

# Public Rights of Way Committee

## Agenda

---

<b>Date:</b>	<b>Monday 14th March 2016</b>
<b>Time:</b>	<b>2.00 pm</b>
<b>Venue:</b>	<b>Committee Suite 1,2 &amp; 3, Westfields, Middlewich Road, Sandbach CW11 1HZ</b>

---

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the 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 - 15)

To approve the minutes of the meeting held on 7 December 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

**Tel:** 01270 686473

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

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. **Highways Act 1980 s.119 and s25: Application for the Diversion of Public Bridleway No 5 and Public Footpath No 9 (parts) and creation of a New Public Footpath, Parish of Marthall** (Pages 16 - 23)

To consider the application to divert part of Public Bridleway No.5 and part of Public Footpath No.9 and the creation of a new Public Footpath in the parish of Marthall

6. **Highways Act 1980 s.119: Application for the Diversion of Public Footpath no. 24 (part), Parish of Bollington** (Pages 24 - 31)

To consider the application to divert part of Public Footpath No. 24 in the parish of Bollington

7. **Highways Act 1980 s.119: Application for the Diversion of Public Footpath No. 3 (part), Parish of Alraham** (Pages 32 - 37)

To consider the application to divert part of Public Footpath No.3 in the parish of Alraham

8. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath no. 24 (part), Parish of Prestbury** (Pages 38 - 43)

To consider the application to divert part of Public Footpath No.24 in the parish of Prestbury

9. **Town and Country Planning Act 1990 S257: Application for the Extinguishment of Pedestrians Routes, Former Victoria Community High School, West Street, Crewe** (Pages 44 - 52)

To consider the application to extinguish pedestrian routes at the former Victoria Community High School, West Street, Crewe

**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Public Rights of Way Committee**  
held on Monday, 7th December, 2015 at Committee Suite 1,2 & 3, Westfields,  
Middlewich Road, Sandbach CW11 1HZ

**PRESENT**

Councillor D Flude (Vice-Chair, in the Chair)

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

**Officers**

Mike Taylor, Public Rights of Way Manager  
Genni Butler, Countryside Access Development Officer  
Jennifer Tench, Definitive Map Officer  
Clare Hibbert, Definitive Map Officer  
Marianne Nixon, Public Path Orders Officer  
Patricia Evans, Lawyer- Highway  
Neil Weeks, Planning and Highways Lawyer  
Rachel Graves, Democratic Services Officer

**11 APOLOGIES FOR ABSENCE**

Apologies were received from Councillors M Hardy and M Deakin.

**12 DECLARATIONS OF INTEREST**

In the interest of openness Councillor S Edgar declared that Public Footpath No.11 parish of Basford was within his Ward.

**13 MINUTES OF PREVIOUS MEETING****RESOLVED:**

That the minutes of the meeting held on 15 June 2015 be confirmed as a correct record and signed by the Chairman.

**14 PUBLIC SPEAKING TIME/OPEN SESSION**

No members of the public present wished to speak.

**15 VILLAGE GREEN APPLICATION - LAND AT WOOD PARK, ALSAGER, CHESHIRE**

The Committee considered the report of the Independent Person on the application to register land know as Wood Park, Alsager as a village green.

The Public Rights of Way Committee at its meeting on 16 March 2015 had resolved:

*“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.*

*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.”*

In April 2015, James Marwick, Barrister of Trinity Chambers, Newcastle upon Tyne was provided with all necessary documentation and instructed to consider the Application. Mr Marwick advised that the legal question of whether the use of the land was ‘by right’ or ‘as of right’ was likely to be the 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 evidence representations and replies on the question of whether use was ‘as of right’. Further evidence, responses and replies were passed to Mr Marwick for consideration.

In accordance with instructions Mr Marwick produced a report in which he concluded 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 activities 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.”

The report was circulated to the parties, who were invited to submit any further representations by 23 October 2015. Any representations will be provided to the Committee by the way of update.

Members of the Committee considered the report of the Independent Person and during the discussions asked questions about the definition of

“by right” and “as of right”, allocation of the land as open space and commented on the scale of development in Alsager.

The Committee then consider the recommendation of the report and unanimous

**RESOLVED:**

That the report of the Independent Person – Mr James Marwick, be accepted and that the application to register the land at Wood Park, Alsager, as a village green be rejected for the reasons as stated in the Independent Person’s report.

**16 WILDLIFE AND COUNTRYSIDE ACT 1981 PART III, SECTION 53 - APPLICATION TO UPGRADE PUBLIC FOOTPATH NOS. 71 & 11(PART) CONGLETON TO BRIDLEWAYS.**

The Committee received a report which detailed an investigation into an application for the upgrading of Public Footpath Nos. 71 and 11 (part) Congleton to Bridleway.

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 the evidence and decide on the outcome whether to make a Definitive Map Modification Order. The event relevant to the application was section 53(3)(c)(ii), which required modification of the map by change of status 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:

- (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.”

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

“Where a way..... had 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 November 2007 by Mrs P Amies on behalf of the Border Bridleway Association to amend the Definitive Map and Statement by upgrading two footpaths in Congleton to bridleways. The application was based on user evidence; a total of 14 user evidence forms were submitted with the application.

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 it was found that Footpath No.71 Congleton had been created in 1958 as an alternative route to Footpath No.10, which was stopped up in 1957 and 1958 for the purposes of quarrying. The Tithe Map of Astbury dated 1845 showed a dotted line on a route very similar to that of Footpath No.11 and the original line of Footpath No.10 is also shown. The Ordnance Survey Maps of 1872, 1898 and 1909 showed the line of Footpath Nos.10 and 11. Both Footpaths were identified on the Parish Walking Survey plan for Congleton carried out in the early 1950s.

A total of fourteen user evidence forms had been submitted, nine of which claimed to have ridden the routes on a horse; three had cycled and two had used the route on both horseback and cycle. Twelve had used the whole of the claimed routes (A-B-C and B-C on Plan No. WCA/011) and two witnesses had only used route A-B-C.

A member of the Border Bridleway Association had been challenged in 2007 while using the route on horseback and therefore the relevant twenty year period to be considered was 1987 to 2007. All fourteen witnesses had provided evidence of use during this period, with three claiming use for the full twenty year period and a further two had used it for nineteen of those years.

Ten of the witnesses were interviewed. All 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. Two witnesses reported that they had been stopped or challenged but these had not been until 2007.

Consultation letters had been sent to local Councillors, Congleton Town Council, adjacent landowners, users groups and statutory consultees. The Council's Assets department commented that the surface of the route would require improving to cater for horse and cyclists. The Astbury Mere Trust had objected to the application on safety grounds, stating that Footpath No.11 was too narrow for pedestrians and horses to pass. The Countryside Range at Astbury Mere Country Park stated he had challenged horse riders on these paths, particularly Footpath No.71, but not cyclists. Local residents were concerned on safety issues, particularly

the width of the path. The Peak and Northern Footpath Society had commented that the path was too narrow in places to enable horses and walkers to pass each other.

The report concluded that a decision on the application had to be made on the basis of user evidence. During the relevant period 1987-2007, form user evidence forms and witnesses interviews showed that both routes were being used on a fairly regular basis by horse riders and cyclists. Despite the Countryside Ranger stating he infrequently challenged horse riders, none of the witnesses had been challenged until 2007. There was sufficient user evidence to support the allegation that a bridleway subsisted along the routes A-B-D and B-C on Plan No. WCA/011.

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 public bridleway rights along the route A-B-D and B-C. The Committee considered that, on the balance of probabilities, the requirements of Section 53(3)(c)(ii) had been met in relation to bridleway rights and the Definitive Map and Statement should be modified to show the route as a Public Bridleway.

The Committee unanimously

**RESOLVED:** That

- 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 Footpath Nos. 71 and 11 (part), Congleton to bridleway along the route shown between points A-B-D and B-C on Plan Number WCA/011.
- 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.
- 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.

**17 HIGHWAYS ACT 1980 SECTION 119 - APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 11, PARISH OF BASFORD**

The Committee considered a report which detailed an application from Mr P Heslop of Goodman Real Estate (UK) Ltd requesting the Council to make an Order to divert part of Public Footpath No.11 in the parish of Basford.

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. At the Public Rights of Way Committee meeting in September 2013, the part of Public Footpath No.11 Basford proposed for diversion was approved to be diverted under section 257 of the Town and Country Planning Act 1990 to allow for development approved in Planning Application 13/0336N. The development and associated landscaping had now been completed. It had been the intention to confirm the unopposed legal orders to make 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 had resulted in the Applicant submitting a new proposal that would allow the footpath to be better aligned through the landscaped area, which was required to be processed under section 119 of the Highways Act 1980.

Informal consultation had been undertaken on the proposed diversion. The Peak and Northern Footpath Society had responded making reference to section 7.8 of the Rights of Way Circular which gave guidance on the avoidance of using of estate roads for alternative alignment of public footpaths. It was confirmed that the proposed diversion was not aligned along any estate roads.

The Committee noted that no objections had been received during informal consultations and considered the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would be of benefit to the landowner to allow completing of the new public right of way between A500 and Crewe Road using Basford Footpath No.11 (part) and the recently adopted road network. 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 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 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order

be confirmed in the exercise of the powers conferred on the Council by the said Acts.

- 3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

**18 HIGHWAYS ACT 1980 SECTION 119 - APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NOS. 1 & 9 (PARTS), PARISH OF HENBURY**

The Committee considered a report which detailed an application from Robin Carr Associates (agents) on behalf of Mr & Mrs Harrison of Sandbach Farm, Henbury, Macclesfield, requesting the Council to make an Order to divert parts of Public Footpath Nos.1 and 9 in the parish of Henbury.

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 Mr & Mrs Harrison. The proposal would move Public Footpath No.9 away from the Applicant's property and drive, increasing the security and privacy of the property and reduce the chance of unintentional trespass.

The proposed route ran along the field boundaries rather than diagonally crossing the field and would be 376 metres in length. The path would be 2 metres wide, unenclosed, have a grass surface and two kissing gates along the route. Some stoning in the vicinity of any gateways would be provided if necessary.

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 and the Ramblers Association had requested that the new route be waymarked and maintained appropriately. Diverting the footpath would be of benefit to the landowner in terms of offering enhanced security and privacy to their property and reduce the chance of unintentional trespass. It was therefore considered that the proposed route was a satisfactory alternative to the current route and that the legal tests for the making and confirming of the 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 parts of Public Footpath No.1 and 9 Henbury by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan NO.HA/103, on the grounds that it is expedient in the interests of the owner of the land crossed by the paths.
- 2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 3 In the event of objections to the Order being received, and not subsequently withdrawn the Order be referred to the Secretary of State to be determined.

**19 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 19 (PART), PARISH OF MIDDLEWICH**

It was reported that the final sentence of paragraph 6.6 of the report - "The diversion would be made in the interests of the landowner" should be deleted.

The Committee considered a report which detailed an application from Mr B Nicholson of Pochins Developments Ltd, Brooks Lane, Middlewich, requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1980 to divert part of Public Footpath No.19 in the parish of Middlewich.

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 been granted for development of warehousing (including yard and office) – Planning Reference 15/2609C. The section of Footpath No.19 to be diverted would be obstructed by the offices, warehousing and yard and a diversion would be required to preserve public access around the development. The length of footpath proposed for diversion was approximately 262 metres of which 118 metres would be directly affected by the development.

The proposed diversion would skirt the perimeter of the new development, going through a landscaped area and then over grassland to exit via a kissing gate to ERF Way The route would continue on an unenclosed 2.5

metre strip of grassland to the north of the pavement terminating at a kissing gate.

Re-alignment of the footpath as proposed along the 2.5 metre of grassland would resolve a current mapping anomaly that routes the current definitive alignment to cross ERF Way twice, eliminating the need for the public to negotiate vehicular traffic on EFR Way.

The reason for not placing the new route on the pavement was the two public highways could not be placed on the same alignment. One would need to be extinguished. By placing the footpath to the north of the pavement, separated the two and preserved the public footpath rights.

The Committee concluded that it was necessary to divert part of Public Footpath No.19 Middlewich to allow the development to be carried out. It was considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

**RESOLVED:** That

- 1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert 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 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.

**20 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:  
APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO.11  
(PART) PARISH OF SANDBACH**

The Committee considered a report which detailed an application from Weightmans LLP as Agent for Barratt Homes requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1980 to divert part of Public Footpath No.11 in the parish of Sandbach.

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 been granted for the construction of 246 houses and associated infrastructure – Planning Applications 12/3948C and 15/3531C. The proposed diversion was required to accommodate the layout of the housing development which directly affected the footpath.

When the Reserved Matters stage of the development was first applied for the proposal for accommodating the footpath was to divert it along the footways of the highways network within the site, which was objected to as it was contrary to the Defra Guidance that *“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.”*

A meeting was held with representatives from the developers and their agents to agree a revised proposal based upon the best achievable outcome within the limits of the development layout and substantially reduced the extent of the diversion corresponding with the highway network.

As far as possible the diversion had been designed to take the public footpath along estate paths, separate from the highways infrastructure. The section of path A to B, as shown on Plan No.TCPA/024, would be a 2 metres 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 would be along a footway and across an estate road to link with a woodland edge path from point C to D. This section would mostly be 2 metre tarmacked surface becoming timber edged ‘hoggin’ surfaced path for the last 20 metres with a width of 1.5 metres. The path then re-joined the existing Public Footpath No.11 crossing the estate road and followed a 2 metre wide tarmacked path to its junction with Old Mill Road.

Councillor S Corcoran had initially objected to the proposal as the new route took the path closer to the A534 and along a less natural route. Details of the specifics of the proposed path, its background and the criteria for diversion under the Town and County Planning Act were provided to Councillor Corcoran, who responded that he welcomed the additional on-site informal woodland paths that were to be included as part of the site development but wished to see these paths taken on and managed by Cheshire East and without this assurance he would maintain his objection. The woodland paths did not form part of the diversion application.

Sandbach Town Council objected to the proposals on the basis that the information provided was inadequate and moving the path closer to the A534 would be detrimental to the quality of the walk. Additional details of the alignment of the proposed new path and the criteria for a diversion

under the Town and Country Planning Act were supplied to the Town Council.

The Ramblers' Association objected to the proposal as they felt the diversion would fail for not complying with Defra guidelines and the information they had was rather poor. There had been some confusion as the Council's Planning Website had not been updated to show the updated proposed footpath diversion.

Sandbach Footpath Group had objected to the proposal on the grounds of it becoming 'negated' as a field or country path; the path directly adjacent to the A534 was merely a 'pavement' and elsewhere as an 'estate road footway' and there being no access to the continuation of the path that ran through the estate to the west of Old Mill Road. The Footpath Group also had 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 site to join Public Footpath No.14 Sandbach to the south west. Offsite road improvement work would include a traffic island opposite to the point where the footpath joins Old Mill Road (A534) which would assist people crossing the road to link with the footpath continuation to the west. Barratt Homes were not involved in the whole of the Capricorn development and did not have control over the interlinking land between the site and the land where Footpath No.14 ran. The Footpath Group welcomed the woodland paths planned within the development and said they would withdraw their objection provided these were taken on and managed by Cheshire East Council.

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

The Committee by majority

**RESOLVED:** That

- 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 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.

- 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.

**21 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 29 (PART), PARISH OF SANDBACH**

It was reported that the final sentence of paragraph 6.6 of the report - "The diversion would be made in the interests of the landowner" should be deleted.

The Committee received a report which detailed an application from Ms Hannah Chadwick (agent) of JRC Architects on behalf of Mr Michael Barrow, Picframes.co.uk, Unit 7, Gate Farm, Wettenhall Road, Nantwich requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1980 to divert part of Public Footpath No.29 in the parish of Sandbach.

In accordance with Section 257 of the Town and Country Planning Act 1980, the Borough Council, as Planning Authority, can make an Order diverting a footpath if it was satisfied that it was necessary to do so to enable development to be carried out in accordance with a planning permission that had been granted.

Planning permission had been granted on 17 August 2015 for the development of an industrial unit and associated car parking – Planning Permission Ref: 15/2960C. The current line of Public Footpath No.29 Sandbach would be obstructed by the industrial unit. Therefore a footpath diversion was required to preserve public access through the development. The length of footpath to be diverted was 87 metres.

The proposed diversion would run along the southern perimeter of the development area and would be enclosed within a 3 metre wide corridor by a 2.4 metre high palisade security fencing and would be surfaced with compacted hardcore. The corner along the new route would have a 3 metre radius to ensure good visibility for users. The proposed diversion would have a length of approximately 82 metres.

Councillor Gail Wait had expressed concern about the placement of a 2.4 metre fence along the rear of neighbouring properties and recommended that residents be consulted. This concern was exacerbated from a previous situation whereby a metal fence bounding a local scrapyards was increased in height. The fencing would be the same type and height as the fencing that was in place at present although it would be moved 2 metres further away from the rear of the properties.

Sandbach Town Council had been consulted on the proposal but their meeting would not be taking place until after the Public Rights of Way had considered the application.

The Committee considered that application and concluded that it was necessary to divert part of Public Footpath No.29 Sandbach to allow the development to be carried out. It was considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

**RESOLVED: That**

- 1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert 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 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.

**22 BRIEFING REGARDING THE DEREGULATION ACT 2015**

The Committee received an information report on Deregulation Act 2015 which would affect the way many public rights of way processes operated.

The Act had 14 parts and 116 sections, with sections 20 to 26 affecting Public Rights of Way. Within these sections were a multitude of changes in procedure and processes which in brief intended to act as a package of legislative reform to set a start date for the operation of:

- The provisions in Countryside and Rights of Way Act 2000 for the 'cut off' date for extinguishing certain rights of way if they were not recorded on definitive maps
- The provisions of the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) to prevent any additional routes being added to definitive maps as BOATs
- The provisions of Highways Act 1980 (as amended by the Countryside and Rights of Way Act 2000 and further amended by Deregulation Act) to provide a formal right to apply for certain Public Path Orders, with associated rights of appeal.
- The provisions of the Highways Act 1980 (as amended by the Deregulation Act) to extend the power to authorise gates to apply to Restricted Byways and BOATs

- The amendments being made by the Deregulation Act to other provisions in Wildlife and Countryside Act 1981 relating to the procedure for Definitive Map Modification Orders (e.g. removal of 'reasonably alleged', preliminary assessment procedure, new procedure for appeals, changes in publicity, disregarding certain objections).
- The amendments being made by the Deregulation Act to other provisions in the Highways Act 1980 relating to the procedure for Public Path Orders (e.g. changes to publicity, disregarding certain objections).
- The provisions in Highways Act 1980 (as amended by Countryside and Rights of Way Act 2000) to provide extended powers for farmers to make temporary diversions of rights of way.

Supplementary procedure were required for the commencement of the provisions referred to above and in order implement these statutory guidance was required. DEFRA had stated that their timetable for the production of the supplementary procedures and guidance would allow the legislation to meet its commencement target of 1 April 2016.

A briefing session would be held for the Committee members once the supplementary procedures and guidance had been produced.

**RESOLVED:**

That the report be noted.

**23 CHESHIRE EAST RIGHTS OF WAY IMPROVEMENT PLAN 2011-2026: IMPLEMENTATION PLAN 2015-2019**

The Committee received an information report on the Cheshire East Rights of Way Improvement Plan 2011-2026 Implementation Plan 2015-2019.

The Cheshire East Rights of Way Improvement Plan 2011-2026 had been approved in 2011. The Improvement Plan was required to contain a statement of the action which the authority proposed to take for the management of local Public Rights of Way, and for securing an improved network of those routes. This was set out in the rolling 4 year Implementation Plans, which detailed projects through which the policies and initiatives stated in the Improvement Plan would be delivered.

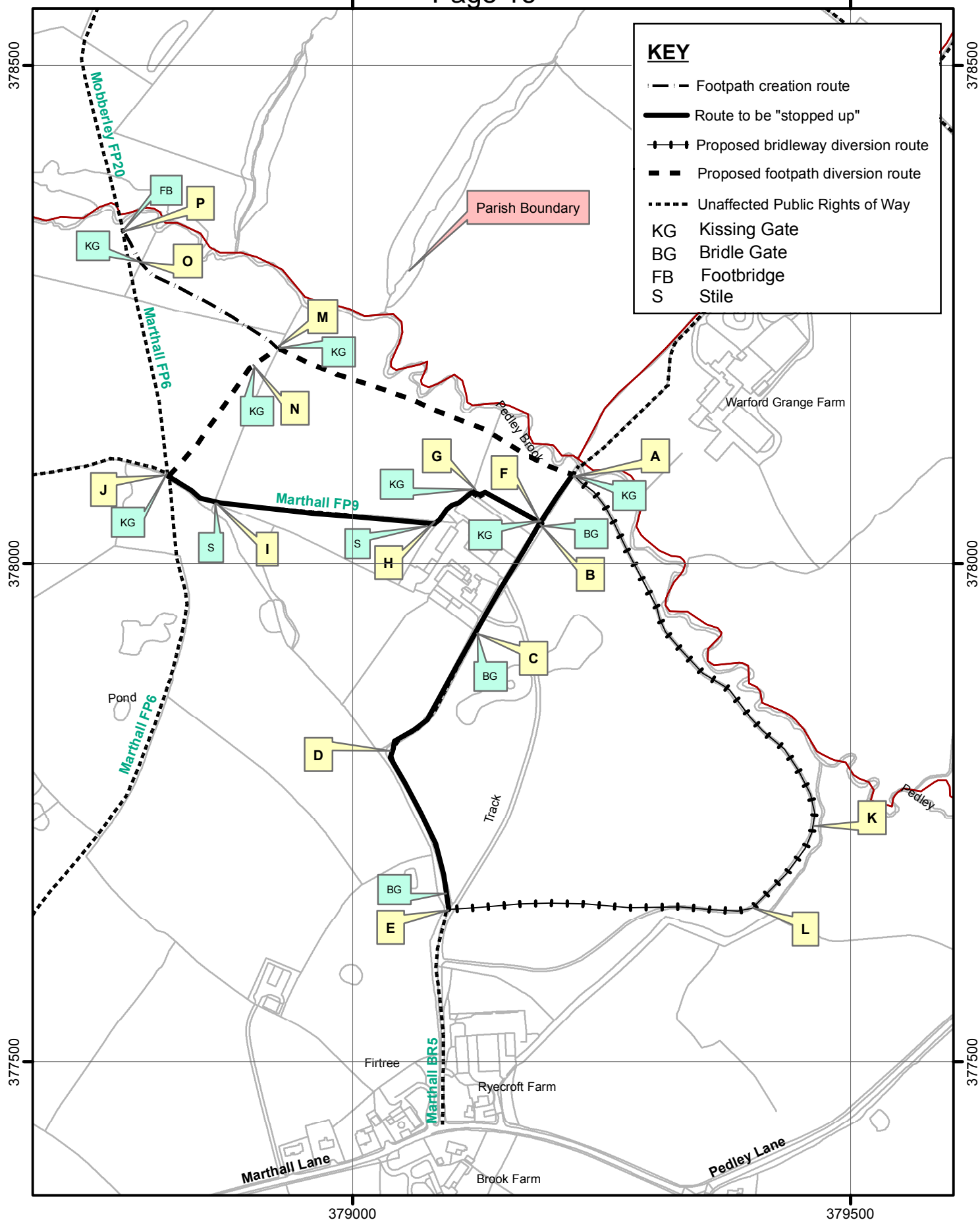
The first 4 year Implementation Plan for 2011-2015 had now expired and the second Implementation Plan covering 2015-2019 was now being prepared – a draft of which was shared with Committee members. The new Plan assessed the delivery of the preceding Plan and set out the intentions of the Council in relation to the period 2015-2019. Once finalised, the Implementation Plan 2015-2019 would be presented to the Portfolio Holder for Open Spaces for approval.

**RESOLVED:**

That the report be noted.

The meeting commenced at 2.00 pm and concluded at 3.45 pm

Councillor D Flude (Vice-Chair, in the Chair)



1:5,000

The Cheshire East Borough Council

- Highways Act 1980 s119 - (Bridleway No 9 (part) & Footpath No 4 (part) Parish of Marthall), Public Path Diversion Order 2016

- Highways Act 1980 s25 - Public Footpath Creation Order 2016

Plan No.  
HA/108



## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

---

**Date of Meeting:** 14<sup>th</sup> March 2016  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Highways Act 1980 s.119 and s25  
Application for the Diversion of Public Bridleway No 5 and Public Footpath No 9 (parts) and Creation of a New Public Footpath, Parish of Marthall

---

#### 1.0 Report Summary

- 1.1 This report outlines the investigation to divert parts of Public Bridleway No 5 and Public Footpath No 9 and to create a new public footpath, linking existing public rights of way, in the parish of Marthall. This includes 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 each path concerned.
- 1.2 Members are required to consider all information in the report and make a decision as to whether the proposed path diversions are expedient based upon the legal tests prescribed in section 119 of the Highways Act 1980 set out in this report. A separate Creation Agreement would be entered into with the owners of the land for the creation of a new public footpath in accordance with the Highways Act 1980 section 25.

#### 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 Bridleway No 5 and Public Footpath No 9 in the parish of Marthall by creating new sections of each path and extinguishing the current path sections as illustrated on Plan No. HA/108 on the grounds that it is expedient in the interests of the owner of the land crossed by the paths.
- 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.

- 2.4 An agreement under Section 25 of the Highways Act 1980 be entered into with the landowner, Mr R Brighthouse, to create a length of public footpath as detailed in this report and as illustrated on Plan No. HA/108.

### **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 paths, or both. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 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 of State will, in addition to the matters discussed at paragraph 3.1 above, have regard to: -

- Whether the paths are 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 paths or ways as a whole.
- The effect that the coming into operation of the Order would have as respects other land served by the existing public rights of way.
- The effect that any new public rights 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 Diverting sections of the bridleway and footpath will be of considerable benefit to the landowner in terms of enhancing the security and privacy of the property. It is considered that the proposed routes will provide a satisfactory alternative to the current routes and, as such, that the legal tests for the making and confirming of a diversion order are satisfied. The applicant has also offered to create, by Agreement, an additional length of public footpath that would provide a very useful addition to the local public rights of way network.

### **4.0 Wards Affected**

- 4.1 Chelford

**5.0 Local Ward Members**

5.1 Councillor George Walton

**6.0 Policy Implications**

6.1 Not applicable

**7.0 Financial Implications**

7.1 Not applicable

**8.0 Legal Implications**

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

**9.0 Risk Management**

9.1 Not applicable

**10.0 Background and Options**

10.1 An application has been received from Mike Walker Ltd (a Public Rights of Way Consultant) on behalf of the owner, Mr R Brighthouse of Mount Pleasant, Marthall, Knutsford, WA16 7SS requesting that the Council makes an Order under section 119 of the Highways Act 1980 to divert parts of Public Bridleway No 5 and Public Footpath No 9 in the Parish of Marthall.

10.2 The existing route of Public Bridleway No 5 Marthall commences just south of the parish boundary with Great Warford at O.S. grid reference 7922 7809 and runs generally south west partly through a field and partly enclosed by fencing, across the frontage of Mount Pleasant Farm, and turns to run generally south, enclosed between fences, to where it joins the access track to Ryecroft Farm along which it continues to terminate at its junction with Pedley Land at O.S. grid reference 7908 7743. The section of path to be diverted is shown by a solid bold black line on Plan No. HA/108 between points A-B-C-D-E. The proposed diversion is illustrated on the same plan with a bold black dashed line between points A-K-L-E.

The existing route of Public Footpath No 9 Marthall commences at its junction with Public Bridleway No 5 Marthall at O.S. grid reference 7918 7804 and runs generally westerly across fields, skirting the boundary of Mount Pleasant Farm and passes through a variety of stiles and kissing gates to terminate at its junction with Public Footpath No 8 Marthall at O.S. grid reference 7816 7818. The section of path to be diverted is shown by a solid bold black line on Plan

No. HA/108 between points F-G-H-I-J. The proposed diversion is illustrated on the same plan with a bold black dashed line between points A-M-N-J.

- 10.3 Mr Brighthouse owns the land over which the current paths and the proposed diversions 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 paths.

- 10.4 Mount Pleasant Farm has been demolished and has permission for the erection of a substantial new single residential dwelling to occupy the site, together with garaging, stables, a ménage and small golf course. Both public rights of way pass very close to the property.

The existing section of Public Bridleway No 5 Marthall to be diverted passes across the frontage of the property and directly crosses, what will be, dual access roads to the house and its facilities. Diverting the path to a new route offers greater privacy and security to the property as well as increasing the safety for users by removing potential conflict with vehicles crossing at two separate access points in front of the property.

The existing section of Public Footpath No. 9 Marthall to be diverted runs through fields and passes adjacent to the northern side of the new dwelling and then across fields behind. Diverting this section would also afford greater privacy.

- 10.5 Referring to the attached plan, HA/108:

The new route for Public Bridleway No. 5 Marthall (points A-K-L-E) would pass through a pasture field in its entirety from point A, generally following the line of Pedley Brook to meet with the access drive to the house at point E

The new route for Public Footpath No 9 Marthall would start at a kissing gate at point A at its junction with Public Bridleway No 5 and run through a pasture field north westerly to a kissing gate at point M, and then continue south westerly through a pasture field to a kissing gate at point N and continue south westerly to a kissing gate at its termination point at the junction with Public Footpath No 6 Marthall (point J).

A new section of public footpath will be created which would start at a kissing gate at point M at its junction with the proposed new route of Public Footpath No 9 Marthall and run north westerly through a pasture field to a kissing gate at point O and then continue north westerly through a pasture field to its termination point at the footbridge at its junction with Public Footpath No 6 Marthall at point P.

The new route of Public Bridleway No 5 will be created with a width of 4 metres with no requirement for any gates. For part of its length it has a stone-based surface.

The two new sections of public footpath will have widths of 3 metres, with kissing gates provided at points A, M, N, J and O.

The existing footpath crosses land that will be developed for the personal use of the occupier of the dwelling and requires diverting to secure the privacy and enjoyment of the property.

The new routes of the paths would afford improved privacy and security to the occupants of the new dwelling, given that the existing bridleway passes across the frontage of the new dwelling and crossing (what will be) two separate vehicular access points to the dwelling and to the stables / ménage which raise issues of safety and could constitute potential hazards to path users as well as to the occupiers and visitors of the property.

The proposal has benefits for the public in that the proposed new route of the bridleway passes through an almost parkland-style setting and has a partially hardened surface, covered by grass. It overcomes any safety concerns about crossing the access points to the new house and its facilities. Furthermore, whilst the existing bridleway passes through three bridle gates, the new route has no need for any gates. It will also have a width of 4 metres, which is wider than the current route and wider than the Council's normal minimum requirement of 3 metres.

The public will benefit with the new route of the footpath following more level ground through the pasture before returning to re-join Footpath No 6 Marthall. The footpath will have a width of 3 metres, a metre wider than the Council's normal minimum requirement of 2 metres.

A new section of footpath will also be created to link the diverted footpath to more conveniently connect with Marthall FP6 at the parish boundary. This also assists in providing a convenient circular walk from the village. The footpath will also have a width of 3 metres. This will assist walkers travelling in north westerly or south easterly directions.

The proposals provide for easier access to walkers with the existing footpath having two kissing gates and two stiles, whilst the new footpath will have three kissing gates, with a further new kissing gate replacing the existing stile at point J.

The development itself, which has been granted planning permission by the Council for residential use, will also greatly tidy and enhance the land in question and be visually more attractive, so improving the outlook for all users (riders, cyclists and walkers).

In summary, the proposed new routes would follow a line that would: -

- Be solely for the use of horse riders, walkers and cyclists, removing their interaction with the current property and allowing for the development as a residential dwelling to secure greater privacy, and be in the interests of the current and future owners.

- Provide accessible, improved routes taking account of the Council's duties under the Equality Act 2010 by removing three bridle gates from the bridleway and four stiles from the footpath network on the land.
- Be as convenient for use by the public and having no detrimental effect on the paths as a whole.
- Give opportunity to create a new direct link to Marthall FP6 at the parish boundary with Great Warford.

10.6 The consultation period for these diversions closed on 12<sup>th</sup> February 2016 and the following replies were received: -

- The Ward Councillor is happy with the proposed changes as long as the parish council is in agreement.
- Ollerton and Marthall Parish Council has been consulted and has not raised objection.
- The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If an Order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected in any event.
- User groups have also been consulted. Responses were received from The North Cheshire Riders Bridleways Group, The Peak and Northern Footpath Society, and The Ramblers with no objections being raised. No other responses have been received.

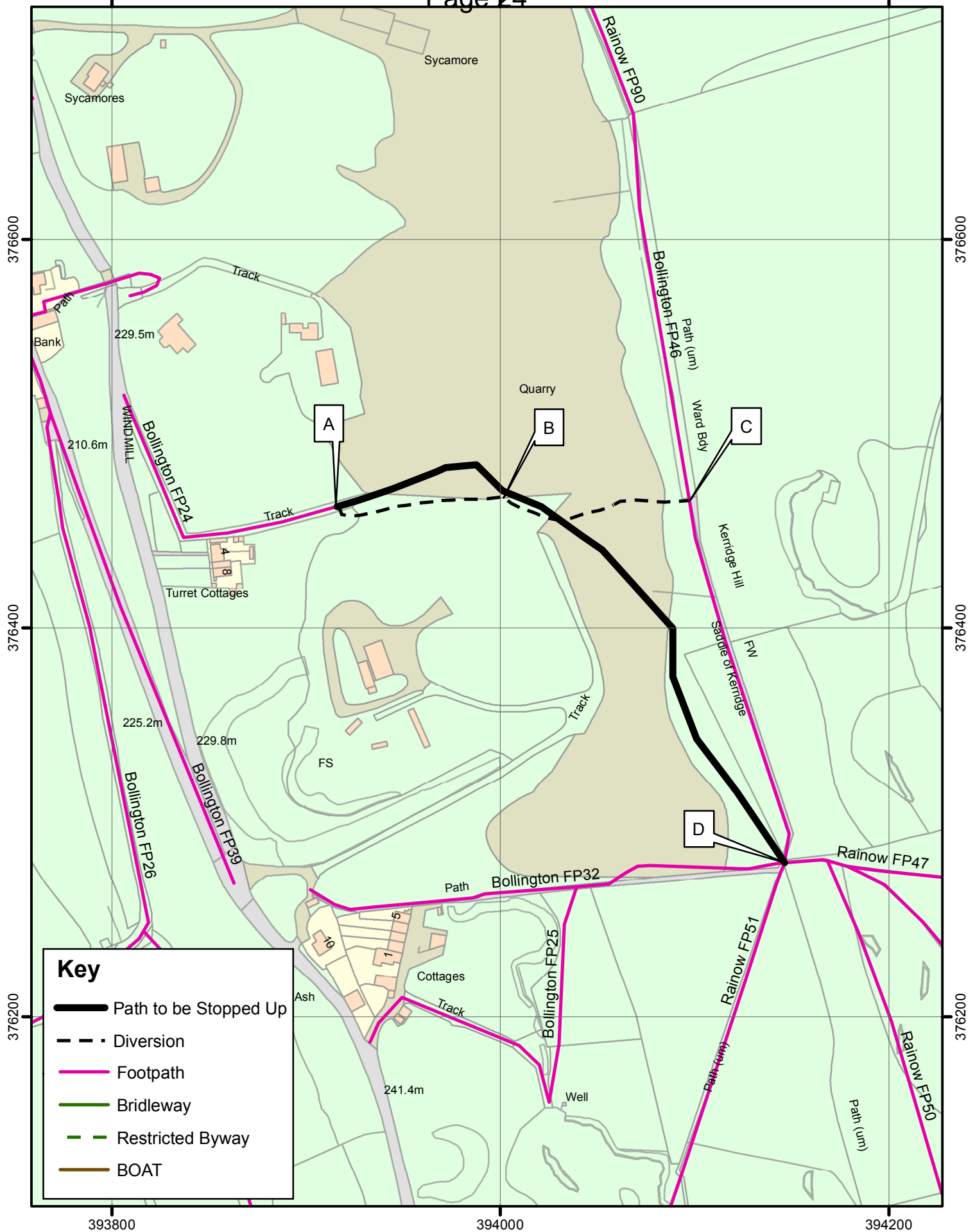
10.7 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion routes are improvements to the existing as they have fewer limitations of gates and stiles, and with new kissing gates being provided for the footpaths.

## **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](mailto:marianne.nixon@cheshireeast.gov.uk)  
PROW File: 202D/514

This page is intentionally left blank



1:2,500

Proposed Diversion of FP24 Bollington

Plan No.  
HA/104This is a working copy of the definitive map  
and should not be used for legal purposes

© Crown copyright and database rights 2016. Ordnance Survey 100049045.



## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

---

**Date of Meeting:** 14<sup>th</sup> March 2016  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Highways Act 1980 s.119  
Application for the Diversion of Public Footpath no. 24 (part),  
Parish of Bollington

---

#### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.24 in the Parish of Bollington. 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 landowners 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 part of Public Footpath No.24 by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/104 on the grounds that it is expedient in the interests of the owners of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

#### 3.0 Reasons for Recommendations

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowners for the reasons set out in paragraph 10.7 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 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath would allow the landowners to continue with their current quarrying permissions. 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 Bollington.

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

5.1 Councillor Amanda Stott; Councillor Jonathon Weston

#### **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 A joint application has been received from Mr. and Mrs. Earl of Sycamore Quarry; and Mr Beardmore of Endon Quarry, Windmill Lane, Kerridge, Macclesfield, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 24 in the Parish of Bollington.
- 10.2 The land over which the section of the current path to be diverted, and the proposed diversion run, belongs to the applicants; with the exception of approximately 10 metres of the current route from point A (on plan no. HA/104). This small section of the route is on land belonging to Mr D. Tooth, who has provided his written consent to the diversion. 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 Public Footpath No. 24 Bollington commences on Windmill Lane (road no. UW2053) at O.S. grid reference SJ 9380 7652, and runs in a generally south-easterly direction to point D (on plan no. HA/104), where it meets at a junction with four other public footpaths. Approximately the first 157 metres of footpath no.24 is unaffected and follows a track. The section of path to be diverted is shown by a solid black line on Plan No. HA/104 between points A-B-D. The proposed diversion is illustrated on the same plan with a black dashed line between points A-B-C.
- 10.4 The section of Public Footpath no.24 to be diverted commences at point A (on plan no. HA/104) and runs in a east north easterly direction for approximately 75 metres then turns in a generally south-easterly direction for approximately 270 metres to point D. The current definitive line of the footpath is partly not available on the ground. The first section is extremely steep and goes through a wooded area and a post and wire fence. Then a section of the route goes through the actual working quarry, and the route has been quarried away. The southern section also has a very steep gradient and is in close proximity to the edge of the working quarry area and large earth moving machinery.
- 10.5 The proposal is to divert the footpath onto a new route that is currently being used as a permissive path, although improvements will need to be made. From point A (on plan no. HA/104) the proposed route follows a southerly then easterly direction to point B. The first section ascends a flight of steps through the wooded area, the path then continues on a level gradient between two post and wire fences. This is the only section of the proposed route that will be enclosed and is for a length of approximately 75 metres. From point B the

path follows a generally easterly direction; it has a gradual then much steeper gradient climbing up to the ridge at point C where it joins Public Footpath no.46 Bollington at point C.

- 10.6 The new route would have a width of 2 metres. The route would be enclosed for approximately 75 metres of its length between post and wire fences and it would be a stone/earth surface. There is no requirement for any furniture on the route. The majority of work required would be to the section between points B-C; steps will be installed and resurfacing as required.
- 10.7 This diversion is in the landowners' interest as the current route partly goes through their working quarries or within close proximity; the diversion would allow the landowners to continue with their current quarrying permissions. To make the definitive route available would hinder their current practice due to the proximity of the path to the quarry face and heavy machinery. The landowners believe the alternative route is not substantially less convenient than the definitive path and that the enjoyment of the path as a whole is not affected.
- 10.8 To reinstate the footpath on its original line would be a very lengthy process, not cost effective and in the meantime this does not help the public as there is no legally recognised useable route. After considerable negotiations with the current landowners, officers agreed to progress this application for a diversion of the footpath under the Highways Act s119; which is funded by the landowners. It is considered that this is the best way forward to hopefully resolving the problem and re-instating a safe and useable path for the public.
- 10.9 The Ward Councillors were consulted about the proposal. No comments have been received.
- 10.10 Bollington Town Council have been consulted; their Footpaths Committee has responded. They state that this footpath has been a major issue for them for many years and it would be good to see a resolution. They convey their support for the application providing that the landowners carry out the necessary work as agreed to a satisfactory standard; in particular the section between points B and C which requires the installation of steps.
- 10.11 Councillor Ken Edwards (Bollington Town Council) has commented that reinstating a version of footpath no.24 would be beneficial. He does state however that the top footpath (footpath no.46 Bollington) is well worn, this proposal would encourage increased use of it and this is of concern to local users.
- 10.12 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.
- 10.13 The user groups have been consulted. The Peak and Northern Footpath Society has no objection to the proposals. The East Cheshire Ramblers have

stated they are prepared to accept the diversion of the footpath as proposed provided that no further extraction is proposed for, or carried out on, the upper levels (closest to the ridge); the new path from A to C is brought up to standard by the installation of steps and hard surfacing as necessary; if the length from B to C was to be fenced they would wish to see a width of 2.5 metres between the fence lines. Finally they state the surface of the length of Bollington FP46 from point C to D needs substantial improvement commensurate with its popular use. With regard to their comments, further extraction is not something the Public Rights of Unit would have control over; the landowners would have to apply for planning permission for this. The width of the new path and the required works are stated in paragraph 10.6 above. The condition of the surface of footpath no.46 is something the Network Maintenance Officer is aware of and will be monitoring. No further responses from the user groups have been received.

- 10.14 The Council's Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.
- 10.15 Officers have received one complaint from a member of the public, Mr G. Williams. Mr Williams states that he used to use footpath no.24 before it was closed. He claims that the landowners closed this path, without permission, a number of years ago and have since quarried away some of the path for profit at the expense of the local population. He states that as it has now been closed for many years, either the Council has failed in its duty to preserve the public right of way, or the landowners have a blatant disregard for law or authority. Mr Williams refers to the permissive path, which is the route of the proposed diversion; he states this is very steep and potentially unsafe. He says the diversion forces people to walk along the ridge (FP46 Bollington) which is heavily used and constantly muddy. He has concerns for the beautiful views from footpath no.46, stating that the landowner may reduce or obliterate any views the public may have by moving earth into mounds, which has been done previously. He also states the view of the ridge from Bollington may also potentially be changed forever as a result of further quarrying that will most likely occur if the footpath is moved. Finally he is concerned that if the footpath is diverted it sends out the message that the landowner can do what he wants with regards to the right of way.
- 10.16 Officers have responded to Mr Williams and explained that the issues with footpath no.24 are very long standing. Since the early 1990's various attempts have been made to protect and make available this footpath, by a number of different officers. As it now appears that the footpath is beyond reinstatement, it is considered that a diversion is the best way forward to resolving the problem. If the proposed route becomes the definitive line of the footpath works would be required; Cheshire East Council would ensure that the gradient, surfacing, fencing and signage were to the required standard before the legal process of diverting the path was completed. With regard to Mr Williams' comments on the condition of the surface of footpath no.46, the Network Maintenance Officer will monitor this and take appropriate action if any surfacing works are required.

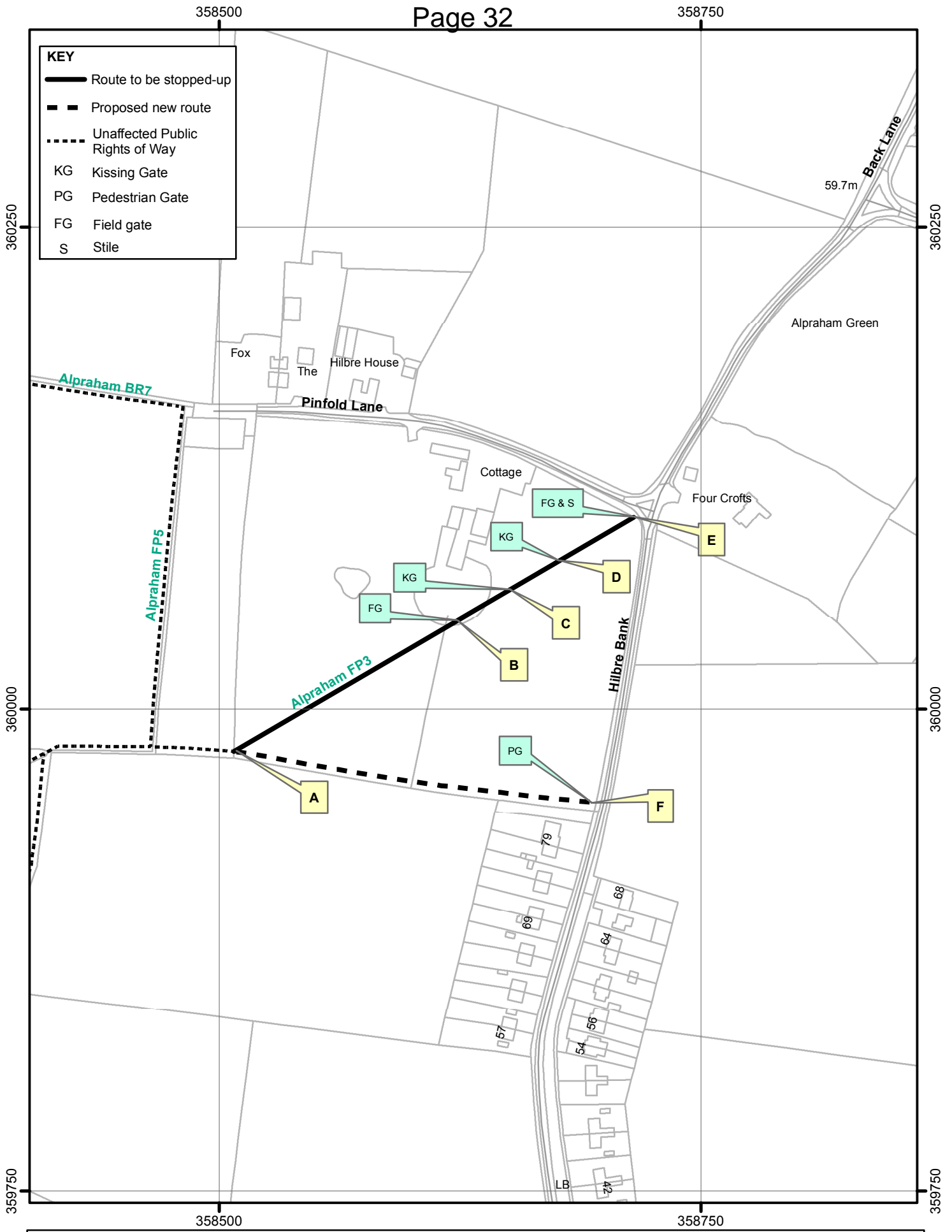
- 10.17 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current route.

## **12.0 Access to Information**

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

Name: Jennifer Tench  
Designation: Definitive Map Officer  
Tel No: 01270 686158  
Email: [jennifer.tench@cheshireeast.gov.uk](mailto:jennifer.tench@cheshireeast.gov.uk)  
PROW File: 028D/515

This page is intentionally left blank



**KEY**

- Route to be stopped-up
- Proposed new route
- Unaffected Public Rights of Way
- KG Kissing Gate
- PG Pedestrian Gate
- FG Field gate
- S Stile



1:2,500

Highways Act 1980 s119  
 The Cheshire East Borough Council  
 (Footpath No. 3 (part) Parish of Alpraham)  
 Public Path Diversion Order 2016

Plan No.  
 HA/107



## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

---

**Date of Meeting:** 14<sup>th</sup> March 2016  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Highways Act 1980 s.119  
Application for the Diversion of Public Footpath No. 3 (part),  
Parish of Alpraham

---

#### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.3 in the Parish of Alpraham. 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 part of Public Footpath No.3 Alpraham by creating a new section of public footpath and extinguishing the current path as illustrated on HA/107 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 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will be of considerable benefit to the landowner in terms of aiding with land management, livestock ( keeping of horses) around their stables and offering enhanced security and privacy to their property. 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 Bunbury

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

5.1 Councillor Michael Jones

#### **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 An application has been received from Claire Goodman (Public Rights of Way Consultant) on behalf of Carol Hutchison, Elm Tree Cottage, Alpraham, Cheshire, CW6 9JQ requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 3 in the Parish of Alpraham.
- 10.2 Public Footpath No. 3, Alpraham commences south west of the dwelling of Elm Tree Cottage at its junction with Public Footpath No 5 Alpraham at OS grid reference SJ 5845,5996 and runs in a generally north, north easterly direction across pasture fields to terminate at its junction with Pinfold Lane at OS grid reference SJ 5868,6009. The section of path to be diverted is shown by a solid bold black line on Plan No. HA/107 between points A-B-C-D-E. The proposed diversion is illustrated on the same plan with a bold black dashed line between points A-F.
- 10.3 The land over which the current path and the proposed diversion run belongs to Carol Hutchison. 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 The section of Public Footpath No. 3, Alpraham to be diverted starts immediately after a stile at the south west corner of a pasture field (point A). From here, it follows across the field in a north-easterly direction before crossing a short section of a smaller field (B-C) to exit into a third field. It continues through this field in the same direction to exit onto a surfaced driveway (point D) which it then follows to its termination point at its junction with Pinfold Lane (point E). Diverting the path would enable the applicant to better manage land, livestock (horses) and operations within the grounds of their stables whilst providing users with a more convenient route that would be no less enjoyable than the current route but would be more convenient as it would have less path furniture to negotiate and also eliminate the need to negotiate the livestock.
- 10.5 The proposed new route would start at Point A and would follow a generally easterly direction to the north of an existing hedge boundary to exit onto a lane, Hilbre Bank, where it would terminate (point F).

The entire length of the new route would have post and rail fencing installed along one side and be bounded by an existing hedge along the other. The whole section would have a minimum width of 2.5 metres and have a grass surface.

Existing rank vegetation would be cut back and trees pruned or removed (including stumps) where necessary. The applicant has indicated that they would agree to undertake future maintenance of this footpath with respect to overgrowth of surrounding vegetation and trees.

The pedestrian gate on the new route at point F would be set back from the lane to give users an area of verge from which to stand and view oncoming traffic. It would also be graded sufficiently so that there was no steep drop onto the area of verge.

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

- 10.6 The local councillor has been consulted about the matter and fully supports the proposal.
- 10.7 Alpraham Parish Council has been consulted and members fully support the proposal stating they believe it would make the footpath more accessible.
- 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. The members of the Peak and Northern Footpath Society registered that they have no objection to the proposal. The South Cheshire Ramblers also have no objection to the proposal as long as (i) the height difference between the road and field at Point F is addressed by a steady incline as a result of works done if proposal successful and (ii) suggest that redundant kissing gates on existing route could replace stiles on part of proposed route.
- 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 the Equality Act Legislation 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion is not substantially less convenient than the old route.

## **11.0 Access to Information**

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

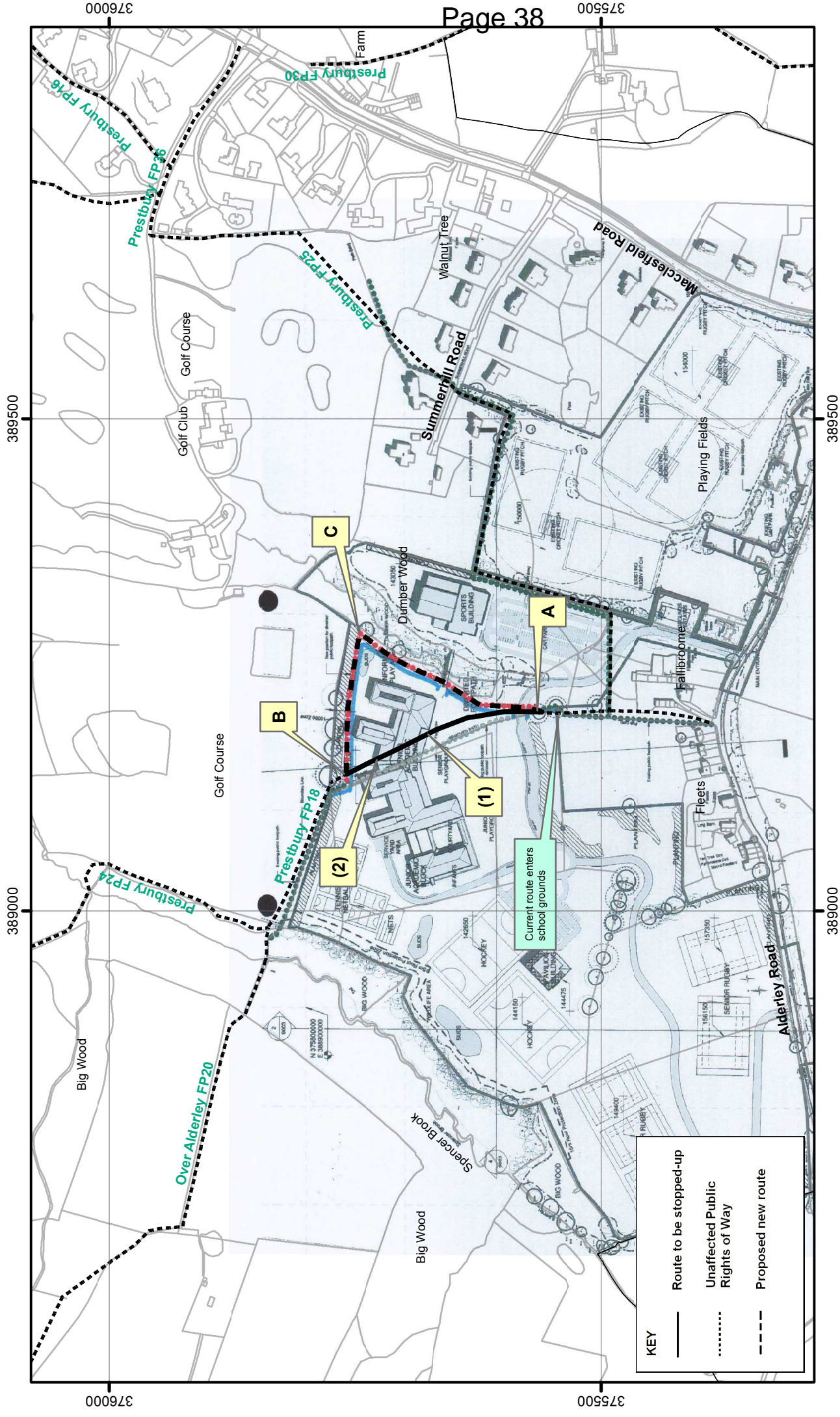
Name: Marianne Nixon

Designation: Public Path Orders Officer

Tel No: 01270 686 077

Email: [marianne.nixon@cheshireeast.gov.uk](mailto:marianne.nixon@cheshireeast.gov.uk)

PROW File: 010D/512



1:5,000

Town and Country Planning Act 1990 s257  
The Cheshire East Borough Council  
(Footpath 24 (part) Parish of Prestbury)  
Public Path Diversion Order 2016

Plan No.  
TCPA/026



## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

---

**Date of Meeting:** 14<sup>th</sup> March 2016  
**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. 24 (part),  
Parish of Prestbury

---

#### 1.0 Purpose of Report

The report outlines the investigation to divert part of Public Footpath No. 24 in the Parish of Prestbury. 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 J Hinds (agent) of Savills UK Ltd on behalf of The Foundation of Sir John Percyvale in Macclesfield of 1502, re-founded by King Edward VI in 1952, (hereafter referred to as 'Kings School') of Cumberland Street, Macclesfield, SK10 1DA for 'Construction of a new school comprising classrooms, libraries and supporting facilities together with additional playing fields and various associated outbuildings, infrastructure, car parking and access' (Planning reference: **15/4286M**). 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 That an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 24 Prestbury, as illustrated on Plan No TCPA/028 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place. That this Order be confirmed and made operable on condition that planning permission is granted.
- 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 as amended by Section 12 of the Growth and Infrastructure Act 2013:

“(1A) Subject to section 259, a competent authority may by order authorise the stopping up or diversion in England of any footpath, bridleway or restricted byway if they are satisfied that—

- (a) an application for planning permission in respect of development has been made under Part 3, and
- (b) if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.”

Thus 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 before that permission is granted, providing that the application has been formally registered with the Council.

- 3.2 It is considered that it is necessary to divert part of Footpath No. 24 Prestbury as illustrated on Plan No. TCPA/028 to allow for the development of the school by Kings School as detailed within planning reference: 15/4286M.
- 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 Prestbury

### **5.0 Local Ward Members**

- 5.1 Councillor JP Findlow

### **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**

- 9.1 An application has been received from J Hinds (agent) of Savills UK Ltd on behalf of Kings School, Cumberland Street, Macclesfield, SK10 1DA 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. 24 in the Parish of Prestbury.

- 9.2 Public Footpath No. 24 Prestbury has two separate sections that are connected by Public Footpath No. 18 Prestbury. The section that is affected by the proposed school development commences at its junction with public Footpath No. 25 at O.S. grid reference SJ 8920 7549 and runs in generally northerly and then north, north westerly directions, firstly along a semi-surfaced track and then across pastureland for a total distance of approximately 299 metres to its junction with Public Footpath No. 18 Prestbury at O.S. grid reference SJ 8913 7577 immediately before it enters onto Prestbury Golf course via a kissing gate.

The section of path required to be diverted by Kings School, is shown by a solid black line on Plan No. TCPA/028 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-C-B.

- 9.3 The existing alignment of the footpath section proposed for diversion by Kings School would be directly affected by development of the school as shown by the solid black line on Plan No. TCPA/028 running between points A-B.

The land over which the current route runs and over which the proposed route would run is partly owned by Kings School although a large proportion of the land is owned by Mrs Penelope Guinness who has consented to the diversion going ahead on condition that the planning application is granted, at which time, it is intended that Kings School will acquire the land from Mrs Guinness.

- 9.4 Planning permission for the school has yet to be granted to Kings School. The application is cited as Planning Permission Ref: 15/4286M. The details of the application are for the development of a school with associated buildings, playing/sports fields and a car park.

- 9.5 With regard to the development sought by Kings School, part of the current line of Public Footpath No.24 Prestbury would be obstructed by the school building. Therefore, the footpath diversion is required to preserve public access around the school.

The length of footpath proposed for diversion (points A-B) is approximately 210 metres of which 60 metres (points (1)-(2)) would be directly affected by the development.

Referring to Plan No. TCPA/026, the proposed diversion route would start from a point (point A) on the current route shortly after it entered the school grounds. From this point, it would run in a generally north, north easterly direction first crossing the access road for the school and then alongside woodland to the north western corner of the school grounds behind a pond (point C). It would then turn to follow a generally westerly direction along the northern school boundary to re-join the current route immediately before the kissing gate leading onto the golf course (point B).

The proposed new route would be 3 metres wide with a 1.2 metre wide stone surface with timber edging, laid within the 3 metre width. Either side of the stoned surface would be grass.

A 'post and three rail sawn timber' fence with sheep netting would be installed to the west of the footpath (blue line on Plan No. TCPA/026) to prevent interaction between school pupils/school personnel, and path users such that security and privacy for both would be enabled. Agricultural gates would be installed within the fence for use by school staff to access the footpath and surrounding land for maintenance and other operational requirements.

- 9.9 The local Councillors have been consulted about the proposal. No comments have been received.
- 9.10 Prestbury Parish Council has been consulted about the proposal and members have registered objection on the basis that it is not justifiable at this time. However, after discussion to explain that the path will need to be diverted if the development is granted permission to go ahead and diversion must be considered at this time, they will reconsider the proposal again on 9<sup>th</sup> March and further comments will be reported verbally.
- 9.11 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.
- 9.12 The user groups have been consulted. The East Cheshire Group of the Ramblers Association registered that they will not object to the diversion if the planning application for the school is granted. No other comments were received.
- 9.13 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 9.14 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 no less convenient to use than the current route.

#### **10.00 Access to Information**

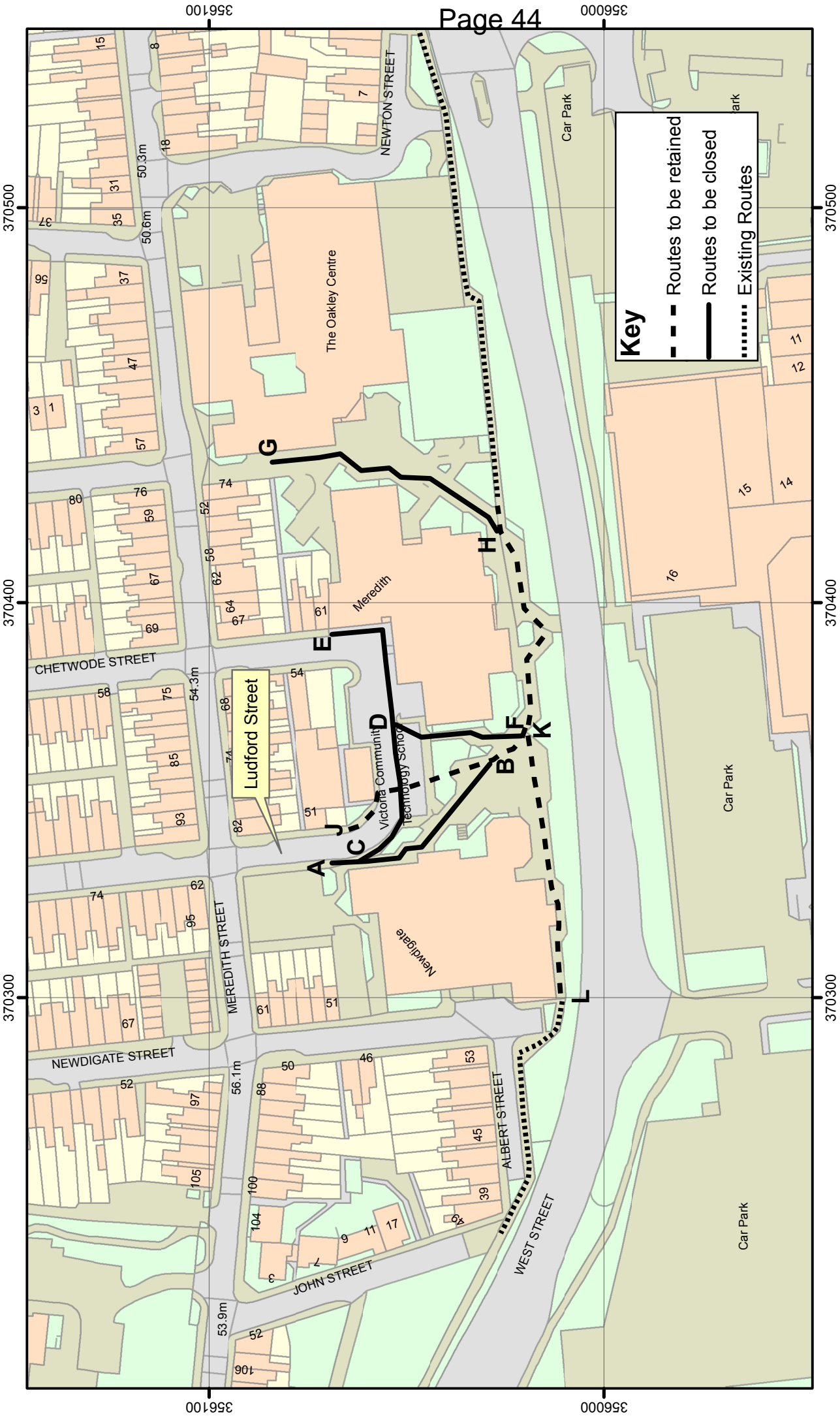
The background papers relating to this report can be inspected by contacting the report writer:

Officer: Marianne Nixon

Tel No: 01270 686 077

Email: [marianne.nixon@cheshireeast.gov.uk](mailto:marianne.nixon@cheshireeast.gov.uk)

**Background Documents:** PROW file 284D/513



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

Plan No.  
TCPA/027

# Proposed Extinguishment Order Pedestrian Routes Former Victoria Community High School West Street, Crewe

N  
1:1,250

## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

---

**Date of meeting:** 14<sup>th</sup> March 2016

**Report of:** Public Rights of Way Manager

**Title:** Town and Country Planning Act 1990 S257  
Application for the Extinguishment of Pedestrians Routes,  
Former Victoria Community High School, West Street,  
Crewe

---

#### 1.0 Purpose of Report

- 1.1 The report outlines the investigation to extinguish four pedestrian routes that run across the site of the Former Victoria Community High School, off West Street in Crewe. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for an extinguishment 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 IBI Group, on behalf of Dr Georgina Harris of Crewe Engineering and Design TC, Westfields, Middlewich Road. Sandbach. The application has been made as a consequence of planning approval granted for:

***Planning Application: 15/4389N***

*Demolition of former Newdigate and Meredith Buildings and the erection of a 3622 sqm. new educational building and associated car parking and landscaping works, alongside the refurbishment of the Oakley Building for use by the UTC Former Victoria Community High School and The Oakley Centre, West Street, Crewe, CW1 2PZ.*

- 1.2 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 extinguish the sections of pedestrian routes concerned.
- 1.3 Members are required to consider the issues set out in this report and make a decision as to whether the proposed extinguishment of the pedestrian routes 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 extinguish those pedestrian routes illustrated on Plan No. TCPA/027 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 extinguishing a pedestrian route that it considers to be a public right of way 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 extinguish those sections of pedestrian routes as illustrated on Plan No. TCPA/027 to allow for the demolition of existing buildings and the construction of a new educational building and associated car parking and landscaping. The pedestrian routes indicated would be directly affected by the new building, car parking and proposed secure perimeter of the site intended to ensure safeguarding of pupils.
- 3.3 Informal consultations have not elicited any objections and it is considered that the legal tests for the making and confirming of an Extinguishment Order under section 257 of the Town and Country Planning Act 1990 are satisfied.

### **4.0 Wards Affected**

- 4.1 Crewe Central

### **5.0 Local Ward Members**

- 5.1 Councillor Irene Faseyi.

### **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") (as amended by section 12 of the Growth and Infrastructure Act 2013) 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 IBI Group acting as Agent for the Crewe Engineering and Design TC ('the Applicant'), requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to extinguish four lengths of pedestrian routes that cross the site of the Former Victoria Community School on West Street in Crewe.

- 9.2 The routes affected are:

**A-B)** A pedestrian route commencing at its junction with Ludford Street at O.S. grid reference SJ 7033 5606 and running in a generally south and south-westerly direction to the east of the current Newdigate building for approximately 51 metres to its junction with the new pedestrian north – south link at O.S. grid reference SJ 7035 5602.

**C-D-E)** A pedestrian route commencing at its junction with route A-B above, at O.S. grid reference SJ 7033 5606 and running generally south easterly then easterly then northerly direction for a distance of approximately 76 metres to its junction with Chetwode Street at O.S. grid reference SJ 7039 5607.

**D-F)** A pedestrian route commencing at its junction with route C-D-E above, at O.S. grid reference SJ 7036 5605, point D, and running in a generally southerly direction for a distance of approximately 34 metres to its junction with the north- south route to be retained (J-K) at O.S. grid reference SJ 7036 5602.

**G-H)** A pedestrian route commencing at its junction with the footway on Oakley Street at O.S. grid reference SJ 7043 5608 and running in a generally south and south westerly direction for a distance of approximately 65 metres to the east-west route to be retained (L-K-H) at O.S. grid reference SJ 7041 5602.

- 9.3 The proposed extinguishments are necessary as they currently pass through the proposed new college building. In addition the routes pass through the area of the site which is to be defined by a secure perimeter, ensuring the safeguarding of pupils. Consequently there can be no public access to this area and it will be available to staff and pupils only.

The layout for the proposed new building and site development is shown on the attached Development Plan. This represents in green those paths that will be retained as public routes and those in red that are to be extinguished within the dashed red line boundary of the site. The routes to be retained are depicted on Plan No. TCPA/027 as a black dashed line J-K (north-south route) and L-K-H (east to west route).

The route J-K will be constructed of concrete paving and existing block paving (made good and re-used) and will have a width in excess of 5 metres except where it runs along the footway to the site entrance from Ludford Street where it will be approximately 1.8 metres. This route will be maintained by the UTC. The route L-K-H will be tarmacked and be approximately 2.2 metres wide. This route will be adopted by the Highways Department and subsequently maintained by the Council. Both routes have secured public access rights by conditions in the Planning decision notice, numbers 14 and 17.

- 9.4 The history of the current site dates back to the late 1970's when sections of the existing streets were stopped up by Magistrate's Court Order to prepare the way for the development of the new Victoria Community High School. No formal access provision was set out through the school site however it was not enclosed and remained highly permeable effectively allowing rights of access for pedestrians to develop. The school stopped being an educational site in about 2009/2010 when it merged with another school and moved to a new site to become the Sir William Stanier Community School. Since that time two of the buildings have been derelict and the Oakley Centre has been used by Cheshire East Council as a Community Centre. When the current development of the site was in the planning stage the PROW department was approached for their comments on the status of the routes through the site. It was considered that public rights had probably accrued. Signs located on site by Cheshire County Council stating ' Private Property, Right of Way' gave a strong indication that access had been acknowledged by the County as landowner. On this basis it was recommended to the partnership working in conjunction to develop the University Technology College, that the routes should be formally closed. At the same time it was agreed that one pedestrian route through the site was an essential requisite in designing the new layout. The route along the frontage of the site running east to west is a strange anomaly as it falls mostly within the school site landholding and yet it also effectively serves as the northern footway to West Street. It was therefore also essential that this route was retained for the public.
- 9.5 The pedestrian routes are currently the subject of a temporary closure order whilst site preparation works are underway and asbestos is removed from the buildings. This order came into force on the 7<sup>th</sup> December 2015 and expires after six months. If the developer wishes to extend this period of closure, an application must be made to the Department of Transport at least 4 weeks before the current expiry date.
- 9.6 Councillor Faseyi has been consulted as the Ward Councillor for Crewe Central, no comments have been received.

- 9.7 Crewe Town Council has been consulted and responded to say that they had resolved that the Council had no objection to the proposals for the extinguishment and retention of pedestrian routes. However they also noted the disappointing lack of direct consultation and notification with affected residents before the 6 month temporary closures of all pedestrian routes were implemented.
- 9.8 The user groups and statutory undertakers have also been consulted and no comments have been received.
- 9.9 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 routes to be retained would be no less convenient to use than the existing routes.

#### **10.0 Access to Information**

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

#### ***For further information:***

*Officer: Clare Hibbert*

*Tel No: 01270 686063*

*Email: [clare.hibbert@cheshireeast.gov.uk](mailto:clare.hibbert@cheshireeast.gov.uk)*

***Background Documents: PROW file 344E/516***

This page is intentionally left blank



This page is intentionally left blank