

Public Rights of Way Committee

Agenda

Date:	Monday, 10th June, 2019
Time:	2.00 pm
Venue:	Committee Suite 1,2 & 3, Westfields, Middlewich Road, Sandbach CW11 1HZ

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

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**

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 - 10)

To approve the minutes of the meeting held on 11 March 2019.

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.

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. **Terms of Reference** (Pages 11 - 12)

To note the Committee's Terms of Reference, as set out in the Constitution.

6. **Wildlife and Countryside Act 1981- Part III, Section 53: Application No.CO/8/40, for the Addition of a Public Footpath between Newcastle Road (A34) to Padgbury Lane, in the Town of Congleton.** (Pages 13 - 34)

To consider the application for the addition of a Public Footpath between Newcastle Road to Padgbury Lane in the town of Congleton.

7. **Wildlife and Countryside Act 1981- Part III, Section 53: Application no. MA/5/252 - Application for the Deletion of Footpath nos. 15 (part) and 23 between Charles Head Farm and Neighbourway Farm Parishes of Rainow and Kettleshulme and Application no. MA/5/174 - Application for the Deletion of Footpath no. 23 Parish of Kettleshulme** (Pages 35 - 68)

To consider the applications for the deletion of part of Public Footpaths No.15 and No.23 in the parish of Rainow and Kettleshulme.

8. **Highways Act 1980 Section 118: Application for the Extinguishment of Public Footpath No. 20 Parish of Bunbury** (Pages 69 - 78)

To consider the application for the extinguishment of Public Footpath No.20 in the parish of Bunbury.

9. **Highways Act 1980 Section 119: Proposal for the Diversion of Public Footpath No. 6 (part) in the Parish of Stoke** (Pages 79 - 86)

To consider the application to divert part of Public Footpath No.6 in the parish of Stoke.

10. **Town and Country Planning Act 1990 Section 257: Proposed Diversion of the Unrecorded Footpath, off St. Anne's Lane, Nantwich** (Pages 87 - 94)

To consider the application to divert the Unrecorded Footpath off St Anne's Lane, Nantwich.

11. **Town and Country Planning Act 1990 Section 257: Proposed Diversion of Public Footpath No.20 (parts) in the Town of Crewe.** (Pages 95 - 102)

To consider the application to divert parts of Public Footpath No.20 in the town of Crewe.

12. **Public Rights of Way Annual Report 2018-19 and Work Programme 2019-20** (Pages 103 - 130)

To consider a report on the achievements of the Council in terms of its public rights of way functions during the year 2018-19 and the proposed work programme for the year 2019-20.

13. **Informative Report: Cases of Uncontested Public Path Orders Determined under Delegated Decision** (Pages 131 - 134)

To note Public Path Orders determined under Delegated Decision.

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 11th March, 2019 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor S Pochin (Chairman)
Councillor D Flude (Vice-Chairman)

Councillors Rhoda Bailey, T Fox and L Gilbert

Officers in attendance

Genni Butler, Acting Public Rights of Way Manager
Laura Allenet, Public Path Orders Officer
Jennifer Miller, Definitive Map Officer
Marianne Nixon, Public Path Orders Officer
Andrew Poynton, Planning and Highways Lawyer
Rachel Graves, Democratic Services Officer

42 APOLOGIES FOR ABSENCE

Apologies were received from Councillor S Davies.

43 DECLARATIONS OF INTEREST

There were no declarations of interest.

44 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meetings held on 3 December 2018 be confirmed
as a correct record and signed by the Chairman.

45 PUBLIC SPEAKING TIME/OPEN SESSION

The Chairman advised that she would invite those registered to speak to
come forward to speak when the application was being considered by the
Committee.

**46 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53:
APPLICATION NO. CN/7/25 - APPLICATION FOR THE ADDITION OF A
PUBLIC FOOTPATH CONNECTING PUBLIC FOOTPATH NO.14 AND
PUBLIC FOOTPATH NO.15 IN THE PARISH OF BUNBURY.**

The Committee considered a report which detailed an application for the addition of a Public Footpath connecting Public Footpath No.14 and Public Footpath No.15 in the parish of Bunbury.

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

In August 2006 Bunbury Parish Council's Footpath Officer had made an application to modify the Definitive Map and Statement by the addition of a Public Footpath linking Public Footpath No.14 and Public Footpath No.15. Due to a backlog of Definitive Map Modification Order applications, the application was not investigated straight away but was registered and placed on the waiting list of outstanding applications.

In 2014 Officers became aware of a planning application which would affect Public Footpaths Nos.14 and 15 Bunbury and also the unrecorded footpath that was the subject of the undetermined Definitive Map Modification Order application.

Following meetings and discussions between Officers, the landowners and the developers, two applications were submitted in 2016 under the Town and Country Planning Act 1990 section 257. One was for the diversion of Footpath No.14 and the other was the extinguishment of the unrecorded footpath. With the diversion of Footpath No.14 and the retention of the existing route of Footpath No.15 it was considered there would be a suitable route through the site. The Public Rights of Way Committee gave approval for both Orders to be made at their meeting on 12 September 2016.

An objection was received to the Extinguishment Order for the unrecorded path and following referral to the Planning Inspectorate for determination, the Order was subsequently confirmed on 23 October 2018.

As the Extinguishment Order had been confirmed, this negated the need to investigate the Definitive Map Modification Order application. However, the Committee was still required to make a decision on the Parish Council's application.

The Committee considered the report and concluded that the application should be refused on the grounds that the footpath had been extinguished by Legal Order.

The Committee unanimously

RESOLVED:

That the application to modify the Definitive Map and Statement to record public footpath rights between points A-B, as shown on Plan No.WCA/017, be refused on the grounds that the footpath has been extinguished by Legal Order.

47 HIGHWAYS ACT 1980 S119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 4 (PART), PARISH OF POOLE

The Committee considered a report which detailed an application by Mr and Mrs Oglesby of Poole Hall, Nantwich, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.4 in the parish of Poole.

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 length of Public Footpath No.4 Poole to be diverted and the proposed diversion belonged wholly to the applicants. The proposed section of the footpath to be diverted crossed a field that was used as beef cattle grazing. The applicants were finding that users of the footpath did not like walking through a field of cattle and tended to walk up the private driveway, close to the front of the house and onwards along an estate track. The applicants had installed clear signage of the footpath route and had challenged users multiple times but still found it happened.

The proposed diversion would move the footpath along the field edge, as shown between Points A-C-B on Plan No.HA.139. It was proposed that the full length of the diversion would be enclosed with Cheshire railings and have a width of 2.5 metres. By enclosing the route it would eliminate any interaction between the cattle and users in the field and hopefully reduce any trespassing on the applicant's land. The proposed diversion route from Points C-B would take users along the tops of the valley bank and give improved views of the listed bridge and the countryside.

The Committee noted the comments made by the Peak and Northern Footpath Society and the Open Spaces Society and the Public Rights of Way Officer's response.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath

would be in the interest of the applicants as it would allow better land management and privacy and security of their property. It was considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a Diversion Order were satisfied.

The Committee unanimously

RESOLVED: That

- 1 an Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No.4 in the parish of Poole by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/139, 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.

48 TOWN AND COUNTRY PLANNING ACT 1990 S 257: APPLICATION FOR THE EXTINGUISHMENT OF PUBLIC FOOTPATH NO. 14 (PART), PARISH OF SANDBACH

The Committee considered a report which detailed an application from Persimmon Homes (North West) Ltd, requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to extinguish part of Public Footpath No.14 in the parish of Sandbach.

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, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they were satisfied that it was necessary to do so in order to enable development to be carried out in accordance with planning permission granted.

Trevor Boxer, Chairman of Sandbach Footpath Group spoke in objection to the extinguishment application and said that Public Footpath No.14 Sandbach was an important footpath as it was a link to the wider footpath network and open countryside and stated that the line of the footpath should have been incorporated into the development landscape rather than being extinguished. As planning permission had been granted

several years ago and work started on the site, the application appeared to be retrospective.

Adele Jacques, Persimmons, spoke to support the application. The section of Public Footpath No.14 to be extinguished was in the centre of the site and extinguishment was required to enable development to be carried out. The two cul-de-sac ends of the footpath would be linked by adopted highway – a section 38 document was with the Council for signing. Areas of open space and new footpaths were being created in the development and it had not been possible for the application to be submitted until negotiations with the landowner had been completed.

It was reported in paragraphs 5.5, 7 and 8.2 of the Report that 'Mill Lane' should read 'Church Lane'.

Planning permission had been granted in November 2013 for outline application for residential development – planning reference 12/4874C. A reserve matters application for the first development phase was granted in July 2015 – planning reference 13/5239C. A full planning application for the second phase was granted in October 2017 – planning reference 13/5242C.

A section of Public Footpath No.14 Sandbach would be obstructed by the proposed residential development – between points A and B as shown on Plan No.TCPA/055. An application had been made to extinguish this section of the Public Footpath. This would result in two cul-de-sac paths running between point A and Hawthorn Drive and between point B and Church Lane. The two paths would be legally connected in due course by a section of new estate road, Larch Drive, once it was formally adopted by the Council.

The objections and comments from the Ward Councillor S Corcoran, Sandbach Town Council and the Open Spaces Society were set out in the report, along with the PROW Officer's response. The objections and comments from Sandbach Footpath Group were circulated at the meeting.

It was reported that the concrete foundations set in place on the line of Public Footpath No.14 had been investigated by the Public Rights of Way team and was found not to be an obstruction - as long as the building was not built upwards it was not considered as an obstruction.

Whilst it was noted that the impact on the footpath by the development, and any mitigation action taken to include the footpath within the development, could not be considered against the current proposal to extinguish the section of footpath to enable the development to go ahead as these matters had been for resolution when the planning application was determined, the Committee was sympathetic to the views of the Sandbach Footpath Group and were disappointed that the developer had not provided a more satisfactory solution to the matter earlier on.

The Committee concluded that it was necessary to extinguish part of Public Footpath No.14 Sandbach to allow for the residential development, as detailed within planning references: 12/4874C and 13/5239C. It was considered that the legal test for the making and confirming of an Extinguishment Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

RESOLVED: That

- 1 That an Order be made under Section 257 of the Town and Country Planning Act 1990 to extinguish part of Public Footpath No.14 in the parish of Sandbach, between points A and B as illustrated on Plan No.TCPA/055, on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

The meeting commenced at 2.00 pm and concluded at 2.54 pm

Councillor S Pochin (Chairman)

*Committees***Public Rights of Way Committee****Membership:** 7 Councillors*Functions*

- 34 The Public Rights of Way Committee shall:
- 34.1 discharge all the functions of the Council in relation to all matters relating to public rights of way (except the determination of non-contentious Public Path Order applications which has been delegated to the Executive Director Place).
 - 34.2 discharge the authority's functions in respect of Commons and Town and Village Greens
 - 34.3 be apprised of, approve, and comment on a range of policies, programmes and practices relating to Rights of Way, Commons and Town and Village Greens and countryside matters including but not limited to:
 - 34.3.1 progress reports on implementation of the Rights of Way improvement Plan (part of the Annual Progress Review for the Local Transport Plan)
 - 34.3.2 Statements of Priorities
 - 34.3.3 Enforcement Protocols
 - 34.3.4 Charging Policy for Public Path Order applications.

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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 10 June 2019

Report Title: Wildlife & Countryside Act 1981– Part III, Section 53 Application No.CO/8/40, for the Addition of a Public Footpath between Newcastle Road (A34) to Padgbury Lane, in the Town of Congleton.

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1 This report outlines the investigation of an application made by Mr Alan Wrench on behalf of The Congleton Group of The Ramblers' Association to amend the Definitive Map and Statement by adding a public footpath. This report includes a discussion of the consultations carried out in respect of the claim, the historical evidence, witness evidence and the legal tests for a Definitive Map Modification Order to be made. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to add the public footpath.
- 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. Recommendations

- 2.1 An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding as a Public Footpath, the route as shown between points A-B on Plan No. WCA/018;
- 2.2 Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Act.
- 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 The evidence in support of this claim must show, on the balance of probabilities, that public rights subsist or are reasonably alleged to subsist along the claimed route. It is considered there is sufficient use of the route without force, secrecy or permission, that is without interruption and as of right; to support the existence of footpath rights along the route shown on Plan No. WCA/018. It is also considered that the historical evidence discovered adds weight and supports the existence of footpath rights on the claimed route.

4. Other Options Considered

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

5. Background

5.1 *Introduction*

5.1.1 The application was submitted in July 2014 by Mr Alan Wrench on behalf of The Congleton Group of The Ramblers' Association to modify the Definitive Map and Statement for the Town of Congleton by adding a footpath. The application was supported by user evidence. A total of 7 witnesses submitted evidence initially with the application in 2014, a further two witnesses have since submitted user evidence in 2019.

5.1.2 The Applicant sought a direction from the Secretary of State for a decision to be made on the application as it was still awaiting investigation. A direction decision dated 7th February 2019 was received from an Inspector representing the Secretary of State. The decision, pursuant to paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981, directed the Council to determine the application no later than 9 months from the date of the direction.

5.2 *Description of the Application Route*

5.2.1 The claimed route runs from Newcastle Road, Congleton (A34) between the properties Marsh House and Portland (point A on Plan No. WCA/018) and follows a south westerly direction for approximately 85 metres to Padgbury Lane (UY940). The full width of the route between the boundaries varies between approximately 5 and 7 metres. The whole route has a grass/earth surface apart from a small section of approximately 2-3 metres of tarmac surface at the start of the route at the Newcastle Road end. Witnesses have reported that the route has been very overgrown at times in the past, however, when Officers visited the site in March 2019 there was a clear trodden path with grass/bushes to the side.

5.3 *The Main Issues*

5.3.1 Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Council shall keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events:-

5.3.2. One such event, (section 53(3)(c)(i)) is where

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

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic

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

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

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

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

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

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

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

5.4 *Investigation of the Claim*

5.4.1 An investigation of the evidence submitted with the application (CO/8/40) has been undertaken, together with some additional research. The application was made on the basis of user evidence from seven witnesses; with a further two witnesses later submitting evidence. In addition to the user evidence submitted an investigation of any available historical documentation is also undertaken to establish whether the claimed route had an historical origin. The documentary evidence that has been examined is referred to below and a list of all the evidence taken into consideration can be found in **Appendix 1**.

5.5 *Documentary Evidence*

There was no documentary evidence submitted with the application. The documents referred to are considered by collective groupings.

Commercial County Maps

5.5.1 These are small scale maps made by commercial map-makers, some of which are known to have been produced from original surveys and others are believed to be copies of earlier maps. All were essentially topographic maps portraying what the surveyors saw on the ground. They included features of interest, including roads and tracks. It is doubtful whether map-makers checked the status of routes, or had the

same sense of status of routes that exist today. There are known errors on many map-makers' work and private estate roads and cul de sac paths are sometimes depicted as 'cross-roads'. The maps do not provide conclusive evidence of public status, although they may provide supporting evidence of the existence of a route.

- 5.5.2 The route is shown on *Greenwood's Map (1819)* and *Swire and Hutching's Map (1830)*. It is also shown on *Bryant's Map (1831)* the full length of the claimed route is shown on the correct alignment. It is not labelled but the depiction is referred to in the key as '*Lanes & Bridle Ways*'.

Tithe Maps and Apportionment

- 5.5.3 Tithe Awards were prepared under the Tithe Commutation Act 1836, which commuted the payment of a tax (tithe) in kind, to a monetary payment. The purpose of the award was to record productive land on which a tax could be levied. The Tithe Map and Award were independently produced by parishes and the quality of the maps is variable. It was not the purpose of the awards to record public highways. Although depiction of both private occupation and public roads, which often formed boundaries, is incidental, they may provide good supporting evidence of the existence of a route, especially since they were implemented as part of a statutory process. Non-depiction of a route is not evidence that it did not exist; merely that it did not affect the tithe charge. Colouring of a track may or may not be significant in determining status. In the absence of a key, explanation or other corroborative evidence the colouring cannot be deemed to be conclusive of anything.
- 5.5.4 The Congleton Tithe Map of 1845 shows the claimed route as part of the public roads. There is a spur path shown, off the north side of the claimed route, which appears to be access to a field, plot number 379. The accompanying apportionment records Plot number 1540 as Public Roads, and states land use as 'Thoroughfare'. This is good supporting evidence that the claimed route was in existence and considered public at the time.

Ordnance Survey Maps

- 5.5.5 Ordnance Survey mapping was originally for military purposes to record all roads and tracks that could be used in times of war. This included both public and private routes. These maps are good evidence of the physical existence of routes, but not necessarily of status. Since 1889 the Ordnance Survey has included a disclaimer on

all of its maps to the effect that the depiction of a road or way is not evidence of the existence of a right of way. It can be presumed that this caveat applies to earlier maps also. These documents must therefore be read alongside the other evidence.

5.5.6 *O.S. 1st Edition County Series 25" to 1 mile 1871/2*

There is a physical depiction of a road/track on the same alignment as the claimed route, the additional spur on the northern side is shown; the spur is braced with the adjacent plots but the claimed path is not braced and does not have a plot number.

5.5.7 *O.S. 2nd Edition County Series 1897*

The road/track shown on the first edition O.S. Map is shown in the same way on this edition with the addition of a brace also on the claimed route. It is braced with the plot to the northern side where Marsh House/Marsh House Farm is located. There are also dashed lines at each end of the claimed route and one along most of the southern length of the route.

5.5.8 *O.S. 3rd Edition County Series 1909*

The road/track shown on the first edition O.S. Map is shown in the same way on this edition, with the addition that the claimed route is braced with the plots either side and there are dashed lines at each end of the route.

5.5.9 *Ordnance Survey Six-inch 1st, 2nd and 3rd Editions*

There is a road/track from Newcastle Road to Padgbury Lane on the same alignment as the claimed route shown on all three editions.

5.5.10 *Ordnance Survey One-inch to 1 Mile England and Wales, Revised New Series 1897*

There is a road/track linking Newcastle Road and Padgbury Lane on the same alignment as the claimed route shown on this edition.

5.5.11 *Ordnance Survey One-inch to 1 Mile New Popular Edition 1947*

There is a road/track linking Newcastle Road and Padgbury Lane on the same alignment as the claimed route shown uncoloured on this edition; the key on the map would seem to indicate the route is classed as 'Other Motor Roads' 'narrow', uncoloured indicates a description of 'bad'.

Finance Act 1910

5.5.12 The Finance Act of 1910 involved a national survey of land by the Inland Revenue so that an incremental value duty could be levied when ownership was transferred. Land was valued for each owner/occupier and this land was given a hereditament number. Landowners could claim tax relief where a highway crossed their land. Although the existence of a public right of way may be admitted it is not usually described or a route shown on the plan. This Act was repealed in 1920.

5.5.13 Two sets of plans were produced: the working plans for the original valuation and the record plans once the valuation was complete. Two sets of books were produced to accompany the maps; the field books, which record what the surveyor found at each property and the so-called 'Domesday Book', which was the complete register of properties and valuations.

5.5.14 Officers have viewed the working plan at the County Records Office. The working plans are on Ordnance Survey 3rd edition base maps; only one plot is marked on the plan near to the claimed route, that is the area around Marsh House Farm; it is given plot number 3333. The claimed route is not included in this plot. The Domesday Book was checked for plot number 3333; no deductions were made for right of way.

National Parks and Access to the Countryside Act 1949

5.5.15 The Definitive Map and Statement is based on surveys and plans carried out in the early 1950s by each parish in Cheshire of all the ways they considered to be public at that time. The surveys were used as the basis for the Draft Definitive Map. Congleton Municipal Borough Council completed the survey for this area at the time and did not claim the route in question as a right of way; the route was subsequently omitted from the published Definitive Map.

The Dane Valley Way Walking Leaflets

5.5.16 The Congleton Ramblers Group have published two walking guide leaflets covering the 'Dane Valley Way', a walk from Buxton to Congleton and Congleton to Northwich, closely following the River Dane. The claimed path is referred to in 'The Lower Dane Valley Way leaflet' as a ginnel. The description of the route guides walkers along the claimed route. The Dane Valley Way project was started by The

Ramblers' Association in 1994; it is not known when the leaflets were first published but the latest versions were produced in 2014.

5.6 *Witness Evidence*

5.6.1. A chart illustrating the user evidence is at Appendix 2. The chart indicates the relevant 20 year period which is 1994 - 2014. This is because no challenge to use of the route has taken place so 2014, when the application was made, is used as the date the route was 'brought into question'.

5.6.2 Nine people claim use of the route; they have all completed standard user evidence forms. Seven witnesses completed their evidence forms in 2014 when the application was submitted, an additional two completed forms in 2019. Four of the witnesses have been interviewed. All of the initial witnesses were written to, however, not all of the witnesses responded.

5.6.3 All of the use of the claimed route is by foot; the first reported use is from as early as 1966. Eight of the nine witnesses state they have used the claimed route in excess of 20 years. Six witnesses have used it for the full relevant 20 year period, 1994 – 2014; two further witnesses have used it for 16 years during this period. The route has been used for a variety of recreational purposes; walks to the Astbury Mere; dog walking; visiting friends and organised walks with the Congleton Ramblers. Seven witnesses state they used the claimed route 'occasionally', the remaining two stated 'weekly' use.

5.6.4 Witnesses do not report being challenged; there is no evidence of any signs at any time anywhere along the claimed route. No obstructions have been reported other than the vegetation. Most of the witnesses mention that the route has been overgrown at certain times with heavy vegetation/nettles/long grass. The applicant has stated that clearance works have been carried out on occasions in the past by a walking group working party.

5.6.5 The witnesses numbered 4, 6, 8, and 9 (on the user evidence chart at Appendix 2) have been interviewed and in addition to their completed user evidence forms have each signed a statement from their interview. All four witnesses have known of the claimed route and used it on foot for a significant number of years (between 30 and 44 years). Although all four state their frequency of use as 'occasional', this varies from very occasionally to 3-4 times a year, to monthly. Over a significant time period such as this it is not unusual for witnesses to have used it more or less often at certain times in their life. None of witnesses interviewed report any challenges to their use.

5.7 Summary of User Evidence

5.7.1 The witness evidence shows clear evidence of use of the claimed route over a significant time frame. Nine people have claimed use of the route A-B and of those four were interviewed by Officers to verify their evidence.

6. Landowner Evidence

6.1 The claimed footpath is on land which is unregistered with the Land Registry, apart from a very small section at the beginning of the route at the Newcastle Road end which has a Caution against first registration (Point A on Plan No. WCA/018). This Caution was made in June 2017 by the owners of Marsh House; it was made to protect their right to access their property. In a statement of truth accompanying the Caution, the owners of Marsh House state they have always used this land to access the property since they purchased it in 1973. The property opposite known as 'Portland' also appears to use this small section of the claimed path as access, however, this is not recorded at the Land Registry. No other part of the claimed path is registered, consequently Notice of the application could not be served on the landowner when the application was made in 2014; therefore Notices were placed at each end of the claimed path. At the start of investigations in March 2019 all five properties which border the claimed path were consulted regarding the application.

6.2 The owner of Marsh House contacted Officers following the consultation. They confirmed they had lived there since 1973 and stated they believed the route was a footpath (known as Cinder Lane) and they would support the application. They stated that Marsh House (built in 1795) and Marsh House Farm were one property at one time, but are now separate.

6.3 Another landowner who lives adjacent to the claimed path, at the Padgbury Lane end, contacted Officers. She also regards the route as a footpath; she has no objection to the path being added to the Definitive Map, she was aware that it is part of the Dane Valley Way. She stated she had seen a man cutting back the vegetation. She explained that there are four manhole covers along the path; there has been a historic problem with flooding in the area. The problem is with the foul drain, the utility company are aware, and on occasions they have to come to clear the drains. She also explained that the path has been used to dump waste in the past, with Christmas trees and garden waste and cuttings.

6.4 No further comments have been received from the adjacent landowners.

7. Bringing the right to use the route into question

7.1 In order to show that public rights have been acquired along the length of the claimed route through usage, a twenty year period must be identified during which use of the route by the public has been established. This period is usually taken as the twenty years immediately prior to a challenge being made to that use. In this case no challenges to the use have taken place, therefore it is considered that the date of the application, July 2014 would have brought the right to use the route into question. The relevant period would therefore, be 1994 to 2014.

8. Conclusions

8.1 The user evidence submitted shows use of the claimed route from 1966 to 2019; however the majority of use seems to be from the 1990s onwards. The relevant period to be considered is 1994 to 2014; as no challenge has been made to the use of the route and it was in 2014 that the application was made. Six of the nine witnesses claim use of the route on foot for the full twenty year period. Four witnesses have been interviewed by Officers.

8.2 Under section 31(1) of the Highways Act 1980 public footpath rights can come into existence by prescription unless there is evidence to the contrary. Therefore the landowner must provide evidence to that effect, which is normally evidence of a challenge or notices put up during the relevant twenty year period. In this case there is no registered landowner, and the adjacent landowners have not registered any objections. All of the witnesses interviewed state they were not challenged at any time when using the route. There is no evidence of any challenge to the public during the relevant period.

8.3 There is documentary evidence to show that a route was in existence along the alignment of the claimed route as early as 1819. The Commercial County Maps; Congleton Tithe Records and Ordnance Survey Maps are all good supporting evidence that public rights exist along the claimed route.

8.4 The evidence in support of this application must show, on the balance of probabilities that public footpath rights subsist or are reasonably alleged to subsist along the claimed route. It is considered that there is sufficient user evidence to support the existence of footpath rights. On the balance of probabilities, the requirements of Section 53(3)(c)(i) have been met and it is recommended that the Definitive Map and Statement should be modified to add the claimed route as a Public Footpath.

9. Implications of the Recommendations

9.1 Legal Implications

9.1.1 Under section 53 of the Wildlife & Countryside Act 1981 (WCA), the Council has a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Section 53 (3) (c) allows for an authority to act on the discovery of evidence that suggests that the Definitive Map needs to be amended. The authority must investigate and determine that evidence and decide on the outcome whether to make a Definitive Map Modification Order or not.

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

9.1.3 The legal implications are contained within the report.

9.2 Finance Implications

9.2.1 If objections to an Order lead to a subsequent hearing/inquiry, the Council would be responsible for any costs involved in the preparation and conducting of such.

9.3 Policy Implications

9.3.1 There are no direct policy implications.

9.4 Equality Implications

9.4.1 The legal tests under section 53 of the Wildlife & Countryside Act 1981 do not include an assessment of the effects under the Equality Act 2010.

9.5 Human Resources Implications

9.5.1 There are no direct implications for human resources.

9.6 Risk Management Implications

9.6.1 There are no direct implications for risk management.

9.7 Rural Communities Implications

9.7.1 There are no direct implications for rural communities.

9.8 Implications for Children & Young People

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

9.9 Public Health Implications

9.9.1 There are no direct implications for public health.

10 Ward Members Affected

10.1 The Councillors in office at the time of the consultation, Councillor Paul Bates, Councillor Gordon Baxendale, and Councillor George Hayes, all representing Congleton West Ward, have been consulted. No comments have been received.

10.2 The new elected Councillors from May 2019 Councillor Suzie Akers Smith and Councillor Sally Holland have been sent a copy of the report. Any comments will be reported verbally.

11 Consultation & Engagement

11.1 The user groups, neighbouring landowners and statutory undertakers have been consulted.

11.2 United Utilities responded in an email dated 5th March 2019 and stated they have no objections.

11.3 Cadent, National Grid, Plant Protection, replied in a letter dated 6th March 2019 advising that they have apparatus in the area and therefore, object to activities pending further investigation. Officers have responded and stated that apparatus would not be affected, if an Order were made the only works that would be required would be the cutting back of vegetation.

11.4 The local correspondent for Cheshire East Open Spaces Society responded by email dated 5th March 2019, and stated that he has walked the path unchallenged for many years, but not for as long as the applicant and the witnesses. He states he continues to walk the path, which is a very useful addition to the public rights of way network; he states additionally it provides a safe pedestrian access to the crossing on the A34. He would welcome the addition of the footpath to the Definitive Map.

12 Access to Information

12.1 The background papers relating to this report can be inspected by contacting the Officer below.

Contact Information

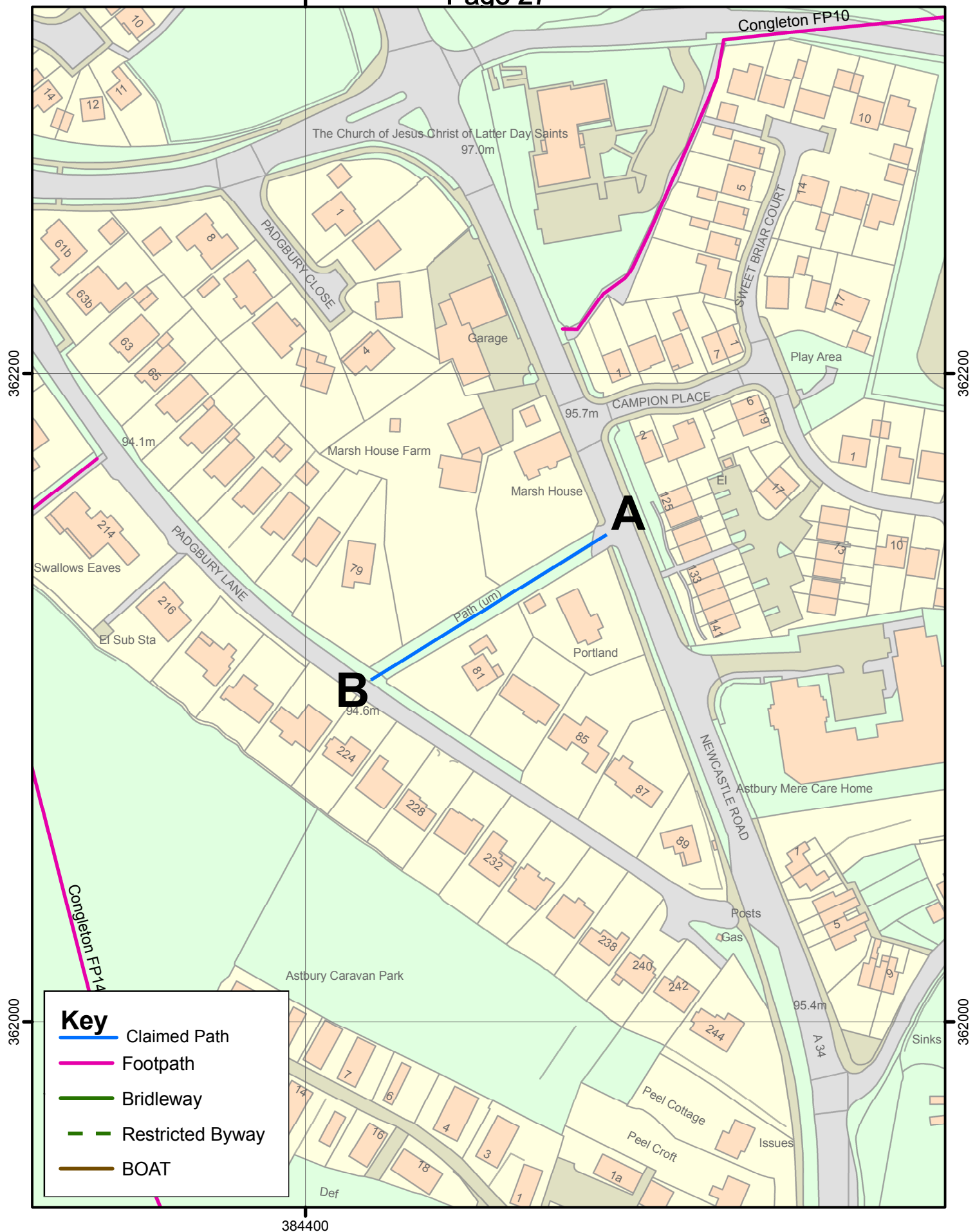
Any questions relating to this report should be directed to the following Officer:

Name: Jennifer Miller

Job Title: Definitive Map Officer

Email: jennifer.miller@cheshireeast.gov.uk

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Claimed footpath between Newcastle Rd
and Padgbury Lane, Congleton

Plan No.
WCA/018

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



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DMMO DOCUMENTARY RESEARCH CHECKLIST

District: Congleton	Parish: Congleton	Application: CO/8/40	
Document	Date	Reference	Notes
Commercial County Maps			
Bryant's Map	1831	CRO 18 (1831)	Route shown as 'Lanes & Bridleways'
Greenwood	1819	CRO PM13/1	Route shown
Swire and Hutching	1830	CRO PM13/8	Route shown
Tithe Records			
Apportionment	1845	CRO EDT/123/1 Township: Congleton	Plot No. 1540 Public Roads
Map	1845	CRO EDT/123/2 Township: Congleton	Route shown linking Newcastle Road and Padgbury Lane
Ordnance Survey			
1" to 1 mile Revised New Series sheet 110	c.1897	PROW Office	Route shown

25" County Series 1 st Edition	c.1875	CRO PROW Office	Route shown
25" 2 nd Edition 25"	1897		Route shown, dashed lines shown at each end and along most of the southern length. Braced with plot 519 to the north.
3 rd Edition 25"	c.1909		Route shown, dashed lines shown at each end. Braced with adjacent plot.
6" Ordnance Survey 1 st , 2 nd , 3 rd Editions	c.1872-5 c.1899 c.1910		Route shown
1 inch to the Mile New Popular	1947		Route shown Description in key 'Other motor Roads' 'Narrow' 'Bad'
Finance Act 1910			
Working Sheets	1910	CRO NVB/LI.5	A plot is outlined around Marsh House Farm this does not include the claimed path. Plot is numbered 3333.
Domesday Book	1910	CRO NVA 2/35	Plot 3333 Occupier named as J. I. Sproston Owner named as W. Billington No deduction made for rights of way.
Parish Records			
Congleton Borough Council Minutes	1951- 1952	CRO LBC 3852/1	No reference to the claimed route.

Newbold Astbury cum Moreton Parish Council Minutes	1924- 1953	CRO PC143/2	No reference to the claimed route.
	1953- 1981	CRO PC143/3	

Local Authority Records

Pre-Definitive Map “Green Book” record	Early 1950s	PROW	No reference to the claimed route.
Walking Survey – Congleton	1952	PROW	No reference to the claimed route.
Draft Definitive Map	1953	PROW	Route not shown.
Provisional Definitive Map	1968	PROW	Route not shown.
Definitive Map	1971	PROW	Route not shown.

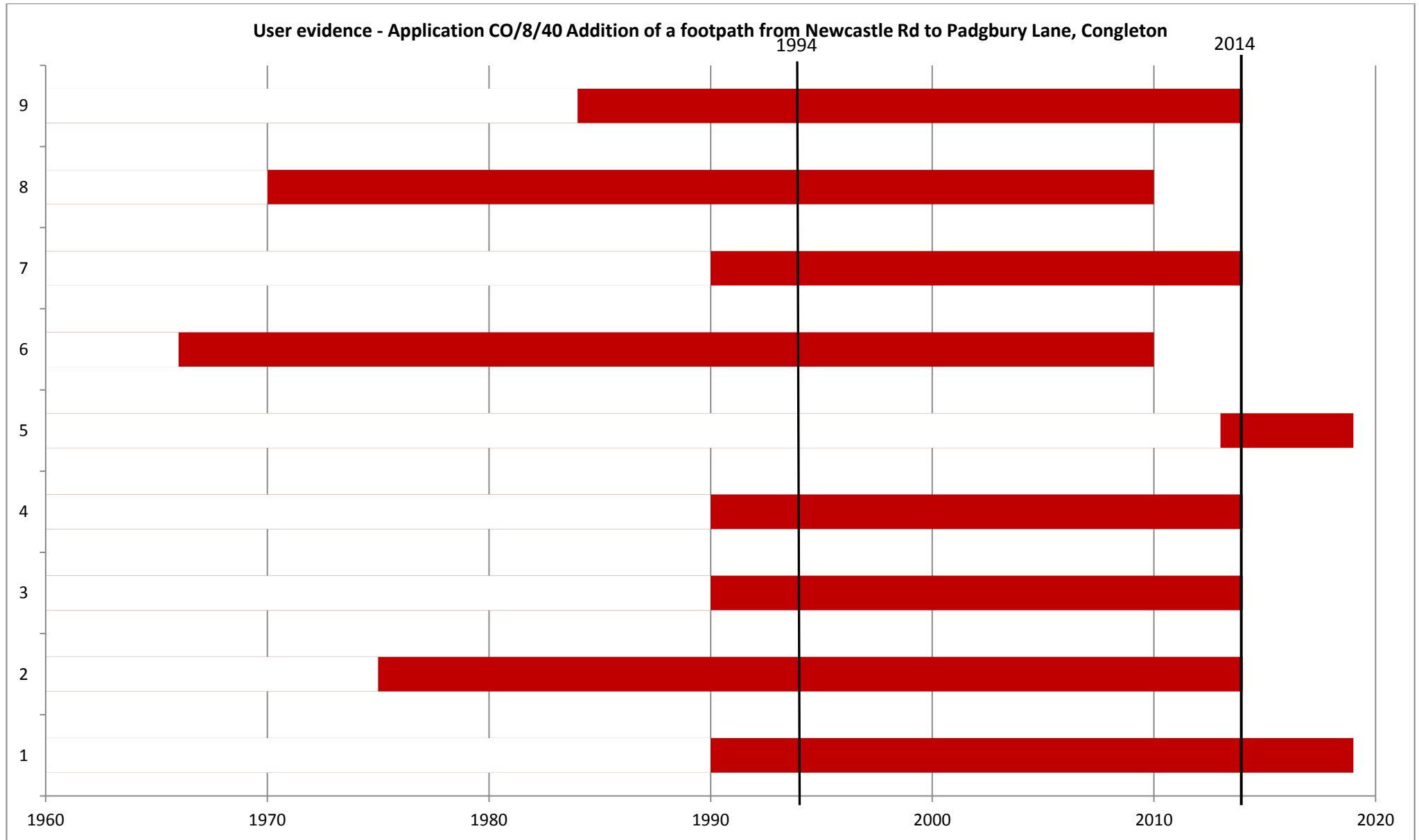
Other documents

Dane Valley Way Leaflets	2014	PROW	Route referred to as a ginnel Claimed footpath included in the description of the route.
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CRO – County Record Office

PROW – Public Rights of Way Unit

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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 10 June 2019

Report Title: Wildlife and Countryside Act 1981– Part III, Section 53

Application no. MA/5/252: Application for the Deletion of Footpath nos. 15 (part) and 23 between Charles Head Farm and Neighbourway Farm Parishes of Rainow and Kettleshulme

Application no. MA/5/174: Application for the Deletion of Footpath no. 23 Parish of Kettleshulme

Senior Officer: Frank Jordan, Executive Director, Place

1. Report Summary

- 1.1. The report outlines the investigation of an application made by Marie Cunningham to amend the Definitive Map and Statement by deleting Public Footpath nos. 15 (part) and 23 between Charles Head Farm and Neighbourway Farm in the two parishes of Rainow and Kettleshulme. The report also makes reference to a previous application which was made to delete Public Footpath no. 23 in the Parish of Kettleshulme. The report includes a discussion of the consultations carried out in respect of the application, the historical evidence, witness evidence and the legal tests for a Definitive Map Modification Order to be made for a deletion case. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to delete Public Footpath nos. 15 (part) and 23 (referred to as FP15/23 throughout this report).

2. Recommendations

- 2.1. An Order not be made under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to delete Public Footpaths nos. 15 (part) and 23, in the parishes of Rainow and Kettleshulme, as shown between points C-D-E-F-G-H-I-J-K-M on Plan no. WCA/015.
- 2.2. Definitive Map Modification Order applications nos. MA/5/252 and MA/5/174 be refused, on the grounds that there is not any robust evidence

to overturn the legal presumption that the Definitive Map and Statement are correct.

3. Reasons for Recommendation/s

- 3.1. The evidence in support of this claim must demonstrate significant and robust evidence to overturn the presumption that the Definitive Map and Statement are correct.
- 3.2. Whilst a substantial amount of research has been undertaken, it is concluded that there is no substantial supporting evidence to overturn the legal presumption that the Definitive Map and Statement are correct at this point in time. The reasons for this recommendation have been discussed in detail within this report.
- 3.3. In particular, it is concluded that the evidence examined does not meet the legal test laid out in the case law 'Trevelyan vs Secretary of State' (2001) which clearly states that some evidence of substance has to be put in the balance if it is to outweigh the initial presumption that a way has been correctly included. There has to be some evidence that was 'beyond the realms of credibility that a right of way existed'.
- 3.4. Following on from the investigation it has been concluded that whilst there are several opinions made by the applicant that there may have been an error in recording FP15/23 on the Definitive Map, it is concluded that the documentary information provided by the applicant is not deemed sufficient to overturn the presumption that the Definitive Map is correct. In particular, it is clear that the correct legal procedures were followed during the time of recording FP15/23 on the Definitive Map and Statement with no objections being received at the time. In addition in more recent years there is evidence of the public having also used the footpaths.
- 3.5. Matters relating to obstructions on the route of FP15/23; difficulties of using the route; the missing footbridge; the cost of making the route safer and little use or lack of awareness of the route are all matters that cannot be taken into account as they are not relevant to the legal tests to be applied in such applications.

4. Other Options Considered

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

5. Background

5.1. *Introduction*

5.1.1 The application was made by Marie Cunningham on 16th March 2016 and included a large amount of documentary evidence such as maps, letters and other material sourced from Cheshire Archives, Cheshire East Council Records and elsewhere. In addition there were also 20 statements attached from individuals who state they did not believe FP15/23 was correct or indeed a public footpath at all. This application was registered as MA/5/252.

5.1.2 It was noted that with the application made in 2016 there was reference to a previous application, made in 1991 (applicant now deceased), to delete public footpath no. 23 Kettleshulme. Copies of statements and documentary evidence from the previous application were once again submitted. Officers understand this previous application was left undetermined at the time; it was Officers' opinion that there was insufficient evidence in 1991 to support the deletion; however, Officers gave the applicant further time to submit additional evidence. The applicant did not submit any further evidence and the application was held in abeyance. This application was registered as MA/5/174.

5.1.3 The main body of this report considers the new application in 2016 (MA/5/252). The 2016 application is for the deletion of Public Footpath no. 15 (part) in the Parish of Rainow and Public Footpath no. 23 in the Parish of Kettleshulme. The 1991 application only concerned the deletion of Public Footpath no. 23 in the Parish of Kettleshulme. Considering the witness evidence, there are mostly identical witness statements in both applications although there were a few other witnesses in 1991 (mostly deceased now) that did not submit statement information in 2016 and some additional letters in the 1991 application. This matter has also been considered in section 5.6 of this report. Consequently, as both the 1991 and 2016 applications are concerned with the same subject, this report investigates all the evidence concerning the deletion of FP15/23, evidence from both applications has been taken into account.

5.1.4 Cheshire East Council appointed a consultant to investigate this case and conduct interviews with witnesses to form the basis of this report. This is in light of the fact there is a Secretary of State direction to determine the case either way as a matter of priority.

5.2 *Description of the Footpaths to be deleted*

5.2.1 That length of Footpath no. 23 proposed to be deleted runs from a point just to the west of Neighbourway Farm (point C on Plan no. WCA/015) in a

generally westerly direction past an old cow shed building, along a sunken lane known locally as 'cow lane' then past a small old gunpowder hut. It then proceeds across two fields in a more south westerly direction before descending steeply crossing over Todd Brook for a short distance to meet the Parish boundary on the other side of the bank (point I on Plan no WCA/015) where it joins Footpath no. 15 Rainow.

5.2.2 That length of Footpath no. 15 (part) proposed to be deleted runs from Todd Brook (point I on Plan no WCA/015) and continues in a south westerly direction upslope towards Charles Head Farm. At point K the route proceeds through a small paddock before meeting a junction of other public rights of way in Charles Head Farm, specifically Footpath no. 9 at (point M on Plan no WCA/015).

5.3 *The Main Issues*

5.3.1 Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Cheshire East Borough Council shall keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events.

5.3.2. One such event (section 53(3)(c)(iii) requires modification of the map and statement to delete a public right of way where:

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

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

5.3.3 The evidence can consist of documentary / historical evidence or user evidence or a mixture of both. All the evidence must be evaluated and weighed before a conclusion is reached. Any other issues, such as safety, security, suitability, desirability, cost or the effects on property or the environment, are not relevant to the decision.

5.3.4 The legal test for deleting a public right of way is somewhat different than for claiming a public right of way or for applications to change the status or alignment of a route. In particular, there are specific case law tests and government guidance notes to be considered when examining deletion cases:

DEFRA Government Circular 1/09 (1990)

5.3.5 This circular states that *'in making an application for an order to delete or downgrade a right of way, it will be for those who contend that there is no right of way or that a right of way is of a lower status than that shown, to prove that the map is in error by the discovery of evidence, which when considered with all other relevant evidence clearly shows that a mistake was made'*. The circular further states *"it is not for the authority to demonstrate that the map is correct, but for the applicant to show that an error was made"* and *'the evidence needed to remove a public right from such an authoritative record, will need to be cogent'*.

Trevelyan v SoS [2001] EWCA Civ 266 and Burrows v SoS [2004] EWHC 132.

5.3.6 In the above case the Court of Appeal held that where an application was made to delete path from the Definitive Map, and it fell to the Secretary of State or an inspector to decide whether the right of way did exist, he had to start with an initial presumption that it did. Some evidence of substance had to be put in the balance if it was to outweigh the initial presumption that the way had been correctly included. There has to be some evidence that was *'beyond the realms of credibility that a right of way existed'*.

5.3.7 **Planning Inspectorate Rights of Way Section Advice no 9 (2006)** on such cases also states, *'An enquiry cannot simply re-examine evidence examined when the way or ways in question were first entered on the Definitive Map, there must be some new evidence, when considered with all the other evidence available, justifies the modification'*.

5.3.8 The guidance notes also refer to the maxim "once a highway, always a highway". Meaning once a highway such as a public footpath has come into being by whatever means it continues indefinitely no matter whether it is used or not. In the case of *Harvey v Truro RDB (1903)* the judge states *"mere disuse of a highway cannot deprive the public of their rights, Where there has once been a highway no length of time during which it may not have been used will preclude the public from resuming the exercise of the right to use it if and when they think proper"*.

5.4 Investigation of the Evidence

5.4.1 An investigation of the evidence submitted with the application (MA/5/252) has been undertaken, together with some additional research. The application was made on the basis of user evidence from 20 witnesses plus a statement from the applicant. A large amount of documentary information was also provided with the application including:-

- Rainow Walking Survey Map and Schedule by Thomas Rowbotham

- Macclesfield District Footpath Map
- Correspondence regarding the condition of a bridge at Todd Brook
- Rainow Parish Council Records
- Rainow Draft Map and Amendment and Statement
- Kettleshulme Parish Council records on correspondence during Definitive Map process
- Kettleshulme Draft Map and Amendments and statement
- Peak and Northern Footpath Society map and records during the Definitive Map process
- Provisional Map Rainow and Kettleshulme
- Definitive Map Rainow and Kettleshulme
- Correspondence regarding Definitive Map Modification Order 1991 on Footpath no. 9 Charles Head
- Definitive Map Modification Order for Footpath no. 9, Charles Head
- Sales Particulars, Land at Charles Head 1987
- 1910 Finance Act Map
- Field book entry for Neighbourway Farm
- Bryant's Map 1831
- Tithe Map and Apportionment for Rainow
- Tithe Map for Kettleshulme
- Earl of Derby, Lord Courtown William Brocklehurst Estate Maps
- Various Ordnance Survey maps – 1840, 1875, 1881, 1910, 1970.
- Ordnance Survey Reference Object book for Rainow and Kettleshulme.

5.4.2 The applicant also submitted some additional documentation for consideration in 2019 which has been reviewed as part of this investigation. This includes:

- Thomas Rowbotham's letters to County Surveyor (1950s)
- Site meeting summary notes regarding Public Footpath no. 23, Kettleshulme in 1994 with landowners, representatives and other countryside access staff
- Draft Map of Kettleshulme 1950
- Peak and Northern Footpath Society Annual report for 1957
- Extract from Rainow Parish Council minutes 15/2/49.

5.4.3 All the historical evidence that has been examined within this investigation is listed at Appendix 1.

5.5 *Documentary Evidence*

The documents referred to are considered by collective groupings.

Ordnance Survey Maps

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

5.5.2 The Ordnance Survey 1 inch to 1 mile 1840 (Sheet 81 NW)

The route 15/23 does not appear on this map and neither is the other nearby footpath 95/16 leading to Mangers Carr.

5.5.3 The Ordnance Survey 1st Edition 25" map, 1875

No route is shown between Charles Head and the parish boundary for Footpath no.15 and no route is shown for route of Footpath no. 95 either. Part of Footpath no. 14 Kettleshulme is shown as a coloured road past Thorneycroft, Neighbourway and Near Carr. A cul-de-sac track is shown for part of Footpath no. 23 Kettleshulme.

5.5.4 The Ordnance Survey 1inch to 1 mile map, 1881

No route is shown between Charles Head and the parish boundary. No route is shown for the route of footpath no. 95 Rainow either although a track is shown for part of footpath no. 23 on the Kettleshulme side.

5.5.5 The Ordnance Survey 3rd Edition 25" map, 1910

No route is shown between Charles Head and the parish boundary and no route is shown on public footpath no. 95 Rainow. A track feature is shown for part of Public Footpath no. 23 Kettleshulme. The 'gunpowder hut' is shown at the end of 'cow lane' on what is now Footpath no. 23 Kettleshulme.

5.5.6 The Ordnance Survey 3rd Edition County Series 1970

No route is shown between Charles Head and the parish boundary (Footpath no. 15 part). A track is shown for part of Footpath no. 23 in Kettleshulme. A dashed line is shown between Charles Head and Mangers Carr Farm annotated 'path' on the Kettleshulme side with 'FB' on the crossing point at Todd Brook all corresponding with Footpath 95/16. In addition a dashed line is shown on the route of Footpath no. 98 and Footpath no. 9 south of Charles Head Farm.

5.5.7 The Ordnance Survey Boundary Remark Book of Rainow 1869 and Ordnance Survey Boundary Sketch Map of Kettleshulme 1871

The Ordnance Survey Boundary Remark Book for Rainow dated 1869, reference OS/26/1076 also shows the wording F.W (Face of Wall) it is noted at the point where Footpath no. 15 and Footpath no. 23 meet at the parish boundary. 'Footbridge' is also noted at the point where footpath nos. 95/16 meet. The Ordnance Survey Boundary Sketch Map for Kettleshulme dated 1871; reference OS/27/537 also shows the same.

Commercial Maps

5.5.8 These are small scale maps made by commercial map-makers, some of which are known to have been produced from original surveys and others are believed to be copies of earlier maps. All were essentially topographic maps portraying what the surveyors saw on the ground. They included features of interest, including roads and tracks. It is doubtful whether map-makers checked the status of routes, or had the same sense of status of routes that exist today. There are known errors on many map-makers' work and private estate roads and cul-de-sac paths are sometimes depicted as 'cross-roads'. The maps do not provide conclusive evidence of public status, although they may provide supporting evidence of the existence of a route.

Bryant's Map (1831)

5.5.9 Andrew Bryant produced commercial, fairly detailed maps between 1822 and 1835. Many show field boundaries, roads and hamlet names. The map showing the location in question was produced in 1831. Footpath nos. 15 and 23 are not shown on the map. Nearby Footpath no. 95 in Rainow is shown but there is no continuation of the route shown into Kettleshulme.

Estate Map 1865

5.5.10 Estate maps generally refer to the private assets held within an estate holding and will include private rights rather than public rights of way. They may also show public rights as reference points or refer to them with estate documentation but this was not their sole purpose; and the non-admittance of public rights of way on estate plans does not mean no public rights of way existed, the Definitive Map and other records must be considered alongside such estate maps.

5.5.11 The estate map (c. 1865) provided with the application for the land belonging to Earls Courtown and Derby and Mr William Brocklehurst shows no route between Charles Head and the parish boundary. Also, no route is shown for Public Footpath no. 95 nearby. For the land belonging to Lord

Derby no route is shown between Charles Head and the parish boundary with no route marked for Footpath no. 95 either.

Tithe Map and Apportionment

5.5.12 Tithe maps and the written document which accompanied them, (the apportionment) were produced between 1837 and the early 1850's in response to the Tithe Commutation Act 1836, to show which landowner owned which pieces of land and as a result how much they owed in monetary terms.

5.5.13 A map was produced by the Tithe Commissioners which showed parcels of land with unique reference numbers, and these were referred to in the apportionment document, which contained details of the land including its ownership, occupation and use. Public roads which generated no titheable produce were not given a tithe number. Some private roads, due to use could be equally not liable to a tithe. However, public and private roads could be subject to a tithe, if for instance, they produced a crop – grazing or hay cut from the verges. The Map and Apportionment must be considered together. Roads were listed at the end of the apportionment; there was often a separate list for private roads. Tithe maps and apportionments were not prepared for the purpose of distinguishing between public and private rights; they were intended to apportion a monetary rent in lieu of tithe payments in kind. Tithe maps provide good topographical evidence that a route physically existed and can be used to interpret other contemporary documents. If a route is not marked on a tithe map that does not mean it is not a public right of way.

5.5.14 On the Rainow side Footpath no. 15 is not shown from Charles Head to the parish boundary. It is noted no route is shown for the route of Footpath no. 95 Rainow either. Thomas Brocklehurst is recorded in the apportionment as the owner. For Kettleshulme, Footpath no. 23 is not shown either.

Finance Act Map 1910

5.5.15 The Finance Act of 1910 provided, among other things, for the levy and collection of a duty on the incremental value of all land in the United Kingdom. Land was broken into land ownership units known as hereditaments and given a number. Land could be excluded from payment of taxes on the grounds that it was a public highway and reductions in value were sometimes made if land was crossed by a public right of way. Finance Act records consist of two sets of documents which are:-

- Working Plans and Valuation Books. Surviving copies of both records may be held at the Local Records Office. Working maps may vary in

details of annotation and shading. The Valuation Books generally show records at a preparatory stage of the survey.

- The record plans and Field Books (small bound books) are the final record of assessment and contain more detail than the working records. The Record Plans and Field Books are deposited at The National Archives, Kew.

5.5.16 While the Valuation and Field Books were generally kept untouched after 1920, many of the working and record maps remained in use by the Valuation Offices and sometimes information was added after the initial Valuation process.

5.5.17 The 1910 Finance Act material did not become widely available until the mid 1980s. It cannot therefore have been considered during the Definitive map making process and can be considered “new evidence”, if it is relevant.

5.5.18 Various field books have been examined relating to the Finance Act Map for surrounding farms around footpaths 15/23. Ref: IR 58/20331 ‘Charles Head House and Land’ shows a £10 deduction for Public Rights of Way, but it is not clear which plots the deduction is relevant to as there are numerous public footpaths at Charles Head. In addition field book entry, Ref: IR 58/20203 refers to ‘Green Low Heath’ (previous name of Neighbourway Farm), which has a deduction for a footpath recorded, but without viewing plot numbers it is difficult to say what this could refer to as it could possibly be Footpath no. 14 or Footpath no. 23 Kettleshulme which both run through/near the farm.

5.5.19 It is difficult to draw any conclusion from the accompanying Finance Act Map information as the map provided with the application is just a working copy plan from the local records office which does not provide sufficient detail. Unfortunately, no final certified sheet for Map Sheet NVB XX1X.11 is available from the National Archives in Kew either.

National Parks and Access to the Countryside Act 1949

5.5.20 The Definitive Map and Statement is based on surveys and plans carried out in the early 1950s by each parish in Cheshire of all the ways they considered to be public at that time. The parish surveys were used as the basis for the Draft Definitive Map. At the same time the Peak and Northern Footpath Society carried out their own surveys of some parishes in Cheshire.

5.5.21 Rainow Parish Council completed their survey, with their Parish walking survey map dated May 1950, although records show the survey was being carried out up to March 1951. It is stated in the Parish Council minutes that the map and schedule were proposed to be submitted to the Surveying

Authority in August 1951. The part of Footpath no.15 Rainow in question is clearly marked from Charles Head Farm to Todd Brook, with the accompanying schedule stating that Footpath no.15 proceeds 'in the direction of Thorneycroft farm' (rather than Neighbourway Farm). It does, however, mention a footbridge over Todd Brook but that it 'is in not too good condition' and there is no beaten path, but as both focal points are visible the path is easy to follow. The general description of Footpath no. 15 on the walking survey states *'carry on keeping to well used farm track into Charles Head Farm Yard. Crossing no.9 path at this point. Continue straight on through farm gate F.G, and down steep field, bearing right hand, to the bottom of the field, Cross Todd Brook by wooden footbridge FB, to the Kettleshulme boundary, aiming for Thorneycroft Farm'*. Whilst there is clearly some possible ambiguity in the description here as Thorneycroft Farm is just north of the terminus at Neighbourway Farm, the general direction of travel is clearly not south of Neighbourway Farm. Whilst there is also mention of bearing right down slope, in practice as the slope is steep from Charles Head, a user would bear right a little before descending on Footpath no. 15.

5.5.22 The situation in Kettleshulme Parish is not so clear: it is believed a survey was completed and submitted at one time, however, there is currently no Parish walking survey map or schedules in the Public Rights of Way records; it is believed to be missing. A map believed to be a copy of the Kettleshulme walking survey (in the possession of Kettleshulme Parish Council) dated May 1950, was submitted by the applicant. A footpath numbered 23 is marked in a different location on this map, between Gap House via Broadcarr to Hardygreen (east-west). There is no footpath marked on this map between Todd Brook and Neighbourway Farm.

5.5.23 In a letter dated 25th August 1955 from the County Surveyor to the Clerk of Cheshire County Council, it is stated that Kettleshulme was one of the parishes from whom no survey particulars were received. A copy of the map submitted by the Peak and Northern Footpath Society for Kettleshulme parish was sent to the Parish Council, this map was prepared by Mr Norman Redford the footpath survey secretary. Every path shown on the Society's map was marked on the Draft Definitive Map and two others were also included. The footpath that became Footpath no.23 Kettleshulme, between Todd Brook and Neighbourway Farm, is not shown on the Society's map it is however on the Draft Definitive Map. With no parish minutes available for Kettleshulme and no correspondence in relation to this, it can only be assumed the Parish Council was consulted with regards to the inclusion of Footpath no.23 on the Draft Definitive Map.

5.5.24 The whole route of both Footpath no. 15 and 23 is then shown consistently as a Footpath on the Draft Map and subsequent Provisional and

Definitive Maps; and there are no records of objections at any stage during the Definitive Map process. On the final Definitive Map and Statement both footpath no.'s 15 and 23 are described clearly and match what is shown on the accompanying Definitive Map i.e. Footpath no. 23 is clearly described as *'From FP14 at "Neighbourway" in a westerly direction to Rainow Parish Boundary'*. Footpath no. 15 is described as *"From the Class II County Road (B5089) generally in a easterly direction to Kettleshulme Parish Boundary"*.

Parish Minutes

5.5.25 Parish Minutes are often a good source of local information regarding any issues that might have arisen on the local footpaths and roads. There are extensive detailed entries in the Rainow Parish minutes in 1951 often several entries each month discussing the Definitive Map process and the recording of public rights of way onto the Definitive Map. Unfortunately no similar records of minutes are now available from Kettleshulme Parish around this time period.

5.5.26 In the Rainow Parish minutes during the year 1951 there is much discussion about public footpaths around Charleshead area to the extent it would appear the parish had good knowledge of paths in their area given the volume of recording on paths and issues. Many of the minutes in 1951 do refer to discussion regarding footbridge repair matters over Todd Brook but it is difficult to be sure from the minutes of the exact location. However, in one entry reference is made to the bridge being between field plot numbers 92 and 371. These plot numbers would be consistent with the nearby Public Footpath nos. 95/16 route out of Charles Head.

5.5.27 In the Rainow Parish minutes of 1955 there is evidence of months of discussion concerning the Draft Map and Statement which were open and available for public inspection and objection/representation. There is included in the evidence submitted a letter from Mr Rowbotham, a member of Rainow Parish Council who was also the surveyor of footpaths in the Rainow area, stating to Cheshire County Council in 1955 that *'the importance of this survey is of such necessity that it should be as near perfect as is humanly possible'* demonstrating he understood the importance of the survey. Whilst there is evidence in the Rainow Parish Council minutes and correspondence of other corrections and potential omissions from the draft map there is no evidence of objections to the Rainow Parish Draft Map to the inclusion of Footpath no. 15.

Other records

Gunpowder hut records

5.5.28 There is an old gunpowder hut (approx. 2 x 2 m) situated at the end of 'cow lane' on public footpath no. 23 leading out of Neighbourway Farm. The applicant provided much historical documentation with the application regarding gunpowder stores in the area at the time including this one and procedures governing them.

5.5.29 It was common for such huts to be situated a little distance from farms and not too far from villages in an area that had several such sites. Local history records explain that gunpowder from the hut along now Footpath 15/23 was sold in the nearby shop/post office in Kettleshulme (now closed). Records provided by the applicant and from interviewing people indicate that the gunpowder hut became redundant at the end of World War 1 so roughly by 1918. The applicant and others make the argument that a gunpowder hut would not be located next to a public right of way. However the public right of way may not have come into existence until later; its usage on foot by the public, to prove warranting its inclusion on the Draft and Definitive Map, would have been based on the 20 years use of the route prior to the 1950s, when the gunpowder hut was long out of operation, i.e. 1930s – 1950s. Interestingly a local history article also mentions that just the other side of Todd Brook at the bottom of Footpath no. 15 was a flat reed area where people used to make baskets.

5.5.30 It has been noted that whilst the gunpowder hut still remains in situ there is only a small space to pass to the side of the gunpowder hut on 'cow lane' via a fallen down stone wall. During interviews some of the witnesses indicated that the council knocked down this bit of stone wall in more recent years with an intention to install a stile here. If there had have been a long standing stone wall barrier by the side of the gunpowder hut this could have prevented access, however, there are no records to prove this or whether there was an historic stone stile or other structure here in the past. However, on the Draft Definitive Map for Kettleshulme the word 'gap' is annotated near to where the gunpowder hut is located on Footpath no. 23. Consequently, this is good evidence that there was a small gap located somewhere very near the gunpowder hut enabling access on foot.

Surveyors' letters (1950s)

5.5.31 It is clear that Mr Rowbotham was the key surveyor in the Rainow area at the time having had responsibility for surveying paths as part of the Definitive Map process and also being on Rainow Parish Council. Indeed as already mentioned above he clearly understood the importance and accuracy

of the work he was undertaking. There are various letters with the application obtained from Cheshire East Council (previously Cheshire County Council) records that show that Mr Rowbotham was in communication with a Mr Connolly, a representative of the County Surveyor. Mr Rowbotham's letters highlight that he had some concerns of lack of continuity of some routes from Rainow into Kettleshulme and other parishes. It is difficult to know exactly why Footpath no. 23 did not appear until the Draft Map stage, and there are letters on file regarding amendments taking place. In 1955 a letter from Mr Rowbotham, referring to other Draft Map amendments, mentions that Mr Connolly was at fault for not investigating all the points (what points is unclear) however, he goes on to say that Mr Connolly was at fault for not initially interviewing Mr Brocklehurst at Charleshead Farm, with Mr Rowbotham stating '*I made a point of Interviewing Mr Brocklehurst*' so on the Rainow side it would appear that matters were followed up.

5.5.32 There is some correspondence on the Kettleshulme side acknowledging that helpers failed to include a number of paths on their initial surveys, so it can only be assumed that some discussions were had that meant Footpath no. 23 then was included on the Draft Definitive Map, as otherwise Footpath no. 15 would have been left as a cul-de-sac path. Correspondence refers to other footpaths in Kettleshulme that were omitted from the Draft Map, but there is no mention of a mistake being made regarding Footpath no.23. Either way during the public consultation stage no objections were received to either Footpath no. 15 or 23 being recorded on the Draft, Provisional and then final Definitive Map.

Census information and Property deeds

5.5.33 The applicant has provided sales particular for 62 acres of mixed grazing in 1987 for land east of Charleshead. The plan attached to sales particulars shows no indication for Footpath 15/23 but does show nearby Footpath 95/16. However sales particulars and deeds do not have to show public assets such as public rights of way as this is not their primary purpose and only private assets (i.e. what someone is buying) are shown, therefore, it is not that unusual that Footpath 15/23 is not shown, especially if it was unavailable in 1987.

Peak and Northern Footpath Society Maps and Records

5.5.34 The Peak and Northern Footpath Society Maps (one for Kettleshulme and one for Rainow) do not show either Public Footpath nos. 15 or 23 between Charles Head and Neighbourway Farm. Both maps are dated in the 1950s. The nearby parallel route of Public Footpath nos. 95 and 16 is shown on both maps. Although another additional map for Kettleshulme by the Society does not show either FP15/23 or FP95/16.

Macclesfield Footpath Map c1933

5.5.35 There is a route shown as a dashed blue line between Charles Head and Mangers Carr with the key stating the blue line means 'Footpaths, repairs of which in the past have been doubtful'. No route is shown for Footpath no. 15 (part) between Charles Head and Neighbourway.

Ramblers Association Footpath Reports 1980s

5.5.36 These acknowledge the existence and some of the practical issues of both Public Footpath nos. 15 and 23. In reports in the summer of 1987 there is a note against Footpath no. 15 (Rainow) to say, "very poor stiles and route unclear at Charles Head Farm". In Kettleshulme the notes against Footpath no. 23 state "Path obstructed at all points by waterlogging, overgrowth and hedges". Later in 1990 there is mention against Footpath no. 15 that there is "no means of crossing the stream Todd Brook".

Definitive Map Modification Order (DMMO) Footpath no. 9, Charleshead 1991

5.5.37 An Order was made in 1991, further to an application from the Peak and Northern Footpath Preservation Society, to add Footpath no. 9 to the Definitive Map and Statement, just south of Charles Head farm yard. This was confirmed on the basis of evidence of unhindered use by the public for more than 20 years. The applicant of MA/5/252 believes that the very nearby Footpath no. 98 just south of Charles Head was recorded on the wrong alignment, and that what is now Footpath no. 9 south of Charles Head was the correct route of Footpath no. 98 as she believes it matches the survey description by Thomas Rowbotham. Consequently the applicant is of the opinion that as an error occurred in recording Footpath no. 98, south of Charles Head on the Rainow side, this therefore gives rise that it is likely that Footpath no. 15 out of Charles Head was also recorded wrongly. This argument is an opinion which may or may not be true.

Site visit notes 17/5/1994 regarding Public Footpath no.23, Kettleshulme

5.5.38 These site visit notes from Council Officers mention that at the time of the Definitive Map the council have evidence that the correct legal procedures and advertisements required at the Draft and Provisional stage were carried out to the letter and no objections were received at any stage of the process with no appeals from landowners. In addition these notes make reference to a Mr Thornley (a Council Officer) who was closely involved over a 3-4 year period in preparing maps at the special review stage in the 1970's. He walked the paths in the area, which he knew well, and remembers on Footpath no. 23 a wooden sleeper bridge at the crossing point. It is also noted that he

personally delivered the special review maps to the parish clerks and no comments or objections regarding Footpath no. 23 were received. Mr Thornley was present at the site meeting in 1994 where the history of Footpath no. 23 was discussed and was copied into the meeting notes, so he would have been aware his comments were being documented. He is the only person in this investigation to remember a crossing of any sort at 15/23 over the Todd Brook.

5.6. Witness Evidence

5.6.1 Twenty completed standard user evidence forms were submitted in total for both the 1991 and 2016 application (note the 20 statements cover a wide time period of submission as they included 10 statements that were completed between 1991-1994; 8 completed between 2015 and 2016 and 2 signed statements in 2016). All the witnesses known to be still alive were written to and invited to an interview to discuss their evidence. Ten individuals were interviewed which included three of the affected/abutting landowners to route 15/23. Most of the rest of the witnesses are either deceased or were unable to attend for personal reasons. A chart illustrating the user evidence is attached as Appendix 2. The chart demonstrates the dates the witnesses claim to have not been aware of the route FP15/23 as a public right of way according to their completed forms and also identifies those deceased.

5.6.2 Deletion applications are fairly rare and therefore detailed analysis of the standard user evidence forms, which are more suited to *claiming* public rights of way, means analysis of the original forms was difficult and provided little evidence of value. Most of the personal statements submitted in 2016 are almost identical and answered in a uniform way with simple denial of public right of way 15/23 existing. Consequently the witnesses themselves from their original forms seem to be relying on the limited or indeed non-use of the path in question, this is not of legal relevance in such cases. They also mention some of the issues that would be encountered on the path which could be interpreted as illegal obstructions. Very few of the witnesses alive by nature of their age have memory going as far back as the critical 20 year period prior to the parish surveys of the early 1950s.

5.6.3 The applicant however does mention in her original statement her belief that there was a possible recording error in the Definitive Map procedure at an early stage, whereby the route of Footpath 15/23 was recorded instead of public footpath 95/16. The latter path added subsequently, on a route parallel to and to the south of, the route in question.

5.6.4 Interviews were conducted from 7th - 9th March 2019 with those available to discuss their comments in more detail, further to their witness statements. The following people were interviewed:-

- Landowner, Neighbourway Farm
- Landowner, land near Charles Head
- Landowner, Charles Head Barn
- Applicant
- Local witness 1
- Local witnesses 2
- Local witness 3
- Local witness 4
- Local witness 5
- Local witness 6 and also acting as Kettleshulme Parish Council representative).

5.6.5 A fair amount of detail arose from the interviews particularly relating to what was on the ground at different points in time. None of the interviewees recalled a footbridge across Todd Brook on FP15/23, and all believed FP15/23 not to be a public footpath. All seemed to be aware of the public footpath FP95/15 running parallel nearby between Charles Head and Mangers Carr with many having used this route. It was only the applicant that provided any potential evidence of relevance by referring to historical material rather than just saying they did not believe FP15/23 to be a public footpath and/or had never used the route.

5.6.6 Some key points of interest from the interviews are below:-

- Many referred to the route running west out of Neighbourway Farm as 'cow lane' with many remembering the gunpowder building at the end of 'cow lane' but believing this stopped being in operation at the end of World War 1.
- The landowner at Neighbourway Farm who had lived there most of his life gave a lot of detail regarding the 'cow lane'. Including there having always been an enclosed area with cow shed at the start of FP15/23 and long standing drainage issues with water flowing down 'cow lane'. He also mentioned that until 2000s there had also been a barbed wire fence along the full length of eastern side of 'cow lane'. Only in recent years he claims to have witnessed people attempting to use the route. He also mentioned that fairly recently the council came into the yard to start works on FP15/23 and knocked down part of the wall at the end of

‘cow lane’, next to the gunpowder hut, with the intention of putting a stile there but never did.

- Many of the older local people interviewed remember playing generally along the river banks in this area and never remember a footbridge where FP15/23 crosses. At the parish boundary where there is a fallen down stone wall and barbed wire fence, one witness commented that there had historically been a well-made stone wall and that the fence came at later date when the wall started to deteriorate.
- Many of the witnesses remember a big flood in the valley in around 1989 and also remember a new bridge going in on Footpath 95/16.
- A builder working regularly at Neighbourway farm in the 1980s remembers building a stone wall to mark a parking area near the cow shed at the start of cow lane and also remembered the corrugated sheet fencing near the cow shed being in place for a long time which would have obstructed passage on FP15/23.
- On the Charles Head side of FP15/23 again there was mention of obstruction or no passage along FP15/23. One local witness living very close to Charles Head on the same driveway remembers an existing field gate and bypass gate going in, in around 2003, but mentioned that the only historical gate he knew of was in the north west corner of the small paddock east of Charles Head yard.
- No interviewee had any detailed relevant knowledge going back to the 1950s or before with regards to the Definitive Map process and public rights of way being recorded in this area.

5.6.7 Overall what is clear from all the witness evidence is that whilst public footpath 15/23 is not impossible to use there does not seem to be any evidence to date of a footbridge across Todd Brook where FP15/23 meet. In addition, it is also clear that there have been long standing obstructions for users to overcome along the route, particularly on the Kettleshulme side from sections of wet terrain in ‘cow lane’; a difficult river crossing; a stone wall /barbed wire fence on the parish boundary and some issues around access into Charles Head via the small paddock on the Rainow side.

5.7 Conclusion

5.7.1 A large amount of historical information has been examined in this investigation of the application, both documentation before and leading up to

Footpaths nos. 15/23 being confirmed on the Definitive Map and documents post Definitive Map. The historical evidence examined does not in this case show that a clear mistake has occurred backed up by robust supporting evidence. Whilst there are a few unknowns and ambiguities in some of the parish minutes and the original survey schedule, this is not sufficient to meet the high legal test that must be evidenced as outlined in 5.7.2. In addition detailed interviews have been conducted which has provided additional historical site knowledge.

5.7.2 There is a strict legal test for such applications; the bar is set very high as per case law *Trevelyan vs SoS* (2001) which clearly states that some new overwhelmingly robust evidence must be evidenced to overturn the legal presumption that the Definitive Map is correct. In addition guidance notes state *‘An enquiry cannot simply re-examine evidence examined when the way or ways in question were first entered on the Definitive Map, there must be some new evidence, when considered with all the other evidence available, justifies the modification’*. The test is high because in order for a public right of way to appear on the Definitive Map and Statement it has already gone through a lengthy process with opportunities for objections/corrections. Consequently some very clear evidence of substance has to be provided or found to overturn the legal presumption.

5.7.3 In the case of Footpaths nos. 15 and 23 there were no objections to its recording on the Definitive Map and the Definitive Map process was followed correctly. Whilst there were clear issues with recording one linear route over a parish boundary and some documentary evidence that there were time differences between the timings of Rainow and Kettleshulme recording the route on their respective sides of the boundary both Footpaths nos. 15 and 23 ended up on Draft maps and the final Definitive Maps with no objections being received. Whilst there is some general correspondence post-Definitive Map regarding the correctness of routes, we do not believe there is any clear documentary evidence of any error being made for Footpaths nos. 15/23, only opinions.

5.7.4 The applicant places much weight on the Rainow parish survey walking schedule which states the route terminates at *‘Todd Brook, 400 west of Neighbourway crossing on to the Kettleshulme Boundary and proceeding in the direction of Thorneycroft Farm’*. The applicant believes this proves an error has occurred as the route of 23 ends in Neighbourway Farm not Thorneycroft Farm. However whilst this is clearly an anomaly here in the end location of the route, the direction of travel is still clearly northeast not southeast and it is not believed evidence was confused with Footpaths nos. 96/16. The applicant believes this was an error and should have read in the

direction of Mangers Carr Farm but even if there had been a written error in the names of farms here there is no evidence to substantiate this.

5.7.5 A lot of time has passed, indeed over 60 years since Footpaths nos. 15/23 were recorded on the Definitive Map and Statement. It is clear that the route has been obstructed for many years, but it has been used, if only in recent years. There is one person during consultation who mentions leading 8 other people on the route as part of a larger circular walk in 2013. Obstructions along any public right of way are irrelevant to proving its legal non-existence as are health and safety concerns, cost of maintenance etc.

5.7.6 Whilst there is always a possibility that an error did occur, without very clear substantial and robust documentary evidence of an error in recording the route, or credible evidence of non-use between about 1930 and 1950 the application to delete Footpaths nos. 15/23 struggles to meet the legal tests required by statute and case law. Due to the number of years that have passed since the route was recorded on the Definitive Map there is barely anyone alive now who was available to interview who had detailed knowledge of this time period (pre 1950s) and the route in question.

5.7.7 Consequently, therefore it is considered that the requirements of Section 53(3)(c)(iii) have not been met and it is recommended that a Definitive Map Modification Order is not made to delete public footpaths nos. 15/23 from the Definitive Map and Statement.

6. Implications of the Recommendations

6.1. Legal Implications

6.1.1. Under section 53 of the Wildlife and Countryside Act 1981 (WCA), the Council has a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Section 53 (3) (c) allows for an authority to act on the discovery of evidence that suggests that the Definitive Map needs to be amended. The authority must investigate and determine that evidence and decide on the outcome whether to make a Definitive Map Modification Order or not.

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

6.1.3. The legal implications are contained within the report.

6.2. Finance Implications

6.2.1. If the determination of the case leads to a subsequent hearing/inquiry, the Council would be responsible for any costs involved in the preparation and conducting of such.

6.3. Policy Implications

6.3.1. There are no direct policy implications.

6.4. Equality Implications

6.4.1. The legal tests under s.53 of the Wildlife and Countryside Act 1981 do not include an assessment of the effects under the Equality Act 2010.

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 and 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. The Councillors in office at the time of consultation were Councillor Gaddum (Sutton Ward), Councillor Murray (Poynton East and Pott Shrigley Ward), Councillor Saunders (Poynton East and Pott Shrigley Ward). All of the above Councillors were consulted. Councillor Murray responded to say that he had no comment to make at this time. He mentioned that no member of the public had ever contacted him regarding Footpath nos. 15/23.

7.2. The new elected Councillors from May 2019, Councillor Gregory (Sutton Ward) and Councillor Wylie (Poynton East and Pott Shrigley Ward) have been sent a copy of the report. Any comments will be reported verbally.

8. Consultation and Engagement

8.1. Consultation letters were sent to the Ward Members; User Groups/Organisations; statutory undertakers and the landowners. There was an extensive number and range of responses.

8.2. The Open Spaces Society sent in a very detailed response strongly objecting to the deletion application. The main thrust of their objection is that they do not believe the application meets the legal tests for such deletion applications. They emphasise that the law clearly state the onus is on the applicant to demonstrate the Map is wrong and also refer to Planning Inspectorate guidance on such cases which states that *‘An enquiry cannot simply-re-examine evidence when the way or ways in question were first entered on the Definitive Map, there must be some new evidence, which when considered with all other evidence available, justifies the modification’*.

8.2.1 The Open Spaces Society have inspected the case file to see the detail of the case and go into some detail on why they think individual arguments made by the applicant are not valid and do not meet the legal test. This includes:-

- i. The fact that they believed that the process of the formation of the Definitive Map seems to have been clearly carried out showing the footpath on many maps. There is a clear historical trail of the route being recorded on maps including survey maps leading up to the final Definitive Map.
- ii. The description of FP15/23 on the Walking Survey card they believe is not ambiguous at all and clearly cannot be confused with Footpath no. 9 to the south as it is clearly describing running in a north easterly direction.
- iii. They dismiss and do not agree with the applicant’s argument of weight they place on the Finance Act 1910 Map not showing the public footpath. They state this would also apply to other public footpaths not shown so do not believe this is a valid argument.
- iv. They question the validity / correctness of some of the statements made by witnesses supporting the application such as claims the river is impassable when others have walked the route and that all maps with statements are identical.
- v. They believe the applicant’s argument that there would never have been a gunpowder hut sited on a public footpath is irrelevant as at the time when this would have been in operation was when there was little in the way of a health and safety culture and its distance from the main farm yard would not be unusual.

- 8.3. Alderley Edge, Wilmslow and District Footpath Preservation Society responded stating that they did not believe the deletion of FP15/23 should take place. They state that Public Footpath nos. 15/23 has been on the Definitive Map and Statement since the 1950s/60s and that its presence on the Definitive Map is conclusive proof of its existence in law and it also forms part of an important national network lying within the Peak District National Park.
- 8.4. Cheshire East Ramblers also responded strongly objecting to the application. They firstly refer to well known case law of *Trevelyan v Secretary of State for the Environment, Transport and the Regions* [2001] EWCS Civ 266 which ruled that the presumption is in favour of the Definitive Map and Statement being correct; and that evidence of some substance must be put into the balance to outweigh that presumption.
- 8.5 Cheshire East Ramblers go on to state that the process at the time of drawing up the Definitive Map had a set period allowing for objections for the route to go on the Definitive Map and that it appears with this case that no objection was registered and the landowners did not appear to have engaged in the process i.e. objected at the time the map was formulated. They state they do not agree with the applicant's argument that an error might have been made, and the Walking Survey for Rainow Footpath no. 15 is extremely clear in describing the footpath running in the direction of Thorneycroft Farm which is a northeasterly direction and cannot be confused with any other nearby footpath.
- 8.6 The Peak and Northern Footpaths Society also responded with a detailed objection which in summary states they believe the applicant has provided no new or substantive evidence that outweighs the initial presumption that a right of way exists. They break down their objection into different points:-
- (i) They have examined both their own paper and online records of this route as well as files at Cheshire Records office for 1950-1973 around time of drawing up Definitive Map and assessed the evidence to see if it meets the threshold tests set out in case law *Trevelyan vs SoS* (2001) also referred to by the Open Spaces Society.
 - (ii) They find it curious that 68 years after the long and detailed process of the Definitive Map where there were no objections at the time, an application to delete the route has come in and state that the application in 2015/16 does not really have any/many statements able to provide evidence prior to 1951 that would outweigh the presumption that the right of way exists.
 - (iii) They mention they have reviewed their own paper and online reports on 15/23 and there are numerous reports about the

deterioration of the condition of the path from 1991 and there has been conflict with the landowner for those using route. They also refer to a comment on their files that the path has been used as a drainage outfall and obstructed on occasion by slurry.

- (iv) They state they do not agree with the applicant's stance on the missing footbridge across Todd Brook that it could have referred to FP95/16.
- (v) They do not believe the argument about the gunpowder hut at end of 'cow lane' is relevant as this would have ceased to be in use when surveyed in 1951.

- 8.7 Kettleshulme Parish Council initially responded to state they did not support the deletion application. They stated that to their knowledge the footpath had been in existence for a long period of time and is walked by many on a regular basis and therefore there seems no good reason for the closure. However a follow on response from Kettleshulme Parish Council stated that the Parish Councillors had subsequently walked the route with one of the landowners and obtained more information which meant they had reconsidered their position and responded again to say they had a change of view and now supported the deletion of FP15/23.
- 8.8 Rainow Parish Council responded to state that their footpaths group had met to walk the route. They make comments referring to the nature of the route i.e., not easy to access, it being wet and boggy in places, the lack of bridge over Todd Brook, and make note of the gunpowder store next to route. They conclude by stating that it is their opinion that the route was mistakenly marked as a footpath when they believe the line drawn on the map actually represents the route of a spring/water course as there was a well/spring at the top of the footpath and they do not ever recall a footpath in use at this location and it would be very costly to re-instate the footpath.
- 8.9 One of the property owners who lives adjacent to Charles Head Farm comments that they believe FP15/23 is redundant as it is uneven, not easily traversable and never been used to best of their knowledge. They state most people use FP96/16 nearby and support footpath nos. 15/23 being removed from the Definitive Map.
- 8.10 The applicant at the time of consultation asked if they could attend an accompanied site visit with the consultant investigating the case, to walk both public footpath nos. 15/23 and 96/16 in order to point out things on the ground. This was carried out on the morning of 7th March 2019.

- 8.11 The landowners of Charles Head Barn responded to the consultation stating that they felt the deletion of the footpath was both appropriate and desirable. They stated that the nearby public footpath no.16 provides a better alternative route to access Neighbourway Farm, which whilst slightly longer was a good footpath. The landowners state that walkers entering the yard are often confused by the presence of footpath nos. 15/23 on their maps when entering Charles Head where they have lived for 15 years and that it is their belief knowing about the lack of bridge etc at the river that money would be better spent on maintaining footpaths that are well used and on providing better signage.
- 8.12 A local resident got in touch with the Council via e-mail during the consultation period and commented that he had used public footpath nos. 15/23 as part of a walk with some friends in December 2013 and marks the public footpath as a link in a much longer circular walk. A follow up telephone call with the local resident confirmed that they had walked the route in 2013 with approximately 8 friends and planned the walk initially from Ordnance Survey mapping, 2013 was the first time they had walked FP15/23 but they have not walked it since.
- 8.13 United Utilities stated that they had no affected apparatus in the area over which Public Footpath nos. 15/23 runs.
- 8.14 Responses were sent acknowledging all the comments received during the consultation and it was made clear during consultation that with such applications it is the applicant who must prove that the map is in error by discovery of evidence, which when considered with all other relevant evidence, clearly shows that a mistake was made when the right of way was first recorded and that no other factors such as suitability, safety etc. can be taken into consideration.

9. Access to Information

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

10. Contact Information

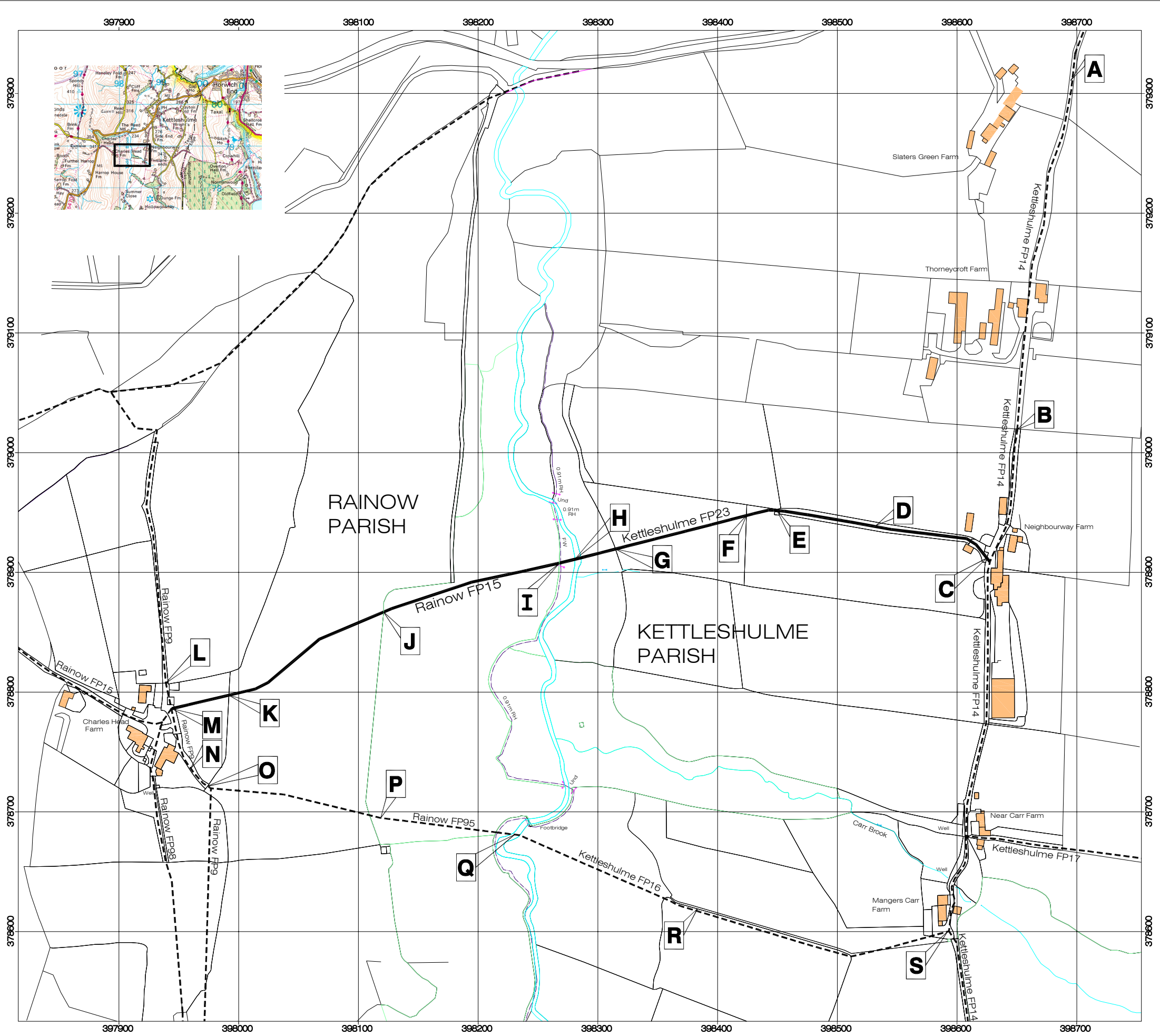
- 10.1 Any questions relating to this report should be directed to the following officer:

Name: Jennifer Miller

Job Title: Definitive Map Officer

Email: Jennifer.miller@cheshireeast.gov.uk

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Application for the deletion of Footpath No. 15 (part)
Rainow and Footpath No. 23 Kettleshulme

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Key

Route of application for deletion
Unaffected Footpath

Plan No.
WCA/015

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



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Appendix 1

DMMO DOCUMENTARY RESEARCH CHECKLIST

District Macclesfield		Parish Rainow & Kettleshulme		Route: Footpaths 15 & 23
Document	Date	Reference	Notes	
County Maps				
Bryant’s Map	1831	CRO 18 (1831)	Not shown	
Estate Map	1865	CRO FS 48/27	Not shown	
Tithe Records				
Apportionment	1846	CRO 223/2 & EDT 339/2 Township: Kettleshulme & Rainow	Landowner Thomas Brocklehurst recorded	
Map	1846	CRO EDT 223/2 & EDT 339/2 Township: Kettleshulme & Rainow	Neither Footpath 15 nor 23 shown. No route either marked for nearby Footpath 95 in Rainow	
Ordnance Survey				
1” to 1 mile	c.1840	PROW Office	Neither Footpath 15 or 23 shown	
25” County Series 1 st Edition	c.1875	PROW Office	No route shown for Footpath 15. Cul-de sac track shown for part of Footpath 23	
25” 2 nd Edition 25”	1881	PROW Office	No route shown for Footpath 15, track is shown for part of Footpath 23.	
3 rd Edition 25”	1910	PROW Office	No route shown for Footpath 15, track feature with gunpowder hut shown at	

3 rd Edition Country Series	1970	PROW Office	end 'cow lane' section of Footpath 23.
OS Object Book	1869 - 1871	OS/26/1076 & OS/27/537	No route shown for Footpath 15, track is shown for part of Footpath 23. For Rainow & Kettleshulme both the remark book and sketch book mention 'FW'Face of Wall near parish boundary crossing near Footpath 15/23. Footbridge is mentioned for nearby Footpath 95 & 16.

Finance Act			
Map (working copy) Field Book	1910	CRO Office IR 58/20331 ,IR358/20232 & IR 58/20203	Routes 15 & 23 not shown on map but poor working copy of little interpretation. Field Book entries for Charles head and Neighbourway Farm at each end of Footpath 15 & 23 both show deductions for footpaths but both farms have multiple public rights of way joining at farm. No certified sheet in National Archives available at Kew.
Local Authority Records			
Walking Survey – Rainow & Kettleshulme	1952	PROW Office	Footpath 15 & 23 both described clearly with mention of footbridge over Todd Brook. Footpath 15 survey slight anomaly describing in direction of Thorneycroft Farm which is just immediately north of Neighbourway.
Draft Definitive Map	1954	PROW	Both 15 & 23 Shown as a Footpath
Provisional Definitive Map	1954	PROW	Both 15 & 23 Shown as a Footpath
Definitive Map	1954	PROW	Both 15 & 23 Shown as a Footpath

Rainow & Kettleshulme Parish Minutes			
Minute Books	1894-1967	CRO PC 74	No specific entries referring to Footpath 15 & 23 but lots of detailed discussion about process of surveying for Definitive Map. Some discussion regarding footbridge & repairs accross Todd Brook.
Other documents			
Gunpowder Stores & hut documentation	1875	QAMM\43/3 & 43/4	Background information regarding siting of gunpowder hut at end of 'cow lane' on footpath west of Neighbourway Farm and associated information on selling of gunpowder from hut in local village shop at Kettleshulme.
Census Records	1891-1901	Census	Gives info on names of farmers living at Charleshead and Neighbourway Farm then. Note Neighbourway is referred to by its old name of Greenlow.
Property Deeds /Sales particulars	1897	Applicant	Footpath 15/23 not shown but does show nearby Footpath 95/16
Macclesfield Map	1933	PROW	No route shown for Footpath 15.
PNFPS Maps	1949/1951	PNFPS	Route for 15 & 23 not shown on Rainow or Kettleshulme maps although 95/16 is.
PNFPS Annual Report	1957	PNFPS	No mention of Footpath issues for 15/23
Surveyors letters	1950's	PROW	Thomas Rowbotham letters to County Surveyors. He writes several letters on the importance of being accurate in recording routes. Some discussion about boundary paths and delays in recording routes either sides of boundaries.
Ramblers Reports	1980's	RA	Mention issues with obstructions on Footpath 12 and against Footpath 15 mentions no means of crossing bridge
DMMO FP 9	1991	PROW	Information regarding Footpath 9 Definitive Map Modification Order of path added south of Charleshead near other public rights of way already on the Definitive Map.

Site meeting notes re: Footpath 23	1994	PROW	Council officer Mr Thornley mentions knew area well when surveyed in 50's and remembers footpath crossing for Footpath 23 across Todd Brook. Mention Definitive Map process followed correctly with correct advertising at the time. Mention of special review maps but not mention of footpath 23
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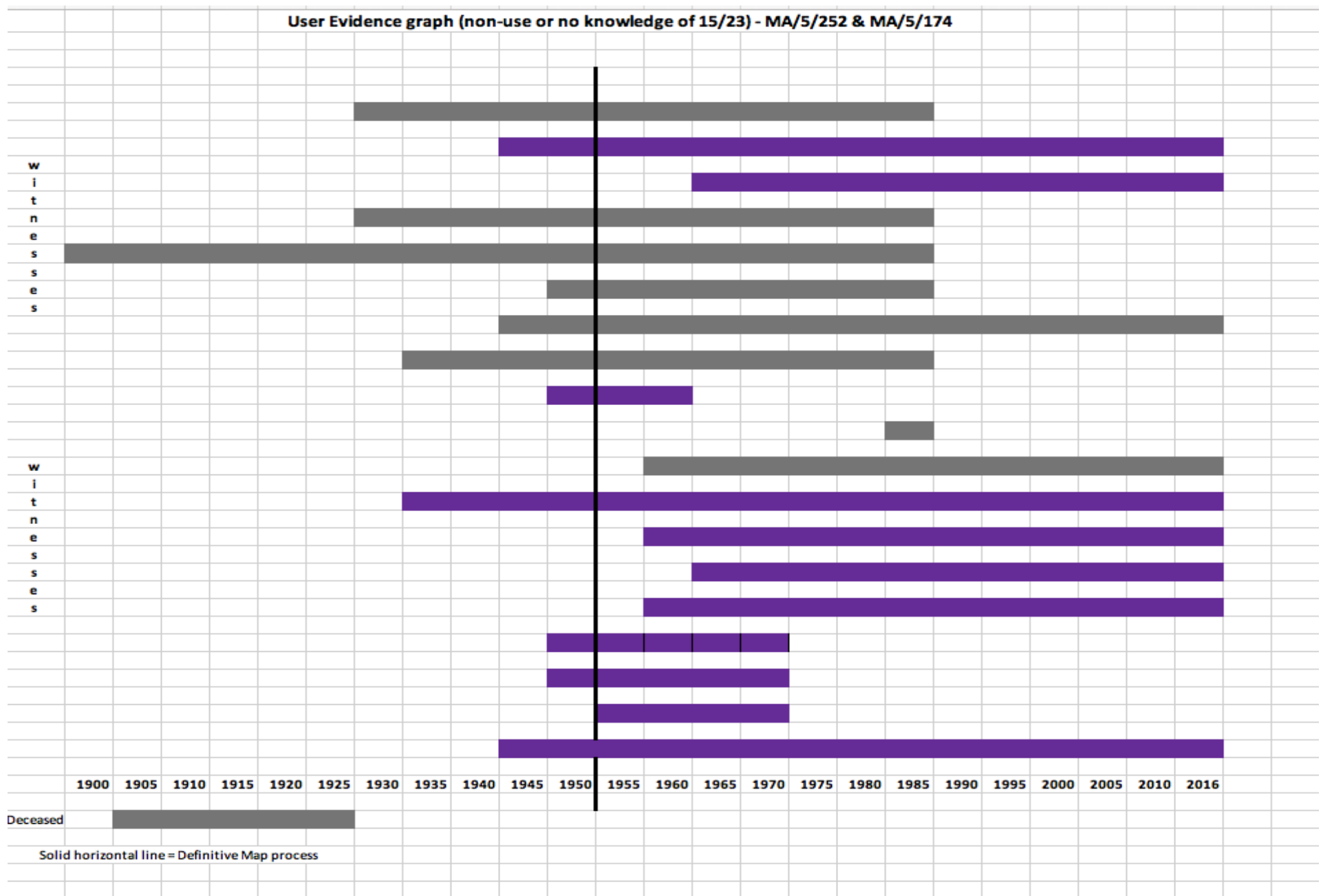
CRO – County Record Office

PROW – Public Rights of Way Unit

PNFPS – Peak & Northern Footpath Society

RA- Ramblers Association

DMMO – Definitive Map Modification order



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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 10 June 2019

Report Title: Highways Act 1980 s118 Application for the Extinguishment of Public Footpath No. 20 Parish of Bunbury

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to extinguish Public Footpath No. 20 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 an extinguishment Order to be made. The proposal has been put forward by the Public Rights of Way team following an application from the landowner. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to extinguish the footpath concerned.
- 1.2. The proposal contributes to the Corporate Plan Outcomes 2 – Cheshire East has a strong and resilient economy and 6 – A Responsible, Effective and Efficient Organisation 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 118 of the Highways Act 1980 to extinguish Public Footpath No. 20 in the Parish of Bunbury as illustrated on Plan No. HA/140 on the basis that it is expedient to do so on the ground it is not needed for public use.
- 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, 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 118(1) of the Highways Act 1980 it is within the Council's discretion to make an Order if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use. It is considered that Public Footpath No. 20 in the Parish of Bunbury is not needed for public use, as adequate alternative public footpaths exist within close proximity to the footpath as indicated on Plan No. HA/140.
- 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:
- The extent (if any) to which it appears to him...that the path or way would, apart from the Order, be likely to be used by the public, and
 - The effect which the extinguishment of the right of way would have as respects land served by the path or way, and
 - The material provision of any rights of way improvement plan prepared by any local highway authority which includes land over which the Order would extinguish a public right of way.
- 3.3 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.2 above.
- 3.4 There are currently twelve letters in support of the proposal, one objection and one representation from members of the public following the informal consultation. In addition and as discussed in paragraph 3.1, alternative routes are available within the immediate vicinity of Bunbury Footpath No. 20; it is therefore considered that the path is not needed for public use.
- 3.5 The proposal contributes to the Corporate Plan Outcomes 2 – Cheshire East has a strong and resilient economy and 6 – A Responsible, Effective and Efficient Organisation 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. The application to extinguish Public Footpath No. 20 in the Parish of Bunbury has been made by one of the landowners directly affected by the right of way on the basis that it is not needed for public use and on the ground that other alternative footpaths exist within the vicinity of Footpath No. 20.
- 5.2. Prior to accepting this application, the possibility of diverting the footpath was considered by the Public Rights of Way team. Although infrequently used, Bunbury Footpath No. 20 has had an effect on the privacy and security of the applicant's property where the path crosses the garden very close to the house and along the driveway access. Walkers have full view into the rear of the property when accessing the path which also 'sterilises' a large part of the garden. The security of the property has also been compromised with the applicant having experienced an incident of trespass and one of threatening behaviour in which the police had been involved.
- 5.3. Given the nature and extent of the rights of way network within the vicinity of the footpath and with reference to plan HA/140 accompanying this report, it can be seen that there is no practical solution with regards to permanently diverting Footpath No. 20 (shown by a solid black line between points A-B) to remove it from the curtilage of the residential property under section 119 of the Highways Act 1980 on the basis of privacy and security concerns.
- 5.4. Consideration has therefore been given to the extent to which the path is used, is likely to be used, the availability of adequate alternative routes, and the effect an extinguishment would have on the land served by the footpath and the affect this would have on the rights of way network in the area.
- 5.5. Public Footpath No. 20 in the Parish of Bunbury commences on Wyche Lane (UX778) at O.S. grid reference SJ 5688 5750 and runs in a generally south south easterly direction along the applicant's driveway for a distance of approximately 69 metres to O.S. grid reference SJ 5688 5743. The path then turns slightly to take a more south easterly direction where it passes within very close proximity to the applicant's house before passing diagonally through the garden and small cultivation field for a distance of approximately 107 metres to O.S. grid reference SJ 5694 5734, where it then connects at a junction with Bunbury Public Footpath No. 17, as shown between points A-B on Plan No. HA/140 accompanying this report.
- 5.6. Bunbury Footpath No. 19 runs in a southerly direction from Wyche Lane to the west of Footpath No. 20 with Footpath No. 21 running from Wyche Lane along the same trajectory to the east. It is unlikely that walkers would

use Footpath No. 20 when approaching the network from the east along Wyche Lane as Footpath No. 21 is a closer alternative footpath that leads to the same destination point on Footpath No. 17 to the south of Footpath No. 20. It is also very likely that most walkers would use Footpath No. 19 when approaching the network from the west along Wyche Lane for the same reason. Furthermore, a visit to the footpath by Officers of the Public Rights of Way team revealed no evidence on the ground that indicated the path had been used on a regular basis or used recently as compared to the alternative public footpaths in the area.

- 5.7. Public Footpath Nos. 19 and 21 both run within the vicinity of Footpath No. 20: for example Footpath No 19 lies approximately 55 metres to the west of Footpath No. 20 at its mid point where the path runs close to the south west corner of the property, with Footpath No. 21 being located approximately 75 metres to the east of Footpath No. 20. Both Footpath Nos. 19 and 21 connect at junctions along Footpath No. 17 close to the junction with Footpath No. 20. For those reasons both Footpath No. 19 and No. 21 can be regarded as adequate convenient alternative routes to Bunbury Footpath No. 20.
- 5.8. Bunbury Footpath No. 20 is a relatively short, infrequently used path that cuts through a residential garden and small cultivation field, the effect of its extinguishment on the rights of way network would be minimal resulting in an extra 120 metres walking distance between Footpath No. 19 and Footpath No. 21 when approaching from the west. The same would also be the case when approaching Footpath No. 19 from the east along Footpath No. 17. With regards to the extra distance the extinguishment would necessitate; this can be viewed as a positive factor on a recreational walk such as this.
- 5.9. The extinguishment of Footpath No. 20 would also benefit the land over which the path runs as it would enable improved management and enjoyment of both the residential garden and the small cultivation field through which it runs.
- 5.10. The majority of the land over which the proposed extinguishment runs belongs to the applicant. A smaller section of the path runs over land belonging to the owners of Wyche House, who have provided written agreement to this proposal. An adjoining landowner has also provided written support of this application.
- 5.11. In light of the above it is considered expedient to make an Order to extinguish Bunbury Footpath No. 20 on the ground it is not needed for public use as adequate alternative routes are available.

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. Human Resources Implications

6.4.1. There are no direct implications for human resources.

6.5. Risk Management Implications

6.5.1. There are no direct implications for risk management.

6.6. Rural Communities Implications

6.6.1. There are no direct implications for rural communities.

6.7. Implications for Children & Young People

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

6.8. Public Health Implications

6.8.1. There are no direct implications for public health.

7. Ward Members Affected

7.1. Bunbury: Councillor Chris Green was consulted and no comments were received. Councillor Pochin, Ward Member post May 2019, has been sent a copy of this report. Any comments received will be reported verbally to the Committee.

8. Consultation & Engagement

8.1. Bunbury Parish Council has been consulted and have responded by email to state the following;

“Bunbury Parish Council has no objection. The Parish Council is very supportive of the public footpath network but would agree with the officer's comments and views this as an exceptional case.”

- 8.2. The statutory undertakers have been consulted and have raised no objections to the proposed extinguishment. If an extinguishment Order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 8.3. The Council's Nature Conservation Officer has been consulted, no comments have been received.
- 8.4. The user groups have been consulted.
- 8.5. Peak and Northern Footpaths Society (PNFS) initially objected to the proposal and made the following comments;
 - a. *“...there is a lack of evidence provided by Cheshire East in relation to the number of users, there is therefore no evidence to support it is under used... PNFS is of the view that this is needed for public use and would object to the extinguishment of this path.”*

In this case the landowner is in the best position to provide evidence of use given that the footpath is a short path that runs directly through the middle of his residential garden. The landowner has ensured that the path is available for use by the public at all times and has not stated that the path is not used, but has instead indicated that it is infrequently used. Public Rights of Way Officers also carried out a visit of the site and saw no evidence that the path had been recently used or used on a regular basis as compared to the alternative footpaths within the area. Furthermore, a number of representations have been received from members of the public regarding the proposed extinguishment. A common theme within those representations is that local members of the public have 'chosen' not to walk along Footpath No. 20 and have instead chosen to use the alternative footpaths that are immediately available to them.

- b. *“PNFS will support the views of local people who use this path. The Society will object to the Order unless it is shown factual evidence that very few people wish to use it. If there is factual evidence that very few people wish to use it and this evidence outweighs any factual evidence to the contrary, then at that point PNFS will withdraw its objections”.*

In terms of factual evidence, a number of local residents were included in the informal consultation. Two residents responded negatively to the consultation. One resident simply stated that they object to the closure and

made no reference to use of the path or the wider network. The second resident stated that they use the rights of way network in the area and have “chosen” to use Bunbury Footpath No. 20 *“as little as possible”*. Neither representation has demonstrated a “need” for the path or provided evidence of frequent use.

Adjacent property owners were also included in the consultation. Two of those property owners have responded to the consultation by saying that they support the application. One owner has stated that they use the network on a daily basis for dog walking and have never seen anyone use Footpath No. 20. They go on to state that they also choose not to walk the Footpath through the garden as *“there are other far better alternatives within a small distance which are nicer footpaths that I can use”*.

In all twelve letters have been received from members of the public supporting the application. Eleven state that they use the network in the area either regularly or on a daily basis. Ten state that there are better alternative paths close to Footpath No. 20 and as such they have ‘chosen’ not to use Footpath No. 20.

Eight state that the extinguishment of the path would not affect their enjoyment of the footpath network. Five state that they have “never” seen anyone use Footpath No. 20. Two state that the extinguishment of the path would be of no detriment to the community.

Under section 118 of the Highways Act 1980 a Council may make an Order to extinguish a footpath where it appears expedient to do so on the ground that it is not needed for public use. In light of the statements both supporting and opposing the proposal it would appear that the local community have not demonstrated a need for the footpath and have in fact chosen to use other footpaths within the vicinity of Footpath No. 20.

In response to the reply referring to those representations, Peak and Northern Footpaths Society stated :

- c. *“As the numbers of those who support it exceeds those that oppose it, and in view of the comments in my email to you, PNFS are unlikely to object to this Order if made”.*

8.6. The South Cheshire Ramblers have been consulted and responded to say that they have no objection to the path being extinguished.

8.7. No other comments have been received from any other user groups.

9. Access to Information

- 9.1. The background papers of file No. 055E/577 relating to this report can be inspected by contacting the report writer.

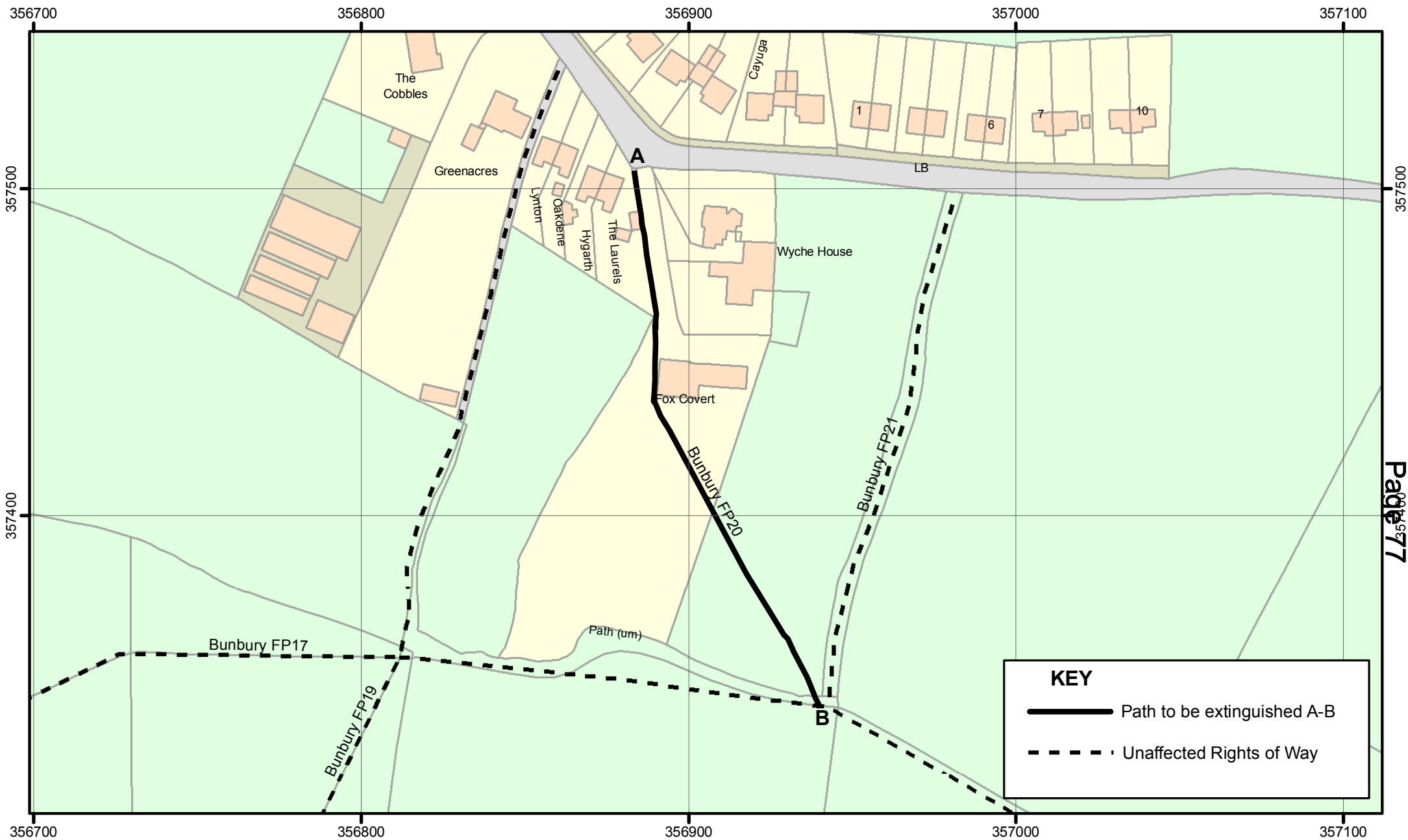
10. Contact Information

- 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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Section 118 Highways Act
Proposed Extinguishment Footpath No.20 in the Parish of Bunbury

Plan
HA/140



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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 10th June 2019

Report Title: Highways Act 1980 s.119: Proposal for the Diversion of Public Footpath No. 6 (part) in the Parish of Stoke

Senior Officer: Frank Jordan, Executive Director Place

1 Report Summary

- 1.1 This report outlines the proposal to divert part of Public Footpath No. 6 in the Parish of Stoke. 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 an application has been made by Mr PH Bourne and Partners of Stoke Hall Farm. 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

- 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. 6 in the Parish of Stoke, by creating a new section of Public Footpath and extinguishing the current path as illustrated on Plan No. HA/141A on the ground that it is expedient in the interests of the owners of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.

- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any 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. The proposed diversion is in the interests of the landowner for the reasons set out in paragraph 5 below.
- 3.2 Section 119 of the Act also stipulates that a public path diversion Order shall not alter the point of termination of the path if that point is not on a highway, or, where it is on a highway, otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
- 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 this section of the report.
- 3.4 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.
- 3.5 In considering whether or not to confirm the Order, in addition to the matters discussed at paragraphs 3.1 and 3.2 above, the Secretary of State where the Order is opposed, or the Council where the Order is unopposed, must be satisfied that the path or way is not substantially less convenient as a consequence of the diversion having regard to the effect:
- The diversion would have on the public enjoyment of the path 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.
- 3.6 In confirming an Order the Secretary of State where the Order is opposed, or the Council where the Order is unopposed, will also have regard to any material provision of the Rights of Way Improvement Plan prepared by the local highway authority and the effect of the path or way on the needs of agriculture, forestry and biodiversity.

- 3.7 The proposed route will not be 'substantially less convenient' than the existing route and will in fact resolve the long standing obstruction of the footpath by an industrial slurry tank. The proposed diversion will not be substantially less convenient than the Definitive path and the enjoyment of the path as a whole would be significantly improved. The section of path that runs through the farm yard can be difficult to walk due to the daily operations of the farm. Following a full discussion of the costs and procedure, Officers agreed to progress the application for a diversion of the footpath under the Highways Act 1980 s119. It is considered that this is the best way forward to resolve the problems currently affecting the route and to fully re-instate a safe and useable path for the public.
- 3.8 It is 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 are satisfied.

4 Other Options Considered

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

5 Background

- 5.1 The application has been submitted by the landowner directly affected by the public right of way requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.6 in the Parish of Stoke on the grounds of privacy, security, agricultural purposes and improved land management.
- 5.2 The land over which the section of path proposed to be diverted, and the proposed diversion runs, belongs to the applicants; under section 119 of the Highways Act 1980 the Council may accede to the applicants' request, if it considers it expedient in the interests of the landowners to make an Order to divert the footpath.
- 5.3 The section of Public Footpath No.6 in the Parish of Stoke affected by the application commences on the unclassified road also known as Stoke Hall Lane (UY1413) at OS grid reference SJ 6230 5685, point A on Plan No. HA/141A. The path then runs in a generally easterly direction through a large field gate, through the farm yard and within close proximity to a residential property for a distance of approximately 183 metres to the slurry tank at OS grid reference SJ 6248 5685. The path then passes through another field gate and continues for a distance of approximately 39 metres to OS grid reference SJ 6252 5685. The path from that point then runs in a generally easterly direction for a distance of approximately 101 metres to OS grid reference SJ 6262 5682, point B on the plan. A total distance of approximately 324 metres. The remaining unaffected section of the path then continues in the same easterly direction to the Parish boundary and its junction with Public Footpath No.13 in the Parish of

Cholmondeston. The footpath is surfaced where it passes through the farm yard and has a surface of grass and earth where it passes through the agricultural land.

- 5.4 Part of the path proposed to be diverted is obstructed by an industrial slurry tank thought to have been installed at sometime during the 1970s. To avoid the obstruction walkers are able to use a short permissive path that goes around the tank as shown by the blue dashed line on the accompanying Plan No. HA/141A. It is not considered practical or cost effective to reinstate the line of the footpath currently affected by the slurry tank. The Council's policy with regards to long standing obstructions on the public rights of way network states;

“Where the obstruction is substantial and it would be costly and impractical to remove it, the owner will be requested to apply for the diversion of the path rather than remove the obstruction. The Council will expect the owner to make an alternative route available whilst the diversion process is completed.”

- 5.5 The landowner has provided an alternative route and applied for this application. The proposal would resolve the obstruction caused by the slurry tank and would also divert walkers completely out of the farm yard and away from the dangers associated with accessing a working dairy farm.
- 5.6 The section of path proposed to be diverted is shown on Plan No. HA/141A accompanying this report by a solid black line between points A-B. The proposed diversion is shown on the same Plan and is depicted by a bold black dashed line running between points A-C-D-B.
- 5.7 The proposed new path would commence at the same point as the existing right of way on Stoke Hall Lane at OS grid reference SJ 6230 5685, point A on Plan HA/141A. The path would then run in a generally east south easterly direction for a distance of approximately 141 metres to OS grid reference SJ 6244 5680, point C on the Plan. The path would then turn slightly to continue in a generally easterly direction for a distance of approximately 102 metres to OS grid reference SJ 6254 568, point D on the Plan. The path would then continue in the same generally easterly direction for a distance of approximately 82 metres to OS grid reference SJ 6262 5682 to reconnect with the unaffected section of Stoke Footpath No. 6 at point B on the Plan. The proposed path would be 2 metres wide with a natural grass and earth surface; it would require the installation of a kissing gate on the field boundary at point C on Plan No. HA/141A and the installation of a further kissing gate and sleeper bridge on the field boundary at point D on the Plan. The proposed new path would have a total distance of approximately 329 metres.

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 Equality Implications

- 6.3.1 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 more accessible than the current route.

6.4 Human Resources Implications

- 6.4.1 There are no direct Human Resource implications.

6.5 Risk Management Implications

- 6.5.1 There are no direct Risk Management implications.

6.6 Rural Communities Implications

- 6.6.1 There are no direct implications for rural communities.

6.7 Implications for Children & Young People

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

6.8 Public Health Implications

- 6.8.1 There are no direct implications for public health, other than an improved and more accessible Footpath would encourage active travel and leisure activities.

7 Ward Members Affected

- 7.1 Bunbury Ward Member Councillor Green has been consulted and no comments have been received. Councillor Pochin, Ward Member post May

2019 elections, has been sent a copy of this report. Any comments received will be reported verbally to the Committee.

8 Consultation & Engagement

- 8.1 Stoke and Hurleston Parish Council, the User Groups and the Council's Nature Conservation Officer have been consulted. The deadline for comments is 30th May 2019. Any comments received by that deadline will be reported to the Public Rights of Way Committee verbally.
- 8.2 The statutory undertakers have been consulted and have raised no objections to the proposed diversion. If a diversion Order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

9 Access to Information

- 9.1 Plan No. HA/141A is attached.
- 9.2 Further information may be obtained from the Officer named below and file reference No. 218D/576.

10 Contact Information

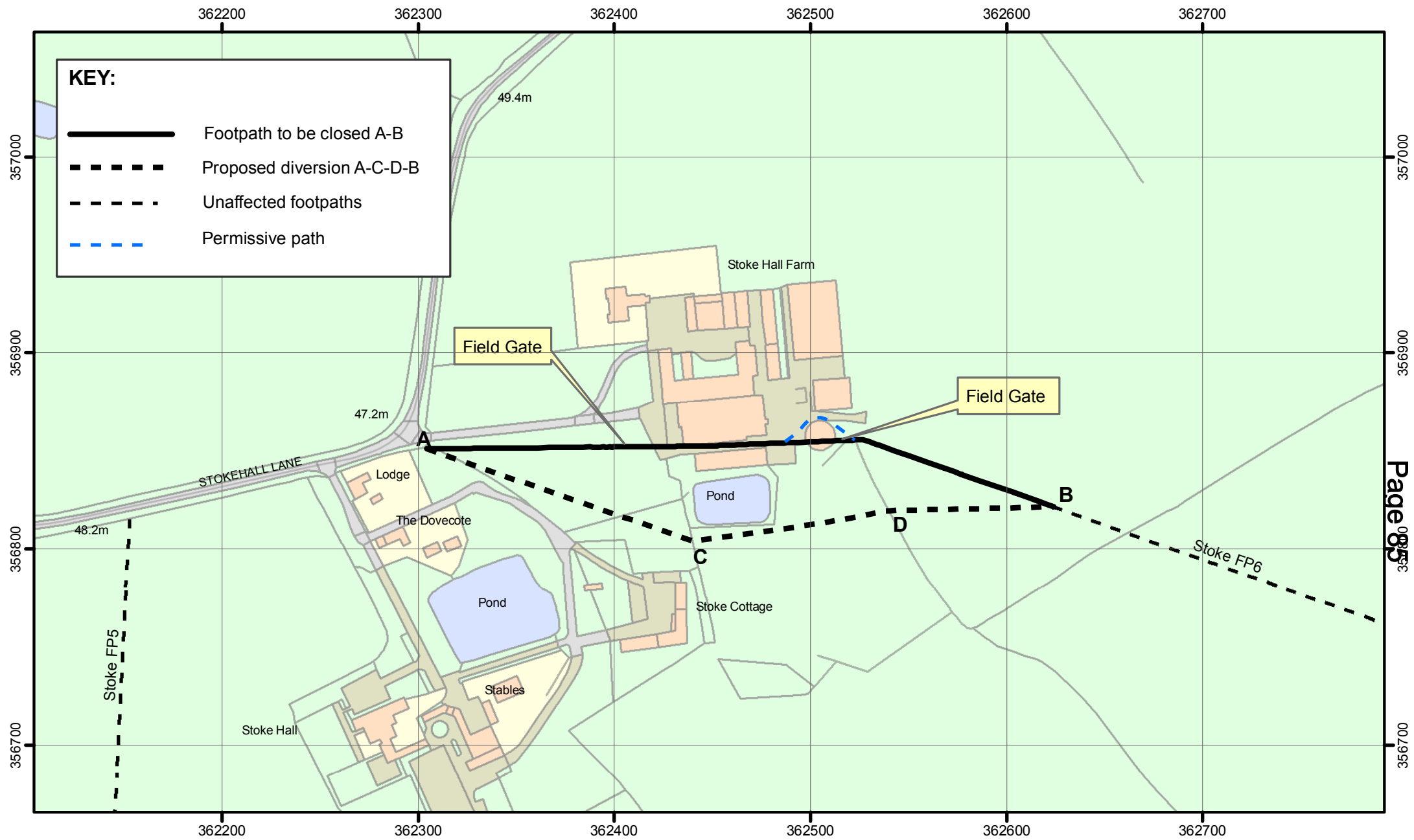
- 10.1 Any questions relating to this report should be directed to the following officer:

Name: Sarah Fraser

Job Title: Public Path Orders Officer

Email: sarah.fraser@cheshireeast.gov.uk

Tel: 01270 686070



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Highways Act 1980 Proposed diversion of
Public Footpath No.6 in the Parish of Stoke.

Plan No.
HA/141A

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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 10 June 2019

Report Title: Town and Country Planning Act 1990 Section 257 Proposed Diversion of the Unrecorded Footpath, off St. Anne's Lane, Nantwich

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to divert the Unrecorded Footpath, off St. Anne's Lane, Nantwich. 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 Public Rights of Way Team as an application has been submitted by Vision for Nantwich Ltd. in response to the following application:-

Planning Application: 18/6313N - *Proposed mixed development of 31no. apartments, hotel, restaurants, retail units and associated car parking, including the demolition of No 17 Welsh Row*

- 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 the 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, and in the event that planning consent has been granted, 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 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 Vision for Nantwich Ltd. requesting that the Council make an Order under Section 257 of the Town and Country Planning Act 1990 to divert the unrecorded footpath, off St. Anne’s Lane Nantwich.

- 5.2. The footpath to be diverted is an unrecorded route running across land to the east and southeast of St. Anne's Lane, Nantwich, as shown on Plan No. TCPA/057 between points A-B. It is currently a well used link from the Nantwich Riverside Park to Welsh Row and this diversion will allow for the retaining and recording of this pedestrian link on the Definitive Map and Statement. The diversion is necessary to allow a mixed development of the land off St. Anne's Lane.
- 5.3. The current unrecorded footpath is shown as a bold black line on Plan No. TCPA/057 between points A-B. It begins at its junction with St. Anne's Lane (UY2599) where it continues in a southerly direction for approximately 34 metres along a sealed surface path which runs alongside land used as a car park by the general public. It then continues in a generally south easterly direction for approximately 58 metres through a small wooded and grassy area along a sealed surface path. Parts of the path have been affected by tree roots making sections of it very uneven.
- 5.4. The proposed diversion affects the whole length of the unrecorded footpath and is shown on Plan No. TCPA/057 as a dashed line running between points C-B. The proposed diversion will commence at point C which is the end of the adopted highway on St. Anne's Lane and will then run in a generally southerly direction for approximately 47 metres before continuing in a generally easterly direction for approximately 36 metres. The proposed diversion will be surfaced with asphalt, will be open on one side and run alongside a car park, a building and a retaining wall on the other, it will be 3 metres wide. Access for cyclists is proposed to be retained, as at present, on a permissive basis.
- 5.5. Alongside the diversion, a deed of dedication is proposed to create a public footpath which will link the proposed diversion to the existing Public Footpath No. 4 on Mill Island, in order that the diversion does not create a cul-de-sac path on the Definitive Map. This will run between points B-D-E and is shown by an orange dotted line on the Plan No. TCPA/057. This land is owned by Cheshire East Council. The route of the creation will follow the unadopted sealed surface path that runs across the northern end of Mill Island.

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. Nantwich North and West: Councillor Penny Butterill and Councillor Arthur Moran were consulted and no comments were received.

7.2. Nantwich South and Stapeley: Councillor Peter Groves and Councillor Andrew Martin were consulted with Councillor Peter Groves stating his support for the development. No comments were received from Councillor Andrew Martin.

8. Consultation & Engagement

- 8.1. Nantwich Town Council, the user groups, statutory undertakers, adjacent 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 of file No. 219D/514 relating to this report can be inspected by contacting the report writer.

10. Contact Information

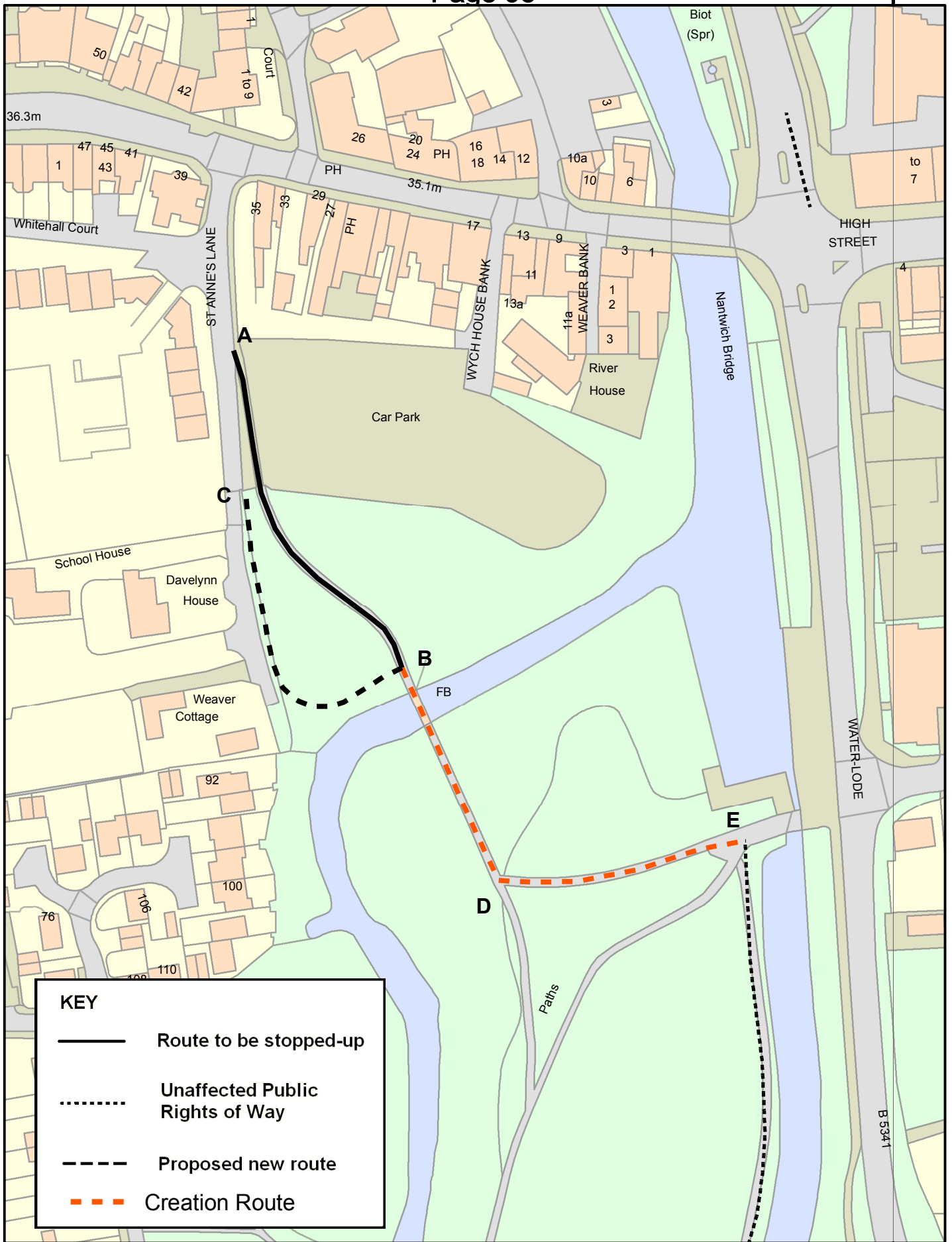
- 10.1. Any questions relating to this report should be directed to the following Officer:

Name: Laura Allenet

Job Title: Public Path Orders Officer

Email: laura.allenet@cheshireeast.gov.uk

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Proposed Diversion of the unrecorded PROW and creation route at St Anne's Lane, Nantwich.

Plan No.
TCPA/057

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



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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 10 June 2019

Report Title: Town and Country Planning Act 1990 Section 257 Proposed Diversion of Public Footpath No.20 (parts) in the Town of Crewe.

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. This report outlines the investigation to divert Public Footpath No.20 (parts) in the Town of Crewe. This includes a discussion of the consultations carried out in respect of the proposal and the legal tests to be considered for a diversion Order to be made under the Town and Country Planning Act 1990. The proposal has been put forward by Jacobs UK Limited on behalf of Cheshire East Borough Council in response to a planning application being submitted for highway infrastructure measures and associated works, in the Leighton area of Crewe, also known as the North West Crewe Package;

Planning Application: 18/6118N, Land between Flowers Lane, Minshull New Road the A530 Middlewich Road and North of Pym's Lane Crewe.

- 1.2. The report makes a recommendation based on that information, for a quasi-judicial decision by Members as to whether or not a diversion Order should be made for that section of public 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/s

- 2.1. A public path diversion Order be made under Section 257 of the Town and Country Planning Act 1990 to divert parts of Public Footpath No.20 in the

Town of Crewe on grounds that the Cheshire East Borough Council is satisfied that it is necessary to do so in order to enable development.

- 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, and in the event that planning consent has been granted, 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/s

- 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 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 public footpath if it is satisfied that it is necessary to do so to enable development to be carried out, provided a planning 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 Jacobs UK Limited on behalf of Cheshire East Borough Council requesting that the Council make an Order under section 257 of the Town and Country Planning Act 1990 to divert a section of Public Footpath No.20 in the Town of Crewe to enable the development of a new spine road to be undertaken.

- 5.2. Public Footpath No.20 commences on Minshull New Road (UY457/C) at O.S. grid reference SJ 6877 5723 and runs in a generally westerly direction for a distance of approximately 126 metres. The footpath then curves slightly at O.S. grid reference SJ 6864 5724 in a generally westerly to south westerly direction for a distance of approximately 325 metres to O.S. grid reference SJ 6835 5712. The footpath then turns in a generally north westerly direction for a distance of approximately 65 metres to O.S. grid reference SJ 6833 5718 before continuing in a generally north easterly direction for a distance of approximately 67 metres to the Parish boundary and its junction with Public Footpath No.6 in the Parish of Leighton. The sections of path proposed to be diverted are shown on Plan No. TCPA/056 attached to this report as a solid black line between points A-B a total distance of approximately 159 metres and F-G-H a total distance of approximately 76 metres.
- 5.3. The proposed diversions are shown on the same Plan (TCPA/056) and are depicted by bold black dashes between points A-C-D-E-B and between points F-J-I-H
- 5.4. The proposed diversion between points A-C-D-E-B would commence at O.S. grid reference SJ 6855 5721, point A on Plan No. TCPA/056, and would curve in a generally south south easterly direction for a distance of approximately 24 metres to O.S. grid reference SJ 6855 5719, point C on the Plan. The path would then curve in a generally south westerly direction over a proposed carriageway crossing point for a distance of approximately 23 metres to O.S. grid reference SJ 6853 5717, point D on the Plan. The path would then curve gently in a generally north westerly direction for a distance of approximately 30 metres to O.S. grid reference SJ 6850 5718, point E on the Plan, before continuing in a generally south westerly direction for a distance of approximately 100 metres to O.S. grid reference SJ 6841 5714, point B on the Plan, and the unaffected section of the footpath. This section of the proposed diversion would have a total distance of approximately 180 metres.
- 5.5. The proposed diversion between points F-J-I-H would commence at O.S. grid reference SJ 6839 5714 point F on Plan No. TCPA/056 and would run in a generally west south westerly direction for a distance of approximately 16 metres to O.S. grid reference SJ 6838 5713, point J on the Plan, the path would then turn to run in a generally north north westerly direction over a proposed carriageway crossing point to O.S. grid reference SJ 6837 5715, point I on the Plan, for a distance of approximately 23 metres. The path would then turn to run in a generally west south westerly direction for a distance of approximately 32 metres to O.S. grid reference SJ 6834 5714, point H on the Plan, to reconnect with the remaining unaffected section of

the public footpath. This section of the proposed diversion would have a total distance of approximately 75 metres.

- 5.6. Initially the proposal was to fence the diversion away from the carriageway; however, since the informal consultation was undertaken the road designers have decided that to do so would introduce costly long term maintenance requirements. The footpath will instead be segregated by a row of around eight individual trees to be planted in the greenspace between the Footpath and carriageway. This will provide a form of segregation whilst maintaining an open feel to the area. There is no requirement for the addition of any path furniture along the proposed diversions. The proposed diversions will run approximately 4 metres away from and parallel to the carriageway. The diversion would be at least 2 metres wide and have a compacted stone surface throughout, except where the path crosses the carriageway. The section of path crossing the carriageway would have tactile paving and dropped kerbs to indicate their presence, and would have a central pedestrian island.

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

- 6.5. 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.

6.6. Human Resources Implications

6.6.1. There are no direct human resource implications.

6.7. Risk Management Implications

6.7.1. There are no direct risk management implications.

6.8. Rural Communities Implications

6.8.1. There are no direct implications for rural communities.

6.9. Implications for Children & Young People

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

6.10. Public Health Implications

6.10.1. There are no direct implications for public health.

7. Ward Members Affected

7.1. Crewe St Barnabas Ward Member Councillor Handley and Leighton Ward Member Councillor Evans have been consulted (post May 2019 elections). Both Ward Members have been sent a copy of this report. The deadline for comments is 6th June 2019. Any comments received will be reported verbally to the Public Rights of Way Committee.

8. Consultation & Engagement

8.1. Crewe Town Council have been consulted, any comments received by the consultation deadline on 6th June 2019 will be reported to the Public Rights of Way Committee verbally.

8.2. The user groups, Statutory Undertakers and the Council's Nature Conservation Officer have been consulted. Any comments received by 6th June 2019 will be reported to the Public Rights of Way Committee verbally.

9. Access to Information

9.1. The Background papers and file 181D/577 relating to this report can be inspected by contacting the report writer.

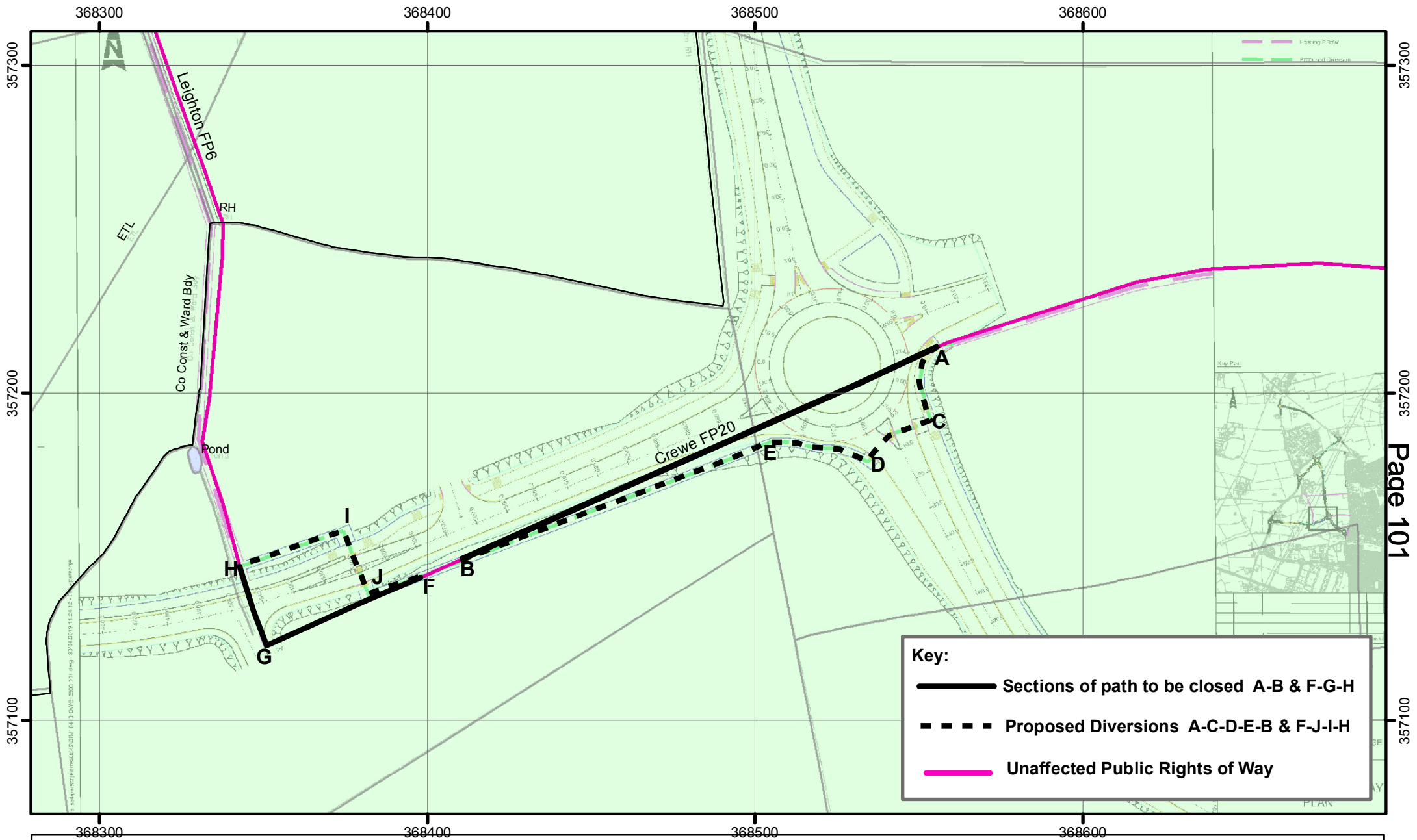
10. Contact Information

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



**Proposed Town and Country Planning Act 1990 s257 Diversion of Public Footpath No. 20 (parts)
in the Town of Crewe.**

Plan No.
TCPA/056



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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 10 June 2019

Report Title: Public Rights of Way Annual Report 2018-19 and Work Programme 2019-20

Senior Officer: Frank Jordan, Executive Director - Place

1. Report Summary

- 1.1. This report records the achievements of the Council in terms of its Public Rights of Way functions during the year 2018-2019 and sets out the proposed work programme for the year 2019-2020. Details are set out in Appendices 1, 2 and 3.
- 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. The work of the team also contributes to Cheshire East's Quality of Place, with the network being both highly valued and regarded by residents. Contributing to transport, leisure, visitor economy and health and wellbeing functions across both the urban and rural areas of the borough, the Public Rights of Way network – together with wider networks of green infrastructure – form a key element of the Cheshire East landscape and policies related to the environment.

2. Recommendation/s

- 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

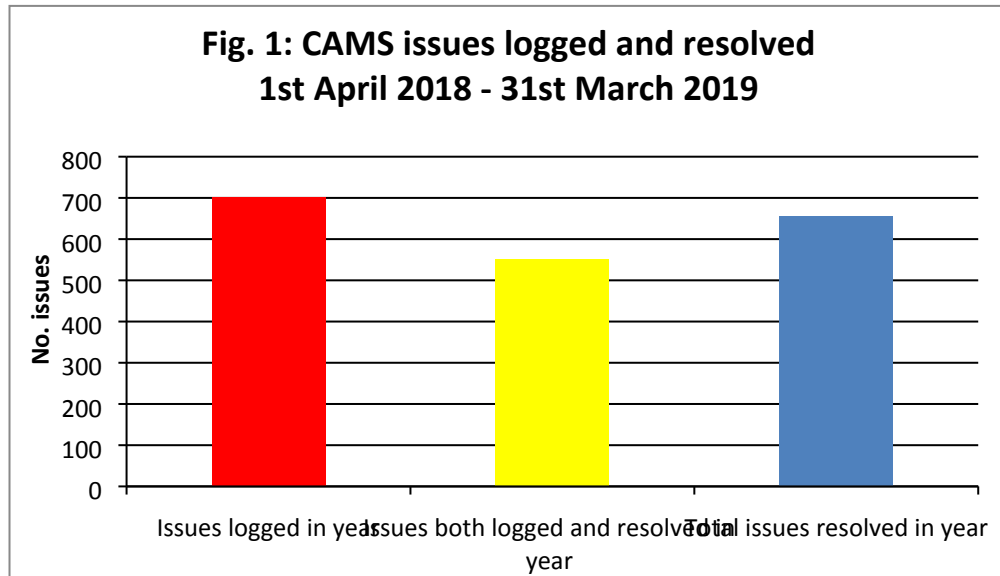
- 5.1 The work of the Public Rights of Way Team is reviewed on an annual basis at the June meeting of the Committee and the forward work programme is outlined. The report covers both the duties and the powers of the Council as set out in highways legislation. The assessment is made in the context of the Natural England (former Countryside Agency) National Targets for Public Rights of Way, which have as their aim that the network in England and Wales should be:
- legally defined,
 - properly maintained; and,
 - well publicised.

- 5.2 Each area is examined individually below with some contextual information provided, with the specific achievements of 2018-19, together with the work programme for 2019-20, contained within the relevant appendices.

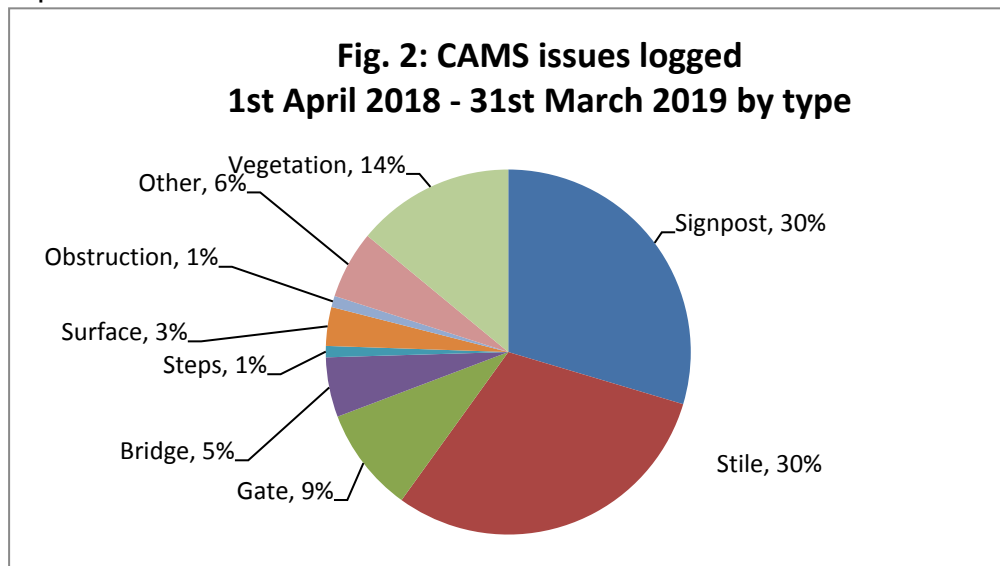
5.3 Network Management and Enforcement

- 5.3.1 Three full time Network Management and Enforcement Officers deal with the protection and maintenance of the network. They operate on an area basis, with each Officer responsible for approximately 649 kilometres of the network. Within their area, they are responsible for maintenance and enforcement to remove obstructions and keep the path network available and easy to use. A report detailing the working undertaken in relation to Network Management and Enforcement is attached at Appendix 1
- 5.3.2 No cases required the Council to undertake enforcement action during 2018-19, as all reported obstructions were removed following receipt of warning letters or telephone calls.
- 5.3.3 The number of long term closures on the network due to legal, environmental or reason other is currently 3. Instructions for Legal assistance to examine two of these cases have been issued, whilst the third case is being assessed by Highways England.
- 5.3.4 554 different Public Rights of Way benefitted from vegetation cutting either once, twice or three times in the year in order to keep the routes open and available for the public, a total length 190km of path.
- 5.3.5 703 path problems have been logged throughout the year 2018-19, having been reported by the public, landowners or Officers. This is a higher number of issues compared to the 554 logged in the preceding year. The charts below illustrate the numbers and types of problems reported, as recorded in the team's mapping and database software "CAMS"

(Countryside Access Management System). In Fig. 1 the shortfall between issues logged in year and issues both logged and resolved in year is due to the number of issues that become complex legal matters, taking longer to resolve, or those matters which span the end of the financial year.

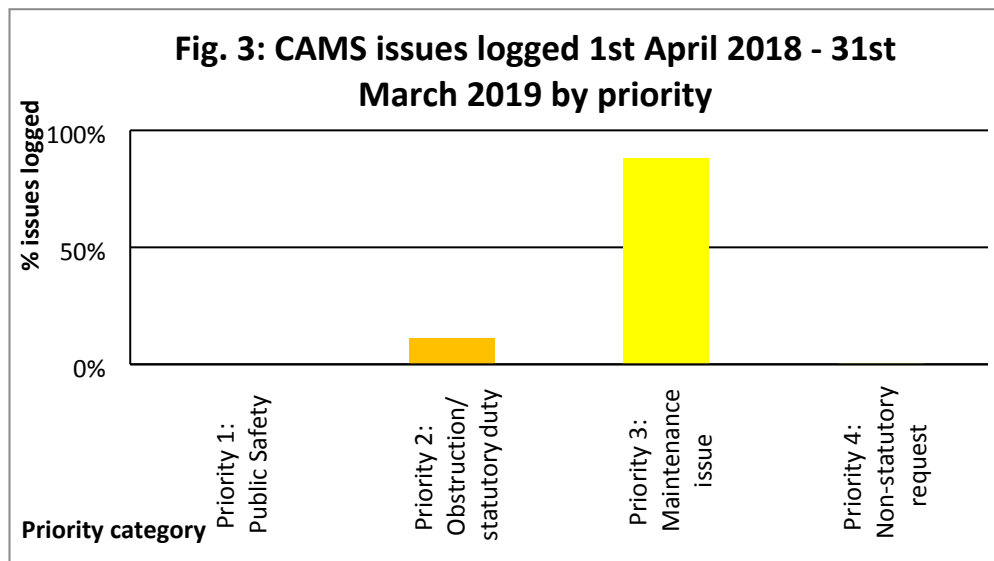


5.3.6 In Fig. 2 the numbers of different types of issues are very similar to previous years, showing little change in the frequency of types of issue being reported.



5.3.7 Fig. 3 shows a similar pattern to the previous year, again with no priority 1 public safety issues having been reported, though urgent issues, such as fallen trees, are frequently reported but not entered into the database as they are resolved largely by communication with landowners, not contractors. Likewise, damaged bridges that cannot be repaired through framework contractor arrangements will be dealt with by specialist

companies and therefore again are not logged through the CAMS system which is used to issue work to framework contractors.



5.3.9 The numbers of items of furniture installed by the team during the year are given in the table below:

Furniture item	No. installed
Fingerposts	260
Waymark posts	133
Stiles	136
Pedestrian gates	42
Kissing gates	152
Bridleway gates	9
2-in-1 combination gates	13
Bridges	47

5.3.10 It should be noted that the above figures do not include the large number of daily enquiries that the team receives and responds to by telephone, email, letter, web enquiry form and in person. Further, many issues are resolved without the need for them to be logged on the CAMS system and issued to contractors for remedy and therefore the above should be viewed simply as an indication of matters dealt with by the team.

5.3.11 In addition to day to day path management, the team also prepare for, procure and manage the delivery of improvement projects including drainage works and surfacing works. Examples of work conducted in this are given in Appendix 1. Works on the ground can also resolve known anomalies, such as has been the case on Sound Footpath No. 4: following a change of landowners and demonstration of the definitive alignment of the path, works to reinstate the definitive line were undertaken.

5.4 Path Inspection

- 5.4.1 The path inspection scheme which the Council employs is in the form of the former National Best Value Performance Indicator 178: percentage of paths deemed 'easy to use'. Although councils are no longer required to report on BVPI178, in Cheshire East it continues to be used as local performance indicator. Other authorities have also continued to use this methodology as it allows performance benchmarking to occur. The survey is carried out on a randomly generated basis of 5% of the network. The team duly carried out the BVPI 178 inspection during year, with the percentage pass rate being 86%. Whilst the small nature of the sample may result in inconsistencies or temporary spikes, the sequence of years 2009 to 2018 shows results averaging 87%.

5.5 Technical Administration

- 5.5.1 The Public Rights of Way team benefits from the work of one Technical Administration Officer who undertakes numerous technical and financial tasks to ensure the efficient running of the Public Rights of Way team, the Countryside Ranger Service's south team, and the office. In addition, the Officer processes search requests from developers and solicitors requesting confirmation of the Definitive Map for specific areas of land. During 2018-19, 155 search requests were processed, only marginally less than the 162 in the previous year. The Officer also processes applications for parking and canoe permits on behalf of the Countryside Ranger Service, of which there were 287 and 104 respectively during the year, an 8% increase on the preceding year. The Officer is also the public's first point of contact for the team, dealing with general enquiries via phone, letter, email and web form.
- 5.5.2 During the year, the team received and responded to 32 Freedom of Information requests and enquiries from MPs.

5.6 Rights of Way Improvement Plan (ROWIP) - Access Development

- 5.6.1 The retirement of the Public Rights of Way Manager during the year saw the Countryside Access Development Officer appointed to the Acting Manager role, an arrangement which continues at the time of report writing. This has resulted in a reduced output in the implementation of ROWIP and access development projects. However, whilst no new projects have been initiated, existing projects already in train have been progressed, such as the Twin Trails project of granted-funded investment on the Gritstone Trail and Sandstone Trail in partnership with Cheshire West and Chester Council. Although Appendix 2 contains an outline report and work programme, the

work of the whole team contributes to the delivery of the ROWIP and the aspirations and reality of improving the network.

- 5.6.2 The Countryside Access Development Officer role is also responsible for the administration of the Cheshire East Countryside Access Forum. In addition, the role facilitates the Rights of Way Consultative Group, advises local user groups, encourages the promotion of walks and rides and responds to general enquiries and requests for information.

5.7 Legal Orders Team

- 5.7.1 The team comprises six Officers (4 full-time and 2 part-time) who operate on a caseload basis and deal with Public Path Orders, (diversions and extinguishments), Definitive Map Modification Orders, (changes to the Definitive Map) emergency and temporary closures, land owner deposits and statements and planning applications as well as day to day enquiries from the public and landowners. Appendix 3 provides a review of work undertaken and the forward work programme.
- 5.7.2 Maternity leave during the first 8 months of the financial year resulted in increased pressures on the workload of the remaining Officers, particularly in the area of Definitive Map Modification Orders. However, the Officer returned to work during the last 3 months of the year and therefore the full capacity of the team was returned. The team has continued to benefit from the work of the two Officers on a fixed two-year basis in order to process Public Path Orders and temporary closures. These two posts as with the existing Public Path Order Officer post, are managed on a net nil basis, with the salaries covered by administration fees. The contracts for the two fixed term Officers has been extended to run for a further two years in recognition of the work required of the team.
- 5.7.3 During 2018-19, the team assessed 409 planning applications in order to ensure the protection and seek enhancement of the Public Rights of Way network. This number of applications, a slight increase on the preceding year, was assessed largely between 2 Officers and is a task which has set deadlines. Whilst some responses are straightforward, others involve continued correspondence to seek the best possible outcome for the protection and enhancement of the Public Rights of Way network.
- 5.7.4 Additionally, 95 temporary closures were processed, predominantly following application from developers and utility companies. Both of these processes can involve repeated negotiation and communications between applicants and Officers, and also initiate enquiries from the general public.

- 5.7.5 The team received and processed 8 deposits, statements and declarations from landowners under section 31 of the Highways Act 1980. The team also responds to enquiries for information following Local Land Charge searches, numbering 40 during the year, as well as internal requests for Definitive Map information.
- 5.7.6 9 Town and Country Planning Act section 257 Orders to enable development to go ahead have been made and 7 Orders confirmed. These applications take precedence over conventional Highway Act 1980 diversions due to the tight timetables involved. The need to respond to these in parallel with the planning process and the consequent work generated liaising with developers and colleagues in the Planning Department has a significant impact on other areas of work.
- 5.7.7 9 Highways Act 1980 Public Path Orders have been made and 7 Orders confirmed. The completion of a diversion order on Pott Shrigley Footpath No. 12 has resolved an anomaly and also satisfied a suggestion logged under the Rights of Way Improvement Plan.
- 5.7.8 5 Definitive Map Modification Order application cases were in progress during the year, with 1 Order being made and 2 cases resulting in no order being made. 1 Definitive Map Modification Order application was resolved through a Public Path Extinguishment Order.
- 5.7.9 During the year, the Council was directed by the Secretary of State to determine 2 cases following appeals from the individuals who submitted the applications because the Council had not determined the cases within 12 months of registration. One direction was for determination within 12 months, and the other within 9 months, the latter being presented to the Public Rights of Way Committee for determination at the date of this report.
- 5.7.10 The use of external consultants has enabled the progression of two Definitive Map Modification Order cases on which directions for determination had been received from the Secretary of State and for which at the time of direction, internal staff resource was already fully committed.
- 5.7.11 The waiting list of Definitive Map Modification Order applications currently stands at 36, as 5 new applications were registered during 2018-19.
- 5.7.12 In addition to the above work, each year a Legal Event Order is completed to collate all Order cases completed during the year; this is the administrative function which legally changes the Definitive Map and Statement.

5.8 Policies

5.8.1 The policies currently in place reflect the following activity:

- Network management and enforcement protocol;
- Policy for structures on Public Rights of Way;
- Prioritisation system for different categories of maintenance & enforcement issues on Public Rights of Way;
- Statement of priorities for Definitive Map Modification Order applications; and,
- Charging policy for Public Path Orders, searches & temporary closures and Highways Act 1980 section 31 deposits and statements.

5.8.2 An additional procedure has been put in place this year in order to expedite some Public Path Order cases: a delegated decision process is now in place for uncontested Public Path Order cases to be determined by the Public Rights of Way Manager in consultation with the Chair and Vice Chair of the Public Rights of Way Committee. The report of each case considered in this way will be made available on the PROW team webpages and a brief summary report will be taken to the Committee listing cases determined by this method. This process will enable the team to process applications for diversions more efficiently by removing the restriction of adhering to, and preparing for, the Committee cycle of quarterly meetings.

5.9 Countryside Access Forum and ROW Consultative Group

5.9.1 The primary purpose of the Forum is to provide advice to Cheshire East Borough Council, and other bodies, such as Government Departments, Natural England, the Forestry Commission, English Heritage, Sport England and Town and Parish Councils, on how to make the countryside more accessible and enjoyable for open air recreation, in ways which address social, economic and environmental interests. The Forum consists of volunteer members. Further details on the role of the Forum, the interest areas of its members and its annual reports can be found on the Forum's webpage at www.cheshireeast.gov.uk/cecaf.

5.9.2 The Access Forum is complemented by the Cheshire East Rights of Way Consultative Group which meets twice yearly with Officers from the team. The Group operates to achieve the following purposes:-

- to enable interest groups (users, landowners and others) to engage in constructive debate and discussion about issues of law, policy, principle and work programming with Members and Officers of the Cheshire East Council;
- to encourage understanding of each others' concerns; and,

- to participate in the consultation process and ongoing monitoring associated with the Rights of Way Improvement Plan.

5.9.3 The Consultative Group meetings are extended to allow user group representatives to meet Network Management Officers on a one to one basis in order to discuss work priorities and individual case issues. This allows user groups and the Council to discuss the prioritisation of issues and works.

5.10 Budget

5.10.1 The annual budget for the years 2018-19 and 2019-20 are set out below. During this current financial year, as in the previous, the budgets have remained as forecast throughout the year, and have remained level across the years, allowing the team to plan spending more efficiently, though costs from suppliers for items such as timber and metal furniture have increased.

	2018-19	2019-20
Length of PROW network	1946km	1947km
Total PROW revenue budget	£405k	£418k
Network maintenance budget	£44k revenue + £100k capital	£44k revenue + £100k capital (tbc)
Maintenance budget per PROW km	£73.9/km	£73.9/km
Other funding	<ul style="list-style-type: none"> • £300k LTP ROWIP/ Cycling 'Active Travel' • S106 funding: <ul style="list-style-type: none"> ○ £15k Sandbach FP51 ○ £54k Edleston FP8 ○ £10k Edleston BR1 ○ £50k non-PROW paths in Nantwich ○ £10k Wheelock Rail Trail ○ £20k Disley FP66 ○ £1k Alsager FP3 ○ £9k Wilmslow FP80 • £100k A6MARR PROW Complementary Measures package 	<ul style="list-style-type: none"> • £tbc LTP ROWIP/ Cycling 'Active Travel' capital budget • S106 funding: <ul style="list-style-type: none"> ○ £41k Alsager FP10 ○ £10k Wheelock Rail Trail ○ £20k Disley FP66 ○ £1k Alsager FP3 ○ £12k non-PROW path in Nantwich • £100k A6MARR PROW Complementary Measures package

5.11 Conclusion

- 5.11.1 As in previous years, the Public Rights of Way team has delivered a high standard of service to the public. Budget stability has allowed this work to be reflected in the condition of the network which is generally highly regarded by user groups.
- 5.11.2 The fixed term Officer appointments in the team, now extended for a further two years, continue to help to manage the Public Path Order waiting list. With the return to full strength of Officers in the Legal Orders team, the Definitive Map Modification Order application waiting list is being actively addressed, though new applications continue to be registered. The use of new methods of working has expedited processes across DMMO and PPO. Any indication that the delayed Deregulation Act is to be implemented will necessitate a fresh appraisal of policies and procedures to deal this change in legislation, along with the timescales and workload implications that may result.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. The implementation of the Deregulation Act 2015 represents a risk to the capability of the team to meet the duties of the Highway Authority with regards to Public Rights of Way. The effect of the Act, when implemented, will require an appraisal of processes and policies for dealing with Definitive Map Modification Orders and Public Path Orders. Tight timescales are to be introduced by the legislation requiring application processing within specified time limits and additionally the processing of Public Path Orders under the Highways Act 1980 will become a duty rather than a discretionary service, as it is at present.

6.2. Finance Implications

- 6.2.1. There are no additional financial implications foreseen.

6.3. Policy Implications

- 6.3.1. There are no policy implications foreseen.

6.4. Equality Implications

- 6.4.1. There are no equality implications.

6.5. Human Resources Implications

- 6.5.1. There are no additional human resource implications foreseen.

6.6. Risk Management Implications

6.6.1. The lack of resource for proactive network surveying puts the Council at potential risk of claims for accidents arising from users of the network. During the year no claims were reported to and investigated by the team

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

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Appendix 1 – Network Management and Enforcement

Measure of Success	Source	Achievements 2018-19 (2017-18)	Anticipated work programme 2019-20
All footpaths, bridleways and byways correctly signposted where they leave a metalled road.	C/side Act 1968 NERC Act 2006	<ul style="list-style-type: none"> 393 signs erected across the borough (201) 	<ul style="list-style-type: none"> Installation of additional signs and replacement signs following loss and damage to ensure the requirements of Countryside Act 1968 s 27 are fulfilled.
All PROW clear of obstructions, misleading notices, other hindrances or impediments to use.	HA 1980 s130	<ul style="list-style-type: none"> Enforcement actions saw 3 notice served for copping and 2 for general obstruction (8 and 8, respectively). Additionally 24 “7 day” warnings were issued in relation to cropping offences (29). No enforcement actions were required to physically remove obstructions on the PROW network. 	<ul style="list-style-type: none"> Carry out necessary enforcement work in line with adopted protocols to ensure that the duty set out in Highways Act 1980 is fulfilled.
Surface of every PROW is in proper repair, reasonably safe and suitable for the expected use.	HA 1980 s41	<ul style="list-style-type: none"> A routine maintenance programme is in operation, with a total length of 123 km having received routine strimming during the year. Strimming is undertaken either once, twice or three times during the growing season. 	<ul style="list-style-type: none"> The routine maintenance programme will be extended as new PROW requiring routine maintenance are encountered (e.g. paths created through ROWIP), within resource constraints. Officers will continue to work with colleagues in other departments and other partners in order to facilitate additional funding for special projects in relation to PROW wherever possible.
All PROW inspected regularly by or on behalf of	HA 1980 s58	<ul style="list-style-type: none"> Bridges are inspected every two years, but paths in general are not 	<ul style="list-style-type: none"> Network Management Officers will continue to hold bi-annual meetings

Measure of Success	Source	Achievements 2018-19 (2017-18)	Anticipated work programme 2019-20
the authority.		<p>inspected due to a lack of resources. This could result in a lack of a legal defence to claim(s) for personal injury.</p> <ul style="list-style-type: none"> • Network Management Officers hold bi-annual meetings with the relevant representative of the walking, cycling and equestrian user groups to agree priorities for work. 	<p>with the relevant representatives of the walking, equestrian and other user groups to agree work priorities and to discuss the results of the survey work carried out by these groups.</p>
The authority is able to protect and assert the public's rights and meet other statutory duties (e.g. to ensure compliance with the Rights of Way Act 1990).	HA 1980 s130	<ul style="list-style-type: none"> • All cropping obstructions were responded to within 4 weeks of reporting. 	<ul style="list-style-type: none"> • Continue to adhere to the response times set out in the current standard.
Waymarks or signposts are provided at necessary locations and are adequate to assist users. Waymarking scheme/initiative in place.	C/side Act 1968 s27	<ul style="list-style-type: none"> • Waymarking is undertaken by staff and contractors as appropriate. Additionally waymarkers are provided to registered PROW volunteers to enable them to replace missing and damaged waymarkers. 	<ul style="list-style-type: none"> • Waymarking and signposting will be undertaken as appropriate.

Appendix 1 – Examples of improvement projects delivered

Peover Superior Footpath No. 13: 5m bridge with anti-slip deck boards and refurbished parkland gate.



Before



After

Wybunbury Footpath No. 11: installation of a 25m boardwalk on a footpath over a wet area at the popular walking area of Wybunbury Moss, assisting in the conservation of the local ecology.



Before



After

Poynton Footpath No. 4: surfacing improvements on an important link from Green Lane to Anson Museum with a wider link to Princes Incline.



Before



After

Crewe Footpath No. 25: 260m of surfacing works.



Before



After

Sandbach Footpath No. 25: Timber fronted steps.



Before



After

Lyme Handley Footpath No. 13: completing the improvement to this connection into Lyme Park from the Macclesfield Canal.



Before



After


RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2018-19

Policy Ref.	ROWIP Ref.	Achievements 2018-2019	Ongoing targets 2019-2020
H2 H3 S7 S8	Various W8	Planning Applications, Pre-Applications and Developer Contributions <ul style="list-style-type: none"> Planning applications and pre-applications commented upon from the perspective of active travel and leisure walking, cycling and horseriding, putting forward ROWIP aspirations. Developer contributions sought and secured for off-site improvement through section 106 agreements and unilateral undertakings. Delivery of s106-funded improvement works in Nantwich, Wilmslow and Sandbach. Securing improvements to Public Rights of Way and other walking and cycling access routes, to be delivered by developers within sites. For example, a ROWIP suggestion to link footpaths Nos. 6 & 7 in Sandbach has been achieved through a housing development. 	<ul style="list-style-type: none"> Ongoing, as arising. S106 funding to be used to improve routes in Nantwich, Alsager and Disley.
H2 H3 S7 S8	X10	Nantwich towpath s106 <ul style="list-style-type: none"> Improvements to the towpath and access to the Shropshire Union Canal in Nantwich A partnership delivery with the Canal and River Trust, using developer contributions secured from a nearby housing development. The improvements mean that a greater proportion of the public will be able to use the route to get out into the countryside close to the town. <div data-bbox="526 973 952 1295" data-label="Image"> </div> <div data-bbox="983 973 1406 1295" data-label="Image"> </div> <p>Improved access and towpath surface</p>	<ul style="list-style-type: none"> Project completed.

RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2018-19

Policy Ref.	ROWIP Ref.	Achievements 2018-2019	Ongoing targets 2019-2020
S7 S8 H3	N/a	<p>Nantwich Riverside Bridges</p> <ul style="list-style-type: none"> • Delivery of works to assess and repair bridges in Nantwich Riverside Park, part funded by s106 developer contribution and part by CEC's facilities management. • Works included improving accessibility of ramped approaches, repainting handrails, replacement of decking boards, re-pointing of stone work abutments, removal of graffiti and protective treatments to increase the life of materials. <div>   </div> <div>   </div>	<ul style="list-style-type: none"> • Completed

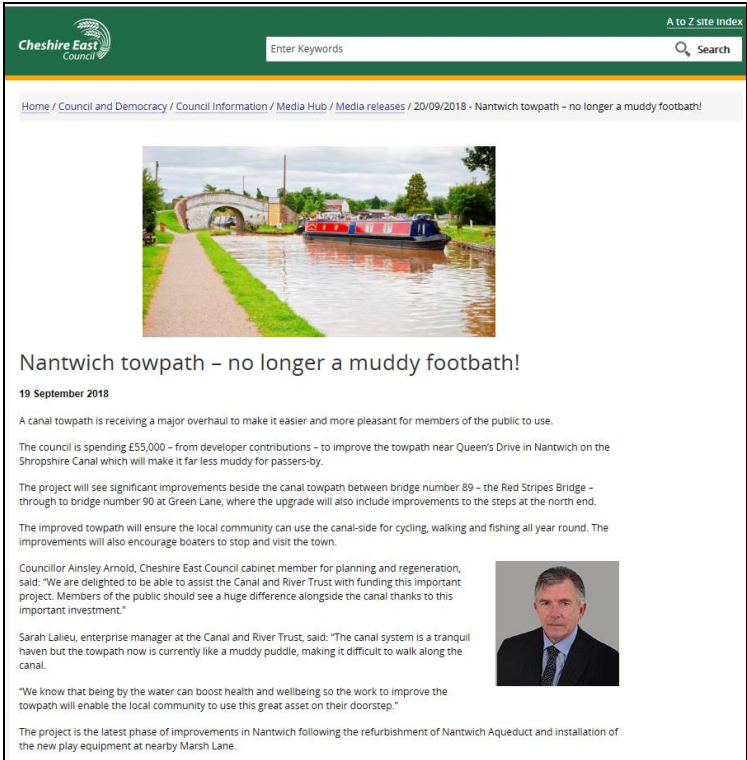
RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2018-19

Policy Ref.	ROWIP Ref.	Achievements 2018-2019	Ongoing targets 2019-2020
H2 H3 S7	T181	<p>Sandbach Footpath No. 46 and 51</p> <ul style="list-style-type: none"> This footpath forms a key link between a major development area and the railway station, and onward towards the town facilities and yet was not an attractive route to use. The potential for the improvement of the route was identified at the time of the planning application as a means to encourage active and sustainable travel. <div data-bbox="477 450 1668 941">  </div> <p>The path before the improvement works were undertaken.</p> <ul style="list-style-type: none"> In order to permit investment in the route to improve its accessibility and aesthetics, a legal order process was required to resolve an anomaly in the status of Public Footpath. The legal order process completed, the improvement works were undertaken to create a more accessible and welcoming route for all users. The works included surfacing, lighting and signage. Funding was secured partly from developer contributions and partly from the Local Transport Plan. A project team including local Ward Member and Community Partnership were involved in delivering the project and securing improvements in Network Rail's footbridge at the same time. 	<ul style="list-style-type: none"> Completed.



RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2018-19

Policy Ref.	ROWIP Ref.	Achievements 2018-2019	Ongoing targets 2019-2020
		<div></div> <p>The path after completion of the improvement works.</p>	

RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2018-19

Policy Ref.	ROWIP Ref.	Achievements 2018-2019	Ongoing targets 2019-2020
H2 H3 S7 S8	X15	<p>Publicity to promote walking, cycling and horse riding</p> <ul style="list-style-type: none"> Articles submitted for Partnership Newsletters, other newsletters and social media feeds for all news items, as arising. Suggestions for walks, cycle rides and horse riding routes published on www.discovercheshire.co.uk. Walks and countryside site leaflets distributed via country parks, visitor information centres, libraries and on request to members of the public. Countryside Ranger Service events promoted via social media channels. Press release undertaken for towpath improvement works completed in Nantwich.  <p>Screenshot of press release on the Council's website.</p>	<ul style="list-style-type: none"> Work ongoing.


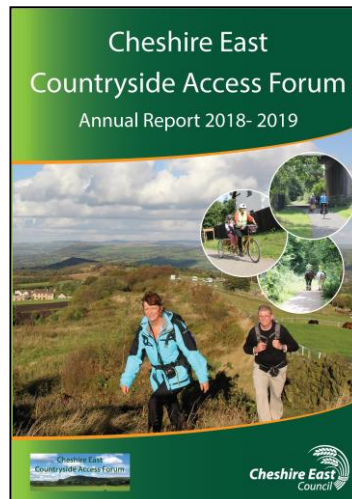
RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2018-19

Policy Ref.	ROWIP Ref.	Achievements 2018-2019	Ongoing targets 2019-2020
H2 H3 S8	W113	<p>Arclid Permissive Path to link Public Footpath Nos. 3 and 9</p> <ul style="list-style-type: none"> Working with landowner Bathgate quarry company to create a permissive path to link two footpaths. The path offers an alternative link in the network to avoid road walking along the busy A534 which has no footway. The new link forms part of circular loops from Sandbach, now featured on the Sandbach Footpath Group's website, and also offers safer access to bus stops for local residents. <div style="display: flex; justify-content: space-around; align-items: center;">   </div> <p>The start of the permissive path and permissive waymark disk</p>	<ul style="list-style-type: none"> Project completed.
H2 H3 S8	X16	<p>Sandbach Footpath No. 7 and Bradwall Footpath No. 5:</p> <ul style="list-style-type: none"> Working in partnership with Sandbach Footpaths Group who secured landowner permission and donations of £1500 towards the improvement of accessibility of this route. The route forms half of a circular walk from Sandbach town. The replacement of stiles with kissing gates and pedestrian gates has made the whole route available to a wider range of walkers than before. 	<ul style="list-style-type: none"> Project completed.

RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2018-19

Policy Ref.	ROWIP Ref.	Achievements 2018-2019	Ongoing targets 2019-2020
H2 H3 S7	T34	<p>Wilmslow Footpath No. 80</p> <ul style="list-style-type: none"> Improvements to a public footpath to make it more attractive as an active travel route between the residential areas of Handforth centre and the employment and retail centres of Handforth Dean. Improvements included signage, surfacing, fencing repairs and revetment works. Delivered using s106 developer contributions and in partnership with Network Rail who removed graffiti and improved brickwork on an underpass under the railway line. <div data-bbox="526 526 1075 941" data-label="Image"> </div> <div data-bbox="1120 526 1668 941" data-label="Image"> </div> <p>Before and after the improvement works</p>	<ul style="list-style-type: none"> Project completed.
H2 H3 S7	W117	<p>Wood Park, Alsager WREN grant third part funding</p> <ul style="list-style-type: none"> A community-led partnership project to improve the Wood Park area of Alsager for the benefit of local residents. The project includes the improvement of part of Alsager Public Footpath No. 28 to provide a more accessible route into the park and onwards to circular walking routes in the area. Advice has been provided for the project and third party funding support for a grant application. 	<ul style="list-style-type: none"> Project delivery.

RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2018-19

Policy Ref.	ROWIP Ref.	Achievements 2018-2019	Ongoing targets 2019-2020
H2 H3 S7 S8	n/a	<p><u>Cheshire East Countryside Access Forum</u></p> <ul style="list-style-type: none"> • Secretariat duties for Forum, a statutory body, whose members are volunteers, which advises the Council on matters relating to countryside access. The Forum: <ul style="list-style-type: none"> ○ Provided input into scheme design for Poynton Relief Road, Middlewich Eastern Bypass, Leighton West Spine Road, A500 and HS2 Phases 2a and 2b. ○ Responded to the government's consultation on 'The future for food, farming and the environment'. ○ Monitored the Rights of Way Improvement Plan delivery and Public Rights of Way team resources. ○ Progressed priority areas of work through working groups on safety on rural lanes, publicity of the Forum, waterways and accessibility of the countryside. ○ Continued to generate publicity on a number of topics through letters, the Connected Communities newsletters, local newspapers and partners, focussing on the work of the Forum under its other priorities. • As Secretariat, the Forum's annual report 2018-19 was published. • Also as Secretariat, a recruitment drive for new members to join the Forum was initiated. <div>   </div> <p>The Forum's logo and front cover of the annual report</p>	<ul style="list-style-type: none"> • Work ongoing.

RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2018-19

Policy Ref.	ROWIP Ref.	Achievements 2018-2019	Ongoing targets 2019-2020
H3 S7 S8	Various	Road and rail infrastructure schemes <ul style="list-style-type: none"> Influencing road and rail infrastructure schemes through design development, the planning system and Side Road Orders to achieve best possible outcomes for non-motorised users, and ensuring delivery of infrastructure on the ground as well as legal records. A556, Leighton West Spine Road, SEMMMS A6-Manchester Airport Relief Road, Congleton Link Road, A500, Sydney Road Bridge, M6 missing Restricted Byway Bridge, Middlewich Eastern Bypass and Poynton Relief Road. Continued input of ROWIP aspirations into options and designs to maximise opportunities for improving routes for active travel and leisure walking, cycling and horse riding. Response to consultation and negotiation with HS2 scheme designers for improved accommodation of Public Rights of Way and rural lanes, to protect and enhance leisure and active travel routes affected by HS2 proposals. Continued liaison and input to the revision of the Local Transport Plan and delivery of active travel schemes under the Cycling Strategy. 	<ul style="list-style-type: none"> Work ongoing.
H2 H3 S7 S8	n/a	Rights of Way Consultative Group <ul style="list-style-type: none"> Twice yearly liaison meetings between PROW team and user group representatives. Updates provided on long term closures of Public Rights of Way due to legal or resource issues. Monitoring of Rights of Way team resources. Proposing improvements to the online Interactive map of public rights of way. Providing information on the route and impact of the A500 dualling, together with the mitigation for and additional Public Rights of Way. Discussion on the trialled use of agents by applications for Public Path Orders, the use of consultants for Definitive Map Modification Order investigations and the delegated decision of uncontested Public Path Order cases. Updates from local groups. Ongoing management of register of volunteers and issuance of Letters of Authority for volunteers assisting with waymarking and minor vegetation cutting. 	<ul style="list-style-type: none"> Work ongoing.

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Appendix 3 - Legal Orders Team

Area of work	Source	Work completed 2018-19 (working completed during 2016-17)	Waiting list / backlog	Anticipated work programme 2019-20
Legal event Orders - no backlog of legal events requiring orders to be made	W&C Act 1981 s53(2) (a) & s53(3) (a)	Legal Event Modification Order made for all legal events in 2017-18	n/a	Legal Event Modification Order to be made for all legal events in 2018-19
Definitive Map Modification Orders - no backlog of applications to modify the Definitive Map	W&C Act 1981 Sch 14	<ul style="list-style-type: none"> 5 applications under active investigation (2) 3 Schedule 14 applications determined (0) 	36	6 cases in progress
Definitive Map Modification Orders - no backlog of decided applications/other cases awaiting Definitive Map Modification Orders	Former Countryside Agency national target	<ul style="list-style-type: none"> 0 Orders confirmed (0) 0 Orders confirmed with modifications (0) 0 refusal to make Order appealed, Secretary of State direction to make Order (1) 2 appeals against non-determination within 12 months (2): 1 directed to determine within 12 months, 1 within 9 months 1 cases referred to Planning Inspectorate (0)) 	0	<ul style="list-style-type: none"> Continue to make orders as soon as reasonably practicable. Contested Orders to be submitted to PINs as soon as reasonably practicable. Directed applications/orders to be processed as required, within resource constraints.
Map consolidation - the authority has considered the need to consolidate the Map and take any necessary action	W&C Act 1981 s56	On hold due to resource limitations.	n/a	On hold due to resource limitations.
Definitive Map - no other matter affecting the Definitive Map outstanding	Former Countryside Agency national target	2 anomalies corrected during 2018-19 (0)	List of 434 known map anomalies	No progress can be made without additional staff resource, unless resolved through other legal process.
Planning application consultations	HA80 s130	409 (398)	n/a	As required

Area of work	Source	Work completed 2018-19 (working completed during 2016-17)	Waiting list / backlog	Anticipated work programme 2019-20
Public Rights of Way searches	WCA81 s57	155 – direct (162) 40 – following Local Land Charge results (44)	n/a	As required
Landowner deposits, statements and declarations	HA80 s31	8 (11)	n/a	As required
Temporary & emergency closures	RTRA84	95 (83)	n/a	As required
Public Path Orders	HA80	<ul style="list-style-type: none"> • 30 cases in progress (6) • 17 Orders made (2) • 13 Order confirmed (1) • 1 Orders contested (2) • 1 cases referred to Planning Inspectorate (0) 	38	22 Orders made
Public Path Orders	TCPA80	<ul style="list-style-type: none"> • 15 cases in progress (8) • 9 Orders made (10) • 7 Orders confirmed (8) • 1 Order contested (1) • 0 case referred to Planning Inspectorate (1) 	n/a	As required – estimated 11 Orders made
Deeds of Dedication	LA11	0 (0)	n/a	1
Cycle Tracks Orders	CTA84	0 (0)	n/a	0

HA80: Highways Act 1980
RTRA84: Road Traffic Regulation Act 1984
LA11: Localism Act 2011

WCA81: Wildlife and Countryside Act 1981
TCPA90: Town and Country Planning Act 1990
CTA84: Cycle Tracks Act 1984



Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 10 June 2019

Report Title: Informative Report on Cases of Uncontested Public Path Orders Determined under Delegated Decision

Senior Officer: Frank Jordan, Executive Director - Place

1. Report Summary

- 1.1. The report informs Members of the uncontested Public Path Order cases that have been determined under delegated decision by the Executive Director of Place in consultation with the Chair and Vice Chair of the Committee.

2. Recommendation/s

- 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 – this is a non-executive matter.

5. Background

- 5.1 Under the Council's Constitution and Local Scheme of Delegation under the cascade principle, the Public Rights of Way Manager, in consultation with the Chair and Vice Chair of the Public Rights of Way Committee, may determine Public Path Order cases which are not contested or contentious at the pre-order consultation stage.
- 5.2 This report provides an update on decisions taken under this delegation:
 - 5.2.1 Highways Act 1980 s118 Application for the Extinguishment of Public Footpath No. 13 (part), Parish of Brereton.

- 5.3 Reports for cases determined through this process can be viewed on the Public Rights of Way webpages at https://www.cheshireeast.gov.uk/leisure_culture_and_tourism/public_rights_of_way/path_orders/Public-Path-Order-Delegated-Decision-Reports.aspx.

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 financial implications.

6.3. Policy Implications

- 6.3.1. There are no policy implications.

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.

6.6. Risk Management Implications

- 6.6.1. There are no risk management implications.

6.7. Rural Communities Implications

- 6.7.1. There are no implications for rural communities.

6.8. Implications for Children & Young People

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

6.9. Public Health Implications

- 6.9.1. There are no implications for public health.

7. Ward Members Affected

- 7.1. All Wards. Consultation with Ward Members is undertaken to inform the decision on each Public Path Order case.

8. Consultation & Engagement

- 8.1. Consultation with Public Rights of Way user groups and statutory consultees is undertaken to inform the decision on each Public Path Order case.

9. Access to Information

- 9.1. Not applicable.

10. Contact Information

- 10.1. 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

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