lea Farm, as the lane was unsuitable for vehicles. She states her father Josef Eckert, later placed cinders and stone on the lane to make a vehicular access for his haulage company. Now aged 59 years Mrs Hodgson explains how she regularly visited her parents; and since living next door she visits her mother daily, especially after her father died, in this time she says only an odd horse might ride past.
- 11.7.4 Mrs Hodgson states she is objecting to the upgrade of this route as footpath 10 passes through her open field which she uses for grazing; she states she has made footpath 10 accessible and maintains it to a high standard for herself and pedestrians who come and visit her animals. She claims that a bridleway would have safety implications for people visiting her Alpaca Farm which include groups of school children and cubs. Some of the groups have learning disabilities and she claims a bridleway would ruin the road surface stopping wheelchair and pushchair use of footpath 10. She also claims that an upgrade to bridleway would reduce the grazing area of her farm and affect her economically. Finally she states this track has never been a bridleway and those claiming it are admitting trespass on footpaths on private land.
- 11.7.5 Officers have also interviewed Joanna Hodgson; she states she has run her Alpaca Farm business from Cedar Lodge, Paddock Hill for the past 9 years. As a child she recalls very few horses using the lane as it used to be overgrown. She has challenged horse riders whenever she has seen them on the lane; although she could not recall any specific dates. She again describes how she locked the gate on footpath 10 preventing horse riders from using the route. She explained how the people at the kennels on Clay Lane have always stopped horse riders from using the lane. She says the gate next to the kennels went up in 1978 but they were stopping people before then.
- 11.7.6 Officers have spoken briefly to Mrs Irene Eckert (now 82 years old) of The Yews, Clay Lane; her husband Mr Joe Eckert has now passed away. She did not wish to make any comment on the application and did not wish to be interviewed. A letter dated 31st July 2009 has however been submitted from Mrs Eckert which simply states that she has lived at The Yews for 69 years and in that time the previous owners of Fiveacres, the Braka family, or the people before them, never accessed Clay Lane with either horses or vehicles from their field. She states this has only happened within the past eighteen months.

- 11.7.7 A letter dated 29th August 2009 has been received from Josef Anton Eckert; Joanna Hodgson's brother. He states he was born in 1952 and resided at The Yews up to the age of 22. He says in those 22 years the only people who used Clay Lane to his father's house were Jack Fisher, to gain access to his house, and Denver Morris, to gain access to his fields. These two people helped his father to maintain the lane to the house; and they were the only ones who had access to the lane. No vehicles ever gained access past Jack Fisher's house, as it was only a footpath.
- 11.7.8 Mr Michael Eckert (Joanna Hodgson's brother) has not submitted any evidence however, during a telephone conversation with Officers on 29th February 2008 he stated he now lives out of the area but has lived near to the claimed routes most of his life. He used to ride the lane and stated his father encouraged use of the lane and installed seats; although there were not many horse riders using it only occasional ones. He emphasised that he has no objection to the application but he does object to his sister's installation of a gate. He said his father took issue with a gate put up by Mr Morris at the Moor Lane end of the lane as it interfered with his father's private access. This led to a High Court case in 1983 and the gate was allowed to remain with conditions.
- 11.7.9 Officers have interviewed Mr Karl Eckert (also brother of Joanna Hodgson). Karl Eckert owns land adjacent to Clay Lane and Filter Bed Lane; he was born at The Yews and lived there until he was 21 years old. He visits his mother regularly and the adjacent land where he keeps horses, pigs and calves. Karl Eckert states he has always been happy for people to use the route as a bridleway. He says horses have always used this route and anyone who says otherwise is simply not telling the truth. He explained how years ago a Captain Unwin, who owned the cottages on Moor Lane, used to ride the route. His mother's sister recalls riding a horse with Captain Unwin along this route when she was a young girl. Karl Eckert explained that in 2008 he applied to the Council for a licence to hold a medieval event on his land. The Council received lots of objections from local residents and the licence was refused. He has submitted copies of over 200 objections to the medieval event, most of these objections refer to the access tracks to the site as 'bridleways and footpaths' and many state they are 'predominately used by walkers, horse riders and cyclists'.
- 11.7.10 In a letter dated 15th February 2008 Mr Morris of Lea Farm states he is opposed to the upgrading of footpath 40 to bridleway. He states "as a result of High Court action taken by myself in the 80's it is gated and subject to an injunction regarding usage". The Court Order seen by Officers does not make any reference to public use of the lane; the conditions regarding usage of the lane relate to the private access to the property known as 'The Yews' (point E on drawing no. MO/001). Mr Morris also refers to a bridleway constructed across Lindow Farm and states this makes any change to footpath 40 unnecessary. He claims to have been turning horses away and not allowing them to use the footpath as a bridleway for over 40 years.

- 11.7.11 In a further letter dated 15th September 2009 Mr Morris again registers his objection and states that he has never allowed it to be used as a bridleway. In the 1970's Mr Morris had a meeting with a Mr Porter from Cheshire County Council and he confirmed the status was designated for foot use only. So apart from permitting limited conditional access to The Yews, which is subject to a High Court injunction; that is how Mr Morris has tried to keep it. He does state he has had numerous confrontations with horse riders and cyclists claiming the right to ride over his land, but he has always turned them away.
- 11.7.12 Officers have interviewed Mr Morris; he states he has lived at Lea Farm since 1957. He claims he has always tried to challenge horse riders when he has seen them, especially since the meeting in the 1970's with Council Officers when it was confirmed to him the route was a footpath only. He explains in 1983 he was involved in a High Court case with Mr Joe Eckert regarding his access to The Yews. Mr Eckert had a lime spreading business and the Court limited the number of vehicles Mr Eckert could drive along the lane in any one day. The Court also entitled Mr Morris to keep a gate across the lane adjacent to his property. The gate has been there ever since; it is kept shut but not locked. Mr Morris has submitted a copy of the Court Order; it does not make any reference to the public's use of the lane. Mr Morris has also submitted two photographs; the first dated 1980 shows a gate post but no gate can be seen on the lane, there is a sign clearly visible on the photograph stating 'Lea Farm Private Land Designated Footpath Only'. The second photograph dated 1983 shows a metal field gate across the lane, a different sign can also be seen stating 'Lea Farm Private Land Footpath No 40'.
- 11.7.13 In a letter, received on 19th February 2008, Mr and Mrs Clayton of Studholme Kennels state they agree with Mr Morris (the property owner) in not wanting any alteration to the classification of Footpath 40. As with Mr Morris's letter referred to at 11.7.10 above, Mr and Mrs Clayton also mention the bridleway across Lindow Farm and state that this makes any change to footpath 40 unnecessary. They state they have been turning horses away and not allowing them to use the footpath as a bridleway for over 20 years. In a further letter dated 15th February 2008 Mr and Mrs Clayton confirm that they object to the application.
- 11.7.14 Mr Clayton has been interviewed by Officers; he has lived and worked at Studholme Kennels, Lea Farm since 1977 and took over the running of the kennels in 1990. He is opposed to the application and states he has never allowed Clay Lane to be used as a bridleway. He states even before the Court Order was made in the 1980's he was challenging everybody who attempted to use Clay Lane, he has stopped people coming from both directions and told them it is a footpath only. He says there have been too many incidents to say how often he has challenged people. He mentions various notices which he has put up on or near to the gate adjacent to the kennels. The notices said 'Private Land Footpath Only No Horse Riding', he says there was even one notice that had a map attached showing the area of land he owns and showing the lane as a footpath only. He states he has

never given permission for anyone to use the lane on horse back, not even his staff were allowed to use it.

- 11.7.15 Mr Ben Ferguson was also interviewed by Officers; he has worked at the kennels for the past 7 years. He has seen Mr and Mrs Clayton turning people away and was told if he saw anyone on horse back he should turn them away. He states he would see someone on horse back perhaps every couple of days in the summer then other times he may not see anyone for a few weeks or months. He said riders mostly came from the direction of The Yews, but he has also stopped people coming from the direction of Moor Lane. He also mentions putting up notices for Mr Clayton. In summer 2006 he recalled putting up about a dozen notices which were all later taken down. Mr Ferguson has also submitted a statement in which he describes an incident which occurred on 7th July 2009, where he was threatened by an intimidating man when he went to inform him he had no right of way on horse back along Clay Lane.
- 11.7.16 Mr and Mrs Clayton have also submitted a letter from Mr John Mulholland. He describes an incident on Easter 2007 when he was at Studholme Kennels fitting a new cattery block with Mr Clayton. He recalls hearing horses coming down the lane outside the kennels, Mr Clayton then went to tell them they were not allowed to ride down the lane as it was not a bridleway. He describes hearing raised voices; he believes the riders then went back up the lane. He describes how Mr Clayton told him he had on several occasions stopped riders using the lane; how some of his customers had been scared to get out of their cars and how in the past a horse had been spooked by people coming to leave or collect their dogs. He raises a safety concern due to the conflict of user if the lane were upgraded to bridleway.
- 11.7.17 Mr and Mrs Clayton have also submitted two further statements. One is from Anissa Jameson, who worked at the kennels; she states she repeatedly saw Mr Clayton and Mr Ferguson having to turn away horse riders, and she also turned them away. The second statement from Elizabeth Neild states she has kept livestock including horses on land at Lea Farm since 1980; and she has always understood Clay Lane to be a footpath only. She has never used this footpath in any other way except to gain access to Mr Morris's fields with his permission. She also states she has seen people trying to use the lane as a bridleway turned back. A further 6 people have signed a statement saying they have seen horses turned away or informed that they do not have access along the route of the proposed bridleway. In addition a copy of a petition, signed by 155 people, has been submitted to Officers stating they do not wish to have a bridleway running between Knutsford Road and Moor Lane. Finally Mr and Mrs Clayton have submitted comments on some of the individual user evidence forms; most of which state the individual has either not been seen riding on Clay Lane or has been stopped by them.
- 11.7.18 Mr K Hall of Heatherside, Gore Lane has written to object to application no.1. His property is near the crossroads of Edge View Lane and Gore Lane. In a letter dated 22nd February 2008 he opposes the application on the grounds that it is not suitable for horses; he refers to parts of the footpath being

overgrown and only 1 metre wide in places. He states the footpaths are clearly marked as such and have been for the past 40 years which he has lived at Heatherside; any horses using the footpaths must have known they were breaking the law. In a further letter dated 1st October 2009 Mr Hall states he has resided at Heatherside for 30 years, rather than the 40 years referred to in his previous letter. He claims to have repeatedly advised people on horses that they were on a footpath and not a bridleway.

- 11.7.19 Officers have interviewed Mr Hall over the telephone; he has lived at Heatherside since 1978. He claims to have always tried to stop people using the route on horse back; he could not recall any specific incidents but said horse riders have been challenged when he has seen them. He believes most of the people who have tried to use the route are associated with John Eyres and his livery and they have all been told it is a footpath only. He states there have been 'Footpath Only' signs on the route but they only last 24 hours and are taken down.
- 11.7.20 Mr and Mrs Gilks of Fiveacres, Paddock Hill own a small section of footpath no. 10 (Clay Lane) and also have property land adjacent to Clay Lane; they have no objections to the upgrading of the route. In a letter dated 25th April 2008 Mr and Mrs Gilks state it has never caused them any concern to have horses down the lane; they have never seen any travel faster than a walk or slow trot and the volume of riders is not cause for concern either. They state the lane is wide enough for vehicles and is used to access surrounding land. They also comment that the route would provide a safe alternative for equestrians from the busy Knutsford Road and would also link to other bridleways in the area.
- 11.7.21 Mrs Gilks has been interviewed by Officers and given evidence in support of the application. She claims to have used part of the route on horseback (application no.1) along Clay Lane, footpath 10 and footpath 14; and also the full length of Filter Bed Lane (application no.2). Her use dates from 2004, when she moved to Fiveacres until July 2009, on average she used the routes on horseback every other day. She was stopped from using the route any further south than Clay Lane when her neighbour Joanna Hodgson installed a gate on the route (marked 'G1' on drawing no. MO/001). She was not stopped from using the route from her property along Clay Lane towards Moor Lane, until November/December 2008 when Joanna Hodgson installed a second gate adjacent to The Yews (marked 'G2' on drawing no. MO/001). A dispute then arose between the neighbours and Mrs Hodgson began to challenge Mrs Gilks. Mrs Gilks states she has also been challenged by people at the kennels; and she is aware of them challenging horse riders coming from the direction of Moor Lane.
- 11.7.22 John Eyres lives at Prospect Place Cottages; these cottages back onto Edge View Lane and are therefore adjacent to the claimed route; he has access to his property along there. Mr Eyres has used the full length of both the claimed routes on horseback; he believes the routes to be public bridleways and has given evidence during an interview with Officers in support of the application. Mr Eyres has lived in the local area all his life, he says these

routes have been used by riders for many years; all the local riders used them to visit the smithy Arthur Burgess, it was also a route used to get to Wilmslow Riding School. He said originally all these lanes were used by horse and cart delivering bread from the bakery at Prospect House. He states he began riding between Edge View Lane and Moor Lane in 1948 when he was 12 years old. He used the routes on and off over the years until the locked gate was put up blocking the route (marked 'G1' on drawing no. MO/001). He has also used the route more recently, since the gate was removed, but has now sold his horse. On average he states he used the route twice a week. From the late 1970's or early 1980's he began to use Filter Bed Lane. He states a gate went up near to the kennels on Clay Lane and Mr Morris was known to stop horse riders, so he used Filter Bed Lane as an alternative route. He did occasionally still use Clay Lane as the gate by the kennels was never locked; he never saw Mr Morris so was never stopped. Mr Eyres claims Mr Hall of Heatherside never stopped him and he would see him ride past. He also said he used to speak to Joe Eckert at The Yews and he never had a problem with riders using the lane.

- 11.7.23 In a letter dated 11th October 2009 Mr Roy Hughes states he has occupied land at Woodmoss off Gore Lane since 1983. He states in all that time horses and cyclists have used the path that runs along one side of the land. (Footpath no. 14).

- 11.7.24 In a letter dated 8th September 2009 Mr and Mrs Pariser of Plum Tree Cottage, Gore Lane object to the application. They state they do not object to the immediate locals using Gore Lane with their own horses but they do object to it becoming part of an extended bridleway system. They state they have pointed out to several riders in the past that Gore Lane is a footpath only. It should be noted that Gore Lane is not part of the claimed route. They also make comments on the suitability of the route; particularly footpath 14 which they state is a small narrow footpath that in the winter can be impassable.

- 11.7.25 A letter dated 16th February 2008 was received from Mrs J Stain of 2 Prospect Cottages. She has no objection to Edge View Lane being upgraded to bridleway but states she would not approve of the path being upgraded to a Byway Open to all Traffic. However a later email from Mr R Stain dated 23rd September 2009, states he would prefer the route to remain as a footpath as some of the paths are too narrow for horses.

- 11.7.26 Letters dated 12th March 2008 and 18th September 2009 have been received from Mr and Mrs Hargreaves of Pear Tree Cottage, Gore Lane. They object to the application; their objection again relates to the area between Freya's Folly Stables (footpath 14) and the junction with footpath 10 (marked 'G1' on drawing no. MO/001). They state the path is used by dog walkers and people with children who would find it intimidating and possibly dangerous to meet horses with nowhere to pass; and they comment that this stretch of path is usually muddy and slippery. However, they do state that if the footpath were able to accommodate both riders and walkers, and were maintained, then they would probably have no objection to the upgrading. In a further letter

dated 12th October 2009 various questions are raised regarding the suitability of the path, the liability and the factors that are considered when determining the application; Officers have responded to their questions in a letter dated 14th October 2009.

- 11.7.27 Mr and Mrs Dahinten of 86 Knutsford Road own land that borders footpath no. 10; Mr Dahinten is a Parish Councillor but he emphasises that his comments are personal and not on behalf of Chorley Parish Council. In a letter dated 27th February 2008 they state they would not wish to see the footpath upgraded as parts of the path are narrow with a very soft surface; animals are grazed on the path to keep vegetation down; and the paths are regularly used by landowners, walkers, families with young children and elderly people. They believe the activities of legitimate users would be in danger if the status of the path changed. They state they have used these footpaths on a daily basis for approximately 30 years and when they have occasionally met horse riders on the footpath have always pointed out that the right of way is for pedestrians only.
- 11.7.28 In a further letter dated 13th October 2009 Mr and Mrs Dahinten again state that they challenged horse riders when they did occasionally see them on Clay Lane; they also comment that Mr Morris of Studholme Kennels always objected to horse riders using the route and he physically stopped them. They state the paths have always been clearly marked as footpaths. They describe the claimed route, and state that footpath 10 between The Yews and footpath 14, was a muddy track until it was stoned and drained by Mr and Mrs Hodgson. They claim the unsurfaced section of footpath 14 is unsuitable for horses as it is narrow with mature trees. Enclosed with the letter is a statement describing the claimed route. They state that the history of the track/footpath linking Clay Lane to Gore Lane and Edge View Lane illustrates that this has never been a through route other than as a footpath and occasional use for farm machinery.
- 11.7.29 Two letters have been received from the joint owners of Ivy Cottage, the derelict property next door to The Yews on Clay Lane. The owners, Mrs V Christensen and Mrs J Croxton, are sisters and currently reside in Australia, it is their intention to renovate and live in Ivy Cottage. The letters dated 16th and 17th September 2009 both object to the application and raise similar issues. They are concerned about the conflict of use between walkers and riders and suggest it would be dangerous should a horse be startled and kick out. They also suggest it would affect their privacy as riders would be in a position to see over the hedge into their garden. Further comments relate to the surface of the route and they state horse droppings would be unwelcome.
- 11.7.30 Five landowners/adjacent landowners have responded to the consultation regarding application no. 2 (Filter Bed Lane); the comments of Mr Karl Eckert have already been discussed at paragraph 11.7.9 above.
- 11.7.31 Dr Thompson of Davenport House Farm, Upcast Lane owns land adjacent to Filter Bed Lane (near to point G on drawing no. MO/001). Dr Thompson has been interviewed by Officers. He has lived here since 1992 and like other

adjacent landowners has a right of access along the lane. Dr Thompson has completed a land registry search which revealed the lane itself is unregistered. He is in favour of the lane becoming a bridleway but has concerns about unauthorised vehicles using the lane. He states he has seen people riding on Filter Bed Lane, mostly at weekends, more in the summer. He has never stopped anyone from riding on the lane. He commented that the surface of the lane has been improved since he has lived there but there have always been problems with the middle section being very wet. The gate at the start of the lane, adjacent to his property, has always been there.

11.7.32 In a letter dated 11th June 2008 Mrs G Hanna writes to object to the application. She and her sister jointly own fields adjacent to Filter Bed Lane. She states it has always been a well used footpath enjoyed by dog walkers, children and families and it would be dangerous to allow horses to use it.

11.7.33 In a letter dated 1st February 2010 Mr Morris of Lea Farm objects to any alteration being made to the classification of Footpath 42 which adjoins Footpath 40 on his land. Mr Clayton, occupier of Studholme Kennels Lea Farm, also objects to this application; in a letter dated 9th February 2010 he again mentions the high court action taken by Mr Morris (referred to in paragraph 11.7.10 above) and states he has been turning horses away for over 20 years.

11.8 *Investigation of the Application*

11.8.1 A detailed investigation of the evidence submitted with the application has been undertaken, together with additional research. The application was made on the basis of user evidence, from 31 witnesses (application no.1) and 23 witnesses (application no.2). 11 witnesses have been interviewed by Officers in person. In addition to the user evidence an investigation of the available historical documentation has been undertaken to establish whether the claimed routes have an earlier origin. The standard reference documents have been consulted in respect of both applications. There is no Enclosure Award for this area and there is no reference to the routes in the Quarter Sessions. Details of all the evidence taken into consideration can be found in **Appendix 3**.

11.9 *Documentary Evidence*

County Maps 18th-19th Century

11.9.1 These are small scale maps made by commercial map-makers, some of which are known to have been produced from original surveys and others are believed to be copies of earlier maps. All were essentially topographic maps portraying what the surveyors saw on the ground. They included features of interest, including roads and tracks. It is doubtful whether map-makers checked the status of routes, or had the same sense of status of routes that exist today. There are known errors on many map-makers' work and private estate roads and cul de sac paths are sometimes depicted as 'cross-roads'.

The maps do not provide conclusive evidence of public status, although they may provide supporting evidence of the existence of a route.

- 11.9.2 On Bryant's Map (1831) part of Edge View Lane is shown as a lane, indicated on the key as 'Lanes and Bridleways', the remainder of the route is not shown, the area is described as 'Lindow Common'. The claimed routes are not shown on the other county maps consulted.

Chorley, Great Warford and Pownall Fee Tithe Maps and Apportionment 1841/2

- 11.9.3 Tithe Awards were prepared under the Tithe Commutation Act 1836, which commuted the payment of a tax (tithe) in kind, to a monetary payment. The purpose of the award was to record productive land on which a tax could be levied. The Tithe Map and Award were independently produced by parishes and the quality of the maps is variable. It was not the purpose of the awards to record public highways. Although depiction of both private occupation and public roads, which often formed boundaries, is incidental, they may provide good supporting evidence of the existence of a route, especially since they were implemented as part of a statutory process. Non-depiction of a route is not evidence that it did not exist; merely that it did not affect the tithe charge. Colouring of a track may or may not be significant in determining status. In the absence of a key, explanation or other corroborative evidence the colouring is of little evidential value.
- 11.9.4 On the Great Warford Tithe Map Edge View Lane is shown as far as Edge View Farm, the route then turns in a westerly direction into a field. Edge View Lane does not have a plot number and does not appear on the Tithe Apportionment. This is good evidence of the existence of the route although the status is not clear. On the Chorley Tithe Map a plot is shown between The Yews and Edge View Farm; in the apportionment the owner is listed as 'Landowners of Chorley' and the plot name is 'waste'; this indicates the plot was considered to be in the ownership of all the landowners in the parish. On the Pownall Fee Tithe Map Clay Lane is not shown; the area is described as 'Lindow Common' and the owner as 'freeholders'. The northern section of the area of Filter Bed Lane as also described as 'Lindow Common; the middle section is described as 'waste or rough moss' and the owner is listed as John Burgess. The southern section has the same owner and is given the plot name 'intake'.

Ordnance Survey Maps

- 11.9.5 Ordnance Survey mapping was originally for military purposes to record all roads and tracks that could be used in times of war. This included both public and private routes. Until about 1880 all roads, paths and ways were coloured sienna. In 1884 an instruction to surveyors was that, "All metalled public roads for wheeled traffic kept in good repair by the highway authority will in future be shaded". The practice ceased in 1912. These maps are good evidence of the physical existence of routes, but not necessarily of status. Since 1889 the Ordnance Survey has included a disclaimer on all of

its maps to the effect that the depiction of a road or way is not evidence of the existence of a right of way. It can be presumed that this caveat applies to earlier maps also. These documents must therefore be read alongside the other evidence.

Ordnance Survey Map 1" to 1 mile 1833 First Edition

- 11.9.6 The 1" to 1 mile first edition dated 1833 shows Edge View Lane as an open-ended track from its junction with Knutsford Road to Edgeview Farm (points A-B on drawing no. MO/001). As with the Tithe Map a spur is shown for a short section from Edgeview Farm in a westerly direction, but there is no continuation of the claimed route for application no. 1 any further than Edgeview Farm. The first half of Filter Bed Lane, from Upcast Lane (point G on drawing no. MO/001) is shown as a single dotted line, which could indicate a route of some description.

Ordnance Survey 6" and 25" Maps 1872 First Edition, 1899 Second Edition and 1909 Third Edition

- 11.9.7 The 6" first and second editions and the 25" second edition were not available to view at the public record office. On the 25" first edition, surveyed in 1872 and 1876, the claimed route of application no. 1 is shown for the most part. From Knutsford Road (point A on drawing no. MO/001) the route is shown as an uncoloured lane drawn between solid physical boundaries, the lane comes to an end at the area of Freya's Folly Stables. No route is shown between here and point D (drawing no. MO/001). Clay Lane is also shown as an uncoloured lane between solid boundaries, this continues to a point just to the north east of point D; the lane then comes to an end and continues as a double pecked line to point D. Application no.2 Filter Bed Lane is also shown as an uncoloured lane between solid boundaries. The 25" third edition 1909 shows the claimed routes of both applications the same as the first edition, with the addition of a double pecked line annotated 'FP' between Freya's Folly and point D. One other alteration is that Clay Lane is now shown as a lane between solid boundaries as far as point D (drawing no. MO/001). All of the claimed routes are also shown coloured yellow on this edition. The 6" third edition 1911 shows the claimed routes the same as the 25" third edition but no colour is shown on this edition.

The Macclesfield, Knutsford and Warrington Railway Plan 1865

- 11.9.8 Railway Plans had to be produced and deposited prior to a railway company obtaining an Act of Parliament authorising the construction of their intended railway. The maps covered a corridor of land defining the limits of deviation either side of the line of the intended railway, with plot numbers for the land and public and private routes, which are referred to in a book of reference. They showed the status of routes bisected by the proposed line, the accuracy of which would have been in the interest of those affected. The plans were drawn to comply with parliamentary requirements. The Bill and plans were open to consultation and debate and as such, they carry strong

evidential weight. The Book of Reference for a railway which was proposed, but not actually built, can also provide cogent evidence for the existence of public rights over a way. This is based on the fact that the application was open for public scrutiny and objection.

- 11.9.9 The Macclesfield, Knutsford and Warrington Railway Plan of 1865 shows a proposed railway bisecting Edge View Lane; the line of the railway crosses just to the south of point B (on drawing no. MO/001). The book of reference refers to the lane as '*Public Road*' and the owner is listed as '*The Highway Board of the Prestbury Diversion of the Hundred of Macclesfield, John May, clerk*'. This is considered cogent evidence of public rights. The claimed routes between points B and C and also just to the north of point C (on drawing no. MO/001) are within the limit of deviation and are given plot numbers. They are referred to in the book of reference as 'Occupation Roads', in both cases there are named owners listed in addition to The Highways Board. This is also cogent evidence that public rights existed on this section of the claimed route. The area of application no. 2, Filter Bed Lane, is not covered by the railway plan.

The Finance Act 1910

- 11.9.10 The Finance Act of 1910 involved a national survey of land by the Inland Revenue so that an incremental value duty could be levied when ownership was transferred. Land was valued for each owner/occupier and this land was given a hereditament number. Landowners could claim tax relief where a highway crossed their land. Although the existence of a public right of way may be admitted it is not usually described or a route shown on the plan. This Act was repealed in 1920.
- 11.9.11 Two sets of plans were produced: the working plans for the original valuation and the record plans once the valuation was complete. Two sets of books were produced to accompany the maps; the field books, which record what the surveyor found at each property and the so-called 'Domesday Book', which was the complete register of properties and valuations.
- 11.9.12 The working sheets are completed on Ordnance Survey 1909 third edition base maps. The claimed route from point A (on drawing no. MO/001) to the area of Freya's Folly Stables is shown excluded from hereditaments. From Freya's Folly to point D, annotated 'FP' on the base map, it is included within plot number 749 but no deduction is made for public rights of way in the 'Domesday Book'. The area between points D and E (on drawing no. MO/001) is coloured yellow and believed to be included in plot number 710; for this plot a £5 deduction has been made in the Domesday Book for 'public rights of way or user'. Clay Lane from point E to point F (on drawing no. MO/001) is shown excluded from hereditaments. The claimed route of application no.2 (Filter Bed Lane) is also shown excluded from hereditaments.
- 11.9.13 The Finance Act plans were prepared according to a statutory process and are generally regarded as good evidence of public rights; although not

necessarily status in some circumstances. Planning Inspectorate Consistency Guidelines state that exclusion from hereditaments is generally considered as an indication of public rights higher than footpath. (Section 11 Planning Inspectorate Consistency Guidelines February 2009).

National Parks and Access to the Countryside Act 1949

11.9.14 The Definitive Map and Statement is based on surveys and plans carried out in the early 1950s by each parish in Cheshire of all the ways they considered to be public at that time. The Alderley Edge and Wilmslow Footpath Preservation Society also carried out their own survey at this time. The surveys were used as the basis for the Draft Definitive Map. The alleged bridleways, apart from Footpath No. 27 and 29 (Edge View Lane), were referred to as public footpaths by Chorley Parish Council in its survey dated 1951. Footpath 27 and Edge View Lane were not included by the Parish Council but were included on the map submitted by the Footpath Preservation Society; they were therefore subsequently included on the Draft Definitive Map, along with the other footpaths. In the schedule it is stated that part of Footpath 10 (between Footpath 9 and 14) has in the past been repaired by the owner/occupier. Footpaths 14 and 15 have been repaired in part by the Parish Council. There is also a note on the schedule for Footpath 14 stating, "Suggest Bridle Path at Parish Council Meeting"; this may have been noted by an Officer at the time.

11.9.15 Wilmslow Urban District Council referred to both Footpath 40 (Clay Lane) and Footpath 42 (Filter Bed Lane) in its survey submitted to the County Council, dated 1951. In the schedule accompanying the map Footpath 40 was referred to as a 'Farm Road' and Footpath 42 as a 'Driftway'. However, the Footpath Preservation Society refers to both footpaths 40 and 42 as bridle paths. All the claimed routes were subsequently shown on the draft and provisional definitive maps as public footpaths.

11.10 Witness Evidence

11.10.1 User evidence is submitted with the application on standard user evidence forms. A sample number of users are then interviewed by Officers to corroborate their evidence. The user evidence from the witnesses is summarised in **Appendices 4, 5, 6 and 7**. There are separate charts for the user evidence forms and for the interviews for both applications. A total of 11 witnesses were interviewed in person by Officers. The user evidence of two of these, Mr John Eyres and Mrs Heidi Gilks, may to some extent be construed as being private, rather than public user "as of right". However they are both only adjacent landowners to the claimed route and would not have had a private right over the full length of the claimed route. Mrs Gilks does now own a small section of Clay Lane but this has only been since July 2009. All of the user evidence is by people on horseback; a few witnesses also mention using the routes on a bicycle.

11.10.2 For application no.1 user evidence covers a cumulative period of over 62 years from 1945 to 2007. Although most of the user evidence submitted

relates to user from the 1960's onwards until 2006 when horse riders were prevented from using the route. Some users have continued to use the route after this date; they would either just use part of the route or they continued to use the route once the obstruction had been removed. From the user evidence statements submitted with the application, the frequency of use on horseback appears to be regular over this period. The majority of the use appears to be for recreational horse riding, hacking or exercising horses. Some users stated they used the route to visit the Blacksmith in Edge View Lane and some used it as a route to get to Wilmslow Riding School. One witness states the route was used by a horse and cart delivering bread from the bakery at Prospect House on Knutsford Road.

- 11.10.3 Of the 31 user forms submitted, 13 witnesses claim use on horseback in excess of twenty years. 18 persons state less than twenty years use. Cumulatively there are 12 examples of twenty years use during the relevant period 1986 to 2006.
- 11.10.4 A total of 11 witnesses have been interviewed; six witnesses stated use of the claimed route on horseback for a period of twenty years or more. Of these, three have use for the full twenty years covering the relevant period (Julie Browning, John Eyres and Margaret Rainey). A further two witnesses use cumulatively also covers the full twenty year period (Kerry Denham and Carol Redgrave). One further witness has used the route for 19 years during this period (Janet Stephenson).
- 11.10.5 Of the 11 witnesses interviewed seven state they have been challenged at Studholme Kennels, although the remaining four (Margaret Rainey, John Eyres, Carol Redgrave and Iris Browning) have not personally been challenged they were aware or had heard of others who have been challenged there. None of the witnesses mentioned being stopped by anyone other than either Mr Morris or Mr Clayton at Studholme Kennels; apart from Heidi Gilks who had been challenged by Joanna Hodgson but not until November/December 2008. One witness specifically mentions the landowner Ken Hall of Heatherside, who claims to have stopped horse riders, she states he saw her riding through and he never stopped her.
- 11.10.6 For application no.2 (Filter Bed Lane) user evidence covers a cumulative period of over 48 years from 1960 to 2008. Although most of the user evidence submitted relates to user from the 1970's onwards until 2008 when the application was made. Once again the majority of the use appears to be for recreational horse riding, hacking or exercising horses. During the interviews some users stated they began to use Filter Bed Lane as an alternative route because they had either been challenged themselves or were aware of people being challenged at Studholme Kennels.
- 11.10.7 Of the 23 user forms submitted, 9 witnesses claim use on horseback in excess of twenty years. 14 persons state less than twenty years use. Cumulatively there are 2 periods of twenty years use during the relevant period 1988 to 2008. However, some witnesses completed their forms in 2007 and have therefore stated their use up to this date; it may be that their

use continued into 2008. There is a further 3 cumulative periods of twenty years use up to 2007. In addition there is a further witness who has used this route for 18 years.

- 11.10.8 Of the 11 witnesses interviewed; one used the route on horseback for the full twenty years covering the relevant period (Margaret Rainey). A further two witnesses use cumulatively also covers the full twenty year period (John Eyres, Heidi Gilks). A further two (Julie Browning and Carol Redgrave) combined use covers 19 years. One further witness has used the route for 17 years during this period (Janet Stephenson).
- 11.10.9 None of the witnesses state they have been challenged when riding on Filter Bed Lane, many said they used it as an alternative to going past Studholme Kennels. None of the witnesses mentioned any gates or obstructions on Filter Bed Lane. Only a few mentioned notices for either route; one said 'Horses Slow', this was at the Moor Lane end of Clay Lane; one other witness said they had seen 'Footpath Only' signs but only more recently.

11.11 *Conclusion*

- 11.11.1 It would appear that at least part of the claimed route existed on what is now 'Edge View Lane' in 1831. The section A-B (on drawing no. MO/001) of the claimed route is first depicted on Bryant's County Map of that year. The Great Warford Tithe Map of 1842 shows Edge View Lane as an untithed track as far as Edge View Farm; and the 1" to 1 mile first edition Ordnance Survey Map dated 1833 shows this same section of Edge View Lane as an open ended track.
- 11.11.2 Most of the claimed route is not depicted until the 25" first edition Ordnance Survey Map 1872. This shows a large part of the claimed route of application no.1 and all of application no.2 as a lane between solid boundaries. Although the Ordnance Survey Maps are good evidence of the physical existence of the route, they do not denote its status.
- 11.11.3 The Macclesfield, Knutsford and Warrington Railway Plan of 1865 shows a proposed railway bisecting Edge View Lane. The book of reference refers to the lane as '*Public Road*' and the owner is listed as '*The Highway Board*'. The claimed route between points B and C and also just to the north of point C (on drawing no. MO/001) is within the limit of deviation and the Highway Board is also listed as an owner. This is considered cogent evidence of public rights.
- 11.11.4 The Finance Act working sheet shows part of the claimed route of application no.1 and all of Filter Bed Lane as excluded from hereditaments. This is good supporting evidence and suggests that this part was considered to carry public rights of some description at the time. The historical evidence in relation to the existence of public rights is considered good; however evidence to help determine the status of those rights is limited. Although the Railway Plan and the Finance Act documents would support the claim that public rights higher than footpath exist along part of the route.

- 11.11.5 The witness evidence submitted shows use of the claimed route of application no.1 (route A-B-C-D-E-F on drawing no. MO/001) on horseback between 1945 and 2007. Public access on horseback appears to have been brought into question by landowner Joanna Hodgson in 2006, when a gate across the route was locked. The relevant twenty year period to be considered is 1986 to 2006. A total of 11 witnesses have been interviewed; three witnesses have use for the full twenty years covering the relevant period (Julie Browning, John Eyres and Margaret Rainey). A further two witnesses use cumulatively also covers the full twenty year period (Kerry Denham and Carol Redgrave). One further witness has used the route for 19 years during this period (Janet Stephenson). However, of the 11 witnesses interviewed seven state they have been challenged at Studholme Kennels, and the remaining four were aware of others being stopped. The photographs referred to in paragraph 11.7.12 although dated outside of the relevant period; clearly show the landowners intention not to dedicate the route as a bridleway. None of the witnesses recall being challenged by anyone else.
- 11.11.6 For application no.2 Filter Bed Lane (route G-H on drawing no. MO/001) user evidence covers a cumulative period of over 48 years from 1960 to 2008. As there is no evidence of the route being brought into question, the relevant period is calculated from the date of the application; therefore the twenty year period to be considered is 1988 to 2008. The cumulative use of the route on horseback over this period is considered sufficient to show that public bridleway rights have come into existence by prescription. None of the witnesses state they have been challenged when riding on Filter Bed Lane, many said they used it as an alternative to going past Studholme Kennels.
- 11.11.7 Under section 31(1) of the Highways Act 1980 public bridleway rights can come into existence by prescription unless there is evidence to the contrary. Due to the challenges at Studholme Kennels, for this section of the claimed route it is considered there is sufficient evidence to show that the landowner has rebutted the presumed dedication, by indicating he had no intention to dedicate the way as a bridleway. However, as no witnesses claim to have been challenged anywhere else along either of the claimed routes, the user evidence for the remainder of the route is considered sufficient to show public bridleway rights. The documentary evidence discovered is considered as supporting evidence for the existence of public bridleway rights.
- 11.11.8 The evidence in support of this application must show, on the balance of probabilities that a reasonable allegation has been made that public bridleway rights subsist along the claimed routes. It is considered that there is sufficient user evidence to support the existence of public bridleway rights along the route A-B-C-D-E-H-G on drawing no. MO/001. On the balance of probabilities, the requirements of Section 53 (3)(c)(ii) have been met and it is recommended that the Definitive Map and Statement should be modified to upgrade the route from a Public Footpath to a Public Bridleway.

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:

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PROW Files: MA/5/239 and MA/5/241

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Appendix 1

Letters in support of the application

Name and address	Summary of main points raised
N Regan, 12 Sylvan Avenue, Wilmslow	Route is safe alternative to busy Knutsford Road and to blacksmith's on Edge View Lane. Mentions friend who was challenged/intimidated whilst riding along claimed route.
S Hall, 32 Newlands Drive, Wilmslow	Believed that the claimed route was a bridleway when purchased land in 1991. Has been riding it with partner ever since.
J L Eyres, 3 Prospect Cottages, Alderley Edge	Has personally ridden route for 57 years. Horses and ponies use route to come to blacksmith's on Edge View Lane. Other examples of use of route by equestrians given.
G L Grange, 17 Booth Road, Wilmslow	Used route to get to blacksmith's on Edge View Lane for many years, and as a regular hack.
Mr Bennett, 217a Moor Lane, Wilmslow	Mr Bennett is an adjacent landowner, believes route to be a bridleway originally and has no objection to it being bridleway status.
N Hampton-Bennett, 44 Mainwaring Drive, Wilmslow	Personal use of route on horseback over 30 years ago. Would enjoy using it again.
K Merrett, 8 Eden Close, Wilmslow	Rode claimed route as a child. Safe alternative to busy roads. Accompanied by young daughter on rides.
S Thornley, 25 Davenport Avenue, Wilmslow	Believes claimed route was bridleway in 1970s. Would enjoy using it again.
Joint letter from 5 horse owners at Longfield Livery Yard, Woodford	Rode claimed route in 1970s and would enjoy using it again.
C Horrox, 56 Legh Road, Sale	Has ridden claimed route since 1970s until 2007 (from Gore Lane end) and until mid 1980s (Clay Lane end). Mentions fact that challenged by owners of Studholme Kennels. Mentions gate erected by Joanna Hodgson. Roads too dangerous to ride as an alternative – puts young children at risk.
M J Rainey, Lingards Farm, Alderley Edge	Chorley parish does not have safe off-road bridleways. Claimed route would allow riders to access other bridleway networks. Road network is dangerous. Between 1984 and 1991, owners of horses stabled at her property rode the claimed route on weekly basis. Mr Eckert (landowner) always very friendly.
W Steen, 211 Moor Lane, Wilmslow	Has walked route for over 50 years and has almost always met a horse rider using the route too – can accommodate both comfortably. Should not force horse riders onto overcrowded highways.
J Grundy, 15 Abbey Lane, Poynton	Regularly rode claimed route in early 1980s.

	Stopped riding when came across locked gate in late 1980s. Would enjoy using it again as alternative to busy roads.
S Roberts, 21 Strawberry Lane, Wilmslow	Used claimed route since 1979 as way to get to blacksmith's on Edge View Lane and as a hack. Safe alternative to busy roads. Has been challenged by owners of Studholme Kennels.
D & E Morris, Warford Hall Farm, Great Warford	Claimed route would be welcome alternative to busy roads.
S Avery, 152 Wendover Road, Brooklands	Used claimed route with a friend and would enjoy using it again as an alternative to busy roads. Mentions challenges to use from adjacent owners. Always believed the route was a bridleway.
A Hill, 1 Moorway, Wilmslow	Would welcome the claimed route being 'converted back' to bridleway status.
N Lister, 2 Warford Terrace, Great Warford	Claimed route would be welcome alternative to busy local roads.
C Redgrave, Moor Lane, Wilmslow	Ridden claimed route over last 20 years or so, until prevented by gate (Joanna Hodgson's). The late Mr Eckert had no problem with horses using it. Would be a welcome alternative to busy roads.
C Heaney, 13 Holly Tree Drive, Knutsford	Claimed route would be welcome alternative to busy roads.
L Slack, 2 Welton Drive, Wilmslow	Ridden claimed route 1996-2003. Would enjoy using it again as alternative to busy, dangerous roads, would be used by many riders.
A Eden, 72 Chapel Lane, Wilmslow	Ridden claimed route regularly in late 1960s as did riders from Bridget Chadwick's riding school at Row of Trees (daily). Would be a welcome alternative to busy roads.
J B Clarke, Kenyon House Cottage, Knutsford	Was British Horse Society Road Safety Officer for several years for Cheshire – therefore supports the application as alternative to busy roads.

Appendix 2

Letters of objection to the application

Name and address	Summary of main points raised
F Hassid, 9 Burford Close, Wilmslow	Has walked claimed route once or twice a day for 25 years and has never seen a horse rider use it. Horses will churn up surface of path, and horse droppings would be very unwelcome. Would be dangerous for walkers, especially children – path is too narrow.
M Grey, Deepdale, Wilmslow	Has walked claimed route for 46 years and has enjoyed fact that has not had to deal with motor vehicles and horses. Has never come into contact with a horse on Clay Lane.
C Mellersh, 48 Blenheim Crescent, London	Grew up in The White House, Gore Lane and remains a frequent visitor – has very rarely seen a horse being ridden on the footpath network. Horses and pedestrians do not mix on safety grounds. Horse riders are in the minority of path users and should not be allowed to undermine safety and wellbeing of walkers.
Major and Mrs Abbott, Gilgo Cottage, Gore Lane	Opposed to Gore Lane being a bridleway. Unmade up tracks would become impassable. Walkers would not be able to enjoy the footpaths if horses churned them up and blocked the route.
Mrs V Brindle, Croft Cottage, Beswicks Lane	Strongly disagrees with this application. Would be dangerous for both walkers and those on horseback as horses are unpredictable in confined spaces, which part of the footpath is. The footpath can be muddy and water logged, horses would make it worse.
Mr and Mrs Mellersh, The White House, Gore Lane	See paragraphs 11.6.2, 11.6.3 and 11.6.4 of the report.

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Documentary Evidence

Glossary of terms

PROW Unit = Public Rights of Way unit

CRO = Cheshire Record Office

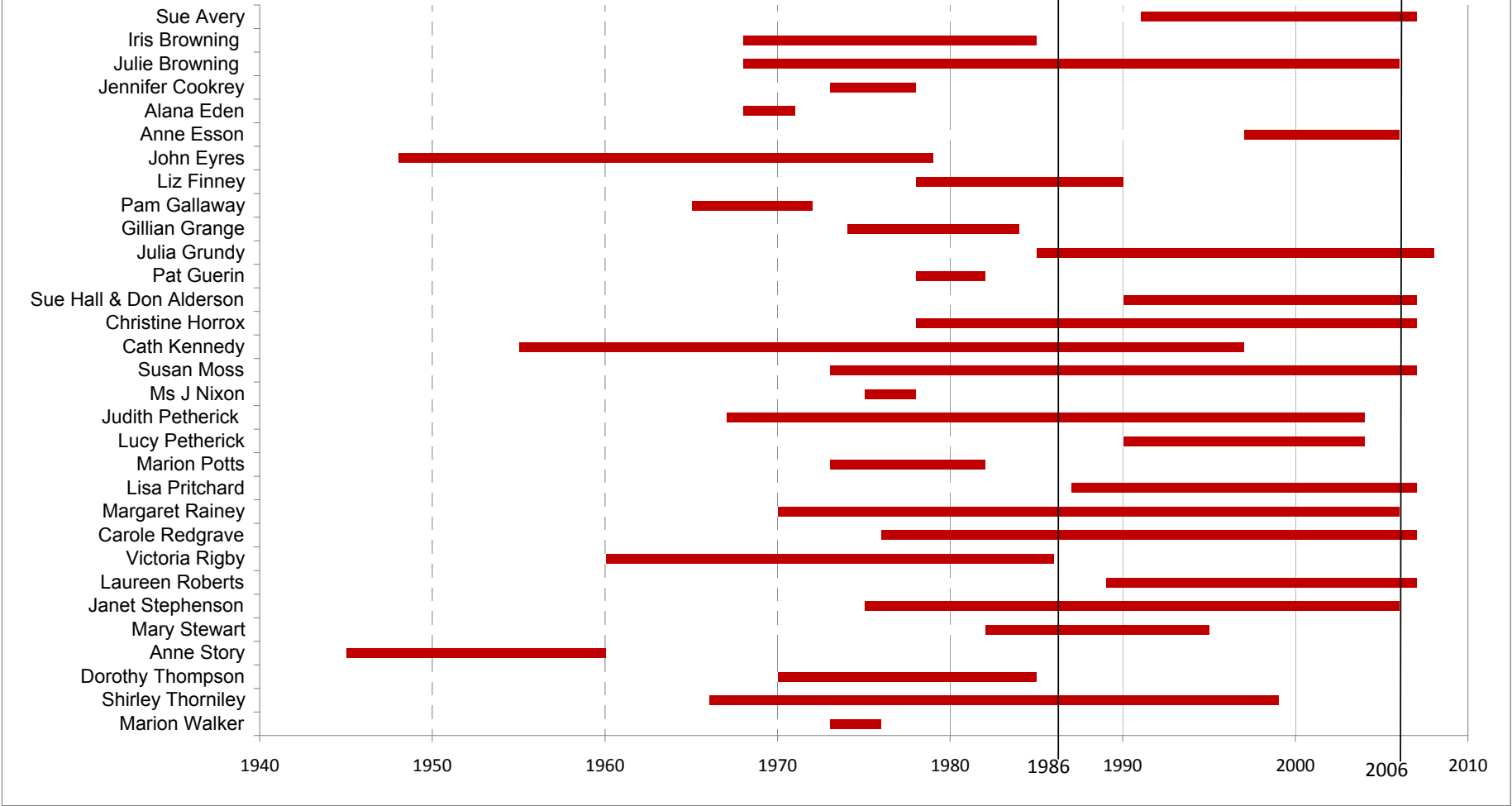
TNA = The National Archives, Kew

Primary Sources	Date	Site shown/ mentioned	Reference Number
County Maps			
Burdett PP	1777	No	CRO PM12/16
Smith C	1801	No	CRO PM 13/1
Greenwood C	1819	No	CRO PM13/10
Cary J	1823	No	CRO PM 4/15
Swire & Hutchings	1830	No	CRO PM13/8
Bryant A	1831	Part	CRO M5.2
Tithe Records			
Chorley Tithe Map	1841	Part	CRO EDT/103/2
Chorley Tithe Apportionment	1841	Part	CRO EDT/103/1
Great Warford Tithe Map	1842	Part	CRO EDT/179/2
Great Warford Tithe Apportionment	1842	Part	CRO EDT/179/1
Pownall Fee Tithe Map	1841	Part	CRO EDT 331/2
Pownall Fee Tithe Apportionment	1841	Part	CRO EDT 331/1
Ordnance Survey Maps			
1":1 Mile 1 st Edition	1833	Part	CRO OS 1":1 mile 1 st Ed
25" 1 st Edition Surveyed 1872 and 1876.	1872	Part	CRO OS 25" 1 st Ed 27/12 Sheet 27/8 unavailable
25" 2 nd Edition	1899		CRO OS 25" 2 nd Ed Sheet 27/12 and 27/8 unavailable

25" 3 rd Edition Surveyed 1871-5 Printed 1909	1909	Yes	CRO OS 25" 3 rd Ed 27/12
6" 1 st Edition	1882		CRO OS 6" 1 st Ed Sheet 27SE unavailable
6" 2 nd Edition	1899		CRO OS 6" 2 nd Ed Sheet 27SE unavailable
6" 3 rd Edition	1913	Yes	CRO OS 6" 3 rd Ed 27SE
Ordnance Survey Book of Reference			CRO Search room unavailable
Finance Act			
Working Sheet	1909	Yes	CRO NVB/27/12 and 27/8
Domesday Book	1910	Part	CRO NVA 4/2
Quarter Sessions			
Index	1782- 1967	No	CRO QAR 107-109
Railway Plans			
The Macclesfield, Knutsford and Warrington Railway	1865	Part	CRO QDP/445
Estate Papers			
Estate Map Property of Sr. John Thomas Stanley Bart	1787	No	CRO P143/14/1
Estate Map of lands belonging to John Trafford Esq.	1771	No	CRO DDT 1405/6/1
Local Authority Records			
Walking Survey	1951	Yes	PROW Unit
Draft Map	1955	Yes	PROW Unit
Provisional Map	1964	Yes	PROW Unit
Definitive Map	1966	Yes	PROW Unit

User Evidence Chart Application No.1 - Evidence forms

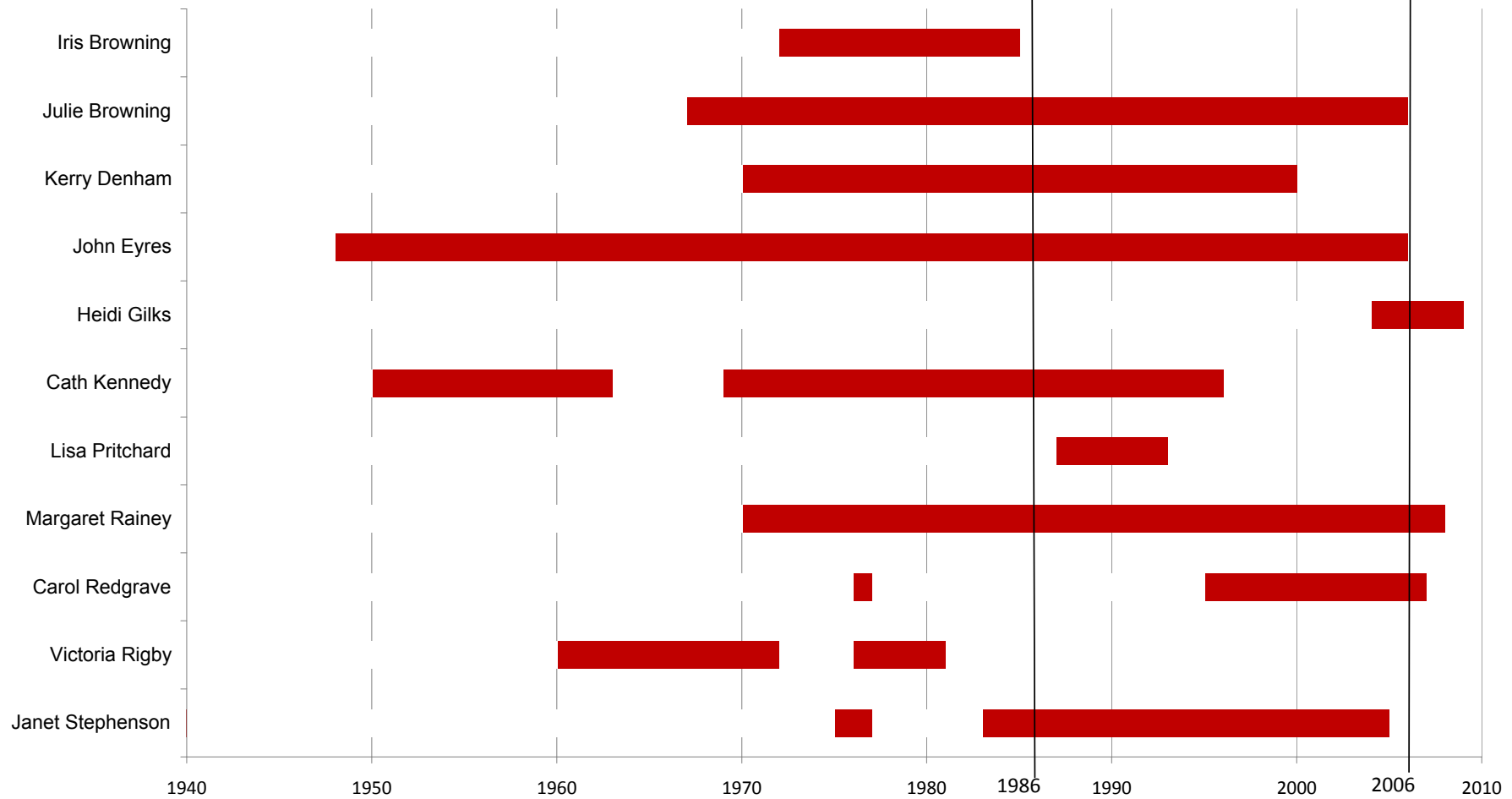
Appendix 4



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User Evidence Chart Application No. 1 - Interviews

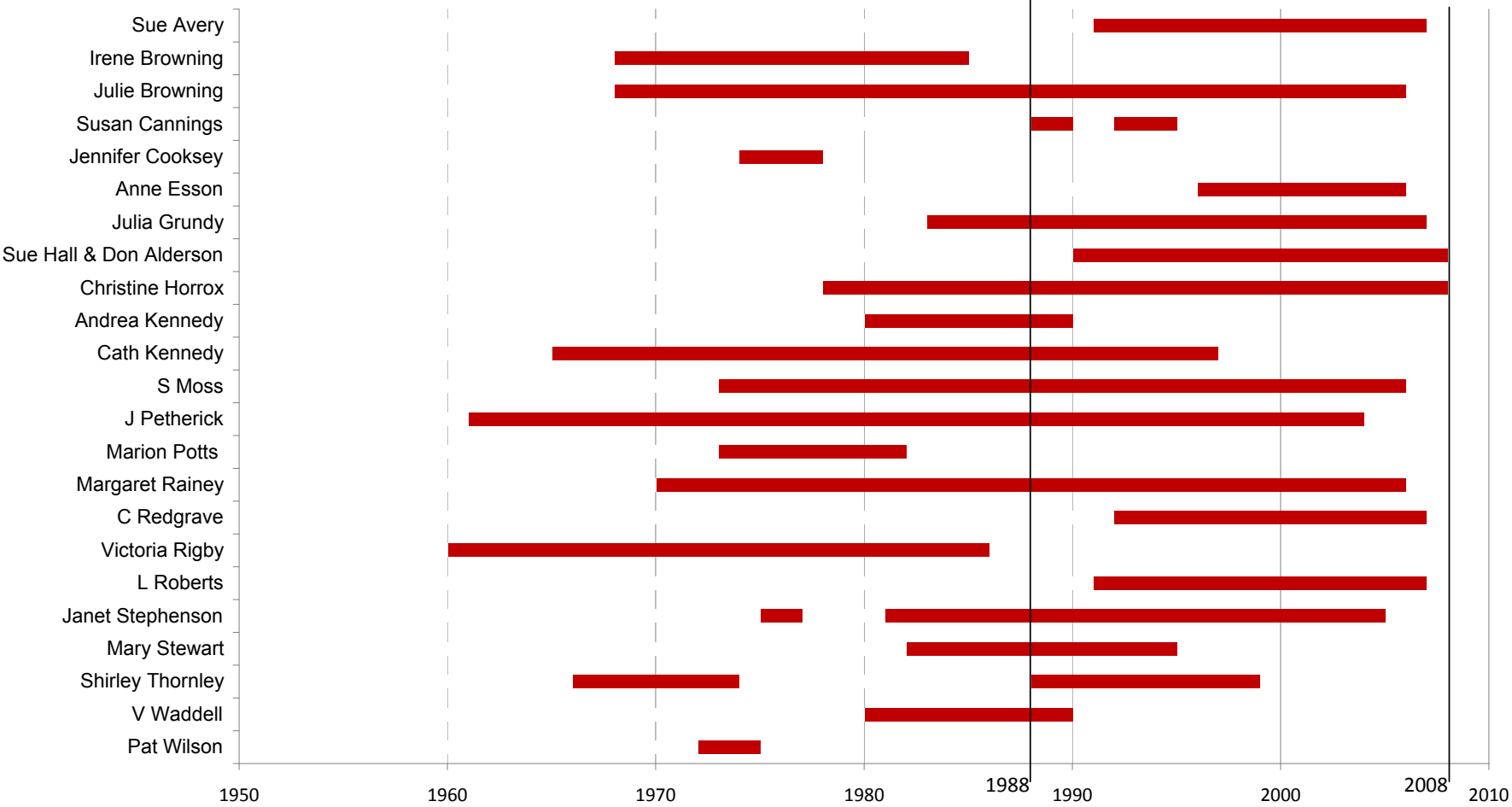
Appendix 5



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User Evidence Chart Application No.2 - Evidence Forms

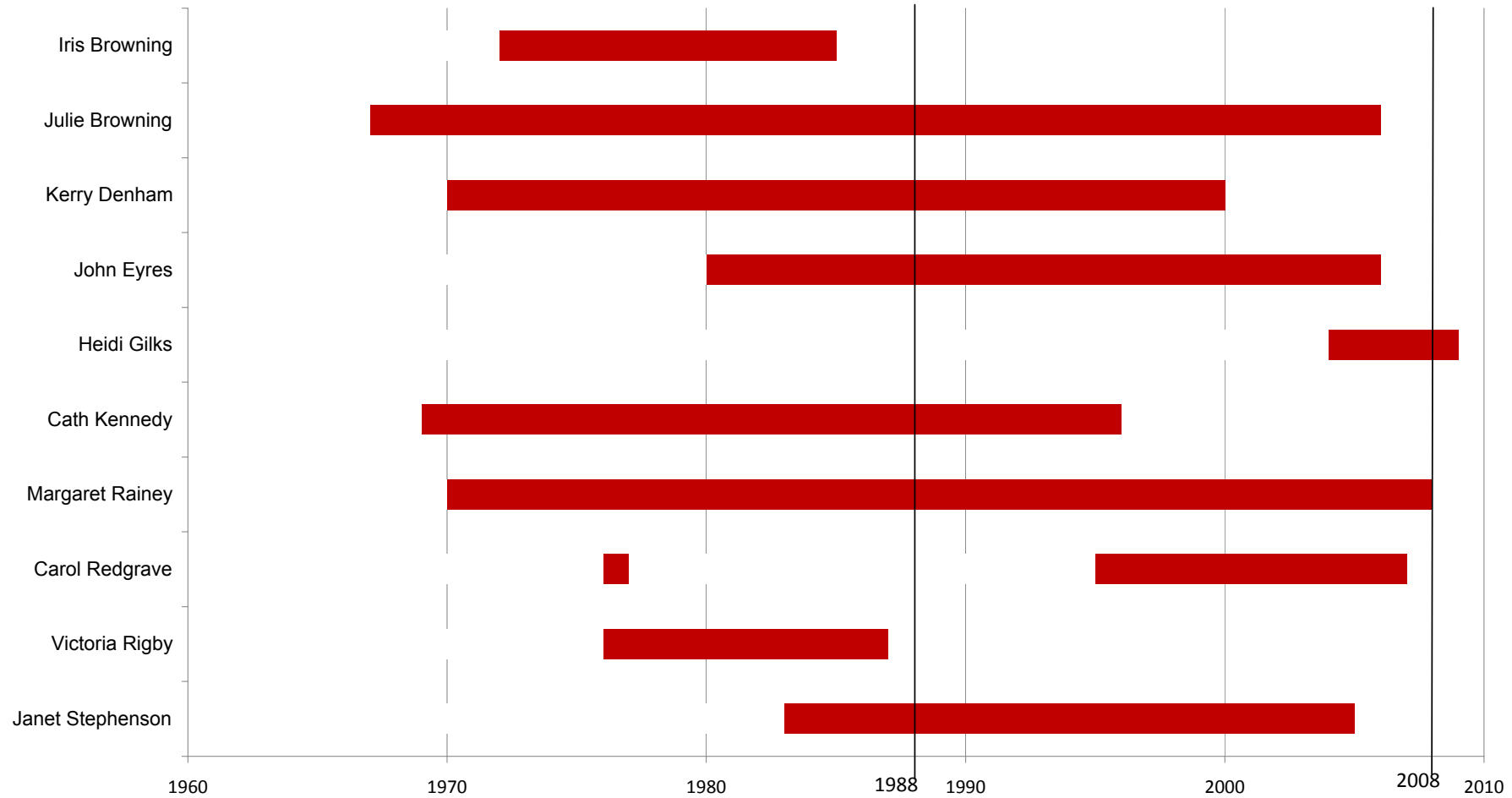
Appendix 6



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User Evidence Chart Application No. 2 - Interviews

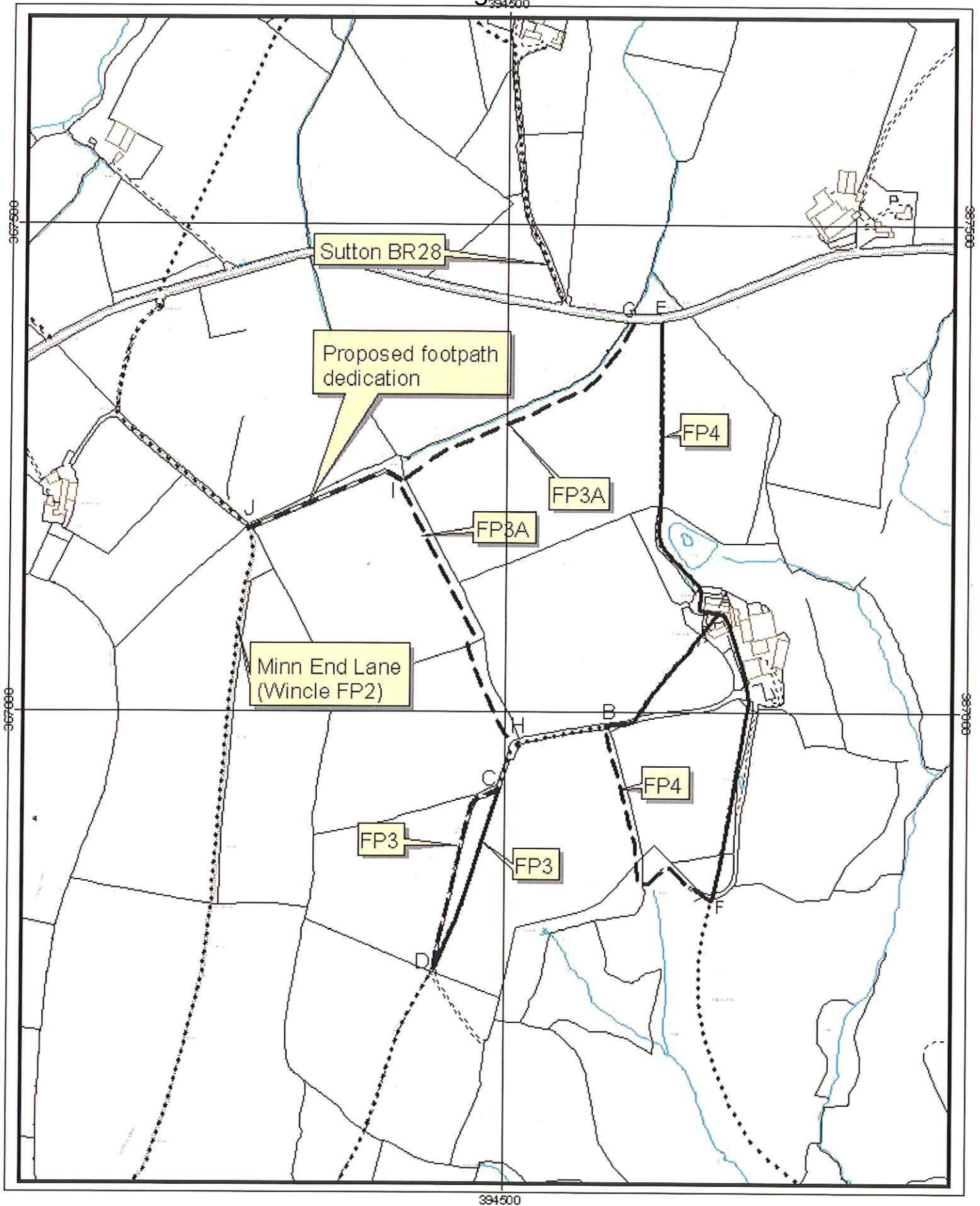
Appendix 7



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Highways Act 1980 – Section 119 and Section 25

Application for the Diversion of Public
Footpaths No. 3 and No. 4 (Parts) Parish of Wincle and
Creation of Public Footpath No. 41 Parish of Wincle



KEY Proposed Diversion Right of Way to be stopped up Other Rights of Way

Plan No. HA/013



Proposed Diversion of Public Footpaths Wincle No's 3 and 4 (Parts)

Scale
1:5000

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CHESHIRE EAST COUNCIL

REPORT TO: RIGHTS OF WAY COMMITTEE

Date of meeting: 1 March 2010
Report of: Greenspaces Manager
Subject/Title: Highways Act 1980 – Section 119 and Section 25
Application for the Diversion of Public
Footpaths No. 3 and No. 4 (Parts) Parish of Wincle
and Creation of Public Footpath No. 41 Parish of
Wincle

1.0 Report Summary

- 1.1 The report outlines the investigation of an application to divert part of Public Footpaths No. 3 and No. 4 in the Parish of Wincle. 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 Footpaths No. 3 and No. 4 Wincle as illustrated on Plan No. HA/013 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 A creation agreement be entered into with the applicant under Section 25 of the Highways Act 1980 to create a new public footpath (No. 41) as illustrated on Plan No. HA/013 between points I–J.
- 2.3 Public Notice of the making of the Order be given and in the event of there being no objections to the Order within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts. There is no statutory objection process for the creation agreement.
- 2.4 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 and the proposed dedication of a footpath will offer advantages to users, providing a very useful link to Minn End Lane (Winkle FP2). The new routes are not 'substantially less convenient' than the existing routes and diverting the footpaths will be of huge benefit to the landowners, particularly in terms of security and privacy and also 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.

3.5 Under section 25 of the Highways Act 1980 a local authority may enter into an agreement with any person having the capacity to dedicate a public footpath or bridleway.

- 3.6 It is considered expedient to enter into such an agreement with the applicant to create the desirable link I-J on plan No. HA/013. The new footpath would be "Public Footpath No. 41 in the Parish of Wincle".

4.0 Wards Affected

- 4.1 Macclesfield Forest

5.0 Local Ward Members

- 5.1 Councillor Marc Asquith
Councillor Hilda Gaddum
Councillor Lesley Smetham

**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 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, which 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.

10.0 Risk Management

- 10.1 Not applicable.

11.0 Background and Options

- 11.1 An application has been received from Mr Simon Holding of Buttlerlands Farm, Wincle, Macclesfield, SK11 0QL ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpaths No. 3 and No. 4 in the Parish of Wincle.

- 11.2 Public Footpath No. 3 Wincle commences at its junction with Public Footpath No. 4 Wincle at Butterlands Farm, at O.S. grid reference SJ 9471 6710 and runs in a generally south westerly direction to join Public Footpath Wincle No. 2 (Minn End Lane) at O.S. grid reference SJ 9406 6635. The sections of path to be diverted are shown by a solid black line on Plan No. HA/013 running between points A-B and C-D. The proposed diversions are illustrated with black dashed lines on the same plan, running between points G-H and C-D.
- 11.3 Public Footpath No. 4 Wincle commences at its junction with Buxton Road (A54) at O.S. grid reference SJ 9465 6739 and runs in a generally southerly direction to join Public Footpath Wincle No. 8 at O.S. grid reference SJ 9491 6626. The section of path to be diverted is shown by a solid black line on Plan No. HA/013 running between points E-F. The proposed diversion is illustrated with a black dashed line on the same plan, running between points B-F.
- 11.4 The Applicant owns the land over which the current paths and the proposed alternative routes 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 applicant to make an order diverting the footpaths.
- 11.5 The first section of the current line of Public Footpath No. 3 Wincle to be diverted (A-B) runs in a south westerly direction immediately past the applicant's back door and kitchen windows, which creates a significant loss of privacy and can cause security issues for the applicant. The second section of Footpath No. 3 to be diverted (C-D) cuts across the corner of a field, this is undesirable in terms of farm management.
- 11.6 Part of the proposed route for Public Footpath No. 3 Wincle would become Public Footpath No. 3A Wincle (G-H). This would begin at Buxton Road (A54) and run in a south westerly and then south south easterly direction across fields and along the field boundaries, to rejoin Public Footpath No. 3 Wincle. This would move the beginning of the route (G) closer to Public Bridleway Sutton No. 28. Moving this section of the footpath would allow the applicant to improve the privacy and security of his property considerably.
- 11.7 The second section of the proposed route for Public Footpath No. 3 Wincle (C-D) would run in a west south westerly and then south westerly direction, along a farm track. This provides an improved surface for walkers and will be of benefit to the applicant in terms of farm management.
- 11.8 The current line of Public Footpath No. 4 Wincle (E-F) runs in a southerly direction along the driveway to the applicant's home and then through a very busy working farmyard which is used by heavy farm machinery, tractors and livestock. This too creates privacy and security

issues for the applicant and the various plant and machinery operated in and around the farm buildings can be hazardous for walkers

- 11.9 The proposed route for Public Footpath No. 4 Wincle (B-F) begins approximately 166 metres south west of the farm on Public Footpath No. 3 Wincle and runs in a southerly then south easterly direction to rejoin the existing line of Footpath No. 4. Part of the route is along an existing track, providing an improved surface for users. It also offers improved views of the valley. Diverting Public Footpath No. 4 Wincle would allow the applicant to significantly improve the privacy and security of his property, improve farm management and provide a safety benefit to users.
- 11.10 If a diversion order for footpath Nos. 3 and 4 is confirmed, the applicant has agreed to dedicate an additional footpath on his land (I-J). This would run in a south westerly direction, linking Footpath No. 3A Wincle and Public Footpath No. 2 Wincle (Minn End Lane). This would provide an extremely useful link for walkers wishing to access Minn End Lane.
- 11.11 The local Councillors have been consulted about the proposal, no objections have been received.
- 11.12 Wincle Parish Council have been consulted and have responded to state that they have no objection to the proposal.
- 11.13 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.
- 11.14 The user groups have been consulted. The Peak and Northern Footpaths Society have responded to state that they have no objection the proposals.
- 11.15 Following a site meeting, the Ramblers Association have responded to state that they believe that the proposals are acceptable provided; 1. The proposed dedication of the link to Minn End Lane is completed concurrently; 2. The path across the two northern fields (between points I-H on Plan No. HA/013) is improved such that it can be walked in all seasons by 'stoning or similar; 3. The new routes are signed and waymarked satisfactorily.

1. The applicant has confirmed in writing that if a diversion order for Public Footpath Nos. 3 and 4 Wincle is confirmed, he will dedicate the route as shown on Plan No. HA/013 as a Public Footpath and this report seeks approval to enter into a creation agreement with the applicant for this purpose; 2. the Cheshire East Borough Council would not issue the Article 2 'certificate of satisfaction' or confirm the Order until works have been carried out on the new routes, including

the surfacing, to bring them up to an acceptable and suitable standard;
3. The new routes will be signed and waymarked appropriately.

11.16 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.

11.17 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

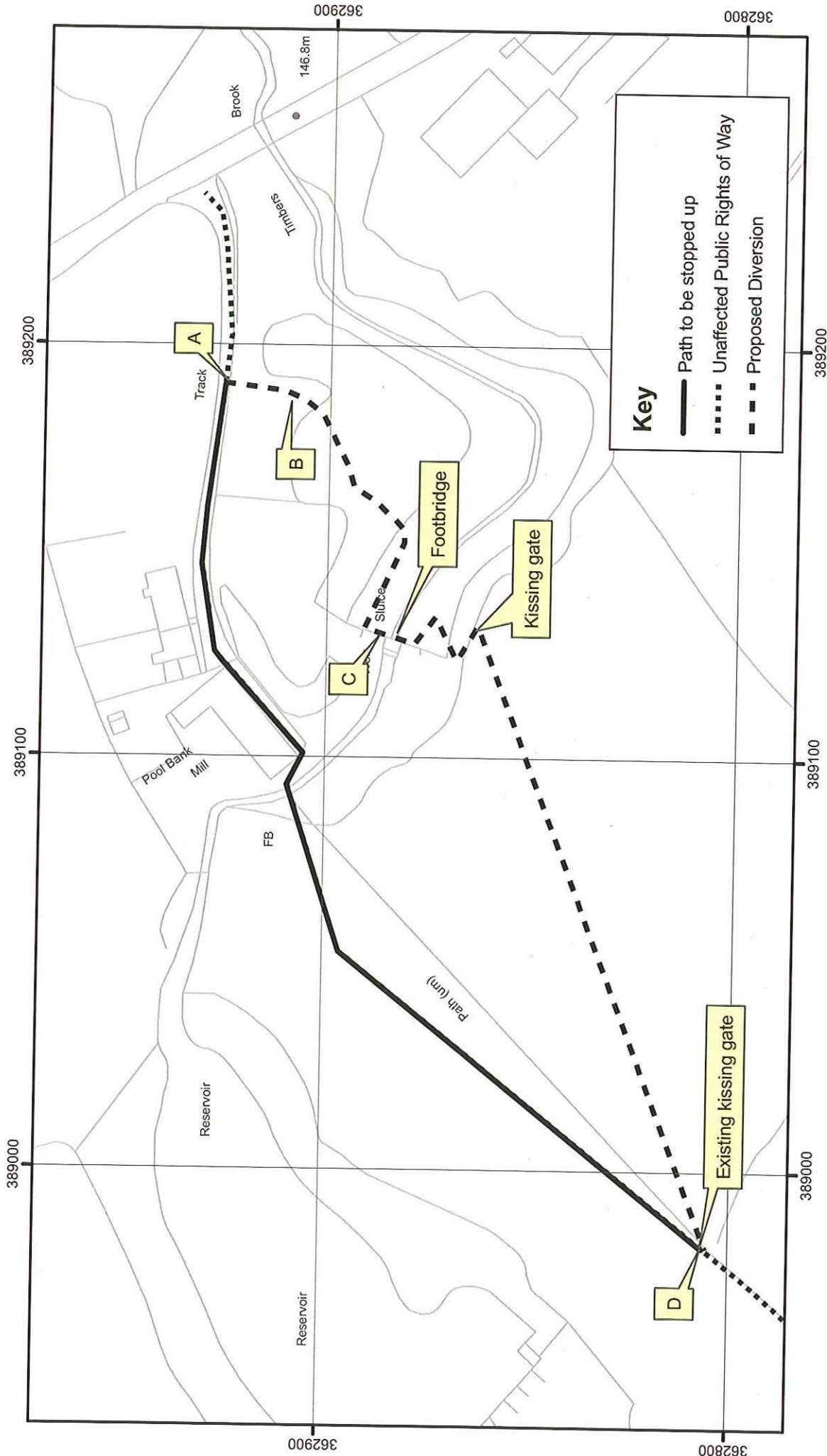
Tel No: 01606 271809

Email: hannah.flannery@cheshireeast.gov.uk

PROW File: 320D/395

Highways Act 1980 – Section 119

Application for the Diversion of Public
Footpath No. 46 (Part) Parish of
Congleton



CHESHIRE EAST COUNCIL

REPORT TO: RIGHTS OF WAY COMMITTEE

Date of meeting: 1 March 2010
Report of: Greenspaces Manager
Subject/Title: Highways Act 1980 – Section 119
Application for the Diversion of Public
Footpath No. 46 (Part) Parish of
Congleton

1.0 Report Summary

- 1.1 The report outlines the investigation of an application to divert part of Public Footpath No. 46 in the Parish of Congleton. 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. 46 Congleton as illustrated on Plan No. HA/014 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 landowners. Moving the footpath away from the applicant's and adjacent landowners properties will allow them to improve their privacy and security considerably. The section of the diversion in the field (between the two kissing gates) is also in the interests of the landowner, moving the footpath will improve the security of his land around the reservoir. It will also provide an improved surface for users. 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 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, which 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.

10.0 Risk Management

10.1 Not applicable.

11.0 Background and Options

11.1 An application has been received from Mr James Morton of Pool Bank Mill, Weathercock Lane, Timbersbrook, Congleton, CW12 3PS ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 46 in the Parish of Congleton.

11.2 Public Footpath No. 46 Congleton commences on Weathercock Lane at OS grid reference SJ 8923 6292 and runs in a generally south westerly direction to Brookhouse Lane at OS grid reference SJ 8868 6236. The section of path to be diverted is shown by a solid black line on Plan No. HA/014 running between points A-D. The proposed diversion is illustrated with a black dashed line on the same plan, again running between points A-B-C-D.

11.3 The applicant owns part of the land over which the current route and proposed route run. He is in the process of purchasing the land in front of Pool Bank Mill from Messrs P and B Dean (the adjacent landowners) to construct a new driveway for access to his property. They have provided written consent and support for the proposal. Mr G Robinson owns the field to the south west of Timbers Brook over which part of

the current path lies and the proposed diversion would lie. He has also provided written consent and support for the proposal. 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 or landowners to make an order diverting the footpath.

- 11.4 Public Footpath Congleton No. 46 forms part of a promoted route, the Gritstone Trail, and is a well used route. The existing line of the footpath runs directly in front of the applicants' home and immediately past the windows of the property. It also runs in very close proximity to the two adjacent landowners properties, Pool Bank Cottage and Pool Bank House. The section of the footpath to be diverted on the south western side of Timbers Brook runs across a field owned by Mr G Robinson.
- 11.5 The proposed route would run along a new driveway that the applicant is building for access to his property. It would leave the existing driveway approximately 50 metres west of Weathercock lane, running in a south westerly direction to Timbers Brook. This section of the footpath will have a stoned surface and be enclosed by post and rail fencing on both sides of the route. The width will be 5 metres between points A-B and 3.5 metres between points B-C, as indicated on Plan No. HA/014. It would then pass through a pleasant wooded valley and over Timbers Brook, providing further, improved views of Timbers Brook. The width of the short section of the footpath through the valley would be 1-1.2 metres with a 1 metre wide footbridge over Timbers Brook. Moving this section of the footpath would allow the applicant and two adjacent landowners to significantly improve the privacy and security of their properties.
- 11.6 The proposed route then crosses the adjacent landowners' field, Mr G Robinson. This section of the diversion is also in the interests of the landowner, moving the footpath south of the current line of the route would take users away from the reservoir area where Mr Robinson has encountered problems with people damaging fencing as they attempt to enter this area. It would provide an improved surface for users as the land over which the proposed route would run in this field is much dryer and less boggy than where the current route runs. The width for this section of the proposal would be 2 metres.
- 11.7 The local Councillors have been consulted about the proposal. No response has been received.
- 11.8 Congleton Town Council have been consulted about the proposal. No response has been received.
- 11.9 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.

- 11.10 The user groups have been consulted. The Peak and Northern Footpaths Society have responded to state that they have no objection to the proposal.
- 11.11 The Ramblers Association initially objected to the proposal as they believed that the width of the section of the proposed route across Mr Robinsons field would be 1 metre. However, they have been assured that this section of the route would be 2 metres and have now withdrawn their objection.
- 11.12 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 11.13 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
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PROW File: 090D/396

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