

Public Rights of Way Committee

Agenda

Date:	Monday 7th December 2015
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**

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 - 10)

To approve the minutes of the meeting held on 15 June 2015

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

Contact: Rachel Graves

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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 body in question. 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. **Village Green Application - Land at Wood Park, Alsager, Cheshire**
(Pages 11 - 31)

To consider the report of the Independent Expert

6. **Wildlife and Countryside Act 1981 Part III, Section 53 - Application to Upgrade Public Footpath Nos. 71 & 11(part) Congleton to Bridleways.** (Pages 32 - 49)

To consider the application for the upgrading of Public Footpaths Nos.71 and 11 (part) Congleton to Bridleways

7. **Highways Act 1980 Section 119 - Application for the Diversion of Public Footpath No. 11, Parish of Basford** (Pages 50 - 55)

To consider the application to diver Public Footpath No.11 in the parish of Basford

8. **Highways Act 1980 Section 119 - Application for the Diversion of Public Footpath Nos. 1 & 9 (parts), Parish of Henbury** (Pages 56 - 61)

To consider the application to diver parts of Public Footpath Nos.1 and 9 in the parish of Henbury

9. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath no. 19 (part), Parish of Middlewich** (Pages 62 - 67)

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

10. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No.11 (part) Parish of Sandbach** (Pages 68 - 75)

To consider the application to diver part of Public Footpath No.11 in the parish of Sandbach

11. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath no. 29 (part), Parish of Sandbach** (Pages 76 - 80)

To consider the application for the diversion of part of Public Footpath No.29 in the parish of Sandbach

12. **Briefing Regarding the Deregulation Act 2015** (Pages 81 - 88)

Information report on the introduction of new legislation affecting the way many public rights of way processes operate.

13. **Cheshire East Rights of Way Improvement Plan 2011-2026: Implementation Plan 2015-2019** (Pages 89 - 92)

Information report on the Cheshire East Rights of Way Improvement Plan 2011-2026 Implementation Plan 2015-2019.

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 15th June, 2015 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor M Hardy (Chairman)
Councillor D Flude (Vice-Chairman)

Councillors Rhoda Bailey, S Davies, T Fox and J Wray

Officers

Mike Taylor, Public Rights of Way Manger
Marianne Nixon, Public Path Orders Officer
Clare Hibbert, Definitive Map Officer
Benedict King, Locum Solicitor
Rachel Graves, Democratic Services

1 APOLOGIES FOR ABSENCE

There were no apologies for absence.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meeting held on 16 March 2015 be confirmed as a correct record and signed by the Chairman.

4 PUBLIC SPEAKING TIME/OPEN SESSION

One member of the public had registered to speak in relation to Item 7. The Chairman advised that he would invite them to speak when the application was being considered by the Committee.

5 TERMS OF REFERENCE AND MEMBERSHIP**RESOLVED:**

That the Terms of Reference and membership of the Public Rights of Way Committee be noted.

6 PUBLIC RIGHTS OF WAY ANNUAL REPORT 2014-2015 AND WORK PROGRAMME 2015-2016

The Committee received a report which detailed the achievements of the Public Rights of Way service during 2014-15 and set out the proposed work programme for 2015-16.

The Rights of Way Manager reported on the work carried out during 2014-15 by the Network Management and Enforcement Team and the Legal Orders Team.

It was reported that:

- 238 planning application consultations and 142 rights of way searches completed
- 52 temporary and emergency closures of rights of way had been made
- 661 problems on the network had been logged in 2014-15
- 5 public path orders had been confirmed, 22 cases were in progress, with a backlog of 43 applications
- 1 orders had been contested and would be referred to the Planning Inspectorate
- 4 Definitive Map Modification Orders had been confirmed, 7 were in progress, with a backlog of 23
- 2 Definitive Map Anomaly investigations had been carried out and there was a backlog of 400+

The budget for Rights of Way services had remained as set throughout the year allowing the Team to both plan spending and clear some of the previous backlog that had arisen between 2010 and 2013.

RESOLVED:

That the Annual Report for 2014-2015 be noted and the proposed Work Programme for the Public Rights of Way Team 2015-2016 be approved.

7 WILDLIFE AND COUNTRYSIDE ACT 1981 - PART III, SECTION 53. APPLICATION NO. CN/7/22: APPLICATION FOR THE ADDITION OF A PUBLIC FOOTPATH BETWEEN PUBLIC FOOTPATH AUDLEM NO. 28 AND CHESHIRE STREET, AUDLEM

The Committee received a report which detailed an investigation into an application to for the addition of a public footpath between Public Footpath No.28 and Cheshire Street, Audlem.

Under Section 53 of the Wildlife and Countryside Act 1981, the Borough Council had a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Section 53 (3)(c) allowed the Authority to act on the discovery of evidence that suggests that the Definitive Map and Statement needed to be amended. The Authority must

investigate and determine that evidence and decide on the outcome whether to make a Definitive Map Modification Order. The event relevant to this application was Section (3)(c)(i), which required modification of the map by the addition of a right of way: -

- “(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-
- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.”

Where the evidence in support of the application is user evidence, Section 31(1) of the Highways Act 1980 applied –

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

Section 31(2) states that “the 20 years is calculated retrospectively from the date when the right of the public to use the way is brought into question.”

The application had been submitted in April 2005 by Audlem Parish Council to modify the Definitive Map and Statement for the parish of Audlem by adding a currently unrecorded route as a Public Footpath. The route applied for ran from Public Footpath No.28 Audlem, on the towpath to the south east of the Shroppie Fly Public House and ran in a generally north easterly direction to join Cheshire Street, Audlem – points A-B-D-E on Plan No.WCA/008. An additional loop had also been claimed, from point D running north westerly through the pub car park then northerly up a grassy slope to point C, then turning south easterly along the top of a bank through a wooded area back to point B. The application was based on user evidence; a total of 10 user evidence forms were submitted with the application.

John White, North and Mid Cheshire Ramblers, spoke in support of the application and confirmed that he had used the claimed route as the Ramblers had used the car park as a start point for their walks.

A detailed investigation of all the evidence submitted with the application had been undertaken, together with additional research. In addition to the user evidence, an investigation of the available historical documentation had been undertaken to establish whether the claimed route had an earlier origin.

From the historical documentation investigation, no evidence of the route claimed was found on the 18th and 19th Century County Maps, the Audlem Tithe Map and Apportionment 1846, the Ordnance Survey Maps 6” to 1 mile, 1st, 2nd and 3rd Editions and the Ordnance Survey Maps 25” to 1

mile, 1st, 2nd and 3rd Editions. The claimed route was not recorded in the Audlem Parish Survey completed in 1952 for the Definitive Map and Statement.

A total of ten user evidence forms were submitted, all claiming the use of the route on foot. Officer had interviewed seven of the witnesses. Use of the route ranged from 1969 until the application was submitted in April 2005. The frequency of use varied between daily, weekly and occasionally. The route was used as a link to access the Shroppie Fly public house, canal and the village shops on Cheshire Street. It was also used recreationally and for leisure purposes, such as a dog walk.

The relevant twenty year period to be considered for this application was 1985 to 2005. From the information on the user evidence forms, eight witnesses stated use of the claimed route on foot for the full 20 year period and two stated use for part of this period.

Seven witnesses were interviewed by officer and had signed statements. Five of the seven interviewed claimed to have used the route on foot for the full twenty year period and two stated use for part of the period. All the witnesses were consistent in describing the route they used – from Cheshire Street, across the playing fields (at the tennis court side, behind the goal posts) and down the steps at The Shroppie Fly to the towpath. None of the witnesses interviewed had been stopped or challenged when walking this path. All of them stated that they did not have permission to use the route, they had just assumed it was a public path.

Only two witnesses interviewed claimed to have used the loop B-C-D and this was only occasional use. Consequently this evidence was not sufficient to show rights had been acquired.

Cheshire East Council's Park Management had been consulted and had concerns that if an Order was made and confirmed, as events were held on the playing field occasionally, these could potentially obstruct the footpath. They were also concerned that a public footpath would cause operational difficulties between walkers and those playing formal sports on the playing field. The Definitive Map Modification application process looked at unrecorded existing public rights and not dedicated new public rights, and health and safety issues could not be taken into account.

Cheshire East Council's insurance team had also been consulted and stated that they had no issue from an insurance point of view but suggested that if the application was successful suitable warning signs for drivers using the car park to watch out for pedestrians and vice versa would be appropriate.

The Canal and River Trust, Punch Partnership Ltd and one of the landowners had not objected to the application. One landowner had commented on the accuracy of the Plan as it showed the claimed path

passing through a fenced off area. It was confirmed that the Plan would be amended to show the correct line of the claimed path if approved.

The report concluded that there was sufficient user evidence to support the existence of a footpath along the route A-B-D-E but insufficient use for the route B-C-D.

The Committee considered the historical and user evidence outlined in the report and the Definitive Map Officer's conclusions and considered that there was sufficient user evidence to support the existence of footpath rights along the route A-B-D-E but there was insufficient evidence to support the existence of footpath rights along route B-C-D. The Committee considered that, on the balance of probabilities, the requirements of Section 53(3)(c)(i) had been met in the first instance and that the Definitive Map and Statement should be modified to add the claimed route as a Public Footpath.

The Committee unanimously

RESOLVED: That

- 1 The application to modify the Definitive Map and Statement to record a footpath between points B-C-D, as shown on Plan No.WCA/008, be refused on the grounds that there is insufficient evidence to show the existence of Public Footpath rights.
 - 2 An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding as a Public Footpath, the route shown between points A-B-D-E on Plan No.WCA/008.
 - 3 Public Notice of the making of the Order be given and, in the event of there being no objections within the specified period or any objections received being withdrawn, the Order be confirmed in exercise of the powers conferred on the Council by the said Act.
 - 4 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.
- 8 HIGHWAYS ACT 1980 S.119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 8 (PART), PARISH OF CREWE**

The Committee considered a report which detailed an application from Mr S Wheeler of Race Farm, Waldrons Lane, Coppenhall, Crewe requesting the Council make an Order to divert part of Public Footpath No.8 in the parish of Crewe.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order to divert a public footpath if it

appeared to the Council to be expedient to do so in the interests of the public or the owner, lessee or occupier of the land crossed by the path.

The land over which the current path and the proposed diversion ran belonged to the Applicant. The section of Public Footpath No.8 Crewe to be diverted entered a field and ran along the eastern boundary close to the Applicant's property before entering a fenced section leading to an exit stile at the north eastern field corner (points A-C on Plan No.HA/101). Diverting this section of footpath to run along the northern field boundary would afford the applicant improved security and privacy by taking path users further away from the Applicant's property buildings and adjacent land.

The proposed new route would start at the junction with Waldrons Road, north of the start point for the current route, from where it would enter into a fenced section of path via a kissing gate. It would run along this fenced section in a generally east, south easterly direction along the northern field boundary to join the current footpath immediately before the stile at the north eastern field corner (point D-C on Plan No.HA/101).

The fenced section would have a width of 2.5 metres and have a grass surface. A drain would be installed at the beginning of the new route from Waldrons Road to resolve current drainage issues and this would be covered and the path surface levelled.

Relocating the start point of the footpath along Waldrons Road would not significantly affect connectivity to the wider path network.

The Committee noted that no objections had been received during the informal consultations and considered that the proposed route would not be substantially less convenient than the existing route. The Peak and Northern Footpath Society had noted the need for regular maintenance of this footpath. Diverting this part of the Footpath would be of considerable benefit to the landowner in terms of offering enhanced security and privacy to their property. It was therefore considered that the proposed route would be a satisfactory alternative to the current route and that the legal tests for the making and confirming of a diversion order were satisfied.

The Committee unanimously

RESOLVED: That

- 1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No.8 Crewe by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/101, on the grounds that it is expedient in the interests of the owner of the land crossed by the path.

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

9 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 3 (PART), PARISH OF BOLLINGTON

The Committee received a report which detailed an application from Mr Dominic Shaw (agent) of Bower Martin Partnership on behalf of Rowlinson Constructions Ltd, London House, London Road, Poynton, requesting the Council make an Order under Section 257 of the Town and Country Planning Act 1980 to divert part of Public Footpath No.3 in the parish of Bollington.

Further to this, for the reasons of public interest, Cheshire East Council proposed that the diversion of a further two parts of Public Footpath No.3 Bollington be included within this Order providing the proposals were unopposed following informal consultation.

In accordance with Section 257 of the Town and Country Planning Act 1980, 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 yet to be granted to Rowlinson Constructions Ltd for a residential development. The application was cited as Planning Permission Ref: 14/3844M. The details of the application were for the development of 33 new residential dwellings including 8 apartments, improvements to land levels, amenity, infra-structure and landscaping to suit. The Growth and Infrastructure Act 2013 allowed for the consideration of the request to divert a public footpath prior to the obtaining planning consent.

Part of the current line of Public Footpath No.3 Bollington would be obstructed by buildings within the proposed residential development and therefore a footpath diversion was required to preserve public access around the residential development. The land over which the current route ran and over which the proposed route would run was entirely owned by Rowlinson Constructions Ltd.

The length of footpath proposed for diversion (points A-B-C) was approximately 170 metres. The proposed new route would be shorter than the current route by approximately 31 metres and would take users along

a route that skirted the north and west of the residential development following the meandering River Dean to meet the current route. The new route would have a width of 2 metres and have a grass surface.

It was considered desirable to raise the footpath onto a bank to help minimise flood risk. However, recently, the Council had been informed that the Environment Agency required an 8 metre clearance zone on either side of a river to allow access for maintenance etc. and raising the bank for the footpath would affect this zone. Further discussions would be required to determine whether a raise bank would therefore be possible. Were it not, then it should be noted that the opposite bank of the river is lower than that onto the development and proposed new route would be located so would naturally hold any flood water.

The existing alignment of the footpath sections proposed for diversion by Cheshire East Council were currently obstructed by the River Dean, which over the years had changed course. The land over which these sections ran and over which the proposed route would run belonged to Mr GA Waller, who had given his written agreement to allow the paths to be diverted. The proposed route would take users along the southern river bank, following the alignment currently used by the public on an informal basis. The route would be 2 metres wide and have a grass surface.

Rowlinson Constructions Ltd had agreed to allow these proposals to be progressed with their diversion proposals provided that their application was not affected nor any additional costs incurred to them.

Informal consultation had been completed on the section of path to be diverted for the housing development. The users groups had been consulted and members of The Peak and Northern Footpath Society and the East Cheshire Ramblers Group had registered no objections to the proposals. The informal consultation was still being carried out on the sections of paths to be diverted as proposed by the Council.

The Committee concluded that it was necessary to divert part of Public Footpath No.3 Bollington to allow for the development of 33 new residential dwellings. 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 190 were satisfied.

The Committee unanimously

RESOLVED: That

- 1 On condition that approval is granted for Planning Application 14/3844, an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert parts of Public Footpath No.3 Bollington, as illustrated on Plan No.TCPA/023A, 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.

10 VILLAGE GREEN APPLICATION - LAND AT PICKMERE INFORMAL RECREATION OPEN SPACE, JACOBS WAY, PICKMERE, KNUTSFORD

The Chairman reported that the map at page 93 of the agenda pack was not relevant to this application and had been included in error.

The Committee considered the report of the Independent Person on the application to register land at Pickmere Informal Recreation Open Space, Jacobs Way, Pickmere, Knutsford as a new village green under section 15 of the Commons Act 2006.

The Public Rights of Way Committee, at its meeting on 8 December 2014 had considered the application and resolved:

- “a 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.*
- b. The Head of Legal Services be given delegated authority to determine if a non-statutory public inquiry should take place upon the recommendations of the Independent Expert, after consulting the Chairman of this Committee.”*

On 11 March 2015, the Head of Legal instructed Mr James Marwick of Counsel:

- a. to consider the Application and provide the Head of Legal with a written preliminary review as to whether the matter can be dealt with by way of written representations in the first instance.*
- b. If, after considering the Application, counsel is of the view that the Application can be dealt with by way of written representations, to sit as an independent expert to consider the Application on the basis of written representations and prepare a report, to go the Council's Public Rights of Way Committee, recommending whether the Application should be approved or not;*

- c. *after considering the Application, counsel is of the view that the Application needs to be dealt with by way of a non-statutory public inquiry, he is to advise the Head of Legal Services in a telephone conference as to the reasons why an inquiry is necessary and, subject to further confirmation from the Head of Legal, to sit as an inspector for the non-statutory inquiry for the purpose of considering the evidence and to prepare a report and recommendation to go the Council's Public Rights of Way Committee on whether the Application should be approved or not.*

Mr Marwick provided a report on 24 March 2015 which advised that the legal question of whether the user of the land was 'by right' or 'as of right' was likely to be determinative of the application. He advised that the application could be dealt with by way of written representations and invited the parties to submit further representations and replies on the question of whether the use was 'as of right'.

Further evidence, responses and replies were made in April and were passed to Mr Marwick for consideration. In accordance with instructions, Mr Marwick provided a report dated 15 May 2015, in which he concluded that use of the land had not been "as of right" but permissive for a large balance of the requisite 20 year period and recommended that the application be rejected. The report was circulated to all parties on 3 June 2015, with an invitation to submit any further representations by 10 June 2015.

Members of the Committee considered the report of the Independent Person and during discussions asked questions about transfer of the land to the Parish Council pursuant to a section 106 agreement, the permitted use of the land under this agreement, permissive access, and the impartiality of the Independent Person.

The Committee unanimously

RESOLVED:

That the report of the Independent Person – Mr James Marwick, be accepted and that the application to register the land at Pickmere Informal Recreation Open Space, Jacobs Way, Pickmere, Knutsford, as a village green be rejected for the reasons as stated in the Independent Person's report.

The meeting commenced at 2.00 pm and concluded at 3.25 pm

Councillor M Hardy (Chairman)

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	7 th December 2015
Report of:	Neil Weeks – Planning & Highways Lawyer
Subject/Title:	Village Green Application – Land at Wood Park, Alsager, Cheshire

1.0 Report Summary

- 1.1 This report deals with an application by Mr. Andrew Barnard dated 3rd September 2012 to register land known as Wood Park, Alsager as a Village Green.

2.0 Recommendation

- 2.1 That at its meeting on 7th December 2015, the Committee receives and accepts the written report of Mr. Marwick (Attached as Appendix A) and refuses the application.

3.0 Reasons for Recommendations

- 3.1 The written report of Mr Marwick recommends that the application must fail because any user of the land has been “by right” and not “as of right” at all material times.
- 3.2 The report also concludes that the land owners actions (The Council) prima facie are consistent with the land being held as open space for public recreational use and further weigh against any user being “as of right”.

4.0 Wards Affected

- 4.1 Alsager

5.0 Local Ward Members

- 5.1 Councillors Rod Fletcher, Derek Hough and Martin Deakin

7.0 Financial Implications

- 7.1 There would be a cost risk in the event of an application for Judicial Review to challenge the Committee’s decision. However the Council is the registration authority for Village Greens and has a statutory duty to decide applications.

8.0 Legal Implications

- 8.1 The Council is the registration authority for the purposes of village green applications and the keeping of the register of village greens.
- 8.2 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 19th September 2012 and therefore will not be subject to the new legislation.
- 8.3 Village greens can be registered either as a result of an application by a third person or by a voluntary registration by the landowner.
- 8.4 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 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 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.
- 8.5 At the meeting on the 16 March 2015, the Committee resolved to authorise the Head of Legal Services to appoint an independent expert to consider the application on the basis of written evidence and provide a report. The Committee also resolved to delegate authority to the Head of Legal Services to determine if a non-statutory public inquiry should take place upon the recommendation of the independent expert, after consulting with the Chairman of the Right of Way Committee.
- 8.6 The Head of Legal Services did appoint an independent person (Mr Marwick of Counsel) to consider the application and to provide a report. That report was provided on the 11th June 2015 and the Head of Legal Services has determined not to convene a non-statutory public inquiry.
- 8.7 The application falls to be determined by this Committee on the basis of this report and the written report of Mr Marwick which appears as Appendix A to this Report.

- 8.8` The burden of proof that the application meets the statutory tests is upon the applicant, on the balance of probabilities.
- 8.9 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.
- 8.10 If registered as a village green, land will be subject to the statutory protection of section 12 of the Enclosure 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 enclosure 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.
- 8.11 There is no right of appeal within the Council against the Committee's decision. The route for any challenges would be via judicial review.
- 8.12 Although Counsel's written report is recommended for refusal by the Committee, the Committee is not bound to follow it.

9.0 Risk Management

- 9.1 It is important that decisions are taken in a way that demonstrates fairness and complies with the rules of natural justice. To that end the Committee adopted a procedure for determining village green applications on 7 December 2009 and it has followed the adopted procedure in the case of this application

10.0 Background and Options

- 10.1 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".
- 10.2 Under section 15(2) of the 2006 Act the test for registration of land as a town or village green is that:-
(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20years; and
(b) they continue to do so at the time of the application
- 10.3 The application was submitted on 19th September 2012 by Mr. Andrew Barnard and the land is shown on Appendix A attached. The evidence in support of the application contains 22 supporting witness statements stating various uses including dog walking, football and games generally.

- 10.4 The application is based on the use of the land for pastimes and sports such as dog walking, football, motor cycle riding and general recreation.
- 10.5 Following the statutory consultation process, the Council received a letter supporting the Application from the Alsager Town Council dated 26th March 2013.
- 10.6 The landowner's (The Councils) objection is based on a number of factual and legal submissions, including:
- The use of the land was not used "as of right"
- 10.7 The applicant has disputed the factual and legal grounds on which the objections are based.
- 10.8 At its meeting on 16 March 2015, the Committee resolved as follows:
- a. 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.
 - b. 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.
- 10.9 In April 2015, the Head of Legal Services instructed Mr James Marwick of Counsel
- a. to consider the Application and provide the Head of Legal with a written preliminary review as to whether the matter can be dealt with by way of written representations in the first instance.
 - b. If, after considering the Application, counsel is of the view that the Application can be dealt with by way of written representations, to sit as an independent expert to consider the Application on the basis of written representations and prepare a report, to go the Council's Public Rights of Way Committee, recommending whether the Application should be approved or not;
 - c. after considering the Application, Counsel is of the view that the Application needs to be dealt with by way of a non statutory public inquiry, he is to advise the Head of Legal Services in a telephone conference as to the reasons why an inquiry is necessary and, subject to further confirmation from the Head of Legal, to sit as an inspector for the non-statutory inquiry for the purpose of considering the evidence and to prepare a report and recommendation to go the Council's Public Rights of Way Committee on whether the Application should be approved or not
- 10.10 Mr Marwick settled his preliminary advice on the 31st March 2015. The advice given was that the legal question of whether the user of the land was 'by right'

or 'as of right' was likely to be determinative of the application. Mr Marwick advised that the application could be dealt with by way of written representations and invited the parties to submit further evidence representations and replies on the question of whether use was 'as of right'.

10.11 Further evidence, responses and replies were made in April and were passed to Mr Marwick for consideration.

10.12 Mr Marwick then settled his written report on the 11th June 2015, a copy of which is attached at appendix A.

10.13 Mr Marwick sets out his analysis in detail in his report, and concludes that:

Para 26 "It follows that the application must fail, in my view, because any user of the Land has been "by right" and not "as of right" at material times. The Applicant must prove his case on the balance of probabilities. In my view, he has no real prospect of success of doing so in relation to this issue"

Para 27 "The Applicant cited a number of examples such as the user by motor-cyclists of the land which may fall outside use "by right". Such user falls to be discounted from the test as it would not amount to a user for lawful sports and pastimes as regards the activity being undertaken. To put it another way, it is very difficult to envisage any users by members of the public for recreational use of the land which would not be use under the statutory right but user "as of right" for lawful sports and pastimes under the Commons Act 2006"

Para 29 "Suffice it to say, that the Land-owners actions prima facie are consistent with the Land being held as open space for public recreational use and further weigh against any user being "as of right"

10:13 Mr Marwick's report was circulated to the parties and the parties have been invited to submit any further representations by the 23rd October 2015. Any representations received will be provided to the Committee by way of update.

10.14 The full range options open to the Committee are to refuse the application, to allow the application, or to decide to hold a non-statutory inquiry. For the reasons set out in the report to the Committee on the occasion of the Committee meeting of the 16 March 2015, the Council has followed best practice in appointing independent counsel to advise whether to deal with the application by way of written representations or to hold a non-statutory public inquiry. Mr Marwick advised that the matter could be dealt with by way of written evidence and representations, and having considered the written evidence and representations has provided written advice on the determination of the application.

11.0 Access to Information

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

Name: Neil Weeks

Designation: Planning & Highways Lawyer

Tel No: 01270 686421

Email: Neil.Weeks@cheshireeast.gov.uk

APPENDIX A

**IN THE MATTER OF AN APPLICATION TO REGISTER LAND AT WOOD
PARK, ALSAGER AS A TOWN OR VILLAGE GREEN**

AND IN THE MATTER OF THE COMMONS ACT 2006

WRITTEN REPORT

1. I am instructed by East Cheshire Borough Council (in its capacity as the relevant **Registration Authority** under the Commons Act 2006) in respect of an application dated 19th September 2012 (the **Application**) to register land at Wood Park in Alsager, Cheshire (the **Land**) as a town or village green.
2. In a preliminary advice dated 31st March 2015 (which I understand was disclosed to the interested parties to the Application), I concluded that the Application could be considered by way of a written report after the filing of further representations and evidence rather than following a non-statutory public inquiry. This was because I considered there were issues which were potentially determinative of the matter even when taking the Applicant's case at its highest. I am instructed by the Registration Authority that the parties were afforded the opportunity to make further representations and I have been provided with copies of the same.

3. As foreshadowed in my preliminary advice, I am now duly instructed by the Registration Authority to prepare a written report in respect of the Application. In settling this written report, I have been provided with copies of the Application and all the material (including correspondence and statements) provided in support of it; the objections duly made to it; and further correspondence, submissions and evidence from all concerned with the Application, including such further representations as I invited in my preliminary advice. I have had regard to all of that material in compiling my report and recommendations.

The Application

4. The Application is dated 3rd September 2012 (date-stamped by the Registration Authority on 19th September 2012) contained within Form 44 and completed with an appropriate statutory declaration by Mr. Andrew Barnard, who is named as the applicant in the Application (the **Applicant**).
5. The relevant land identified for registration is named as Wood Park, as identified in outline in green as the “application plot” on an Ordnance Survey plan (scale 1:5000) appended to the Application. The neighbourhood relied upon in the Application is delineated on the said plan, being land bordered by Sandbach Road North, Lawton Road and the open space which is to the north of the Land which marks the edge of the residential area of this part of Alsager. The Land is a large area of open recreational space; on the said plan it is identified as a playing field.

6. There were twenty two supporting statements appended to the Application (as listed in a covering index). The statements are contained within a pro-forma questionnaire completed with a signed declaration which authorises, among others, the disclosure of the statement when reasonably required in relation to the Application. They are not completed with a statement of truth albeit for the purposes of this written report that is immaterial. The statements were all completed in or around July 2012 and speak to various periods of use of the Land for typical activities such as dog-walking, football and games generally from 1968 onwards until the time of completion of the statement. The statements state that user of the Land has not been permitted nor prevented at any material time.
7. Support for the Application was also received from Alsager Town Council by letter dated 26th March 2013 albeit the letter did not speak to user of the Land but only to the Town Council's support of the Application.

Objections by the Land-Owner

8. The Land is owned by East Cheshire Borough Council (in its capacity as Land-owner¹). By objections dated 15th December 2014, it objected to the registration of the Land as a town or village green. Its primary objections can be summarised as follows:-

¹ My preliminary advice dealt with matters regarding both the question of a conflict and the Land-owner's change in position during the course of the processing of the Application. For present purposes, I rely upon that earlier advice and I use the distinct definitions of **Registration Authority** and **Land-owner** to delineate between the Council's involvement in two capacities.

8.1 The Land at material times has been registered as Open Space on the Register of Open Spaces. In accordance with section 10 of the Open Spaces Act 1906 and **R (on the application of Barkas) v North Yorkshire County Council [2014] UKSC 31**, any user of the Land has therefore been “by right” rather than “as of right”.

8.2 The Application fails to identify a legally recognised administrative unit or cohesive neighbourhood within the meaning ascribed to the terms locality and neighbourhood by established case law.

8.3 Further and in the alternative, the Council avers that it has permitted user of the Land by members of the public (citing the example of the hiring of football pitches laid out on the Land) and has regulated its use by the putting up of various signs which, among others, forbid certain activities on the Land. A number of photographs were appended to the Objection in support of these matters.

Further Representations

9. The Land-owner made no further representations after the issuing of directions pursuant to my preliminary advice. It repeated its original objections as summarised above.

10. In his further representations (contained in an email dated 7th May 2015), the Applicant accepted that the Land-owner had maintained the Land and erected signs thereon.

11. He queried, among others, whether users such as motor bike riders would be regarded as using the Land “as of right” if they were not permitted to do so and re-iterated that he considered that the Land-owner’s position was motivated by planning interests (citing a draft planning document). I address these particular concerns below.

Statutory Framework: The Commons Act 2006 (the **2006 Act**)

12. The Application is made under section 15(2) of the 2006 Act. That section provides the following test for registration of land as a town or village green²:-

“(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
(b) they continue to do so at the time of the application.”

13. The burden of proving that the Land has become a town or village green lies with the Applicant. The standard of proof is the balance of probabilities. All the elements required to establish that land has become a town or village green must be properly and strictly proved by an applicant on the balance of

² The Growth and Infrastructure Act 2013 (partly in force as from 25th April 2013) introduced a number of further significant measures to the law on registering new town and village greens under the 2006 Act, which require consideration in addition to the provisions of section 15(2) above, but which are not engaged in the circumstances of this Application. Section 15C of the 2006 Act took effect on 25th April 2013 and excludes the right to apply for the registration of land in England as a town or village green where a trigger event has occurred in relation to the land. The right to apply for registration of the land as a green remains excluded unless and until a terminating event occurs in relation to the land. Trigger and terminating events are set out in Schedule 1A to the 2006 Act.

probabilities, per the guidance given by Lord Bingham in **R v. Sunderland City Council ex parte Beresford** [2004] 1 AC 889.

14. The motivation of the Land-owner in terms of any intended future development the Land is not a material consideration in considering whether the test under section 15(2) has been satisfied. Equally (save where section 15(C) is engaged), any future development plans of the Land-owner cannot serve so as to defeat an application. It follows that the references to the same made by the Applicant are not matters which I need to take into account.

15. There are a number of issues which would properly need to be determined at a non statutory public inquiry. For example, the question of whether the Applicant has identified a neighbourhood within a locality within the meaning of section 15(2)³ as challenged by the Land-owner is a matter, in my view, which could only be determined after the hearing of evidence at a public inquiry. Likewise, whether there has been sufficiency of user by a significant number of local inhabitants for the relevant 20 year period would be a matter properly for determination after a public inquiry, albeit that in a case where the Land has been laid out for recreational use by the Public this may readily be proven.

³ A neighbourhood need not be a recognised administrative unit (unlike a locality), however, a neighbourhood cannot be an area simply delineated on a map. It must have a sufficient degree of cohesiveness: *R. (on the application of Cheltenham Builders Ltd) v South Gloucestershire DC* [2003] EWHC 2803 (Admin); [2003] 4 P.L.R. 95. The question of whether there is such cohesiveness typically falls to be established at an inquiry. Whereas under the customary law, a right to indulge in activities could only attach to a single defined area, under the 2006 Act, "neighbourhood" can mean two or more neighbourhoods: *Leeds Group Plc v Leeds City Council* [2010] EWCA Civ 1438; [2011] Ch. 363.

16. I do not in this written report therefore seek to determine such matters. The issue I identified as potentially determinative of the Application is whether user of the Land has been “as of right” and I do now go on to address this issue and the relevant law in respect of the same. If user of the Land has not been “as of right” for the relevant 20 year period then the Application would fall to be rejected regardless of whether, for example, a cohesive neighbourhood might be established at a public inquiry. .

Qualifying User

17. The Applicant must prove, among others, on the balance of probabilities that there has been sufficient qualifying user (i.e. user “as of right” for lawful sports and pastimes) during the 20 year period (being the 20 years immediately prior to the date of the Application) to allow the Land to be registered.

18. User “as of right” means not by force, nor stealth, nor the licence of the owner. The most authoritative discussion of the term was that of Lord Hoffmann in **R v Oxfordshire County Council, Ex p Sunningwell Parish Council [2000] 1 AC 335** (at para 351A):-

“The unifying element in these three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect the owner to resist the exercise of the right- in the first case, because rights should not be acquired by the use of force, in the second, because the owner would

not have known of the user and in the third, because he had consented to the user, but for a limited period.”

19. The term was further considered by the Supreme Court in **R. (Barkas) v North Yorkshire County Council [2014] UKSC 31**. Per Lord Neuberger (at para 14):-

“...it is, I think, helpful to explain that the legal meaning of the expression “as of right” is, somewhat counterintuitively, almost the converse of “of right” or “by right”. Thus, if a person uses privately owned land “of right” or “by right”, the use will have been permitted by the landowner – hence the use is rightful. However, if the use of such land is “as of right”, it is without the permission of the landowner, and therefore is not “of right” or “by right”, but is actually carried on as if it were by right – hence “as of right”. The significance of the little word “as” is therefore crucial, and renders the expression “as of right” effectively the antithesis of “of right” or “by right”.”

20. In **Barkas** the Supreme Court was considering whether user of land allocated for public recreation under the Housing Act 1985 by a local authority was user “by right” or “as of right”. In finding that such user was “by right”, Lord Neuberger held as follows (at para 21):-

“In my judgment, this argument is as compelling as it is simple. So long as land is held under a provision such as section 12(1) of the 1985 Act, it appears to me that members of the public have a statutory right to use the land for

recreational purposes, and therefore they use the land “by right” and not as trespassers, so that no question of user “as of right” can arise.”

21. Lord Neuberger further elaborated upon the reasons why user of land allocated for use by the public by a local authority would fall to be considered in these terms (at para 24):-

“I agree with Lord Carnwath that, where the owner of the land is a local, or other public, authority which has lawfully allocated the land for public use (whether for a limited period or an indefinite period), it is impossible to see how, at least in the absence of unusual additional facts, it could be appropriate to infer that members of the public have been using the land using the land “as of right”, simply because the authority has not objected to their using the land. It seems very unlikely that, in such a case, the legislature could have intended that such land would become a village green after the public had used it for twenty years. It would not merely be understandable why the local authority had not objected to the public use: it would be positively inconsistent with their allocation decision if they had done so. The position is very different from that of a private owner, with no legal duty and no statutory power to allocate land for public use, with no ability to allocate land as a village green, and who would be expected to protect his or her legal rights.”

22. The Supreme Court expressly endorsed the view of Lord Walker in **Beresford** as regards local authority land held under section 10 of the Open Spaces Act 1906 for the enjoyment by the public as an open space (per Lord Walker at para 87):-

“...where land is vested in a local authority on a statutory trust under section 10 of the Open Space Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers.”

23. In more straightforward terms, the consequence of the case law is that it is now settled law that where land is held by a local authority as allocated open space under section 10 of the Open Spaces Act 1906 then the public have had a right to use it and therefore user cannot be “as of right”⁴.

Analysis

24. The Land is allocated as open space under the Open Spaces Act 1906 and registered as open space on the Register of Open Spaces of the Land-owner. This means that the Land has been laid out for use by the public for their enjoyment as open space under an express statutory trust: per section 10 of the

⁴ Section 10 provides: “A local authority who have acquired any estate or interest in or control over any open space or burial ground under this Act shall, subject to any conditions under which the estate, interest, or control was so acquired—

(a) hold and administer the open space or burial ground in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act and under proper control and regulation and for no other purpose; and

(b) maintain and keep the open space or burial ground in a good and decent state, and may inclose it or keep it inclosed with proper railings and gates, and may drain, level, lay out, turf, plant, ornament, light, provide with seats, and otherwise improve it, and do all such works and things and employ such officers and servants as may be requisite for the purposes aforesaid or any of them.”

use of the Land which would not be use under the statutory right but user “as of right” for lawful sports and pastimes under the Commons Act 2006.

28. It has not been necessary for me to consider whether there has been any express consent to use the Land beyond the statutory right granted to the public to use the Land or whether the regulation of user by the Land-owner is sufficient to mean user has not been “as of right”⁵.

29. Suffice it to say, that the Land-owner’s actions prima facie are consistent with the Land being held as open space for public recreational use and further weigh against any user being “as of right”.

Conclusion and Recommendations

30. I have concluded as follows:-

30.1 User of the Land has not been “as of right” but “by right” at material times.

30.2 I recommend that the Application be rejected for the reasons I have given and for the reasons for rejection to be recorded as those stated in this report.

31. If there are any queries with this report, please do not hesitate to contact me.

James Marwick

Trinity Chambers

j.marwick@trinitychambers.co.uk

11th June 2015

⁵ It is plain from **Barkas**, for the avoidance of doubt, that any licencing of the Land for organised football games is consistent and compatible with its allocation as open space land for user by the Public.

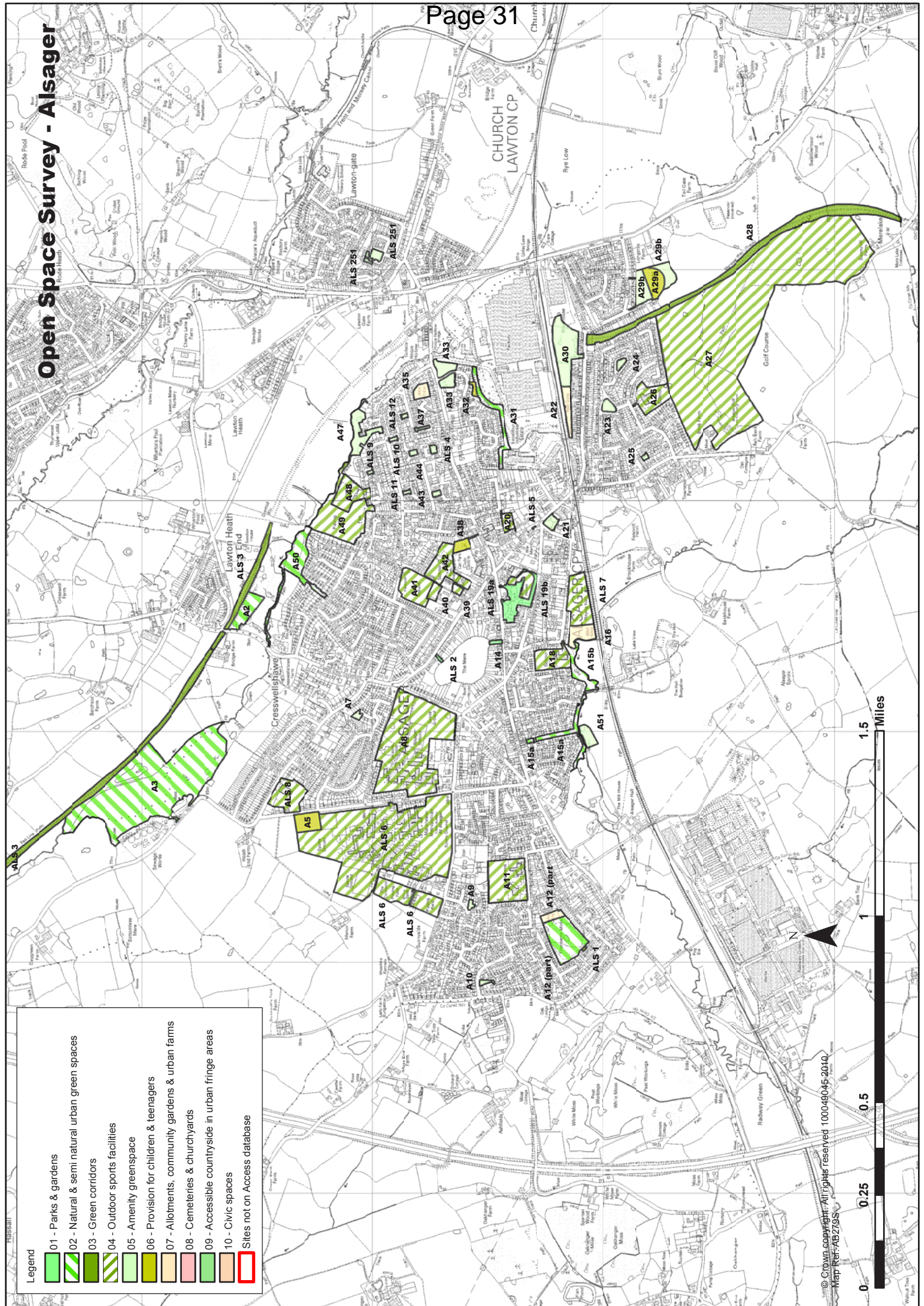
Open Spaces Act 1906. There has been no challenge to the Land-owner's case that the Land has been laid out at material times under the Open Spaces Act 1906 and the documentation the Land-owner has disclosed (in particular the Open Space Survey) supports this conclusion.

25. Pursuant to **Barkas** and **Beresford** (decisions of the most senior courts in England & Wales at the material times they were respectively handed down), it is now well established that where land is allocated as open space in such circumstances then user by the public will amount to user "by right" and not "as of right". I have cited a number of paragraphs from **Barkas** which elaborate upon this distinction. In more straightforward terms, section 10 of the Open Spaces Act 1906 is regarded as giving a statutory right to the public to use the land and therefore it falls outside the definition of user "as of right".

26. It follows that the Application must fail, in my view, because any user of the Land has been "by right" and not "as of right" at material times. The Applicant must prove his case on the balance of probabilities. In my view, he has no real prospect of success of doing so in relation to this issue.

27. The Applicant cited a number of examples such as the user by motor-cyclists of the Land which may fall outside use "by right". Such user falls to be discounted from the test as it would not amount to user for lawful sports and pastimes as regards the activity being undertaken. To put it another way, it is very difficult to envisage any user by members of the public for recreational

Open Space Survey - Alsager



Legend

01 - Parks & gardens

02 - Natural & semi natural urban green spaces

03 - Green corridors

04 - Outdoor sports facilities

05 - Amenity greenspace

06 - Provision for children & teenagers

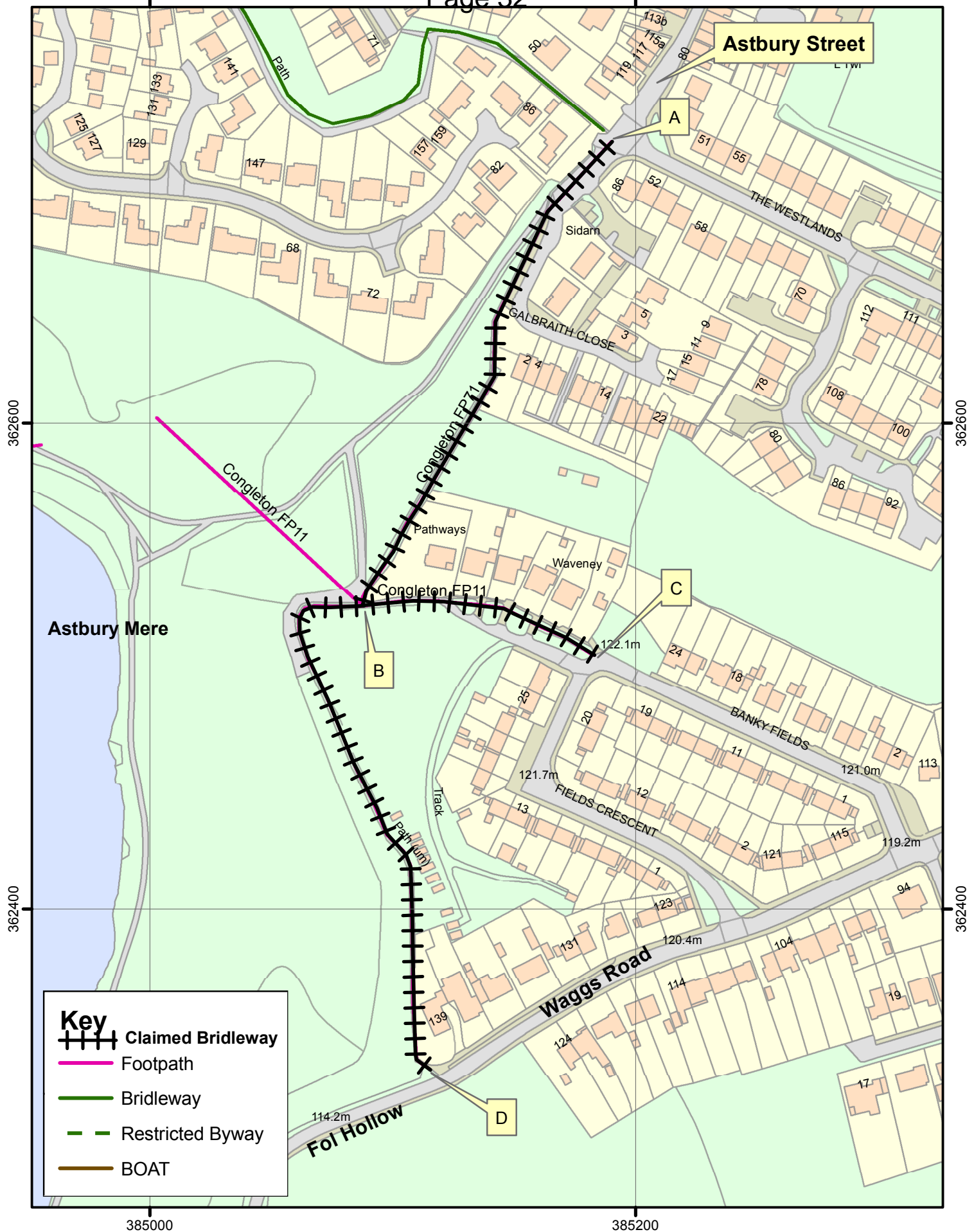
07 - Allotments, community gardens & urban farms

08 - Cemeteries & churchyards

09 - Accessible countryside in urban fringe areas

10 - Civic spaces

Sites not on Access database



Application to Upgrade Public Footpath
Nos. 71 & 11(pt) Congleton to Bridleways

Plan No.
WCA/011

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



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 7th December 2015
Report of: Public Rights of Way Manager
Subject/Title: WILDLIFE AND COUNTRYSIDE ACT 1981 –
PART III, SECTION 53.
Application to Upgrade Public Footpath Nos. 71 & 11(part)
Congleton to Bridleways.

1.0 Report Summary

- 1.1 The report outlines the investigation of an application made by Mrs P Amies of Home Farm, Hulme Walfield to amend the Definitive Map and Statement by upgrading footpaths in Congleton to bridleways. This includes a discussion of the consultations carried out in respect of the claim, the historical evidence, witness evidence and the legal tests for a Definitive Map Modification Order to be made. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to upgrade these footpaths to bridleways.

2.0 Recommendation

- 2.1 An Order be made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by upgrading Public Footpaths nos. 71 and 11(pt), Congleton to bridleway along the route shown between points A-B-D and B-C on plan number WCA/011.
- 2.2 Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Orders be confirmed in exercise of the power 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 The evidence in support of this claim must show, on the balance of probabilities that public bridleway rights subsist along the existing public footpaths. It is considered that there is sufficient user evidence to support the existence of public bridleway rights along the route A-B-D and B-C on plan no. WCA/011. It is considered that the requirements of Section 53(3)(c)(ii) have been met in relation to bridleway rights and it is recommended that the Definitive Map and Statement should be modified to show the route as a Public Bridleway.

4.0 Wards Affected

4.1 Congleton West

5.0 Local Ward Members

5.1 Councillor Bates; Councillor Baxendale; Councillor Hayes

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.

8.2 Upon determination of this application, the authority must serve notice on the applicant to inform them of the decision. Under Schedule 14 of the WCA, if the authority decides not to make an order, the applicant may, at any time within 28 days after service of the notice, appeal against the decision on the Secretary of State and the authority. The Secretary of State will then consider the application to determine whether an order should be made and may give the authority directions in relation to the same.

8.3 The legal implications are contained within the report.

9.0 Risk Management

9.1 None

10.0 Background and Options

10.1 *Introduction*

10.1.1 This application was registered in November 2007 and made by Mrs P Amies on behalf of the Border Bridleways Association to modify the Definitive Map and Statement by upgrading two footpaths to bridleways along the routes

A-B-D and B-C in the parish of Congleton. The route applied for is currently recorded as public footpath no. 71, Congleton between points A-B-D; and public footpath no. 11(pt) between points B-C.

- 10.1.2 The applicant supplied user evidence to support the application; eleven user evidence forms from individuals who claim use of the route or part of it on horseback; and three who claim cycle use. The periods of use vary between 5 years and 28 years and were stated to be weekly, monthly or occasionally. The earliest use was from 1979 and it extended until 2007. Since the application was submitted in 2007 some witnesses have continued to use the route up to the present day.

10.2 *Description of the Claimed Bridleway.*

- 10.2.1 The claimed route begins at point A (plan no. WCA/011) on Astbury Street at the junction with Bridleway no.12 Congleton. It follows a grass verge for a short distance before entering an enclosed path between hedges with a compacted stone surface. The route has a gradual incline and follows a south westerly direction to point B where it meets Footpath no.11 Congleton.
- 10.2.2 From point B the surface is earth/grass and it follows a westerly then generally southerly direction. On the bend there is wooden knee rail fencing to one side which marks the boundary to the Astbury Mere Trust's land. To the east of the path, there is a playing field owned by Cheshire East Council, between the path and the field there is a partial boundary of trees, and there is a section with no boundary. There is a hedge and then trees on the western boundary of the path. The route continues in a southerly direction with an earth surface between trees. The final section has a wooden fence panel boundary and then a low stone wall to the eastern side to point D (on plan no. WCA/011) where it meets Fol Hollow/Waggs Road.
- 10.2.3 The section B-C runs in front of a row of bungalows in a generally easterly direction, the surface is earth/grass. The path has partial hedges on each side and it meets BankyFields Crescent at point C (on plan no. WCA/011).

10.3 *The Main Issues*

- 10.3.1 Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Cheshire East Borough Council shall keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events.
- 10.3.2 The event relevant to this application is section 53(3)(c)(ii), this requires modification of the map by the change of status of a right of way. The relevant section is quoted below:

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

(ii) 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;”

10.3.3 The evidence can consist of documentary/ historical evidence or user evidence or a mixture of both. All the evidence must be evaluated and weighed and a conclusion reached whether, on the ‘balance of probabilities’ the alleged rights subsist. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.

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

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

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

10.3.5 A member of the Border Bridleway Association was challenged in 2007 while using the route on horseback and this seems to have prompted the application to upgrade the route, which was made in the same year. Therefore the relevant twenty year period would be 1987 to 2007.

10.3.6 In this case there is some evidence of use on horseback and cycle prior to 1987; eight witnesses state their period of use began before this time and six of the witnesses interviewed state their use continued after 2007 when they filled in the form. It has been stated that the evidence of use either side of the 20 year period being relied upon buttresses the use made during the 20 year period and can reinforce the conclusion that there was sufficient use during the core period as confirmed by *Rowley v. Secretary of State for Transport, Local Government and the Regions* (2002).

10.3.7 The case of *Whitworth v Secretary of State for the Environment, Food and Rural Affairs* (2010) is relevant to this case as there is evidence of use on pedal cycle. The Planning Inspectorate guidelines state, “Section 31, Highways Act 1980, as amended by section 68 of Natural Environment and Rural Communities Act (NERC) 2006, provides that use of a way by non-mechanically propelled vehicles (such as a pedal cycle) can give rise to a restricted byway. In *Whitworth* it was suggested that subsequent use by cyclists of an accepted, but unrecorded, bridleway, where use of the bridleway would have been permitted by virtue of section 30 of the Countryside Act 1968, could not give rise to anything other than a bridleway. Whilst *Carnwath LJ* accepted that regular use by horse riders and cyclists might be consistent with dedication as a restricted byway, it was also consistent with dedication as

a bridleway. In such an instance of statutory interference with private property rights, he determined, it was reasonable to infer the dedication least burdensome to the owner.”

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

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

The proviso means that presumed dedication of a way can be rebutted if there is sufficient evidence that there was no intention to dedicate the way, during the relevant twenty year period. What is regarded as ‘sufficient evidence’ will vary from case to case. The Lords addressed the issue of whether the “intention” in section 31(1) had to be communicated to those using the way, at the time of user, or whether an intention held by the landowner but not revealed to anybody could constitute “sufficient evidence”. The Lords also considered whether use of the phrase “during that period” in the proviso, meant during the whole of that period. The House of Lords held that a landowner had to communicate his intention to the public in some way to satisfy the requirement of the proviso. It was also held that the lack of intention to dedicate means “at some point during that period”, it does not have to be continuously demonstrated throughout the whole twenty year period. Two of the witnesses indicate that they were challenged when using the route on horseback; although this was not until 2007 which was the date the application was submitted.

- 10.3.9 If for some reason the statutory test fails, the issue of common law dedication can be considered; that is whether the available evidence shows that the owner of the land over which the way passes has dedicated it to the public. An implication of dedication may be shown at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. In this case according to land registry records the path is unregistered between points A-B-C (on plan no. WCA/011) and also for approximately 35 metres at the southern end of the claimed route from point D. The remaining section of the claimed route falls within Cheshire East Council’s title, which also includes the playing field and garage area.

10.4 *Consultations*

- 10.4.1 Consultation letters were sent to the local Councillors, Congleton Town Council, adjacent landowners, user groups and statutory consultees in June 2014. In addition the new local Councillors for 2015 for the ward and Cheshire East Council’s Assets department were consulted in June 2015. The adjacent landowners were also informed of the Officers recommendation in June 2015 and invited to submit comments.

- 10.4.2 No response was received from the local members, or from the Town Council. The only comment from the Council's Assets department refers to the surface of the route; which it states would require improving to cater for horses and cyclists.
- 10.4.3 National Grid responded and objected to the application as they identified apparatus (gas pipes) in the vicinity which they state may be affected by the activities. However as no works would be required and the surface will not be disturbed it is believed that the apparatus would not be affected.
- 10.4.4 The Astbury Mere Trust responded to their initial notification of the application in December 2007. The chairman Robert Minshull objected to the application on safety grounds. He stated that footpath no.71 was too narrow in a number of places and it would be impossible for pedestrians and horses to pass. He also comments that if horse riders were to use Fol Hollow from the southern end of the claimed bridleway to join the Lambert Lane bridleway this would have horse riders going along a narrow, winding and very busy section of road. He also comments that it is not logical to include Footpath 11, the western end of which terminates in the Country Park; he states they object as they do not want horses in the Park. However this section of Footpath No.11 is not included in the application; no part of the claimed bridleway is on land owned by the Trust, although it is adjacent to it. Members are reminded that issues of safety and suitability are not relevant considerations to the decision. (See paragraph 10.3.3 above)
- 10.4.5 The Countryside Ranger who works at Astbury Mere Country Park has stated he has challenged horse riders on these paths in the past, particularly footpath no.71. He states this has been on a number of infrequent occasions since 1991, although he could not recall any specific incidents or dates. He has not challenged cyclists. The witness statements regarding any challenges are discussed below.
- 10.4.6 Officers met on site with the residents of some of the adjacent properties on Banky Fields. Their main concerns seemed to be safety issues, again relating to the width of the path. They stated it would be difficult for a walker to pass if a horse was using the path. Officers explained that safety issues are not relevant to the decision, and that there had been no reports of any incidents. One resident said she had heard horses galloping up the bank from Astbury Street.
- 10.4.7 A resident of Banky Fields, Mr Gordon Mellor has written to point out that the width of Bridleway no.12 is 9 foot whereas this path is 4 foot wide in many places. He asks if the committee could alter the route of the claimed bridleway at point C, so that it runs just to the south along the existing hardcore track. This is used as vehicle access to the bungalows and the garage area. Officers have explained to Mr Mellor that this is not possible under this legislation. The line of the claimed bridleway is the current definitive line of the public footpath. An application would need to be made to divert the route under a different legislative process. Alternatively it may be possible to have this as a permissive route.

- 10.4.8 The Peak and Northern Footpath Society have commented that in places the path is too narrow to enable horses to pass each other and/or pedestrians.

10.5 *Investigation of the Claim*

- 10.5.1 A detailed investigation of the evidence submitted with the application has been undertaken, together with additional research. The application was initially made on the basis of user evidence from 13 witnesses; one further form has since been received.

- 10.5.2 It has been discovered that footpath no.71 Congleton was not shown on the Definitive Map when it was first published. It was created by legal order as a public footpath in 1958 as an alternative route to parts of footpath no.10 (known as 'Lover's Walk') which were stopped up in 1957 and 1958 for the purpose of quarrying. Footpath No.11 was shown on the Definitive Map as linking with footpath no.10. When footpath no.10 was stopped up, the western end of footpath no.11 was left as a cul-de-sac path. The area has changed considerably with quarrying and housing development since the Definitive Map was first produced. Some of the standard historical documents have been consulted; details can be found in **Appendix 1**, however the case is based on the user evidence.

10.6 *Documentary Evidence*

10.6.1 *Astbury Tithe Map and Apportionment 1845*

Tithe Awards were prepared under the Tithe Commutation Act 1836, which commuted the payment of a tax (tithe) in kind, to a monetary payment. The purpose of the award was to record productive land on which a tax could be levied. The Tithe Map and Award were independently produced by parishes and the quality of the maps is variable. It was not the purpose of the awards to record public highways. Although depiction of both private occupation and public roads, which often formed boundaries, is incidental, they may provide good supporting evidence of the existence of a route, especially since they were implemented as part of a statutory process. Non-depiction of a route is not evidence that it did not exist; merely that it did not affect the tithe charge. Colouring of a track may or may not be significant in determining status. In the absence of a key, explanation or other corroborative evidence the colouring cannot be deemed to be conclusive of anything.

- 10.6.2 The Tithe Map of Astbury dated 1845 shows a dotted line on a route very similar to that of footpath no.11. The original line of footpath no.10 is shown partly between solid boundaries from what is now Astbury Street. The route of what is now footpath no.71 is not shown. The apportionment does not mention any of the routes but gives the name of an owner and occupier for each field.

Ordnance Survey

- 10.6.3 Ordnance Survey mapping was originally for military purposes to record all roads and tracks that could be used in times of war. This included both public and private routes. These maps are good evidence of the physical existence of routes, but not necessarily of status. Since 1889 the Ordnance Survey has included a disclaimer on all of its maps to the effect that the depiction of a road or way is not evidence of the existence of a right of way. It can be presumed that this caveat applies to earlier maps also. These documents must therefore be read alongside the other evidence.

O.S. 1st Edition County Series 25" to 1mile c1872

- 10.6.4 The route of the former footpath no.10 is shown between solid lines on this map from Astbury Street to the western end of what is now footpath no.11. It is named as 'Lovers' Walk'. It was this section of path that was stopped up by legal orders in 1957 and 1958. The line of what is now footpath no.11 is shown in its entirety as a double dashed line, the line continues over what is now Banky Fields Crescent to join Waggs Road. The route of what is now footpath no.71 is not shown

O.S 2nd Edition County Series c1898

- 10.6.5 The routes are shown exactly the same as the 1st edition.

O.S. 3rd Edition County Series c1909

- 10.6.6 The routes are shown in a similar way to the previous editions. The only difference is that the route of footpath no.11 is now annotated 'F.P' and is shown between solid lines between approximately point B (on plan no. WCA/011) and where it meets Waggs Road. The western end of footpath no.11, between point B and where it meets 'Lovers' Walk', continues to be shown as a double dashed line. Again the route of what is now footpath no.71 is not shown.

Definitive Map Process - National Parks & Access to the Countryside Act 1949

- 10.6.7 The Definitive Map and Statement is based on surveys and plans carried out in the early 1950s by each parish in Cheshire of all the ways they considered to be public at that time. The surveys were used as the basis for the Draft Definitive Map.
- 10.6.8 The survey plan for Congleton includes footpaths nos. 10 and 11; they are both identified as 'footpath' in the schedule. On footpath no. 10 a finger post, 'Public Footpath' is noted at the northern end on Astbury Street. Footpath no.11 is described as following a westerly direction from Banky Fields to FP10. Again a finger post is noted at the start of the path; a kissing gate and a squeeze stile are also cited. An obstruction to the stile is noted, with wooden posts either side of the stile reducing the width. The location of this

seems to be near to point B (on plan no. WCA/011). Footpath no.11 is described as well used with a ditch and hedge on the left hand side and a post and wire fence on the right hand side.

- 10.6.9 The Draft Map was the first step towards compiling the survey information into what would become the Definitive Map. On this map the routes are shown in the same way as on the survey maps and annotated the same. The subsequent provisional and definitive maps show the routes as footpaths. As footpath no.71 was created later as an alternative to the stopping up of footpath no.10, it does not feature throughout the definitive map process.

10.7 *Witness evidence*

- 10.7.1 Fourteen user evidence forms were submitted in total on standard user evidence forms, ten of these have been interviewed. A chart illustrating the user evidence is attached as **Appendix 2** (user evidence forms) and **Appendix 3** (interviews).
- 10.7.2 In order to show that public bridleway rights have been acquired along the length of the claimed route through usage, a twenty year period must be identified during which use of the route by horse riders/cyclists has been established. This period is usually taken as the twenty years immediately prior to a challenge to that use. In section 10.3.5 it is discussed that a challenge did occur in 2007, which is also the same year the application was made. Therefore the relevant period would be 1987 to 2007.
- 10.7.3 Of the fourteen user evidence forms submitted, nine claim to have ridden the routes with a horse; three have cycled and two have used it on both horseback and cycle. Twelve have used the whole of the claimed route; A-B-D and B-C (plan no. WCA/011). Two witnesses have only used the route A-B-C (Debbie Garnsey and Anndrea Bossen). Use of the route varies from 5 years to 28 years. All fourteen of the witnesses have some use during the period 1987 to 2007, three users claim use for the full twenty year period and a further two have used it for nineteen of those years. Frequency of use varies between the witnesses; most have used it monthly, some state weekly and some state occasionally.

Witness Interviews

- 10.7.4 Ten of the fourteen witnesses have been interviewed by Officers. Four of the ten persons interviewed claim use of the route for the full twenty year period, 1987-2007. Two of these were on horseback, one on cycle and the fourth person used it by horse and cycle. One other person used the routes on horseback for 19 of the 20 years, her use ended in 2006 as she moved from the area. Two further witnesses (Debbie Garnsey and Rachel Stafford) have used the route on horse back and cumulatively their use covers the twenty year period; although Debbie Garnsey only used the route A-B-C (on plan no. WCA/011). The remaining three witnesses have stated use for the latter part of the twenty year period.

- 10.7.5 Six of the ten witnesses stated their use began before 1987, the earliest being Mrs Crawford who's use began in 1979. Six witnesses state their use continued after 2007, three of those continue to use it to the present day.
- 10.7.6 All of the witnesses described the route in the same way, between two hedges from Astbury Street; then along the outside edge of the playing fields or out onto Bank Fields Crescent. Most described the route between points B and D (on plan no. WCA/011) as quite narrow, especially the southern section from behind the garages. However at some point in the past it would seem there was a barbed wire fence to the side of the path at this location, which has since been removed.
- 10.7.7 Two of the witnesses interviewed have been stopped or challenged when riding this path. Mrs Crawford stated in 2007 she saw workmen on the path and she was told she should not be riding there. Also in 2007 Rachel Stafford came across walkers on the path who told her it was a footpath and too narrow for horses. No other challenges are mentioned, all the other witnesses state they were never stopped or challenged throughout their period of use. As stated in 10.4.5 above the Countryside Ranger for the Astbury Mere Country Park has stated he has challenged horse riders in the past. However it is considered this would not be sufficient to rebut the presumed dedication (referred to in 10.3.8 above) as the section of claimed bridleway is not in the ownership of The Astbury Mere Trust and also none of the witnesses interviewed have been challenged until 2007. There is no evidence of any notices on the route other than the finger posts mentioned in the walking survey and the finger posts and waymarkers currently in situ.
- 10.8 *Conclusion*
- 10.8.1 The claimed route between points A-B-D (Plan no. WCA/011) was not created until 1958 (by legal order); it therefore does not appear to have any earlier historical origin. It does not appear on any of the historical Ordnance Survey maps consulted, nor is it mentioned in the Definitive Map process.
- 10.8.2 The route of footpath no.11 does appear to have an earlier origin; it is shown on the Tithe Map of 1845 and all three editions of the County Series Ordnance Survey maps. It does appear as part of a through route from Newcastle Road to Waggs Road, so had the potential to be used as a bridleway. It is not until the third edition of c1909 that the route is annotated 'F.P'. Although the Ordnance Survey Maps show a physical route existed on the ground, there is no known historical evidence to suggest it was used as a bridleway. The section from Newcastle Road to the junction with footpath no.10 was added as a bridleway as part of the Definitive Map process, but this became a cul-de-sac bridleway as the remainder of the route was added as footpaths no.'s 10 and 11. The walking survey in 1951 clearly refers to the route of footpath no.11 as a 'footpath'; kissing gates and a stile are mentioned in the schedule.
- 10.8.3 The area changed considerably with quarrying and housing development, several routes in this area were stopped up or diverted. Therefore a decision on this application is to be made on the basis of the user evidence.

- 10.8.4 The relevant period of use to be considered here is 1987-2007. During this period, from the user evidence forms and the witness interviews, it would seem that both routes were being used on a fairly regular basis by horse riders. One of the property owners on Banky Fields referred to a horse galloping along the route. There is also frequent use by those that have used it on a bicycle and they continue to do so. The applicant states she is aware of more recent frequent use by cyclists as more people are now cycling to commute into town or as a pleasure ride avoiding the busy main road. Despite the Countryside Ranger stating he has infrequently challenged horse riders, none of the witnesses have been challenged until 2007.
- 10.8.5 The evidence in support of this application must show, on the balance of probabilities that public bridleway rights subsist along the claimed routes. The balance of user evidence supports the allegation that a bridleway subsists along the routes A-B-D and B-C (Plan no. WCA/011). Therefore it is considered that the requirements of Section 53(3)(c)(ii) have been met and it is recommended that a Definitive Map Modification Order is made to upgrade footpaths nos. 71 & 11(pt), Congleton to bridleway and thus amend the Definitive Map and Statement.

11.0 Access to Information

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

Name: Jennifer Tench
Designation: Definitive Map Officer
Tel No: 01270 686158
Email: jennifer.tench@cheshireeast.gov.uk

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DMMO DOCUMENTARY RESEARCH CHECKLIST

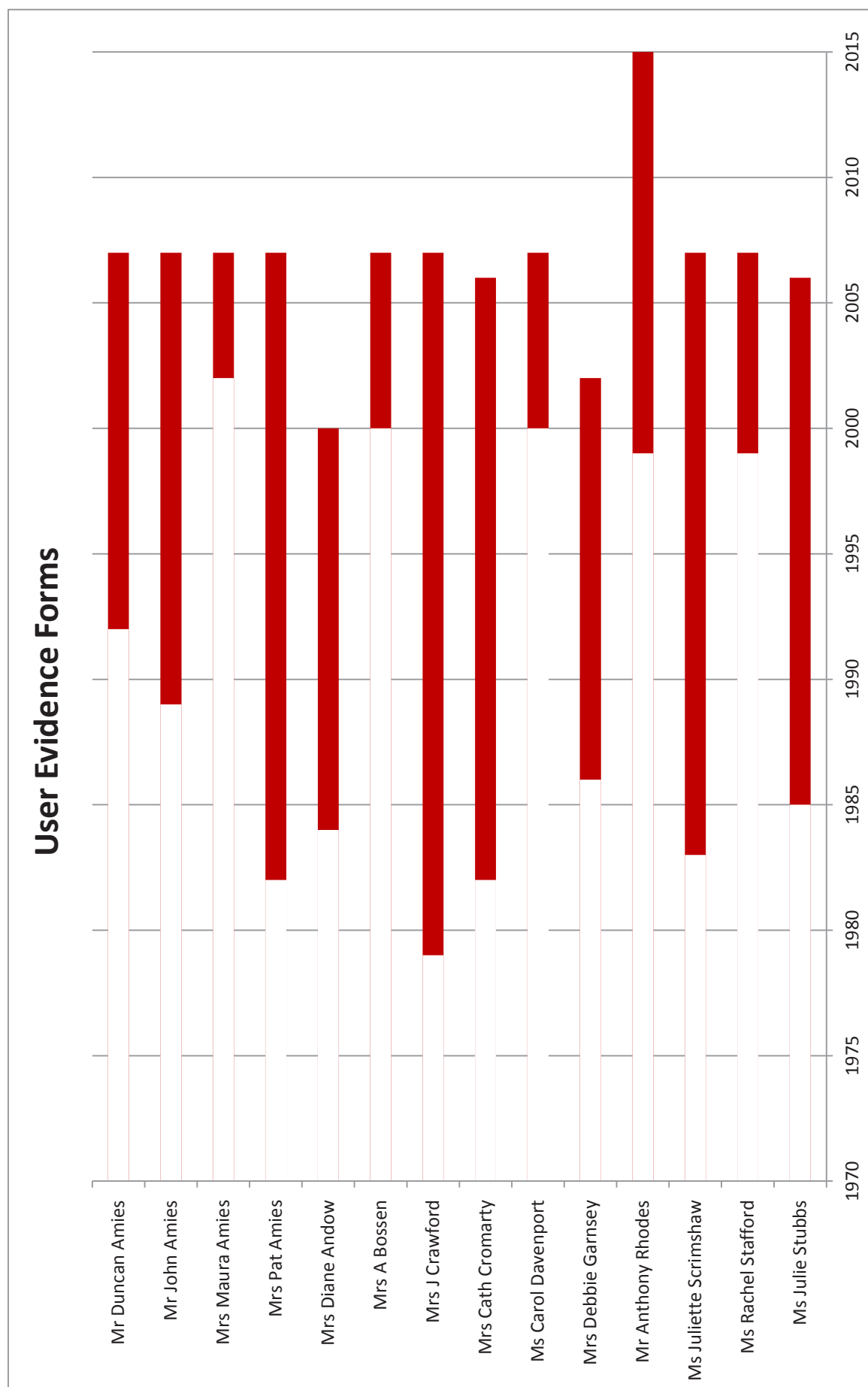
District Congleton	Parish Congleton	Route FP71 & FP11 Congleton
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Document	Date	Reference	Notes
<i>County Maps</i>			
Burdett PP	1777	CRO PM12/16	Not shown
Greenwood C	1819	CRO PM13/10	Not shown
Bryant A	1831	CRO Searchroom M.5.2	Not shown
<i>Tithe Records</i>			
Apportionment		CRO EDT/123/1 Township: Astbury	Not mentioned
Map	1846	CRO EDT/123/2 Township: Astbury	Original line of FP10 shown between solid lines. Dotted line on the route of FP11
<i>Ordnance Survey</i>			
25" County Series 1 st Edition	c.1872	CRO	Original line of FP10 shown between solid lines between Astbury Street and FP11, annotated 'Lovers' Walk'. The entire line of FP11 is shown as a double dashed line and this extends to Waggs Road.
25" 2 nd Edition	c.1898	CRO	As above.
25" 3 rd Edition	c.1909	CRO	As above, but the line of FP11 now annotated 'F.P.' and is shown as double solid lines for the part subject to the claim.
<i>Local Authority Records</i>			
Walking Survey - Congleton	1951	PROW	The survey plan for Congleton includes footpaths nos. 10 and 11; they are both identified as 'footpath' in the schedule. On footpath no. 10 a finger post, 'Public Footpath' is noted at the

Appendix 1

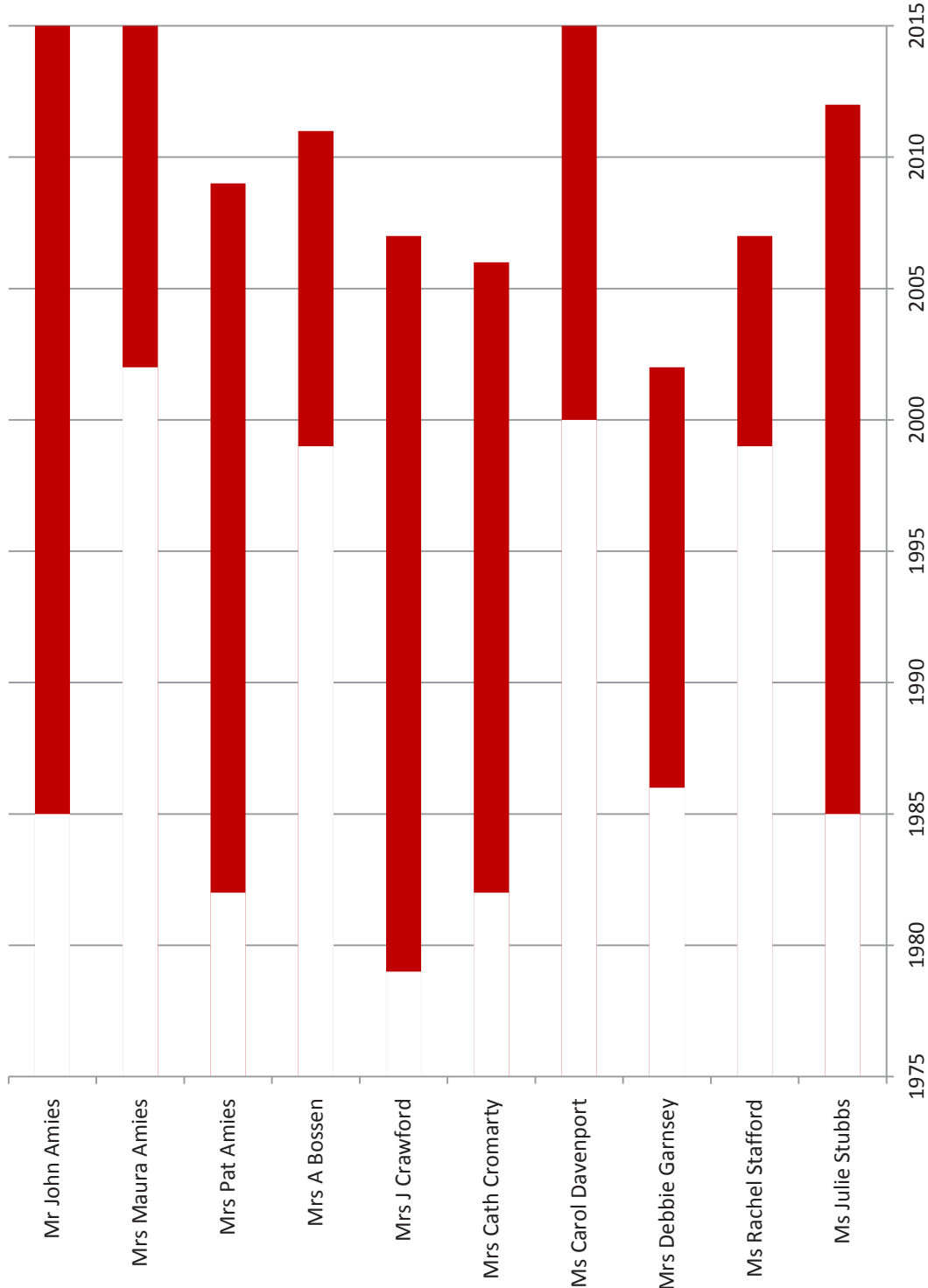
			<p>northern end on Astbury Street. Footpath no.11 is described as following a westerly direction from Banky Fields to FP10. A finger post is noted at the start of the path; a kissing gates and a squeeze stile are also cited. An obstruction to the stile is noted, with wooden posts either side of the stile reducing the width. Footpath no.11 is described as well used with a ditch and hedge on the left hand side and a post and wire fence on the right hand side.</p>
Draft Definitive Map	1953	PROW	FP10 and FP11 are shown and annotated the same as the walking survey.
Provisional Definitive Map		PROW	FP10 and FP11 are shown.
Definitive Map		PROW	FP10 and FP11 are shown.
Definitive Map Review File		PROW	
The Stopping up of Highways (County of Chester) (No.21) Order 1957	1957		<p>Stopping up of FP10 (Lovers' Walk) Creating FP71 southern end</p>
The Stopping up of Highways (County of Chester) (No.2) Order 1958	1958		<p>Stopping up of FP10 Creating FP71 northern end</p>

CRO – County Record Office
PROW – Public Rights of Way Unit



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User Evidence - Interviews



Use on horseback unless stated

Used on cycle 1-2x a week, not challenged

Used both routes 1-2x a fortnight had a break in 2011 when had child but back riding in 2012

Used A-B-C weekly, B-D monthly

Used A-B-C only, once a month

Used A-B-C monthly, B-D every other month. Challenged in 2007

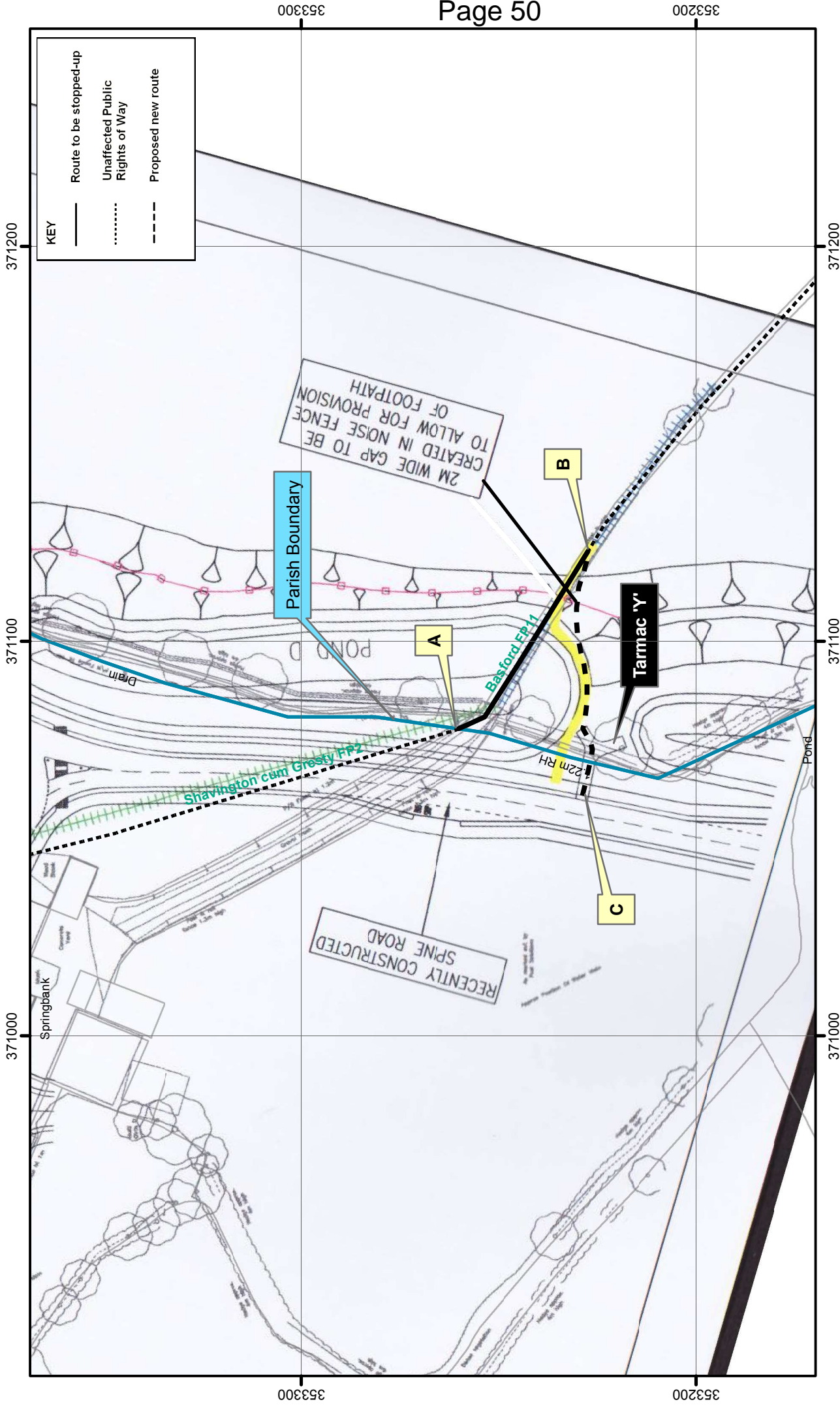
Used both routes regular until 2002 then occasionally until 2006

Used both routes monthly until 2007, then every 2-3 months

Used A-B-C only, monthly, more in summer

Used both routes monthly. Challenged in 2007 then stopped using it

Used both routes once every 2 months, less often after 2006



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	7 th December 2015
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980 s.119 Application for the Diversion of Public Footpath No. 11, Parish of Basford

1.0 Report Summary

- 1.1 The report outlines the investigation to divert Public Footpath No. 11 in the Parish of Basford. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as an application has been made by the landowner concerned. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

2.0 Recommendation

- 2.1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert Public Footpath No.11 Basford by creating a new public footpath and extinguishing the current path as illustrated on Plan No. HA/102 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 10.4 & 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 an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:

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

And whether it is expedient to confirm the Order considering:

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

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

3.4 No objections to the proposal have been received through the informal consultation process. The proposed route will not be 'substantially less convenient' than the current route and diverting the footpath will be of benefit to the landowner by concluding changes to the Public Rights of Way network that were required to enable a permitted planned residential development (Planning application: 13/0336N). The changes were necessary to preserve a public right of way between the A500 and Crewe Road.

It is considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Haslington and Shavington wards

5.0 Local Ward Members

5.1 Councillor S Edgar, Councillor D Marren and Councillor J Hammond

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 not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/an inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

9.0 Risk Management

9.1 Not applicable

10.0 Background and Options

10.1 An application has been received from Mr P Heslop of Goodmans Real Estate (UK) Ltd, Nelton House, Central Boulevard, Blythe Valley Park, Solihull, West Midlands, B90 8BG requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 11 in the Parish of Basford.

10.2 Public Footpath No. 11, Basford, Public Footpath No. 11 Basford commences on Weston Lane (C504) at OS grid reference SJ 7161 5221 and runs in a generally north westerly direction to its junction with Public Footpath No. 2 Shavington cum Gresty at OS grid reference SJ 7108 5324.

The path to be diverted is shown by a solid black line on Plan No. HA/102 running between points A-B. The proposed diversion is illustrated on the same plan by a black dashed line running between points B-C.

10.3 Goodmans Real Estate (UK) Ltd own the land over which the current path and the proposed diversion run. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request, if it considers it expedient in the interests of the landowner to make an order to divert the footpath.

10.4 In 2013, the part of Public Footpath No.11 Basford proposed for diversion, was to be diverted under the Town and Country Planning Act 1990 S.257 in response to the following planned development:

Planning Application **Planning Application 13/0336N** - *Outline application for residential development (up to 370 units), Offices (B1), local centre comprising food and non-food retail (A1) and restaurant/public house (A3/A4), hotel (C1), car showroom and associated works including construction of new spine road with accesses from Crewe Road and A500, creation of footpaths, drainage including formation of SUDS, foul pumping station, substation, earthworks to form landscaped bunds, provision of public open space and landscaping*

As resolved by the Rights of Way Committee in 2013 (see Rights of Way Committee Minute No. 18, 16th September, 2013), two unopposed Legal Orders were made that would extinguish Shavington cum Gresty FP2 and divert a short section of Basford FP11 such that it would link to the new spine road, 'John Mills Way', once this road was adopted by the Council.

The spine road has now been completed and adopted and, the landscaped bunds detailed above have been installed, including storm water balancing ponds. It was the intention that the unopposed legal orders would be confirmed and made operable at this point to conclude the necessary path changes required to preserve the public right of way between the A500 and Crewe Road. However, further consideration of the diversion route has resulted in the applicant submitting a new proposal that would allow the footpath to be better aligned through the landscaped area.

Although the previous extinguishment and diversion were progressed under the Town and Country Planning Act, Section 257, the legal test to enable development is not met by the circumstances of this new diversion and it must therefore be processed under section 119 of the Highways Act 1980.

- 10.5 Referring to Plan No. HA/102, the proposed new route (points B-C) would start at point B and would run in a generally westerly direction through a gap in a sound fence to continue to cross over a tarmac 'Y' shaped area to its junction with John Mills Way (point C) where it would terminate.

Since the new route would straddle the parish boundary, a short section of new footpath would be created in the Parish of Shavington cum Gresty that would take the new route to its junction with John Mills Way (Parish Boundary – point C).

The new route would be 2 metres wide and have surfaces of tarmac over the 'Y' shaped area and topsoil between the tarmac 'Y' and the current footpath (point C).

The diversion would be made in the interests of the landowner to complete the new public right of way between the A500 and Crewe Road using Basford FP11 (part) and the recently adopted road network (adopted August 2015).

- 10.6 Ward Councillors have been consulted about the proposal. No comments have yet been received. Received comments will be reported verbally.
- 10.7 Weston and Basford and, Shavington-cum-Gresty, Parish Councils have been consulted.

Members of Weston and Basford Parish Council have registered no objection to the diversion.

Received comments from members of Shavington cum Gresty Parish Council will be reported verbally.

10.8 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

10.9 The user groups have been consulted and no objections have been received. However, the Peak and Northern Footpath Society referred to section 7.8 of the Rights of Way Circular which gives the following guidance:

'In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic.'

The proposed diversion is not aligned along any estate roads and all other path changes in relation to offering a route along the adopted estate roads within the development have been concluded such that they can be confirmed and made operable.

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

10.11 An assessment in relation to Equality Act 2010 Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion is not substantially less convenient than the current route.

11.0 Access to Information

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

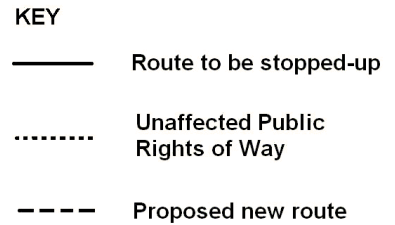
Name: Marianne Nixon

Designation: Public Path Orders Officer

Tel No: 01270 686 077

Email: Marianne.Nixon@cheshireeast.gov.uk

PROW File: 042D/511



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	7 December 2015
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980 s.119 Application for the Diversion of Public Footpath Nos. 1 & 9 (parts), Parish of Henbury

1.0 Report Summary

- 1.1 This report seeks to assist Members in the determination of an application to divert parts of Public Footpaths No.1 and No 9 in the Parish of Henbury as shown on Plan 1 attached to the report.
- 1.2 The report includes the outcome of consultations carried out in respect of the proposal and the legal tests to be considered before a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit because an application has been made by the landowner concerned. The report makes a recommendation based upon the above information, to enable a quasi-judicial decision to be made by Members whether or not to make the requested Order.

2.0 Recommendation

- 2.1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert parts of Public Footpaths No.1 and No 9 Henbury by creating a new section of public footpath and extinguishing the current path as illustrated on Plan 1 attached to this report on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, and not subsequently withdrawn the Order be referred to the Secretary of State to be determined.

3.0 Reasons for Recommendations

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

diversion is in the interests of the landowner for the reasons set out in Section 10 below.

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

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

And whether it is expedient to confirm the Order considering the effect to which:

- The diversion would have on public enjoyment of the path as a whole
- The effect on other land served by the path
- Any provisions for compensation
- Any material provision within a Rights of Way Improvement Plan
- The needs of agriculture and forestry; biodiversity; and disability discrimination legislation

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

3.4 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will increase the perception of both the security and privacy of the property as well as reduce the chance of unintentional trespass. It is considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order can be satisfied.

4.0 Wards Affected

4.1 Gawsworth

5.0 Local Ward Members

5.1 Councillor Lesley Smetham

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 not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a 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 Not applicable

10.0 Background and Options

- 10.1 The application has been received from Robin Carr Associates (agents) on behalf of Mr & Mrs Harrison of Sandbach Farm, Henbury, Macclesfield SK11 9PL. The application requests that the Council make an Order under section 119 of the Highways Act 1980 to divert parts of Public Footpaths Nos. 1 & 9 in the Parish of Henbury as shown on Plan 1 attached to this report.
- 10.2 The land over which the current path and the proposed diversion run belongs to Mr & Mrs Harrison. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request, if it considers it expedient in the interests of the landowner to make an order to divert the footpath.
- 10.3 The section of footpath proposed for extinguishment is the whole width of those parts of Public Footpaths, Henbury No 1 and 9 shown by a solid black line on Plan 1 and commencing at Grid Reference 38640 37213 (Point A) then running in a generally northerly direction across the open field to Grid Reference 38636 37241 (Point B). The length of this section of footpath (A – B) is approximately 300 metres.
- 10.4 The proposed new footpath is shown by a broken black line on Plan 1 and commences at Grid Reference 38640 37213 (Point A) then runs in a generally north north-easterly direction along the eastern side of the field boundary to Grid Reference 38648 37235 (Point C) where it turns and runs along the southern side of the field boundary in a generally west north westerly direction to Grid Reference 38636 37241 (Point B). The length of the proposed new footpath is approximately 376 metres.
- 10.5 As part of the proposals the stile at Grid Reference 38640 37213 (Point A) will be replaced with a kissing gate and a new kissing gate will be installed at Grid Reference 38648 37235 (Point C). The gating arrangements at Grid Reference 38636 37241 (Point B) will remain unchanged. It should be further noted that, as part of the works to bring the path into being, the cattle watering trough located in the hedge line between Points C and B will be relocated away from the alignment of the new footpath. The new route would be 2 metres wide and unenclosed. The surface of the new route would be grass with some stoning in the vicinity of any gate ways should this prove necessary.

- 10.6 The proposal will move the footpath further away from the new property and its access drive. Moving the footpath will increase the perception of both the security and privacy of the property and reduce the chance of unintentional trespass. As such the proposal is considered to be in the interest of the owner of the land and that the diversion of the footpath is a suitable and appropriate (expedient) means of addressing these issues.
- 10.7 Whilst the proposed new route is approximately 76 metres longer than the existing route, and any such increase in distance may be considered to have an impact on the convenience of the route, this must be considered in context taking into account factors such as the primary use that a path receives (e.g. to get to local amenities or recreation) and the overall length of the path or journey to be undertaken. In this instance the increased distance is only 76 metres which will only add perhaps a minute to any journey. This is not considered unreasonable given the rural setting of the footpath and the generally recreational use that it receives.
- 10.8 Consideration may also be given to the number of structures (e.g. stiles and gates etc) that have to be negotiated when using the route. The affected section of the existing footpath has two gates plus a stile. The proposed new route will have only two kissing gates meaning that there are therefore fewer structures on the proposed new route. Overall it is considered that the proposed new route is not substantially less convenient than the existing footpath.
- 10.9 With regard to the enjoyment of the route, the proposed new route affords walkers excellent views of the surrounding area and there are fewer structures (and no stiles) to negotiate. It is not therefore considered that the diversion will have a detrimental effect on the enjoyment of the path as a whole.
- 10.10 The land crossed by the existing and proposed routes is all in the same ownership and no private rights of access will be affected by the proposals. There is therefore no adverse effect on any land served by the footpath. Similarly, as the land is all in the same ownership, and the land owners are the applicants, no compensation issues should arise.
- 10.11 An assessment of the ROWIP for the Cheshire East Council area has been made and there are no material provisions within the document that adversely affect the proposals, and the proposal is not considered to have any detrimental effect on the needs of agriculture, forestry or biodiversity.
- 10.12 The Ward Councillor was consulted about the proposal and no objections have been received to the proposal.
- 10.13 Henbury Parish Council has been consulted and no objections have been received to the proposal.
- 10.14 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing

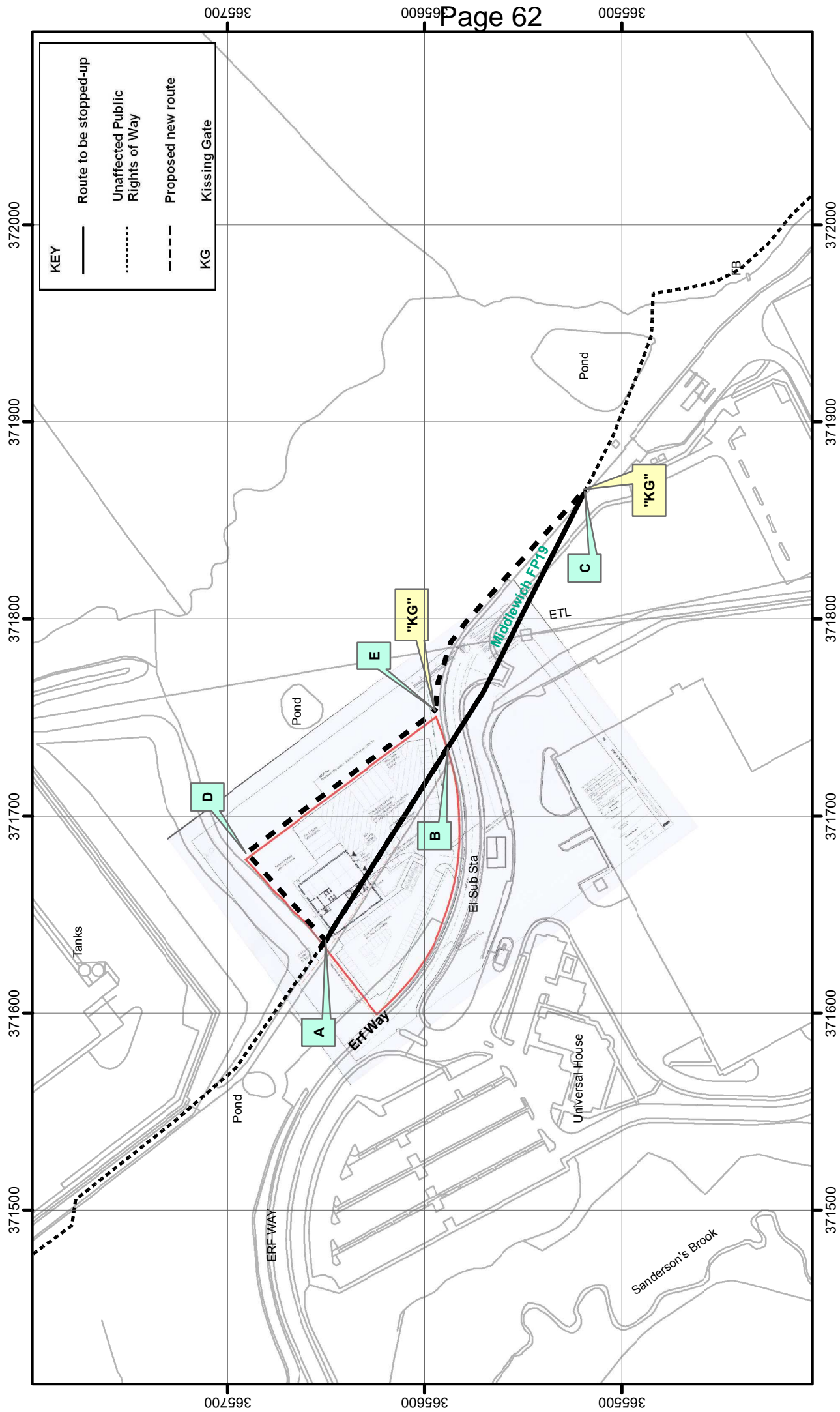
rights of access for the statutory undertakers to their apparatus and equipment are protected.

- 10.15 The user groups have been consulted. The Peak and Northern Footpath Society and the Ramblers Association have no objection to the proposal, but have requested that the new route be waymarked and maintained appropriately. No other comments were received.
- 10.16 The Council's Nature Conservation Officer has been consulted and raised no objection to the proposals.
- 10.17 An assessment in relation to Disability Discrimination Legislation has been carried out and it is considered that the proposed diversion offers an improvement over the old route due to there being few structures and the replacement of a stile with a kissing gate.

11.0 Access to Information

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

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Designation: Public rights of Way Manager
Tel No: 01270 686 115
Email: mike.taylor@cheshireeast.gov.uk
PROW File: 202D/490

Plan No.
TCPA/025

Town and Country Planning Act 1990 s257
The Cheshire East Borough Council
(Footpath No 19 (part) Parish of Middlewich)
Public Path Diversion Order 2015



1:2,500

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	7 th December 2015
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 Middlewich

1.0 Purpose of Report

The report outlines the investigation to divert part of Public Footpath No. 19 in the Parish of Middlewich. 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 a planning application. The application has been submitted by Mr B Nicholson of Pochin Developments Ltd., Brooks Lane, Middlewich, Cheshire, CW10 0JQ for development of a 'BI office/B2/B8 warehouse and yard facility for Scottish Power' (Planning reference: 15/2609C). 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 Middlewich, as illustrated on Plan No TCPA/025 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 Middlewich as illustrated on Plan No. TCPA/025 to allow for the development of the warehousing (including yard and office) by Scottish Power as detailed within planning reference: 15/2609C.

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 Middlewich

5.0 Local Ward Members

5.1 Councillor S McGrory
Councillor M Parsons
Councillor B Walmsley

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 B Nicholson of Pochins Developments Ltd., Brooks Lane, Middlewich, Cheshire, CW10 0JQ 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 Middlewich.

6.2 Public Footpath No. 19 Middlewich commences at its junction with Brooks Lane at O.S. grid reference SJ 7074 6609 and runs in generally north easterly direction between industrial premises for a distance of approximately 129 metres to then cross a railway bridge. Immediately after the railway bridge, it bears in a generally south, south easterly direction for a distance of approximately 1,953 metres terminating at its junction with Bradwall Road at O.S. grid reference SJ 7245 6524. Across this longer section, the footpath crosses scrubland and then pasture land, several roads (Sanderson Road and ERF Way twice) and passes adjacent to a number of other industrial premises.

The section of path required to be diverted by Pochins Developments Ltd. is shown by a solid black line on Plan No. TCPA/025 running between points A-B-C. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-D-E-C.

- 6.3 The existing alignment of the footpath section proposed for diversion by Pochins Developments Ltd., would be directly affected by development of the office, warehousing and yard as shown by the solid black line on Plan No. TCPA/025 running between points A-B.

The land over which the current route runs and over which the proposed route would run is entirely owned by Pochin Developments Ltd.

- 6.4 Planning permission was granted to Pochin Developments Ltd on 17th August 2015. The application is cited as Planning Permission Ref: 15/2609C. The details of the application are for the development of offices and warehousing with yard, for Scottish Power.

- 6.5 With regard to the development sought by Pochin Developments Ltd, part of the current line of Public Footpath No.19 Middlewich would be obstructed by the offices, warehousing and yard. Therefore, the footpath diversion is required to preserve public access around the development.

The length of footpath proposed for diversion (points A-B-C) is approximately 262 metres of which 118 metres (points A-B) would be directly affected by the development.

- 6.6 The proposed diversion route would be skirt the perimeter of the new development, initially following a north easterly direction within the development through a landscaped area (points A-D) and then bearing in a south easterly direction along the outside of the development over grassland to ERF Way (points D-E). This part of the diversion route would be 2 metres wide and unenclosed.

On reaching ERF Way (point E), the proposed diversion route would exit the grassland via a kissing gate to continue in a generally south, south easterly direction on an unenclosed, 2.5 metre strip of grassland provided to the north of the pavement terminating immediately at a kissing gate (point C).

Re-alignment of the footpath as proposed between points E-C, would resolve a current mapping anomaly that routes the current definitive alignment to cross ERF Way twice (between points B and C on Plan No. TCPA/025), eliminating the need for the public to negotiate vehicular traffic on ERF Way.

The reason for not placing the new route between points E-C, on the pavement is that two public highways cannot be placed on the same alignment. One would need to be extinguished. So placing the footpath to the north of the pavement separates the two and preserves the public footpath rights.

The diversion would be made in the interests of the landowner.

- 6.9 The local Councillors have been consulted about the proposal. No comments have been received.
- 6.10 Middlewich Parish Council has been consulted about the proposal and have registered their support for the diversion.
- 6.11 The statutory undertakers have also been consulted and have no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 6.12 The user groups have been consulted. No objections have been received. However, the Peak and Northern Footpath Society registered that the proposal is better than a previous proposal (abandoned) making reference to section 7.8 of the Rights of Way Circular which gives the following guidance:

'In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic.'

From point A, the previous proposal would have diverted the footpath onto the pavement of ERF Way that runs adjacent to the southern perimeter of the development which would be against the above guidance but at the time, there was no alternative route that was acceptable to Pochin Developments Ltd. Following discussion with the Congleton Ramblers Group (whose members objected to the initial proposal), this proposal was revised to that detailed in this report.

- 6.13 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 6.14 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be an improvement to the current route as it would take away the need for users to twice cross ERF Way.

10.00 Access to Information

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

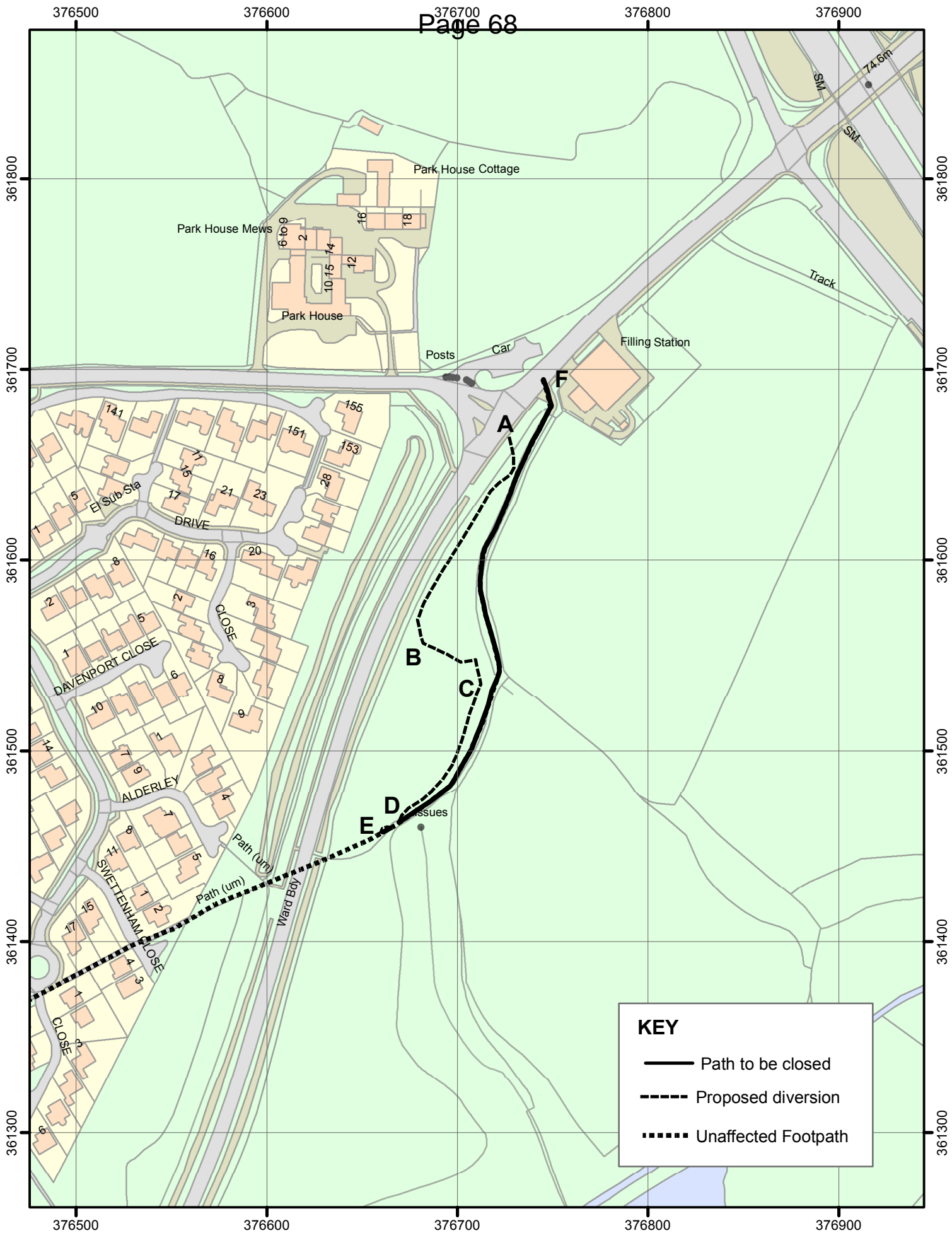
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Background Documents: PROW file 207D/506

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KEY

- Path to be closed
- - - Proposed diversion
- Unaffected Footpath



TCPA 1990 s.257
Proposed Diversion of Public Footpath no.11(pt)
Parish of Sandbach

Plan No. TCPA/024

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



1:2,500

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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of meeting: 7th December 2015
Report of: Public Rights of Way Manager
Title: Town and Country Planning Act 1990 S257
Application for the Diversion of Public Footpath No.11 (part)
Parish of Sandbach

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 11 in the Parish of Sandbach. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as an application has been made by the agents Weightmans LLP on behalf of Barratt Homes Manchester of 4 Brindley Road, City Park, Manchester. M16 9HQ. The application has been made as a consequence of planning approval granted for:

Planning Application: 12/3948C:

Outline application with all matters reserved for commercial development comprising of family pub/restaurant, 63 bedroom hotel, Drive through cafe, Eat in cafe and office and light industrial commercial units with an adjacent residential development of up to 250 dwellings. The proposal also includes associated infrastructure and access.

Planning Application: 15/3531C

Reserved matters application for proposed erection of 246 no. dwellings including roads, sewers, boundary treatments and garages and associated works. This application is to be decided by Planning Committee on the 16th December 2015.

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.

Members are required to consider the issues set out in this report and make a decision as to whether the proposed footpath diversion is necessary to enable development to take place in accordance with section 257 of the Town and Country Planning Act 1990 (as detailed in paragraph 3.1 below).

2.0 Recommendations

- 2.1 An Order is made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 11 Sandbach as illustrated on Plan No. TCPA/024 on the grounds that the Borough Council is satisfied that it is necessary to do so in order to enable development to be carried out.

- 2.2 Public Notice of the making of the Order is 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 Recommendations

- 3.1 In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as Local Planning Authority, can make an Order diverting a public footpath if it is satisfied that it is necessary to do so in order to enable development to be carried out in accordance with a planning permission that has been applied for or granted.
- 3.2 It is considered that it is necessary to divert part of Footpath No. 11 Sandbach as illustrated on Plan No. TCPA/024 to allow for the construction of 246 houses and associated infrastructure. The footpath would be directly affected by housing and the road network.
- 3.3 Informal consultations have elicited four objections to the proposal however 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 Wards Affected

- 4.1 Sandbach Heath and East.

5.0 Local Ward Members

- 5.1 Councillor Sam Corcoran.

6.0 Financial Implications

- 6.1.1 Not applicable

7.0 Legal Implications

- 7.1 Section 257 of the Town and Country Planning Act 1990 ("TCPA") allows the council to make and confirm orders authorising the stopping up or diversion of a footpath if they are satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission applied for. There are requirements of public notice and if objections are received to the proposed order and not withdrawn, the order must be submitted to the Secretary of State for confirmation, who must either call for a local inquiry or give the objectors an opportunity of being heard before making his decision. This would require attendant legal involvement and use of resources. It follows that the Committee decision may or may not be confirmed by the Secretary of State.

- 7.2 The procedure in making an order is detailed in Schedule 14 to the TCPA and the Town and Country Planning (Public Path Orders) Regulations 1993, which are made under the TCPA.

8.0 Risk Assessment

- 8.1 Not applicable

9.0 Background and Options

- 9.1 An application has been received from Weightmans LLP acting as Agent for Barratt Homes ('the Applicant'), 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. 11 in the Parish of Sandbach.
- 9.2 Public Footpath No. 11, Sandbach commences on Congleton Road (A534) at OS grid reference SJ 7674 6169 and runs in a generally south westerly direction to Well Bank at OS grid reference SJ 7621 6100. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/024 running between points F-E. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-E.
- 9.3 The proposed diversion is necessary to accommodate the layout of the housing development which will directly affect the footpath. As far as is possible the diversion is designed to take the public footpath along estate paths, separate from the highway infrastructure. The site layout for the area affected by the footpath is shown on the attached Development Plan. The Section A to B as shown on Plan no. TCPA/024 will be a 2 metre wide tarmacked path within a green corridor separated from the A534 by an existing hedge line and approximately 6 metres of highway verge on the roadside and 3 metres on the development side. Section B to C will be along a footway and across an estate road to link with a woodland edge path from point C to point D. This section will mostly be 2 metre tarmacked surface becoming a timber edged 'hoggin' surfaced path for the last 20 metres with a width of 1.5 metres. The path then re-joins the existing public footpath no.11 crossing the estate road and following a 2 metre wide tarmacked path to its junction with Old Mill Road.
- 9.4 When the Reserved Matters stage of this development was first applied for in August this year the proposal for accommodating the footpath was to divert it along the footways of the highway network within the site. This department objected to the application on the basis that this was contrary to Defra guidance and part of our response stated:

'It should be noted that "any alternative alignment [of a Public Right of Way] should avoid the use of estate roads for the purpose wherever possible and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic" (Defra Rights of Way Circular (1/09), Guidance for Local Authorities, Version 2, October 2009, para 7.8).'

A meeting with representatives from the developers and their agents was subsequently held and the current proposal was agreed upon as the best

achievable outcome within the limits of the development layout and substantially reduced the extent of the diversion corresponding with the highway network.

- 9.5 Councillor S Corcoran has been consulted as the Ward Councillor. He has initially stated his objection to the proposal because the new route takes the path closer to the A534 and takes it along a less natural route. Following further correspondence providing more detail of the specifics of the proposed path, its background and the criteria for a diversion under the Town and Country Planning Act; Councillor Corcoran responded that he welcomed the additional onsite informal woodland paths that were to be included as part of the site development (see 'Woodland Paths Plan') but wished to see these paths taken on and managed by Cheshire East and without that assurance he would maintain his objection. These paths do not form part of the diversion application to be decided.
- 9.6 Sandbach Town Council has been consulted and responded with an objection to the proposal on the basis that the information provided was inadequate and that moving the path closer to the A534 would be detrimental to the quality of the walk. They also stated that the proposed path appears to be a walkway along the new access road rather than a separate public footpath. A response was sent explaining more detail of the alignment of the proposed new path and the criteria for a diversion under the Town and Country Planning Act. Unfortunately the next meeting at which the Town Council were due to consider the additional information was cancelled however it is hoped that a further response, following a meeting on the 26th November, will be available to be reported verbally at Committee.
- 9.7 The user groups have been consulted. The Rambler's Association Representative has objected to this proposal as they felt the diversion would fail for not complying with Defra guidelines and that the information at their disposal was rather poor. There was some confusion regarding the proposed diversion route because the Council's Planning website was still showing the original diversion running entirely along estate roads and hadn't been updated. This position was clarified and further information provided about the position of the proposed path and its proximity to the A534. Further comments from the Rambler's Association are awaited.
- 9.9 Sandbach Footpath Group was also consulted and objected to the proposal on the grounds of it becoming 'negated' as a field or country path; running directly adjacent to the A534 as merely a 'pavement' and elsewhere as an 'estate road footway' and there being no access to the continuation of the path that runs through the estate to the west of Old Mill Road. In addition to these objections the comments also included a desire to see enhancements to the proposal by linking into new paths that could be included through Offley Wood, on the southerly fringes of the site, and also linking across the larger expanse of the 'Capricorn' development to join Sandbach FP 14 to the south-west. It was the whole 'Capricorn' site that was the subject of the outline approval given under planning application no. 12/3948C. The matters of the specifics of the footpath diversion were addressed with assistance from the developers and their agent. The offsite road improvement works will include a traffic island opposite to the point where the footpath joins Old Mill Road (A534) which will assist people crossing the road to link with the footpath continuation to the west. Barratt Homes however are not involved in the whole

of the Capricorn development and do not have control over interlinking land between this site and the land where Footpath 14 runs. There are also proposals within the site to accommodate informal woodland paths as mentioned above in paragraph 9.5 (see 'Woodland Paths Plan'). On receipt of this information The Footpath Group welcomed the woodland paths planned within the development and said they would withdraw their objection provided these are taken on and managed by Cheshire East Council.

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

9.11 An assessment in relation to Equality Act 2010 Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the existing route.

10.0 Access to Information

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

For further information:

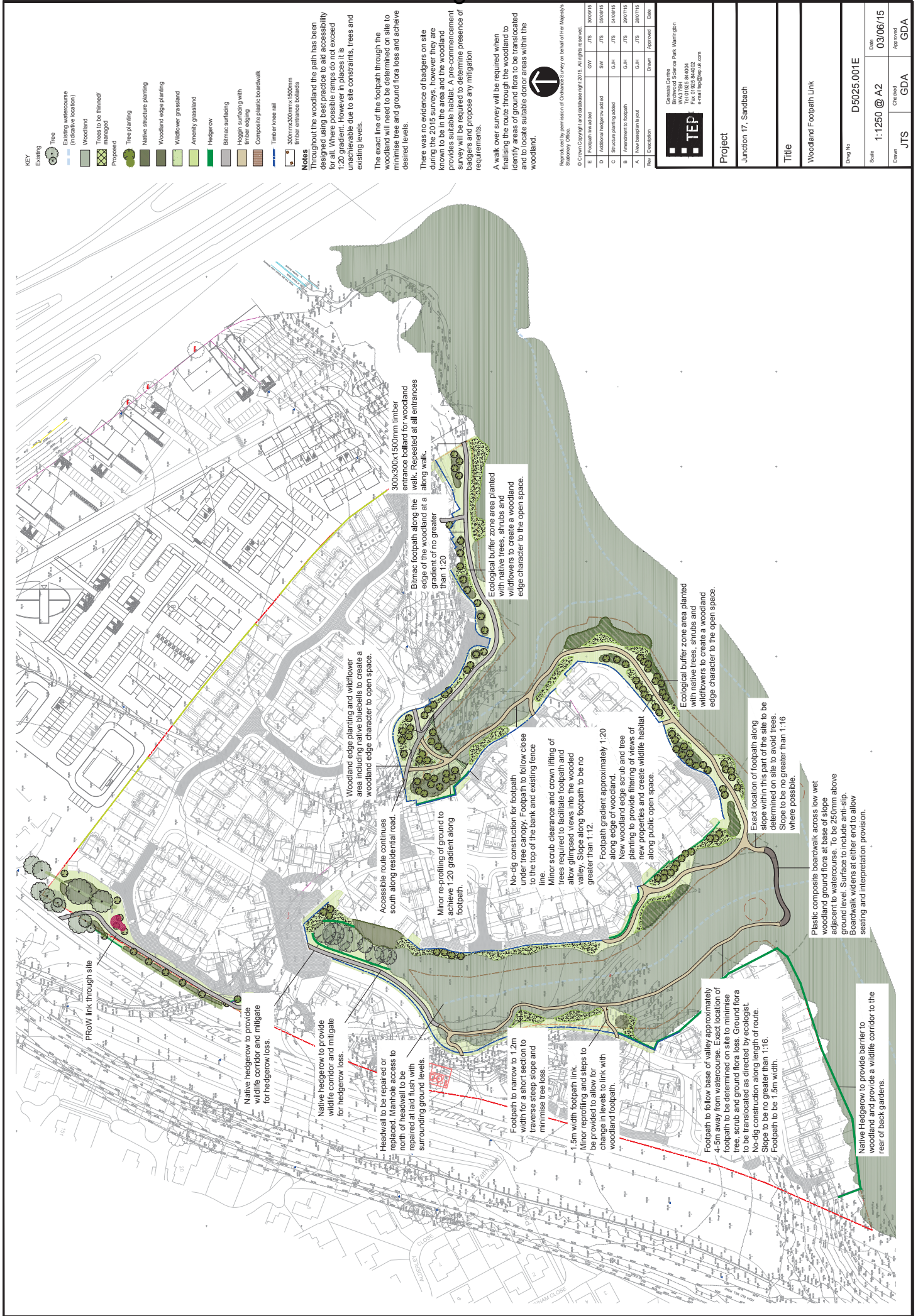
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Background Documents: PROW file 262D/509

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KEY

- Existing
- Tree
- Existing watercourse (indicative location)
- Woodland
- Trees to be thinned/managed
- Proposed
- Tree planting
- Native structure planting
- Woodland edge planting
- Wildflower grassland
- Arveny grassland
- Hedgerow
- Bitmac surfacing
- Asphalt surfacing with timber edging
- Composite plastic boardwalk
- Timber fence rail
- 300x300x1500mm timber entrance bollard

Notes

Throughout the woodland the path has been designed using best practice to aid accessibility for all. Where possible ramps do not exceed 1:20 gradient. However in places it is unavoidable due to site constraints, trees and existing levels.

The exact line of the footpath through the woodland will need to be determined on site to minimise tree and ground flora loss and achieve desired levels.

There was no evidence of badgers on site during the 2015 surveys, however they are known to be in the area and the woodland provides suitable habitat. A pre-commencement survey will be required to determine presence of badgers and propose any mitigation requirements.

A walk over survey will be required when finalising the route through the woodland to identify areas of ground flora to be translocated and to locate suitable donor areas within the woodland.

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Rev	Description	Drawn	Approved	Date
E	Footpath line added	GW	JTS	06/07/15
D	Additional hedgerow added	SW	JTS	06/07/15
C	Structure planting added	GLH	JTS	04/07/15
B	Amendment to footpath	GLH	JTS	28/07/15
A	New landscape layout	GLH	JTS	28/07/15



Charles Crutcher
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Warrington, Cheshire
WA1 0JL
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Email: info@tep.co.uk

Project

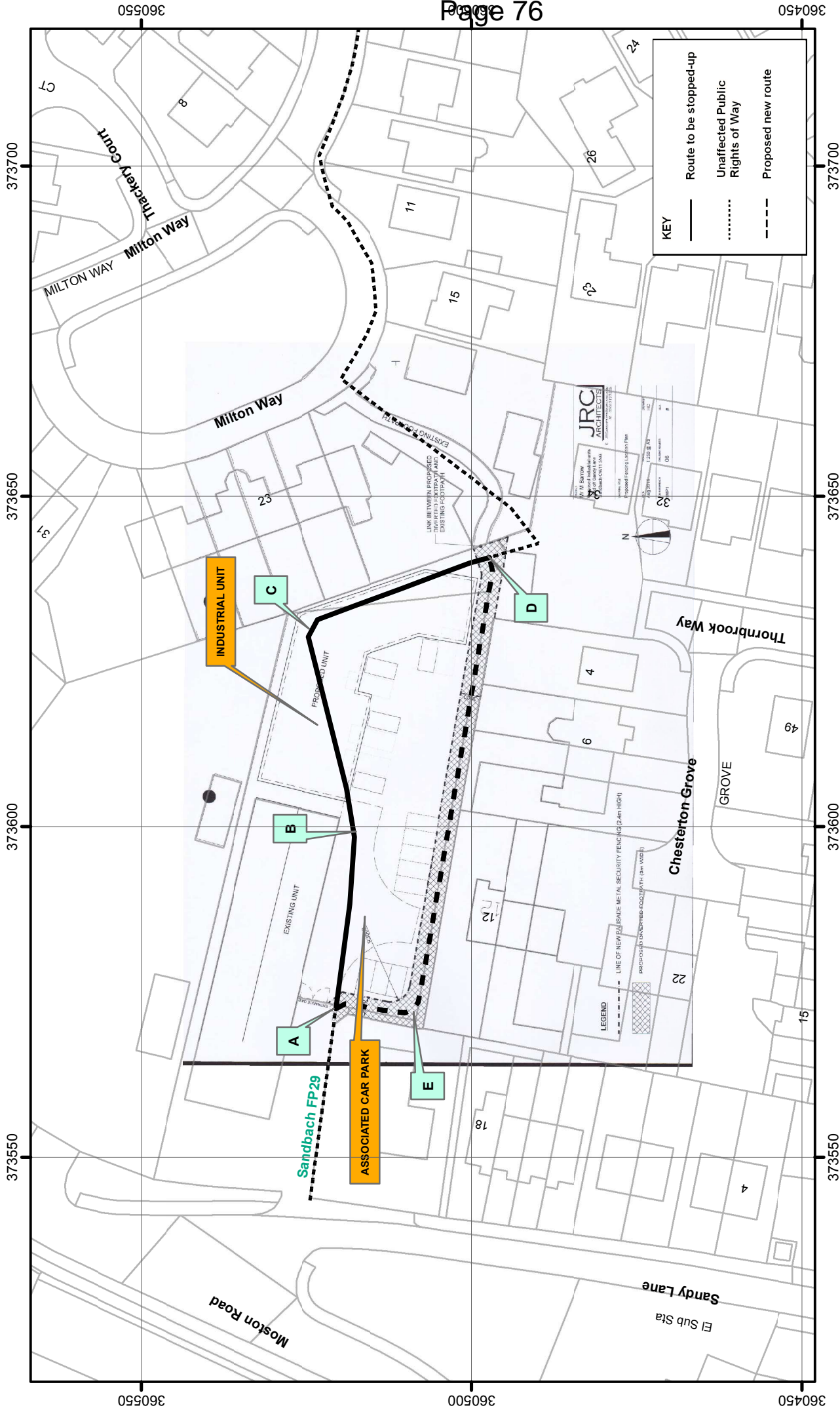
Junction 17, Sandbach

Title

Woodland Footpath Link

Drawn No D5025.001E

Scale	1:1250 @ A2	Date	03/06/15
Drawn	JTS	Checked	GDA
Approved	JTS	Approved	GDA



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	7 th December 2015
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. 29 (part), Parish of Sandbach

1.0 Purpose of Report

The report outlines the investigation to divert part of Public Footpath No. 29 in the Parish of Sandbach. 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 a planning application that is currently under consideration by the Council's Planning Department. The application has been submitted by Ms. Hannah Chadwick (agent) of JRC Architects on behalf of Mr Michael Barrow, Picframes.co.uk, Unit 7, Gate Farm, Wettenhall Road, Nantwich, Cheshire, CW5 6AL for erection of a new industrial unit (housing 4no. individual office/storage units) and, associated car parking (Planning reference: 15/2960C). 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. 29 Sandbach, as illustrated on Plan No TCPA/026 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place on condition that no adverse comments are received from Sandbach Town Council.
- 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. 29 Sandbach as illustrated on Plan No. TCPA/026 to allow for the erection of a new industrial unit (housing 4no. individual office/storage units) and, associated car parking as detailed within planning reference: 15/2960C.

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 Sandbach Ettiley Heath and Wheelock

5.0 Local Ward Members

5.1 Councillor G Wait

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 Ms. Hannah Chadwick (agent) of JRC Architects on behalf of Mr Michael Barrow, Picframes.co.uk, Unit 7, Gate Farm, Wettenhall Road, Nantwich, Cheshire, CW5 6AL 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. 29 in the Parish of Sandbach.

6.2 Public Footpath No. 29 Sandbach commences at its junction with Sandy Lane at O.S. grid reference SJ 7354 6052 and, apart from the section between Sandy Lane and Milton Way, runs through an estate along adopted highways in a generally south easterly direction to terminate on Elton Road at O.S. grid reference SJ 7388 6027. In total, the footpath has a length of approximately 593 metres.

The section of path required to be diverted by Mr Barrow is shown by solid black line on Plan No. TCPA/026 running 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 section proposed for diversion by Mr Barrow, would be directly affected by development of the industrial unit as shown on Plan No. TCPA/026.

The land over which the current route runs and over which the proposed route would run is entirely owned by Mr Barrow.

- 6.4 Planning permission was granted to Mr Barrow on 17th August 2015. The application is cited as Planning Permission Ref: 15/2960C. The details of the application are for the development of an industrial unit and associated car parking.

- 6.5 With regard to the development, part of the current line of Public Footpath No.29 Sandbach would be obstructed by the industrial unit. Therefore, the footpath diversion is required to preserve public access through the development.

The length of footpath proposed for diversion (points A-B-C-D) is approximately 87 metres.

- 6.6 Referring to Plan No. TCPA/026, the proposed diversion route would run along the southern perimeter of the development area as shown by the bold black dashed line between points A-E-D. It would be enclosed within a 3 metre wide corridor (hatched area) by 2.4 metre high palisade security fencing and would be surfaced with compacted hardcore. The corner (point E) along this new route would have a 3 metre radius to assure good visibility for users. The proposed diversion route would have a length of approximately 82 metres.

This diversion would be made in the interests of the landowner.

- 6.9 The local Councillor has been consulted about the proposal and expressed concern about the response from local residents since the proposal involves placement of a 2.4 metre fence along the rear of their properties. This concern is exacerbated from a previous situation whereby a metal fence bounding a local scrapyard was increased in height. The Councillor recommended that these residents be consulted.

To date, the residents have not been consulted on the basis that the initial consultation is an informal invite of comments from a discrete number of statutory consultees. However, if the diversion is approved, then the residents will receive a copy of the Legal Order documents and the notice inviting them to comment within the four week statutory advertising period. Furthermore the proposed fencing will be the same type and height as the fencing that is in place at the moment although it will be moved 2 metres further away from the rear of the properties.

- 6.10 Sandbach Town Council has been consulted about the proposal and comments will not be available until after their meeting due to be held on the evening of Monday 7th December.
- 6.11 The statutory undertakers have also been consulted and have no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 6.12 The user groups have been consulted. The Peak and Northern Footpath Society registered that their members have no objection to the diversion. No other responses have been received.
- 6.13 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 6.14 An assessment in relation to the Equality Act 2010 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 than the current route.

10.00 Access to Information

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

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Background Documents: PROW file 262D/508

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	7 th December 2015
Report of:	Public Rights of Way Manager
Subject/Title:	Briefing Regarding the Deregulation Act 2015

1.0 Report Summary

- 1.1 This report is an informative item to brief members about the introduction of new legislation affecting the way many public rights of way processes operate.

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 All.

5.0 Local Ward Members

- 5.1 All.

6.0 Policy Implications

- 6.1 Not Applicable

7.0 Financial Implications

- 7.1 Not Applicable

8.0 Legal Implications

- 8.1 None

9.0 Risk Management

- 9.1 None

10.0 Background

- 10.1 The origins of the Act stem from the last coalition government's "Red Tape Challenge" campaign. The Act has 14 parts and 116 sections dealing with a multitude of areas of legislation from reducing burdens on public authorities to changes in legislation controlling alcohol, sport and entertainment. The area concerning Public Rights of Way is the part relating to use of land, sections 20 to 26.
- 10.2 The package of measures only applies to England but the Welsh Assembly may consider adopting them. The package has evolved from a stakeholder working group set up to make proposals to simplify, speed up and reduce costs and administrative burdens associated with rights of way procedures. However not all the recommendations of the stakeholder working group have been included. It is intended that the implementation date for the package is 1st April 2016.
- 10.3 The sections affecting Public Rights of Way are;
 20. Recording rights of way: additional protection.
 21. Unrecorded rights of way: protection from extinguishment.
 22. Conversion of public rights of way to private rights of way.
 23. Applications by owners etc for public path orders.
 24. Extension of powers to authorise gates at owner's request.
 25. Applications for certain orders under Highways Act 1980: cost recovery.
 26. Public rights of way: procedure.
- 10.4 Within those few sections are a multitude of changes in procedure and process which in brief intends to act as a package of legislative reform to set a start date for the operation of:
 1. The provisions in CRWA 2000 (as amended by DA) for the 'cut-off' date for extinguishing certain public rights of way if they are not recorded on definitive maps.
 2. The provisions in WCA 1981 (as amended by CRWA 2000) to prevent any additional routes being added to definitive maps as BOATs.
 3. The provisions in HA 1980 (as amended by CRWA 2000 and further amended by DA) to provide a formal right to apply for certain PPOs, with associated rights of appeal.
 4. The provisions in HA 1980 (as amended by DA) to extend the power to authorise gates to apply to RBs and BOATs.
 5. The amendments being made by DA to other provisions in WCA 1981 relating to the procedure for DMMOs (e.g. removal of 'reasonably alleged', preliminary assessment procedure, new procedure for appeals, changes to publicity, disregarding certain objections).

6. The amendments being made by DA to other provisions in HA 1980 relating to the procedure for PPOs (e.g. changes to publicity, disregarding certain objections).
 7. The provisions in HA 1980 (as amended by CRWA 2000) to provide extended powers for farmers to make temporary diversions of rights of way.
- 10.5 Supplementary procedures are required for the commencement of the provisions referred to above and in order to implement those supplementary provisions statutory guidance (to which highway/surveying and other order-making authorities must have regard) will need to be provided. DEFRA state that their timetable for the production of the supplementary procedures and guidance will allow the legislation to meet its commencement target of 1st April 2016.
- 10.6 Because none of the supplementary procedures or any of the statutory guidance has so far been published it is not possible at the moment to relate how the various legislative reforms will operate. All that can be done at the moment is to relate what the new and revised reforms set out to achieve and raise questions where detail is absent with a view to bringing a more detailed paper when the supplementary provisions and statutory guidance has been made available to answer those questions.

11.0 Contents of the Legislation and Package of Reforms.

- 11.1 *The provisions in CRWA 2000 (as amended by DA) for the 'cut-off' date for extinguishing certain public rights of way if they are not recorded on definitive maps.*

The intention is that any footpath or bridleway not recorded on the Definitive Map but that was in existence on 1st January 1949 will be extinguished on the "cut off" date of 1st January 2026. It is also intended that any higher rights carried on those routes but also unrecorded on the Definitive Map will also be extinguished. There are exceptions, and regulations will quantify and clarify them but at the moment It would be perfectly lawful for the provisions to be applied so that any qualifying right of way not recorded on the definitive map at 1st January 2026 would be extinguished, regardless of whether any application had been made to record it, or whether it was in regular use, or whether it was recorded in the highway authority's 'list of streets' as a highway maintainable at public expense.

- 11.2 *The provisions in WCA 1981 (as amended by CRWA 2000) to prevent any additional routes being added to definitive maps as BOATs.*

This proposal works in a much simpler way. The new provision would not extinguish any public rights, but instead prevent any more ways being added to the Definitive Map and statement as byways open to all traffic.

- 11.3 *The provisions in HA 1980 (as amended by CRWA 2000 and further amended by DA) to provide a formal right to apply for certain PPOs, with associated rights of appeal.*

The effect is to provide a formal right of application for diversion and extinguishment orders for paths across land used for agriculture, forestry or the breeding or keeping of horses and special orders for school security. There are powers to make regulations prescribing the format of applications and also to require applicants to undertake consultations prior to submitting their application. There are also rights of appeal to the Secretary of State in certain circumstances. These provisions will not replace existing ones but run parallel. Furthermore Government has indicated that it will extend the land types to include others such as residential gardens. It is anticipated that applicants under these provisions would be able to appeal to the Secretary of State for a determination if the council has not determined their case within 4 months, or refused their case.

- 11.4 *The provisions in HA 1980 (as amended by DA) to extend the power to authorise gates to apply to RBs and BOATs.*

A relatively minor change that extends the power of councils to authorise barriers across vehicular highways to prevent the ingress and egress of livestock.

- 11.5 *The amendments being made by DA to other provisions in WCA 1981 relating to the procedure for DMMOs (e.g. removal of 'reasonably alleged', preliminary assessment procedure, new procedure for appeals, changes to publicity, disregarding certain objections).*

These provisions make many changes to the way DMMO cases are handled. On receipt of an application the council will be required to undertake an initial assessment within 3 months to determine whether there is a "reasonable basis for the applicant's belief" that a DMMO is required.

There will be no requirement to record the application on a council's register until the completion of the initial assessment and the service of notice to that effect on the applicant and landowners.

If the council fails to notify the applicant at the expiry of the three month period the applicant may appeal to a Magistrates' Court. No such appeal exists if the council refuses the application.

The 'reasonably alleged' test in WCA 1981 s 53(c) (i) is removed. This is the test that councils Apply to an application to trigger making an Order. The confirmation of the Order though, is dependent on the evidence being assessed on the balance of probabilities.

The existing provision for an applicant to ask the Secretary of State to give a direction to the surveying authority if an application has not been determined within 12 months will be replaced by a power to apply to a Magistrates' Court.

There will also, as noted above, be a similar power to make an application in relation to non-determination of the preliminary assessment after three months.

New provisions are introduced in WCA 1981 s 54B which specifies what a surveying authority must do when it appears to the authority that “it might be requisite to make a modification” to the definitive map and statement. This applies whether or not an application has been made, but where an application has been made, the action is required after the authority has completed the preliminary assessment and served notice that it is considering the application. The action required is to ascertain whether every owner (but not occupier) of the land to which the modification relates either:

- a) Consents to the making of a DMMO; or
- b) Would so consent if the authority made one or more of the following, referred to in the section as “special orders”:-
 - i. A diversion order;
 - ii. An order altering the width of the path or way;
 - iii. An order imposing a new limitation or condition affecting the right of way such as gates or stiles. Diversion Orders made under these provisions are subject to similar tests as conventional diversions but there is no requirement to hold inquiries into objections, councils can overrule objections although representations can be made to the High Court.

New provisions are introduced to WCA 1981 s 53ZA that gives the Secretary of State power to make regulations applying in cases where it appears to a surveying authority necessary to make a modification Order due to;

- i. An administrative error.
- ii. The error and the modification needed to correct it are obvious.

New provisions are introduced to WCA 1981 Sch 13A paras 7 to 11 creating new procedure for appeals against decisions by surveying authorities not to make DMMOs on applications. The new procedure combines the decision on the appeal and any decision that would subsequently have been made if the appeal had been granted.

New provisions in Sch 14A para 5(2)(a) introduce changes to the publicity for DMMOs by dropping the requirement to advertise the notice in a local newspaper and in its place require the notice to be published on a website maintained by the authority.

New provisions in Schedule 14A para 6 which permit a council to disregard objections and representations to a DMMO if the council considers that none of them are relevant. The council must take heed of guidance and notify the objector of the reasons why the objection is being disregarded.

New provisions in Schedule 14A para 13(1)(b) will permit the Secretary of State to offer an objector only written representations rather than a hearing.

New provisions in Sch 13A para 12 will give an applicant the power, at any time before the application is determined, to give notice to the council their intention to transfer to another person named in the notice, and thereafter the other person is to be treated as the applicant.

- 11.6 *The amendments being made by DA to other provisions in HA 1980 relating to the procedure for PPOs (e.g. changes to publicity, disregarding certain objections).*

New provisions in HA 1980 Sch 6 para 1(3) & (3ZA). incorporates changes to the publicity for PPOs in a similar way to that for DMMOs by dropping the requirement to place the notice in a local newspaper and in its place substituting a requirement to publish the notice on a website maintained by the authority.

New provisions 2 (2ZA)-(2ZE) and 2(4) in HA 1980 Sch 6 give authorities and the Secretary of State powers to disregard objections that they consider would not be relevant to the Secretary of State in determining whether or not to confirm the order were it submitted to him. As with the similar provision for DMMOs, the authority must have regard to any guidance given by the Secretary of State and notify the objector of the reasons why the objection is being disregarded.

New provisions 2(2ZB) and 2ZZA give authorities the power to split Orders between parts that are opposed and parts that are unopposed (or to which there have been only objections that the authority has determined to be irrelevant).

New provisions 2(5)&(6) give the Secretary of State power to offer an objector only written representations rather than a hearing.

- 11.7 *The provisions in HA 1980 (as amended by CRWA 2000) to provide extended powers for farmers to make temporary diversions of rights of way.*

New provisions in HA 1980 ss 135A and 135B which permit an occupier to make a temporary diversion of a FP or BW (but not a RB or BOAT) where works of a description to be prescribed in regulations which are likely to cause danger to users occur. There are restrictions placed in the section on where a temporary diversion may go, and a requirement to give prior notice to the highway authority, prior publicity by a local newspaper advert and site notices while a diversion is in place. There are also powers for the authority to take enforcement action and a right for anyone to prosecute if the diversion is not reasonably convenient or is not marked on the ground, and if the notice to the authority or in the press contains a false statement or a site notice falsely purports to relate to an authorised temporary diversion.

12.0 Access to Information

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

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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 7th December 2015
Report of: Public Rights of Way Manager
Subject/Title: Cheshire East Rights of Way Improvement Plan 2011-2026:
Implementation Plan 2015-2019

1.0 Report Summary

- 1.1 This report presents the Cheshire East Rights of Way Improvement Plan (ROWIP) 2011-2026 Implementation Plan 2015-2019.

2.0 Recommendation

- 2.1 That the Cheshire East Rights of Way Improvement Plan 2011-2026 Implementation Plan 2015-2019 be noted.

3.0 Reasons for Recommendation

- 3.1 On 13th December 2010, the Public Rights of Way Committee gave the Green Spaces Manager the delegated powers to compile, for approval by the Portfolio Holder, the ROWIP Implementation Plan 2011-2015 based on a prioritisation methodology that was presented. The second Implementation Plan covering 2015-2019 has now been prepared and is in the process of being put to the Portfolio Holder for Open Spaces for approval.

4.0 Wards Affected

- 4.1 All Wards affected.

5.0 Local Ward Members

- 5.1 All Local Ward Members.

6.0 Policy Implications

- 6.1 The development of the ROWIP is aligned with the health and wellbeing objectives and priorities of the Council as stated in the Corporate Plan:
Outcome 4: *Cheshire East is a green and sustainable place*
Outcome 5: *People live well and for longer.*

6.2 In addition, the ROWIP, as an integrated part of the Local Transport Plan.

7.0 Financial Implications

7.1 Potential funding sources, which will include external grants, are identified in the Implementation Plan, but are not committed as the funding is unknown and the actual projects developed may vary from those presented in the Plan.

8.0 Legal Implications

8.1 It is a statutory duty under section 60 of the Countryside and Rights of Way Act 2000 for every local highway authority to prepare and publish a Rights of Way Improvement Plan. A ROWIP should contain a statement of the action which the authority proposes to take.

8.2 Non compliance with the requirement for the full integration of the ROWIP with the Local Transport Plan could result in criticism from statutory monitoring bodies, agencies and local user groups.

9.0 Risk Management

9.1 No matters arising.

10.0 Background and Options

10.1 Under the Countryside and Rights of Way Act 2000, every highway authority in England is required to prepare and publish a Rights of Way Improvement Plan (ROWIP) for its area. The plan must then be assessed and reviewed within ten years and at similar intervals thereafter. ROWIPs were created to publish the authority's assessment of:

- the extent to which the local Public Rights of Way network meets the present and future needs of the public;
- the opportunities provided by local Public Rights of Way for exercise and other forms of open-air recreation and the enjoyment of the local authority's area; and,
- the accessibility of local Public Rights of Way for blind or partially sighted persons and others with mobility problems.

10.2 The ROWIP strategy for Cheshire East was developed through consultation with residents and the wider public, Ward Members, local user groups and parish and town councils. The strategy covers the period 2011-2026. This strategy is integrated into the Local Transport Plan in recognition of walking and cycling as means of travel.

10.3 On 17^h January 2011 the Portfolio Holder for Health and Wellbeing approved the Cheshire East [Rights of Way Improvement Plan 2011-2026](#) which sets out the strategy for this period.

- 10.4 ROWIPs are also required to contain a statement of the action which the authority proposes to take for the management of local Public Rights of Way, and for securing an improved network of those routes. Therefore, under the ROWIP strategy there are rolling 4-year implementation plans detailing projects through which the policies and initiatives stated in the ROWIP will be delivered.
- 10.5 The first [ROWIP Implementation Plan 2011-2015](#) has expired, and the next Implementation Plan has been prepared.
- 10.5 Suggestions for improvement projects are submitted by residents, Ward Members, local user groups, community groups, parish and town councils and officers. These suggestions are prioritised using the methodology selected and amended by the Cheshire Local Access Forum and which was presented to the Public Rights of Way Committee on 13th December 2010. This methodology takes into account the benefits of the scheme in the context of local need.
- 10.6 The highest priority suggestions have been selected for each category of suggestion: walking, cycling, horse riding, transport-related and cross-cutting projects. It is intended that these suggestions be investigated and developed first, with the acknowledgement that some may not be feasible and other opportunities may arise through partnerships, funding opportunities and development sites that result in alternative projects being taken forward.
- 10.7 On 13th December 2010, the Public Rights of Way Committee gave the Green Spaces Manager the delegated powers to, in consultation with the Chairman of the Committee, compile the Implementation Plan based on the prioritisation methodology. The Implementation Plan was then approved by the Portfolio Holder for Health and Wellbeing on 14th March 2011.
- 10.8 A new Implementation Plan has been drawn up, assessing the delivery of the preceding Plan, and setting out the intentions of the Council in relation to the period 2015-2019. The report is being presented to the Portfolio Holder for Open Spaces for approval.
- 10.9 Monitoring and reporting shall be undertaken through annual progress reporting to the Public Rights of Way Committee.

11.0 Access to Information

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

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