

Public Rights of Way Committee

Agenda

Date: Monday 12th September 2016
Time: 2.00 pm
Venue: Committee Suite 1,2 & 3, Westfields, Middlewich Road,
Sandbach CW11 1HZ

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

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

1. **Apologies for Absence**

2. **Declarations of Interest**

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

3. **Minutes of Previous meeting** (Pages 1 - 18)

To approve the minutes of the meeting held on 13 June 2016

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

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 Section 119: Application for the Diversion of Public Footpath No. 56, Parish of Bollington** (Pages 19 - 25)

To consider the application to divert Public Footpath No. 56 in the parish of Bollington

6. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No 13 (parts), Parish of Moston and Public Footpath No 8 (part), Parish of Warmingham** (Pages 26 - 33)

To consider the application to divert parts of Public Footpath No.13 in the parish of Moston and part of Public Footpath No.8 in the parish of Warmingham

7. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath no. 8 (part), Parish of Odd Rode** (Pages 34 - 39)

To consider the application to divert part of Public Footpath No.8 in the parish of Odd Rode

8. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath no. 14 (part), and Extinguishment of an unrecorded footpath between Public Footpath no.14 and 15, Parish of Bunbury** (Pages 40 - 46)

To consider the application to divert part of Public Footpath No.14 and extinguishment of an unrecorded footpath between Public Footpath No.14 and 15 in the parish of Bunbury

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 13th June, 2016 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

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

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

Councillor in Attendance

Councillor Glen Williams

Officers

Mike Taylor, Public Rights of Way Manager
Jennifer Tench, Definitive Map Officer
Marianne Nixon, Public Path Order Officer
Genni Butler, Countryside Access Development Officer
Daniel Dickinson, Legal Team Manager – Corporate and Regulatory
Rachel Graves, Democratic Services Officer

1 APOLOGIES FOR ABSENCE

There were no apologies for absence.

2 DECLARATIONS OF INTEREST

No declarations of interest were made.

3 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meeting held on 14 March 2016 be confirmed as a correct record and signed by the Chairman.

4 PUBLIC SPEAKING TIME/OPEN SESSION

Four members of the public had registered to speak in relation to Items 12 – Application to Upgrade Public Footpaths No.8 Marbury cum Quoisley and No33 Wirswall to Bridleway, and Item 13 – Application for the Diversion of Public No. 12 (part) Goostrey.

The Chairman advised that he would invite them to speak when the applications were being considered by the Committee.

5 TERMS OF REFERENCE AND MEMBERSHIP

RESOLVED:

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

6 VILLAGE GREEN APPLICATIONS - DELEGATION OF POWERS FROM ROCHDALE BOROUGH COUNCIL

The Committee considered a report seeking acceptance of a delegation of powers from Rochdale Borough Council to determine two village green applications on that Council's behalf.

Rochdale Borough Council had approached Cheshire East Council with a request to accept a delegation under S101 of the Local Government Act 1972, with the effect that Cheshire East Borough Council assumes the functions of Commons Registration Authority for Rochdale Borough Council in respect of two village green applications.

Rochdale Borough Council owned the land subject to both applications, and in the interests of transparency, their preference was that another authority determined the applications on its behalf.

Under S101(1)(b) of the Local Government Act 1972, a local authority may arrange for the discharge of any of its functions by any other local authority.

Rochdale Borough Council had agreed to meet the reasonable costs properly incurred by Cheshire East Council in determining the two applications.

The Committee unanimously

RESOLVED:

That the delegation be accepted from Rochdale Borough Council, made under Section 101 of the Local Government Act 1972, of its powers to determine the following two village green applications:-

- a) lane at Swift Road, Bamford
- b) Heritage Green, Norden

7 VILLAGE GREEN APPLICATION - LAND TO THE REAR OF GORSEY BANK PRIMARY SCHOOL, WILMSLOW

The Committee considered the report of the Independent Expert on the application to register land at the rear of Gorse Bank Primary School, Wilmslow as a village green.

The Public Rights of Way Committee had previously resolved that the Council appoint an independent expert to consider the application. Mr Stephen Sauvain QC was appointed and he had held a public inquiry to consider the evidence over the course of 16 to 19 November 2015 and had subsequently produced a report.

Mr Sauvain QC in his report concluded that there was insufficient evidence that the land had been used “as of right” for the requisite period by a significant number of inhabitants of the locality or of a neighbourhood within the locality , and that in accordance with the decision of the Supreme Court in *Regina (Newhaven Port & Properties Ltd) v East Sussex County Council* [2015] A.C 1547, the registration of the land as a village green would be incompatible with the statutory purposes for which the land was held.

Members of the Committee considered the report and recommendations of the Independent Expert and unanimously

RESOLVED:

That the report of the Independent Expert, Mr Stephen Sauvain QC, be accepted and that the application to register the land to the rear of Gorsey Bank Primary School as a village green be rejected for the reasons set out in the Independent Expert’s report.

8 VILLAGE GREEN APPLICATION - BANKY FIELDS, CONGLETON

The Committee considered the report of the Independent Expert on the application to register land at Banky Fields, Congleton as a village green.

The Public Rights of Way Committee, at its meeting on 16 March 2015, had resolved that the Council appoint an independent expert to consider the application and prepare a report making a recommendation as to how the application should be determined.

Mr James Marwick of Counsel was appointed as the independent expert. Mr Marwick issued his Preliminary Advice on 30 March 2015, which advised that the legal question of whether the use of the land was ‘by right’ or ‘as of right’ was likely to determine the application and concluded that the application could be dealt with by way of written representations and invited parties to submit further evidence and written representations.

In accordance with instructions Mr Marwick produced a report in which he concluded that:-

“a) the land was open space regulated under the Open Spaces Act 1906 and has, on the evidence, been laid out as open recreational space at all material times. As such, the land was at all material times held out for a statutory purpose for use as open space by the public.

b) that in accordance with the Supreme Court decision in *Regina (Barkas) v North Yorkshire County Council* [2014] UKSC21, as a matter of law use of land held under statute for the purposes of public recreation is use “by right” and not use “as of right”.

c) Therefore the application should be rejected.

Members of the Committee considered the report and recommendations of the Independent Expert and unanimously

RESOLVED:

That the report of the Independent Expert, Mr James Marwick, be accepted and that the application to register the land at Banky Fields, Congleton, as a village green be rejected for the reasons set out in the Independent Expert’s report.

9 VILLAGE GREEN APPLICATION - LAND BELL AVENUE, SUTTON IN MACCLESFIELD, CHESHIRE

The Committee considered the report of the Independent Expert on the application to register land at Bell Avenue, Sutton as a village green.

The Public Rights of Way Committee, at its meeting in December 2014, had resolved that the Council appoint an independent expert to consider the application and prepare a report making a recommendation as to how the application should be determined.

Mr James Marwick of Counsel was appointed as the independent expert. Mr Marwick issued his Preliminary Advice on 25 April 2015, which advised that the legal question of whether the use of the land was ‘by right’ or ‘as of right’ was likely to determine the application and concluded that the application could be dealt with by way of written representations and invited parties to submit further evidence and written representations.

In accordance with instructions Mr Marwick produced a report in which he concluded that:-

a) The land was acquired by Macclesfield Rural District Council (a predecessor in title to Macclesfield Borough Council and Cheshire East Borough Council) as part of a larger conveyance of land executed on or about 21 March 1947.

b) the Land was subsequently lawfully laid out as a housing estate sometime in the post-war period.

c) At all material times, a local authority was entitled to lay out open space in connection with the laying out of the housing estate: section 80 of the Housing Act 1936 and later provided for by section 12 of the Housing Act 1985 which was the relevant statute in force during the 20 year period.

d) use of the Land had been “by right” and not “as of right” from 1993 to 2006 in circumstances where qualifying user must be shown from 1993 to 2013. Therefore the recommendation is that the application be rejected,”

Members of the Committee considered the report and recommendations of the Independent Expert and unanimously

RESOLVED:

That the report of the Independent Expert, Mr James Marwick, be accepted and that the application to register the land at Bell Lane, Sutton, as a village green be rejected for the reasons set out in the Independent Expert’s report.

10 VILLAGE GREEN APPLICATION - LAND ADJACENT TO CHELFORD ROAD AND BLACK FIRS LANE, SOMERFORD

The Committee considered a report detailing the outcome of the Judicial Review of the decision to refuse to register land at Black Firs Lane, Somerford as a village green.

An application in respect of land along the verge of Black Firs Lane and Chelford Road, Somerford was initially submitted in May 2013 and refused by the Public Rights of Way Committee on 15 September 2014, following a written report provided by the independent expert, Mr James Marwick.

The decision to refuse the application was subsequently challenged by Judicial Review proceedings in the High Court on the following ground:-

- (i) did the Defendant act in breach of the rule of natural justice that no one should be judge in their own case?
- (ii) if the Defendant was entitled to act on the advice of an independent legal expert, was Mr Marwick such as expert?
- (iii) Was Mr Marwick’s advice vitiated by procedural error by allowing the Defendant to put in evidence opposing the village green application out of time and not giving Mr Bell the opportunity to comment on the late evidence before giving his opinion?
- (iv) Was the decision of the Defendant procedurally erroneous in that Mr Marwick did not hold a public inquiry to find facts?

In respect of Grounds (i) and (ii) the court found in favour of the Council, finding that the Council’s practice of appointing an independent expert to consider the matter and report to the Public Rights of Way Committee, who would determine the matter, was a lawful process in keeping with the rules of natural justice, and that Mr Marwick was a suitable independent expert.

In respect of Grounds (iii) and (iv) the court found the Mr Marwick had fallen into error, procedurally, by accepting late highways evidence from

the Council and not giving Mr Bell sufficient time to comment on it, and that there was sufficient dispute over matters of fact such that the testing of the evidence in a non-statutory public inquiry was required.

Consequently the case was lost and the decision quashed on account of the two linked procedural errors made in the course of consideration of the matter by Mr Marwick.

On account of the finding, the Council must re-determine the matter and it was prudent to do so by means of a non-statutory public inquiry held by an independent expert, who would report to the Committee for a determination.

RESOLVED:

That the Director of Legal Services be authorised to appoint an appropriately qualified independent expert to conduct a non-statutory public inquiry to consider the application and provide the Public Rights of Way Committee with a report and recommendation for determination.

11 PUBLIC RIGHTS OF WAY ANNUAL REPORT 2015-2016 AND WORK PROGRAMME 2016-2017

The Committee considered a report which detailed the achievements of the Public Rights of Way service during 2015-16 and set out the proposed work programme for 2016-17.

The Public Rights of Way Manager reported on the work carried out during 2015-16 by the Network Management and Enforcement Team and the Legal Orders Team.

It was reported that:

- 253 planning application consultations and 123 rights of way searches completed
- 66 temporary and emergency closures of right of way had been made
- 601 problems on the network had been logged in 2015-16
- 1 public path orders had been confirmed, 20 cases were in progress, with a backlog of 48 applications
- 4 Definitive Map Modification Orders had been confirmed, 7 were in progress, with a backlog of 33
- 2 Definitive Map Anomaly investigations had been carried out and there was a backlog of 415

The implementation of the Deregulation Act 2015 would require an appraisal of processes and policies for dealing with Definitive Map Modification Orders and Highways Act diversions. Tight timescales were being introduced requiring their processing within time limits and additionally the processing of Highway Act diversions would become a duty rather than a discretionary service.

The budget for Rights of Way had remained as set throughout the year allowing the Team to both plan spending and clear some of the previous backlog that had arisen. To facilitate an increased work output a small additional resource not exceeding £15,000 had been made available from other areas.

RESOLVED:

That the Annual Report for 2015-16 be noted and the proposed Work Programme for the Public Rights of Way Team 2016-17 be approved.

12 WILDLIFE AND COUNTRYSIDE ACT- PART III, SECTION 53: APPLICATION TO UPGRADE PUBLIC FOOTPATHS NOS. 8 MARBURY CUM QUOISLEY AND NO. 3 WIRSWALL TO BRIDLEWAYS

The Committee considered a report which detailed an investigation into an application for the upgrading of Public Footpaths No.8 Marbury cum Quoisley and No.3 Wirswall 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) discovery by the authority of evidence which (when considered with all other relevant evidence) shows:

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be shown as a highway of a different description.”

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

The application had been submitted in 2005 by Miss B Harden and Mrs A Williams to amend the Definitive Map and Statement by upgrading footpaths in Marbury cum Quoisley and Wirswall to bridleways. The application was based solely on historical evidence dating from 1812 to 1954. There was no evidence of any use on horseback or bicycle.

Sofie Paton-Smith spoke in objection to the application and stated that she had carried out her own research and believed that the bridleway rights had been removed and that the route was a footpath. She was awaiting evidence from the County Records Office, which she thought may affect the decision.

Two letters of objections from Caroline Paton-Smith and Elaine Von Dinther had been circulated to the Committee members.

A detailed investigation of the evidence submitted had been undertaken, together with additional research. The application had been made based on historical evidence and the following documents had been supplied by the applicant: Marbury and Wirswall Tithe Maps and Apportionment (1837-1840); the Finance Act Plan, Field Book entries (1910, 1913); the National Parks and Access to the Countryside Act Parish Survey for Wirswall (1954) and copies of a diversion of part of the claimed route made through the Quarter Sessions dated 1812.

The historical evidence has showed that the claimed route appeared in a number of documents of good provenance. The Quarter Sessions diversion records for 1812 were legal documents and although it did not show the full length of the route, it clearly showed that the route continued and indicated a status of 'bridle and footway'. The Tithe Maps (1838-40) showed a consistent alignment corresponding to footpath No.8 Marbury and footpath No.3 Wirswall with the route shown between double pecked lines or one pecked and one solid line. It was annotated as 'Bridle Road' on the Wirswall Map and states to Marbury at the edge of the map indicating a continuing route. The full length of the route appears on Bryant's map dated 1831 and is depicted as 'Lanes and Bridleways'. These early records raise a reasonable presumption that the route was a through route and of a higher status than footpath.

The Ordnance Survey First series from 1833 was consistent with the Tithe and Bryant's County map clearly depicting a through route from Marbury to Wirswall. The County series O.S maps from around 1872 to 1910 consistently show a pecked double line for the route. The 25th inch first edition gave the route a number but there was no book of reference available. On the 2nd and 3rd editions the route is annotated with B.R.

The Finance Act 1910 showed the route included within a hereditament for the Wirswall part of the route and the field book recorded an exemption for 'Bridle Road'. The Marbury Parish Council minute from 1910 specifically refers to the route as a 'Bridleroad' which confirmed that the full length of the route as considered to have bridle rights at this time.

The minutes of the County Council Roads and Bridges Committee in 1945 suggest that the route was still considered a bridleway and was publicly repairable.

The original survey report for Wirswall, which was used for the completion of the Definitive Map, showed a presumption of the use of the route as a bridleway. These were written by local people with knowledge of the local area and indicate that the path was capable of being used by horse riders even if it was recorded as a footpath at the next stages of the Definitive Map process.

The report concluded that on the balance of probabilities evidence supported the allegation that a bridleway subsists along the route claimed and it was considered that Section 53(3)(c)(ii) had been met.

The Committee considered the historical evidence and the Definitive Map Officer's conclusion and considered that there was sufficient evidence to support the existence of public bridleway rights. It was proposed that time be allowed for the additional evidence to be viewed in case any evidence was found that bridleway rights had been stopped up. The Committee was asked to delegate the decision to the Public Rights of Way Manager, in consultation with the Chairman and Vice Chairman to allow any additional evidence to be considered in reaching a final decision.

RESOLVED: That

- 1 the decision be delegated to the Public Rights of Way Manager, in consultation with the Chairman and Vice Chairman.
- 2 If an Order is made, 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 being withdrawn, the Order be confirmed in exercise of the power 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.

13 HIGHWAYS ACT 1980 S.119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 12 (PART), PARISH OF GOOSTREY

The Committee considered a report which detailed an application from Robin Carr Associates (agent) on behalf of Mr & Mrs Dick of Swanwick Hall, Booth Bed Lane, Goostrey, requesting the Council to make an Order to divert part of Public Footpath No.12 in the parish of Goostrey.

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.

Margaret Barker, on behalf of Congleton Ramblers and Goostrey Footpath Group, said that they were opposed to the proposed route due to the

gradients of the path, which would exclude some users of the present path. The proposed route would be less enjoyable and convenient than the present path and views of the 17th century hall would be lost and failed to meet the legal test for the granting of an Order. The proposed new route would potentially run in part next to a proposed new housing development.

Roger Dyke, on behalf of Goostrey Footpath Group, stated that the Group had brought the footpath back into use in 1999 with the aim to make it safely negotiable by the less agile and eventually wheelchair and pushchairs. The proposed new route had gradients which were longer and steeper than those of the present route which would permanently exclude those people who could cope with the short gentle climb on the present route but not the longer steeper climbs and descents on the proposed route.

Cameron Dick, applicant, stated that they had purchased the property three years ago and had developed an equestrian business at the property. There was shared access to the house and yard, which could be busy at times and wished to divert the path for safety and security reasons. He had commissioned an access audit of the proposed path and had implemented a number of the recommendations from the report.

The land over which the current path and the proposed diversion ran belonged to the Mr & Mrs Dick. The current path ran immediately in front of the residential property and then between it and the adjoining barns/farm buildings through what was originally an area of farm yard, but was now more akin to the driveway, parking area and garages to the house. Moving the footpath out of such an area would clearly increase the perception of both security and privacy of the property.

The proposed new route would leave the drive way to Swanwick Hall and pass through a hand gate before running along a field boundary in a generally south south-easterly direction where it turns in an arc and proceeds down a re-graded slope, crossing a footbridge over the brook and continued up a further slope initially along the field boundary and then through open field through a hand gate to re-join Footpath No.12.

The proposed new route had been established as a permissive route in 2014 with full consultation with the Goostrey Footpath Group and Officers of the Council. The Footpath Group had expressed reservations regarding issues surrounding access for people with mobility problems.

Following submission of the application a number of objections were received relating to accessibility issues for people with mobility problems. In response the Applicant commissioned an access audit from a specialist in countryside access for people with disabilities.

The affected section of the existing footpath had a number of difficult structures e.g. double gate structures and a broad walk, and a potentially

problematic gravelled surface. The proposed new route would have only two gates, a footbridge which was more accessible than the board walk and better surfaces. In addition, work had been undertaken to improve drainage and gradients towards meeting acceptable access standards.

The Access Report was circulated as part of a second informal consultation exercise to which an objection and suggested changes to the route were received.

The Committee noted the comments made by the speakers and received from the User Groups from the two informal consultations on the application.

The Committee considered that the proposed route would not be substantially less convenient than the existing route and that diverting the existing route would be in the interest of the landowner and would increase security and privacy of the property. It was considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order were satisfied.

The Committee unanimously

RESOLVED: That

- 1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of the Public Footpath No.12 Goostrey by creating a new section of the public footpath and extinguishing the current path, as illustrated on Plan No.HA/110, on the grounds that it is expedient in the interest of the owner of the land crossed by the path.
- 2 Public Notice 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 for determined.

14 HIGHWAYS ACT 1980 S.119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 5 (PART), PARISH OF BROOMHALL

The Committee considered a report which detailed an application from Mr Peter Hollinshead of Honeysuckle Cottage, Heatley Lane, Broomhall, requesting the Council make an Order to divert part of Public Footpath No.5 (part) in the parish of Broomhall.

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 alignment of the current footpath had been inadvertently obstructed by the recent erection of an agriculture building designed for storage and potentially housing cattle. Honeysuckle Cottage comprised of a small holding with attached grazing land. The building had been sited in order to best utilise the available land. A retrospective planning application had been made to the Council and it was the consultation for this application which brought the matter to the attention of the Public Rights of Way Unit. A site meeting took place with the landowner, during which it became clear that the available route of the footpath had been slightly offline and hence the misunderstanding regarding the siting of the building. The application for planning permission had been withdrawn until the diversion order had been processed.

The land over which the section of Public Footpath No.5 to be diverted and the proposed diversion ran belonged to the Applicant. The new route would have a width of 2 metres, with a grass surface and would not be enclosed. The route would have a kissing gate rather than stiles. The proposed new route would be approximately 135 metres in length compared to the present route of 132 metres.

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. Diverting the footpath would be of benefit to the landowner in terms of aiding with land and animal management. It was considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion were satisfied.

The Committee unanimously

RESOLVED: That

- 1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No.5 by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/105, 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.

15 HIGHWAYS ACT 1980 S.119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 5 (PARTS), PARISH OF PRESTBURY

The Committee considered a report which detailed an application from United Utilities Plc requesting the Council to make an Order to divert part of Public Footpath No.5 in the parish of Prestbury.

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.

Public Footpath No.5 Prestbury was a long path to the north west of Prestbury, which for most of its length followed the River Bollin. The sections of footpath to be diverted were mid-way along the footpath, adjacent to the United Utilities Sewerage works, and were partly not available on the ground as the River Bollin had moved alignment and the adjacent land had suffered erosion due to the active nature of the river.

It was proposed to divert the effected parts of the footpaths onto a new route that was slightly further to the east of the current route and therefore, a safer distance from the river. The new route would be 1.2 metres wide and have a rolled gritstone surface for this width.

In response to the informal consultations on the proposed route, the Peak and Northern Footpath Society stated that they had reservations about the route being so close to the fencing which surrounded the sewerage works as they believed this made the walk less enjoyable. East Cheshire Ramblers had submitted a letter which stated that they were not opposed to the diversion in principle but considered that the diversion between J and I, as shown on Plan HA/109, was unnecessary as the river was highly unlikely to erode this section of the footpath and also suggested minor amendments to the diversion which could enhance the future enjoyment by the public.

In response Officers stated that they believed that as the section next to the fence was only a short distance compared to the full length of the route, this would not have a detrimental effect on the overall enjoyment of the route. This was the most suitable position for the proposed route to ensure the longevity of the popular footpath, also the tree and foliage coverage on this section would make it difficult to divert the route elsewhere.

The Committee noted the comments received from the informal consultation, however they considered that the proposed route would not be substantially less convenient than the existing route. Diverting the

footpath would make the route available for walkers and ensure the safety of the general public by moving the footpath away from the edge of the river bank ensuring the continued enjoyment of the well-used path. It was considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order were satisfied.

The Committee resolved 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.5 by creating new sections of public footpath and extinguishing parts of the current path, as illustrated on Plan No.HA/109 on the grounds that it is expedient in the interests of the public.
- 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.

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

The Committee considered a report which detailed an application from Mr R Bright (agent) on behalf of Bathgate Silica Sand Ltd 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.9 in the parish of Arclid.

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

A planning application had been submitted applying for a 'southern eastern extension to existing silica sand workings at south Arclid, Arclid Quarry' – planning reference 09/2291W, and granted on 20 February 2013.

Part of Public Footpath No.9 Arclid was temporarily aligned on a different route to its definitive alignment since it was diverted 30 years ago in 1986 under the Town and Country Planning Act, Sections 257 & 261 to enable sand extraction under the definitive line.

The 30 year temporary diversion of the Public Footpath No.9 would end on 4 July 2016. Thereafter the legal right of way would revert to the definitive alignment which was currently unavailable. On that date, it would be formally closed via a temporary 6 month closure, to protect the public from dangers posed by ongoing quarrying operations, on condition that an alternative route would be provided for the public by Archibald Bathgate so that a walkable route was available at all times whilst the definitive route was closed. It was understood that this would initially comprise Hemmingshaw Lane until the route of the proposed diversion had been made available on the ground which could then be used on a permissive basis until the legal process had been completed.

Any Order made would be made after the expiry date of the 30 year temporary diversion and would detail the diversion of the definitive alignment, not the 30 year temporary diversion.

The land over which the current route ran and over which the proposed route would run was part owned by Archibald Bathgate Silica Sand Ltd and partly owned by Mrs E Beresford of Arclid Hall Farm. Mrs Beresford has consented to the diversion going ahead across the parts of land in her ownership.

The land over which ran the existing alignment of the footpath section proposed for division would be re-developed on completion of the sand excavations to recreate and re-landscape the excavated area accommodating the proposed diversion route for Footpath No.9 Arclid

The Committee considered the application and concluded that it would be necessary to divert part of Public Footpath No.9 Arclid to allow for the excavations of sand beneath the land. 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 That after 4th July 2016 when the long term temporary diversion of the definitive route for Public Footpath No.9 Arclid will expire, an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.9 Arclid, as illustrated on Plan No. TCPA/030, 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 the condition that planning permission is granted.

- 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.

17 PUBLIC INQUIRY TO DETERMINE CYCLE TRACKS ACT 1984 THE CHESHIRE EAST BOROUGH COUNCIL (CREWE FOOTPATH NOS. 3 (PART) AND 11 (ALSO KNOWN AS FOOTPATH NO. 36)) CYCLE TRACKS ORDER 2014

The Committee received an information report on the outcome of public inquiry to determine a Cycle Track Order.

The Public Rights of Way Committee, at its meeting on 18 March 2014, considered an application to convert Footpaths No.3 (part) and No.36 Crewe into Cycle Tracks. The Committee resolved that "An Order be made under Section 3 of the Cycle Track Act 1984 to convert to cycle track those lengths of public footpath between points A-B-D, as illustrated on Plan No.CTA/001".

Public Notice of the Order attracted three objections, one of which was withdrawn. The case was submitted to the Department for Transport National Casework Team in May 2015. A public inquiry was held on 19 January 2016 with the appointed Inspector, Mike Moore. The Council was represented by Alistair Mills of Counsel, who called Genni Butler, Countryside Access Development Officer and David Wilkinson, Transport Planning Principal Consultant. The two objectors represented themselves. Ben Wye, Chair of Governors at Hungerford Primary School also spoke in support of the Order.

Following the inquiry the Inspector issued a report to the Secretary of State for Transport, in which the Inspector recommended that the Order be confirmed. The Inspector concluded that "*none of the factors put forward in opposition to the Order are of such significance, individually or in combination, that they would amount to reasons not to confirm the Order.*"

The Secretary of State considered this recommendation and confirmed the Order on 29 February 2016. The Council was required to give public notice of this decision.

RESOLVED:

That the report be noted.

The meeting commenced at 2.00 pm and concluded at 3.50 pm

Councillor M Hardy (Chairman)

378400

378400

378375

378375

378350

378350

378325

378325

394050

394075

Cockshead

Hey Farm

H

Steps

G

D

Bollington FP56

F

C

B

A

E

Nab Lane

Berristall Rise

Cocksheadhey Road

Bollington FP42

Berristall

Rise

2

7

28

KEY

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



1:375

Highways Act 1980 s119
 The Cheshire East Borough Council
 (Footpath 56 (part) Parish of Bollington
 Public Path Diversion Order 2016

Plan No.
 HA/112



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 12th September 2016
Report of: Public Rights of Way Manager
Subject/Title: Highways Act 1980 s.119
Application for the Diversion of Public Footpath No. 56,
Parish of Bollington

1.0 Report Summary

- 1.1 The report outlines the investigation to divert Public Footpath No. 56 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 landowner concerned. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

2.0 Recommendation

- 2.1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert Public Footpath No.56 Bollington by creating a new public footpath and extinguishing the current path as illustrated on Plan No. HA/112 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 10.4 & 10.5 below.

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

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

And whether it is expedient to confirm the Order considering:

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

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

3.4 No objections to the proposal have been received through the informal consultation process. The proposed route will not be 'substantially less convenient' than the current route and diverting the footpath will be of benefit to the landowner by improving privacy and security to her property, 'Berristall Rise'.

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 ward

5.0 Local Ward Members

5.1 Councillor A Stott and Councillor J 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/an inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

9.0 Risk Management

- 9.1 Not applicable

10.0 Background and Options

- 10.1 An application has been received from Mrs A Theobold of 2, Berristall Rise, Bollington, Macclesfield, Cheshire, SK10 5RH requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 56 in the Parish of Bollington.

- 10.2 Public Footpath No. 56, Bollington, commences at its junction with Public Footpath No. 42 on Cocksheadhey Road (UW1355) at OS grid reference SJ 9404 7834 and runs in a generally west, north westerly direction passing through the garden of No 3 Berristall Rise, then crossing the unadopted road, Berristall Rise, before passing through the garden of No. 2 Berristall Rise (which is also called 'Berristall Rise') before exiting into a pasture field across which it continues in a generally north, north westerly direction to terminate at its junction with Public Footpath No. 55, Bollington at O.S. grid reference SJ 9393 7859.

The path to be diverted is shown by a solid black line on Plan No. HA/112 running between points A-B-C-D. The proposed diversion is illustrated on the same plan by a black dashed line running between points E-F-G-H-D.

- 10.3 Mr and Mrs A Theobold own the land over which part of the current path and part of the proposed diversion run. The remaining parcels of land over which the route runs are separately owned by Mr Kershaw of 3, Berristall Rise and Mrs Gray of 1, Berristall Rise both of whom have given written agreement to the proposed 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.

- 10.4 Referring to Plan No. HA/112, the section of Bollington FP56 to be diverted starts at its junction with Cocksheadhey Road (point A). From this point, it runs in an west, north westerly direction through the garden of 3, Berristall Rise (points A-B), crosses the road, Berristall Rise, (points B-C) and then enters the garden of the applicant's property, Berristall Rise, which it crosses to its termination point immediately before a stile in the northern garden boundary (points C-D).

Diverting this section of footpath to run along Beristall Rise and then around the perimeter of the applicant's garden would afford the applicant improved security and privacy by taking path users further away from property buildings.

The new route would start at its junction with Cocksheadhey Road (point E) from where it would follow the unadopted road, Berristall Rise, in generally westerly, northerly and then north westerly directions to the applicant's property (point F). It would then follow parts of the eastern and northern perimeters of the property garden (points F-G-H-D), to terminate immediately before the stile (point D).

The new route would be 2 metres wide throughout and would have surfaces of tarmac and grass.

Of benefit to users, the proposed diversion route would follow a line that:

- would be easier to navigate as it would follow a road and then a garden perimeter rather than crossing through two gardens.
- would eliminate the unintentional use of the owners domestic steps to their house and the driveway leading to them.

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

10.5 Ward Councillors have been consulted about the proposal. Councillor J Weston registered that he has no objection to the proposal. Any further comments will be reported verbally.

10.6 Members of Bollington Town Council have registered no objection to the diversion. However, they requested that adequate signage be displayed on approach to the applicant's property to indicate to users the direction of the new route.

10.7 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. Several identified apparatus in the vicinity of the diversion and objected initially but withdrew once they understood that any works on the new route would not affect such apparatus.

If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

10.8 The user groups have been consulted. The Peak and Northern Footpath Society and the East Cheshire Ramblers registered no objection. However, they did both request that adequate signage be displayed where the diversion route passes through the applicant's garden to ensure that users are clear about where to walk. No other comments were received.

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

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

11.0 Access to Information

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

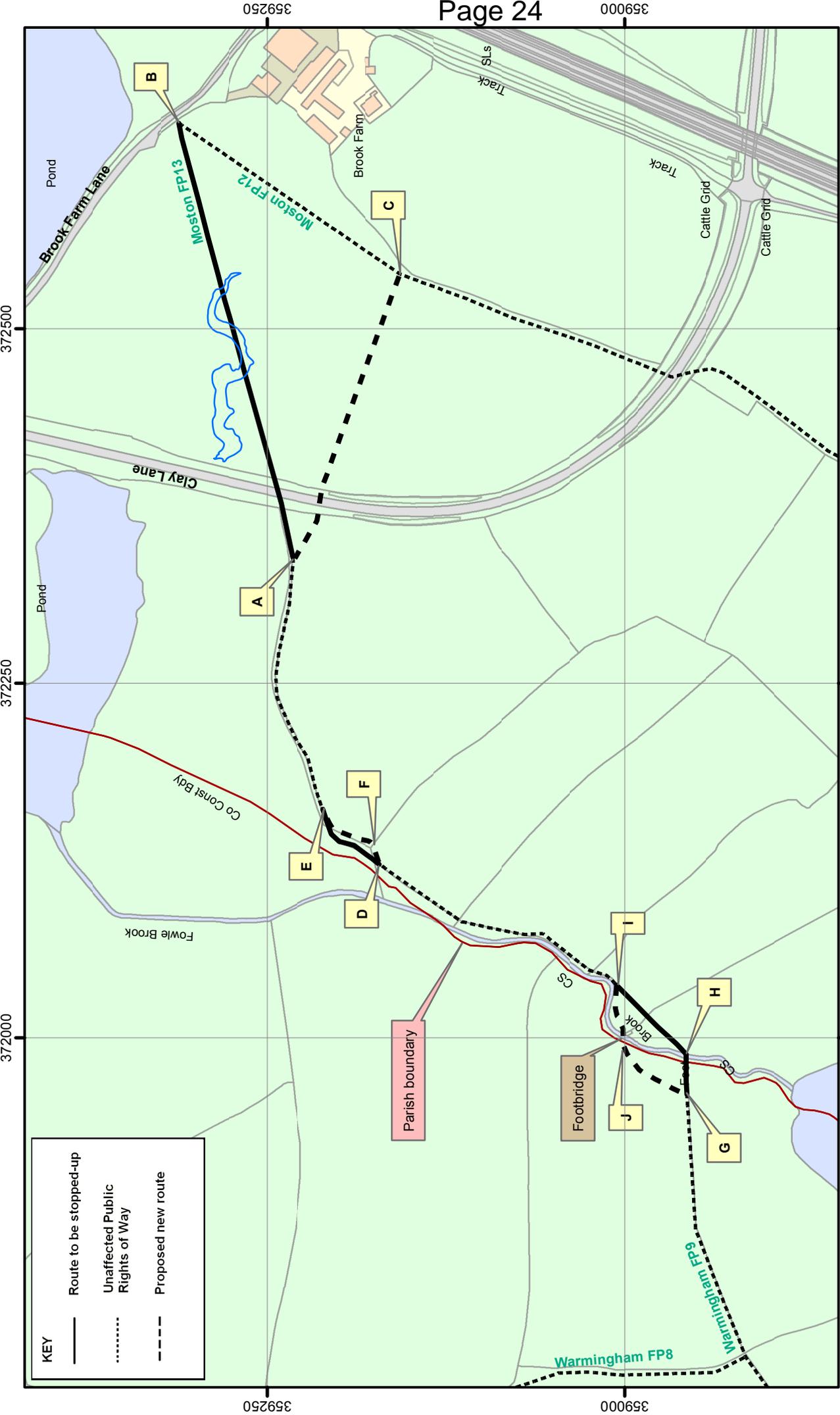
Name: Marianne Nixon

Designation: Public Path Orders Officer

Tel No: 01270 686 077

Email: Marianne.Nixon@cheshireeast.gov.uk

PROW File: 028D/522



KEY

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



Plan No.
HA/111

Highways Act 1980 s119
The Cheshire East Borough Council
(Footpath No 13 (parts) Parish of Moston and Footpath No 9 (part) Parish of Warmingham)
Public Path Diversion Order 2016

N

1:3,500

372500 372250 372000

372500

372250

372000

359250

359000

359250

359000

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 12th September 2016
Report of: Public Rights of Way Manager
Subject/Title: Highways Act 1980 s.119
Application for the Diversion of Public Footpath No 13 (parts), Parish of Moston and Public Footpath No 8 (part), Parish of Warmingham

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No 13 (parts), Parish of Moston and Public Footpath No 8 (part), Parish of Warmingham. 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 each footpath concerned.
- 1.2 Members are required to consider all information in the report and make a decision as to whether the proposed footpath diversion is expedient based upon the legal tests prescribed in section 119 Highways Act 1980 set out in this report.

2.0 Recommendation

- 2.1 Providing that landowner agreement is secured, that 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 13, Parish of Moston and part of Public Footpath No 8 (part), Parish of Warmingham, by creating new sections of each public footpath and extinguishing the current path sections as illustrated on Plan No. HA/111 on the grounds that it is expedient in the interests of the owners of the land crossed by the paths and the public.
- 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 paths. 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 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 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 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 The proposed route would be an improvement to the existing route and diverting the footpaths would be of considerable benefit to the landowner and public.

An area of land within a field over which runs part of Public Footpath No 13, Parish of Moston P13 currently suffers seasonal flooding. Diverting the footpath to run in a different direction across a drier area within this field would assure its availability for use during wetter seasons.

Diversion of two further parts of Public Footpath 13, Parish of Moston and a section of Public Footpath No 8, Parish of Warmingham, would re-align them onto the currently walked route.

It is considered that the proposed new route resulting from diversion of these path sections, would provide a more satisfactory alternative to the current route and that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Brereton Rural Ward

5.0 Local Ward Members

5.1 Councillor John Wray

6.0 Policy Implications

6.1 Not applicable

7.0 Financial Implications

7.1 Not applicable

8.0 Legal Implications

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

9.0 Risk Management

9.1 Not applicable

10.0 Background and Options

10.1 An application has been received from Mr D Hancock of Brook Farm, Clay Lane, Moston, Sandbach, CW11 3QY requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No 13, Parish of Moston.

Further along this footpath, two short sections have been walked for a considerable period of time on a different alignment to the definitive alignment so the Council proposes to divert these sections composed of parts of Public Footpath No 13, Parish of Moston and Public Footpath No 8, Parish of Warmingham, such that they align along the walked route.

10.2 Public Footpath No 13, Parish of Moston, commences at its junction with Public Footpath No 12, Parish of Moston along Brook Farm Lane at O.S. grid reference SJ 7264 5931 and runs in a generally west, south westerly direction through a pasture field to cross Clay Lane before continuing across more pasture fields in generally west, south westerly and then south westerly directions to terminate at the parish boundary at its junction with Public Footpath No 8, Parish of Warmingham at O.S. grid reference SJ 7198 5895.

Public Footpath No 9, Parish of Warmingham, commences at its junction with Public Footpath No 13, Parish of Moston at the parish boundary at O.S. grid reference SJ 7198 5895 and runs in a generally west, south westerly direction across pasture fields to terminate at the parish boundary at its junction with Public Footpath No 11, Parish of Crewe at O.S. grid reference SJ 7122 5864.

- 10.3 Mr Hancock owns the land over which run parts of the current route of Public Footpath No 13, Parish of Moston and their proposed new routes. Mr A Whittaker owns the land over which run the remaining parts of this footpath proposed for diversion, and their proposed new routes. Both these landowners have given their written consent to diverting this footpath as proposed.

Mr JR Derbyshire owns the land over which runs the part of Public Footpath No 9, Parish of Warmingham, proposed for diversion and its proposed diversion route. However, written consent from Mr Derbyshire is still awaited.

Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request, if it considers it expedient in the interests of the landowner(s) and the public, to make an order to divert the footpaths.

- 10.4 An area of land within a field owned by Mr Hancock, over which part of Moston FP13 currently runs suffers seasonal flooding. Diverting the footpath to run in a different direction across a drier area within this field would assure its availability for use during wetter seasons.

Further along this footpath, two short sections are walked on a different alignment to the definitive alignment so the Council proposes to divert these sections composed of parts of Public Footpath No 13, Parish of Moston and Public Footpath No 8, Parish of Warmingham, such that they align along the walked route.

- 10.5 Referring to Plan No. HA/111, the section of public Footpath no 13, Parish of Moston, proposed for diversion by Mr Hancock starts along a hedge boundary within a field (point A) from where it follows a generally east, north easterly direction to Clay Lane which it crosses to then enter a second field where it continues in the same direction, crossing the field to terminate near its junction with Brook Farm Lane (point B).

The proposed diversion route would start at the same point as the current route, at a hedge boundary within a field (point A). From there, it would then follow a generally east, south easterly direction to Clay Lane which it would cross to enter the second field where it would continue in the same direction across the field to terminate at its junction with Public Footpath No 12, Parish of Moston FP12 (point C).

The new route would be 2 metres wide throughout and have a grass surface except where it crossed Clay Lane when it would be tarmac.

Of the two path sections proposed for diversion by the Council, referring to the attached plan:

- The first is a section of Public Footpath No 13, Parish of Moston, which starts within a field at a hedge boundary (point D) and immediately crosses the hedge boundary to then follow it in a generally north, north westerly direction for approximately 45 metres before crossing back into a different field where it terminates (point E).

From the same start point (point D), the proposed diversion route would follow the hedge boundary in the same general direction to the same termination point (point E) but without crossing it. It would, however, cross a field boundary en-route (point F).

- The second is composed of short sections of Public Footpath No 9, Parish of Warmingham and Public Footpath No 13, Parish of Moston as it spans the boundary of these two parishes. It starts within a field in the Parish of Warmingham (point G) and follows a generally easterly direction, crossing the parish boundary and a brook, to immediately bear in a generally north easterly direction (point H), crossing a field boundary to then continue to its termination point by the brook (point I).

From the same start point (point G), the proposed diversion route would follow a generally north easterly direction to a different part of the parish boundary (point J). It would then cross the brook to continue alongside it in a generally easterly direction to the same termination point (point I).

Both proposed diversion routes would have grass surfaces with the exception of the footbridge across the brook, and be 2 metres wide throughout.

Diversion of the ascribed path sections of Public Footpath No 13, Parish of Moston and Public Footpath No 9, Parish of Warmingham would be in the interests of both the public and the landowner.

10.6 The consultation period for this diversion is still running until Friday 8th March. However, to date, responses are as follows:

10.6.1 The Ward Councillor has been consulted about the proposal. No comments have been received.

10.6.2 Moston and Warmingham Parish Councils have been consulted and have not yet registered objection. Any comments received will be reported verbally.

10.6.3 The statutory undertakers have been consulted and, with the exception of National Grid, have raised no objections to the proposed diversion. National Grid have placed a holding objection pending further information about any work on the new diversion routes. No works will be required in the vicinity of their apparatus so it is anticipated that this objection will be withdrawn. The final outcome will be reported verbally.

If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

10.6.4 The user groups have been consulted. The Peak and Northern Footpath Society registered no objections. No other comments have been received.

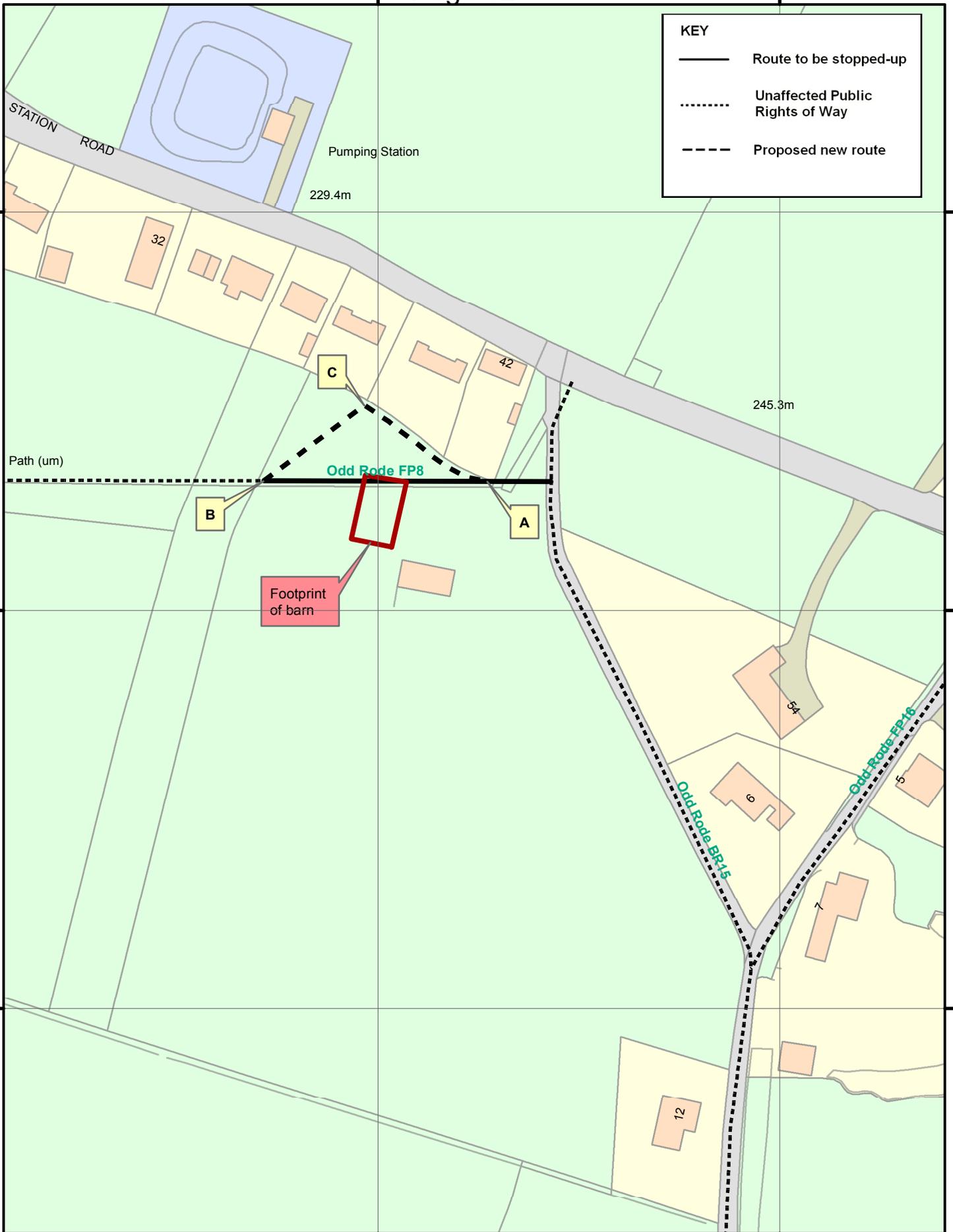
10.7 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion route is an improvement to the existing route since it will place part of Public Footpath No 13, Parish of Moston, onto an area of land that is less susceptible to water logging during the wetter seasons.

12.0 Access to Information

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

Name: Marianne Nixon
Designation: Public Path Orders Officer
Tel No: 01270 686 077
Email: marianne.nixon@cheshireeast.gov.uk
PROW File: 214D/510

This page is intentionally left blank



KEY

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

N

 1:1,250

Town and Country Planning Act 1990, s.257
 The Cheshire East Borough Council
 (Footpath 8 (part) Parish of Odd Rode)
 Public Path Diversion Order 2016

Plan No.
 HA/32



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	12 th September 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. 8 (part), Parish of Odd Rode

1.0 Purpose of Report

The report outlines the investigation to divert part of Public Footpath No. 8 in the Parish of Odd Rode. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as a response to a planning application that is currently under consideration by the Council's Planning Department. The application has been submitted by Mr Mark Taylor of 9, Primitive Street, Mow Cop, Stoke on Trent, ST7 3NH for erection of a new implement, produce and hay store (Planning reference: 16/3010C). 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. 8 Odd Rode, as illustrated on Plan No TCPA/032 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, the Borough Council, as Planning Authority, can make an Order diverting a footpath if it is satisfied that it is necessary to do so to enable

development to be carried out in accordance with a planning permission that has been granted.

3.2 It is considered that it is necessary to divert part of Footpath No. 8 Odd Rode as illustrated on Plan No. TCPA/032 to allow for the erection of a new implement, produce and hay store as detailed within planning reference: 16/3010C.

3.3 Consultations have elicited one objection to the proposal. However, it is considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 are satisfied.

4.0 Ward Affected

4.1 Odd Rode

5.0 Local Ward Members

5.1 Councillor R Bailey and Councillor L Wardlaw

6.0 Financial Implications

6.1 Not applicable

7.0 Legal Implications

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

8.0 Risk Assessment

8.1 Not applicable

9.0 Background and Options

6.1 An application has been received from Mr Mark Taylor of 9, Primitive Street, Mow Cop, Stoke on Trent, ST7 3NH 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. 8 in the Parish of Odd Rode.

6.2 Public Footpath No. 8 Odd Rode commences at its junction with Public Bridleway No 15 Odd Rode at O.S. grid reference SJ 8524 5743 and runs in a generally easterly direction across pasture fields to terminate at its junction with Birch Tree Lane at O.S. grid reference SJ 8478 5748. In total, the footpath has a length of approximately 465 metres.

The section of path required to be diverted by Mr Taylor is shown by solid black line on Plan No. TCPA/032 running between points A-B and has a length of approximately 56 metres. The proposed diversion is illustrated

with a black dashed line on the same plan, running between points A-C-B and has a length of approximately 68 metres.

- 6.3 The existing alignment of the footpath section proposed for diversion by Mr Taylor, would be directly affected by development of the store for implements, produce and hay, the footprint of which is shown as a red rectangle on Plan No. TCPA/032.

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

- 6.4 Planning permission for the store has yet to be granted to Mr Taylor. The application is cited as Planning Permission Ref: 15/2960C. The details of the application are for the development of an implement, produce and hay store.

- 6.5 With regard to the development, part of the current line of Public Footpath No.8 Odd Rode would be obstructed by the store. Therefore, the footpath diversion is required to preserve public access through the site.

The length of footpath proposed for diversion (points A-B) is approximately 12 metres longer than the current route.

- 6.6 Referring to Plan No. TCPA/032, the section of Odd Rode FP8 proposed for diversion commences at the north eastern corner of a pasture field (point A), immediately after a kissing gate, and runs in a generally westerly direction across the field to terminate immediately before a stile within the western field boundary (point B).

The proposed new route would also start at the north eastern corner of the pasture field immediately after the kissing gate (point A) but it would then run along the northern field boundary behind the barn (points A-C) before diagonally crossing the field to terminate on joining the current route immediately before the stile (points C-B).

The new route would be approximately 68 metres in length, have a width of 2 metres and have a grass surface.

- 6.9 The local Councillors have been consulted about the proposal and comments will be reported verbally.
- 6.10 Odd Rode Parish Council has been consulted about the proposal. No comments have been received.
- 6.11 The statutory undertakers have also been consulted and have no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 6.12 The user groups have been consulted. The Peak and Northern footpath Society registered that their members have no objection to the diversion.

The Congleton Ramblers registered objection on the basis that they understand that the TCPA permits diversions only to the extent required for the development to proceed, so state that the new route should run to the eastern corner of the proposed barn and then back to its original course.

In response to this objection, discussion within the Institute of Public Rights of Way and Access concludes that there is nothing within the legislation of section 257 of the Town and Country Planning Act 1990, to state that diversions undertaken to allow development, must be the shortest possible. It is important to offer a proposal that is in the best interests of the public and not one that will be shortest if this does not serve those interests. In this case, taking the new route along a field boundary to a point passed the barn where the user can then view the stile that exits the field, is considered to be more convenient and easier to see and, the fact that it would run close to the northern field boundary for the majority of its length would be perhaps more enjoyable and easy to follow than having to walk close to the barn which would reduce the visibility.

No other responses have been received.

- 6.13 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 6.14 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient than the current route.

10.00 Access to Information

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

Officer: Marianne Nixon

Tel No: 01270 686 077

Email: marianne.nixon@cheshireeast.gov.uk

Background Documents: PROW file 231D/524

This page is intentionally left blank

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 12th September 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. 14 (part),
and Extinguishment of an unrecorded footpath between
Public Footpath no.14 and 15, Parish of Bunbury

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 14 and extinguish an unrecorded footpath, between public footpath no.14 and 15, in the Parish of Bunbury. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion and extinguishment order to be made. The proposal has been put forward by the Public Rights of Way Unit as an application has been submitted by Crabtree Homes of Godscroft House, Godscroft Lane, Frodsham, WA6 6XU on behalf the current landowners Mr and Mrs Goodyer. The application has been made alongside an application for planning consent for:

Planning Application: 16/2010N

Land off Oak Gardens, Bunbury

Outline application for proposed residential development for 15 dwellings with associated works.

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 and extinguish the sections 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. 14 Bunbury, and extinguish an unrecorded footpath between points H and D, as illustrated on Plan No TCPA/031 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 and extinguishing 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. 14 Bunbury and extinguish an unrecorded footpath as illustrated on Plan No. TCPA/031 to allow for the residential development as detailed within planning reference: 16/2010N.
- 3.3 It is considered that the legal tests for the making and confirming of a Diversion and Extinguishment Order under section 257 of the Town and Country Planning Act 1990 are satisfied.

4.0 Ward Affected

- 4.1 Bunbury

5.0 Local Ward Members

- 5.1 Councillor Michael Jones

6.0 Financial Implications

- 6.1 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 Crabtree Homes Ltd on behalf of Mr. and Mrs. Goodyer 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. 14 in the Parish of Bunbury; and also to extinguish an unrecorded footpath which runs between footpath no.14 and 15 in the Parish of Bunbury.
- 9.2 The section of Public Footpath No.14 Bunbury that would be affected by the proposed residential development is shown by a solid black line on Plan No. TCPA/031 running between points A-B-C. The section commences approximately 44 metres from its northern end off Bunbury Lane; at O.S. grid reference SJ 5630 5754 (point A on plan no. TCPA/031). It runs in a generally south westerly direction, for a distance of approximately 70 metres to O.S. grid reference SJ 5624 5750 (Point B on plan no. TCPA/031) then in a generally southerly direction for approximately 34 metres to the junction with Public Footpath No. 15 Bunbury at O.S. grid reference SJ 5624 5747 (Point C on plan no. TCPA/031). A total distance of approximately 104 metres of footpath no.14 Bunbury would be directly affected by the development.
- 9.3 The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-E-F-G-C. The proposed route of the diversion is from point A in a generally south westerly direction for approximately 16 metres to point E, then in a generally south south easterly direction along the eastern boundary of plot 1, it then crosses the access road to point F; it then turns in a south westerly direction and runs adjacent to the access road for a distance of approximately 50 metres to point G, it will then turn in a south south westerly direction adjacent to plot no.15 for approximately 27 metres to point C (on plan no. TCPA/031) where it will join the remainder of footpath no. 14 and footpath no.15 Bunbury. The proposed diversion will have a width of 2.5 metres. The proposed surface would need to be discussed with the developer.

- 9.4 In addition to the diversion there is also an application for the extinguishment of an unrecorded footpath. This path is shown in blue on Plan no. TCPA/031 between points H and D. This footpath is not currently shown on the Definitive Map; there is however a Definitive Map Modification Order Application registered with Cheshire East Council (application no. CN/7/25) for the addition of this route as a public footpath. The modification order application was made in August 2006 by Bunbury Parish Council and based on user evidence. The application has not yet been investigated; it is currently on a waiting list of outstanding applications. However as the claimed footpath cuts through a number of plots within the proposed development the applicants are applying to extinguish this footpath. The total length of footpath proposed to be extinguished between points H and D is approximately 164 metres. With the proposed diversion of footpath no.14 and the retention of the existing route of footpath no. 15 Bunbury, there will remain to be a suitable footpath link around the site.
- 9.5 The land over which the current routes run and over which the proposed route would run is currently owned by Mr and Mrs Goodyer who have consented to the diversion and extinguishment going ahead, on condition that the planning application is granted, at which time, it is intended that Crabtree Homes will acquire the land from Mr and Mrs Goodyer.
- 9.6 Planning permission for the residential development has yet to be granted to Crabtree Homes. The application is cited as Planning Application Ref: 16/2010N. The application is for outline permission for a residential development for 15 dwellings with associated works. It is considered that it is necessary to divert part of footpath no. 14 Bunbury and extinguish the unrecorded footpath to allow for the residential development as detailed within the planning application.
- 9.7 The local Councillor has been consulted about the proposal. No comments have been received.
- 9.8 Bunbury Parish Council has been consulted about the proposal and members have registered an objection on the basis that it will not be required if the development is refused. Officers have explained that current legislation allows for developers to apply for public path diversion/extinguishment Orders prior to the granting of planning permission. If planning permission is refused and the Order is not required then the Order would not be confirmed. If that was the case then their application to modify the Definitive Map would then remain on the waiting list to be determined. Any further comments received from Bunbury Parish Council will be reported verbally.
- 9.9 The statutory undertakers have also been consulted and have no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 9.10 The user groups have been consulted. No comments had been received at the time of writing.
- 9.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.

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

10.0 Access to Information

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

Officer: Jennifer Tench

Tel No: 01270 686 158

Email: jennifer.tench@cheshireeast.gov.uk

Background Documents: PROW file: 055D/055E/521

This page is intentionally left blank