

Public Rights of Way Committee

Agenda

Date: Monday 7th December 2020

Time: 2.00 pm

Venue: Virtual Meeting

How to Watch the Meeting

For anybody wishing to view the meeting live please click in the link below:

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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 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 3 - 6)

To approve the minutes of the meeting held on 8 June 2020.

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

Contact: Rachel Graves

Tel: 01270 686473

E-Mail: rachel.graves@cheshireeast.gov.uk

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.

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 wishing to ask a question or make a statement 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. **Definitive Map Modification Order Applications: Revision of Statement of Priorities** (Pages 7 - 14)

To consider and approve the Statement of Priorities for Definitive Map Modification Order Applications.

6. **Informative Report - Highways Act 1980 s.119: Public Path Diversion Order, Goostrey Public Footpath No.12 (part)** (Pages 15 - 20)

To note the outcome of the Public Inquiry on the Order made to divert part of Goostrey Public Footpath No. 12 (part).

THERE ARE NO PART 2 ITEMS

Membership: Councillors S Edgar (Chairman), H Faddes, I Macfarlane, R Moreton, 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, 8th June, 2020 at Virtual Meeting

PRESENT

Councillor S Edgar (Chairman)
Councillor B Puddicombe (Vice-Chairman)

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

Officers in Attendance

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

1 APOLOGIES FOR ABSENCE

There were no apologies for absence.

2 DECLARATIONS OF INTEREST

No declarations of interest were made.

3 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meeting held on 9 March 2020 be confirmed as a correct record.

4 PUBLIC SPEAKING TIME/OPEN SESSION

There were no public speakers.

**5 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257
PROPOSED DIVERSION OF PUBLIC FOOTPATH ASTON JUXTRA
MONDRUM NO. 5 (PART)**

The Committee considered a report which detailed an application received from MJ and MC Thomasson requesting that the Council make an Order under Section 257 of the Town and County Planning Act 1990 to divert a section of Public Footpath No.5 in the Parish of Aston Juxtra Mondrum to enable a new Milking Parlour to be built.

In accordance with section 257 of the Town and County Planning Act 1990, the Borough Council, as planning authority, could make an Order diverting a public footpath if it was satisfied it was necessary to do so to

enable development to be carried out under a planning permission which had been applied for or granted.

Planning permission had been granted, subject to conditions, on 13 December 2018 for a Milking Parlour at Aston Lower Hall, Dairy Lane, Aston Juxtra Mondrum - planning reference 18/4485N.

The existing alignment of Public Footpath No.5 Aston Juxtra Mondrum would be affected directly by the development of the Milking Parlour. The footpath would be diverted to start on Dairy Lane approximately 97 metres south of the current path, connecting with Aston Juxtra Mondrum Footpath No.1. There was a layby at this location on Dairy Lane, which provided a safer exit point for walkers than the current definitive line, which exited directly onto the road.

The Committee considered the application and concluded that it was necessary to divert part of Public Footpath No. No.5 in the Parish of Aston Juxtra Mondrum to allow for the Milking Parlour as detailed in the approved planning application. It was considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

RESOLVED: That

1. a Public Footpath Diversion Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.5 in the Parish of Aston Juxtra Mondrum on the grounds that Cheshire East Council is satisfied that it is necessary to do so in order to enable development to be carried out.
2. Public Notice of the making of the Order be given and in the event of there being no objection within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
3. In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

6 INFORMATIVE REPORT ON CASES OF UNCONTESTED PUBLIC PATH ORDERS DETERMINED UNDER DELEGATED DECISION

The Committee received an information report on the uncontested Public Path Order cases that had been determined under delegated decision.

Two decisions had been taken under delegation, which related to Town and Country Planning Act 1990 Section 257 applications. One was for the diversion of Public Footpath No.36 in the Town of Macclesfield and the

other for the diversion of part of Public Footpath No.1 in the Parish of Leighton.

AGREED:

That the uncontested Public Path Orders determined under delegated decision be noted.

7 INFORMATIVE REPORT: PUBLIC RIGHTS OF WAY ANNUAL REPORT 2019-20 AND WORK PROGRAMME 2020-21

The Committee considered a report which detailed the achievements of the Public Rights of Way team during 2019-20 and set out the proposed work programme for 2020-21.

The Acting Public Rights of Way Manager reported on the work carried out during 2019-20 by the Network Management and Enforcement Officers, Technical Administration Officer and Legal Orders Officers. Specific performance was detailed in the Appendices to the Report.

The budget for Public Rights of Way during the 2019-20 financial year had remained as forecast throughout the year which had allowed the Team to plan spending efficiently throughout the year. However, budgets over recent years had remained static in contrast to increased costs from suppliers for items such as timber and metal path furniture.

It was also noted that extreme weather events of 2019-20 resulted in damage to path surfaces and bridges, with repair/replacement works not able to be funded from available budgets.

Looking to 2020-21, the revenue budgets had remained largely the same as the previous year, whilst the core capital budget had been reduced by 20%, resulting in a lower level of investment in the network.

It was concluded that, as in previous years, the Public Rights of Way Team had delivered a very high standard of service to the public. The good condition of the network was highly regarded by user groups, the processing of legal orders continued to serve both users and landowners, and the high standard of response and service from the Team as a whole was widely recognised.

The Acting Public Rights of Way Manager also reported on the challenges faced by the Public Rights of Way team because of the Covid-19 pandemic. Office based tasks had been relocated to home-based remote working. The Network Management and Enforcement Team continued to function, albeit on a re-prioritised basis, to ensure that availability and safety of the network. The Team was dealing with a large number of enquiries from both landowners and users, often involving heightened tensions and users unfamiliar with rural walking routes. Advice for both landowner and users had been made available on the Council's website

and was kept up to date in line with national government guidance. The Covid-19 situation had reinforced the vital importance of the network for our communities' physical and mental wellbeing, and in doing so, the validity of protecting the necessary resources to maintain that asset.

AGREED:

That the report be noted.

The meeting commenced at 2.00 pm and concluded at 3.07 pm

Councillor S Edgar (Chairman)



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Public Rights of Way Committee

Date of Meeting: 07 December 2020

Report Title: Definitive Map Modification Order Applications:
Revision of Statement of Priorities

Senior Officer: Frank Jordan, Executive Director – Place

1. Report Summary

- 1.1. This report seeks approval from Members for a revised Statement of Priorities for dealing with Definitive Map Modification Order applications.
- 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. In addition the Statement of Priorities is integrated with the Council’s Local Transport Plan 2019-2024.

2. Recommendation/s

- 2.1. That the revised Statement of Priorities outlined at Appendix 1 be approved.

3. Reasons for Recommendation/s

- 3.1 The current Statement of Priorities was adopted by the Public Rights of Way Committee on 12th December 2011. The Statement of Priorities has been revised to take account of policy changes since that date and user group comments.

4. Other Options Considered

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

5. Background

- 5.1 Under Section 53 of the Wildlife and Countryside Act 1981 (“the Act”), the Council has a duty to keep the Definitive Map and Statement, the legal record

of Public Rights of Way, namely public footpaths, bridleways, restricted byways and byways open to all traffic, under continuous review and to make modifications as required. Changes are affected by means of Definitive Map Modifications Orders (DMMO) for the addition/deletion/amendment of public footpaths, bridleways, restricted byways and byways open to all traffic on the Definitive Map. This is triggered by any individual making a formal application for a DMMO under the provisions of Schedule 14 to the Act and presenting evidence to show that a route is incorrectly shown or there is an omission in the legal record.

- 5.2 The Secretary of State recognises that the task of bringing Definitive Maps up to date is considerable - at present Cheshire East has 38 outstanding DMMO applications, with 9 cases currently in progress. Prior to the Covid-19 pandemic which has resulted in a number of long term staff absences and therefore diversion of resources to priority matters, the main focus of 2 Officers was on DMMOs and progression through the waiting list was being achieved; in 2019/20, 5 cases were taken to the Public Rights of Way Committee for determination. However, Covid-19 has interrupted that process and in fact potentially causing an increase in the rate of applications. Cases therefore remain on the waiting list and further applications can be anticipated; 26 applications have been submitted since 2015. It is therefore best practice for the Council, as the Surveying Authority, to publish periodic statements of its priorities for processing applications, this being a demonstration of an Authority's acknowledgement of its duty, and of a determination to progress with the work.
- 5.3 Under Schedule 14 of the Act an applicant has a right of appeal to the Secretary of State if an application is not determined within 12 months of registration. In considering such appeals from applicants, the Secretary of State takes account of any statement made by the Authority setting out its priorities for bringing and keeping the Definitive Map up to date, the reasonableness of such priorities, any actions already taken by the Authority or expressed intentions of further action on the application in question, the circumstances of the case and any views expressed by the applicant (Circular 1/09). A successful appeal will result in the Secretary of State making a direction to an Authority to determine an application within a set timeframe, which has recently varied between 6 and 12 months. The appeal process diverts resource from the determination of cases and, if successful, results in a re-prioritisation of cases being actively progressed, away from locally-agreed priorities.
- 5.4 Under Section 53 of the Countryside and Rights of Way Act 2000 there is a proposal that footpaths and bridleways that were in existence before 1949 but not recorded on the Definitive Map by 2026 will be extinguished - though

DMMO applications could still be allowed if based on user evidence. This date is referred to as the 'cut-off date', and although as yet this part of the legislation has not been enacted, there is considerable concern amongst user groups which is already resulting in increased levels of applications. It is therefore increasingly important to have a workable and justifiable method in place to prioritise such applications.

- 5.5 The only instance where an application may be investigated out of priority order would be in the case where a route is under threat of development and therefore may be potentially lost.
- 5.6 On registration, new applications are scored using the Statement of Priorities to add them to the waiting list in priority order. All registered applications are reviewed on an annual basis to take into account any change in scoring required under the Statement of Priorities due to the age of witnesses.

The revised Statement of Priorities

- 5.7 The current Statement of Priorities has been revised to reflect a number of changes in corporate policy that have been made since the document was adopted in 2011.
- 5.8 The proposed revised Statement of Priorities continues to take account of the objectives of the Council's statutory Rights of Way Improvement Plan (ROWIP) 2011-2026. This has the advantage of being defensible (all ROWIPs are subject to wide consultation and input from a diverse range of groups) and of helping with the implementation of that document by offering a wider benefit; DMMOs may add routes which are useful to the public, by providing a link to a school, say, or by providing access for a group of users, such as horse riders or cyclists who have comparatively little current recorded provision by length of network.
- 5.9 The proposed Statement of Priorities employs the relevant¹ objectives of the revised Cheshire East Local Transport Plan 2019-2024, adopted by Cabinet on 8th October 2019, into which the ROWIP is integrated. These objectives replace the former Sustainable Community Strategy policies which featured in the previous Statement of Priorities. The Statement of Priorities also supports the Outcomes of the Corporate Plan.
- 5.10 The proposed Statement of Priorities affords recognition of the length of time application has been on the waiting list.
- 5.11 The proposed Statement of Priorities affords recognition of the value of an application in resolving a known mapping anomaly on the Definitive Map and

¹ The objectives of the Local Transport Plan not appearing in the proposed Statement of Priorities relate to 'maintaining and managing our network assets' and 'improving organisational efficiency and effectiveness'.

Statement, anomalies which may date from the time during which the Map and Statement were drawn up.

- 5.12 The proposed Statement of Priorities affords recognition of where a claim coincides with a 'Discovering Lost Way' route in acknowledgement of the potential value of the route and the potential impact of the 'cut-off date', though any application already registered prior to the 'cut-off date' must be duly determined. A 'Discovering Lost Ways' pilot project was initiated by the Countryside Agency in 2004 for which Cheshire was one of the demonstration authorities. The project was not deemed a success so was not rolled out across the country, however the route information collated is useful, is still retained by the Authority and can provide good base information upon which a claim could be substantiated.
- 5.13 Finally, in consideration of the fact that the user evidence frequently presented to substantiate applications is from individuals of advancing years, additional weight is given to applications where the witnesses are over the age of 70 years.

6. Implications of the Recommendations

6.1 Legal Implications

- 6.1.1 There are no legal implications.

6.2 Finance Implications

- 6.2.1 There are no additional financial implications foreseen.

6.3 Policy Implications

- 6.3.1 The Public Rights of Way Statement of Priorities will be updated.

6.4 Equality Implications

- 6.4.1 There are equality implications as applications supported by older witnesses receive additional weighting in the proposed Statement of Priorities. An Equality Impact Assessment has been undertaken.

6.5 Human Resources Implications

- 6.5.1 There are no human resource implications foreseen.

6.6 Risk Management Implications

- 6.6.1 There are no risk management implications foreseen.

6.7 Rural Communities Implications

- 6.7.1 There are no direct implications for rural communities.

6.8 Implications for Children & Young People

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

6.9 Public Health Implications

6.9.1 There are no direct implications for public health.

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.

8. Consultation & Engagement

8.1 Comments on the proposed Statement of Priorities have been invited from user groups represented on the Rights of Way Consultative Group and statutory Cheshire East Countryside Access Forum. No recommendations for amending the proposed Statement of Priorities were received from the Forum. Comments from the Consultative Group have been assessed and taken into account where considered appropriate in the proposed revision of the Statement of Priorities presented to the Committee.

9. Access to Information

9.1 Contact the report writer.

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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Cheshire East Council

DEFINITIVE MAP MODIFICATION ORDERS:

2020 - Draft

Background

Cheshire East Council, as Surveying Authority for the Definitive Map and Statement, has a duty to keep it under continuous review and make modifications as required. The Secretary of State recommends that Surveying Authorities should periodically publish a statement of priorities for dealing with Definitive Map Modification Orders.

A revised prioritisation system is described here. It is based on the policies and objectives of the Cheshire East Rights of Way Improvement Plan (ROWIP) 2011-2026 and the objectives of Local Transport Plan 2019-2024, plus 4 other considerations.

The scoring system is designed to permit a systematic yet flexible approach to dealing with a potentially large volume of applications and matters requiring detailed investigations.

N.B. Any claimed route threatened by development will be taken out of turn regardless of the score it initially received.

The higher the total score for a route, the higher priority it will be given for processing.

Application of scoring

- 0 = objective not met
- 1 = not met, but potential to meet
- 2 = partially met
- 3 = met
- 4 = met, with potential added value

Ref.	ROWIP policy/objective	Score (0-4)
H2	Promotion of active travel and healthy activities: Working in partnership to promote walking, cycling and horseriding as active travel options and healthy activities	
H3	Public rights of way and green infrastructure: Protect and enhance our public rights of way and green infrastructure and endeavour to create new links where beneficial for health, safety or access to green spaces	
S7	Walking: Working with stakeholders to improve facilities for walking so that it is attractive for shorter journeys	
S8	Cycling: Working with stakeholders to improve facilities for cycling so that it is attractive for shorter journeys	
-	Application coincides with existing ROWIP suggestion which has come from interest groups (e.g. users, Parish Council, landowners) (automatically add 4 points).	
Local Transport Plan objectives		
LTP1	Supporting growth and economic strength through connectivity	
LTP2	Ensuring accessibility to services	
LTP3	Protecting and improving our environment	
LTP4	Promoting health, wellbeing and physical activity	
Other considerations		
-	Application has been on waiting list for more than 1 year (automatically add 2 points for every year on the waiting list since receipt date of full application).	
-	Application would resolve a mapping anomaly (automatically add 5 points).	
-	Claimed route coincides with a Discovering Lost Ways case route (automatically add 5 points).	
-	Applicant or witnesses over the age of 70 (automatically add 2 points per witness/applicant)	
TOTAL		



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Public Rights of Way Committee

Date of Meeting: 07 December 2020

Report Title: Highways Act 1980 s.119: Public Path Diversion Order, Goostrey Public Footpath No.12 (part) – Informative Report

Senior Officer: Frank Jordan, Executive Director, Place

1. Report Summary

- 1.1. This report is to inform the Committee that an Order made to divert part of Goostrey Public Footpath No. 12 was considered at a Public Inquiry held on 4th – 5th February 2020 and the decision was made not to confirm the Order.

2. Recommendation/s

- 2.1. That the content of this report be noted and minuted. No committee decision is required.

3. Reasons for Recommendation/s

- 3.1. To formally note that the Order made to divert part of Goostrey Public Footpath No. 12 was not confirmed following consideration of evidence presented and examined during a Public Inquiry held by the Planning Inspectorate on 4th - 5th February 2020.

4. Other Options Considered

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

5. Background

- 5.1. An application was received from Mr R Carr (agent) of Robin Carr Associates on behalf of Mr & Mrs Dick (applicants) of Swanwick Hall, Booth Bed Lane, Goostrey, Cheshire CW4 8NB, requesting the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 12 in the Parish of Goostrey.
- 5.2. The current path runs immediately in front of the residential property owned by the applicants, and then between it and the adjoining barns / farm

buildings through what was originally an area of farmyard, but is now more akin to the driveway, parking area and garages to the house. The applicants submitted the application to divert the footpath away from their property, to afford improved privacy and security to their property.

- 5.3. On 13th June 2016, the Committee resolved that an Order be made and confirmed to divert part of Goostrey Public Footpath No. 12 under section 119 of the Highways Act 1980. The diversion is shown on Plan No. HA/010A.
- 5.4. An Order was made and advertised for 28 days from 30th November 2016. Of the objections received, two were sustained. The case was therefore referred to the Planning Inspectorate for determination as the Authority cannot confirm an opposed Order.
- 5.5. A decision not to confirm the Order to divert part of Goostrey Public Footpath No. 12 was made following a Public Inquiry held on 4th - 5th February 2020.
- 5.6. The Inspector did not confirm the Order on the basis that despite the diversion route being more accessible than the current route, the enjoyment to be derived from experiencing the listed farmhouse and associated buildings in their proper context outweighed the enjoyment to be gained from the new path, such that the new path was less enjoyable as a whole. The Inspector noted that it was a very finely balanced case, but, in considering the legal tests necessary for the confirming of an Order, concluded that the loss of enjoyment outweighed the benefits to the landowners.

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 direct policy implications.

6.4 Equality Implications

- 6.4.1 There are no direct equality implications.

6.5 Human Resources Implications

- 6.5.1 There are no direct human resources 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.

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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 Dane Valley Ward: Councillors Les Gilbert and Andrew Kolker were originally consulted.

8 Consultation & Engagement

8.1 Statutory and local user groups and statutory undertakers were originally consulted.

9 Access to Information

9.1 The background papers of file No. 132D/507 relating to this report can be inspected by contacting the report writer.

10 Contact Information

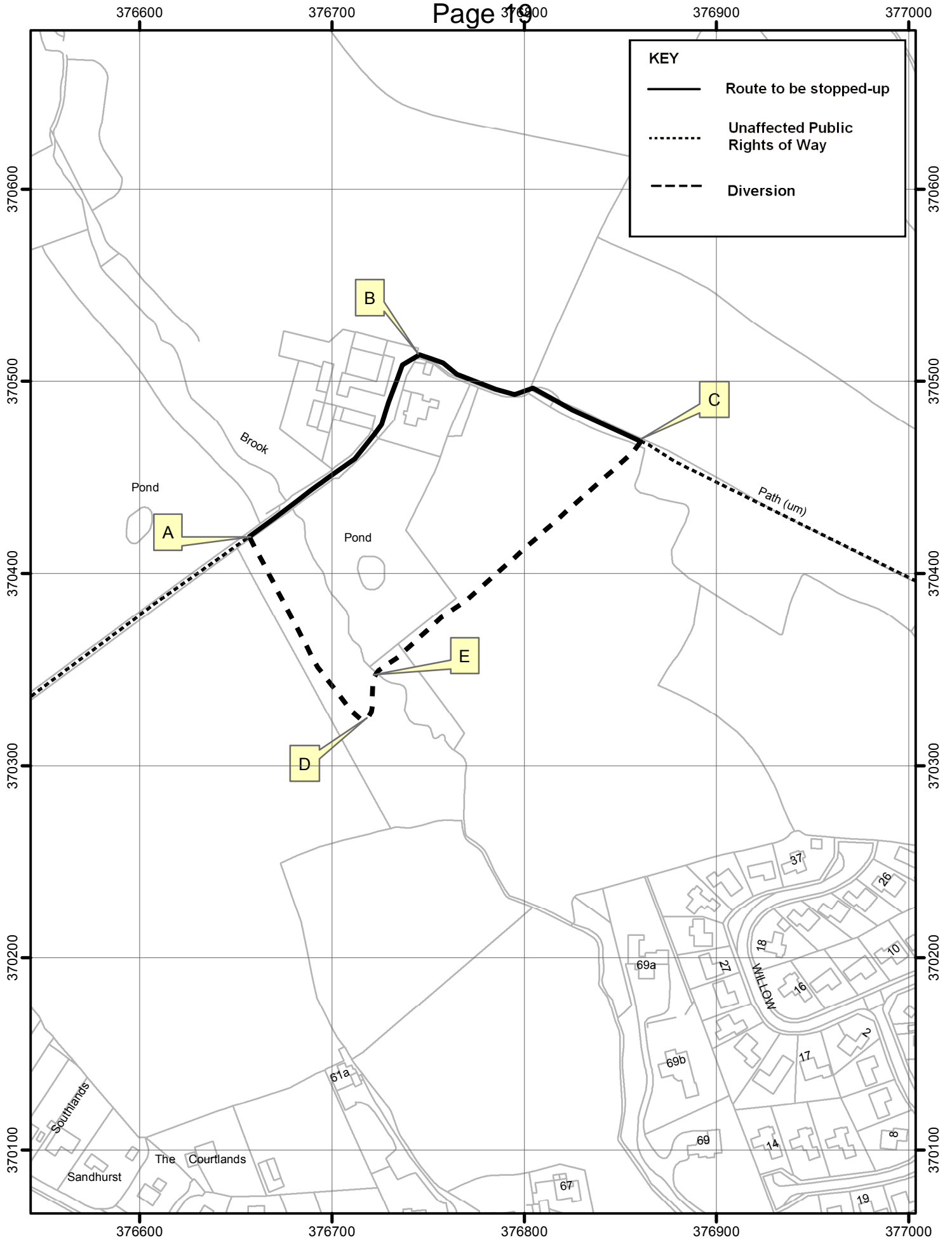
10.1 Any questions relating to this report should be directed to the following officer:

Name: Marianne Nixon

Job Title: Public Path Orders Officer

Email: marianne.nixon@cheshireeast.gov.uk

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1:2,500

Highways Act 1980, s119
The Cheshire East Borough Council
(Footpath 12 (part) Parish of Goostrey)
Public Path Diversion Order 2016

Plan No.
HA/110A



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