

Public Rights of Way Committee

Agenda

Date: Monday 8th December 2014
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 top of each report.

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

1. **Apologies for Absence**

To receive any apologies for absence

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

3. **Minutes of Previous meeting** (Pages 1 - 7)

To approve the minutes of the meeting held on 15 September 2014

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

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

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

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

5. **Highways Act 1980 Sections 118 and 119: Application for the Diversion of Public Footpath No. 16 (parts), Parish of Brereton and Public Footpath No. 9 (part), Parish of Sandbach and for the Extinguishment of Public Footpath No. 9 (part), Parish of Sandbach** (Pages 8 - 19)

To consider the applications to divert parts of Public Footpath No.16 in the parish of Brereton and divert part of Public Footpath No.9 in the parish of Sandbach and for the extinguishment of part of Public Footpath No.9 in the parish of Sandbach

6. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No. 19 (part), Parish of Rainow** (Pages 20 - 24)

To consider the application to divert part of Public Footpath No.19 in the parish of Rainow

7. **Village Green Application - Land adjacent to No. 16 Bell Avenue, Sutton, Macclesfield** (Pages 25 - 30)

To consider how to proceed with a village green application in respect of land adjacent to No.16 Bell Avenue, Sutton, Macclesfield

8. **Village Green Application - Land at Pickmere Informal Recreation Open Space, Jacobs Way, Pickmere, Knutsford** (Pages 31 - 35)

To consider how to proceed with a village green application in respect of land at Pickmere Informal Recreation Open Space, Jacobs Way, Pickmere, Knutsford

9. **Public Hearing to Determine Definitive Map Modification Order: Upgrading of Public Footpath No.9 (part) to Bridleway and addition of Public Bridleway No 12, Parish of Higher Hurdsfield and addition of Public Bridleway No 98, Parish of Macclesfield** (Pages 36 - 64)

Informative Report to brief the Committee on a recent public hearing and the outcome.

10. **Public Hearing to Determine Public Path Extinguishment Order: The Cheshire East Borough Council (Public Footpath No. 29 (Part) Parish of Sandbach) Public Path Extinguishment Order 2013 (Pages 65 - 68)**

Informative report to brief the Committee on a recent Public Hearing and the outcome.

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 15th September, 2014 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor M Hardy (Chairman)
Councillor Rhoda Bailey (Vice-Chairman)

Councillors A Barratt, W S Davies, K Edwards, M Parsons and J Wray

Officers

Mike Taylor, Public Rights of Way Manager
Marianne Nixon, Public Path Orders Officer
Elaine Field, Highways Solicitor
Rachel Graves, Democratic Services Officer

13 APOLOGIES FOR ABSENCE

There were no apologies for absence.

14 DECLARATIONS OF INTEREST

Item 7 - Councillor J Wray declared that he had attended a parish council meeting when this application had been discussed. He had not taken part in the discussions and had kept an open mind.

Item 7 - In the interest of openness Cllr Rhoda Bailey declared that she knew the applicant's father.

15 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meeting held on 16 June 2014 be confirmed as a correct record and signed by the Chairman.

16 PUBLIC SPEAKING TIME/OPEN SESSION

Two members of the public had registered to speak in relation to Items 6 and 7. The Chairman advised that he would invite them to speak when these applications were being considered by the Committee.

**17 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:
APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 11,
PARISH OF SHAVINGTON CUM GRESTDY AND PUBLIC FOOTPATH
NO. 21 (PART), PARISH OF WYBUNBURY**

The Committee received a report which detailed an application from Ms Miranda Steadman (agent) on behalf of Mactaggart & Mickel, 1 Atlantic Quay, 1 Robertson Street, Glasgow, G2 8JB requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1990 to divert Public Footpath No.11 in the parish of Shavington and part of Public Footpath No.21 in the parish of Wynbunbury.

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

Planning permission had been granted to the Applicant on 23 January 2014 – planning permission ref: 12/3114N, for residential development on land south of Newcastle Road at Shavington and Wybunbury.

The current line of Public Footpath No.11 Shavington cum Gresty and part of the current line of Public Footpath 21 Wybunbury would be obstructed by the planned residential development. A footpath diversion was required to preserve the public right of way between Stock Lane and Newcastle Road. The land was owned by Graham Ward Farms Ltd, Netherset Hey Farm, Netherset Lane, Madeley, Crewe and written consent had been given to permit the diversion on the land by Graham Ward.

The new route would have a width of 2 metres throughout and have a hard surface suitable for use by all user types. Users would be protected from vehicles upon approach to Newcastle Road by a form of path furniture such as a gate or barriers. Furthermore, a tarmac area at the roadside would provide a safe visible place from which to assess traffic before crossing the road.

The local Councillors had been consulted.

Councillor D Brickhill had registered an objection on a number of concerns including anti social behaviour, provide perfect location for drug sales and drug taking, become foul from dog faeces, the route was longer then the present route, and it emerged onto Newcastle Road 50 metres away from the continuation of the footpath on the other side of the road.

In response, the Council explained that detailed planning measures would be in place to mitigate against the speculative problems relating to drug use/sales, dog fouling and residential disturbance. Furthermore, a measure of natural surveillance would be present since the majority of houses face onto the proposed path (as shown on Plan No.TCPA/20 overlaid with the developer's plan) and the path would run through an open landscaped area. With regard to placing the new route on estate road(s), this would affect a net loss to the network of countryside paths. The requirement for the public to walk a further 50 metres to connect to

the footpath on the other side of the road was not considered to be marginal and would not add significantly to journey times.

Councillor J Clowes had not objected to the proposal but had expressed concerns about its relationship with the various planning applications underway that stemmed from the approved outline plan. Wybunbury Parish Council registered support for these concerns and objected to the proposed diversion. Discussions with the Parish Council were still ongoing.

It was emphasised that the approved outline plan would not change so the housing development would be developed as shown on the plan and the proposed diversion would be preserved within that plan.

The various planning applications underway that stemmed from the approved outline plan were to resolve issues relating to the detail of the outline plan such as housing type (two or three storey) for example but would not alter the outline plan or the proposed diversion.

An objection had been received from National Grid and discussions were underway to resolve this as if a diversion order was made, existing rights of access for the statutory undertakers to their apparatus and equipment were protected.

No objections were received from the User Groups, although the Peak and Northern Footpath Society registered a conditional acceptance stating once it was confirmed that access between points C-D-E, as shown on Plan No.TCPA/020 would be non-vehicular.

The Committee considered the objections and comments received and concluded that it was necessary to divert Public Footpath No.11 Shavington cum Gresty and part of Public Footpath No.21 Wybunbury to allow the development to be carried out. It was considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

RESOLVED: That

1. An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert Public Footpath No.11 Parish of Shavington cum Gresty and part of Public Footpath No.21 Parish of Wybunbury, as illustrated on Plan No.TCPA/020, on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
2. Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.

3. In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

18 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO.11 (PART), PARISH OF KNUTSFORD

The Committee received a report which detailed an application from Mr Steve Bowers (agent) of CBO Transport Ltd on behalf of Mr H Brooks (applicant) of The Tatton Estate, Peover Estate Office, nr Knutsford, requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.11 in the parish of Knutsford.

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

The applicant had applied for planning permission for the erection of a high quality residential development with associated woodland buffer, ecological mitigation and enhancements and open spaces – planning reference 13/2935M. Planning permission had not yet been granted for this application.

The existing alignment of Public Footpath No.11 Knutsford would be directly affected by the construction of the planned residential development. The land was owned by the same owners as The Tatton Estate. It would be necessary to realign the path via diversion to preserve right of passage between points A and B, as shown on Plan No.TCPA/021. The new route would have a width of 2.5 metres with a 1.2 metre wide timer lined surface (type to be confirmed) running along the centre. It would run through a landscaped area and would have grass to either side.

John White, Ramblers Footpath Secretary and Mid Cheshire Footpaths, spoke in relation to the application, stating that the footpath was an important path as it linked the urban area with countryside and was part of the North Cheshire Way and asked that any diversion proposed should keep the character of the present footpath.

Consultation had not elicited objections to the proposals from the local ward councillors and statutory undertakers. The CTC had questioned the possibility that the proposed route may be suitable as a cycle route if upgraded as would provide a link to either Broadoak Lane or the B5085.

The Council had explained that it was only part of the footpath that was being diverted and that the remainder of the footpath crossed pasture land and belonged to another landowner.

The Committee was concerned how the proposed footpath diversion would fit in with the layout and design of the development as no details on this had been presented to the Committee. It was agreed that the application be approved, subject to the Chairman and Vice Chairman seeing and agreeing that the proposed footpath route through the development was the best option.

The Committee unanimously

RESOLVED: That delegation be given to the Chairman and Vice Chairman to

1. approve that an Order be made under Section 257 of the Town and Country Planning Act 1990, on condition that approval is granted for Planning Application 13/2935M to divert part of Public Footpath No.11 Knutsford, as illustrated on Plan No.TCPA/021, on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
2. Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
3. In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

19 VILLAGE GREEN APPLICATION: LAND ADJACENT TO CHELFORD ROAD AND BLACK FIRS LANE, SOMERFORD

The Committee received a report seeking a decision on how to proceed with village green application in respect of land along the verge of Black Firs Lane and Chelford Road, Somerford.

The Council was the registration authority for village greens and the responsibility for the function was delegated to the Public Rights of Way Committee under the Council's Constitution.

An application had been submitted on 3 May 2013 by Mr Nicholas Bell. The Application Land was shown on Appendix A to the report. The evidence in support of the application contained several witness statements stating various uses and several photographs.

Mr Bell, the father of the applicant, attended the meeting and spoke in support of the application.

Cheshire East Council, as highways authority, had written objecting to the application making certain legal arguments.

Richmond Estates Limited had recently obtained planning permission for residential development of the land bound by the Application Land and had written in objecting to the application. The planning application had been submitted after the date of the village green application. They had also obtained counsel opinion, which recommended that the application be dealt with by an independent person on the basis of written representation.

Legislation introduced by the Growth and Infrastructure Act 2013 had changed the criteria for registration of new village greens, which applied to applications received after 25 April 2013. The new legislation excluded the right to apply for village green status where a prescribed event, known as a trigger event, had occurred within the planning system in relation to that land.

Part of the application land may be affected by a trigger event as it had been identified as land for housing and employment and included in Cheshire East Council's Local Plan Development Strategy and Emerging Policy Principles document, which was consulted on in January and February 2013.

It was proposed that the applicant and the objectors be given an opportunity to make representations on the potential trigger event before the application be considered by an independent person based on written representations. It was moved and seconded that the time allowed for the representations to be submitted be amended from fourteen days to twenty eight days.

It was possible that the independent person, having received the documents, recommends an inquiry be held instead. In the event of such a request it was recommended that delegated authority be given to the Head of Legal Services, in consultation with the Chairman of the Public Rights of Way Committee, to determine if a non statutory public inquiry should take place.

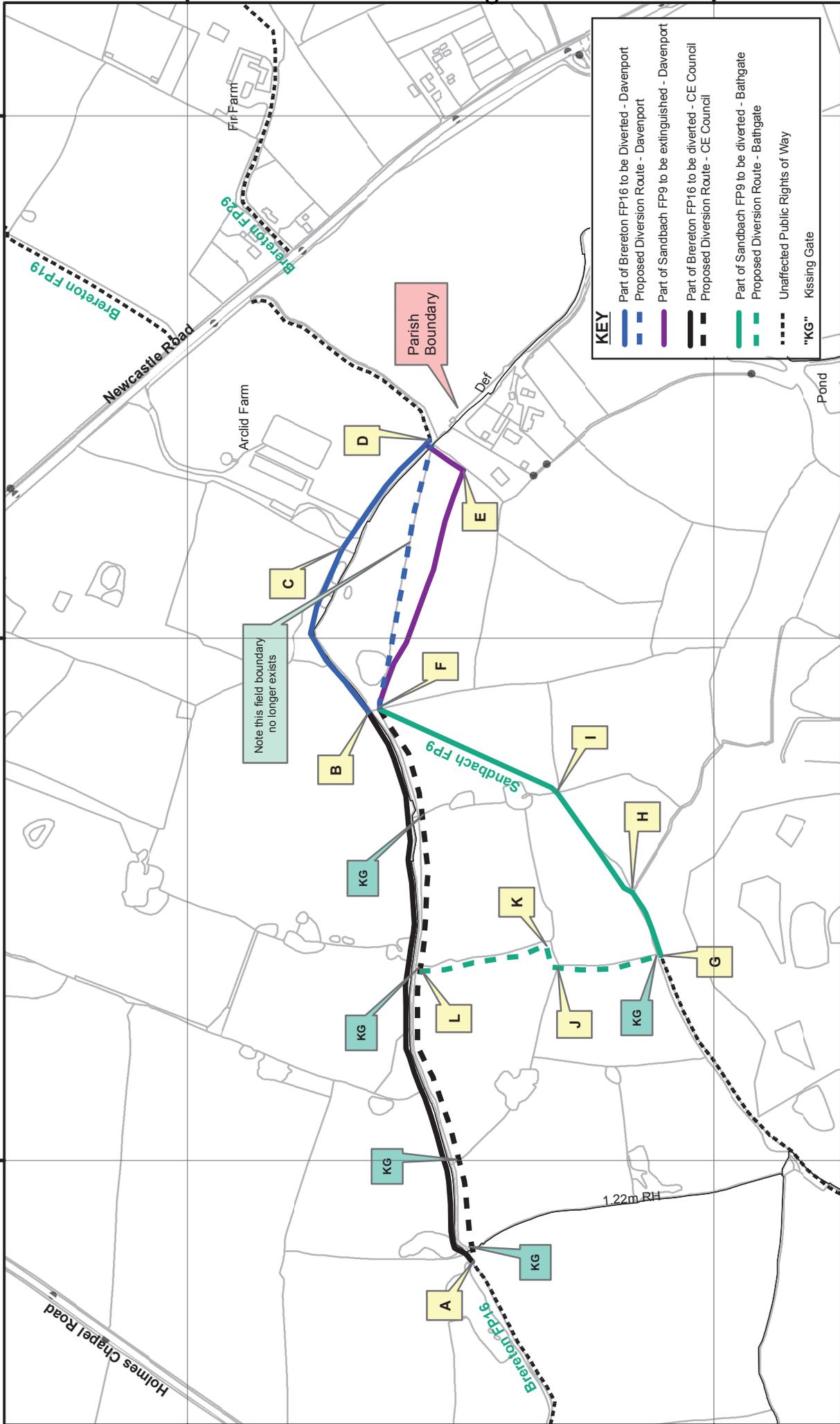
RESOLVED: That

1. the Head of Legal Services offer the applicant and the objectors twenty eight days to make representations on the potential trigger event which may affect part of the land subject to the village green application.
2. following expiration of the twenty eight day period, the Head of Legal Services be authorised to appoint an independent expert to consider the application on the basis of written representations and provide a report.

3. the Head of Legal Services be given delegated authority to determine if a non-statutory public inquiry should take place upon the recommendation of the independent expert, after consulting the Chairman of the Public Rights of Way Committee.

The meeting commenced at 2.00 pm and concluded at 3.15 pm

Councillor M Hardy (Chairman)



Highways Act 1980 s119
The Cheshire East Borough Council
(Footpath 16 (parts) Parish of Brereton and
Footpath 9 (part) Parish of Sandbach)
Public Path Diversion Orders 2014

Highways Act 1980 s118
The Cheshire East Borough Council
(Footpath 9 (part) Parish of Sandbach)
Public Path Extinguishment Order 2014

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Plan No.
HA/098

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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	8 th December 2014
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980, Sections 118 and 119 Application for the Diversion of Public Footpath No. 16 (parts), Parish of Brereton and public Footpath No. 9 (part), Parish of Sandbach and for the Extinguishment of Public Footpath No. 9 (part), Parish of Sandbach.

1.0 Report Summary

The report outlines the investigation to divert parts of Public Footpath No 16, Parish of Brereton and part of Public Footpath No. 9, Parish of Sandbach and to extinguish part of Public Footpath No. 9, Parish of Sandbach. This includes a discussion of consultations carried out in respect of the proposals and the legal tests to be considered for diversion and extinguishment orders to be made. The proposals have been put forward by the Public Rights of Way Unit as applications have been made by the landowners concerned. The report makes recommendations based on that information, for quasi-judicial decision by Members as to whether or not Orders should be made to divert or extinguish the section of each footpath concerned.

- 1.1 Members are required to consider all information in the report and make a decision as to whether the proposed footpath diversions and extinguishment are expedient based upon the legal tests prescribed in sections 118 and 119 respectively of the Highways Act 1980 as set out in this report.

2.0 Recommendation

- 2.1 Two Orders be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert:

Part of Public Footpath No 16, Parish of Brereton (as proposed by Mrs Davenport)

Part of Public Footpath No. 16, Parish of Brereton and part of Public Footpath No. 9, Parish of Sandbach (as proposed by Cheshire East Council and Mr M Sloane on behalf of Archibald Bathgate Ltd., respectively)

Diversions to be made by creating new sections of public footpath, and extinguishing the current path sections as illustrated on Plan No. HA/098 on the grounds that it is expedient in the interests of the owners of the land crossed by the paths.

Subject to an Order being made to divert that part of Public Footpath No. 16 in the Parish of Brereton (proposed by Mrs Davenport) that a subsequent Order be made under Section 118 of the Highways Act 1980 to extinguish Public Footpath No. 9 (part) in the Parish of Sandbach (also proposed by Mrs Davenport) as illustrated on Plan No. HA/098 on the grounds that it will no longer be needed for public use.

- 2.2 Public Notice of the making of the Orders be given and in the event of there being no objections within the period specified, the Orders be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Orders being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 In accordance within the Highways Act 1980, it is within the Council's discretion to make an Order:
- To divert a Public Footpath under Section 119(1) 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.
 - To extinguish Public Footpath under Section 118(1) if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use.

It is considered that the proposed diversions and extinguishment are in the interests of the landowners for the reasons set out in paragraph 10.4 & 10.5 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 a Diversion or Extinguishment Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to the following:

For diversions

- 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.

For Extinguishments

- The extent (if any) to which it appears to him...that the path or way would, apart from the order, be likely to be used by the public, and
- The effect which the extinguishment of the right of way would have as respects land served by the path or way, and

The material provision of any rights of way improvement plan prepared by any local highway authority which includes land over which the order would extinguish a public right of way.

- 3.3 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order(s) in accordance with the matters referred to in paragraph 3.2 above.
- 3.4 Overall, the proposed route for Public Footpath No. 16 (parts) Parish of Brereton will be a significant improvement to the existing route and diversion of the two sections to realign this footpath will be of considerable benefit to both the public and landowner involved, Mrs Davenport:
- The public will benefit from the Council's realignment of one section as it will make the public right of way available again for public use by resolving current obstruction issues.
 - The landowner, Mrs Davenport, who has proposed the diversion of the other section, will benefit in terms of enhancing the security and privacy of her equestrian business whilst promoting better land and stock (horses) management.

The diversion route for Public Footpath No. 9 (part) in the Parish of Sandbach proposed by Mr Sloane on behalf of Archibald Bathgate Ltd., will be an improvement to the existing route and will benefit this landowner in terms of enhancing privacy and security to their sand quarrying operations.

It is considered that the proposed routes will be satisfactory alternatives to the current ones and that the legal tests for the making and confirming of the relevant diversion orders are satisfied.

- 3.5 On condition that the section of Brereton FP16 proposed for diversion by Mrs Davenport is successful, then the section of Public Footpath No. 9 (part) Parish of Sandbach will no longer be needed for public use and it is considered that the legal test for the making and confirming of the extinguishment order is satisfied.

4.0 Wards Affected

4.1 Sandbach Heath and East Ward and Brereton Rural Ward

5.0 Local Ward Members

5.1 Councillor Sam Corcoran and Councillor John Wray

6.0 Policy Implications

6.1 Not applicable

7.0 Financial Implications

7.1 Not applicable

8.0 Legal Implications

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

9.0 Risk Management

9.1 Not applicable

10.0 Background and Options

10.1 An application has been received from Mrs J Davenport of The Old Vicarage, Chelford lane, Over Peover, Nr Knutsford, WA16 8UF requesting that the Council make an Order to divert part of Public Footpath no. 16 in the Parish of Brereton and on condition that this diversion is successful, to make an Order to extinguish Public Footpath No 9 (part) in the Parish of Sandbach under sections 119 and 118 respectively of the Highways Act 1980.

A separate application has been received from Mr Malcolm Sloane (agent) of Sloane Mead on behalf of Archibald Bathgate Group Ltd, Arclid Quarry, Congleton Road, Sandbach, Cheshire, CW11 4SN requesting that the Council make an Order to divert part of Public Footpath No. 9 in the Parish of Sandbach. Further, this landowner has given permission to allow the Public Rights of Way Team to request that the Council include within this Order a diversion of part of Public Footpath no. 16 in the Parish of Brereton. This diversion will be made in the interests of the Public and will be placed onto land owned by the Archibald Bathgate Group Ltd. Consequently, the two diversions will be dependent on each other so that the part of Public Footpath No. 16 in the Parish of Brereton is only diverted onto their land if the Council

will allow the diversion of part of Public Footpath No. 9 in the Parish of Sandbach that they request and vice versa.

- 10.2 Public Footpath No. 16 in the Parish of Brereton runs over a distance of 1439 metres. It commences at its junction with Holmes Chapel Road at O.S. grid reference SJ 7708 6269 and runs in a generally east, south easterly direction along a track into a pasture field. It then bears in a generally east, north easterly through further pasture fields before changing direction to follow a generally south easterly direction through a final field before entering into the grounds of Arclid Farm through which it follows the southern and then easterly boundaries in generally south easterly and then north easterly direction to terminate at its junction with Newcastle Road at O.S. grid reference 7832 6294.

Public Footpath No. 9 in the Parish of Sandbach runs over a distance of approximately 1494 metres. It commences at its junction with Holmes Chapel Road at O.S. grid reference SJ 7711 6197 and runs in a generally north easterly through pasture fields to change direction within the final field through which it passes. It runs across this in a generally east, south easterly direction to the eastern boundary which it then follows in a generally north easterly direction to terminate at the Parish Boundary at its junction with Public Footpath No. 16 in the Parish of Brereton at O.S. grid reference SJ 7818 6276.

Referring to Plan No. HA/098, the footpath sections to be diverted or extinguished are colour coded:

Cheshire East Council proposes to divert part of Public Footpath No. 16 in the Parish of Brereton between points A-B (shown by a solid black line) as it is believed that it would be in the public interest.

Mrs Davenport proposes to divert a part of Public Footpath No. 16 in the Parish of Brereton between points B-C-D (shown by a solid blue line) that follows on from the eastern end of the section that the Council propose for diversion and she also proposes to extinguish part of Public Footpath No. 9 in the Parish of Sandbach between points D-E-F (shown by a solid purple line) on condition that the diversion of Public Footpath No. 16 in the Parish of Brereton that she proposes (shown by a solid blue line) is successful.

Mr Malcolm Sloane on behalf of Archibald Bathgate Ltd., proposes to divert part of Public Footpath No. 9 in the Parish of Sandbach FP9 between points G-H-I-F (shown by a solid green line) concurrent with the Council's diversion such that either both succeed or both fail.

- 10.3 The land over which the section of Public Footpath No. 16 in the Parish of Brereton that Mrs Davenport proposes to divert (blue), belongs to Mrs Davenport between points C-D but between points A-B-C, it belongs to a different landowner, the Archibald Bathgate Group Ltd., who have granted permission to Mrs Davenport to divert this section of footpath as proposed.

The land over which the section of Public Footpath No. 16 in the Parish of Brereton that the Council proposes to divert (black), belongs in part to 'Safeguard Limited' and in part to Archibald Bathgate Ltd. Both landowners have granted permission for the Council to divert this section of footpath as proposed although permission from the latter remains conditional on the success of the diversion of part of Public Footpath No. 9 in the Parish of Sandbach (green). Permission from 'Safeguard Limited' was via their agent, Strutt and Parker.

Under section 118 and 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 landowners to make orders to respectively extinguish or divert the footpaths.

- 10.4 On Plan No. HA/098, routes to be 'stopped up' are shown by solid bold lines and proposed diversion routes are shown by dashed bold lines and corresponding existing and diversion routes are colour coded. Elaborating in more detail and with deeper reference to this plan:

Diversion of part of Public Footpath No. 16, Parish of Brereton – Cheshire East Council (shown in black on Plan No. HA/098)

The part of Public Footpath No. 16, Parish of Brereton proposed by the Council for diversion starts at point A and runs in a generally easterly direction along a hedge that forms the southern boundary of several fields, terminating in a field at point B. Currently, this path section is obstructed by ponds and in places by dense hedge growth. Diversion of this path section to run in a similar alignment but along the south of the hedge boundary starting at point A and terminating at point E, would resolve these issues.

Historically, it would appear that this part of Public Footpath No. 16, Parish of Brereton, may have been inaccurately recorded on the definitive map as the ponds are of some antiquity since it is unlikely that the path and ponds coexisted.

It should be noted also that resolving the obstructions by means of either removing the obstructions or legally moving the line of the footpath by a DMMO to a usable line, would prove costly to the Council and would take much longer to effect.

Diversion of part of Public Footpath No. 16, Parish of Brereton – Mrs Davenport (shown in blue on Plan No. HA/098)

Mrs Davenport has proposed to divert the part of Public Footpath No. 16, Parish of Brereton that starts at point B and runs through fields into the grounds of Arclid Hall Stud Farm at (point C). It then runs along the southern boundary of these grounds to terminate at the south eastern field corner (point D). Diversion of this path section to run across a pasture field (points D-F) that lies to the south of the property grounds would afford improved security and

privacy to the property buildings and to livestock (horses), whilst enabling better management of land and livestock.

The Council would welcome this diversion as it would resolve path obstructions along part of Public Footpath No. 16, Parish of Brereton (points B-C) that are similar to those along the part of this same footpath that the Council is seeking to divert. Further, it would resolve existing alignment issues.

Extinguishment of part of Public Footpath No.9, Parish of Sandbach – Mrs Davenport (shown in purple on Plan No. HA/098)

Mrs Davenport's proposed diversion route for Public Footpath No. 16, Parish of Brereton, would create a situation where two public footpaths cross the same field in close proximity to pass between points D-F as part of Public Footpath No. 9 in the Parish of Sandbach already crosses this field between points D-E-F. It starts at the north eastern field corner (point D) and runs in a generally west, south westerly direction to the western field boundary (point E) along which it then runs in a west, north westerly direction to terminate at point F just before a stile.

It is considered that two path sections providing similar routes are unnecessary. Therefore, since public Footpath No. 9 in the Parish of Sandbach is not as direct as the proposed diversion route of Public Footpath No. 16, Parish of Brereton (blue), it is proposed that this be extinguished on the basis that it is no longer needed for public use, on condition that the proposed diversion of Public Footpath No. 16, Parish of Brereton as proposed by Mrs Davenport (blue) is successful.

Diversion of part of Public Footpath No. 9, Parish of Sandbach – Mr Sloane for Archibald Bathgate Ltd (shown in green on Plan No. HA/098)

The section of Public Footpath No. 9, Parish of Sandbach proposed for diversion by Mr Sloane on behalf of Archibald Bathgate Ltd, starts along a grassed track (point G). It runs in a generally east, north easterly direction along this track before crossing a footbridge over a stream (point H) into a field to continue along the southern field boundary. On exiting into a second field (point I), it bears in a generally north easterly direction diagonally across the field to its termination at the north eastern field corner immediately before a stile (point F).

Diverting this section of Public Footpath No. 9, Parish of Sandbach, would improve the security and privacy of sand quarry workings and excavation areas by taking users further away from these areas.

The proposed diversion route would start at the same point as the existing section (point G) and would immediately leave the green track via a kissing gate into a field to the north. It would then follow the eastern field boundary in a northerly direction to exit through a gap into a second field (point J). It would then follow a short section in an easterly direction before again (point K),

running in a northerly direction along the eastern boundary of this second field to terminate at the north east field corner where it would join the section of Public Footpath No. 16, Parish of Brereton (shown by a black solid dashed line), if successfully diverted as proposed by the Council (point L).

The Council has agreed with Mr Sloane that the Council's proposed diversion of Public Footpath No. 16, Parish of Brereton (for reasons of public interest) will be dependent on the success of Mr Sloane's proposal to divert this section of Public Footpath No. 9, Parish of Sandbach, as the Council's diversion will place a longer stretch of public footpath on land owned by the Archibald Bathgate Group Ltd. Consequently, both orders must succeed or neither will be able to go ahead.

The proposed diversion routes for Brereton FP16 and Sandbach FP9 would have grassed surfaces and be a width of 2 metres throughout.

Of benefit to the public:

- Diversion of both parts as requested by Mrs Davenport and the Council, of Public Footpath No. 16, Parish of Brereton, would create a route that would be more direct and therefore easier to navigate and also, to negotiate as it would have kissing gates instead of stiles.

Further, the new route would provide a direct link with Sandbach FP9 that is not available at present.

- The section of Public Footpath No. 9, Parish of Sandbach proposed for diversion would also be placed on a more direct line that would be easier to navigate as it would be guided along field edges. Further, it too would have kissing gates instead of stiles and would no longer have a footbridge to negotiate.
- The overall strategic connectivity of the network from Newcastle Road where Public Footpath No's 20 and 29 in the Parish of Brereton connect to the Holmes Chapel Road by Public Footpath No. 16, Parish of Brereton and to the Congleton Road by Public Footpath No. 9, Parish of Sandbach, would be retained.

Other than the diversion of part of Public Footpath No. 16, Parish of Brereton by the Council in the interest of the public, the other diversions and the extinguishment would be made in the interests of the landowners.

- 10.5 It is important to note that the success of the diversions is interdependent such that if one should fail, all three would fail. This is due to the fact that the two diversion routes for each section of Public Footpath No. 16, Parish of Brereton must connect at point F. If this occurs, then the diversion route for Public Footpath No. 9, Parish of Sandbach, will be able to connect to the diversion route of public Footpath No. 16, Parish of Brereton at point L.

Further, for the extinguishment of part of Public Footpath No.9, Parish of Sandbach to legally meet the tests of section 118 of the Highways Act 1980, is dependent on the success of the diversion of part of Public Footpath No.16, Parish of Brereton, as proposed by Mrs Davenport (blue).

- 10.7 Ward Councillors have been consulted about the proposals. Councillor Corcoran registered agreement to the proposals. No other comments were received.
- 10.8 Brereton Parish Council and Sandbach Town Council have been consulted. Member's response(s) will be reported verbally.
- 10.9 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion or extinguishments. If diversion or extinguishment orders are made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.10 The user groups have been consulted. The Peak and Northern Footpath Society registered that they have no objection to the proposals.

The Congleton RA however, registered objection to the proposal made by Mr Sloane on behalf of the Archibald Bathgate Group Ltd. to divert part of Public Footpath No. 9, Parish of Sandbach (green) stating that the diversion route would be less convenient and enjoyable for pedestrians.

Although the Council has not responded to this objection, in considering convenience and enjoyability, the Officers of the Public Rights of Way Team concluded the following in their decision to support this diversion:

Regarding convenience:

- The current route crosses one field diagonally whereas the proposed diversion route would follow field boundaries that would make navigation easier for path users.
- There would be less and more easily accessible path furniture. The current route requires users to negotiate stiles and a footbridge whereas the new route would have 1-2 kissing gates depending on whether a gap could be left between the fields on the new route shown at point J on Plan No. HA/098.
- Looking at length, in isolation, the section of Public Footpath No. 9, Parish of Sandbach to be diverted would be reduced in length by 33.5% (equivalent to 125m) which would be considered as significant. However, looking wider at path length in total from Congleton Road to Newcastle Road via the current route along Public Footpath No. 9, Parish of Sandbach and Public Footpath No. 16, Parish of Brereton, and comparing this to the new route formed from the proposed diversions of these paths, the length of path to be walked between these two roads would be increased by just 8% (147m) which would not be considered as significant.

Regarding enjoyability:

- The new route for Public Footpath No. 9, Parish of Sandbach would not be significantly different in scenery to the current route as it would pass over similar pastureland offering similar views.
- Users are guided easily along the new route by hedged boundaries.
- Technically, the set of diversions as proposed would result in a more direct arrangement of both Public Footpath No. 9, Parish of Sandbach and public Footpath No. 16, Parish of Brereton and, would not significantly change or affect the user's ability to enjoy their legal right of passage between Congleton Road and Newcastle Road. This is illustrated on the plan entitled 'Overview of the Diversions and extinguishment'.

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

10.12 An assessment in relation to the Equality Act Legislation 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that overall, diverting both Public Footpath No. 16, Parish of Brereton and Public Footpath No.9, Parish of Sandbach, would be an improvement to the current routes with respect to the Equality Act 2010 since the resultant routes would have kissing gates instead of stiles or a footbridge and Public Footpath No.16, Parish of Brereton would be walkable again.

11.0 Access to Information

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

Name: Marianne Nixon

Designation: Public Path Orders Officer

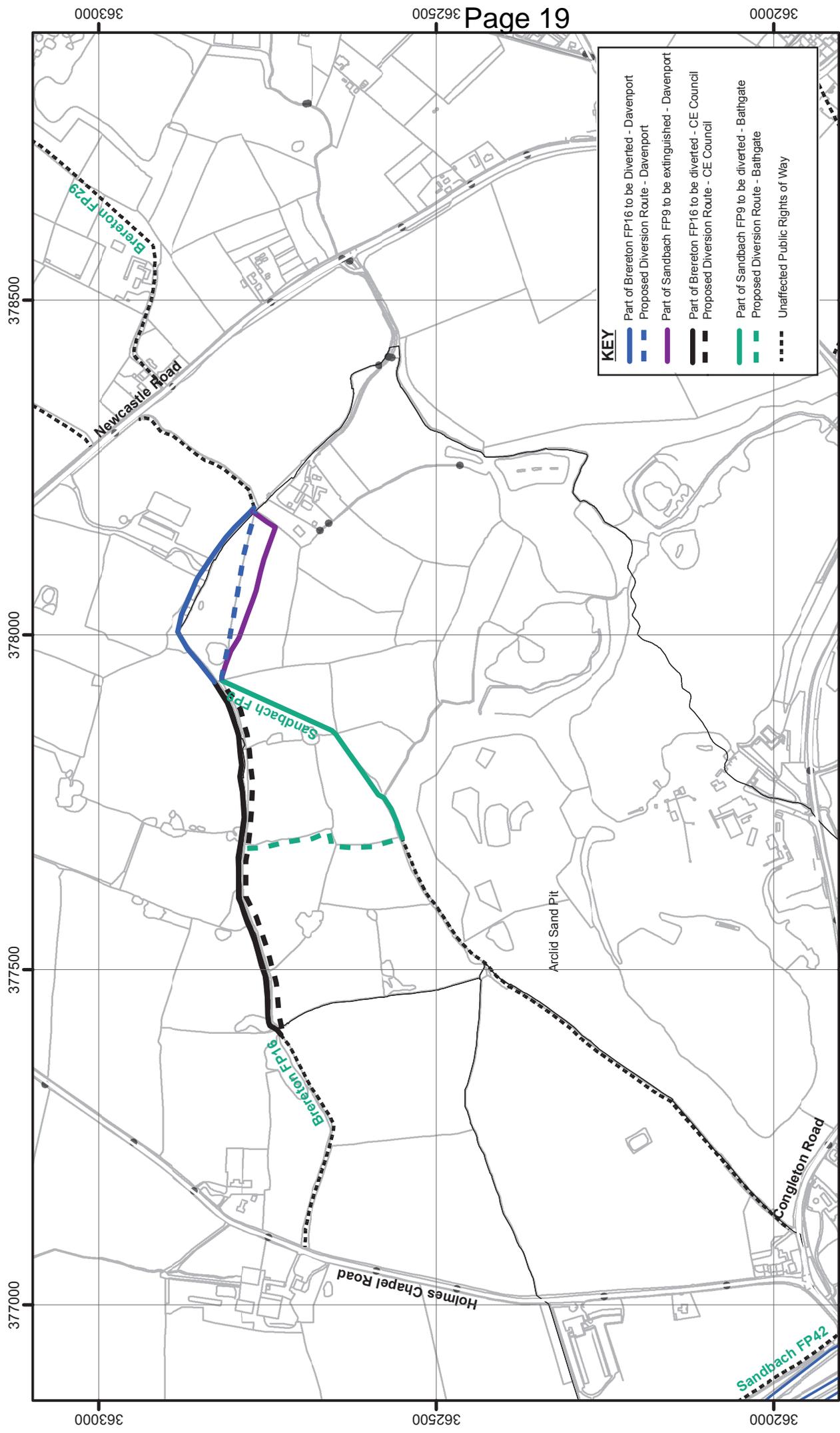
Tel No: 01270 686 077

Email: marianne.nixon@cheshireeast.gov.uk

PROW Files : 045D/496

: 262E/497

: 045D + 262D/498



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

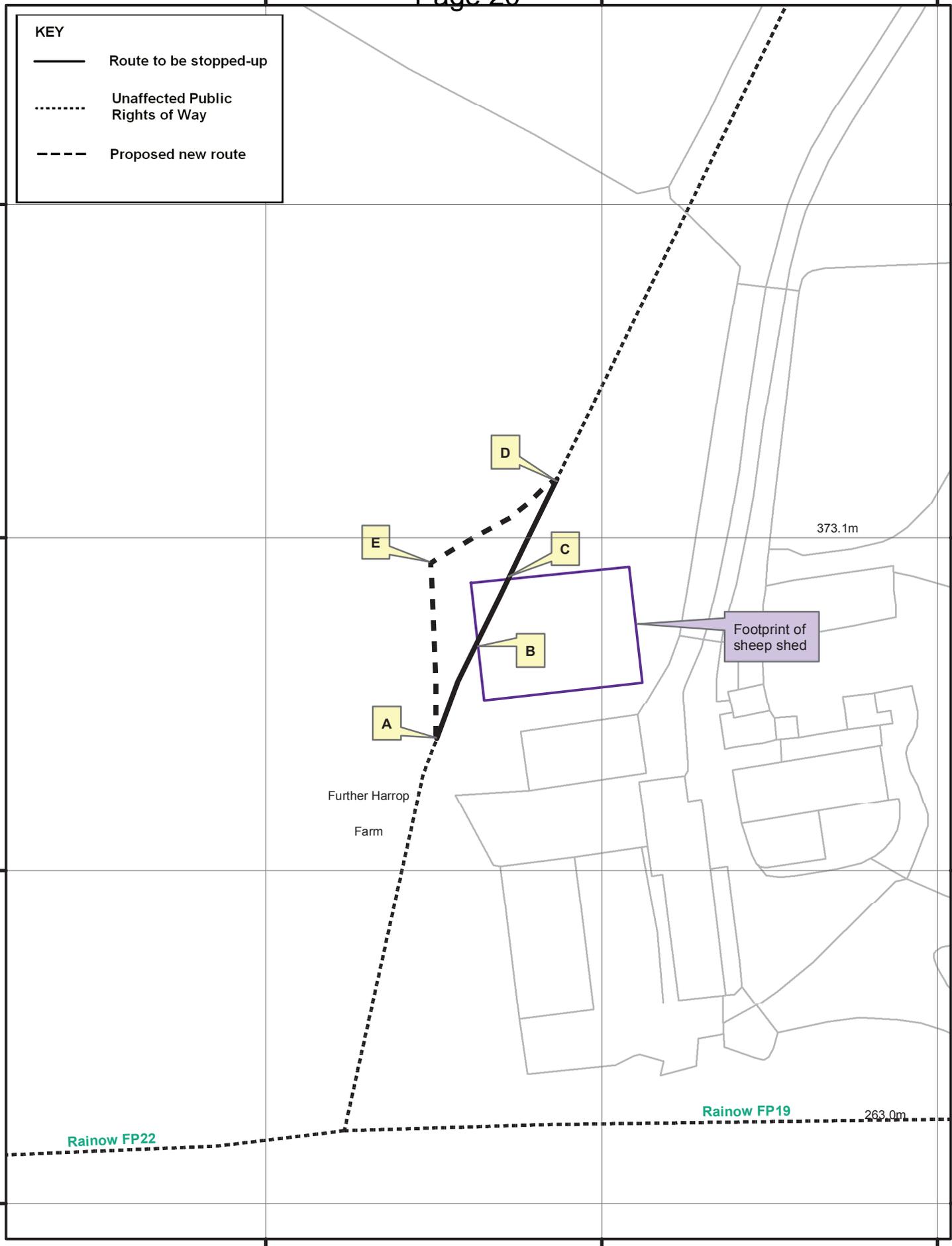
Overview of the Diversions and Extinguishment



1:7,500

KEY

- Route to be stopped-up
- Unaffected Public Rights of Way
- - - Proposed new route



Rainow FP22

Rainow FP19

263.0m

Further Harrop Farm

Footprint of sheep shed

373.1m



Town and Country Planning Act 1990 s.257
 The Cheshire East Borough Council
 (Footpath 19 (part) Parish of Rainow)
 Public Path Diversion Order 2014

Plan No.
 TCPA/022



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	8 th December 2014
Report of:	Public Rights of Way Manager
Subject/Title:	Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath no. 19 (part), Parish of Rainow

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 19 in the Parish of Rainow. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as a response to planning approval granted to Mr W Horne, Further Harrop Farm, Bakestonedale Road, Rainow, Cheshire, SK10 5UU for the construction of a sheep shed (Planning reference: NP/CEC/0814/0898). The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

2.0 Recommendations

- 2.1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 19 Rainow, as illustrated on Plan No. TCPA/022 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 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 and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendation

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

3.2 It is considered that it is necessary to divert part of Footpath No.19 Rainow as illustrated on Plan No. TCPA/022, to allow for the erection of a sheep shed. Planning consent was granted on the 16th October 2014 by the Peak District National Park; reference number NP/CEC/0814/0898.

3.3 Consultations have not elicited objections to the proposal and it is considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 are satisfied.

4.0 Ward Affected

4.1 Sutton

5.0 Local Ward Members

5.1 Councillor H Gaddum

6.0 Financial Implications

6.1 Not applicable

7.0 Legal Implications

7.1 Objections received to the proposed order, if not withdrawn, could lead to a public inquiry or hearing with attendant legal involvement and use of resources.

8.0 Risk Assessment

8.1 Not applicable

9.0 Background and Options

6.1 An application has been received from Mr R Gascoigne (agent) of Emery Planning Partnership Ltd on behalf of Mr W Horne, Further Harrop Farm, Bakestonedale Road, Rainow, Cheshire, SK10 5UU requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert part of Public Footpath No. 19 in the Parish of Rainow.

6.2 Public Footpath No. 19 Parish of Rainow is a long footpath (approximately 2,332 metres) that runs mainly across pasture fields that lie between Macclesfield Road and Bakenstonedale Road.

It commences at its junction with Macclesfield Road at O.S. grid reference SJ 9626 7727 to run in a generally north westerly and then northerly directions to Fold Farm. It then continues in a generally north, north easterly direction to its junction with Public Footpath No. 20, Parish of Rainow. At this point, it turns sharply to follow an easterly direction to its junction with Public Footpath No. 22 Parish of Rainow from where it turns sharply again to follow a generally north, north easterly direction past Further Harrop Farm (to its east). It then continues in this direction to terminate at its junction with Bakestonedale Road at O.S. grid reference SJ 9702 7917.

The section of path required to be diverted is shown by a solid black line on Plan No. TCPA/022 running between points B-C although the section of path proposed for diversion is longer and runs between points A-B-C-D. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-E-D.

- 6.3 The existing alignment of the footpath would be directly affected by the construction of the planned sheep shed. The land is entirely owned by Mr W Horne.
- 6.4 Planning permission was granted to the applicant on 16th October 2014. The application is cited as Planning Permission Ref: NP/CEC/0814/0898 'Erection of agricultural livestock building, associated alterations to immediate site levels, alteration to farm track along with part diversion of footpath (Rainow FP19). The proposed development is shown on the plan entitled 'Proposed diversion of Rainow FP19 overlaid with development plan'.
- 6.5 Part of the current line of Public Footpath No.19 Rainow would be obstructed by the planned sheep shed. Therefore, the footpath diversion is required to provide a public access around the sheep shed.

The length of footpath proposed for diversion (points A-B-C-D) is approximately 43 metres of which approximately 10 metres would be obstructed (points B-C) by the planned sheep shed.

- 6.6 The proposed route for the footpath (A-E-D) is approximately 48 metres long, just 5 metres longer than the current route and would take users around the sheep shed.

The route would be 2 metres wide throughout and would have a similar grass surface to the current route since it would cross the same pastureland no more than approximately 12 metres to the west of the current route.

- 6.7 The local Councillor has been consulted about the proposal. No comments have been received.
- 6.8 Rainow Parish Council has been consulted about the proposal and members registered that they have no objection to the proposal.
- 6.9 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.
- 6.10 The user groups have been consulted. Members of both the East Cheshire Group of the Rambler's Association (RA) and the Peak and Northern Footpath Society registered that they have no objection to the proposal. No other comments were received.

There were suggestions from the East Cheshire Ramblers that:

- A shallow depth of the topsoil (approx. 1 metre wide) be removed along the

new route and replaced with stone to provide a solid foundation walkable in all seasons whilst acting initially as a clear indication of the line of the new footpath. This would be on the understanding that in time, grass would grow over the stoned section so the footpath would blend back into the surrounding pastureland.

- The new route be waymarked to make it clear for walkers.

These suggestions are under consideration and final outcomes will be reported verbally.

- 6.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 6.12 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current route.

10.00 Access to Information

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

Officer: Marianne Nixon

Tel No: 01270 686 077

Email: marianne.nixon@cheshireeast.gov.uk

Background Documents: PROW file 253D/499

CHESHIRE EAST COUNCIL

RIGHTS OF WAY COMMITTEE

Date of meeting: 8th December 2014
Report of: Head of Legal Services
Title: Village Green Application – Land adjacent to
No. 16 Bell Avenue, Sutton, Macclesfield

1.0 Purpose of Report

- 1.1 This report seeks a decision on how to proceed with a village green application in respect of land adjacent to No. 16 Bell Avenue, Sutton, Macclesfield (“the Application Land”).

2.0 Recommendations

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

3.0 Reasons for Recommendations

- 3.1 An application has been received in respect of land adjacent to No. 16 Bell Avenue, Sutton, Macclesfield (“the Application Land”). There are substantial disputes as to fact which will be central to the outcome of the application.

4.0 Wards Affected

- 4.1 Sutton

5.0 Local Ward Members

- 5.1 Councillor Hilda Gaddum.

6.0 Financial Implications

- 6.1 There will be costs incurred by the Council in appointing an independent person to consider written representations. It is envisaged that any such costs will be charged to Legal Services initially with a corresponding recharge to the relevant service during 2014/15.

7.0 Legal Implications

- 7.1 The Council is the registration authority for the purposes of village green applications and the keeping of the register of village greens.
- 7.2 In recent years there has been much case law and legislation surrounding village greens and both case law and legislation continue to evolve. New legislation was introduced by the Growth and Infrastructure Act 2013 which changed the criteria for registration of new village greens and applies to applications received after 25th April 2013. This application was received on 8th March 2013 and therefore will not be subject to the new legislation.
- 7.3 Village greens can be registered either as a result of an application by a third person or by a voluntary registration by the landowner.
- 7.4 It is commonly understood that the Council may hold a public inquiry as a result of an application being received and it is often referred to as 'non-statutory' because the legislation in respect of village greens does not specifically provide for inquiries to be held. The Local Government Act 1972, however, does enable local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions. In appropriate cases, consideration of written representations only by an independent person would facilitate the determining of the village green application. The holding of an inquiry is at the discretion of the Committee.
- 7.5 The Committee adopted a procedure for determining village green applications on 7 December 2009. Option 4 of that procedure is relevant in this case as it accepts that an application validly made may be referred to an independent person either to consider the application on the basis of written representations or to hold a non statutory public inquiry and to provide a report to the committee. Factors relevant in deciding whether to appoint an independent person are listed in the adopted procedure and include complexity of evidence, where evidence is finely balanced and where the land is owned by the Council.
- 7.6 The burden of proof that the application meets the statutory tests is upon the applicant, on the balance of probabilities.
- 7.7 In deciding upon applications, the Committee should consider the advice given to it by its officers and by any independent person appointed and decide the application in the light of all of evidence submitted and the advice received, and acting in accordance with the principles of natural justice and good administration.
- 7.8 If registered as a village green, land will be subject to the statutory protection of section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 2006. Section 12 protects greens from injury or damage and interruption to their use or enjoyment as a place for exercise and recreation. Section 29 makes encroachment or inclosure of a green,

and interference with or occupation of the soil, unlawful unless it is with the aim of improving the enjoyment of the green.

7.9 There is no right of appeal within the Council against the Committee's decision. The route for any challenges would be via judicial review.

8.0 Risk Assessment

8.1 If the Council chose to determine the application without independent input, as it is also the highway authority, it may increase the risk of challenge..

9.0 Background and Options

9.1 The Council is the registration authority for village greens and responsibility for this function was delegated to the Rights of Way Committee under Part 3 of the Council's Constitution. The terms of reference allow the Committee "to discharge the authority's functions in respect of Commons and Village Greens".

9.2 The application was submitted on 8th March 2013 by Sutton Parish Council and the land is shown on Appendix A attached. The evidence in support of the application contains six witness statements stating various uses.

9.3 The application is based on the use of the land "as of right" for pastimes such as a children's play area, walking and exercising dogs, bicycle riding, football, and general recreation.

9.4 Following the statutory consultation process, the Council received a further 82 letters/forms in support of the application and one letter of objection from Peaks & Plains Housing Trust, who own the land.

9.5 The landowners' objection is based on a number of factual and legal submissions, including:

- The use of the land by a "significant" number of inhabitants
- The "neighbourhood/locality" that use the land
- That the use of the land is not use "as of right"
- The actual use of the land

9.6 The applicant has disputed the factual grounds on which the objections are based.

9.7 Although Cheshire East Council does not have a legal interest in the land, they do have an interest in Peak & Plains Housing Trust. Members should be aware that, in such cases, it is considered appropriate that an independent person be appointed to consider the application.

9.8 A non-statutory public inquiry is not being recommended in this report because it is considered that given that some of the objections are of a legal nature, it may be possible for this application to be considered on

the written evidence in the first instance. It may be possible that the independent person, having received the documentation, recommends an inquiry is held instead. In the event of such a request, delegated authority is sought so that the Head of Legal Services can determine whether this is appropriate, after consulting the Chairman of this Committee.

10.0 Access to Information

10.1 The background papers relating to this report are listed below and can be inspected by contacting the report writer:

Village green application and supporting evidence

Objections to the application

For further information:

Officer: Elaine Field

Tel No: 01270 685698

Email: Elaine.field@cheshireeast.gov.uk

This map is ICA exhibit referred to as MAP A on ICA attached Form 44.

[Signature]
Rosary C Pico
8.3.13.

MAP A - LOCATION OF CLAIMED LAND AND LOCALITY

Map A identifies the location of the claimed land to which this application relates as the hashed area (shown on Map A) adjacent to No. 16 Bell Avenue, Sutton, Macclesfield, SK11 0EE.

The locality to which this land relates is identified using a bold line (shown on Map A) encompassing the dwellings of Bell Avenue, Morton Drive and Tunnicliffe Road.



Scale: 1:1,200

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CHESHIRE EAST COUNCIL

RIGHTS OF WAY COMMITTEE

Date of meeting: 8th December 2014
Report of: Head of Legal Services
Title: Village Green Application – Land at Pickmere Informal Recreation Open Space, Jacobs Way, Pickmere, Knutsford

1.0 Purpose of Report

- 1.1 This report seeks a decision on how to proceed with a village green application in respect of land at Pickmere Informal Recreation Open Space (IROS), Jacobs Way, Pickmere, Knutsford (“the Application Land”).

2.0 Recommendations

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

3.0 Reasons for Recommendations

- 3.1 An application has been received in respect of land at Pickmere Informal Recreation Open Space (IROS), Jacobs Way, Pickmere, Knutsford (“the Application Land”). There are substantial disputes as to fact which will be central to the outcome of the application.

4.0 Wards Affected

- 4.1 High Legh

5.0 Local Ward Members

- 5.1 Councillor Steve Wilkinson.

6.0 Financial Implications

- 6.1 There will be costs incurred by the Council in appointing an independent person to consider written representations. It is envisaged that any such costs will be charged to Legal Services initially with a corresponding recharge to the relevant service during 2014/15.

7.0 Legal Implications

- 7.1 The Council is the registration authority for the purposes of village green applications and the keeping of the register of village greens.
- 7.2 In recent years there has been much case law and legislation surrounding village greens and both case law and legislation continue to evolve. New legislation was introduced by the Growth and Infrastructure Act 2013 which changed the criteria for registration of new village greens and applies to applications received after 25th April 2013. This application was received on 5th February 2013 and therefore will not be subject to the new legislation.
- 7.3 Village greens can be registered either as a result of an application by a third person or by a voluntary registration by the landowner.
- 7.4 It is commonly understood that the Council may hold a public inquiry as a result of an application being received and it is often referred to as 'non-statutory' because the legislation in respect of village greens does not specifically provide for inquiries to be held. The Local Government Act 1972, however, does enable local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions. In appropriate cases, consideration of written representations only by an independent person would facilitate the determining of the village green application. The holding of an inquiry is at the discretion of the Committee.
- 7.5 The Committee adopted a procedure for determining village green applications on 7 December 2009. Option 4 of that procedure is relevant in this case as it accepts that an application validly made may be referred to an independent person either to consider the application on the basis of written representations or to hold a non statutory public inquiry and to provide a report to the committee. Factors relevant in deciding whether to appoint an independent person are listed in the adopted procedure and include complexity of evidence, where evidence is finely balances and where the land is owned by the Council.
- 7.6 The burden of proof that the application meets the statutory tests is upon the applicant, on the balance of probabilities.
- 7.7 In deciding upon applications, the Committee should consider the advice given to it by its officers and by any independent person appointed and decide the application in the light of all of evidence submitted and the advice received, and acting in accordance with the principles of natural justice and good administration.
- 7.8 If registered as a village green, land will be subject to the statutory protection of section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 2006. Section 12 protects greens from injury or damage and interruption to their use or enjoyment as a place for exercise and recreation. Section 29 makes encroachment or inclosure of a green,

and interference with or occupation of the soil, unlawful unless it is with the aim of improving the enjoyment of the green.

- 7.9 There is no right of appeal within the Council against the Committee's decision. The route for any challenges would be via judicial review.

8.0 Risk Assessment

- 8.1 If the Council chose to determine the application without testing the evidence which has been provided it may increase the risk of challenge.

9.0 Background and Options

- 9.1 The Council is the registration authority for village greens and responsibility for this function was delegated to the Rights of Way Committee under Part 3 of the Council's Constitution. The terms of reference allow the Committee "to discharge the authority's functions in respect of Commons and Village Greens".

- 9.2 The application was submitted on 5th February 2013 by Mrs Catherine Plowden and the land is shown on Appendix A attached. The evidence in support of the application contains several witness statements stating various uses and several photographs.

- 9.3 The application is based on the use of the land for pastimes and sports such as dog walking, children play areas, bird watching, picnics, football, cricket, flying kites, sledging and general recreation.

- 9.4 Following the statutory consultation process, the Council received a further 18 letters in support of the application, one letter of objection from a local resident and an objection from Pickmere Parish Council (as landowner).

- 9.5 The landowner's objection is based on a number of factual and legal submissions, including:

- The use of the land is no use "as of right"
- The length of use and the ability to use the land

- 9.6 The applicant has disputed the factual and legal grounds on which the objections are based.

- 9.7 A non-statutory public inquiry is not being recommended in this report because it is considered that given that some of the objections are of a legal nature, it may be possible for this application to be considered on the written evidence in the first instance. It may be possible that the independent person, having received the documentation, recommends an inquiry is held instead. In the event of such a request, delegated authority is sought so that the Head of Legal Services can determine whether this is appropriate, after consulting the Chairman of this Committee.

10.0 Access to Information

10.1 The background papers relating to this report are listed below and can be inspected by contacting the report writer:

Village green application and supporting evidence

Objections to the application

For further information:

Officer: Elaine Field

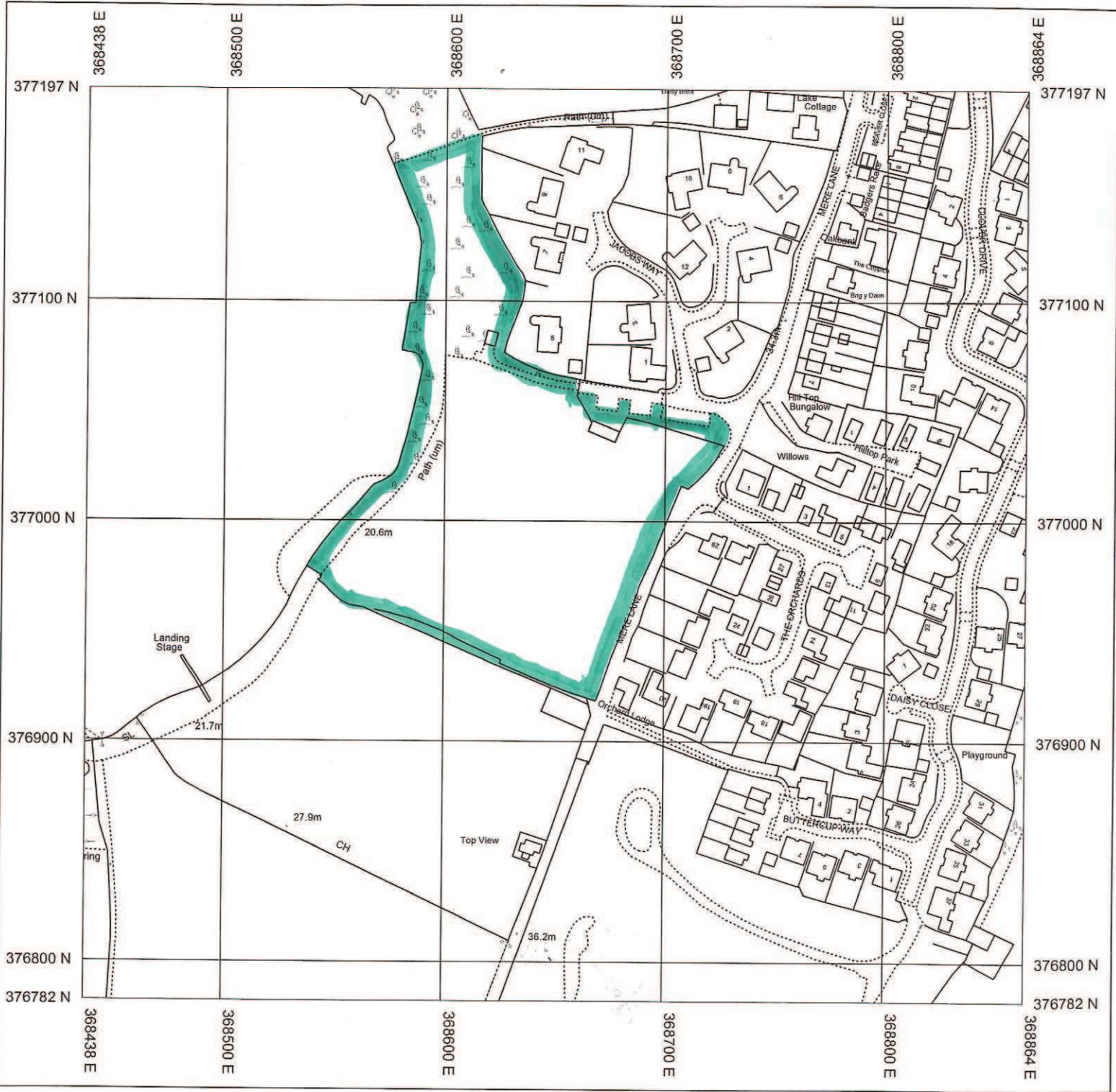
Tel No: 01270 685698

Email: Elaine.field@cheshireeast.gov.uk

Mapping sourced from



Location Map



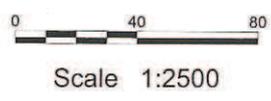
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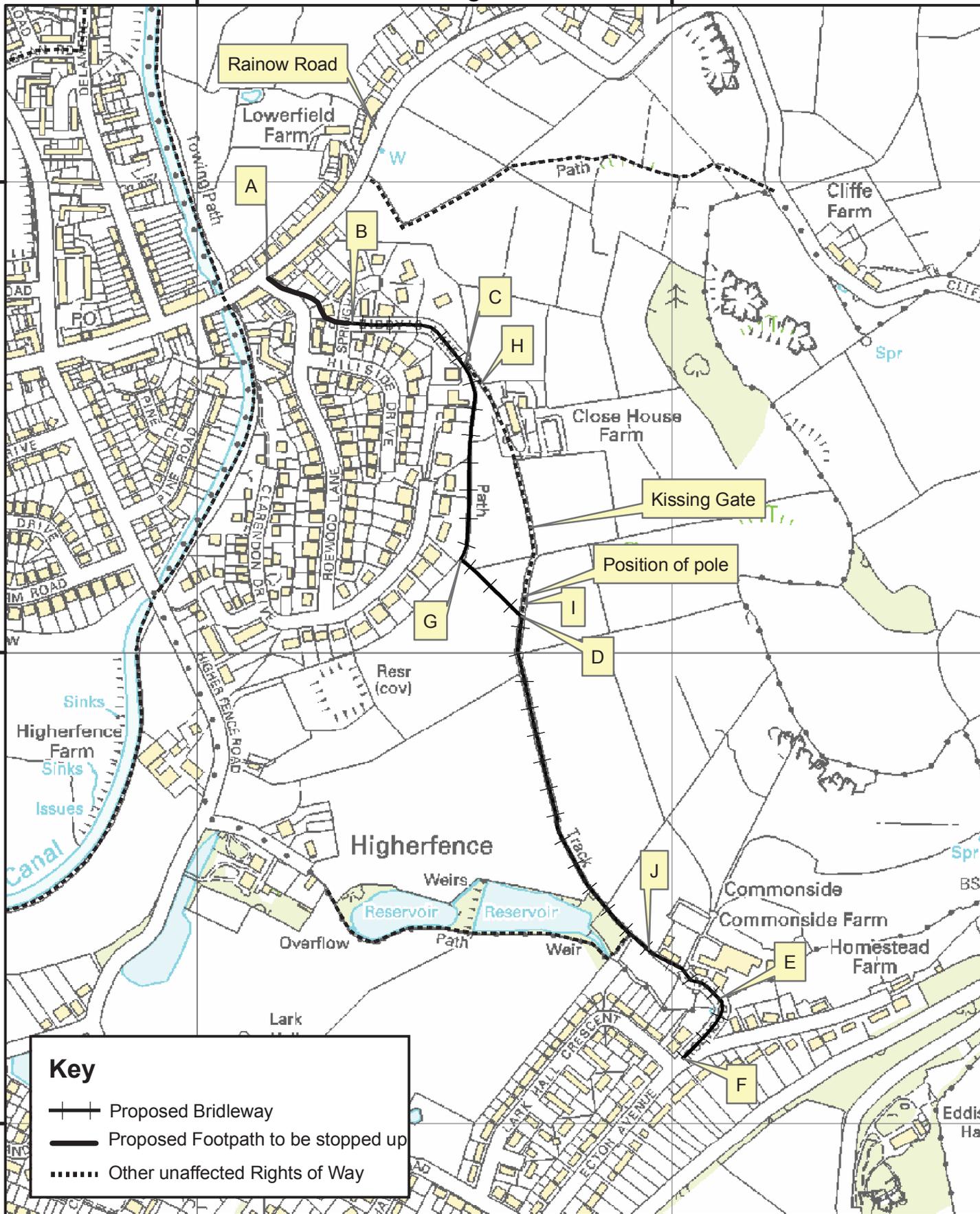
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The representation of a road, track or path is no evidence of a right of way.

The representation of features as lines is no evidence of a property boundary.



Supplied By: **Entwistle Thorpe Warrington**
 Serial number: 001079996
 Plot Centre Coordinates: 368651, 376990



Key

- +— Proposed Bridleway
- Proposed Footpath to be stopped up
- Other unaffected Rights of Way



N

1:5,500

Upgrade of Footpath No.9 (part) to bridleway and
Addition of a bridleway, Parish of Higher Hurdfield

Plan No.
WCA/004

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



**Cheshire East
Council**

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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	8 th December 2014
Report of:	Public Rights of Way Manager
Subject/Title:	Public Hearing to Determine Definitive Map Modification Order Upgrading of Public Footpath No.9 (part) to Bridleway and addition of Public Bridleway No 12, Parish of Higher Hurdsfield and addition of Public Bridleway No 98, Parish of Macclesfield

1.0 Report Summary

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

2.0 Recommendation

- 2.1 No decision is required by Committee.

3.0 Reasons for Recommendations

- 3.1 N/A

4.0 Wards Affected

- 4.1 Bollington and Macclesfield East.

5.0 Local Ward Members

- 5.1 Councillors P Hayes, Councillor B Livesley and Councillor D Neilson

6.0 Policy Implications

- 6.1 Not Applicable

7.0 Financial Implications

- 7.1 Not Applicable

8.0 Legal Implications

- 8.1 Under section 53 of the Wildlife & Countryside Act 1981 (WCA), the Council has a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Section 53 (3) (c) allows for an authority to act on the

discovery of evidence that suggests that the Definitive Map needs to be amended. The authority must investigate and determine that evidence and decide on the outcome whether to make a Definitive Map Modification Order or not.

9.0 Risk Management

9.1 None

10.0 Background and Options

- 10.1 An application was made to Cheshire County Council in 2003 to amend the Definitive Map and Statement by upgrading Public Footpath No.9 in the parish of Higher Hurdsfield to a Public Bridleway.
- 10.2 Cheshire East Borough Council considered this application in a report put before the Rights of Way Committee on 24th September 2012. The making of an order was approved with the exception of the part of Footpath No. 9 marked C-H-I-D on Plan No. WCA/004. The section C-H-I-D was refused on the grounds that there was insufficient evidence to show the existence of bridleway rights. Approval was also given for the making of an order for the addition of two further sections of bridleway between points C-G-D and E-F on Plan No. WCA/004. Section E-F is in the parish of Macclesfield. A Modification Order was made on the 17th January 2013 and advertised on 6th February 2013.
- 10.3 Four formal objections were submitted to the order which were not withdrawn. In addition a representation was made by Mr Broadbent of Close House Farm. Three of the objections were based on the fact that the Council had omitted the section C-H-I-D (past Close House Farm) from the Order; they believed the full length of Footpath No.9 Higher Hurdsfield should be upgraded to bridleway. There was also concern over the conflict between walkers and horses on the section C-G-D, it was stated by the objectors that the route is unsuitable for mixed use. The fourth objector did not oppose the recording of a bridleway along the Order route, his objection related to the way in which the Order schedule records the width of the bridleway at a point where a large oak tree narrows the path.
- 10.4 Mr Broadbent made a representation, he was not objecting to the Order but would object if the Order were modified to include the section past Close House Farm (section C-H-I-D).
- 10.5 As the objections were not withdrawn consequently a file of the relevant information was submitted to the Planning Inspectorate in January 2014.
- 10.6 A public hearing was held on 9th September 2014 at Macclesfield Town Hall. Mr Spoor (applicant and objector) was present; he was also representing two other statutory objectors. Mr Broadbent who had submitted a representation was also present. Cheshire East Council was represented by Jennifer Tench

(Definitive Map Officer) and Mike Taylor (Rights of Way Manager). The appointed Inspector was Sue Arnott.

- 10.7 The hearing heard evidence from the Council's Definitive Map Officer, Jennifer Tench and from the Rights of Way Manager. It was the Council's approach that the evidence was sufficient to justify making an Order to record the claimed bridleway, but not over the entire length of the route, as claimed by Mr Spoons. The historical evidence was not strong enough to support the existence of a status higher than that of footpath, which is already recorded on the definitive map. Therefore the basis of the evidence in support of the Order route was that of user evidence. It was the Council's case that under section 31 of the Highways Act 1980, the way had been used on horseback for a full period of 20 years without force, secrecy or permission and without sufficient evidence to indicate that there had been no intention to dedicate during that period. If these criteria are fulfilled then the way is deemed to have been dedicated as a bridleway. At the hearing various dates were discussed as to when the status of the route was 'brought into question'. The relevant 20 year period to be considered is taken back from this date.
- 10.8 It was Mr Spoons' case that the historical documents show dedication of the full length of footpath no.9 as a bridleway (at least). The Inspector addressed the historical evidence that was submitted by Mr Spoons with his application, as well as additional evidence gathered by officers during the investigation.
- 10.9 The Inspector also addressed the user evidence; she looked at the use on horseback for both the Order route and that of route C-H-I-D (past Close House Farm). She also examined the landowner's intentions and whether there was any evidence to show a lack of intention to dedicate a public right of way for horses.
- 10.10 The hearing was closed and concluded on 9th September 2014 following an accompanied site visit. The Inspector issued a decision letter on the 14th November 2014 (Appendix 1) in which she confirmed the order, with no modifications. The balance of the argument weighed in favour of the Order route having been deemed to have been dedicated as a bridleway.
- 10.11 With regard to the documentary evidence the Inspector found the southern half of the route to be shown consistently different than the northern half. She found the southern half could be interpreted as acknowledging a public interest or at least not precluding that conclusion; at best the northern part is consistently neutral but with a tendency to weigh against the route being a highway. She concludes that the historical documents do not support the claimed route ever being acknowledged as a highway (beyond the footpath now recorded on the definitive map).
- 10.11 With regard to the user evidence the Inspector considered various possible dates as the 'bringing into question', but concluded that 1995 and 1991 were the most significant requiring examination. In 1995 Mrs Broadbent lodged a statutory declaration with the Council. Under section 31(6) of the Highways Act 1980 any landowner can deposit with the appropriate Council a map of

their land with a statement indicating the ways (if any) they admit to have been dedicated as highways. The Inspector accepts the date of Mrs Broadbent's declaration as one point at which the public's rights came into question. The other date of 1991 is the date a public path diversion order was advertised, proposing diverting the footpath from C-H-I-D to C-G-D. When the order was publicised in 1991 this would have brought into question the rights of horse riders as well as walkers. Also around this time a stile was installed to the north of point D, which was a very clear obstruction to horse riders. Therefore the Inspector considered two relevant twenty year periods, 1975-1995 and 1971-1991.

- 10.12 For a presumed dedication of the order route to have occurred the use by the public, during the relevant period, must be shown to have been actually enjoyed as of right, without interruption, and to have continued throughout the full twenty years. The Inspector concluded that she was satisfied that there was sufficient use of the Order route as a bridleway during the two relevant periods. In relation to the landowners' intention there was insufficient evidence (during either relevant period) that the landowners made clear to the public a lack of intention to dedicate a right of way for horses along the Order route via points C-G-D.
- 10.13 Although the route C-H-I-D was not part of the Order route, as it was the subject of Mr Spoor's objection, the Inspector also considered the evidence in relation to the possibility of statutory dedication of this path as a bridleway. In short the Inspector found rather little evidence of use by local riders and concluded it was insufficient to raise a presumption of dedication.
- 10.14 Finally the Inspector considered the objection in relation to the stated width of the bridleway between points C and G. The Order schedule states the bridleway will vary between 1.4 metres and 3.2 metres except at one particular point where it is restricted to 1.1 metres by a large tree. The objector submits that the initial presumption should be that the whole of the track has been dedicated except for a reservation of the right to keep the tree. The objector further argues that the dedication of a way as narrow as 1.4 metres raises a fundamental question over its intended status. In response Cheshire East Council argued that the tree had been in place throughout the relevant 20 year period and therefore the public (including horse riders) have acquired the right of way subject to the restricted width beside the tree. It was also a matter of fact that horse riders used this route with the restriction and this use was known to the landowner who did not challenge it. The Inspector, whilst acknowledging the validity of the objector's argument, agreed with the Council on this point, she saw no reason why the use of this narrow path could not give rise to a bridleway in these circumstances. The Inspector did not therefore amend the width in the Order and concluded that the Order should be confirmed.
- 10.15 The Council will now arrange advertisement the confirmation of the order, 42 days is allowed for a High Court challenge to be made. A challenge can only be made on the basis that the Inspector in reaching her decision has wrongly applied the relevant law.

11.0 Access to Information

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

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Order Decision

Hearing held on 9 September 2014

by Sue Arnott FIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 14 November 2014

Order Ref: FPS/R0660/7/7

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Cheshire East Borough Council Definitive Map and Statement (Upgrading of Public Footpath No 9 (part) to Bridleway and addition of Public Bridleway No 12, Parish of Higher Hurdsfield and addition of Public Bridleway No 98, Parish of Macclesfield) Modification Order 2013.
- The Order is dated 17 January 2013. It proposes to modify the definitive map and statement for the area by recording a public bridleway between Springhill and Ecton Avenue in the Parishes of Higher Hurdsfield and Macclesfield, as shown on the Order map and described in the Order schedule.
- There were four objections and one representation outstanding when Cheshire East Borough Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I held a public local hearing into the Order in Macclesfield Town Hall on 9 September 2014. During the previous afternoon I walked (unaccompanied) the Order route together with that part of Footpath 9 which passes Close House Farm. This section, shown on the Order map as the direct route between points C and D, is not included in the Order. However in the submission of the applicant, Mr Spors, this public footpath is the historical line of the bridleway between Roewood Lane and Ecton Avenue and it is the line he applied to have upgraded on the definitive map and statement in 2003. I therefore considered it important that I familiarise myself with this section as well.
2. Before closing the hearing, I adjourned the proceedings to the site so that the main parties were able to continue the discussion whilst we walked the northern part of the Order route. For this I was accompanied by Ms Tench of Cheshire East Council (CEC), Mr Spors (applicant and objector) and Mr Broadbent (representing the owner of Close House Farm).
3. In principle, neither Mr Spors nor the two other statutory objectors he had been appointed to represent object to the upgrading of Footpath 9 to bridleway status; indeed that was the aim of his application. It was the omission of the section past Close House Farm to which they object.
4. The fourth statutory objector, Mr Kind, likewise did not oppose the recording of a bridleway along the Order route. The focus of his objection was solely the way in which the Order schedule records the width of the bridleway, in particular at a point where a large oak tree narrows passage for the public.

5. Whilst I have listed Mr Broadbent under the heading of 'Objectors' at the end of this decision, I understand he does not actively oppose the Order as it has been made (although he does not actively support it) but would object to any modification of the route to reflect the line sought by Mr Spoons.

The Main Issues

6. The main issue here is whether the evidence shows that in the past the Order route has been used in such a way that a public bridleway can be presumed to have been established.
7. The Order was made by CEC under Section 53(2)(b) of the 1981 Act on the basis of events specified in sub-sections 53(3)(c)(i) and 53(c)(ii).
8. Section 53(3)(c)(i) requires the discovery of evidence which shows, on a balance of probability, that a right of way subsists, or is reasonably alleged to subsist, over the way in question. However, at this stage, if I am to confirm the Order I must be satisfied, on a balance of probability, that the public rights intended to be recorded over the sections shown on the Order map as C-G-D and E-F do subsist.
9. Section 53(3)(c)(ii) requires the discovery of evidence which shows, similarly on the balance of probability, 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", in this case that parts of Footpath 9 (shown as B-C and D-E) should instead be shown as a bridleway.
10. CEC's case in support of the Order is based primarily on the presumed dedication of a public bridleway under statute, the requirements of which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). In brief, this approach requires use of the claimed route by the public with horses, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route had been dedicated as a public bridleway. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by horses; if not, a public bridleway will be deemed to subsist.
11. Although the case was not argued on the basis of common law, I explained at the hearing that if I find that the requirements for dedication under statute have not been satisfied, I may consider such an approach in the alternative. For this I would need to consider whether, during any relevant period, the owner(s) of the land in question had the capacity to dedicate a public right of way; whether there was express or implied dedication by the owner(s), and whether there is evidence of acceptance of the claimed right by the public.

Reasons

12. When Mr Spoons made his application to Cheshire County Council (CCC) in 2003, he did so on the basis of both historical documentary evidence and more recent evidence of use by horse riders. Following investigation some years later by the former County Council's successor authority, CEC, a report was presented to its Rights of Way Committee in September 2012. The Committee decided that the evidence submitted by Mr Spoons, when considered along with the additional evidence gathered by its own officers, was sufficient to justify making an Order to record the claimed bridleway but not over the entire length

of the application route. That part of the application that related to section C-D was rejected and the Order that is now before me for determination was made.

13. In short, the rationale behind the Council's decision was that it concluded the available evidence was simply not strong enough to support the applicant's route being an historical highway carrying more than the public right on foot that is already recorded on the definitive map. However it was persuaded that the evidence of use in the late twentieth century demonstrated a much more recent dedication but the route followed by these users contributed to the establishment of the Order route, in particular via C-G-D not C-D.
14. Three of the objectors now argue that the evidence either supports the whole of Footpath 9 being a bridleway or none of it. Whilst I would agree that is a logical approach to the historical evidence which pre-dates the provision of the alternative path C-G-D, it is not necessarily true when it comes to analysis of the more recent use by riders.
15. At the hearing, I proposed that the parties present examine with me first the historical evidence, working forward in time from the oldest to the most recent, so that then it would give some context to the user evidence which dates from the 1950s onwards. This proved to be a helpful approach.
16. Therefore despite the Order being made by CEC on the basis of the user evidence leading to the presumed dedication of a bridleway, I shall start by addressing the historical evidence that formed the basis of the applicant's case before I turn back to the Council's proposition.

Historical evidence in support of bridleway status (via C-D)

17. In essence it is Mr Spoor's submission that dedication of the route B-C-D-E-F as a bridleway (at least) by the owner(s) long ago can be inferred from the documentary evidence available. He contends that historical documents show this route to be a public highway of some antiquity, its origins dating back as far as the early nineteenth century and possibly earlier than that.
18. Section 32 of the Highways Act 1980 provides for "*any map, plan or history of the locality or other relevant document*" to be taken into consideration when deciding whether or not a way has been dedicated as a highway. Thus, evidence of the status attributed to a route at some time in the past may be taken into account in determining its present status. Following the legal maxim '*once a highway, always a highway*', if the evidence shows that at some stage in the past the way has been accepted as a public right of way, in the absence of any evidence of formal closure, such rights will have continued to exist until recent times.
19. Mr Spoor criticised CEC's analysis and general approach to the weighting of the historical evidence it discovered during its research in addition to that he provided himself. He says they considered and evaluated each individual item but did not look at the totality of the evidence. Both Mr Taylor and Ms Tench challenged his assertion, stating that CEC had taken a balanced view of all the evidence. Mr Broadbent highlighted the published guidance which emphasises the requirement for evidence to be considered as a whole and on a balance of probability. I was able to reassure Mr Spoor that in approaching all the evidence in this case and the submissions as to the interpretation of each and all the individual documents, I intend to follow that guidance.

20. I have analysed in date order both the documents submitted by Mr Spoor's with his application together with all the additional material uncovered by CEC during its investigations into the case. Although Mr Spoor's relied primarily on tithe records, Ordnance Survey (OS) maps, local mining maps and the records prepared under the Finance Act of 1909/1910, I must consider all the evidence available in reaching my conclusions.
21. To avoid any confusion, I will refer to Mr Spoor's route B-C-D-E-F (via the Close House Farm track) as 'the claimed route' to distinguish it from the Order route B-C-G-D-E-F.

Nineteenth century records

22. The earliest document discovered was one of several commercial maps of the County: one by Burdett in 1777. Neither this map, nor others produced by Cary (in 1787 and 1823) or Smith (in 1801) showed any trace of the claimed route, whilst those by Greenwood (in 1819), Swire and Hutching (in 1830) and Bryant (in 1831) show only short sections at one or both ends¹. For the southern end, the inclosure map and award for Macclesfield in 1804 set out the section in that parish (E-F) as a private occupation road (although no details were available to indicate which parties enjoyed rights over it). Whilst this does not rule out the possibility that a public right of way might also have existed, this record provides no evidence of it. No inclosure documents exist for Higher Hurdsfield parish.
23. However that is not to say that the route did not exist in its entirety around that time. Indeed the earliest OS map (the 1": 1 mile of 1830-1840) shows it clearly did, yet its physical existence is no proof of its status as a highway. There must have been reasons why it had not been included as a through-route by the main map-makers of that period, even by those (such as Bryant) showing bridleways on their maps.
24. Tithe maps and apportionments are available for both parishes. In Macclesfield the 1840 record shows section E-F coloured in the same manner as other roads although that is not necessarily indicative of it being a highway.
25. The map for Higher Hurdsfield dated 1849 curiously shows parts of the route at and near Commonside Farm but a significant area, including Close House Farm, was not included in the titheable lands.
26. It is known that there were certain categories of land that were customarily exempt from tithe payments but the reason for the exclusion of this area remains speculation. I agree with Mr Spoor's that the omission of those parts of the claimed route which do not appear on this map (because they run through the excluded land) cannot mean it did not exist; earlier evidence I have already noted shows otherwise. However, I must give weight to the fact that the claimed route is not displayed through this excluded land yet other known highways are shown. The obvious inference is that this was not a public road although it is not necessarily certain that a bridleway would be depicted through non-titheable land in the same way.
27. Mr Spoor's highlights the numbering of the claimed route on the tithe map as parcel 105a, described in the apportionment simply as "Lane" with its land use

¹ Although none of these maps were produced to the hearing, the information they displayed was not disputed.

- listed as "Thoroughfare". He submits that the non-payment of a tithe is evidence this lane was a highway.
28. CEC points to the listing of a named owner and occupiers for this lane which it submits is more likely to indicate a private occupation road for which no tithe would be payable, it being unproductive land. Mr Broadbent argued that highways do not normally have named occupiers. The term 'thoroughfare' is not used elsewhere in the apportionment so there is no scope for making comparisons within the document to aid interpretation. One further point of note is that the section of the claimed route that is shown is not shaded brown in the same way as known highways, for example Rainow Road.
 29. Mr Broadbent drew my attention to the case of *Merstham Manor v Coulsdon and Purley Urban District Council [1937] 2 KB 77* and in particular to the Court's finding that tithe maps make no distinction between a public and a private road; their object is to show what is titheable. It follows that roads are marked as non-titheable pieces of land whether they are public or private.
 30. Nothing on this tithe map or in this apportionment excludes the possibility that the claimed route was at that time a highway as Mr Spoons submits, but in my view the listing of a named occupier, the lack of any noted public interest in the apportionment or of brown shading on the map, and absence of any continuation through the excluded area point away from it being a public thoroughfare at that time.
 31. It is not disputed that OS Maps have consistently shown the full length of the claimed route as a lane bounded on both sides since the first was published between 1830 and 1840. In particular I have examined the first edition 25" to one mile of 1875, the second edition of 1899 and the third edition of 1910 together with the corresponding 6" maps.
 32. Mr Spoons argues that the character of the way, having stone walls on both sides for most of its length, strongly suggests that it is more than a footpath. I agree with him that the width and construction of the way definitely point towards one capable of being used historically by vehicles as well as horses and pedestrians. Yet the features themselves say nothing of whether users in the nineteenth century were exercising public or private rights of way. Indeed CEC highlighted a disclaimer issued by the OS in 1889 to the effect that its maps offered no evidence of the existence of public rights but simply showed physical features noted by its surveyors.
 33. Two maps raise questions over the implications of that statement here. The first is the coloured version of the 1875 First Edition 25" map on which the full length of the claimed route is shaded brown; the second is the 1" map dated between 1897 and 1904 on which it is identified as a third class metalled road.
 34. Since the brown shading is also used for other known highways (again including the present Rainow Road (then Hurdsfield Road), and noting the 1875 map clearly pre-dates the disclaimer, the conclusion Mr Spoons draws is that this acknowledges the existence of full highway rights over the claimed route. CEC is more cautious and highlights expert cartographic opinion which suggests it may simply represent a metalled surface.
 35. As Mr Spoons has highlighted the substantive nature of the lane's surface, I have no difficulty in accepting that the colouring could have indicated a metalled surface. The OS 1" map around the turn of the century endorses

that. But what is less certain is that the colouring also represented the status of the lane, and that it showed a highway open to the public as opposed to a private occupation road.

36. Before reaching a conclusion on the inference to be drawn from the 1875 coloured OS map I regard it as important to look at what came before and after the document. In particular I need to consider the 1865 Prestbury Highways Plan that was produced at the hearing by CEC. This showed all district roads (in colour), turnpike roads and railways; the reference key states: "all other roads are uncoloured". On this plan, around half of the claimed route is shown (uncoloured), from F via E and D, ending (but shown continuing northwards) approximately one field north of D (at a point I shall call X). This is also the point at which the route shown on the tithe map ends.
37. Going back a little further still, the Council's research noted Bagshaw's Directory for 1850 mentioned 'Roe Wood Colliery' as producing a moderate quantity of good coal. The 1875 OS maps show several coal pits in the vicinity of Commonsides in the south as well as Roe Wood to the north of the claimed route. It is entirely possible – even probable – that the metalled lane was used for transporting coal from these pits. However, that does not necessarily mean that this relied on a public right of way; it may have been by private right and/or licence.
38. On balance, I am inclined to think that it may have been partly both. The weight of the tithe map, the coloured OS map and especially the highways plan together lead me to conclude that in the second half of the nineteenth century the whole length was metalled but that any public interest would have extended from F only as far as X although there is no obvious explanation for a cul-de-sac highway here.
39. I have considered Mr Spoor's suggestion that the Dye Works at Higherfence may have utilised the claimed route but I find that less likely, given its position in relation to the lane.
40. Plans deposited in 1891 for the proposed Lancashire, Derbyshire and East Coast Railway noted the whole route as an occupation road in the ownership of "P. Brocklehurst". Ecton Road was similarly identified as occupation road. Neither precludes the existence of a public bridleway (or footpath) but the absence of any reference at all to the Prestbury Highways Board (who had recorded F-X in its ambiguous 'all other roads' category) tends to tip the balance away from any part of the claimed route being clearly acknowledged as a highway during that period despite physically being a metalled track and probably capable of such use.

Twentieth century records

41. Moving into the early 1900s, most of the records prepared under the Finance Act of 1909-1910 are still available although some of the plans have additional markings which are presumed to have come from the former Macclesfield Rural District Council with whom the records were stored for a period before being transferred to the County Archive. Nevertheless, the main aspect of this evidence relied on by Mr Spoor is evident and accepted by the other parties. This is the exclusion of parts of the claimed route from adjacent hereditaments which is usually regarded as being a good indication of a highway of a status higher than a footpath.

42. At the northern end around Roewood House (including section B-C) and in the south from point F to my point X, the lane is not included within any land parcel for valuation purposes. Section C-X lies within the Close House Farm hereditament (No 132); no deduction is made for public rights of way across the property although there is an unspecified reference to a "footpath".
43. It is not unusual to find inconsistency along a clearly defined lane such as this where land ownership varies but that makes it no easier to explain. Owners were at liberty to declare and claim a deduction for public rights of way across their land but it was not compulsory. A valuer would most probably have queried obvious anomalies, for example if public rights of way were claimed where there was no apparent use taking place, or where a well-used highway followed a defined track through the property was not declared at all.
44. In broad terms, I recognise there is a degree of consistency here insofar as there is evidence suggesting the circumstances affecting the treatment of section F-X were different to those applying to the section across Close House Farm land. That follows the same pattern as the tithe map and the highways record from the middle of the previous century, both of these recognising a lane of indeterminate (but possibly highway) status but only as far north as X. Yet OS mapping confirms that the route in its entirety was then in existence.
45. The highway records 'handed over' from the District to the County Council in 1929 took the form of a list which did not include the claimed route. Although this was over 50 years since the Prestbury Highways map was produced, it tends to suggest that the inclusion of section F-X in the category 'all other roads' was not recognition of a publicly maintainable highway in 1865 so the reason for it being shown remains debateable. A map of reservoirs and pipelines dated 1942 shows the whole route coloured and named "Needham's Lane" but the full significance of this is not explained.
46. Mr Broadbent highlighted the fact that when the Close House Farm property was offered for auction in 1933 as part of the Hurdsfield Estate, it was described as 'formerly copyhold'. He further explained that until 1922 it had been held under the copyhold title of the Manor and Forest of Macclesfield. But whether or not different land tenure was the reason for the consistent differences in the way the two parts of the claimed route were represented in the key records up to and including the 1910 Act documents is unproven but seems to me the most likely explanation.
47. Yet the first recording of a public right of way over the claimed route following the National Parks and Access to the Countryside Act 1949 is the most puzzling. Records show it² was surveyed in September 1951 by two local men who identified it as "CRF" (a *Public Carriageway or Cart Road or Green Lane mainly used as a footpath*) and "FP" (a *footpath*), although CRF was subsequently crossed out, by whom is not known. The survey sheet recorded two limitations: a kissing gate (at X) and a stile (at D), both of which are clearly consistent with a footpath but not with any greater rights (public or private). Mr Taylor suggested there may also have been field gates next to the stile and kissing gate but neither the survey sheet nor the parish map show any such gates although the map does include field gates (FG) in other locations north and south of Close House Farm.

² That section in Higher Hurdsfield Parish only.

48. However the minutes of a meeting in 1956 note that objection was made to a notice at Close House Farm stating 'Private Road'. The record makes clear the Parish Council's stance: "*This road had always been a bridle road.*" A year later this was followed up with a request through Macclesfield RDC that the road be recorded as a public bridleway. It is not clear whether by 1957 preparation of the definitive map and statement had reached its final stage but it appears that no further action was taken to seek recognition of the bridleway asserted by the Parish Council until an application was made in 1972 by a Mr Maddock.
49. The kissing gate and stile described by the surveyors were in place in, and presumably before, 1951. Whenever they were installed they would have challenged use by horse riders. Perhaps it was a need to establish use back twenty years to the time before Close House Farm was sold in 1933 that proved problematic. That must remain speculation since no evidence is available from this period to shed light on this. What is clear is that in the 1950s there was a belief that the claimed route via Close House Farm was a public bridleway but it was unproven.

Overall conclusion on historical evidence

50. Mr Spoons submits that a consistent picture emerges from the various maps submitted in evidence, this showing the claimed route to be a public highway of considerable importance. He points to its substantial nature and width over its entire length and speculates that in the past this would have been used by local people engaged in agriculture and early industrial use: coal mining, the dye works and canal traffic in particular. Further he highlights the road names - Roewood Lane in the south and Bibby's Lane in the north (Mr Bibby farming at Close House Farm in 1892 and 1914) - these confirming its local reputation as a thoroughfare.
51. CEC accepts the lane may be ancient in origin but says the evidence to show it was a public way may be consistent for the southern part but not for the whole route; if it had been, the Council may have been swayed by evidence.
52. In fact I find a surprising degree of consistency in the documentary evidence until the preparation of the definitive map in the mid-twentieth century and the ambiguous Parish Council references to the route. Unlike Mr Spoons, the picture I find is of two halves of the route being shown consistently differently other than the coloured OS map in 1875 which, on balance, I interpret here as representing the substantial construction of the whole lane which, broadly speaking, still exists today. Whilst I find the southern half consistently shown in a manner which **could** be interpreted as acknowledging a public interest or at least not precluding that conclusion, at best the northern part is consistently neutral but with a tendency to weigh against the route being a highway.
53. I suspect Mr Spoons may be correct in his assertion that for over a century and more local people have used the claimed route on foot, on horseback, perhaps even with carts, and that the reputation expressed by the Parish Council in the 1950s was based on recollections of that use having taken place. However there is no evidence before me that such use was in exercise of a public right of way. The historical documents before me do not support the claimed route ever being acknowledged as a highway (beyond the footpath now recorded on the definitive map) and having considered the implications of all the available evidence, on a balance of probability, I cannot agree that it is sufficient to demonstrate the public bridleway that Mr Spoons believes subsists.

Presumed dedication under statute

54. Turning next to the user evidence, I note firstly that long-standing use by pedestrians of the sections of path C-G-D and E-F is not disputed. Despite C-G-D being referred to as a "permissive diversion" since it was established in or soon after 1953, I have seen no evidence at all to suggest that at any time notices were placed along the way by or on behalf of the land owners advising users of the way that their use was anything other than 'as of right', or that people on foot were challenged by any other means. Although in 1995 the owner, Mrs Broadbent, deposited with the relevant authority (Cheshire County Council) a statement under Section 31(6) of the 1980 Act denying the existence of any public rights (other than Footpath 9), there is nothing to indicate that users of the way were informed they should no longer use it.
55. In fact it now seems to have been accepted that the public has acquired a right of way on foot over this part of the Order route and I have seen no evidence which causes me to reach any other conclusion as far as pedestrian rights are concerned. It is the rights of horse riders that are at issue here and this therefore forms the focus of my further analysis.

Bringing into question

56. Before a presumption of dedication can be inferred under statute, Section 31(2) of the 1980 Act requires the relevant period of use "*to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by notice ... or otherwise*". Use during that period must be shown to have been actually enjoyed as of right, without interruption, and to have continued for a full period of twenty years.
57. Thus the first matter to be established is when the public's rights were brought into question. Whilst I have considered other possibilities, three dates were canvassed by CEC so I shall address these first.
58. The first is the date of the application made by Mr Spoor in July 2003. Section 69 of the Natural Environment and Rural Communities Act 2006 allows the date of a *qualifying* application to be treated as 'bringing into question' the rights of the public. CEC submits that this date should apply in relation to the southernmost section of the Order route E-F³ since there has been no other challenge to the public's rights here.
59. In short, I do not intend to consider this date further. I regard challenges to any part of the way as applicable to the whole unless evidence (of which there is none here) suggests otherwise. Even if I were to follow CEC's approach and take E-F in isolation, I would have to reject Mr Spoor's application as a possible challenge since his form sought the upgrading of Footpath 9 in Higher Hurdsfield Parish and thus did not include the section E-F (even though he may have intended that it form part of his claim).
60. Mr Spoor's application undoubtedly did raise questions over the status of the public's rights on Footpath 9, on section E-F and the Order route C-G-D. However, any presumption arising from use by the public of the whole route during the preceding twenty year period, 1983-2003, would be rebutted by the

³ I have noted earlier that Footpath 9 Higher Hurdsfield ends at Point E on the parish boundary. It is not recorded on the definitive map and statement as continuing into the adjacent Macclesfield parish.

statutory declaration lodged by Mrs Broadbent (in relation to her own land) in 1995 under the provisions of Section 31(6) of the 1980 Act.

61. Indeed this is the second action considered by CEC to have brought into question the public's rights over and above those of pedestrians on the definitive line of Footpath 9. Although the Council considers this applied only to the routes over the Broadbent's land, in my view it raised doubts over the rights of horse riders to use the whole route from Ecton Road to Springhill.
62. Under Section 31(6) a landowner can deposit with the appropriate Council a map of their land with a statement indicating the ways (if any) over the land they admit to have been dedicated as highways. In the absence of proof to the contrary, a properly made statutory declaration of this type is sufficient evidence to rebut the intention of the owner to dedicate any additional highways during the associated relevant period. In most cases it will also bring into question the status of any ways in use by the public but not acknowledged to be highways.
63. Although a public register must now be kept of such deposits, this was not general practice in 1995. Thus it is not entirely certain that Mrs Broadbent's declaration came to the attention of any members of the public who might have been inclined to challenge their rights over and above those covered by Footpath 9.
64. However, I regard the timing of the declaration as significant insofar as it occurred during the protracted determination of a diversion order which proposed to close the footpath between C and D and re-direct walkers along C-G-D. A diversion order⁴ was made in 1991 under Section 119 of the 1980 Act and, as a result of objections to the proposal, an inquiry was held in 1994. The decision issued on 25 Jan 1995 was subsequently quashed by the High Court in March 1996, prompting a second inquiry to be held in February 1997 after which the final decision to reject the diversion was issued in April 1997.
65. I find it hard to imagine that Mrs Broadbent's statutory declaration was not somehow related to these events, or that it did not come to the attention of interested parties during this lengthy process. There is no direct evidence to support that conclusion but it seems likely.
66. Consequently I accept the date the declaration was lodged in 1995 as one point at which the public's rights came into question thereby requiring examination of use during the period **1975-1995**.
67. CEC's third event dates broadly from the same period; it concerns a physical challenge to the route of Footpath 9 south of Close House Farm approximately at my point X in or around 1987 or 1988. It was shortly after this that the separate horse track was installed alongside the C-G-D 'diversion' since it appears horse riders were using the Order route causing difficulties for walkers and prompting complaints about the path surface.
68. There are references to a blockage in letters to CCC from a Mr Burch (in 1987), Mr Spoor (in 1988) and Mr Shercliff (in 1989) along with notes of Council Officers' meetings noting that Footpath 9 was barred to horse riders but not

⁴ The Cheshire County Council (Footpath No. 9 (Part) Higher Hurdsfield, Macclesfield Borough) Public Path Diversion Order 1991

pedestrians. Although the notes were not explicit as to the exact nature of the obstruction that prevented use by horse riders, other evidence points to this being a pole or wooden rail at a point north of D.

69. Mr Broadbent recalled this pole being put in place much earlier than this; he thought it was soon after the family moved to Close House Farm in 1967. However there is no evidence before me to corroborate this until the 1980s. Whilst Mr Spoons thought the pole was in place when he moved to his present house in 1982, in his statement Mr Armstrong of Commonsides Farm recalled the pole being put across the lane around the time the alternative horse way was put in. Another rider, Mrs Morton, wrote that she remembered the pole being quite low so that her horse could step over it.
70. It is difficult to accurately pinpoint when the pole was first put across Footpath 9. Indeed the evidence seems to suggest it may have been in place intermittently, but it was not until 1987 that records show CCC began to receive complaints. However these complaints do not appear to have come from horse riders, at least some of whom chose to ignore the pole and ride past Close House Farm, but from pedestrians complaining of horses using the alternative path C-G-D.
71. On balance I am minded not to accept that the pole brought into question the status of any part of the Order route. Nevertheless, one way or another, these complaints seem to have resulted in an application being made in 1989 to divert Footpath 9 away from Close House Farm and onto C-G-D, and alongside that, the provision of a separate horse track (though not part of the proposal).
72. A letter from CCC on 27 October 1989 reported the comments of the Ramblers' Association and the Peak and Northern Footpath Society to the requested public path diversion order. The response of the latter was to state that the proposed new route was "*quite obviously dedicated to the public*" and that "*in the ordinary course of events we should have been applying for it to be added to the Definitive Map at the next opportunity*". The Ramblers' Association was more explicit, highlighting the use of the horse track (adjacent to C-G-D) but pointing out that "*the whole path is not a bridleway*" and that it would oppose the diversion unless horse riders were excluded.
73. It seems to me that the rights of horse riders as well as walkers were brought to the fore by the application to divert Footpath 9 in 1989. Yet there is no certainty that horse riders would have been aware of the proposed re-routing of Footpath 9 and formal designation of C-G-D as a footpath until the public path order was made and publicised. (Organisations representing the interests of local horse-riders may not necessarily have been consulted over a proposal which concerned only a definitive footpath.)
74. I therefore regard the publication of the 1991 diversion order as bringing into question the extent of the public's rights and intend also to consider a relevant 20 year period **1971-1991**.
75. It seems there was another event around the same period: a stile was installed to the north of point D around the time works were being carried out by the water company in 1991 or 1992. This was a very clear obstruction for horse riders (as is the Council's kissing gate which replaced it in 2007) but will have challenged their use of Footpath 9 via C-D, not necessarily the Order route C-G-D. (I will consider the implications of this separately below.)

76. In addition to these three main 'events', an application to upgrade the route to bridleway was made in 1972 under previous legislation by a Mr Maddock (who had been Bridlepaths Officer for East Cheshire Combined Training Group since 1967/8). This may or may not have been prompted by the construction of flats across the original line of Footpath 9 at its northern end⁵ by Macclesfield Rural District Council in 1973. However, Mr Maddock's application was not reviewed until 1986 and, when he failed to re-submit his application, it did not proceed further. Unfortunately his evidence has not been located if indeed it still exists. Although this application had the potential to bring into question the extent of the public's rights, as indeed did the obliteration of the way north of point B by housing development, there seems to be no contemporary evidence available to show that either in fact did so.
77. There is also reference to diversion of Footpath 9 proposed in 1976 which likewise might have caused questions to be asked over the rights of horse riders along the way but no evidence is available to support this.
78. Going back still further, in his statement dated 1997 Mr Parker (owner of Close House Farm from 1953 to 1967) explained how he established the 'diversion' route (C-G-D) to take walkers away from his herd of milking cows because of fears of Foot and Mouth Disease. Soon after moving to the property he set out the new path and, after consulting Macclesfield Council and the Ramblers' Association, believed it thereafter to be the official route of Footpath 9.
79. Although Mr Parker himself does not mention this, the minutes of the Hurdsfield Parish Council in 1956 record protests at the display of a 'Private Road' sign along Roewood Lane. In March 1957 the Parish Council concluded that the road in question should be recorded as a bridleway not a public footpath and in June 1959 there was concern that Mr Parker had erected a notice advising pedestrians to use the alternative path.
80. Although the precise sequence of events is not clear from the limited information available, I regard these notices as actions which challenged the rights of the public. At that time compilation of the definitive map and statement was not finalised⁶ so that there would have been no conclusive evidence of a public right of way over Footpath 9.
81. Whilst I conclude the 1956 notice brought into question the status of the route, during the previous twenty years there is direct evidence from only one rider (Mrs Johnson) whose use possibly predated the notice. Her statement indicates she began riding the way in 1956. However, I would need to discount parts of her evidence since, as Mr Parker's daughter, she lived at Close House Farm and her use of some, if not all, of the route would not have qualified as being 'as of right'; she would have been riding on her family's own land.
82. Although it is clear from the minutes of meetings in 1956 and 1957 that the Parish Council considered the route surveyed in 1951 "*had always been a bridle road*", with no other evidence from riders who used it between 1936 and 1956, I cannot take further the possibility of statutory dedication under Section 31 of the 1980 Act during this particular period.

⁵ The part of Footpath 9 (Higher Hurdsfield) north of point B has since been extinguished by Order made by CEC and confirmed on 14 March 2013.

⁶ As I have noted above, the initial survey of public rights of way in Higher Hurdsfield Parish was carried out in September 1951. The relevant date of the first definitive map and statement for Macclesfield was 1 November 1954.

83. In summary, I intend to focus on two twenty year periods: 1975-1995 and 1971-1991. The first of these was brought to an end by Mrs Broadbent's statutory declaration; in the second case it was publication of the order proposing diversion of Footpath 9 (C-D to C-G-D) that marked the end of a relevant twenty year period for the purposes of Section 31(1) of the 1980 Act.

Evidence of use by the public

84. If a presumption of dedication is to be raised, qualifying use by the public during the relevant period must be shown to have been actually enjoyed as of right, without interruption, and to have continued throughout the full twenty years. Enjoyment of the way 'as of right' is usually interpreted as use by the public that is not by force, does not take place in secret and is not on the basis of 'permission' to use the way.
85. The evidence of use provided by the applicant and on which CEC relied consists of the written evidence of 12 riders. This is in the form of standard user evidence sheets, in some cases supplemented by statements following interview with Ms Tench of CEC to clarify their original forms.
86. Of these people, one (Mrs Johnson) is the daughter of the previous owner of Close House Farm, Mr Parker. Although I agree that whilst he owned the property, her use of routes on his land would not have been 'as of right', I do not discount the use she describes between 1984 and 1992 once it had been sold to the Broadbents.
87. I exercise a degree of caution over the evidence of Mr Armstrong since he claims that a right of way for all purposes along the full length of Footpath 9 is attached to his property (Commonside Farm). Although I have not seen any documentation which proves such a right exists, it is entirely possible that he does indeed enjoy a right of way over Close House Farm land in which case his use on horseback would be in the exercise of that private right, not 'as of right'. Although not proven one way or the other, I will not rely on his individual use of Footpath 9 in my analysis but there is no reason why his evidence should not be considered in respect of section C-G-D (or the horse way) where no private right of way is claimed.
88. Mrs Armstrong's evidence also requires closer examination in relation to the same point. Her statement seems clear that she regularly rode along Footpath 9 past Close House Farm (apparently on the instruction of Mrs Broadbent) from 1975 until around 1987. Thereafter she switched to the 'alternative bridleway' and continued to use this route until 1996 or thereabouts but it is not clear whether she was referring to the footpath C-G-D or the horse way.
89. I have no difficulty in accepting that Mrs Armstrong's use of the alternative route between C and D was as of right and should be counted. However it is not clear to me whether the instruction given to her by Mrs Broadbent in 1975 was simply directing horses away from the footpath C-G-D following the complaints made by pedestrians, or the granting of express permission. Neither Mrs Broadbent nor Mrs Armstrong was available to answer questions at the hearing so I have been unable clarify the matter further.
90. With these and all the remaining claimants I consider it important to try to establish exactly which route they were riding and when. It is clear that the Order route has been open and available for pedestrians since it was created in

the 1950s by Mr Parker and, other than the width restriction, no physical barriers appear to have precluded horse use at any time.

91. In 1973 the Parish Council discussed *"the use of this footpath by horse riders and in particular the diversion around Close House Farm where this footpath was narrow and muddy and caused concern to people encountering horses on this stretch."* Thus horse riding on the Order route is corroborated at that time and was still continuing to raise concerns in a minute recorded in July 1976.
92. By September the Council was so concerned about horse riders using the "diverted footpath" around Close House Farm that it resolved *"that a sign be erected at each end of the diversion with a direction sign for horses through the farm and pedestrians around the diversion"*. However there is no evidence to support such a sign ever being erected.
93. Whether related to this resolution or not, the Parish Council minutes for October 1976 made reference to an invitation from CCC to comment on a proposed footpath diversion, presumably as requested by Dr Broadbent. At this meeting it appears Dr Broadbent (himself a Parish Councillor) had *"suggested that horses could continue to use the route by his house whilst pedestrians should use the alternative."* However the basis on which horse riders might do so was not made clear.
94. Mrs Broadbent was a keen horse rider herself and was known to some of the claimants. Yet it is not entirely certain whether this continued use of C-D via Close House Farm was by express permission (as Mr Broadbent submits), whether permission should be implied from any particular actions or whether use by horse riders was simply tolerated.
95. Many claimants say they rode along Footpath 9 via Close House Farm until told by Mrs Broadbent to use the alternative. In some cases that was via the Order route whilst others used the separate horse track once it was set out in 1989⁷.
96. For example, Mr Maddock, whose use began in 1964, said he rode the route past Close House Farm until the Broadbents moved to the property and asked him to use the alternative path. Mrs Morton (who had been riding there since 1957, sometimes with Mrs Johnson) did the same as Mr Maddock: when the Broadbents went to Close House Farm she knew they preferred horses to use the diversion so she did so though she was never actually told to do this by Mrs Broadbent. Mr Armstrong said that he first rode the route in 1986 when starting his livery business; initially he rode past Close House Farm (C-D) but later used the "diverted bridle path" as instructed by Mrs Broadbent. Mr Brough, who rode from 1986 to 2003 weekly, stated *"I have always used the diverted route when on horseback, the narrow one as marked on the map."* Mrs Eagles described her use between 1976 and 1980 using the Order route but later, between 1988 and 1993 she used both this and the horse track.

Use during the periods 1971-1991 and 1975-1995

97. Focussing on the specific period 1971-1991 I find nine of the 12 claimants had been using the Order route (including C-G-D) for various lengths of time although only Mrs Morton had done so throughout the whole period. It is not

⁷ The exact date this was made available is not certain but it is first mentioned in a letter to CCC from Mr Shercliff dated 9 June 1989.

- necessary that each claimant has themselves used the way for all of the 20 years; it is their collective use during that period that is relevant. Whilst the combined use of the claimants is greater towards the second half of this period, I weigh in the balance the references in the Parish Council minutes from the mid-1970s to horse use of 'the diversion'.
98. For the later period, 1975-1995, all twelve claimants are able to contribute use during at least part of the relevant twenty years. Again this amounts to more during the latter half but I accord a degree of additional weight on account of the Parish Council references for similar reasons.
99. There is nothing to suggest that this use of the Order route by horse riders was ever interrupted, by physical obstruction or otherwise. None of the claimed use has been in secret or by force and whilst the route was referred to by some as the 'permissive diversion', there is no evidence to support the claimed usage being on the basis of either express or implied permission.
100. Yet a proportion of the claimed use after the horse track was provided in 1989 should be credited to this alternative, not to the Order route. Although it is tempting to consider these all part of the same way, being side by side for much of their length, they join Footpath 9 at significantly different points at and near point D over 50 metres apart.
101. This horse track was in place for only 6 years before Mrs Broadbent's statutory declaration rebutted any presumption that this too might have been dedicated as a bridleway. I find that insufficient to make the case here, either under the statutory approach or at common law.
102. Nevertheless I am satisfied that between 1971 and 1991 at least, whilst the horse track was still a relatively new feature, there was sufficient use of the Order route with horses, as of right and without interruption, to raise a presumption of dedication as a bridleway.

Intentions of the landowner(s)

103. I next turn to consider whether there is any evidence to show that during this period (1971-1991), the owner(s) of the land demonstrated a lack of intention to dedicate a public right of way for horses over the claimed route. During the whole of this time, the land at the northern end of the Order route was owned by the Broadbents; ownership of the land south of point D is unrecorded.
104. There is no evidence that horse riders were ever turned back or challenged whilst riding the order route C-G-D over the northern section. Some claimants (for example Mr Brough) mention a Mr Henson, formerly of Nursery Cottage near Commonsides Farm, who objected to horses using the route. He insisted it was a footpath and erected a notice near his cottage stating so (although no date is attributed to this action). However Mr Henson did not own the track and there is no evidence to link his actions with the intentions of the unknown owner of this section. In any event it seems this had no effect at all on horse use of the route.
105. For the northern section, minutes of meetings in the mid-1970s show that the Parish Council was concerned about horse riding on the Order route and proposed a notice be erected here but there is no evidence this was ever done. (Clearly the Parish Council was not the landowner). Although it was not

minuted, a letter in February 1977 from the Ramblers' Association to the County Council reported that at the same meeting Dr Broadbent had stated that horse riders could continue to use C-D past Close House Farm whilst pedestrians should use the alternative (C-G-D). That seems to be supported by the evidence of Mrs Armstrong who says she used C-D on the instruction of Mrs Broadbent; others, such as Mr Brough, stuck to the Order route, some saying that they knew she preferred them to use it and saw them doing so. The only notices reported which were much later, positioned at both ends of the horse-way stating "Horses" but there is no mention of any signs intended to deter horses from using C-G-D. There is no evidence of any other relevant notices being displayed elsewhere on the Order route.

106. I have also considered whether the Broadbents' application for diversion of Footpath 9 either in the mid-1970s or late 1980s demonstrated a lack of intention to dedicate the Order route since it dealt only with pedestrian rights. But whilst it did not show a positive intention to dedicate the way for horses, neither did it make clear that a public right to ride was not accepted. In fact the Broadbents' reaction to objections to their 1989 diversion proposal was to create the horse track. I interpret that as more in keeping with an acceptance of horse use rather than in rebuttal of it.
107. It was not disputed that the waymarking signs which are in place at present are relatively recent. No other evidence has been provided from which I might draw the conclusion that at any relevant time the owner/s (or their agents) made known to the public who were using the way with horses that they should not presume they had a right to ride there.
108. In conclusion I find insufficient evidence that during the period 1971 to 1991 (or 1975 to 1995) the relevant landowners made clear to the public a lack of intention to dedicate a right of way for horses along the Order route via C-G-D.

Section C-D

109. As I have already noted, the section of Footpath 9 past Close House Farm does not form part of this Order. However, since it was the subject of Mr Spoor's application and its omission is the main reason for his objection, I have addressed the evidence specifically in relation to the possibility of statutory dedication of this path as a bridleway.
110. My earlier finding that the status of the Order route was brought into question in 1991 and in 1995 applies also to that part of Footpath 9 between C and D. In addition I consider the stile erected on Footpath 9 north of D (and, importantly, north of the junction with the horse track) challenged the rights of horse riders to use C-D past Close House Farm. Thereafter it became impossible to ride this section, thus ruling out any possibility of dedication between 1975 and 1995.
111. Examining horse riding use between 1971/2 and 1991/2 reveals relatively little evidence that local riders were using this, having been encouraged first to use the Order route as an alternative and then from 1989 onwards to follow the horse track. There is some evidence from 1976 that Dr Broadbent may have relented by offering to allow horses to use the definitive footpath past his home but, other than Mrs Armstrong, there is little evidence from claimants to

suggest riders actually did so, with or without the express permission of Mrs Broadbent.

112. There may be some truth in Mr Spoor's assertion that passage along Footpath 9 at Close House Farm had deliberately been made difficult for walkers and almost impossible for horse riders since the 1960s. Finding the pole placed across the way from time to time may have deterred some riders although others, like Mrs Morton, had her horse step over it. However, objectively assessing the quantity of evidence of use of C-D over either twenty year period prior to the stile being installed I have to conclude it is insufficient to raise a presumption of dedication. In short, by 1972, most riders seem to have switched to the Order route including Mr Maddock who was Bridlepaths Officer at the time.

Width

113. In his objection, Mr Kind challenges the width of the intended Bridleway 12 between points C and G which the Order schedule states will vary between 1.4m and 3.2m except at one particular point where it is restricted to 1.1m by a large tree. He submits the initial presumption should be that the whole of the track has been dedicated except for reservation of the right to keep the tree: "*Where there is (within a track) a temporary feature such as a tree, or a boulder, which by its character 'limits' the user of the way, the whole of the way is prima facie dedicated, subject to the presence, for the time being, of that temporary feature.*" Mr Kind refers to the case of *Ford v Harrow Urban District Council [1903] LT May 23 1903* in support of his submission that the correct way to record the circumstances here would be to note the full width of the track as highway subject to the limitation of the owner to retain and maintain a tree at this point.
114. Mr Kind further argues that the dedication of a way as narrow as 1.4m raises a fundamental question over its intended status. He asks: "*could an owner reasonably dedicate a bridleway so narrow at common law?*"
115. In response to the first point, CEC submits that the tree has been in place throughout the relevant 20 year period and therefore the public (including horse riders) have acquired the right of way subject to the restricted width beside the tree. In the case quoted by Mr Kind the circumstances are not comparable. On the second point it highlights the user evidence which confirms as a matter of fact that horse riders have used this route with the restriction and that the horse riding use was known to the landowner who did not challenge it.
116. It seems to me that this oak tree is of some considerable age. It was no doubt *in situ* in the 1950s when Mr Parker created the section C-G-D with a fence on one side and hedge on the other, intending to provide an alternative route for pedestrians. Horse use gradually migrated to this path after the Broadbents moved to Close House Farm in the late 1960s.
117. The tree has clearly been in position during the relevant twenty years and probably long before that. In her statement claimant Mrs Morton commented that the diversion (C-G-D) "*was a much narrower route – too narrow really*" but other than being a little boggy in places she used it nonetheless. Mr Brough (and other riders) noted the narrowness of the route but it is clear they all accepted and used it before some swapped to the horse track from 1989.

118. Whilst I acknowledge the validity of both Mr Kind's arguments, in this case I find the general presumption to be displaced by the fact that the claimed right of way was established around this very old tree and has always been its present width, narrowed even further at this one particular point to the stated 1.1 metres. I agree it is debateable whether it could reasonably be implied that a landowner could positively intend to dedicate a bridleway of that width. Of course dedication under the statutory approach does not require a positive intention, simply the lack of a negative one. I recognise that even this approach is qualified by sub-section 31(1) of the 1980 Act insofar as this requires that the subject highway should not be "*of such character that use of it by the public could not give rise at common law to any presumption of dedication*". However I do not agree that this caveat precludes the presumed dedication of a bridleway here. A bridleway which narrows to 1.4 metres in places with a pinch-point of 1.1metres will have made passage difficult for horse riders but it is a fact that the claimants have used the Order route on horseback with that restriction. Thus I see no reason at all why the use of this narrow path could not give rise to a bridleway in these circumstances. I therefore do not propose to amend the width stated in the Order schedule as suggested.

Overall conclusion on user evidence

119. Having examined all the available information, I conclude that the evidence is sufficient to show use of the way in question by the public on horseback throughout the 20 year period between 1971 and 1991 and therefore to raise an initial presumption that this had been dedicated as a public bridleway. I have also concluded the owner(s) of the way did not demonstrate to the public a clear lack of intention to dedicate the route as a public bridleway during that period so that the presumption of dedication was not rebutted. I therefore reach my final conclusion that the evidence before me is sufficient to show, on the balance of probability, that a public bridleway subsists over the Order route and should be recorded on the definitive map and statement.

Other matters

120. The recording of this route as a public right of way rests on use of the way in the past. It is clear that the narrowness of the section C-G-D has caused difficulties for horse riders and pedestrians alike and that, for a while, the situation was improved for all when the horse track was put in place. I made clear at the start of the hearing that neither the merits of the Order route nor any alternatives are at issue here. I have made no judgement on the relative amenity value of the definitive line or any others I have considered in the course of reaching my conclusions.

Conclusion

121. Having regard to the above and all other matters raised at the hearing and in the written representations, I conclude that the Order should be confirmed.

Formal Decision

122. I confirm the Order.

Sue Arnott

Inspector

APPEARANCES**In support of the Order**

Ms J Tench Definitive Map Officer; East Cheshire Council
Mr M Taylor Rights of Way Manager; East Cheshire Council

Opposing the Order

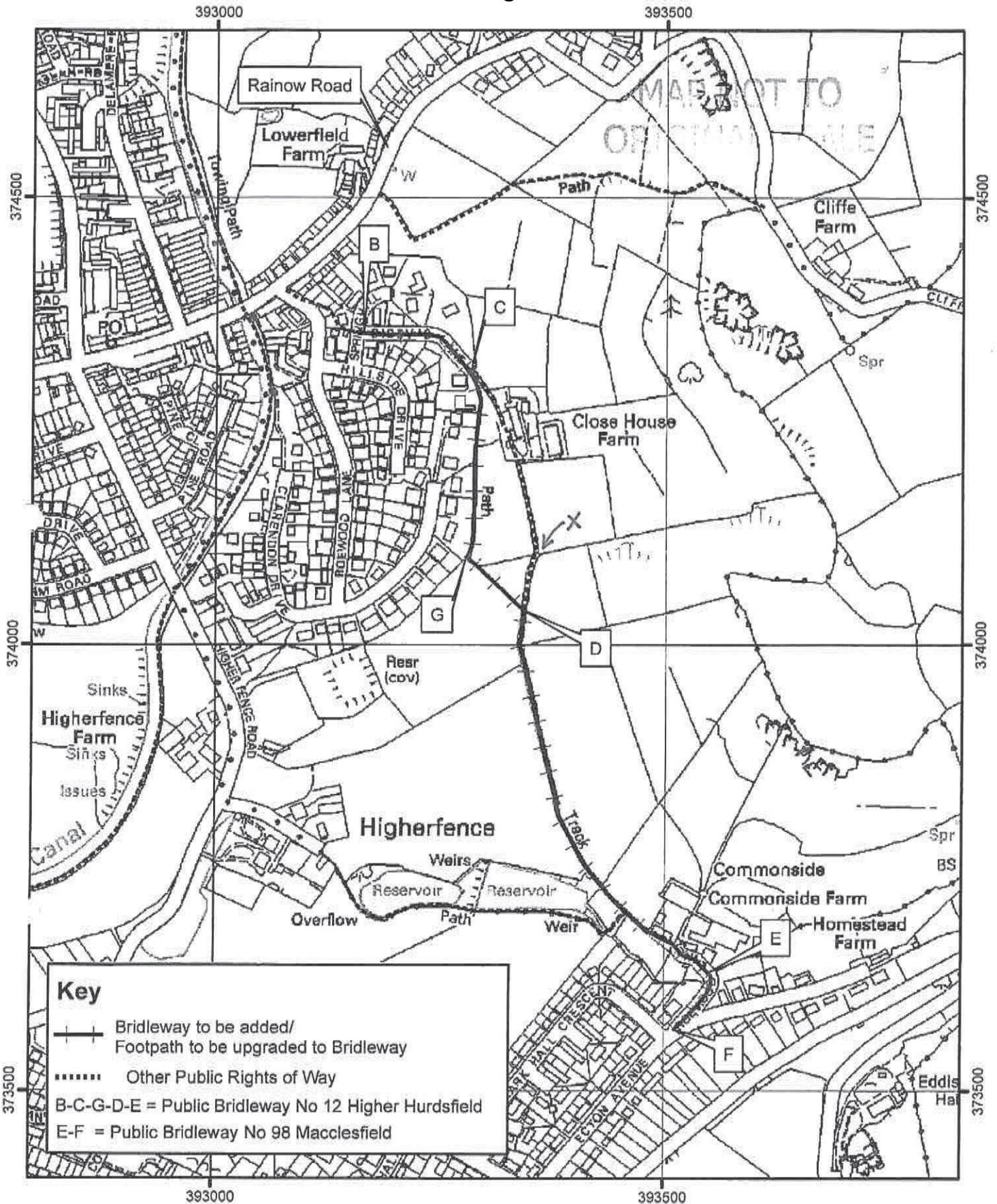
Mr R Spoons Applicant/statutory objector; also representing
statutory objectors: Mrs C E Peat (British Horse Society)
and Ms J Mosscrop

Mr C M Broadbent Statutory representation

DOCUMENTS

1. Copies of statutory notices and certification
2. Copy of the 4 statutory objections & 1 representation
3. East Cheshire Council's Statement of Case together with bundle of accompanying documents
4. Letter from Mr Spoons to the Planning Inspectorate dated 18 July 2014
5. Letter from Mr Broadbent to the Planning Inspectorate dated 21 July 2014
6. Statement of case of Mr Kind
7. Letters confirming Mr Spoons as representing Mrs Peat and Ms Mosscrop
8. Extract from Prestbury Highways Board Map of 1865 including reference key

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The Cheshire East Borough Council Definitive Map and Statement (Upgrading of Public Footpath No 9 (part) to Bridleway and addition of Public Bridleway No 12, Parish of Higher Hurdfield and addition of Public Bridleway No 98, Parish of Macclesfield) Modification Order 2013

Plan No.
WCA/004A

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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 8th December 2014
Report of: Public Rights of Way Manager
Subject/Title: Public Hearing to Determine Public Path Extinguishment Order - The Cheshire East Borough Council (Public Footpath No. 29 (Part) Parish of Sandbach) Public Path Extinguishment Order 2013

1.0 Report Summary

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

2.0 Recommendation

2.1 No decision is required by Committee.

3.0 Reasons for Recommendations

3.1 N/A

4.0 Wards Affected

4.1 Sandbach Ettiley Heath and Wheelock..

5.0 Local Ward Members

5.1 Councillor Gail Wait.

6.0 Policy Implications

6.1 Not Applicable

7.0 Financial Implications

7.1 Not Applicable

8.0 Legal Implications

8.1 Once an Order has been made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local highway authority to confirm the order itself, and this may lead to a public hearing/inquiry. It follows that the Committee decision may be confirmed or

not confirmed. This process may involve additional legal support and resources

9.0 Risk Management

9.1 None

10.0 Background and Options

- 10.1 An application was received from Mr Frank Murray of Ipstones Developments Ltd requesting that the Council make an Order under section 118 of the Highways Act 1980 to extinguish part of Public Footpath No. 29 in the Parish of Sandbach. The application was supported by two additional landowners also affected by this section of footpath.
- 10.2 Cheshire East Borough Council considered this application in a report put before the Rights of Way Committee in September 2013 and the making of an order was approved. Two objections to the Order were received within the statutory time period; from Mr Chris Meewezen on behalf of the Congleton Ramblers Group and Mr Terry Norris on behalf of The Peak and Northern Footpaths Society
- 10.3 The objections were based on various reasons. In summary, the main points were that there was a demonstrable public need for the footpath and that the alternative route was not acceptable as it was substantially inconvenient.
- 10.4 As the objections were not withdrawn consequently a file of the relevant information was submitted to the Planning Inspectorate in April 2014.
- 10.5 A public Hearing was held on 30th September 2014 at Westfields. The Council was represented by Hannah Duncan (Definitive Map Officer) and Mike Taylor (Public Rights of Way Manager). The objectors represented themselves. The appointed Inspector was Michael Lowe.
- 10.6 The Hearing heard evidence in support of the Order from the Council's Public Rights of Way Manager, Mike Taylor and Definitive Map Officer, Hannah Duncan. In opposition to the Order the Hearing heard evidence from Terry Norris of the Peak and Northern Footpaths Society, Chris Meewezen of the Congleton Ramblers Group and local resident, Roger Foden. The basis of the evidence in support of the Order was that the lack of complaints about the long standing obstruction was a good indication that the path was not needed and that the alternative, more attractive and safer route was satisfactory.
- 10.7 The evidence in opposition to the order was that footpath No. 29 was a more attractive route for walkers in comparison to the alternative route and that it would be a more direct route for some residents to access the local shop and wider countryside. The Ramblers had gathered 24 signatures on a petition in support of this.

- 10.8 The Hearing was closed and concluded on 30th September 2014. The Inspector issued a decision letter on the 18th November 2014 in which he did not confirm the order. The balance of the argument weighed in favour of retaining the footpath as the Inspector believed that a significant number of local residents on the estate would find the footpath a convenient route to the local shop and other locations (if it were available) and attached considerable weight to this factor.
- 10.9 The Council is now required to give notice of this decision on any person on whom notices were required to be served under paragraphs 1(3)(b), (3c) or (4).

11.0 Access to Information

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

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