

# Public Rights of Way Committee Agenda

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**Date:** Monday, 10th September, 2018  
**Time:** 2.00 pm  
**Venue:** Committee Suite 1,2 & 3, Westfields, Middlewich Road,  
Sandbach CW11 1HZ

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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.

It should be noted that Part 1 items of Cheshire East Council decision meetings are audio recorded and the recordings are uploaded to the Council's website.

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

1. **Apologies for Absence**

To receive any apologies for absence.

2. **Declarations of Interest**

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

3. **Minutes of Previous meeting** (Pages 5 - 18)

To approve the minutes of the meeting held on 11 June 2018.

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

In accordance with paragraph 9 of Appendix 7 of the Procedure Rules, members 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.

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For any apologies or requests for further information, or to give notice of a question to be asked by a member of the public

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Also in accordance with paragraph 2.32 of the Committee Procedural Rules and Appendix 7 of the Procedural Rules 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. 18 (part), Parish of Bunbury** (Pages 19 - 26)

To consider the application to divert part of Public Footpath No.18 in the parish of Bunbury.

6. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No. 4 (part), Parish of Peover Superior** (Pages 27 - 34)

To consider the application to divert part of Public Footpath No.4 in the parish of Peover Superior.

7. **Town and Country Planning Act 1990 Section 257: Proposed Diversion of Public Footpath No.12 (part) in the Parish Wardle** (Pages 35 - 42)

To consider the application to divert part of Public Footpath No.12 in the parish of Wardle.

8. **Town & Country Planning Act 1990 Section 333(7): Application for Variation of Town and Country Planning Act 1990 Section 257 Cheshire East Borough Council (unrecorded Footpath Church Lane, Parish of Wistaston) Public Path Diversion Order 2017** (Pages 43 - 54)

To consider the application to vary the Town and Country Planning Act 1990 Section 257 Cheshire East Borough Council (unrecorded Footpath Church Lane, Parish of Wistaston) Public Path Diversion Order 2017.

9. **Town and Country Planning Act 1990 Section 257: Proposed Diversion of Public Footpath No.2 (part) in the Parish Wistaston** (Pages 55 - 60)

To consider the application to diver part of Public Footpath No.2 in the parish of Wistaston.

10. **Town & Country Planning Act 1990 Section 333(7): Application for Variation of Town and Country Planning Act 1990 Section 257 Cheshire East Borough Council (Restricted Byway No.1 (pt), Parish of Eaton) Public Path Diversion Order 2017** (Pages 61 - 72)

To consider the application to vary the Town and Country Planning Act 1990 Section 257 Cheshire East Borough Council (Restricted Byway No.1 (part) parish of Eaton) Public Path Diversion Order 2017.

11. **Public Rights of Way Proposed Fees and Charges 2019-20** (Pages 73 - 76)

To note the proposed Public Rights of Way fees and charges for 2019-20.

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**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Public Rights of Way Committee**  
held on Monday, 11th June, 2018 at Committee Suite 1,2 & 3, Westfields,  
Middlewich Road, Sandbach CW11 1HZ

**PRESENT**

Councillor S Pochin (Chairman)

Councillors Rhoda Bailey, S Davies, L Gilbert, L Jeuda (substitute for Cllr D Flude), A Stott (substitute for Cllr T Fox) and J Wray

**Councillor in attendance**

Councillor G Williams, Deputy Portfolio Holder for Environment

**Officers**

Genni Butler, Acting Public Rights of Way Manager

Sarah Fraser, Public Path Orders Officer

Andrew Poynton, Planning and Highways Lawyer

Rachel Graves, Democratic Services Officer

**1 APOLOGIES FOR ABSENCE**

Apologies were received from Councillors D Flude and T Fox.

**2 DECLARATIONS OF INTEREST**

In the interests of openness, Councillor S Pochin declared that she knew the applicant of Item 6 – Application for the Diversion of Public Footpath No.8 (part) in the parish of Brindley and that she had not discussed the application with them.

**3 MINUTES OF PREVIOUS MEETING****RESOLVED:**

That the minutes of the meeting held on 12 March 2018 be confirmed as a correct record and signed by the Chairman.

**4 PUBLIC SPEAKING TIME/OPEN SESSION**

Mr Mark Hope of Friends of Heritage Green spoke in relation to the village green application considered at the last meeting and that the late objection by Rochdale Borough Council had been made by telephone and had not been submitted in writing. He had contacted the previous Chairman of this Committee seeking for the application to be called back to the Committee for reconsideration and was disappointed that it was not on the agenda today.

In response it was reported that Rochdale Council had informed Cheshire East Council that they were recalling their delegation of this application and therefore Cheshire East Council could no longer deal with the matter.

**5 WILDLIFE & COUNTRYSIDE ACT 1981- PART III, SECTION 53 APPLICATION NO. MA/5/232 & 233: APPLICATIONS FOR THE UPGRADE OF FOOTPATH NO.13, SIDDINGTON TO BRIDLEWAY AND UPGRADE OF FOOTPATH NO. 8(PT) SIDDINGTON TO BRIDLEWAY.**

The Committee considered a report which detailed an application to upgrade Public Footpath No.13 Siddington to Bridleway and upgrade part of Public Footpath No.8 Siddington to Bridleway.

Section 53(2)(b) of the Wildlife and Countryside Act 1981 required that the Council keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appears requisite in consequence of the occurrence of certain events.

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.

Where the evidence in support of the application was user evidence, section 31(1) of the Highways Act 1980 applied, which states:

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

The twenty year period was calculated retrospectively from the date when the right of the public to use the way was brought into question.

The application had been submitted in April 2005 by Pat Amies on behalf of Border Bridleways Association to amend the Definitive Map and Statement by upgrading part of Public Footpath No.8 and Public Footpath No. 13 in the parish of Siddington to bridleways. The applications were based on user and documentary evidence. As the two routes claimed were largely used in conjunction with one another via the interconnecting Restricted Byway No.12, the applications were considered together.

Investigation of the application for the upgrade of Public Footpath No.13 Siddington had revealed that the whole of the route was now recorded as an unclassified road. The section of Woodside Close that was of uncertain status had been the subject of a Highways Dedication agreement in 2005 between Macclesfield Borough Council, the landowner and Cheshire County Council. This added a section of highway between the already adopted part of Woodside Close and the part of Nursery Lane (Public Footpath No.13) which had been left as a cul de sac following the stopping up at Magistrates Court of part of the lane in 2003 due to the construction some time previously of a row of terraced bungalows on the line of the route.

The use of Footpath No. 8 (part) as a bridleway had been brought into question when the Captesthorne Estate deposited a Section 31(6) Statement and Map declaring that they had no intention to dedicate any additional rights except those shown on the map attached to the statement. This was made in 2008 and therefore the relevant twenty year period to be considered for user evidence was 1988 to 2008.

An investigation of the nine user evidence forms that had submitted had been undertaken, together with additional research on historical evidence of the route submitted.

The five copies of the County Maps submitted all showed Nursery Lane as a cross road but did not show Footpath No.8. The current status of Nursery Lane as an unclassified road was in keeping with these Maps. The Ordnance Survey Maps of 1870-71, 1897 and 1909 all showed Public Footpath No.8 as a track commencing from Restricted Byway No.12 and linking to Congleton Lane. The Ordnance Survey revised New Series 1897 showed a double dotted track which indicated an unfenced, unmetalled road. It was similarly depicted on Bartholomew's Maps of 1902-06 and 1919-1924.

The original survey report for Siddington, which was used for the completion of the Definitive Map, showed the route as a footpath with a description of Cart Road for the first 85 yards. This corresponded with the length of the path up to its junction with Restricted Byway No.12.

The investigation of the user evidence submitted had showed that the claimed part of Public Footpath No.8 as a bridleway had been used for over a period of 30 years up to 2008 and that use had continued to the

present day. None of the riders had been stopped or challenged whilst using the route nor had they seen any signs or notices to indicate that they should not ride there. All the witnesses interviewed commented that without the use of this part of Public Footpath No.8, the Restricted Byway would be redundant for use other than by pedestrians.

The tenant for Blake House Farm had objected to the proposal to upgrade the section of Public Footpath No.8 as they were concerned over Health and Safety implications of the narrow driveway being shared by horses, cars and farm machinery and that it would increase the risk of accidents occurring. A response had been sent stating the legal basis on which the application is decided and that no other factors such as suitability and safety could be taken into consideration.

The report concluded that on the balance of probabilities evidence supported the allegation that a bridleway subsists along the section of Public Footpath No.8 claimed and it was considered that the requirements of Section 53(3)(c)(ii) had been met.

The Committee considered the user and historical evidence submitted and the Definitive Map Officer's conclusion and considered that there was sufficient evidence to support the existence of public bridleway rights on the route A-B of Public Footpath No.8 Siddington, as shown on Plan No.WCA/014. The Committee considered that, on the balance of probabilities, the requirements of Section 53(3)(c)(i) had been met and that the Definitive Map and Statement should be modified to add the claimed route as a Public Bridleway.

The Committee considered that, as the status of Nursery Lane which ran along the same alignment of Public Footpath No.13 Siddington and its connection to Woodside Close had now been verified as highways and that bridleway rights were in effect already recognised, the application to upgrade the path should be refused.

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 to bridleway, that part of Footpath No.8 in the parish of Siddington as shown between points A-B on Plan No.WCA/014 (Application No.MA/5/233).
- 2 Public Notice of the making of the Order be given and, in the event of there being objections within the specified period or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Act.



- 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,
  - 4 That the application to upgrade Public Footpath No.13 Siddington (Application No. MA/5/232) be refused on the grounds that there is an unclassified county road along the length of the claimed route, as shown between points A-B-C-D on Plan No.WCA/014(2).
- 6 **HIGHWAYS ACT 1980 SECTION 119 APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 8 (PART), PARISH OF BRINDLEY**

The Committee considered a report which detailed an application requesting the Council to make an Order to divert part of Public Footpath No.8 in the parish of Brindley.

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 section of Public Footpath No.6 Brindley to be diverted and the proposed diversion belonged to the applicant. Part of the path to be diverted was currently obstructed by a large building and the public currently followed a permissive route around the building and a pond.

The proposed diversion between Points C-D-B on Plan No.HA/130, would commence at a new junction with Public Footpath No.11 Brindley and continue in a south westerly direction alongside a field boundary and would then turn south easterly to re-join the current definitive line at Point B. The proposal would be in the interest of the applicant due to reasons of privacy and security. By diverting the footpath it would remove it from a farm area and also resolve the issue of the farm building obstructing the definitive line.

The Committee noted that no objections had been received during the informal consultations. The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath from the applicant's farmyard, would improve their privacy and security. 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 Public Footpath No.8 in the parish of Brindley by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/130, on the grounds that it is expedient in the interests of the landowners.
  - 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.
- 7 HIGHWAYS ACT 1980 SECTION 119 APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 32 (PART), PARISH OF NETHER ALDERLEY**

The Committee considered a report which detailed an application requesting the Council to make an Order to divert part of Public Footpath No.32 in the parish of Nether Alderley.

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 diversion ran jointly belonged to a group of landowners. The land had been jointly purchased and written permission had been provided by each landowner. The current line of the section of footpath to be diverted ran through the boundaries of a number of paddocks. There was one pedestrian gate to pass through with the rest of the paddocks having gaps in their boundaries to keep the definitive line clear.

The proposed diversion would follow a current permissive route between Points A-C-B as shown on Plan No.HA/131. The proposed path would commence at Point A and continue to cross the field to a kissing gate (Point C), already installed by the applicant, on the paddock boundary. It would then follow an enclosed section to Point B. The proposal was in the interests of the applicants due to reasons of privacy, security and better land and livestock management.

The Committee noted the comments received from Nether Alderley Parish Council, East Cheshire Ramblers in relation to the ongoing maintenance of

the new path and also the issues raised by the local residents and the responses sent by the Public Rights of Way Officers.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would move the footpath out of the paddocks, improving their privacy and security. 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 Public Footpath No.32 in the parish of Nether Alderley by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/131 on the grounds that it is expedient in the interests of the landowners.
  - 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.
- 8 **HIGHWAYS ACT 1980 SECTION 119 APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 5 (PART), PARISH OF BOSLEY**

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

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 section of Public Footpath No.5 Bosley to be diverted and the proposed diversion ran belonged to the applicant. Stiles Meadow Farm had been a large commercial farm and had subsequently been sold as individual smallholding properties. The section to be diverted commenced next to an outbuilding and ran along a tarmacked private driveway and passed directly in front of a residential property. There had been issues with privacy and security at Stiles Meadow Farm mainly due

to the remote location and lack of secure gates. Livestock was also kept at the applicant's property and these were at risk when being moved due to the fact that a lockable gate could not be put across the driveway.

The proposed diversion would be to the east of the present path – between Points A-C-B on Plan No.HA/129. It would have a minimum width of 2 metres and the area would be cleared of the trees and shrubbery that were currently in place. The path would be surfaced with material that was of equal quality to the tarmacked drive. The proposed diversion would run alongside a farm building where there was currently a large drop on the northern side and to ensure safety of walkers this section would be enclosed with a post and rail fence.

The Committee noted that no objections had been received during the informal consultations and noted the comments reported at the meeting from East Cheshire Ramblers and the response from the Public Rights of Way Officer. The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would be of benefit to the applicant as it would remove the path from their driveway and improve their privacy and security. 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 Public Footpath No.5 in the parish of Bosley by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/129, on the grounds that it is expedient in the interests of the landowners.
  - 2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
  - 3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.
- 9 **HIGHWAYS ACT 1980 SECTION 119 APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 12 (PART), PARISH OF ADLINGTON**

The Committee considered a report which detailed an application from Mr and Mrs Wildblood of Lower Pedley Hill Farm, Aldlington requesting the

Council to make an Order to divert part of Public Footpath No.12 in the parish of Adlington.

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 legal definitive line of Public Footpath No.12 Adlington had been partially obstructed and offline for decades. When the current owners purchased the property they had opened up the definitive line and requested to be placed on the diversions application waiting list. The section of footpath to be diverted ran in very close proximity to the applicant's home. In addition, it was at an elevated level close to two bedroom windows, facilitating a clear view directly into the house. There was a stile and seven steps for users to negotiate up a short steep slope with a gradient of 1:3. The path ran beneath a low established tree and bush canopy which afforded little natural day light for walkers.

The proposed diversion would follow the field boundary directly to the east of the property and re-join the existing line of the footpath at the northern end of the field. Written permission had been obtained from the adjacent landowner. The footpath would leave Pedley Hill 20 metres to the east of the current route at a slightly wider section of the road, which would provide improved visibility for walkers, drivers and horse riders using the road. A kissing gate would be installed as the path left Pedley Hill, with one step between the road and gate. There was then a short slope with a gradient of 1:4, which would provide a slightly easier walking route. The proposal was in the interests of the applicant as it would improve their privacy and security of their property.

The Committee noted that no objections had been received during the informal consultation. The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would be of the benefit to the applicant as it would move the footpath away from the applicant's home, improving privacy and security and also provide a safer and more accessible exit onto Pedley Hill for walkers. It was considered that the proposed route would be a satisfactory alternative to the current one that the legal tests for the making and confirming of a Diversion Order were satisfied.

The Committee unanimously

**RESOLVED:** That

- 1 an Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No.12 in the parish of Adlington by creating a new section of public footpath and extinguishing the current path, as

illustrated on Plan No.HA/125, on the grounds that it is expedient in the interests of the landowners.

- 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.

**10 HIGHWAYS ACT 1980 SECTION 119 APPLICATION FOR THE PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.16 (PART) IN THE PARISH OF WILMSLOW**

The Committee considered a report which detailed an application by the National Trust requesting the Council to make an Order to divert part of Public Footpath No.16 in the parish of Wilmslow.

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 section of path to be diverted and the proposed diversion ran both belonged to the applicant. The section of path to be diverted took walkers from the junction between Restricted Byways Nos. 18 and 22, Point A as shown on Plan No.HA/128, up a slight embankment, through a narrow gap between an oak tree and stone wall and across the corner of an agricultural field to the gate at Point B.

The proposed diversion would move the path out of the field and to the east of the current alignment onto a permissive path, which ran parallel to the agricultural field boundary and reconnected with the definitive line of the path at Point B. The permissive path was already in use by members of the public and was 2.5 metres wide with a hard, level well drained surface throughout. The diversion would be in the interests of the landowner as it would divert walkers out of the agricultural field and improve land management.

The Committee noted that not objections had been received during the informal consultations and noted the comments from the Peak and Northern Footpaths Society stating that this was a retrospective application, which satisfied all the requirements with the only qualification being that it no longer visibly linked to Footpath No.21. The Committee considered that the proposed diversion would not be substantially less convenient than the existing route. Diverting the footpath would improve the landowners' agricultural and land management responsibilities. 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 Public Footpath No.16 in the parish of Wilmslow by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/128, on the grounds that it is expedient in the interests of the owners of the land crossed by the right of way.
- 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 being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

**11 HIGHWAYS ACT 1980 SECTION 119 APPLICATION FOR THE PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.12 (PART) IN THE PARISH OF BUNBURY**

The Committee considered a report which detailed an application requesting the Council to make an Order to divert part of Public Footpath No. 12 in the parish of Bunbury.

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 section of the current path to be diverted and the proposed diversion ran belonged to the applicant. It was proposed that approximately 48 metres of public footpath than ran through the middle of the applicant's garden be diverted closer to the property's boundary – as shown on Plan No.HA/127. The path was to be separated from the garden area by a planted hedge. The path would have a recorded width of 2.5 metres and would run through an open area of approximately 15.5 metres and its widest point and 4.5 metres at its narrowest point.

The diversion would be in the interests of the landowner as it would divert walkers way from the middle of the garden and the improve privacy and security of the property.

Responses to the informal consultation had been received from the Open Spaces Society on the height of the proposed hedge and the Mid Cheshire Footpath Society had opposed the diversion on the grounds that it was longer, more confusing and added nothing to the walk or for the householder. Bunbury Parish Council had objected to the diversion on the basis that it was not in the garden, that the land had never been a garden and that it was a field and had always been a field. The applicant had confirmed that the land was formally classified as a garden/amenity land and not a field in a planning decision notice under section 191 TCPA.

The Committee noted the responses to the informal consultation and the Public Rights of Way Officers responses. The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would preserve the landowner's privacy and security. 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 public footpath No.12 in the parish of Bunbury by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan Number HA/127, on the grounds that it is expedient in the interests of the owners of the land crossed by the right of way.
- 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 being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

*Prior to consideration of the remaining items, the meeting adjourned for 5 minutes.*

## 12 **PUBLIC RIGHTS OF WAY ANNUAL REPORT 2017-18 AND WORK PROGRAMME 2018-19**

The Committee considered a report which detailed the achievements of the Public Rights of Way team during 2017-18 and set out the proposed work programme for 2018-19.



The Acting Public Rights of Way Manager reported on the work carried out during 2017-18 by the Network Management and Enforcement Officer, Technical Administration Officer, Countryside Access Development Officer and the Legal Orders Officers. Specific performance was detailed in the Appendices to the report.

The budget for Public Rights of Way had remained as set throughout the year which had allowed the team to plan spending more efficiently.

The addition of the two fixed term appointments to the Rights of Way Team had helped to reduce the Public Path Order waiting list. Measures were being considered to make the process for Public Path Orders and Definitive Map Modification Orders more efficient in an effort to reduce the back log.

The Deputy Portfolio Member for Environment, on behalf of the Portfolio Holder – Councillor D Stockton, thanked the Public Rights of Way Team for their work and contribution to Cheshire East Council and stated that the Portfolio Holder recognised the challenges faced by the Team.

**RESOLVED:**

That the Annual Report for 2017-18 be noted and the proposed Work Programme for the Public Rights of Way Team for 2018-19 be approved.

**13 CHANGES TO PROCESSES ASSOCIATED WITH DIVERSION ORDERS AND DEFINITIVE MAP MODIFICATION ORDER APPLICATIONS**

The Committee considered a report which detailed proposals to change the way some applications for Diversion Orders and Definitive Map Modification Orders were processed and determined.

It was proposed that the previous pilot scheme to allow applicants for Public Path Orders under the Highways Act 1980 and Town and Country Planning Act 1990 to instruct agents to act on their behalf to process their applications would continue. The Public Rights of Way Team would exercise discretion in all cases as to whether or not to accept an applicant's request to use an independent agent.

A system using external consultants to investigate Definitive Map Modification Orders applications was to be introduced to reduce the backlog and deal with cases set against tight timescales. If an applicant's case had not been determined within 12 months of registration they could appeal to the Secretary of State for a direction, requiring their case to be investigated and determined to a given timescale. Due to staffing pressures it was difficult to meet the timescales imposed by the Secretary of State directions and investigate cases on the existing backlog.

Currently Public Path Order cases were presented to the quarterly Rights of Way Committee for determination. This could have a knock on effect on the speed at which they could be processed, Orders made, advertised and confirmed and costs recovered by creating a log jam of cases awaiting determination. It was proposed that a report be taken to the Constitution Committee seeking an amendment to the scheme of delegation so that that any Public Path Order applications that were not contested or contentious at the pre-Order consultation stage be delegated for determination to the Public Rights of Way Manager in consultation with the Chairman and Vice Chairman of the Public Rights of Way Committee.

**RESOLVED:** That

- 1 the report be noted, and
- 2 the Constitution Committee be recommended to amend the scheme of delegation to allow the Public Rights of Way Manager to determine, in consultation with the Chairman and Vice Chairman of the Public Rights of Way Committee, any Public Path Order applications that are not contested or contentious at the pre-Order consultation stage.

The meeting commenced at 2.00 pm and concluded at 4.03 pm

Councillor S Pochin (Chairman)



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## **Public Rights of Way Committee**

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**Date of Meeting:** 10 September 2018

**Report Title:** Highways Act 1980 s119 Application for the Diversion of Public Footpath No. 18 (part), Parish of Bunbury

**Senior Officer:** Frank Jordan, Executive Director Place

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### **1. Report Summary**

- 1.1. The report outlines the investigation to divert part of Public Footpath No. 18 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 order to be made. The proposal has been put forward by the Public Rights of Way team in the interests of the landowners. 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.
- 1.2. The proposal contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

### **2. Recommendation/s**

- 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. 18 in the Parish of Bunbury by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/132 on the grounds that it is expedient in the interests of the landowners.
- 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. Reasons for Recommendation/s**

- 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 5.8 below.

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

- Whether the proposed new path and its exit point 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 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. Diverting the footpath would remove the footpath from field, improving their land management. 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.

- 3.5 The proposal contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

#### **4. Other Options Considered**

- 4.1. Not applicable – this is a non-executive matter.

#### **5. Background**

- 5.1. An application has been received from John and Helen Langley of Oaklands in Bunbury requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 18 in the Parish of Bunbury.
- 5.2. Public Footpath No. 18 Bunbury commences at the Bunbury/Spurstow Parish boundary at O.S grid reference SJ 5673 5719 and runs in a generally north westerly direction for approximately 175 metres to its junction with Public Footpath No. 17 Bunbury at O.S. grid reference SJ 5660 5731. The entire length of Public Footpath No. 18 Bunbury will be diverted and is shown by a solid black line on Plan No. HA/132 between points A – B. The proposed diversion is illustrated on the same plan with a black dashed line between points A-C.
- 5.3. The land over which the length of Public Footpath No. 18 Bunbury to be diverted and the proposed diversion belongs wholly to the applicant.
- 5.4. The length of Public Footpath No. 18 Bunbury to be diverted commences at Point A, on Plan No. HA/132, at O.S. grid reference SJ 5673 5719 and passes through a kissing gate where it then crosses a field to reach another kissing gate on a field boundary. During the winter this section of the path can get very muddy. Public Footpath No. 18 Bunbury then continues across a second field to Point B, on Plan No. HA/132, at O.S. grid reference SJ 5660 5731 where it crosses a stile to its junction with Public Footpath No. 17 Bunbury.
- 5.5. The proposed diversion will run between points A-C (on Plan No. HA/132). It will commence at point A (on Plan No. HA/132) at O.S. grid reference SJ 5673 5718 and run in a generally northerly direction to point C (on Plan No. HA/132) at O.S. grid reference SJ 5673 5735. The total distance of the proposed diversion is approximately 171 metres. The proposed diversion will create a length of new footpath in the Parish of Spurstow of approximately 10 metres.
- 5.6. The proposed diversion will have a minimum width of 3 metres and will be enclosed along its length with a fence. There are a number of large trees that will be within the enclosed area that will create narrower points but the footpath will maintain a minimum width of 2.5 metres at these points. The footpath will run along a field edge which is of equivalent surface to the current route. The applicants have agreed to maintain the surface.. There

will be two kissing gates installed at either end of the proposed diversion as shown on Plan No. HA/132.

- 5.7. The proposal is in the interest of the applicant due to reasons of security for the fields and for better livestock and land management. The landowners keep beef cattle on their land and have encountered issues in the past with cattle contracting neosporosis which is passed to cattle in dog faeces, this led to females aborting their calves. The proposed diversion will enable users to be kept separate from any livestock, including cows, calves and bulls as the route is enclosed from the agricultural land.
- 5.8. If users walk from Public Footpath No. 16 or 17 Bunbury from the west and then wish to proceed in a southerly direction via Public Footpath No. 18, the proposed diversion does make the route longer by 115 metres, but users would have the benefit of not having to walk through a field with livestock. If walking from the east, users would have the option to continue along Public Footpath No. 19 Bunbury which runs through a field that may contain livestock or choose to walk the proposed diversion which keeps users separate from any livestock in the field.
- 5.9. The proposed diversion will also move the current definitive line away from the silage store and the feeder for the livestock. This area is well used by livestock and can be susceptible to muddy conditions in the winter. The new proposed route will not be accessible to the livestock.

## **6. Implications of the Recommendations**

### **6.1. Legal Implications**

- 6.1.1. 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.

### **6.2. Finance Implications**

- 6.2.1. If objections to the Order lead to a subsequent hearing/inquiry, this legal process would have financial implications for the Council.

### **6.3. Policy Implications**

- 6.3.1. There are no direct policy implications

### **6.4. Equality Implications**

6.4.1. 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 one.

**6.5. Human Resources Implications**

6.5.1. There are no direct implications for human resources.

**6.6. Risk Management Implications**

6.6.1. There are no direct implications for risk management.

**6.7. Rural Communities Implications**

6.7.1. There are no direct implications for rural communities.

**6.8. Implications for Children & Young People**

6.8.1. There are no direct implications for children and young people.

**6.9. Public Health Implications**

6.9.1. There are no direct implications for public health.

**7. Ward Members Affected**

7.1. Bunbury Ward: Councillor Chris Green was consulted and no comments were received.

**8. Consultation & Engagement**

8.1. Bunbury Parish Council, the user groups, statutory undertakers and the Council's Nature Conservation Officer have been consulted. No comments were received.

8.2. Spurstow Parish Council was consulted and provided the following comments:

*The Councillors would like to make an objection to any such change. Their reasoning for their objection is twofold, firstly they feel strongly that public footpaths have a heritage value and should not be causally set aside or moved to suit the owner, and secondly they feel that there is not a strong case for the proposed and the proposed change would make the journey longer for those using the footpath.*

A response was sent to Spurstow Parish Council explaining the process of diverting a footpath under Section 119 of the Highways Act 1980, along with further information explaining the reasons for the application. Whilst

the walking route from the northwest to the south of the area would be slightly longer following the proposal, the footpath is used for leisure purposes as opposed to utility journeys, and the proposal would offer a benefit to users through the provision of a footpath segregated from any livestock in the fields.

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

## **9. Access to Information**

- 9.1. The background papers of file No. 055D/564 relating to this report can be inspected by contacting the report writer.

## **10. Contact Information**

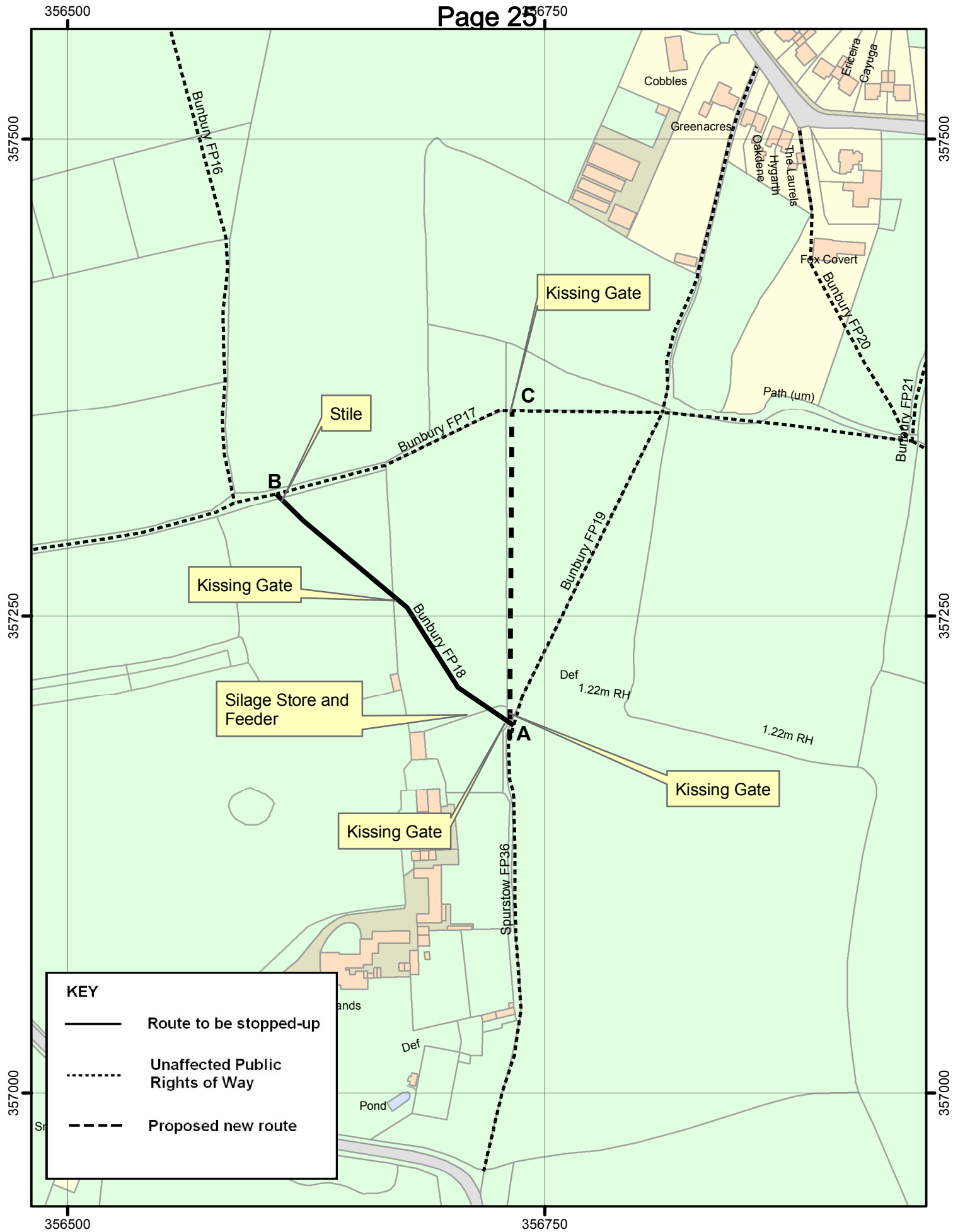
- 10.1. Any questions relating to this report should be directed to the following officer:

Name: Laura Brown

Job Title: Public Path Orders Officer

Email: [laura.brown@cheshireeast.gov.uk](mailto:laura.brown@cheshireeast.gov.uk)





KEY

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



1:2,500

Highways Act 1980 s119  
Proposed Diversion of Bunbury FP18

Plan No. HA/132

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



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## **Public Rights of Way Committee**

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**Date of Meeting:** 10 September 2018

**Report Title:** Town and Country Planning Act 1990 s257 Application for the Diversion of Public Footpath No. 4 (part), Parish of Peover Superior

**Senior Officer:** Frank Jordan, Executive Director Place

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### **1. Report Summary**

- 1.1. The report outlines the investigation to divert part of Public Footpath No. 4 in the Parish of Peover Superior. 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 team as a response to a planning application. The diversion application has been submitted by Mr B Kettle (agent) of Wharfe Rural Planning on behalf of Mr D Cox (applicant) of Paradise House, Holmes Chapel Road, Over Peover, to apply for permission to construct an agricultural barn (Planning reference: 16/2659M).
- 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 divert the section of footpath concerned.
- 1.3. A diversion of part of the above footpath has been requested since the current path alignment has been obstructed by the development of an agricultural barn that has not been built in the location granted within the planning permission. Consequently the Council's Planning Enforcement team stopped the applicant from further developing the barn until the applicant sought to divert the footpath or to relocate the partly built barn which is not substantially complete.
- 1.4. The proposal contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer", and the

policies and objectives of the Council's statutory Rights of Way Improvement Plan.

## **2. 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. 4 in the Parish of Peover Superior, as illustrated on Plan No TCPA/050 on the grounds that the Council is satisfied that it is necessary to do so to allow development to take place.
- 2.2. Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
- 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. Reasons for Recommendation/s**

- 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

- 3.2 Thus the Council, as the Local 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. It can also take this action in response to a non-compliance with a planning permission that results in a development being incorrectly positioned such that its footprint then lies on a footpath, providing that the development is not substantially complete.
- 3.3 In this case, the permission as granted positioned the agricultural barn on a footprint that would not affect Public Footpath No. 4 in the Parish of Peover Superior. However, the barn has been partially constructed in a position where it does affect this footpath such that on completion, the barn would obstruct the footpath. In response, the Council, as the Local Planning

Authority, took enforcement action to prevent any further construction of the barn until either the barn was moved to the correct location or until the footpath was diverted. The decision was taken by the applicant to divert the footpath.

- 3.4 It is considered necessary, to divert part of Public Footpath No. 4 in the Parish of Peover Superior as illustrated on Plan No. TCPA/050 to enable the construction of an agricultural barn to be completed as detailed within planning reference: 16/2659M but in its as-built location.
- 3.5 The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

#### **4. Other Options Considered**

- 4.1. Not applicable – this is a non-executive matter.

#### **5. Background**

- 5.1. An application has been received from Mr B Kettle (agent) of Wharfe Rural Planning on behalf of Mr D Cox (applicant) of Paradise House, Holmes Chapel Road, Over Peover, requesting that the Council make an Order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 4 in the Parish of Peover Superior.
- 5.2. Public Footpath No. 4 Peover Superior commences at its junction with Holmes Chapel Road (A50/DB/10) at O.S. grid reference SJ 7592 7310 and runs in a generally north westerly direction to the yard of Paradise House through which it passes to exit into pastureland across which it continues in a generally west, south westerly and then westerly directions to terminate at its junction with Free Green Lane at O.S. grid reference SJ 7558 7317. In total, the footpath covers a distance of approximately 387 metres.
- 5.3. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/050 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points A-D-C. The lengths of these path sections differ by approximately 3 metres.
- 5.4. The land over which both the section of path to be diverted and the diversion route run are owned by the applicant.
- 5.5. Planning permission for the construction of the agricultural barn was granted to Mr D Cox on 28<sup>th</sup> June 2016. The application is cited as Planning

Permission Ref: 16/2659M. The details of the application are for the construction of an agricultural barn.

- 5.6. The existing alignment of Public Footpath No. 4 Peover Superior would be obstructed by the agricultural barn should it be completed since the barn has been placed incorrectly such that its footprint is on the footpath (see section 3.1). A diversion is required to preserve the right of way for the public between Holmes Chapel Road and Free Green Lane.
- 5.7. Referring again to Plan No. TCPA/050, the part of Peover Superior FP4 proposed for diversion passes through the yard of the applicant's property, across the footprint of the partly built barn, in a generally west, north westerly direction (points A-B) and then exits into a pasture field to then follow a generally west, south westerly direction to terminate within the field (point C).
- 5.8. The proposed diversion route would move the footpath such that it runs to the south of the barn. The new route would start at point A and run in a generally west, north westerly direction to exit the yard of the applicant's property (point D) into the pasture field where it would then follow a generally westerly direction to terminate on rejoining the current route in the pasture field (point C).
- 5.9. The new route would be 2 metres wide throughout and have a surface consisting in part a semi-surfaced track, and part grass.

## **6. Implications of the Recommendations**

### **6.1. Legal Implications**

- 6.1.1 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.

### **6.2. Finance Implications**

- 6.2.1 If objections to the Order lead to a subsequent hearing/inquiry, this legal process would have financial implications for the Council.

### **6.3. Policy Implications**

- 6.3.1 There are no direct policy implications.

**6.4. Equality Implications**

6.4.1 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 one.

**6.5. Human Resources Implications**

6.5.1 There are no direct implications for human resources.

**6.6. Risk Management Implications**

6.6.1 There are no direct implications for risk management.

**6.7. Rural Communities Implications**

6.7.1 There are no direct implications for rural communities.

**6.8. Implications for Children & Young People**

6.8.1 There are no direct implications for children and young people.

**6.9. Public Health Implications**

6.9.1 There are no direct implications for public health.

**7. Ward Members Affected**

7.1 Chelford Ward: Councillor George Walton has been consulted and responded to register support for the response from Peover Superior Parish Council.

**8. Consultation & Engagement**

8.1. Consultation is currently ongoing to consider the proposal against the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990. The consultation is due to be completed on Friday 7<sup>th</sup> September 2018. A verbal update will be presented to the Committee.

8.2. Peover Superior Parish Council has been consulted and, at the time of writing, no comments have been received directly.

8.3. The user groups have been consulted and, at the time of writing, no objections have been registered. The Peak and Northern Footpath Society registered support for the proposal and the North and Mid Cheshire Ramblers requested that adequate signage be installed.

- 8.4. The North Cheshire Riders Group proposed that the footpath be upgraded to a bridleway to enable riders to more safely access Public Bridleway No. 9 in the Parish of Peover Superior. Currently, from Free Green Lane, riders must use the A50 to connect to this bridleway. The Council responded that this upgrade could not be considered as part of this diversion application as it is outside the scope of the diversion process. However, even if it were possible to do so, this could not be achieved unless all landowners over whose land the footpath crossed, were in agreement.
- 8.5. The statutory undertakers have been consulted and, at the time of writing, 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
- 8.6. The Council's Nature Conservation Officer has been consulted, at the time of writing no comments have been received.

## **9. Access to Information**

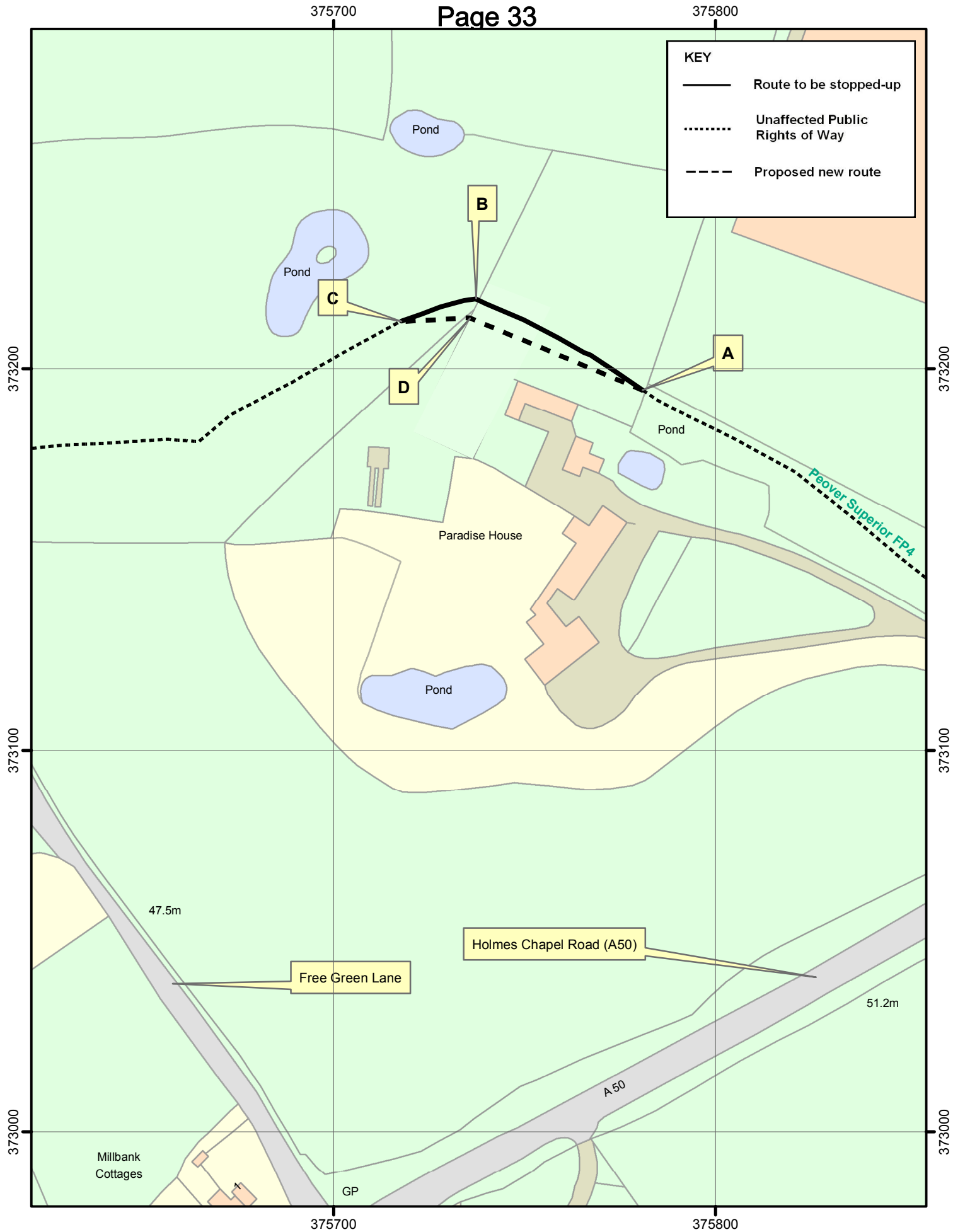
- 9.1. The background papers of file No. 239D/566 relating to this report can be inspected by contacting the report writer.

## **10. Contact Information**

- 10.1. Any questions relating to this report should be directed to the following officer:

Name: Marianne Nixon  
Job Title: Public Path Orders Officer  
Email: [marianne.nixon@cheshireeast.gov.uk](mailto:marianne.nixon@cheshireeast.gov.uk)





1:1,250

Town and Country Planning Act 1990 s257  
Proposed diversion of Footpath 4 (part) Parish of Peover Superior

Plan No.  
TCPA/050



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## **Public Rights of Way Committee**

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**Date of Meeting:** 10 September 2018

**Report Title:** Town and Country Planning Act 1990 Section 257 Proposed Diversion of Public Footpath No.12 (part) in the Parish Wardle

**Senior Officer:** Frank Jordan, Executive Director Place

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### **1. Report Summary**

- 1.1. The report outlines the investigation to divert Public Footpath No. 12 (part) in the Parish of Wardle. This includes a discussion of the consultations carried out in respect of the proposal and the legal tests to be considered for the diversion Order to be made. The proposal has been put forward by the Rights of Way Team as an application has been submitted by Mr Philip Posnett of Haughton Hall, Tarporley, in response to the following reserved matters application being granted:-

Planning Application: 18/2028N - *The approval of reserved matters seeking approval for a new spine road and other associated infrastructure works.*

The outline permission granted for the site is 13/2035N - *Outline Planning Application Including Means of Access for Employment Development Comprising Light Industry, General Industrial and Storage and Distribution Uses (B1(C)/B2/B8 Use Classes) on Land at the Former Wardle Airfield, Cheshire.*

- 1.2 The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not a diversion Order should be made for that section of footpath.
- 1.3 The proposal contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

## **2. Recommendation**

- 2.1. A Public Path Diversion Order be made under Section 257 of the Town and Country Planning Act 1990 on grounds that Cheshire East 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 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 Act.
- 2.3. In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

## **3. Reasons for Recommendation**

- 3.1. In accordance with Section 257 of the Town and Country Planning Act 1990 (“TCPA”) 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.”

- 3.2. The Council, as the Local 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, providing that the application has been formally registered with the Council.
- 3.3. The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

## **4. Other Options Considered**

- 4.1. Not applicable – this is a non-executive matter.

## 5. Background

- 5.1. An application has been received from Mr Philip Posnett requesting that the Council make an Order under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No 12 in the Parish of Wardle.
- 5.2. Public Footpath No. 12 Wardle commences at its junction with Public Footpath No. 1 Wardle at O.S. Grid Reference SJ 6023 5770 and runs in a generally south westerly direction for approximately 261 metres to O.S. grid reference SJ 6009 5749. It then continues in a west south westerly direction for approximately 1,186 metres to the parish boundary of Haughton at O.S. grid reference SJ 5905 5694. The section of path to be diverted is shown by a bold solid black line on Plan No. TCPA/051 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points A-D-C.
- 5.3. The existing alignment of the footpath will be directly affected by the development and infrastructure within the planning consent, resulting in the partial obstruction of the footpath by a new substation and spine road. Therefore the diversion is required to preserve the public right of way.
- 5.4. The length of Public Footpath No. 12 Wardle to be diverted commences at its junction with Public Footpath No. 1 Wardle (Point A on Plan No. TCPA/051) at O.S. grid reference SJ 6023 5770 and continues in a south westerly direction for approximately 261 metres to Point B (on Plan No. TCPA/051). It then continues in a west south westerly direction for approximately 98 metres to point C (on Plan No. TCPA/051) at O.S. grid reference SJ 5999 5746. The current route runs along a field boundary and along a dirt track.
- 5.5. The proposed diversion would commence at point A (on Plan No. TCPA/051) and run in a south westerly direction for approximately 279 metres to point D (on Plan No. TCPA/051) at O.S. grid reference SJ 6007 5748. This section will run along a new stone surfaced maintenance track that will be used for access to a new foul pumping station and will be 4 metres in width. The only traffic that will have access to this track will be to service the pumping station.
- 5.6. The proposed diversion would then continue in a west south westerly direction from point D to point C (on Plan No. TCPA/051) at O.S. grid reference SJ 5999 5746. This section will be a sealed surfaced footpath of a width of 3 metres and will run around the boundary of the adjoining land before continuing in a west south westerly direction at a distance of 7

metres from the road edge. This road will remain private and will not be adopted highway.

## **6. Implications of the Recommendations**

### **6.1. Legal Implications**

6.1.1. 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 or Public Inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.

### **6.2. Finance Implications**

6.2.1. If objections to the Order lead to a subsequent hearing or inquiry, this legal process would have financial implications for the Council.

### **6.3. Policy Implications**

6.3.1. There are no direct policy implications.

### **6.4. Equality Implications**

6.4.1. 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 one.

### **6.5. Human Resources Implications**

6.5.1. There are no direct human resource implications.

### **6.6. Risk Management Implications**

6.6.1. There are no direct risk management implications.

### **6.7. Rural Communities Implications**

6.7.1. There are no direct implications for rural communities.

### **6.8. Implications for Children & Young People**

6.8.1. There are no direct implications for children and young people.

### **6.9. Public Health Implications**

6.9.1. There are no direct implications for public health.

## **7. Ward Members Affected**

- 7.1. Bunbury Ward: Councillor Chris Green was consulted and no comments were received

## **8. Consultation & Engagement**

- 8.1. Wardle Parish Council, the user groups, statutory undertakers, and the Council's Nature Conservation Officer have been consulted and have raised no objections.
- 8.2. The Open Spaces Society submitted comments relating to the use of the maintenance track and objected to the route that the proposed diversion was taking alongside the road. Based on their comments the applicant agreed to a revised alignment for section D-C of the proposed diversion where it runs parallel to the road, so that it runs further away from the edge of the road at a distance of 7 metres. That proposal is shown in Plan No. TCPA/051. A detailed plan of the pumping station area was also provided to the Society's representative. The Society are happy with the layout of the pumping station but at the time of writing no comments have been received relating to section D-C.

## **9. Access to Information**

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

## **10. Contact Information**

- 10.1. Any questions relating to this report should be directed to the following Officer:

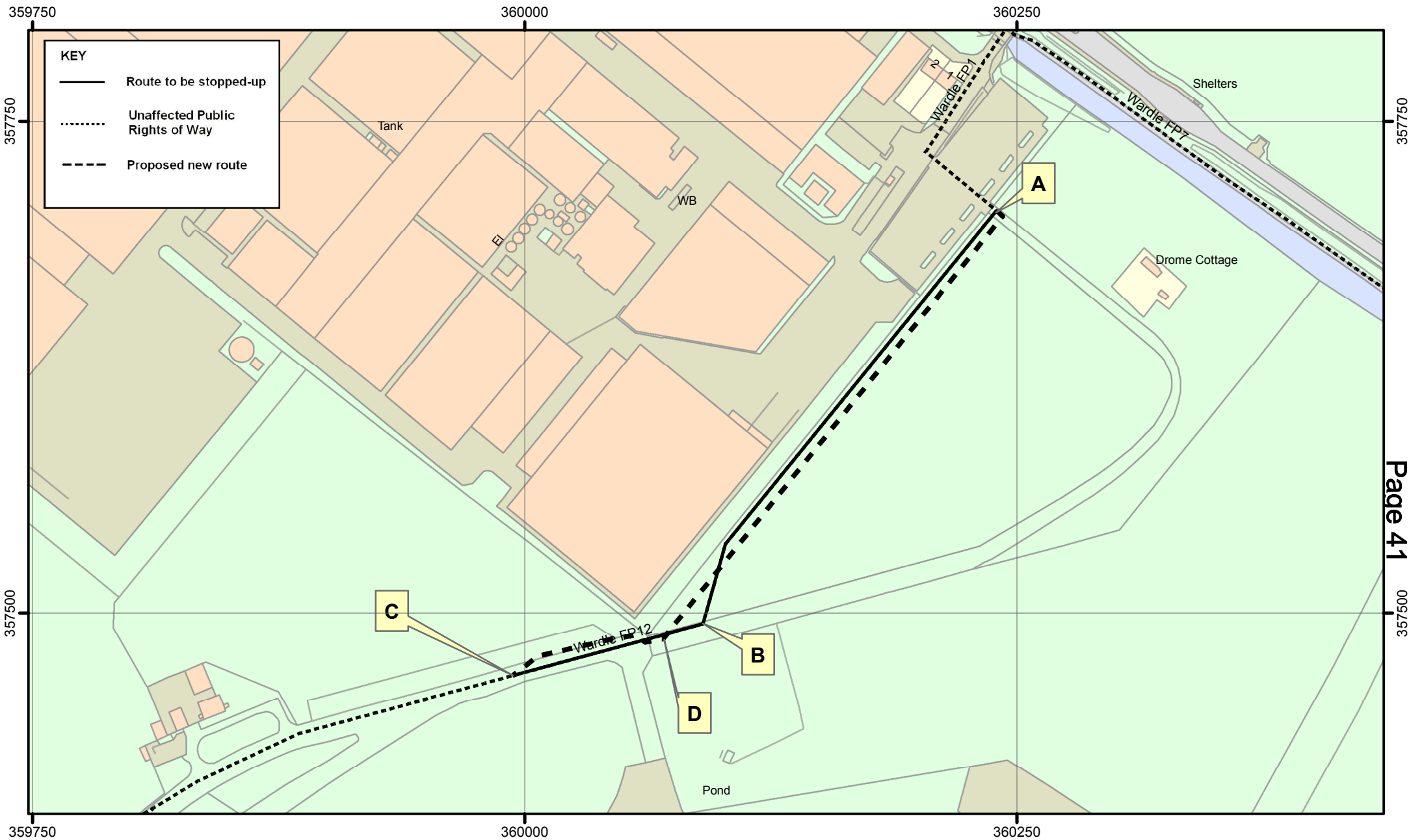
Name: Laura Brown

Job Title: Public Path Orders Officer

Email: [laura.brown@cheshireeast.gov.uk](mailto:laura.brown@cheshireeast.gov.uk)

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Town and Country Planning Act 1990 Section 257  
Proposed Diversion of Public Footpath No.12 (part) in the Parish of Wardle

Plan No. TCPA/051

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



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## Public Rights of Way Committee

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**Date of Meeting:** 10 September 2018

**Report Title:** Town & Country Planning Act 1990 Section 333(7), Application for Variation of Town and Country Planning Act 1990 Section 257 Cheshire East Borough Council (unrecorded Footpath Church Lane, Parish of Wistaston) Public Path Diversion Order 2017.

**Senior Officer:** Frank Jordan, Executive Director Place

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### 1. Report Summary

1.1. The report outlines the investigation to vary part of the Town and Country Planning Act 1990 Section 257 Cheshire East Borough Council (unrecorded Footpath Church Lane, Parish of Wistaston) Public Path Diversion Order 2017. This includes a discussion of the consultations carried out in respect of the proposal and the legal tests to be considered for the variation of the diversion Order to be made. The proposal has been put forward by the Public Rights of Way Team as an application has been submitted by Mr Clarke of Bloor Homes North West, 2-4 Whiteside Business Park, Station Road, Holmes Chapel, Cheshire, CW4 8AA in response to the following reserved matters application being granted:-

**Planning Application 17/6042N** - *'Application for the approval of details of the appearance, landscaping, layout and scale being matters reserved under approval APP/R0660/W/15/3136524 (14/3024N).'*

- 1.2 The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not a Variation Order should be made to the 2017 Diversion Order of the section of footpath concerned.
- 1.3 The proposal contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

## **2. Recommendation**

- 2.1. A Public Path (Variation) Order be made under section 333(7) of the Town and Country Planning Act 1990 to vary the Cheshire East Borough Council (unrecorded Footpath Church Lane, Parish of Wistaston) Public Path Diversion Order 2017 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 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 Act.
- 2.3. In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

## **3. Reasons for Recommendation**

- 3.1 In accordance with Section 257 of the Town and Country Planning Act 1990 ("TCPA") 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.”
- 3.2 The Council, as the Local 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, providing that the application has been formally registered with the Council.
- 3.3 Section 333(7) of the Act provides the Council with the authority to make a Public Path (Variation) Order provided the same procedures and consultations are carried out under which the Order was originally made.
- 3.4 The Variation Order is required following changes made to the layout of the site by the developer in their approved reserved matters planning application.

#### **4. Other Options Considered**

- 4.1. A Public Path Variation Order as opposed to a further Diversion Order is considered to be the most appropriate course of action.

#### **5. Background**

- 5.1. On 12th June 2017 the Public Rights of Way Committee, following an informal consultation, resolved to make a Diversion Order (attached as Appendix 1 to this report) to the previously unrecorded footpath now known as Wistaston Footpath No.17. The Order was duly made, signed and sealed on 22<sup>nd</sup> June 2017 and confirmed on the 24<sup>th</sup> August 2017. The original line of the unrecorded footpath rights are shown on plan TCPA/048 by a solid black line between points A-B-C-D-E-F. The rights were acknowledged by a former developer (Gladman Development Ltd) and diverted under the TCPA to the new alignment to accommodate the layout of a proposed housing development and infrastructure that would have directly impacted upon the unrecorded footpath rights.
- 5.2. The diverted alignment of Footpath No. 17 Wistaston commences at its junction with Public Footpath No.2 shown as point G on plan TCPA/048 and extends in a generally westerly and south westerly direction for a distance of approximately 220 metres to point H (plan TCPA/048) before turning to run in a generally southerly direction for approximately 235 metres (point I on plan TCPA/048). It then continues in a generally easterly direction to its junction with Public Footpath No.1 Wistaston shown at point J on plan TCPA/048 and running to the rear of the houses on Church Lane (K on plan TCPA/048) for a distance of approximately 214 metres to point L on the same plan at its junction with Public Footpath No. 2. Footpath No.17 is shown by a bold black dashed line between points G -H-I-J-K-L (on plan TCPA/048).
- 5.3. A Variation Order is now required to reflect the slight changes identified in the practical alignment of Public Footpath No.17 in the 2017 Order, as the development proposals now consented by the reserved matters application have altered slightly from those originally proposed (by Gladman Development Ltd) at the outline stage.
- 5.4. The proposed variation of the diverted path is shown by a bold blue dashed line between points M-N-H-I on plan TCPA/048. The proposed Variation Order will not significantly change the nature, widths, surface or general orientation of Wistaston Footpath No.17 as detailed by the 2017 Diversion Order but will instead alter the practical alignment of several sections of the footpath shown on the 2017 Diversion Plan and amend the description contained in Schedule 2 of the 2017 Diversion Order to reflect those changes.

- 5.5. The Variation Order, therefore, would amend the diversion alignment on the 2017 Order Plan, firstly along the western most extents of the path (as shown by the black dashed line between points I-H on plan TCPA/048) and associated with the reserved matters conditions that were approved in July of this year. As it stands the existing line of the path at this point conflicts with several small bodies of water that require a minimum 8 metre undeveloped buffer zone, deemed necessary to mitigate the impact of the development upon protected species and the biodiversity of the area. The proposed Variation would therefore move the alignment of the path between those points approximately 8 metres to the east of its current alignment and the ponds as shown by the bold blue dashed line also between points I-H on plan TCPA/048. Part 2 of the 2017 Order Schedule describing this section of the path would also be amended to reflect the slight change in distance between points I-H (on plan TCPA/048). In line with the 2017 Diversion Order this section of the path will continue to be 2 metres wide and have a surface of self binding gravel with timber edging.
- 5.6. The second proposed variation to the 2017 Order would be to slightly amend the Order Plan between points H-N (shown by the bold black dashed line on plan TCPA/048). This variation would align the path to what was agreed in the approved reserved matters application as shown by the blue dashed line between points H-N (on plan No. TCPA/048). Part 2 of the Order schedule describing this section of the path would also be amended to reflect the variation. The general orientation, width and surface of the path would remain the same as previously described by the 2017 Diversion Order.
- 5.7. The third proposed variation would amend the northern alignment of the path as shown by the bold black dashed line between points N-G on plan TCPA/048 to the line shown by the bold blue dashed line on the same plan between points N-M. The amendment would reposition the path in line with the approved changes to the reserved matters application. The effect of this variation would be to move that section of the path approximately 8 metres to the south of its current alignment. Both the 2017 Diversion Order Plan and the description in Part 2 of the Order Schedule would be amended to reflect this variation. Again the general orientation, width and surface of this section of the footpath would remain the same as that previously described by the 2017 Diversion Order.

## **6. Implications of the Recommendations**

### **6.1 Legal Implications**

- 6.1.1. 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 or Public Inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.

## **6.2 Finance Implications**

- 6.2.1 If objections to the Order lead to a subsequent hearing or inquiry, this legal process would have financial implications for the Council.

## **6.3 Policy Implications**

- 6.3.1 There are no direct policy implications.

## **6.4 Equality Implications**

- 6.4.1 There are no direct equality implications.

## **6.5 Human Resources Implications**

- 6.5.1 There are no human resource implications.

## **6.6 Risk Management Implications**

- 6.6.1 There are no direct risk management implications.

## **6.7 Rural Communities Implications**

- 6.7.1 There are no direct implications for rural communities.

## **6.8 Implications for Children & Young People**

- 6.8.1 There are no direct implications for children and young people.

## **6.9 Public Health Implications**

- 6.9.1 There are no direct implications for public health.

## **7 Ward Members Affected**

- 7.1 Councillors Margaret Simon and Jacqueline Weatherill have been consulted about this application and no comments have been received.

## **8 Consultation & Engagement**

- 8.1 The User Groups, Statutory Undertakers, local residents and the Council's Nature Conservation Officer have been consulted and have raised no objections.

## **9 Access to Information**

- 9.1** The background papers relating to this report and the 2017 Diversion Order can be inspected by contacting the report writer.

## **10 Contact Information**

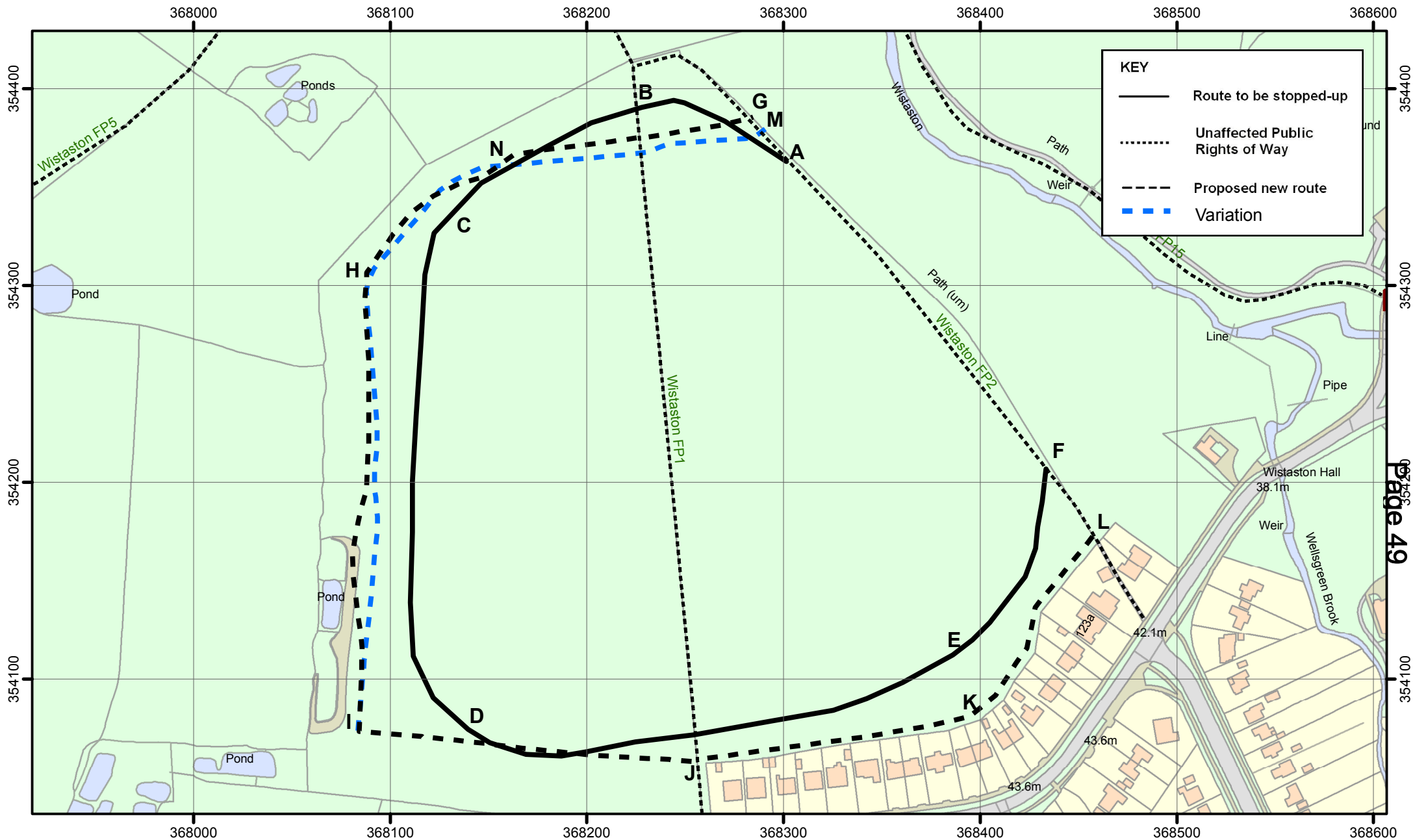
- 10.1** Any questions relating to this report should be directed to the following officer:

Name: Sarah Fraser

Job Title: Public Path Orders Officer

Email: [sarah.fraser@cheshireeast.gov.uk](mailto:sarah.fraser@cheshireeast.gov.uk)





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**Town and Country Planning Act 1990 s333(7) Application to Vary the  
Cheshire East Borough Council (Unrecorded Footpath off Church Lane, Parish of Wistaston)  
Public Path Diversion Order 2017**

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Plan No.  
TCPA/048



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**PUBLIC PATH DIVERSION ORDER  
TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257  
CHESHIRE EAST BOROUGH COUNCIL**

**THE CHESHIRE EAST BOROUGH COUNCIL  
(UNRECORDED FOOTPATH, CHURCH LANE, PARISH OF WISTASTON)  
PUBLIC PATH DIVERSION ORDER 2017**

This Order is made by Cheshire East Borough Council ("the Authority") under Section 257 of the Town and Country Planning Act 1990 ("the 1990 Act") because it is satisfied that it is necessary to divert the footpath to which this Order relates in order to enable development to be carried out in accordance with planning permission granted under Part III of the 1990 Act. Namely:

Planning Application: 14/3024N

*Outline application for a proposed residential development of up to 300 dwellings, site access, public open space, landscaping and associated infrastructure.*

**BY THIS ORDER:**

1. The Unrecorded Footpath over the land situated in the Parish of Wistaston and shown by a bold black continuous line on the plan contained in this Order and described in Part 1 of the Schedule to this Order ("The Schedule") shall be stopped up as provided below.
2. There shall be created to the reasonable satisfaction of the Authority an alternative highway for use as a replacement for the said footpath as provided in Part 2 of the Schedule and shown by bold black dashes on the attached plan.
3. The diversion of the footpath shall have effect on the date which the Authority certifies that the terms of Article 2 above have been complied with.
4. Where immediately before the date on which the footpath is diverted there is apparatus under, in, on, over along or across it belonging to the statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.
5. This Order shall be cited as "The Cheshire East Borough Council (Unrecorded Footpath, Church Lane, Parish of Wistaston) Public Path Diversion Order 2017".

THE COMMON SEAL OF  
CHESHIRE EAST BOROUGH COUNCIL  
was hereunto affixed this  
22<sup>nd</sup> June Two Thousand  
and Seventeen in the presence of:-

  
  
9764  
(2)  
Authorised Signatory



## SCHEDULE

### PART 1

#### Description of site of existing Path or Way to be diverted

##### **Unrecorded Footpath, Church Lane**

That length of Unrecorded Footpath from its junction with FP no. 2, in the Parish of Wistaston commencing at O.S. grid reference SJ 6829 5436 (point A on Plan No. TCPA/038A) and running in a generally north westerly and westerly direction for a distance of approximately 77 metres to O.S. grid reference SJ 6822 5439 (point B on Plan No. TCPA/038A) and its junction with FP no. 1, in the Parish of Wistaston then running in a generally west south westerly direction for a distance of approximately 114 metres to O.S. grid reference SJ 6812 5433 (point C on Plan No. TCPA/038A) and continuing in a generally southerly direction for a distance of approximately 256 metres to O.S. grid reference SJ 6812 5408 (point D on Plan No. TCPA/038A) then turning to run in a generally south east and easterly direction for a distance of approximately 265 metres to O.S. grid reference SJ 6838 5410 (point E on Plan No. TCPA/038A) and finally continuing in a generally north west and northerly direction for a distance of approximately 124 metres to O.S. grid reference SJ 6843 5420 (point F on Plan No. TCPA/038A) as indicated by a solid black line between the points marked A-B-C-D-E-F on Plan No. TCPA/038A.

A total distance of approximately 836 metres in length

### PART 2

#### Description of site of new Path or Way

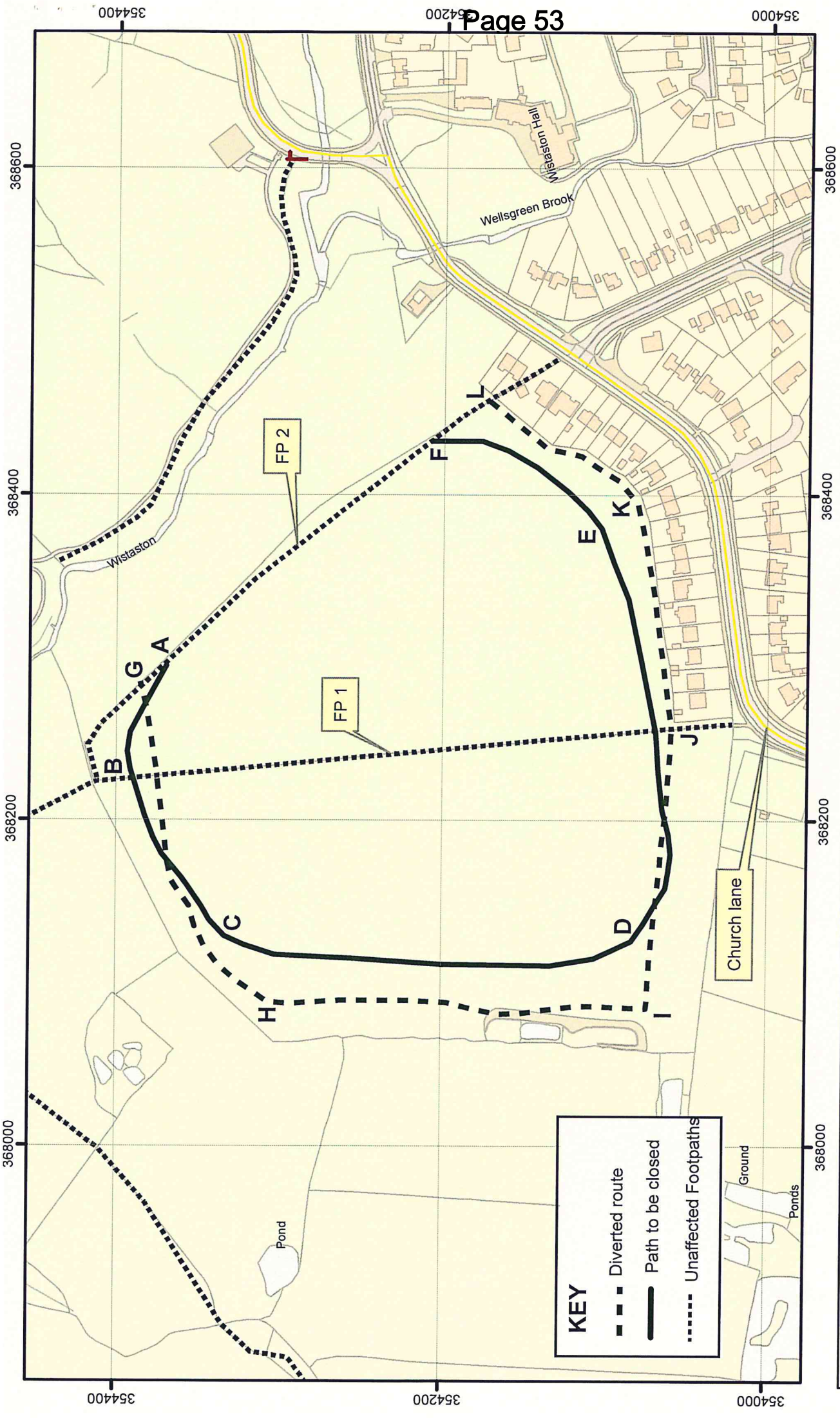
##### **Public Footpath No.17, Wistaston**

A footpath, in the Parish of Wistaston to be known as Footpath no. 17, commencing at its junction with FP no.2 in the Parish of Wistaston, at O.S. grid reference SJ 6828 5438 (point G on Plan No. TCPA/038A) and running in a generally westerly and south westerly direction for a distance of approximately 220 metres to O.S. grid reference SJ 6808 5431 (point H on Plan No. TCPA/038A) then turning to run in a generally southerly direction for approximately 235 metres to O.S. grid reference SJ 6808 5407 (point I on Plan No. TCPA/038A) and then continuing in a generally easterly direction for a distance of approximately 172 metres to its junction with FP no.1, in the Parish of Wistaston, at O.S. grid reference SJ 6825 5405 (point J on Plan No. TCPA/038A) and continuing in a generally easterly direction to the rear of houses on Church Lane for a distance of approximately 142 metres to O.S. grid reference SJ 6839 5408 (point K on Plan No. TCPA/038A) and then finally turning to run in a generally north easterly direction for approximately 108 metres to its junction with FP. No. 2, in the Parish of Wistaston, at O.S. grid reference SJ 6845 5417 (point L on Plan No. TCPA/038A) as indicated by a bold dashed line between the points G-H-I-J-K-L on Plan No. TCPA/038A.

The footpath will be 2 metres wide between points G-H-I with a compacted stone surface and timber edging.

The footpath between points I-J-K-L will be 3 metres wide with a sealed surface.





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**Town & Country Planning Act 1990 s.257**  
**Division of an Unrecorded Footpath**  
**off Church Lane, Wistaston**

Plan No.  
TCPA/038A







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## **Public Rights of Way Committee**

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**Date of Meeting:** 10 September 2018

**Report Title:** Town and Country Planning Act 1990 Section 257 Proposed Diversion of Public Footpath No.2 (part) in the Parish Wistaston

**Senior Officer:** Frank Jordan, Executive Director Place

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### **1. Report Summary**

- 1.1. The report outlines the investigation to divert Public Footpath No.2 (part) in the Parish of Wistaston. This includes a discussion of the consultations carried out in respect of the proposal and the legal tests to be considered for the diversion Order to be made. The proposal has been put forward by the Rights of Way Team as an application has been submitted by Mr Clarke of Bloor Homes North West, 2-4 Whiteside Business Park, Station Road, Holmes Chapel, Cheshire. CW4 8AA in response to the following reserved matters application being granted:-

**Planning Application 17/6042N** – *Application for the approval of details of the appearance, landscaping, layout and scale being matters reserved under approval APP/R0660/W/15/3136524 (14/3024N).*

- 1.2 The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not a diversion Order should be made for that section of footpath.
- 1.3 The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

### **2. Recommendation**

- 2.1. A Public Path Diversion Order be made under section 257 of the Town and Country Planning Act 1990 on grounds that Cheshire East 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 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 Act.

2.3. In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

### **3. Reasons for Recommendation**

3.1. In accordance with Section 257 of the Town and Country Planning Act 1990 ("TCPA") 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."

3.2. The Council, as the Local 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, providing that the application has been formally registered with the Council.

### **4. Other Options Considered**

4.1. Not applicable – this is a non-executive matter.

### **5. Background**

5.1. An application has been received from Mr Clarke of Bloor Homes Ltd. requesting that the Council make an Order under section 257 of the TCPA 1990 to divert part of Public Footpath No.2 in the Parish of Wistaston.

5.2. Public Footpath No.2 commences at its junction with Church Lane at O.S. Grid Reference SJ 6848 5413 and extends in a generally north westerly direction for a distance of approximately 376 metres before turning to a generally westerly direction for a distance of approximately 23 metres to its junction with Public Footpath No.1 Wistaston at O.S. Grid Reference SJ 6822 5441. The section of path to be diverted is shown by a bold solid



black line on plan TCPA/049 and extends between points B-C-D. The proposed diversion is shown by a bold black dashed line also running between points B-C-D on plan TCPA/049.

- 5.3. The existing alignment of the footpath would be directly affected by the residential development and infrastructure of the approved planning application resulting in the partial obstruction of the footpath by the construction of the planned residential dwellings. Therefore the diversion is required to preserve the Public Right of Way.
- 5.4. The proposal would divert approximately 283 metres of the path between O.S Grid Reference SJ 6844 5419 and O.S. Grid Reference SJ 6825 5440 as shown between points B-C-D (on plan TCPA/049) to a new line approximately 13 metres to the east of its current alignment and on to the actual walked line of the path shown between points B-C-D (Plan TCPA/049).
- 5.5. The length of Public Footpath No.2 from point A (plan TCPA/049), including the proposed new route extending to point C would be 2 metres wide, timber edged and surfaced with self binding gravel.
- 5.6. The section of path shown between points C-D-E would be 2 metres wide, concrete-edged and surfaced with tarmac as it would offer access to the proposed play area of the development.
- 5.7. There would be no requirement for the addition of any new furniture along the proposed new section of the path.

## **6. Implications of the Recommendations**

### **6.1. Legal Implications**

- 6.1.1. 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 or Public Inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.

### **6.2. Finance Implications**

- 6.2.1. If objections to the Order lead to a subsequent hearing or inquiry, this legal process would have financial implications for the Council.

### **6.3. Policy Implications**

- 6.3.1. There are no direct policy implications.

**6.4. Equality Implications**

6.4.1. 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 one.

**6.5. Human Resources Implications**

6.5.1. There are no direct human resource implications.

**6.6. Risk Management Implications**

6.6.1. There are no direct risk management implications.

**6.7. Rural Communities Implications**

6.7.1. There are no direct implications for rural communities.

**6.8. Implications for Children & Young People**

6.8.1. There are no direct implications for children and young people.

**6.9. Public Health Implications**

6.9.1. There are no direct implications for public health.

**7. Ward Members Affected**

7.1. Councillors Margaret Simon and Jacqueline Weatherill have been consulted about this application and no comments have been received.

**8. Consultation & Engagement**

8.1. The User Groups, Statutory Undertakers, local residents and the Council's Nature Conservation Officer have been consulted and have raised no objections.

**9. Access to Information**

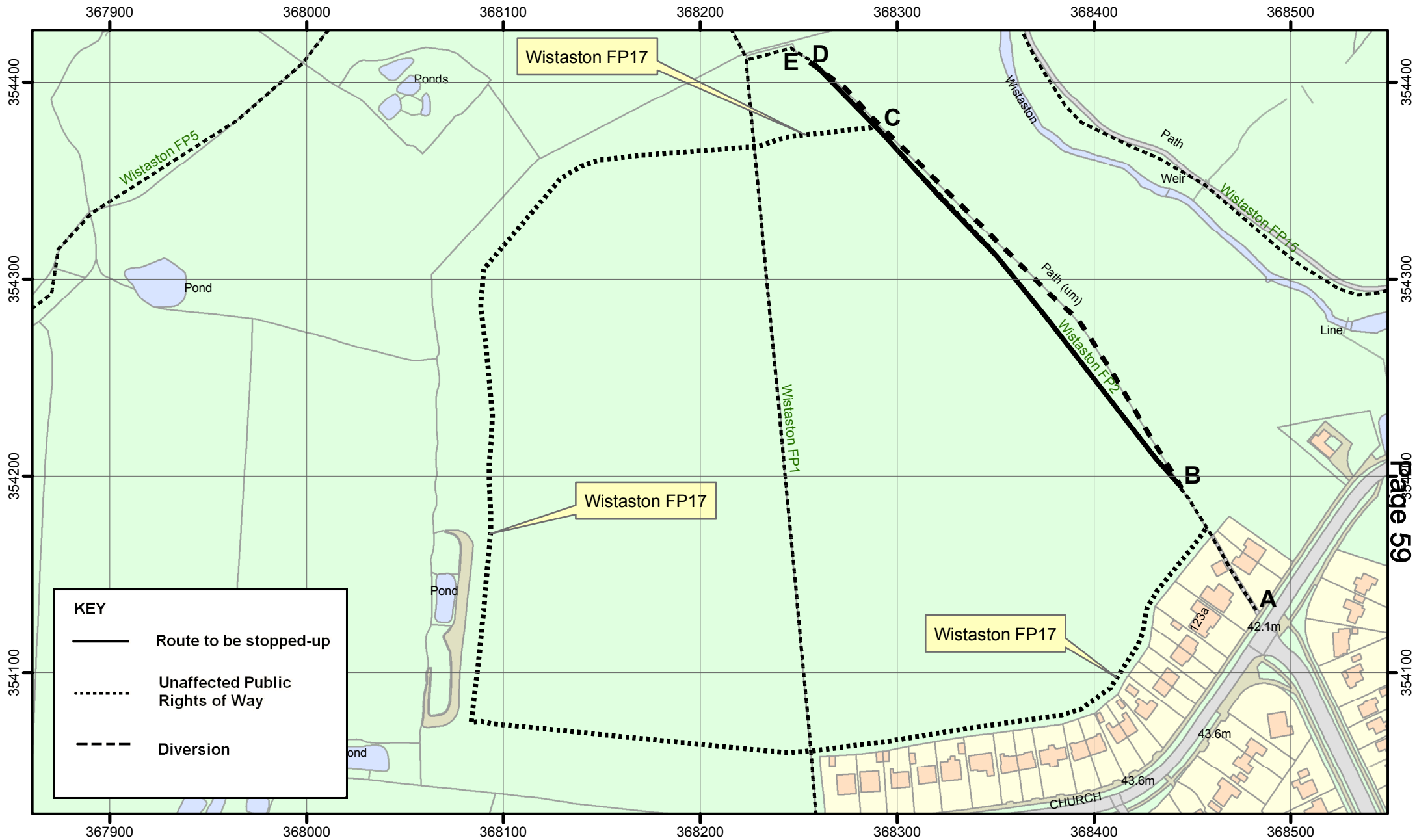
9.1. The background papers relating to this report can be inspected by contacting the report writer.

**10. Contact Information**

10.1. Any questions relating to this report should be directed to the following officer: Name: Sarah Fraser

Job Title: Public Path Orders Officer

Email: sarah.fraser@cheshireeast.gov.uk



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**Town and Country Planning Act 1990**  
**Application to Divert Public Footpath No.2 (part)**  
**in the Parish of Wistaston.**

Plan No.  
**TCPA/049**



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## **Public Rights of Way Committee**

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**Date of Meeting:** 10 September 2018

**Report Title:** Town & Country Planning Act 1990 Section 333(7), Application for Variation of Town and Country Planning Act 1990 Section 257 Cheshire East Borough Council (Restricted Byway No.1 (pt), Parish of Eaton) Public Path Diversion Order 2017

**Senior Officer:** Frank Jordan, Executive Director Place

---

### **1. Report Summary**

- 1.1. The report outlines the investigation to vary part of the Town and Country Planning Act 1990 Section 257 Cheshire East Borough Council (Restricted Byway No.1 (pt), Parish of Eaton) Public Path Diversion Order 2017. This includes a discussion of the previous consultations carried out in respect of the diversion Orders and the legal tests to be considered for the variation of the diversion Order to be made. The proposal has been put forward by the Public Rights of Way Team as an application has been submitted by Mr Fyles of Tarmac Trading Ltd. Tunstead House, Wormhill, Buxton, as a consequence of a site inspection of the proposed diversion and the variations between the Diversion Order and the route provided on the ground.
- 1.2 The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not a Variation Order should be made to the 2017 Diversion Order of the section of Restricted Byway concerned.
- 1.3 The proposal contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

### **2. Recommendation**

- 2.1. A Public Path (Variation) Order be made under section 333(7) of the Town and Country Planning Act 1990 to vary the Cheshire East Borough Council (Restricted Byway No.1 (pt), Parish of Eaton) Public Path Diversion Order

OFFICIAL

2017 to reflect the alignment of the route set out and available on the ground.

- 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 Act.
- 2.3. In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

### **3. Reasons for Recommendation**

- 3.1 In accordance with Section 257 of the Town and Country Planning Act 1990 ("TCPA") 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."

- 3.2 The Council, as the Local 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, providing that the application has been formally registered with the Council.
- 3.3 Section 333(7) of the Act provides the Council with the authority to make a Public Path (Variation) Order provided the same procedures are carried out under which the Order was originally made.
- 3.4 The Variation Order is required following discrepancies between the maps used by contractors to lay out the route on site and the plan attached to the Diversion Order.

### **4. Other Options Considered**

- 4.1. A Public Path Variation Order as opposed to a further Diversion Order is considered to be the most appropriate course of action.

### **5. Background**

- 5.1. On the 5<sup>th</sup> December 2016 a report was presented to the Public Rights of Way Committee, following an informal consultation, for the diversion of part of

Restricted Byway No. 1, following the application for planning permission, since approved of: **Planning Application: 16/3298W** *Application to extend Eaton Hall Quarry to the North and South of the existing permitted extraction area to the North of School lane AND Planning Application: 16/3282W* *Application to vary planning permission 5/APP/2004/0012 under section 73 of the Town and Country Planning Act 1990 (as amended) to develop land without compliance to conditions.*

- 5.2. The Committee resolved to make a Diversion Order to the Restricted Byway which was directly affected by the sand quarry. This Order was made, signed and sealed on 12<sup>th</sup> January 2017. An objection was subsequently received from an adjacent landowner concerning the proximity of part of the new route to the trajectory of clays from his shooting range. Consequently a second Order was made altering the section of route affected, between points M-N-D on Plan No. TCPA/052, on the 6<sup>th</sup> July 2017 (Appendix 1 attached to this report). No objections were received to this Order and over the following months, the construction of the path was commenced. There were serious flooding and drainage issues that arose due to the very wet weather through the winter which has delayed works being finalised. The site has very recently been inspected and the anomalies between the alignment of the route on the ground and that constructed have become apparent.
- 5.3. The line of the diversion route is shown on plan TCPA/052 by a broken black line between points E-F-G-H-I-J-K-L-M-N-D. The sections of route on the ground that differ from the Diversion Order are shown in red on the attached plan TCPA/052. The route on the ground has been put in to a 4 metre width with a double post and wire fenceline to the south and east where it hugs the field boundary and to both sides elsewhere.
- 5.4. A Variation Order is now required to reflect the changes identified by the recent site visit and thereby alter the legal alignment of the route in the second Diversion Order of 2017. The proposed Order will not significantly change the nature, widths, surface or general direction of the alternative route of Restricted Byway No.1 but will change the specific alignment of three separate short sections of the route on the 2017 Diversion Plan and amend the descriptions of those sections contained in Schedule 2 of the 2017 Diversion Order.
- 5.5. The sections that require amendment are between points G and H, H and I and M-N. The section between G and H as it stands, runs across a section of open field which is currently used for livestock by the neighbouring Jack Fields farm. To avoid sterilising this part of the field, the route has been constructed following the boundary of the ponds and field edge. This is indicated by G1-G2- H1- H2 on Plan No. TCPA/052. From point G1 the path would run in a

north north westerly direction for approximately 26 metres to point G2 then turn to run in a generally westerly direction for approximately 75 metres to point H1 then turn south south easterly for approximately 25 metres to point H2 and its junction with the current diversion route. This section creates an additional length of 72 metres.

- 5.6. Similarly a shorter section of the route between H and I is shown cutting a corner on the second Diversion Order plan but has been constructed to follow the pond and field boundary. This is indicated by points H-I1-I on Plan No. TCPA/052. From Point H the path would run in a generally north north westerly direction for approximately 20 metres to point I1 then turn to run in a generally westerly direction for approximately 30 metres to Point I and its junction with the current diversion route. This creates an additional length of approximately 10 metres.
- 5.7. The section between M and N has been constructed approximately 30 metres further south, south easterly along the field boundary adjacent to Congleton Road to point M1 on Plan No. TCPA/052. It then runs generally north easterly at a more oblique angle for approximately 110 metres to point N, keeping closer to the northern boundary of the rectangle of woodland that is outlined on the plan. It may be the case that the variation of this section would not be required if on consultation with the adjacent landowner it transpires that this alignment is still too close to the clay shoot. In this case the route will be altered to reflect the route on the second 2017 Diversion Order. This is currently the subject of discussion between the applicant and this landowner. If this section does require variation it will add approximately 32 metres to the overall length of the diversion.
- 5.8. The overall change in length to the route on the amended second Diversion Order would be 114 metres making the diverted route approximately 1709 metres rather than 1595 metres as it is in the current Diversion Order. The width of the route will be 4 metres and it will have a grass surface, these are unchanged from the current Order.

## **6. Implications of the Recommendations**

### **6.1 Legal Implications**

- 6.1.1. 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 or Public Inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.



## **6.2 Finance Implications**

- 6.2.1 If objections to the Order lead to a subsequent hearing or inquiry, this legal process would have financial implications for the Council.

## **6.3 Policy Implications**

- 6.3.1 There are no direct policy implications.

## **6.4 Equality Implications**

- 6.4.1 There are no direct equality implications.

## **6.5 Human Resources Implications**

- 6.5.1 There are no human resource implications.

## **6.6 Risk Management Implications**

- 6.6.1 There are no direct risk management implications.

## **6.7 Rural Communities Implications**

- 6.7.1 There are no direct implications for rural communities.

## **6.8 Implications for Children & Young People**

- 6.8.1 There are no direct implications for children and young people.

## **6.9 Public Health Implications**

- 6.9.1 There are no direct implications for public health.

## **7 Ward Members Affected**

- 7.1 Councillor L Smetham was originally consulted as part of the first Committee report and had no comments to make.

## **8 Consultation & Engagement**

- 8.1 Eaton Parish Council, User Groups, Statutory Undertakers and the Council's Nature Conservation Officer were also previously consulted and raised no objections.

## **9 Access to Information**

- 9.1 The background papers relating to this report and the 2017 Diversion Orders can be inspected by contacting the report writer.

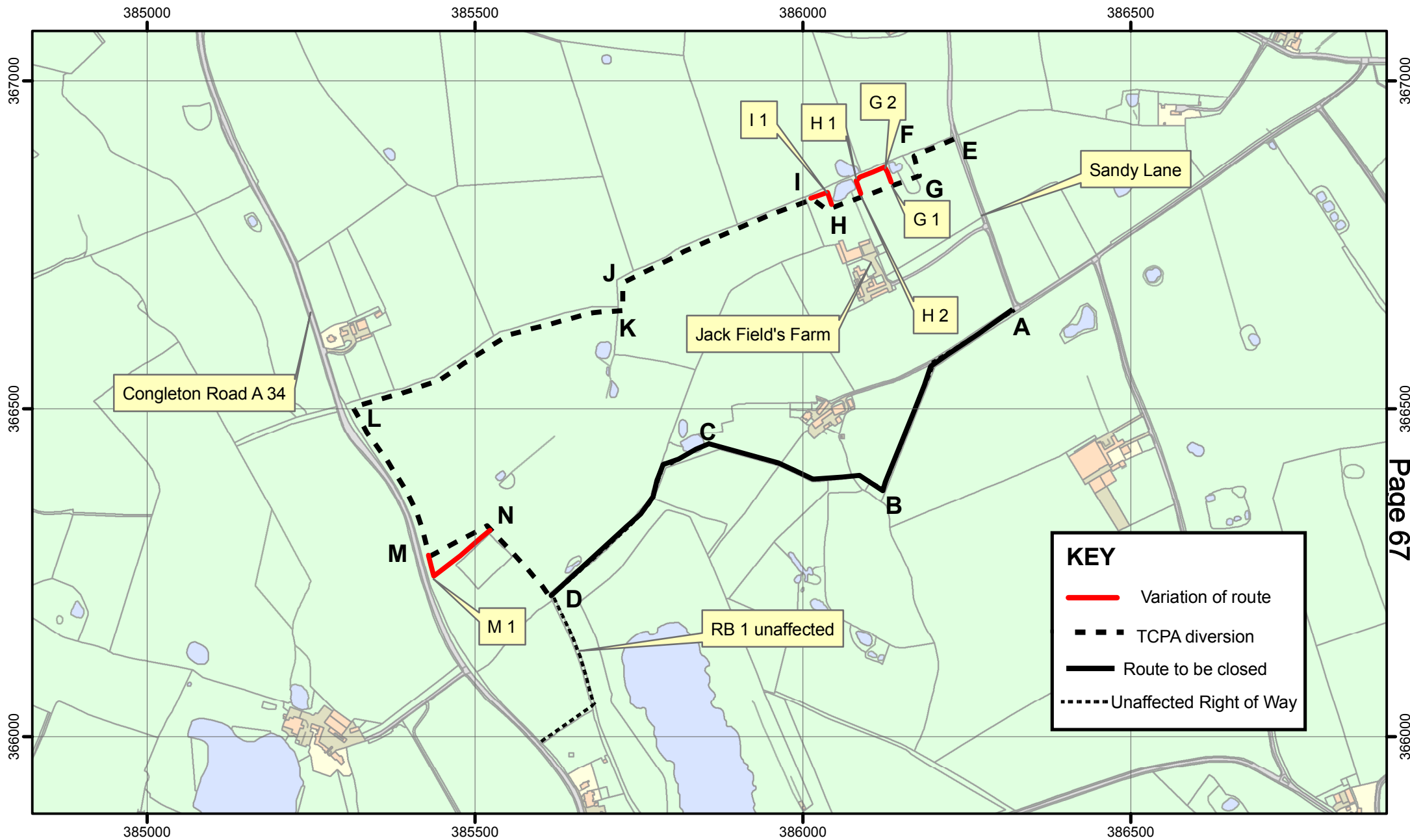
## 10 Contact Information

**10.1** Any questions relating to this report should be directed to the following officer:

Name: Clare Hibbert

Job Title: Definitive Map Officer

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



1:7,500

**Town & Country Planning Act s.333**  
**Proposed Variation Order of**  
**The Cheshire East Borough Council (Restricted Byway no. 1(pt),**  
**Parish of Eaton, Public Path Diversion Order 2017 (no.2)**

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**Plan No.**  
**TCPA /052**



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**PUBLIC PATH DIVERSION ORDER  
TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257  
CHESHIRE EAST BOROUGH COUNCIL**

**THE CHESHIRE EAST BOROUGH COUNCIL  
(RESTRICTED BYWAY NO. 1 (PART) PARISH OF EATON)  
PUBLIC PATH DIVERSION ORDER 2017 (no.2)**

This Order is made by Cheshire East Borough Council ("the Authority") under Section 257 of the Town and Country Planning Act 1990 ("the 1990 Act") because it is satisfied that it is necessary to divert the footpath to which this Order relates in order to enable development to be carried out in accordance with planning permission applied for under Part III of the 1990 Act. Namely:

Planning Application: 16/3298W: Application to extend Eaton Hall Quarry to the North and South of the existing permitted extraction area to the North of School lane.

Planning Application: 16/3282W: Application to vary planning permission 5/APP/2004/0012 under section 73 of the Town and Country Planning Act 1990 (as amended) to develop land without compliance to conditions.

**BY THIS ORDER:**

1. The Restricted Byway over the land situated in the Parish of Eaton and shown by a bold black continuous line on the plan contained in this Order and described in Part 1 of the Schedule to this Order ("The Schedule") shall be stopped up as provided below.
2. There shall be created to the reasonable satisfaction of the Authority an alternative highway for use as a replacement for the said Restricted Byway as provided in Part 2 of the Schedule and shown by bold black dashes on the attached plan.
3. The diversion of the Restricted Byway shall have effect on the date which the Authority certifies that the terms of Article 2 above have been complied with.
4. Where immediately before the date on which the Restricted Byway is diverted there is apparatus under, in, on, over along or across it belonging to the statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.
5. This Order shall be cited as "The Cheshire East Borough Council (Restricted Byway No. 1 (Part) Parish of Eaton) Public Path Diversion Order 2017 (no.2)".

THE COMMON SEAL OF  
CHESHIRE EAST BOROUGH COUNCIL

was hereunto affixed this

6<sup>th</sup> day of July

Two Thousand and Seventeen in the presence of:-



Authorised Signatory



4791  
(x2)

## SCHEDULE

### PART 1

#### Description of site of existing Path or Way to be diverted

That length of Restricted Byway No. 1 in the Parish of Eaton commencing at O.S. grid reference SJ 8632 6665 at its junction with Sandy Lane (UY 1300) (point A on Plan No. TCPA/034B) and running in a generally south westerly direction for a distance of approximately 352 metres to O.S. grid reference SJ 8612 6637 (point B on Plan No. TCPA/034B) and then running in a generally west north westerly direction for approximately 281 metres to O.S. grid reference SJ 8585 6644 (point C on Plan No. TCPA/034B) and then running in a generally south westerly direction for approximately 345 metres to O.S. grid reference SJ 8561 6621 (point D on Plan No. TCPA 0/34B), as indicated by a solid black line between the points marked A-B-C-D on Plan No. TCPA/034B.  
A total distance of approximately 978 metres in length.

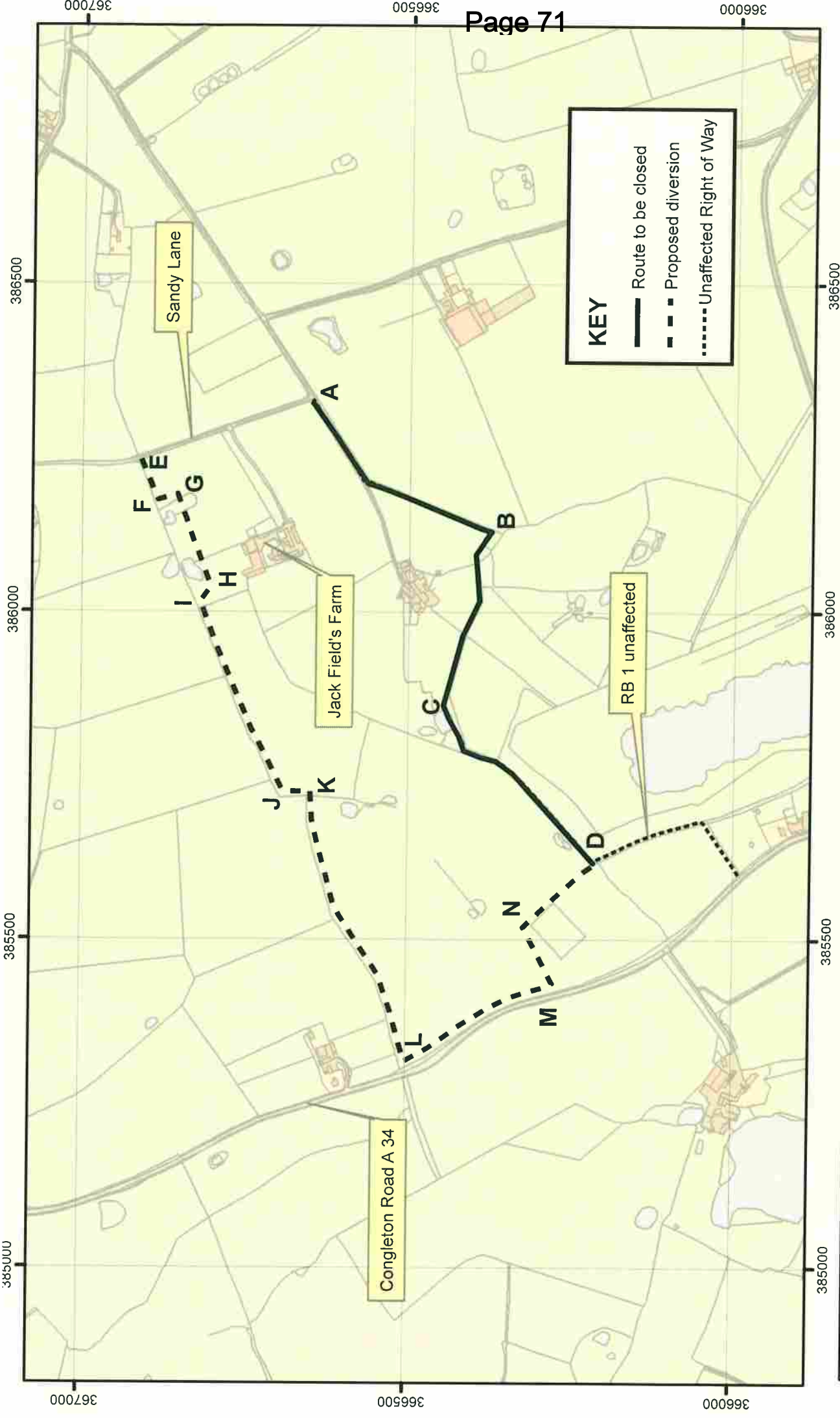
### PART 2

#### Description of site of new Path or Way

A Restricted Byway, in the Parish of Eaton, commencing at O.S. grid reference SJ 8623 6691, at its junction with Sandy Lane (UY 1300) (point E on Plan No. TCPA/034B) and running in a generally west south westerly direction for a distance of approximately 68 metres to O.S. grid reference SJ 8616 6688 (point F on Plan No. TCPA/034B), then running in a generally southerly direction for approximately 37 metres to O.S. grid reference SJ 8617 6685 (point G on Plan no. TCPA/034B) then turning to run in a generally west south westerly direction for a distance of approximately 149 metres to O.S. grid reference SJ 8604 6680 (point H on Plan no. TCPA/034B) then running generally north north westerly for a distance of approximately 29 metres to O.S. grid reference SJ 8601 6682 (point I on Plan no. TCPA/034B) then running in a generally west south westerly direction for approximately 317 metres to O.S. grid reference SJ 8572 6669 (Point J on Plan No. TCPA/034B) then turning to run in a generally southerly direction for approximately 42 metres to O.S. grid reference SJ 8572 6665 (Point K on Plan No. TCPA/034B) then once again turning to run in a generally west south westerly direction for approximately 445 metres to O.S. grid reference SJ 8531 6650 (Point L on Plan No. TCPA/034B) then running in a generally south south easterly direction for a distance of approximately 260 metres to O.S. grid reference SJ 8543 6627 (Point M on Plan No. TCPA/034B) and then running in a generally east north easterly direction for a distance of approximately 98 metres to O.S. grid reference SJ 8552 6632 (Point N on Plan No. TCPA/034B) and finally running in a generally south south easterly direction for a distance of approximately 150 metres its junction with the unaffected section of Restricted Byway No. 1, Eaton at O.S. grid reference SJ 8561 6621 (Point D on Plan No. TCPA/034B) as indicated by a dashed black line between the points marked E-F-G-H-I-J-K-L-M-N-D on Plan No. TCPA/034B.  
A total distance of approximately 1595 metres in length.

The restricted byway running between points E-F-G-H-I-J-K-L-M-N-D on Plan No. TCPA/034B is four metres wide throughout.





Town & Country Planning Act s.257

The Cheshire East Borough Council (Restricted Byway no. 1(pt),  
Parish of Eaton, Public Path Diversion Order 2017



Plan No.  
TCPA /034B







*Working for a brighter future together*

## **Public Rights of Way Committee**

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**Date of Meeting:** 10 September 2018

**Report Title:** Public Rights of Way Proposed Fees and Charges 2019-20

**Senior Officer:** Frank Jordan, Executive Director - Place

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### **1. Report Summary**

- 1.1. This report outlines the proposed fees and charges for 2019-20 for charged-for services provided by the Public Rights of Way team.
- 1.2. The work of the Public Rights of Way team contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

### **2. Recommendation**

- 2.1. That the report be noted.

### **3. Reasons for Recommendation/s**

- 3.1. The report is for information only.

### **4. Other Options Considered**

- 4.1. Not applicable.

### **5. Background**

- 5.1 Charges are made for services provided by the Public Rights of Way team in four principle areas where recovery of costs is permissible within the relevant legislation:
  - Public Path Orders and Temporary Closures
  - Land Searches
  - Landowner declarations, deposits and statements
  - Enforcement action cost recovery.

- 5.2 Powers for the recovery of enforcement costs are set out in various pieces of statutory legislation and reflect full cost recovery of all reasonable costs involved in pursuing the matter including overheads. Costs are based on time analysis of staff based on the penultimate scale point of salary grade with 20% for overheads. Legislation does not permit the making of a profit. Advertising costs are recovered from the applicant.
- 5.3 An annual review of the fees and charges are conducted as part of the budget setting process of the Council. The charges for 2019-20 have been increased by inflation and rounded. In addition, the fees and charges have been amended to reflect changes in legal process enacted by legislation.
- 5.4 Charges for Public Path Orders are set to recover all administrative costs of the process, with charges made in accordance with “The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993” as amended by “The Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996”.
- 5.5 Land Searches are a discretionary task in which a request is made for formal confirmation of whether or not there are Public Rights of Way recorded on the Definitive Map within a defined area. Charges are set to recover all administrative costs, and to reflect similar charges levied by Cheshire East Highways for similar services.
- 5.6 Landowner declarations, deposits and statements made under the Highways Act 1980 section 31(6) attract a charge set to recover all administrative costs, and are made under the provisions of Commons Act 2006 S15A and S15B.
- 5.7 Enforcement action costs are charged on the basis of actual costs incurred by the Public Rights of Way team, contractors and police, as applicable.
- 5.8 The fees and charges proposed for the 2019-20 financial year are detailed below. Approval for the changes has been obtained from the Portfolio Holder / Head of Service who have the appropriate delegated powers. The revised fees and charges schedule has been submitted as part of the Council’s budget setting process which will be finalised in February 2019 by full Council.

<b>Service</b>	<b>2018-19</b>	<b>2019-20</b>
Public Path Order	£3,817	£3,900
Emergency closure	£274	£280
21 day extension to 21 day closure	£78	£80
6 month extension to closure	£499	£510
6 month temporary closure Order	£499	£510
Further 6 month extension Order (via Secretary of State)	£327	£335

Land Search	£77	£80
Highways Act 1980 S31(6) deposits and statements on behalf of landowner applicants:	-	-
•deposited statement and plan with consecutive statutory declaration	£235	£240
•a statutory declaration relating to a current, valid statement and plan	£118	£120

## 6. Implications of the Recommendations

### 6.1 Legal Implications

6.1.1 There are no legal implications.

### 6.2 Finance Implications

6.2.1 There are no additional financial implications foreseen.

### 6.3 Policy Implications

6.3.1 The Public Rights of Way Charging Policy will be updated when the revised fees and charges come into operation in 2019-20.

### 6.4 Equality Implications

6.4.1 There are no equality implications.

### 6.5 Human Resources Implications

6.5.1 There are no human resource implications foreseen.

### 6.6 Risk Management Implications

6.6.1 There are no risk management implications foreseen.

### 6.7 Rural Communities Implications

6.7.1 There are no direct implications for rural communities.

### 6.8 Implications for Children & Young People

6.8.1 There are no direct implications for children and young people.

### 6.9 Public Health Implications

6.9.1 There are no direct implications for public health.

## 7 Ward Members Affected

7.1 All Wards. No Ward Member engagement is required as the report is for information only.

## **8 Access to Information**

8.1 Not applicable.

## **9 Contact Information**

9.1 Any questions relating to this report should be directed to the following officer:

Name: Genni Butler

Job Title: Acting Public Rights of Way Manager

Email: [genni.butler@cheshireeast.gov.uk](mailto:genni.butler@cheshireeast.gov.uk)