

# Public Rights of Way Committee

## Agenda

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<b>Date:</b>	<b>Monday 9th March 2020</b>
<b>Time:</b>	<b>2.00 pm</b>
<b>Venue:</b>	<b>Committee Suite 1,2 &amp; 3, Westfields, Middlewich Road, Sandbach CW11 1HZ</b>

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

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

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

1. **Apologies for Absence**

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 2 December 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.

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

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Also in accordance with paragraph 2.32 of the Committee Procedural Rules and Appendix 7 of the Procedural Rules a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the body in question. Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice of the intention to speak, however as a matter of courtesy, a period of 24 hours notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

5. **Wildlife & Countryside Act 1981 - Part III, Section 53: Application no. CO/8/52: Application for the Addition of a Public Right of Way along a route known as Manor Drive between Nantwich Road (A530) and Kerridge Close, Parish of Middlewich** (Pages 11 - 36)

To consider the application for the addition of a Public Right of Way along a route known as Manor Drive in the parish of Middlewich.

6. **Town and Country Planning Act 1990 Section 257: Application for the Extinguishment of Public Footpath No. 20, Parish of Congleton** (Pages 37 - 44)

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

7. **Town and Country Planning Act 1990 Section 257: Proposed Diversion of Public Footpath Hatherton No. 8 (Part)** (Pages 45 - 54)

To consider the application for the diversion of part of Public Footpath No.8 in the parish of Hatherton.

8. **Informative Report on Cases of Uncontested Public Path Orders Determined under Delegated Decision** (Pages 55 - 58)

To note the Public Path Orders determined under Delegated Decision.

## **THERE ARE NO PART 2 ITEMS**

**Membership:** Councillors S Akers Smith, H Faddes, I Macfarlane, S Pochin (Chairman), B Puddicombe (Vice-Chairman), D Stockton and L Wardlaw

**CHESHIRE EAST COUNCIL**

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

**PRESENT**

Councillor B Puddicombe (Vice-Chair, in the Chair)

Councillors H Faddes, I Macfarlane, D Stockton and L Wardlaw

**Officers in Attendance**

Genni Butler, Acting Rights of Way Manager  
Sarah Fraser, Public Path Orders Officer  
Andrew Poynton, Planning and Highways Lawyer  
Rachel Graves, Democratic Services Officer

**24 APOLOGIES FOR ABSENCE**

Apologies were received from Councillors S Akers Smith and S Pochin.

**25 DECLARATIONS OF INTEREST**

No declarations of interest were made.

**26 MINUTES OF PREVIOUS MEETING****RESOLVED:**

That the minutes of the meeting held on 9 September 2019 be approved as a correct record.

**27 PUBLIC SPEAKING TIME/OPEN SESSION**

No members of the public present wished to speak.

**28 VILLAGE GREEN APPLICATION: APPLICATION TO REGISTER LAND AT WOODSIDE, KNUTSFORD KNOWN LOCALLY AS COLLEGE WOOD**

The Committee considered a report which detailed an application made by Knutsford Town Council under section 15(2) of the Commons Act 2006 to register an area of land known as College Wood, Woodside, Knutsford as a new village green.

The Council was the registration authority for village greens and responsibility for this function had been delegated to the Public Rights of Way Committee.

The application was made pursuant to section 15(2) of the Commons Act 2006, which required the applicant to demonstrate on the balance of probabilities that the land was used:

- a. for lawful sports and pastimes for a period of at least 20 years and that this use continued to the date of the application
- b. by a significant number of the inhabitants of a locality or of a neighbourhood within a locality
- c. as of right.

The application, dated 27 June 2018, was received by the Council and validated on 27 July 2018. The application related to a piece of land known as 'College Wood', which was located adjacent to the junction of Woodside and Thorneyholme Drive in Knutsford. The application site consisted of unenclosed mixed woodland of an area of approximately 0.35 hectares, with a number of informal paths running through the site.

The application land was owned by the Shrewsbury Roman Catholic Diocesan Trustees and a copy of the public notice and application had been provided to them. No objection to the application had been received from them.

Public notice was placed in the Wilmslow and Knutsford Guardian on 30 May 2019 and two notices were placed close to the land on an adjacent lamppost and road sign. No objections had been received from any party by the deadline of 29 July 2019.

The fifty witness statements had been submitted by the applicant which confirmed that activities such as dog walking, bird watching, picnics, drawing and painting, community events, tree climbing, building dens, wildlife watching, people walking, team games and bicycle riding had all been undertaken on the application land for more than 20 years.

The applicant had confirmed that the locality of the land was the Over Ward parish and the neighbourhood within that ward could be defined as the Cross Town neighbourhood. The majority of witness statements received came from those who lived or had previously lived within the Cross Town neighbourhood.

The witnesses confirmed that they had used the application land for lawful sports and pastimes openly, without force and without permissions and that this fell within the definition of the uses being 'as of right'.

The Committee considered the report and concluded that the application complied with the three requirements of Section 15(2) of the Commons Act 2006 and that the land should be registered as a Town or Village Green.

The Committee unanimously



**RESOLVED:**

That the application by Knutsford Town Council to register an area of land known as College Wood, Woodside, Knutsford be registered as a Town or Village Green.

**29 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 45 (PART), PARISH OF MOBBERLEY**

The Committee considered a report which detailed an application from Mr T Cummins of Saltersley Hall Farm, Wilmslow, requesting the Council to make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No.45 in the parish of Mobberley. The application was made on the grounds of privacy and security of the property.

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 section of path proposed to be diverted ran along the driveway leading to Saltersley Hall Farm, close to various out buildings and the farmhouse to its junction with Public Footpath No.52 Mobberley.

The proposed diversion would run to the south of the Saltersley Hall Farm, along a field edge to connect to Public Footpath No. 52 Mobberley – as shown on Plan No.HA/146 between points A-C-D-E. The proposed path would be four metres wide, surfaced with stone chippings and sand dusting. The path between points A-C-D would be enclosed by a wooden railed fence as the landowner wished in future to restore and improve the land for agricultural purposes. The proposed diversion would take users away from the private driveway, the out buildings and the farmhouse, therefore increasing the privacy and security of the property.

The Committee considered the application and noted the comments received from the Open Spaces Society, North and Mid Cheshire Ramblers and the Peak and Northern Footpath Society along with the Public Rights of Way Officer's responses.

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

The Committee unanimously

**RESOLVED:** That

- 1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No.45 in the parish of Mobberley by creating a new section of Public Footpath and extinguishing the current path, as illustrated on Plan No.HA/146, on the grounds that it is expedient in the interests of the landowner.
- 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 Council be responsible for the conduct of any hearing or public inquiry.

**30 HIGHWAYS ACT 1980 SECTION 119: PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.34 AND NO.35 (PARTS) IN THE PARISH OF MACCLESFIELD FOREST.**

The Committee considered a report which detailed an application from Mr Hurley of Whitehills Farm, Macclesfield Forest, requesting the Council to make an Order under Section 119 of the Highways Act 1980 to divert parts of Public Footpath No.34 and No.35 in the parish of Macclesfield Forest. The application was made on the grounds of privacy, security of the farm and improved management of the land.

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 current line of the section of Public Footpath No.34 to be diverted passed within very close proximity to a residential property and through the middle of Whitehills farmyard and animal holding areas. Where the path passed through the farmyard there was an obstruction caused by a wall forming part of an animal holding area and an agricultural structure installed prior to legislation requiring planning permission. To avoid the obstruction walkers were able to use a permissive path that ran to the east of the farm.

The current line of the section of Public Footpath No. 35 to be diverted ran through an old barn erected sometime in the past, close to residential dwellings and through Whitehills farmyard. A short permissive path was in place for the section obstructed by the barn which had a number of gates and stiles to negotiate and took walkers within close proximity to the residential dwellings and the working areas of the farm.

The proposed diversions of Public Footpaths No.34 and No.35, as shown on Plan No.HA/145, would take the existing paths away from the residential properties and the working farm environment, through a safer more scenic route and would reduce the risks associated with walking through a working farm. The proposed diversions would offer improved views of the surrounding countryside.

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

The Committee considered that the proposed routes would not be sustainably less convenient than the existing routes. Diverting the footpaths would be in the interest of the applicant as it would improve the privacy and security of the dwellings and improve land management. It was considered that the proposed routes would be satisfactory alternatives to the current ones 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.34 and part of Public Footpath No.35 in the parish of Macclesfield Forest by creating new sections of Public Footpath and extinguishing parts of the current paths, as illustrated on Plan No.HA/145, on the grounds that it is expedient in the interests of the landowner.
- 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.

**31 PUBLIC RIGHTS OF WAY PROPOSED FEES AND CHARGES 2020-21**

The Committee received a report which detailed the proposed fees and charges for 2020-21 for charged-for services provided by the Public Rights of Way team.

The annual review of fees and charges had been conducted as part of the budget setting process of the Council. The charges for 2020-21 had been increased by inflation, rounded and also take into account revised corporate recharge rates. In addition, the fees and charges had been amended to reflect revised assessments of costs incurred.

**AGREED:**

That the report be noted.

**32 WILDLIFE & COUNTRYSIDE ACT 1981- PART III, SECTION 53:  
APPEAL DECISION FOR APPLICATION NO. CO/8/34: CLAIMED  
FOOTPATH FROM BYLEY LANE TO CARVER AVENUE, PARISH OF  
CRANAGE**

The Committee received an information report on the outcome of an appeal against the decision not make a Definitive Map Modification Order.

Cranage Parish Council had appealed the decision of the Public Rights of Way Committee in December 2018 to refuse an application to add a public footpath between Carver Avenue and Byley Lane in Cranage, route A-B-C-D as shown on Plan No.WCA/016. Following further submissions of comments by all affected parties, the Secretary of State for Environment, Food and Rural Affairs had issued a letter directing the Council to make an Order. Consequently the Council had made an Order to add the Footpath to the Definitive Map and Statement as directed.

**AGREED:**

That the Report be noted.

The meeting commenced at 2.00 pm and concluded at 2.43 pm

Councillor B Puddicombe (Vice-Chair, in the Chair)



*Working for a brighter future together*

## **Public Rights of Way Committee**

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**Date of Meeting:** 09 March 2020

**Report Title:** Wildlife & Countryside Act 1981 – Part III, Section 53: Application no. CO/8/52: Application for the Addition of a Public Right of Way along a route known as Manor Drive between Nantwich Road (A530) and Kerridge Close, Parish of Middlewich

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

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### **1. Report Summary**

- 1.1. The report outlines the investigation of an application made by Mr John Bayley on behalf of The Middlewich Public Rights of Way Group to amend the Definitive Map and Statement by adding a public right of way along a route known as Manor Drive, between Nantwich Road (A530) and Kerridge Close, in the parish of Middlewich. 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 (DMMO) 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 route to the Definitive Map.
- 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 Restricted Byways the routes shown between points A-B-C and B-D on plan number WCA/021.

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

### **3. Reasons for Recommendations**

- 3.1. The evidence in support of this claim must show, on the balance of probabilities, that public rights subsist along the claimed routes. It is considered that there is sufficient user evidence to support the existence of public restricted byway rights along the routes A-B-C and B-D on plan no. WCA/021. It is considered that the requirements of Section 53(3)(c)(i) have been met in relation to restricted byway rights and it is recommended that the Definitive Map and Statement should be modified to show the routes as Restricted Byways.

### **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 Mr Bayley, on behalf of The Middlewich Public Rights of Way Group, on 22<sup>nd</sup> November 2017. The application was registered and assessed under the Council's adopted policy for prioritising such applications, known as the DMMO Statement of Priorities. The application was for the addition of a bridleway along a route known as Manor Drive, in the parish of Middlewich. The application is based on user evidence. 10 user evidence forms were submitted with the application; 2 further forms have since been submitted. Although the application stated it was for the addition of a bridleway, Officers consider that the evidence suggests the status should be that of Restricted Byway; the reason for this is explained in section 5.3 below.
- 5.1.2 The application form describes the route 'from the corner of the rear garden of 5 Buckley Close Middlewich down Manor Drive through to Nantwich Road (A530) passing Manor Lodge'. This is the route between points B and A on plan no. WCA/021. It is believed the applicant did not include the section from point B through to Kerridge Close, point C, as this land is

mainly owned by Cheshire East Council and public use of that section has not been disputed. However, for the purpose of investigating the claimed public rights, the full length of the route has been considered. This is because the witnesses stated they used the full length of the route; and also if the route were to be added to the Definitive Map it would need to link to a recorded public highway. Therefore the full, currently unrecorded, length of the route from Nantwich Road to Kerridge Close has been considered, as shown between points A-B-C on plan no. WCA/021.

- 5.1.3 During the investigation it has come to light that the route from Buckley Close to Manor Drive (between points B and D on plan no. WCA/021) is not recorded on the Definitive Map. This is land in the ownership of Cheshire East Council. A small section of this route is recorded as an adopted footway, this is approximately the first 17 metres from Buckley Close, the adopted footway then continues in a southerly direction to link with Brynlow Drive. Therefore this route, between points B and D, has also been considered as part of the application as some witnesses stated they also used this route.
- 5.1.4 The reason for the application was an article, that was printed in the Middlewich Guardian newspaper dated 24<sup>th</sup> August 2017, that stated the owners of a property on Nantwich Road planned *“to gate the driveway to stop residents from using it as a thoroughfare into Middlewich or on to the canal”*. The article was reporting on the problem of HGVs using Nantwich Road (A530) and being unaware of the low headroom at the aqueduct. Despite signage being in place warning of the low headroom, it was claimed this was not clear enough. This, it was reported, was causing problems as the HGVs then block the road as they attempt to turn around. The property owners stated they were aware of the problem before they moved in, but now substantial damage was being caused and their only option was to narrow the frontage to their house to deter HGV movements. Local residents saw this article in the newspaper and were concerned they would be prevented from using Manor Drive. Consequently this led to the application to record the route as a public bridleway being submitted.
- 5.1.5 In December 2018 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 31<sup>st</sup> January 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 12 months from the date of the direction.

- 5.1.6 In August 2019 the owners of Manor Lodge built a wall, four pillars and a raised kerbed grass verge on unregistered land to the front of their property, immediately adjacent to Nantwich Road (point A on plan no. WCA/021). This is on the claimed public right of way. The owners have since applied for retrospective planning permission for change of use of the land to allow them to encompass the land within their residential curtilage. The planning application has yet to be decided; the reference number is 19/4060N.

## **5.2. *Description of the Investigated Route***

- 5.2.1 The investigated route begins at point A (on plan no. WCA/021) on Nantwich Road (A530) and follows a generally southerly direction to Kerridge Close at point C. The route is mostly enclosed between boundaries. The section at the start and adjacent to Manor Lodge has a stone surface, further along around point B the surface is earth. The section nearer to point C at the Kerridge Close end has a sealed tarmac surface. There are retractable bollards at points B and C to prevent vehicle access. It is believed these were installed by Congleton Borough Council in the 1990s.

- 5.2.2 The route from Manor Drive to Buckley Close between points B-D has an approximate varying width of between 2.5 and 3.5 metres, it is narrower than Manor Drive and has a sealed tarmac surface. It is bounded on one side by a wall, which forms the adjacent property boundary.

## **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 The event relevant to this application is section 53(3)(c)(i), this requires modification of the map by the addition of a right of way. The relevant section is quoted below:

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

(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...;



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 and a conclusion reached whether, on the 'balance of probabilities' the alleged rights subsist. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.

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

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

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

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

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

The proviso means that presumed dedication of a way can be rebutted if there is sufficient evidence that there was no intention to dedicate the way, during the relevant twenty year period. What is regarded as 'sufficient evidence' will vary from case to case. The Lords addressed the issue of whether the “intention” in section 31(1) had to be communicated to those using the way, at the time of 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.

- 5.3.6 For public rights to have come into being through long use, as stated above, a twenty year period must be identified during which time use can be established. Where no challenge to the use has occurred, this period can be taken as the twenty years immediately prior to the date of the application. In this case that would be 1997 to 2017. The newspaper article, referred to above in paragraph 5.1.4, shows an intention to challenge the public use, that was dated 2017. The current owners of Manor Lodge moved into the property in 2016, although some witnesses stated they have heard of others who have been stopped/challenged, none had been personally challenged themselves when using the route on foot/cycle. There was some evidence of challenges however; this was when vehicles were attempting to use the route for access, so it was not a challenge to the public use but rather their private access. Therefore, the twenty year period to be considered could be 1996-2016, if the current owners of Manor Lodge had challenged anyone from when they moved to the property, otherwise it would be 1997-2017. For the route B-D on plan no. WCA/021, no challenge has taken place so the 20 year period to be considered for that route is 1997-2017.
- 5.3.7 In this case there is evidence of use on pedal cycle but no evidence of equestrian use. The status applied for was that of bridleway; however, Officers have considered the relevant legislation, guidance and a similar case decided by The Planning Inspectorate; and believe that the routes should be recorded as Restricted Byways.
- 5.3.8 The Planning Inspectorate guidelines state, "Section 31, Highways Act 1980, as amended by section 68 of Natural Environment and Rural Communities Act (NERC) 2006, provides that use of a way by non-mechanically propelled vehicles (such as a pedal cycle) can give rise to a restricted byway.
- 5.3.9 The case of *Whitworth v Secretary of State for the Environment, Food and Rural Affairs (2010)* is often quoted where there is evidence of use on horseback and pedal cycle. Section 30 of the Countryside Act 1968 gave pedal cyclists the right to ride on a bridleway; therefore any use from 1968 onwards is said to be "by right". In *Whitworth* the route was found to have pre-existing bridleway status, i.e. it was decided the status was a bridleway prior to 1968. It was suggested that subsequent use by cyclists of an accepted, but unrecorded, bridleway, where use of the bridleway would have been permitted by virtue of section 30 of the Countryside Act 1968, could not give rise to anything other than a bridleway.
- 5.3.10 The judge in the *Whitworth* case, Carnwath LJ, went on to discuss what the outcome would have been had there been no pre-existing bridleway status.

His view is predicted on user evidence dominated by equestrians, a ratio of 8 equestrians to 2 cyclists (8 v 2). He accepted that regular use by horse riders and cyclists might be consistent with dedication as a restricted byway, it was also consistent with dedication as a bridleway. In such an instance of statutory interference with private property rights, he determined, it was reasonable to infer the dedication “least burdensome to the owner”.

5.3.11 In these circumstances Carnwath LJ could equally have decided bridleway or restricted byway status, but opted for bridleway as equestrian was the dominant user evidence and he did not want to inflict a more burdensome way on the landowner.

5.3.12 When determining whether the status should be bridleway or restricted byway, consideration needs to be given to the dominant user between cyclists and equestrians. In this case, the predominant users are cyclists, as there are no equestrians at all; this distinguishes the current application from the *Whitworth* case. A more comparable case to the current application is a decision of the Planning Inspectorate dated 6<sup>th</sup> April 2017; this concerned a Definitive Map Modification Order made by East Riding of Yorkshire Council. The Order was for the addition of a Restricted Byway. In that case no pre-existing bridleway status was found, the Order route was created as a private road; however, from the 1950s there was evidence of use by the public. The dominant user was pedal cyclists (19 claimed use with a cycle and 3 on horseback). The Inspector determined that the facts were different to the facts in *Whitworth*; that the evidence of use by cyclists supports the establishment of a restricted byway and concluded that there is no basis from which a less burdensome bridleway can be inferred.

5.3.13 It is Officers’ opinion with the present case, that where the predominant user is cyclist (as in the East Riding case above) it is appropriate to record the status as a restricted byway. Unlike the *Whitworth* case there is no need to be cautious and record the least burdensome way for the landowner; there is clear dominance by cyclists in this case, with no equestrian use, therefore the appropriate status is that of restricted byway.

#### 5.4. ***Investigation of the Claim***

5.4.1 An investigation of the evidence submitted with the application (CO/8/52) has been undertaken, together with some additional research. The application was made on the basis of user evidence from ten witnesses; two further forms have since been received, one of whom was

subsequently interviewed and made a statement. In addition to the user evidence submitted an investigation of any available historical documentation was 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 3**.

## 5.5. ***Documentary Evidence***

- 5.5.1 There was no documentary evidence submitted with the application. It is clear from viewing historical Ordnance Survey maps that the route was historically used as the access to Manor Hall, or 'Manor House' as it is named on some maps. The route appears to have been gated at the Manor Lodge in the past. The Hall itself was built between 1800-1830 and is a grade II listed building; it is believed to have been a private residential house until it became a residential care home for the elderly in 2011. The housing estate to the south of the claimed route, Manor Park, was built in the late 1960s/early 1970s; the houses to the east, that back onto the route were built in the 1980s. It is most likely that the route was used as private access only until the area changed considerably with the construction of the residential developments. Therefore limited historical research has been completed as it is clear that if public rights have come into being this would have been through evidence of use of the route. The documents that have been considered are listed in **Appendix 3**.

### *Middlewich & Newton Tithe Map c1848*

- 5.5.2 Tithe maps and the written document which accompanied them, (the apportionment) were produced between 1837 and the early 1850s 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.
- 5.5.3 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.

- 5.5.4 In this case a route is shown for the full length of the claimed route between points A-C, on plan no. WCA/021. It is shown coloured the same as the other highways and does not show a line across the route, which may indicate that it was not gated at the time. The alignment is shown as bearing more southerly rather than south south westerly. No tithe number is given to the route and therefore no landowner is listed in the apportionment. However as stated above this does not necessarily mean it was public, just that the route generated no titheable produce.

#### *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.

#### *O.S. 1 inch to 1 mile Revised New Series 1897*

- 5.5.6 On this edition the full length of the claimed route is shown between solid boundaries from Nantwich Road before continuing further south as double dashed lines to 'Newton Manor'. There is no building shown where the Manor Lodge is now and there appears to be no line across the route, which may indicate that it was not gated at the time.

#### *O.S 2<sup>nd</sup> Edition County Series 1897 – 25 inch*

- 5.5.7 On this edition of the map, Manor Drive between points A and C on plan no. WCA/021 is shown as a route with solid line boundaries each side. There does appear to be a line across the route near to the Manor Lodge, indicating there were gates at that time. An unnamed building is shown where Manor Lodge is now. Further south the route continues as double dashed lines with trees lined on both sides all the way to the entrance to 'Newton Manor' as it is named on this edition.

*O.S. 3rd Edition County Series 1909- 25 inch*

- 5.5.8 On this edition the route is depicted in the same way as the previous map. Manor Lodge is named as 'Lodge' and again there is a line across the route near to the Lodge, indicating that it was gated. The Hall is referred to as 'Manor House' on this edition.

*Ordnance Survey Six-inch 2nd and 3rd Editions*

- 5.5.9 These two editions depict the claimed route in the same way as the 25 inch versions.

*Ordnance Survey Six-inch Sheet XLI.SE 1938*

- 5.5.10 This edition depicts the claimed route and names the buildings in the same way as the 3<sup>rd</sup> Edition 25 inch map.

*Photographs c.1910-15 and c1974*

- 5.5.11 A photograph of what appears to be a painting of Manor Lodge, possibly around the period 1910-15, shows that the route was gated at that time. A photograph from around 1974 shows the original gates posts in place but no gates.

*National Parks and Access to the Countryside Act 1949*

- 5.5.12 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. Middleswich Urban District 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.

*Housing Estate Adoption Plans*

- 5.5.13 The adoption plan for the Manor Park estate, which includes Kerridge Close, has the building contractor 'McLean' stated in the top right hand corner and is dated March 1978. The extent of Kerridge Close is shown and then at the head of the cul-de-sac, on the edge of the plan, is an annotation stating 'existing private road to Nantwich Road'. The extent of the claimed route is not shown on this plan.
- 5.5.14 The Norbury Drive adoption plan shows the extent of Buckley Close and other roads in the immediate area coloured pink. The adopted footway extending from Buckley Close (point D on plan no. WCA/021) is shown pink; this however does not continue to point B but turns in a southerly

direction to join Brynlow Drive. This plan is undated, but it is thought to be from around the late 1980s.

#### *Land Registry Information*

5.5.15 The area of land at the northern end of the claimed route, from Nantwich Road (point A on plan no. WCA/021) to where the original gate posts were on Manor Drive, adjacent to the Manor Lodge building, is unregistered land. This is the area of land that is the subject of the current planning permission application by the owners of Manor Lodge. From a point adjacent to Manor Lodge southerly to point B on plan no. WCA/021, the land is owned by Jones Homes (North West) Limited. The land between point B and C; and between points B and D is owned by Cheshire East Council, apart from one very small section approximately 2-3 metres at point C, which remains registered to the original developer McLean Homes. McLean Homes were taken over by Taylor Wimpey, Officers have consulted Taylor Wimpey Homes but have had no response.

#### **5.6. Witness Evidence**

5.6.1 The application was made in 2017 and contained 10 user evidence forms. Two of the forms contained evidence from two witnesses on the same form, who lived at the same address (e.g. husband/wife); therefore, there was evidence from 12 witnesses. A further three forms were submitted in 2019, giving a total of 15 witnesses.

5.6.2 All 15 witnesses have used the routes on foot; in addition to using it on foot, nine witnesses have also used the routes on a bicycle. The witnesses were contacted with a view to being interviewed; subsequently eight witnesses were interviewed, seven in person and one by telephone interview. Statements have been signed by the eight witnesses who were interviewed, the statements are a summary of their evidence as set out during their interview. A chart illustrating the user evidence from all 15 witnesses is attached as **Appendix 1**. A separate chart illustrating the use on a bicycle is attached as **Appendix 2**.

5.6.3 For public rights to have come into being through long use, a twenty year period must be identified during which time use can be established. Where no challenge to the use has occurred, this period can be taken as the 20 years immediately prior to the date of the application. In this case for the route B-D (on plan no. WCA/021) that would be 1997 to 2017. Although none of the witnesses state they were stopped or challenged when using the route A-B-C (on plan no. WCA/021) on foot/cycle; a few did say they had heard of others that had been stopped. The newspaper article referred to above in paragraph 5.1.4, shows an intention to prevent use by the



public. The current owners of Manor Lodge purchased the property in 2016; therefore it would seem challenges may have occurred from that time. Therefore the twenty year period to be considered for the route A-B-C (on plan no. WCA/021) is 1996-2016.

- 5.6.4 Use of the route has been largely for functional purposes, but it has also been used for leisure/dog walking. It forms a link between the housing estate and Nantwich Road and onwards to the town for shopping; visiting the doctors; the pub; the cemetery and other services offered by the town centre in Middlewich. Some witnesses also used it to gain access onto the canal; some said that school children use it. Witnesses stated that they use this route because an alternative route from the estate into town is not safe. That route is from the western extent of Brynlow Drive along the Nantwich Road (A530), which has no pavement.
- 5.6.5 The route was used frequently; weekly and for some people nearly daily. Some witnesses have used the route on a pedal cycle weekly, monthly or occasionally. One witness walked and cycled the route from her childhood in the 1970s and then since moving closer to the route in 1999 has used the route on a weekly basis to visit relatives and also for dog walking. Another witness who moved to the area in 1986 used the route on a daily basis from that time for dog walking and going into town until 2012, he then continued to use it 2-3 times a week. He also used it on a bicycle up to 2-3 times a week at one time.
- 5.6.6 Of the witnesses represented in the bar chart in Appendix 1, 9 have used the route for the full 20 years required under s.31 (6) of the Highways Act, as set out in paragraph 5.3.4. Of the remaining six witnesses, one has used the route for 17/18 of the 20 years and another for 11/12 years. The earliest use stems from 1970 and continues to the present day.
- 5.6.7 Of the 15 witnesses, 9 have used the route on a bicycle, of these 9 witnesses 4 have used the route for the full 20 years, and one other witness for 17/18 of the 20 years.
- 5.6.8 None of the witnesses had ever been challenged or prevented from using the route on foot or bicycle. They have never seen signs or barriers to suggest that the route was not open to public use.

## 5.7. Conclusion

- 5.7.1 The user evidence submitted demonstrates regular, continuous and long term use of the claimed route on foot and bicycle. The documentary evidence shows that the route of Manor Drive has been in existence for over a hundred years, most likely since the Manor Hall was built. It is



Officers' opinion that the conclusion of the historical documents is that the route A-B-C (on plan no. WCA/021) was historically used as private access to the Hall. The nature and purpose of the use of the route then changed with the development of the area from the 1970s onwards.

- 5.7.2 Under section 31(1) of the Highways Act 1980 public rights can come into existence by prescription unless there is evidence to the contrary. The user evidence shows that use, on both foot and bicycle, has been uninterrupted for a full twenty year period between 1996 and 2016 in the case of route A-B-C on plan no. WCA/021, without challenge, permission or secrecy; and in the case of the route B-D on the same plan between 1997 and 2017.
- 5.7.3 The evidence in support of this application must show, on the balance of probabilities, that restricted byway rights subsist or are reasonably alleged to subsist, along the claimed route. The balance of user evidence supports the case that there is a reasonable allegation that a restricted byway subsists along the routes A-B-C and B-D (Plan No. WCA/021). Therefore it is considered that the requirements of Section 53(3)(c)(i) have been met and it is recommended that a Definitive Map Modification Order is made to add the two restricted byways in the Parish of Middlewich and thus amend 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 & Young People/Cared for Children**

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.

**6.10. Climate Change Implications**

6.10.1 The Council has committed to becoming carbon neutral by 2025 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint.

6.10.2 The addition of a restricted byway to the Definitive Map represents the formal recognition of pedestrian/equestrian/cycle rights, creating more opportunities for travel/leisure on foot/horseback/cycle and potentially reducing the use of cars for short local journeys and therefore energy consumption. It also has the potential for the improvement/promotion of healthy lifestyles.

## **7. Ward Members Affected**

- 7.1. The Ward Members for Middlewich, Councillor Bulman; Councillor Hunter and Councillor Parry have been consulted on the application, no comments have been received.

## **8. Consultation & Engagement**

- 8.1. Consultation letters including a map showing the route A-B-C (on plan no. WCA/021) were sent to the Ward Members; Middlewich Town Council; User Groups/Organisations; statutory undertakers and the landowners in October 2019. Further letters/emails were sent to all consultees to inform them of the additional route being considered, route B-D (on plan no. WCA/021), and further comments were invited.
- 8.2. Middlewich Town Council have responded and state “the Town Council has considered this matter and the Council supports the retention of the public right of way”.
- 8.3. Cheshire East Council Assets Management Service have been consulted as Cheshire East Council own part of the affected land between points B-C and B-D. The Service responded and stated they have no comments to make.
- 8.4. Jones Homes (North West) Limited own part of the claimed bridleway, from a point adjacent to Manor Lodge southerly to point B on plan no. WCA/021, they have not responded to correspondence.
- 8.5. The owners of Manor Lodge, although they do not own the affected land, are immediately adjacent to it and have recently applied to incorporate part of the claimed route within their curtilage. They were notified of the application in 2017 and have also been consulted in October 2019. On 30<sup>th</sup> November 2017 Officers received an email from the owners of Manor Lodge acknowledging that they had received notification of the application. The email stated they would be objecting to the application and asked about the procedure for objecting. Officers responded and included information on the Definitive Map Modification Order process.
- 8.6. Following the consultation letter the owners of Manor Lodge made contact and Officers met with them on site on 9<sup>th</sup> October 2019. Once again details of the application process were discussed. Officers viewed the wall and pillars that had been built on the claimed route. The owners of Manor Lodge explained the problems they had with the drivers of HGVs, when they realise they are unable to continue along Nantwich Road (A530) because of the low aqueduct, they then attempt to turn around. This has caused damage to their property in the past and has now led to them

building the wall/pillars to prevent HGVs from turning there. They did acknowledge to Officers that they realise that people use the path and they did not wish to stop them; for that reason, they have left a gap to the side of one of the pillars. Officers measured the gap between the wall and the pillar, which was 88cm. Following the meeting, no further comments have been received from the owners of Manor Lodge. The gap of 88cm would be insufficient for a right of way; if an Order is made to add the route to the Definitive Map, the recorded width would include the full width between the boundaries as that is what the public have customarily used. That would be between approximately 4.5m and 6m.

- 8.7. United Utilities state there are water mains in close proximity. However they are located outside of the boundary of the claimed right of way and as no works disturbing the surface would be required as a result of any Order, it is believed that the apparatus would not be affected.
- 8.8. Cadent/National Grid have responded and state they have no objection.
- 8.9. A resident of Nantwich Road, Middlewich has submitted comments. He states he has lived on Nantwich Road for over 30 years, he considers the potential closure of Manor Drive a great loss. He states he and his late father used the route when visiting each other, and he has also used it for many years to visit a cousin who lived locally. He uses it currently to visit friends and states it is not feasible to go along the A530 or along the canal for safety reasons. He comments on the issue of HGVs reversing back along Nantwich Road when they miss the warning signs for the low bridge; he states he too has had the inconvenience of this and his gate pillars (and those of his neighbours) have been damaged by vehicles trying to turn around. He states Manor Lodge is not a special case as many other local residents have similar problems. He comments that the owners of Manor Lodge have no right to block off Manor Drive, it has been a right of way as long as he can remember; he is 83 years old.

## **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**

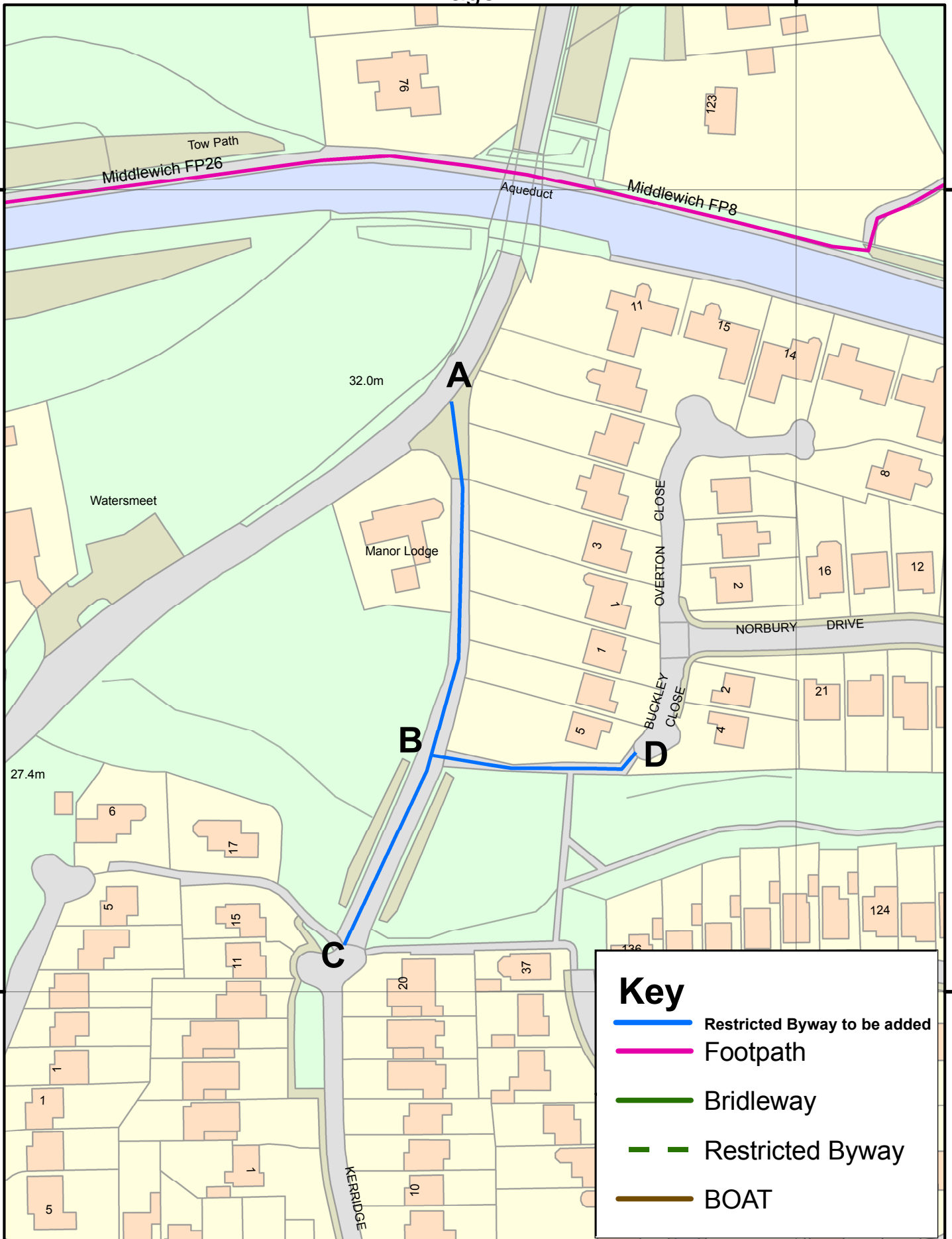
10.1. Any questions relating to this report should be directed to the following officer:

Name: Jennifer Miller

Job Title: Definitive Map Officer

Email: [Jennifer.miller@cheshireeast.gov.uk](mailto:Jennifer.miller@cheshireeast.gov.uk)

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**Key**

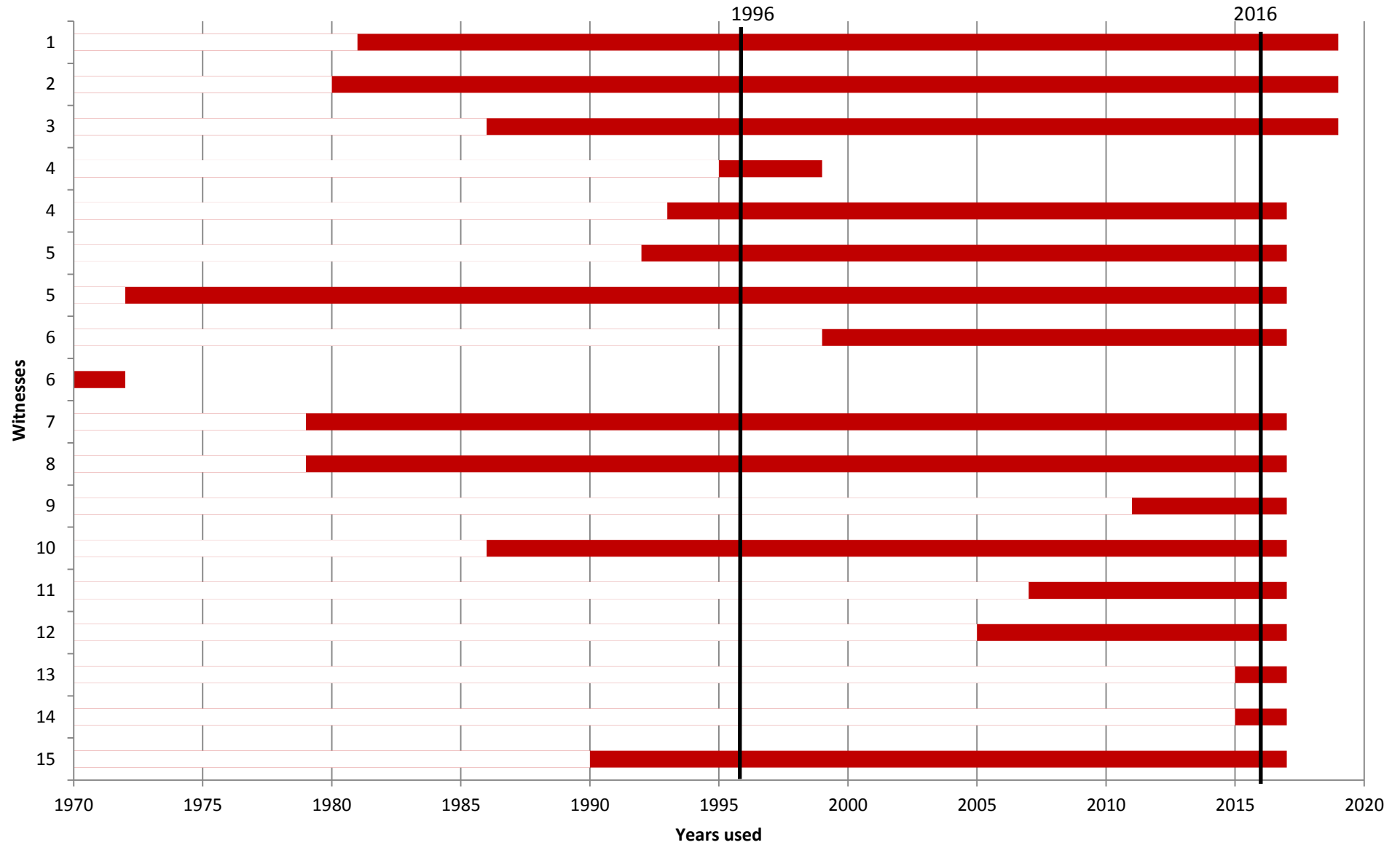
- Restricted Byway to be added
- Footpath
- Bridleway
- - Restricted Byway
- BOAT

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## User Evidence Chart - Forms

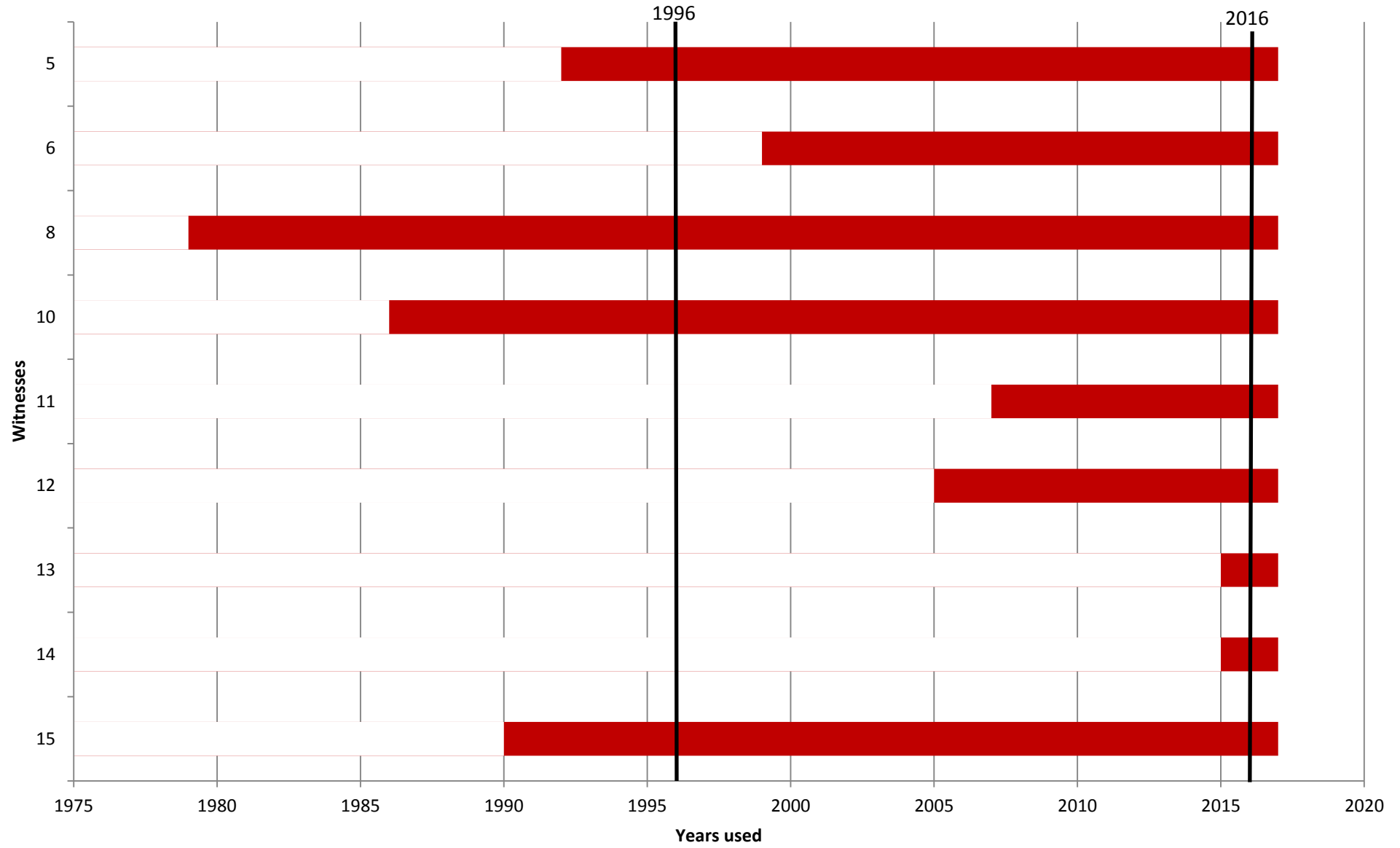
Appendix 1



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## User Evidence - Bicycle use

Appendix 2



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**DMMO DOCUMENTARY RESEARCH CHECKLIST**

<b>District:</b> Congleton		<b>Parish:</b> Middlewich		<b>Application:</b> CO/8/52	
<b>Document</b>		<b>Date</b>	<b>Reference</b>	<b>Notes</b>	
<b>Tithe Records</b>					
Apportionment		1845	CRO EDT/123/1  Township: Middlewich & Newton	No Plot number	
Map		1845	CRO EDT/123/2  Township: Middlewich & Newton	Route shown the same as other highways	
<b>Ordnance Survey</b>					
1" to 1 mile  Revised New Series sheet 110		c.1897	PROW Office	Route shown	
25" County Series 1 <sup>st</sup> Edition		c.1875	CRO  PROW Office	Route shown	
25" 2 <sup>nd</sup> Edition 25"		1897		Route shown,	

3 <sup>rd</sup> Edition 25"	c.1909		Route shown
6" Ordnance Survey 1 <sup>st</sup> , 2 <sup>nd</sup> , 3 <sup>rd</sup> Editions	c.1872-5 c.1899 c.1910		Route shown

Local Authority Records			
Pre-Definitive Map "Green Book" record	Early 1950s	PROW	No reference to the claimed route.
Walking Survey – Middlewich	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.



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## Public Rights of Way Committee

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**Date of Meeting:** 09 March 2020

**Report Title:** Town and Country Planning Act 1990 s 257 Application for the Extinguishment of Public Footpath No. 20, Parish of Congleton

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

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### 1. Report Summary

- 1.1. The report outlines the investigation to extinguish Public Footpath No. 20 in the Parish of Congleton. 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 as an application has been submitted by Miller Homes, Hawthorn House, Woodlands Park, Ashton Road, Newton le Willows, WA12 0HF. The application has been made following the granting of planning consent for:

***Outline Planning Application: 16/0514C***

*Land at Back Lane, Congleton*

*'Outline application for demolition of some existing building and the development of a residential scheme composing up to 140 dwellings, open space, landscape, access and associated infrastructure'*

***Permission granted: 21<sup>st</sup> December 2017***

***Reserved Matters Application: 18/4888C***

*'Reserved matters application for appearance, landscaping, layout & scale following outline approval applications 16/0514C for demolition of some existing buildings and the development of up to 140 dwellings'*

***Permission granted: 13<sup>th</sup> September 2019***

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 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. That an Order be made under Section 257 of the Town and Country Planning Act 1990 to extinguish Public Footpath No. 20 Congleton, between points A and B, as illustrated on Plan No. TCPA/061 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 2.2. Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3. In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

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

- 3.1. In accordance with Section 257 of the Town and Country Planning Act 1990, as amended by Section 12 of the Growth and Infrastructure Act 2013:  
  
"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 it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted under Part 3 "- 3.2 It is considered that it is necessary to extinguish Public Footpath No. 20 in the Parish of Congleton between points A and B as illustrated on Plan No. TCPA/061 to allow for the residential development as detailed within planning references: 16/0514C and 18/4888C. It is considered that the legal test for making and confirming of an Extinguishment Order under section 257 of the Town and Country Planning Act 1990 is satisfied.
- 3.3 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.
- 3.4 Where there are no outstanding objections, it is for the Council to confirm the Order.
- 3.5 The proposal contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer",



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

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

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

#### **5. Background**

- 5.1. An application has been received from Miller Homes, requesting the Council make an order under section 257 of the Town and Country Planning Act 1990 to extinguish Public Footpath No.20 in the Parish of Congleton as shown between points A and B on Plan No. TCPA/061.
- 5.2. Public Footpath No.20 Congleton that will be affected by the proposed residential development is shown by a solid black line on Plan No. TCPA/061 running between points A and B. The section commences at O.S. grid reference SJ 8397 6413 (point A on plan No. TCPA/061) and runs in a generally north westerly direction for a distance of approximately 159 metres to O.S. grid reference SJ 8387 6426 (point B on plan No. TCPA/061). The line of the footpath, which ran through pasture fields, will be obstructed by a house and run across gardens and parking spaces.
- 5.3. The planning permissions for the residential development have been granted (section 1.1). It is considered necessary to extinguish Public Footpath No. 20 Congleton to enable the residential development that would otherwise obstruct the footpath, to go ahead as detailed within these planning applications.

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

##### **6.1. Legal Implications**

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

##### **6.2. Finance Implications**

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

**6.3. Policy Implications**

6.3.1. There are no direct policy implications.

**6.4. Equality Implications**

6.4.1. An assessment in relation to the Equality Act 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed paths within the consented development would be no less convenient to use than the current footpath.

**6.5. Human Resources Implications**

6.5.1. There are no direct implications for human resources.

**6.6. Risk Management Implications**

6.6.1. There are no direct implications for risk management.

**6.7. Rural Communities Implications**

6.7.1. There are no direct implications for rural communities.

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

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

**6.9. Public Health Implications**

6.9.1. There are no direct implications for public health.

**6.10. Climate Change Implications**

6.9.1 The Council has committed to becoming carbon neutral by 2025 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint.

6.9.2 The diversion of the Public Footpath would enable better access to the public rights of way network by members of the public on foot with the potential for the improvement and promotion of active healthy lifestyles and wellbeing.

**7. Ward Members Affected**

7.1 Congleton West Councillors S Akers Smith, S Holland and G Hayes, were consulted.

- 7.2 Councillor Akers Smith informed that she would speak with the local walking group for their views and questioned whether the developer was offering any contribution to cycle lanes, pathways or public open spaces in mitigation of allowing this public right of way to be extinguished. In response, it was explained that the consented planning layout includes linkages for pedestrians and cyclists into and within the housing area. These links enable connections to the shared use footway/cycleway alongside Back Lane, to the shared use footway/cycleway alongside the Link Road and to the adjacent development site. Public open space is also included in the layout for the site which been granted planning consent.

Whilst these various links are included within the development design, they cannot be considered against the legislation under which this proposal is being made. The legal test that has to be met is that the footpath must be extinguished to enable the development to go ahead, irrespective of other considerations ongoing within the development.

- 7.3 No comments were received from Councillors Holland and Hayes.

## **8. Consultation & Engagement**

- 8.1 Congleton Town Council has been consulted. Congleton Town Council has been consulted and commented that access will be improved through the development and that given this, they are content with the closure of the footpath.
- 8.2 The user groups have been consulted. The local correspondent of the Open Spaces Society commented that Public Rights of Way Officer, Clare Hibbert, had undertaken an excellent piece of work although did not further elaborate. No comments were received from any other user group.
- 8.3 The statutory undertakers have been consulted and have raised no objections to the proposed extinguishment. United Utilities, Cadent Gas and Openreach registered that they have no objections. If an extinguishment order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 8.4 The Council's Nature Conservation Officer has been consulted, no comments have been received.

## **9. Access to Information**

- 9.1. The background papers of file No. 090E/588 relating to this report can be inspected by contacting the report writer.

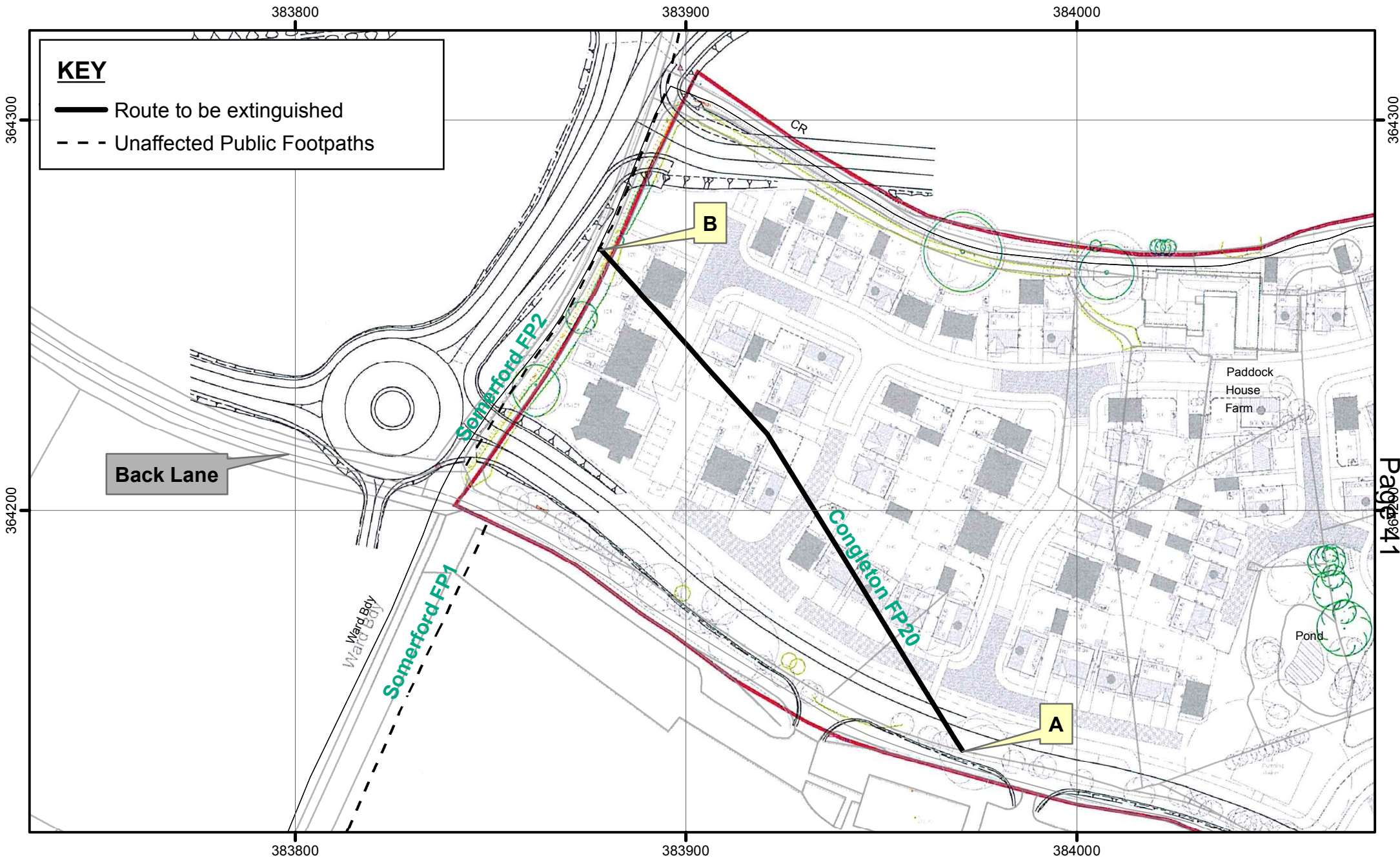
## **10. Contact Information**

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

Name: Marianne Nixon

Job Title: Public Path Orders Officer

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



Proposal to extinguish Congleton Footpath No. 20 under section 257 of the Town and Country Planning Act 1990

Plan No.  
TCPA/061



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## **Public Rights of Way Committee**

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**Date of Meeting:** 09 March 2020

**Report Title:** Town and Country Planning Act 1990 Section 257 Proposed Diversion of Public Footpath Hatherton No. 8 (Part)

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

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### **1. Report Summary**

- 1.1. This report outlines the investigation to divert part of Public Footpath No. 8 in the Parish of Hatherton. 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 the Public Rights of Way team on behalf of Joseph Heler Farms, as a response to a planning application that has recently been approved by the Council's Planning Department, for a **Cold Store Extension (Planning Application No. 19/2086N)**.
- 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 part of Public Footpath No. 8 in the Parish of Hatherton on grounds that the 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/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.

- 3.3 It is considered that it is necessary to divert part of Footpath No. 8 in the Parish of Hatherton, as illustrated on Plan No. TCPA/059, to allow for the extension to the Cold Store as detailed within planning reference: 19/2086N.

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

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

### **5. Background**

- 5.1. An application has been received from Joseph Heler Farms 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. 8 in the Parish of Hatherton to enable a cold store extension.
- 5.2 The land over which the current route runs and over which the proposed route would run is owned by Joseph Heler Farms.



- 5.3 Planning permission was granted, subject to conditions, on 11 September 2019. The application is cited as Proposed Cold Store Extension at Laurels Farm, Crewe Road, Hatherton, CW5 7PE (Application No. 19/2086N).
- 5.4 Public Footpath No. 8 Hatherton commences at its junction with Crewe Road (B5071) at O.S. grid reference SJ 6866 4735 and runs in a generally easterly and then generally southerly direction to its junction with Public Footpath No. 9 Hatherton at O.S. grid reference SJ 6966 4666 for a distance of approximately 1316 metres. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/059 running between points A-B. It has a grass surface with no path furniture. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-B.
- 5.5 The existing alignment of the footpath will be directly affected by the Cold store extension as illustrated on Drawing No. 5412.05 Rev D. It is proposed to divert approximately 136 metres of the route.
- 5.6 The proposed line for the footpath is a short diversion curving round in a south easterly direction, following the boundary of the cold store extension for approximately 151 metres (points A-B on Plan No. TCPA/059). It will be unenclosed with a grass surface, no path furniture and a width of two metres. The path will have 2.5 metre 'grass strips' on either side and there will be a 2.5 metre native shrub mix border along the full length of the eastern boundary and the majority of the western boundary, as indicated on Drawing No. 5412.05 Rev D.

## **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.

**6.10. Climate Change Implications**

- 6.10.1 The Council has committed to becoming carbon neutral by 2025 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint.
- 6.10.2 The work of the Public Rights of Way team encourages a reduction in carbon emissions and increased environmental sustainability by reducing energy consumption and promoting healthy lifestyles through active travel

**Ward Members Affected**

- 6.11. Councillor Janet Clowes from the Wynbunbury ward has been consulted. No comments have been received.

**7. Consultation & Engagement**

- 7.1. Hatherton Parish Council have been consulted, no comments have been received.

- 7.2. The user groups have been consulted. The Peak and Northern Footpaths Society have responded to state that they do 'not have any concerns about the proposed diversion' and 'will not object to this Order if made'.
- 7.3. The Open Spaces Society object to the proposed width of two metres for the diverted route. Two metres is the Cheshire East Council's Public Rights of Way team standard width for unenclosed diverted footpaths. This has been the policy, and accepted by user groups, utility companies and landowners/applicants, for many years. A two metre footpath is an appropriate width for a public footpath in this environment, providing adequate width for two users to pass. The Open Spaces Society also object on the basis that one of the stays for the pylon adjacent to the path at its northern end will encroach onto it. Drawing No. 5412.05 Rev D illustrates that the stay is 2 metres from the centre of the path and does not encroach onto its width.
- 7.4. Statutory Undertakers have been consulted. Cadent and National Grid have no objection to the proposal.

## **8. Access to Information**

- 8.1. The Background papers and file 148D/582 relating to this report can be inspected by contacting the report writer.

## **9. Contact Information**

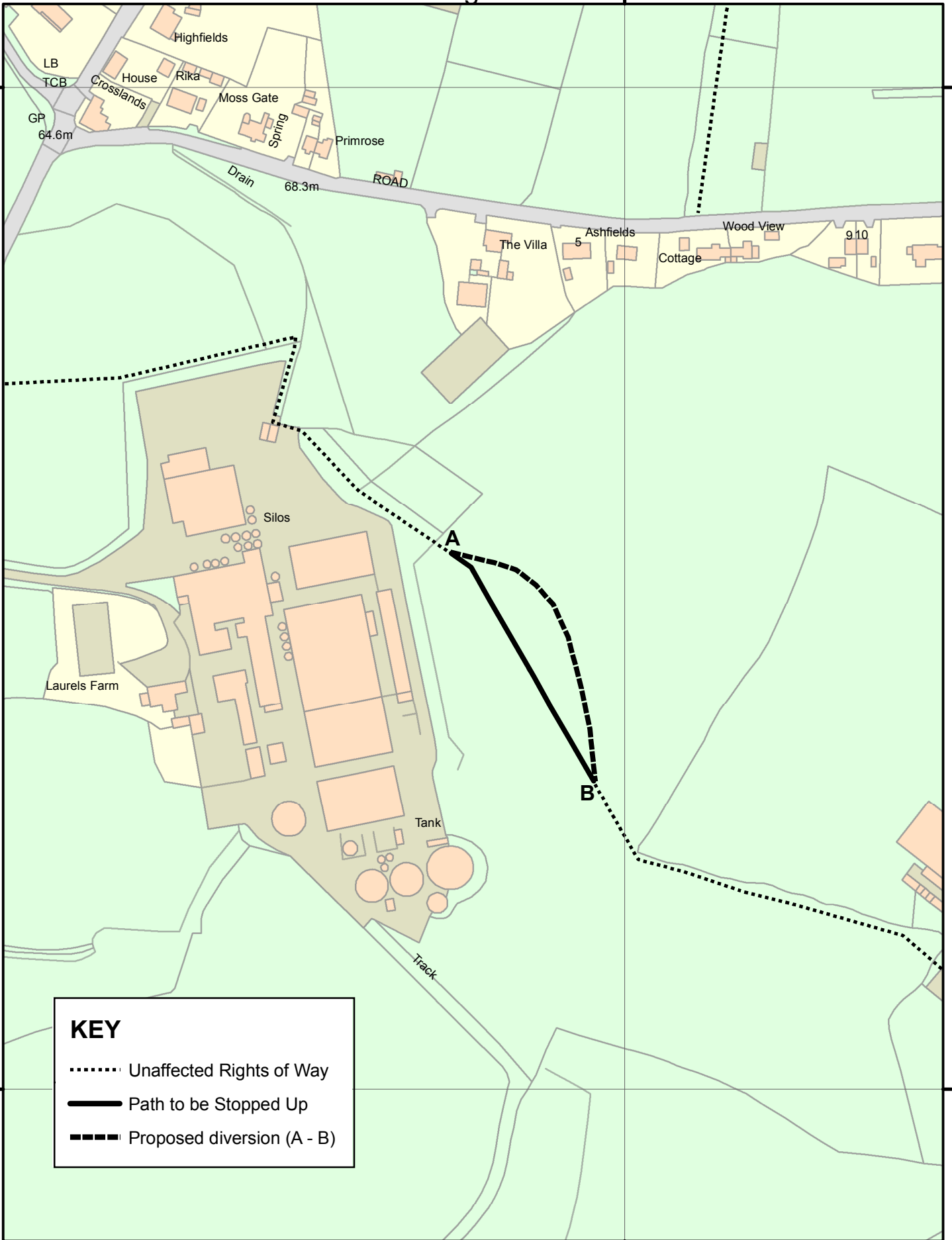
- 9.1. Any questions relating to this report should be directed to the following

Officer Name: Hannah Duncan

Job Title: Definitive Map Officer

Email: [hannah.duncan@cheshireeast.gov.uk](mailto:hannah.duncan@cheshireeast.gov.uk)

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# KEY

- ..... Unaffected Rights of Way
- Path to be Stopped Up
- Proposed diversion (A - B)



Town and Country Planning Act 1990 s257  
Proposed Diversion of Public Footpath  
No. 8 Parish of Hatherton

Plan No.  
TCPA/059

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**

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**Date of Meeting:** 09 March 2020

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

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

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### **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 Town and Country Planning Act 1990 Section 257 Proposed Diversion of Restricted Byway Wilmslow No. 22 (Part)

5.2.2 Town and Country Planning Act 1990 Section 257 Proposed Diversion of Public Footpaths No. 7 and No. 8 (parts) in the Parish of Weston

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](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.

## **6.10 Climate Change Implications**

6.10.1 The Council has committed to becoming carbon neutral by 2025 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint.

6.10.2 The work of the Public Rights of Way team encourages a reduction in carbon emissions and increased environmental sustainability by reducing energy consumption and promoting healthy lifestyles through active travel

## **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](mailto:genni.butler@cheshireeast.gov.uk)

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