

Public Rights of Way Sub Committee

Agenda

Date: Monday, 6th December, 2021
Time: 2.00 pm
Venue: Committee Suite 1,2 & 3, Westfields, Middlewich Road,
Sandbach CW11 1HZ

PLEASE NOTE – This meeting is open to the public and anyone attending this meeting will need to wear a face covering upon entering and leaving the venue. This may only be removed when seated.

The importance of undertaking a lateral flow test in advance of attending any committee meeting. Anyone attending is asked to undertake a lateral flow test on the day of any meeting before embarking upon the journey to the venue. Please note that it can take up to 30 minutes for the true result to show on a lateral flow test. If your test shows a positive result, then you must not attend the meeting, and must follow the advice which can be found here:

https://www.cheshireeast.gov.uk/council_and_democracy/council_information/coronavirus/testing-for-covid-19.aspx

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 making meetings are audio recorded and the recordings will be 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.

For requests for further information

Contact: Karen Shuker

Tel: 01270 686459

E-Mail: karen.shuker@cheshireeast.gov.uk with any apologies

3. **Minutes of Previous Meeting** (Pages 5 - 10)

To approve the minutes of the meeting held on 13 September 2021.

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

In accordance with Public Speaking Appendix, members of the public may speak on a particular application after the Chair has introduced the report, provided that notice has been given in writing to Democratic Services by 12 noon three 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 2.24 of the Committee Procedural Rules and Public Speaking Appendix a total period of 15 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 2 minutes but the Chair 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 speak are required to provide notice of this at least three clear working days' in advance of the meeting and should include the question with that notice.

5. **Wildlife & Countryside Act 1981- Part III, Section 53 Ref. No. MA/5/267, to amend the alignment of FP15 in the Parish of Disley** (Pages 11 - 26)

To consider the application for an Order to be made under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by amending the alignment of Public Footpath No.15 Disley, from the current route to its correct alignment.

6. **Highways Act 1980 s119 Application for the Diversion of Public Footpath No 4 (parts), Parish of Henhull** (Pages 27 - 36)

To consider an application for the Diversion of Public Footpath No 4 (parts), Parish of Henhull.

7. **Town and Country Planning Act 1990 s257 Application for the Diversion of Public Bridleway No's 10 and 11 (part), Parish of Arclid** (Pages 37 - 44)

To consider an application for the Diversion of Public Bridleway No's 10 and 11 (part), Parish of Arclid.

8. **Town and Country Planning Act 1990 s257 Application for the Diversion of Public Footpath No's 43 and 46 (parts), Parish of Poynton with Worth** (Pages 45 - 54)

To consider an application for the Diversion of Public Footpath No's 43 and 46 (parts), Parish of Poynton with Worth.

9. **Application for the stopping up of a strip of land to the rear of 205A Mow Cop Road, Mow Cop under the provisions of Section 116 Highways Act 1980.**
(Pages 55 - 76)

To consider an application for the stopping up of a strip of land to the rear of 205A Mow Cop Road, Mow Cop under the provisions of Section 116 Highways Act 1980.

Membership: Councillors S Akers Smith, H Faddes, L Crane (Chair), S Edgar (Vice-Chair), L Gilbert, R Moreton and D Stockton

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CHESHIRE EAST COUNCIL**Minutes of a meeting of the Public Rights of Way Sub Committee**

held on Monday, 13th September, 2021 at Council Chamber,
Municipal Buildings, Earle Street, Crewe CW1 2BJ

PRESENT

Councillor S Edgar (Chair)

Councillors S Akers Smith, H Faddes, L Gilbert, R Moreton, D Stockton and N Mannion

OFFICERS IN ATTENDANCE

Richard Doran, Countryside Service Development Manager
Jennifer Ingram, Definitive Map Officer
Marianne Nixon, Public Path Orders Officer
Andrew Poynton, Planning and Highways Lawyer
Karen Shuker, Democratic Services Officer

1 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor L Crane.

2 DECLARATIONS OF INTEREST

No declarations of interest were made.

3 MINUTES OF PREVIOUS MEETING**RESOLVED**

That the minutes of the meeting held on 8 March 2021 be confirmed as a correct record.

4 PUBLIC SPEAKING TIME/OPEN SESSION

There were no public speakers.

5 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53 APPLICATION NO. MA/5/249, FOR THE ADDITION OF A PUBLIC FOOTPATH BETWEEN FP13 LYME HANDLEY ON THE MACCLESFIELD CANAL TO FP13 LYME HANDLEY TO THE SOUTH EAST OF THROSTLENEST FARM, AND ALSO A LINK FOOTPATH FROM FP13 TO FP8 LYME HANDLEY

Councillor Stockton joined the meeting during this item.

The Committee considered a report which detailed the investigation of an application made to amend the Definitive Map and Statement for the Parish of Lyme Handley by adding a footpath.

Under Section 53(2)(b) of the Wildlife and Countryside Act 1981, the Council had a duty to keep the Definitive Map and Statement under continuous review. Section 53 (c) allowed the Authority to act on the discovery of evidence that suggested that the Definitive Map and Statement needed to be amended. The Authority must investigate and determine the evidence and decide whether to make a Definitive Map Modification Order or not.

One such event under section 53(3)(c)(i) was where

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

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

The evidence could consist of documentary/historical evidence or user evidence or a mixture of both. Where the evidence in support of the application was user evidence, section 31(1) of the Highways Act 1980 applied:- *“Where a way has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”*

The application had been submitted in March 2015 by Mr David Kitching. The application was supported by user evidence from sixteen witnesses; with a further witness, the spouse of one witness, who had not previously completed a user evidence form, who gave evidence to Officers during an interview.

The report before Committee detailed the investigation carried out into the application. Documentary evidence from Ordnance Survey Maps and the Lyme Handley Tithe Map supported evidence that public rights existed along the definitive route of Footpath No.13 and part of the claimed footpath.

Fourteen of the sixteen witnesses had claimed use of the route on foot for the whole 20 year period, and all had completed standard user evidence forms. The relevant 20 year period was 1994 to 2014. The route had been used for a variety of recreational purposes; dog walking; visiting friends

and leisure/exercise. The witnesses stated that they had not been challenged and there was no evidence of any challenge to the public during the relevant period. All the witnesses who had been interviewed had used the route A-B-C-D; most had used D-E, but not many had mentioned the link to Footpath No.8 Lyme Handley (between point C-H on Plan No. WCA/022).

The Committee considered the user evidence submitted and the Definitive Map Officer's conclusion and considered that there was sufficient user evidence to support the existence of footpath rights. The Committee considered that on the balance of probabilities, the requirements of Section 53(3)(C)(i) had been met and the Definitive Map and Statement should be modified to add the claimed route between points A-B-C-D-E on Plan No. WCA/022 as a Public Footpath.

The Sub Committee by majority

RESOLVED: That

- 1 An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding as a Public Footpath, the route as shown between points A-B-C-D-E on Plan No. WCA/022;
- 2 The application to modify the Definitive Map and Statement to record public footpath rights between points C and H as illustrated on Plan No. WCA/022 be refused on the grounds that there is insufficient evidence of use of that section.
- 3 Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Act.
- 4 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.

6 INFORMATIVE REPORT - DIVERSION OF HENHULL FP4 (HA80 S119) PPO

The Committee received an information report which detailed why an unopposed Order made to divert part of Henhull Public Footpath No.4 under section 257 of the Town and Country Planning Act (TCPA 90 s257) had to be abandoned and that the same diversion of the footpath was progressing under section 119 of the Highways Act 1980 (HA80 s119).

An application had been made in 2017 requesting the Council make an Order under section 257 of the Town and Country Planning Act 1990 which would divert parts of Public Footpath No.4 in the Parish of Henhull. The proposal was approved by the Public Rights of Way Committee on 12th March 2018 and the subsequent Order remained unopposed following

formal advertising and the Council had been awaiting contact from the developers regarding the installation of the new diversion routes.

In December 2020, a site visit had revealed that a house, part of a garage and garden, had been built on the one of the footpath sections proposed for diversion, and residents had moved in. The development had gone ahead prior to the conclusion of the legal process for the footpath diversion meaning that the legal test of the TCPA 90 s257 legislation had not been met and the diversion was voided.

The developers had abandoned the diversion of parts of Henhull Footpath No.4 under TCPA 90 s257 and had re-applied for the same diversion to be progressed under the HA80 s119.

Following the conclusion of the pre-Order consultation stage, the diversion would be decided accordingly through the PROW Sub Committee or via delegated decision.

RESOLVED

That the report be noted.

7 INFORMATIVE REPORT - PUBLIC RIGHTS OF WAY ANNUAL REPORT 2020/21 AND WORK PROGRAMME 2021/22

The Committee considered a report which detailed the achievements of the Public Rights of Way team during 2020-21 and set out the proposed work programme for the year 2021-22.

The Countryside Service Development Manager reported on the work carried out during 2020-21 by the Network Management and Enforcement Officers, Technical Administration Officer, Public Path Orders Officers and Definitive Map Officers. Specific performance was detailed in the Appendices to the report.

The budget for Public Rights of Way during the 2020-21 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 such as timber and metal path furniture. A business case had been successful in securing a small amount of additional revenue for 2021-22.

It was also noted that extreme weather events, specifically the rainfall experienced in January 2021, coupled with the increased usage during the Covid-19 lockdowns had put path surfaces under pressure.

It was noted that during 2020-21 the team assessed 349 planning applications which was a 10% increase on the previous year. There had

been 195 temporary closures processed an increase from the 135 of the previous year.

The Public Rights of Way Team had continued to deliver an excellent service across all functions despite a number of long term absences in the team and challenges caused by the Covid-19 pandemic. Office based tasks had been relocated to home-based remote working which had its own challenges such as working space, broadband, home schooling and access to historic documents, files and office functions. 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.

Future working arrangements would be likely to involve a form of hybrid office/home working and although the longer-term implications of Covid-19 would become clearer with time, it would certainly involve a continued reduction in income.

The implementation of the Deregulation Act 2015 represented a risk to the capability of the team to meet their duties of the Highway Authority with regards to Public Rights of Way. The effect of the Act once implemented would require an appraisal of processes and policies for dealing with Definitive Map Modification Orders and Public Path Orders. Tight timescales would be introduced by the legislation requiring application processing within specified time limits and additionally the processing of Public Path Orders would become a duty rather than a discretionary service.

Additional resources would be required to continue maintaining the PROW network and services going forward. The increased use of the network and demand for legal process, together with increased supplies and service costs meant that a growth bid had been submitted through the medium-term financial strategy budget setting process to seek additional resources.

RESOLVED

That the report be noted.

8 INFORMATIVE REPORT - 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 delegate decision.

One decision had been taken under delegation which related to Town and Country Planning Act 1990 Section 257 for the Proposed Diversion of Public Footpath No.9 in the Parish of High Legh (Part).

AGREED

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

The meeting commenced at 2.00 pm and concluded at 2.50 pm

Councillor S Edgar (Chair)



Working for a brighter future together

Public Rights of Way Sub Committee

Date of Meeting:	6 th December 2021
Report Title:	Wildlife & Countryside Act 1981– Part III, Section 53 Ref. No. MA/5/267, to amend the alignment of FP15 in the Parish of Disley as shown on the Definitive Map.
Report of:	Jayne Traverse, Executive Director Place
Ward(s) Affected:	Disley

1. Executive Summary

- 1.1.** This report outlines the investigation of a case, instigated by Cheshire East Council, to amend the Definitive Map and Statement by modifying the alignment of Public Footpath No.15 in the Parish of Disley. This report includes a discussion of the consultations carried out, the historical evidence, and the legal tests for a Definitive Map Modification Order to be made. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to amend the alignment of the public footpath.
- 1.2.** The work of the Public Rights of Way team contributes to the three Corporate Plan aims “We will provide strong community leadership and work transparently with our residents, businesses and partners to deliver our ambition in Cheshire East”, “We aim to reduce inequalities, promote fairness and opportunity for all and support our most vulnerable residents” and “We will lead our communities to protect and enhance our environment, tackle the climate emergency and drive sustainable development”.

2. Recommendations

- 2.1.** An Order be made under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by amending the alignment of Public Footpath No.15 Disley, from the current route as shown between points A-B on Plan No. WCA/024, to its correct alignment between points C-D on Plan No. WCA/024;

- 2.2. Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Act.
- 2.3. In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3. Reasons for Recommendations

- 3.1. The evidence in support of this case must show, on the balance of probabilities, that the particulars proposed to be amended will be a correct record of the public's rights. It is considered there is sufficient evidence to show that the correct alignment of Public Footpath No.15 Disley is along the proposed route shown between points C-D on Plan No. WCA/024.

4. Other Options Considered

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

5. Background

5.1. *Introduction*

- 5.1.1. This case is instigated by Cheshire East Council Public Rights of Way team. The team keep an 'anomaly list', a list of known errors or discrepancies with routes shown on the Definitive Map and Statement, which may require further investigation. An entry was added to the anomaly list on 18th June 2007 regarding Public Footpath No. 15 Disley ("FP15 Disley") after it was surveyed by an Officer on that date. The entry states "Possible mapping error, path goes between houses on the ground". It is accompanied by a map showing the Definitive alignment, in addition the route on the ground is highlighted and annotated. This report follows an investigation into the supposition that the path is incorrectly recorded and a possible mapping error occurred during the preparation of the Definitive Map.

5.2. *Description of the Route*

- 5.2.1. The route of FP15 Disley as it is currently shown on the Definitive Map runs from Buxton Road West (point A on Plan No. WCA/024) it follows a north-easterly direction for 77 metres then turns in a generally easterly direction for 38 metres to meet Light Alders Lane, which was previously known as 'Woodbank Lane' (point B on Plan No. WCA/024), an approximate total length of 115 metres. An extract from the original Definitive Map, which has a relevant date of 1st November 1954, can be seen at **Appendix 1**.
- 5.2.2. As can be seen from Plan No. WCA/024 the Definitive alignment of FP15 Disley is not available for use on the ground; it goes through two properties, a property known as 'Pemberley' which is 30 Buxton Road

West, and a property known as 'Kelsey House' on Light Alders Lane. The footpath which is available on the ground and which, the evidence shows, has been in existence on the ground since around 1929/30 is shown between points C-D on Plan No. WCA/024. It runs in a slightly more easterly north-easterly direction for approximately 110 metres. It too links Buxton Road West and Light Alders Lane, the path runs between fences between the two properties known as 'Pemberley' and 'Wynley' on Buxton Road West; and between the boundaries of 'Kelsey House' and 'Aldersyde' on Light Alders Lane.

5.3. *The Main Issues*

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

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

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

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

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 particulars proposed to be amended will be a correct record of the public's rights. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.

5.3.3. Paragraph 37 of the case of Marlene Peggy Masters and Secretary of State for the Environment, Transport and the Regions 2000 makes it clear that the second limb of Section 53(3)(c)(iii), namely that “*any other particulars contained in the map and statement require modification*”, does not relate to the deletion of a right of way from the definitive map and statement. It relates to matters such as the position and width of the right of way.

5.4. *Investigation of the evidence*

5.4.1. An investigation of the available evidence has been undertaken. 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 2**.

5.5. *Documentary Evidence*

Tithe Maps and Apportionment

- 5.5.1.** Tithe Awards were prepared under the Tithe Commutation Act 1836, which commuted the payment of a tax (tithe) in kind, to a monetary payment. The purpose of the award was to record productive land on which a tax could be levied. The Tithe Map and Award were independently produced by parishes and the quality of the maps is variable. It was not the purpose of the awards to record public highways. Although depiction of both private occupation and public roads, which often formed boundaries, is incidental, they may provide good supporting evidence of the existence of a route, especially since they were implemented as part of a statutory process. Non-depiction of a route is not evidence that it did not exist; merely that it did not affect the tithe charge. Colouring of a track may or may not be significant in determining status. In the absence of a key, explanation or other corroborative evidence the colouring cannot be deemed to be conclusive of anything.
- 5.5.2.** The Disley Tithe Map of 1851 does not show any feature of a footpath in this area. The only building nearby is a building shown at the position of Light Alders Farm, which is just to the north of Kelsey House on Light Alders Lane. The area of FP15 Disley is included in plot number 83, which is described as 'Lower Meadow' and the owner is listed as Thomas Legh.

Ordnance Survey Maps

- 5.5.3.** 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. County Series 25" to 1 mile, 1st, 2nd and 3rd Editions

- 5.5.4.** On the first edition there is a double dashed line on an alignment similar to the Definitive Map, but rather than turning easterly the route turns more northerly and continues to the farm and then into the next field. The second and third editions show a double dashed line, the alignment is very similar to the Definitive Map where the path turns easterly to Light Alders Lane. Only the third edition annotates the path with 'F.P.' The footpath is not affected by any buildings at this time.

Conveyance from the Deeds to the property 'Pemberley' 1920, 1934

- 5.5.5.** The current owners of the property 'Pemberley' on Buxton Road West have submitted extracts from their deeds. They state the property was

built in 1929. One conveyance dated November 1920 relates to the sale of the land, there is a plan with a rough square marked in pencil indicating the area of land. There is a double dashed line to the south eastern edge of the square. This follows a straight line from Buxton Road to Light Alders Farm in a north north easterly direction, similar to the 1st Edition O.S. map. The conveyance dated May 1934 has a plan indicating the plot with a red line boundary with measurements. To the immediate south eastern edge, outside of the red line boundary, is a line running the length of the plot, it is annotated 'public footpath'. This shows that the footpath was in existence in this location in 1934, and most likely since 1929 if that is when the property was built.

National Parks and Access to the Countryside Act 1949

- 5.5.6.** 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.
- 5.5.7.** The Disley walking survey schedule states their survey was carried out between 1st June 1952 and 30th November 1952. Due to the small scale of the map, the base map shows the houses on Buxton Road West as a block rather than individual houses, FP15 is shown on an alignment similar to C-D on Plan No. WCA/024 and is shown as going through the block of houses. 'WG1' is annotated on the map to indicate a wicket gate at the Buxton Road West end of the path.
- 5.5.8.** The walking survey schedule describes FP15 as commencing at Buxton Road north side, runs north east and terminates at Light Alders Lane (Woodbank Lane). It is very clear with its description of the path and states, *"Narrow path up four stone steps between wooden fences and ascends fairly steeply to Light Alders Lane. Path commences between two houses off Buxton Road (Pemberley and Wynley) Rough path but well defined 4' 6" wide."* It also indicates the length is approximately 120yds. This is roughly 110 metres which is the length of the path between points C-D on Plan No. WCA/024.
- 5.5.9.** The Draft Definitive Map for Disley shows the alignment of FP15 as a straight line in an east north easterly direction between the two roads. No houses are shown on the base map, this alignment appears to be a similar line to C-D on Plan No. WCA/024. The Draft Definitive Map was published in December 1954. The Draft Definitive Statement describes the path as "From Buxton Road (A6 TR12) in a North Easterly direction to Woodbank Lane (UC/4/214)". It states the length as 110 metres and the width as 1.5 metres.
- 5.5.10.** The Provisional Definitive Map was published in May 1968 and shows the line of the footpath following the alignment A-B as shown on Plan No. WCA/024. There are four square blocks on the base map, indicating the

houses on Buxton Road West, the line of the footpath goes between two of the houses in a north easterly direction to the boundary with the farm, it then turns easterly to join Light Alders Lane. 'F.P.' is printed on the base map below the line indicating the footpath.

- 5.5.11.** The Definitive Map shows FP15 the same as the Provisional Map with the alignment between A-B as it is shown on Plan No. WCA/024. There seems to be a discrepancy between the Definitive Map and the Definitive Statement. The Definitive Statement is the same as the Draft Statement *"From Buxton Road (A6 TR12) in a North Easterly direction to Woodbank Lane (UC/4/214)"*. It again states the length as 120yds (110 metres) and the width as 4' 6" (1.5 metres). The statement is consistent with the route on the ground between point C-D on Plan No. WCA/024.
- 5.5.12.** There is no evidence of any objections or representations being made regarding this path during the Definitive Map process at either the draft or provisional stage.
- 5.5.13.** There is an entry in an Officer's notebook dated 21st March 1955, which would have been between the Draft and Provisional Maps being published. The note refers to FP15 and states "WG at start going NE ~ 4 stone steps. 4' 6" between fences". This description clearly relates to the position of the path being between points C-D on Plan No. WCA/024 and is consistent with the parish walking survey documents and the Draft Definitive Map

Correspondence relating to maintenance

- 5.5.14.** Correspondence has been found in the public rights of way records. A letter dated 11th June 1962 from the owner of the property 'Aldersyde' on Light Alders Lane, he refers to the footpath at the side of his property and states it is used by local residents as access to the bus stop. He complains that the footpath is thick with mud and also refers to a dangerous raised manhole cover, broken steps and overhanging hedgerows. He states locals have advised him that, as far as they are aware, no repairs have been carried out on this footpath in thirty years. This corroborates other evidence which would suggest the footpath has been in existence in this location since around 1930.
- 5.5.15.** Following investigation, the Council then appeared to agree to carry out repairs. A minute from the Macclesfield Roads Area Advisory Sub-Committee dated 18th January 1963 states it was *"Resolved – That repairs be carried out to this footpath at an estimated cost of £65"*. This was subsequently approved by the County Roads and Bridges Committee.

Land Registry Search

- 5.5.16.** A search of the Index Map at the Land Registry reveals that the width of the footpath between points C-D on Plan No. WCA/024 is unregistered. As there is no registered owner of this land that could suggest that the route is public.

5.6. Conclusions

- 5.6.1.** The evidence shows that a route has been in existence on the alignment C-D on Plan No. WCA/024 since around 1930 when the houses were built on Buxton Road West. This is clear from the plan accompanying the conveyance dated 1934 contained in the deeds to the property 'Pemberley'. The property 'Kelsey House' was built later in 1970. All the evidence from the early stages of the Definitive Map process clearly describe the footpath as it is on the ground today. The officer's notebook from 1955, correspondence from the owner of 'Aldersyde' in 1962 and the Committee minute confirming that repairs were to be carried out; all refer to the position of the footpath as C-D. The Definitive Statement is also consistent with the route as it is on the ground, including the length and width described.
- 5.6.2.** It is unknown why the alignment was changed on the Provisional Map and subsequently the Definitive Map. It may have been that a dashed line on the base map caused confusion for the draftsman, or that they were simply following the line of the earlier O.S. maps. The scale of these maps made it difficult in some circumstances to be completely accurate with a narrow path between houses such as this.
- 5.6.3.** The evidence in support of this case must show, on the balance of probabilities, that the particulars proposed to be amended will be a correct record of the public's rights. It is considered there is sufficient evidence to show that the correct alignment of Public Footpath No.15 Disley is along the route shown between points C-D on Plan No. WCA/024. On the balance of probabilities, the requirements of Section 53(3)(c)(iii) have been met and it is recommended that the Definitive Map and Statement should be modified to amend the position of Public Footpath No.15 Disley from A-B to C-D as shown on Plan No. WCA/024.

6. Consultation and Engagement

- 6.1.** The affected landowners, Ward Councillor, Parish Council and user groups have been consulted.
- 6.2.** Disley Parish Council, East Cheshire Ramblers and Disley Footpath Society have all responded and state that they have no objection to an Order being made.
- 6.3.** Councillor Murphy has not commented at the time of writing.
- 6.4.** The owner of the property 'Pemberley' on Buxton Road West has responded and states that there certainly appears to have been a serious mistake. The consequences could be very distressing. He states the path

between C-D on the map is accurate. He states *“We bought the house number 30 in 1983 and would not have done so had it been that A-B was the footpath. The documents that we possess and were sent to you clearly show the correct footpath. It runs between 28 and 30. We implore you to correct the anomaly as our houses would be unsalable.”*

- 6.5.** The owner of the property ‘Kelsey House’ on Light Alders Lane states *“on the map it is shown as running through the middle of both my house and neighbouring 30 Buxton Rd. In reality it runs alongside and outside the southerly boundaries of both properties as is clearly promoted by Cheshire East on the ground. I believe there has been overwhelming evidence produced to show that the line of FP 15 is as it is on the ground and has been so for at least 100years. The Council have known about this and the situation is marked in the Council's records as “an anomaly”.”*

7. Implications

7.1. Legal

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

- 7.1.2.** The legal implications are contained within the report.

7.2. Finance

- 7.2.1.** If objections to an Order lead to a subsequent hearing/inquiry, the Council would be responsible for any costs involved in the preparation and conducting of such.
- 7.2.2.** Were the anomaly to remain the Council may be open to claims for financial compensation should landholdings be adversely affected by the anomaly.

7.3. Policy

- 7.3.1.** There are no direct policy implications.

7.4. Equality

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

7.5. Human Resources

- 7.5.1.** There are no direct implications for human resources.

7.6. Risk Management

7.6.1. There are no direct implications for risk management.

7.7. Rural Communities

7.7.1. There are no direct implications for rural communities.

7.8. Children and Young People/Cared for Children

7.8.1. There are no direct implications for children and young people/cared for children.

7.9. Public Health

7.9.1. There are no direct implications for public health.

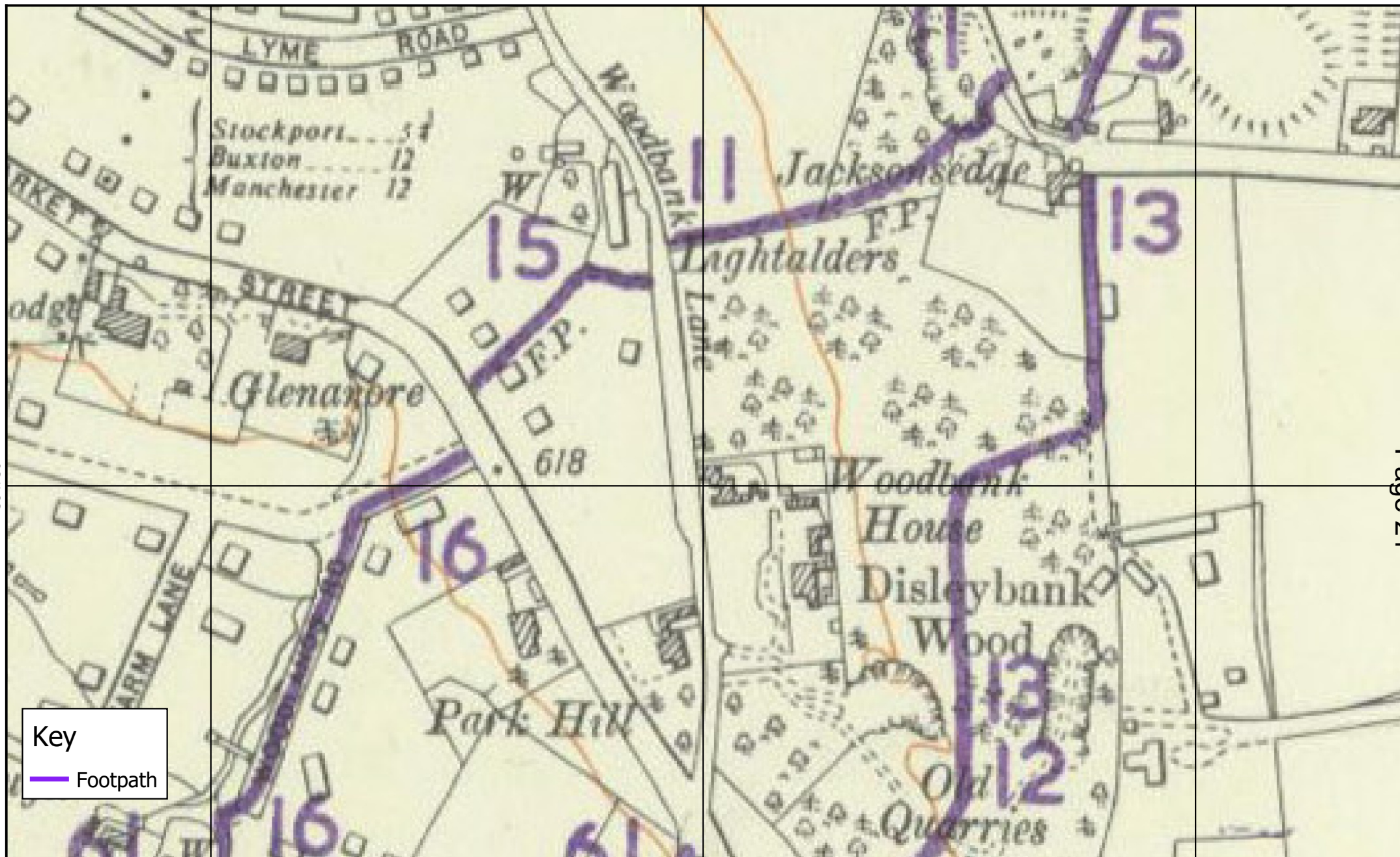
7.10. Climate Change

7.10.1. 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.

7.10.2. 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.

Access to Information	
Contact Officer:	Jennifer Ingram Definitive Map Officer jennifer.ingram@cheshireeast.gov.uk
Appendices:	Appendix 1 – Extract from The Definitive Map Appendix 2 – Documentary Evidence List
Background Papers:	The background papers/information relevant to this report are contained in file MA/5/267 and can be inspected by contacting the Officer above.

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Key

Footpath



1:2500

Extract from The Definitive Map
Relevant Date 1st November 1954

Appendix 1

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

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DMMO DOCUMENTARY RESEARCH CHECKLIST

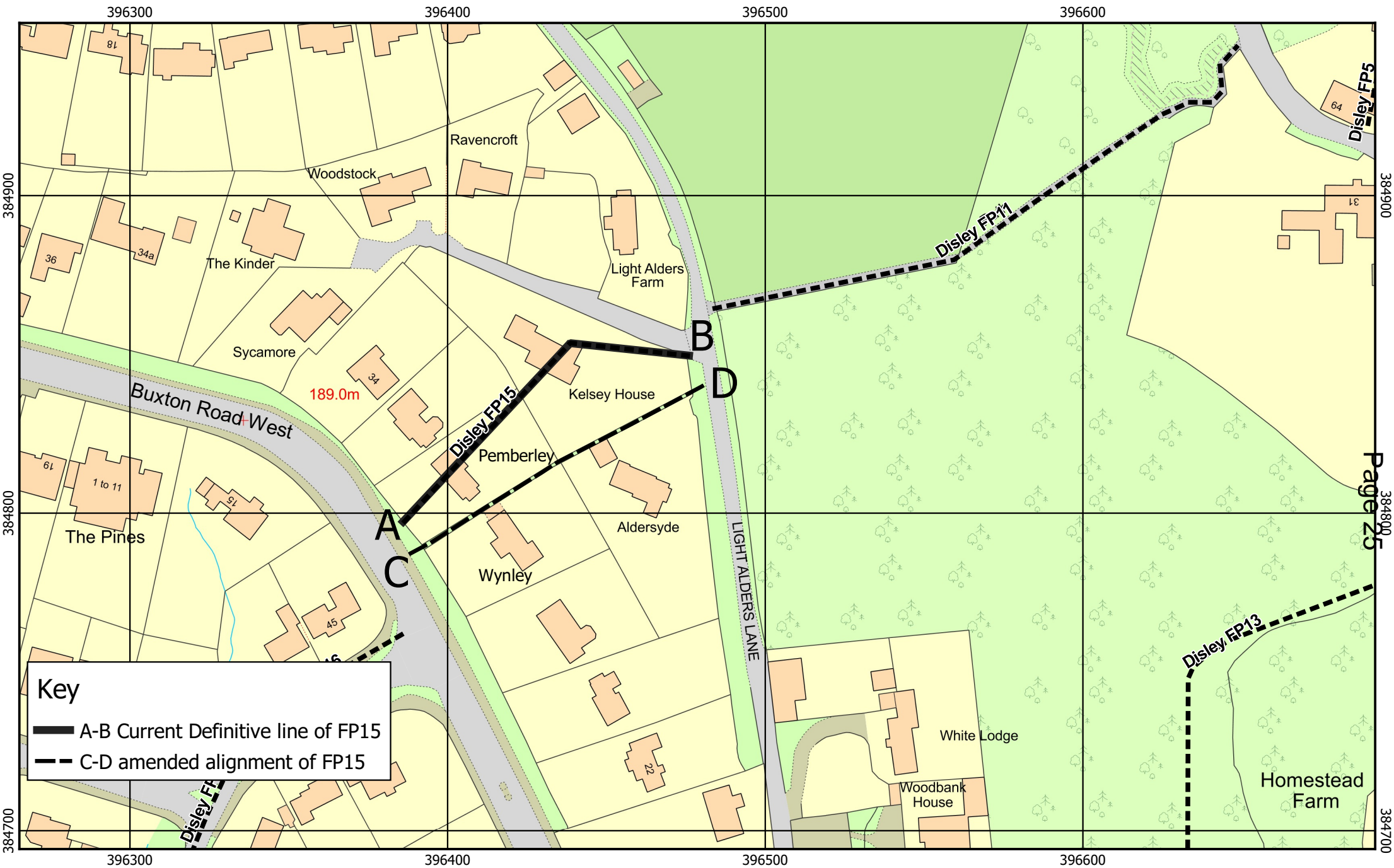
District: Macclesfield	Parish: Disley		Application: MA/5/267
Document	Date	Reference	Notes
Tithe Records			
Apportionment	1851	CRO EDT/137/1 Township: Disley	Plot No. 83 Plot name: 'Lower Meadow' Land use: 'Meadow'
Map	1851	CRO EDT/137/2 Township: Disley	Plot 83 – no routes shown
Ordnance Survey			
25" County Series 1 st Edition	c.1875	PROW digital copies viewed	Double dashed line from point A to Light Alders Farm
25" 2 nd Edition 25"	c.1897		Double dashed line on similar alignment to Definitive Map
3 rd Edition 25"	c.1909		Double dashed line on similar alignment to Definitive Map, annotated 'FP'

Local Authority Records			
Walking Survey Map & Schedule For FP15 Disley	1952	PROW	A route is shown on an alignment similar to C-D. Footpath is described as the route C-D
Draft Definitive Map & Statement	1954	PROW	A route is shown on an alignment similar to C-D. Statement consistent with route C-D.
Provisional Definitive Map	1968	PROW	A route is shown on an alignment similar to A-B.
Definitive Map & Statement	1971 (Relevant Date 1954)	PROW	A route is shown on an alignment similar to A-B.
Other documents			
Extract from Deeds property known as 'Pemberley' 30 Buxton Road West	1920, 1934	Submitted to PROW by property owner	Public Footpath shown on plan outside of the plot
PROW Officer's notebook	21 st March 1955	PROW	Entry states – FP15 "WG at start going NE ~ 4 stone steps. 4' 6" between fences".
Correspondence from owner of 'Aldersyde'	11 th June 1962	PROW	Footpath described at the side of house as the route C-D
Minute of Macclesfield Roads Area Advisory Sub-Committee	18 th January 1963	PROW	Resolved – That repairs be carried out to this footpath at an estimated cost of £65".
Land Registry map search	10 th November 2021	PROW	Route C-D land is unregistered

CRO – County Record Office

PROW – Public Rights of Way Unit

A-B; C-D – refer to points on Plan no. WCA/024



1:1500

Wildlife & Countryside Act 1981 Ref. No. MA/5/267
Amendment to the alignment of Public Footpath No.15 in the Parish of Disley

Plan No.
WCA/024

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

Date of Meeting:	6 th December 2021
Report Title:	Highways Act 1980 s119 Application for the Diversion of Public Footpath No 4 (parts), Parish of Henhull
Report of:	Jayne Traverse, Executive Director Place
Ward(s) Affected:	Bunbury

1. Executive Summary

- 1.1. The report outlines the investigation to divert parts of Public Footpath No 4 in the Parish of Henhull. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way team as an application has been made by the landowner concerned. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an order should be made to divert the sections of footpath concerned.
- 1.2. The work of the Public Rights of Way team contributes to the three Corporate Plan aims. "We will provide strong community leadership and work transparently with our residents, businesses and partners to deliver our ambition in Cheshire East", "We aim to reduce inequalities, promote fairness and opportunity for all and support our most vulnerable residents" and "We will lead our communities to protect and enhance our environment, tackle the climate emergency and drive sustainable development".

2. Recommendation/s

- 2.1. That an Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert parts of Public Footpath No.4 Henhull by creating a new public footpath and extinguishing the current path as illustrated on Plan No. HA/147 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2. Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3. In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3. Reasons for Recommendation/s

- 3.1. In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraphs 5.1 – 5.5 below.
- 3.2. Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:

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

And whether it is expedient to confirm the Order considering:

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

- 3.3. Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.2 above.
- 3.4 No objections to the proposal have been received through the informal consultation process. The proposed route will not be 'substantially less convenient' than the current route and diversion of two footpath sections will be of benefit to the landowner by realigning the footpath as per the permitted development that was granted, and by resolving an obstruction issue.
- 3.5 It is considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.
- 3.6 In confirming an Order the Secretary of State where the Order is opposed, or the Council where the Order is unopposed, will also have regard to any material provision of the Rights of Way improvement Plan prepared by the local highway authority and the effect of the path or way on the needs of agriculture, forestry and biodiversity.
- 3.7 The proposal contributes to the Corporate Plan aims 'Open, 'Fair' and 'Green' 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 Stone MC Ltd on behalf of a consortium of housing developers (the north west divisions of Taylor Wimpey, Redrow Homes and David Wilson Homes), requesting that the Council make an order under section 119 of the Highways Act 1980 to divert two sections of Public Footpath No. 4 in the Parish of Henhull.
- 5.2. A former application for this diversion was made in 2018 under section 257 of the Town and Country Planning Act 1990 (TCPA 90 s257) as it was considered necessary to do so to enable the Kingsbourne residential development in Nantwich, to go ahead as detailed in the outline planning application (13/2471N), and the reserved matters application, 16/4601N. Specifically, it was necessary to divert one section of Footpath No. 4 Henhull to enable the building of a house, garage and gardens whose footprints lay across the current definitive alignment of this footpath section such that they would otherwise unlawfully obstruct it.
- 5.3. The diversion proposal was progressed accordingly, and an Order was made. This remained unopposed following formal advertising and the

next stage of the process was to install the diversion route before the final administrative stages of the diversion process could be completed.

- 5.4. A site inspection revealed that before the diversion was completed, on the alignment of the current route to be diverted, a house, garage, and gardens had been constructed. This voided the diversion under TCPA 90 s257 because the legal test was no longer applicable as it was then no longer necessary to divert the footpath to enable construction of the house, garage, and gardens since they had already been constructed. Development had already gone ahead.
- 5.5. Consequently, the incomplete diversion under TCPA 90 s257 was abandoned, and the developers sought the same diversion under the legislation of section 119 of the Highways Act 1980, to rectify the situation.
- 5.6. Public Footpath No 4, Parish of Henhull commences at the parish boundary where it joins Public Footpath No's 3 and 4, Parish of Worleston at O.S. grid reference SJ 6487 5335, and runs in generally south, south westerly, then south, south easterly, then south, south westerly directions for a total distance of approximately 572 metres to terminate at its junction with Public Footpath No. 4 Parish of Nantwich at O.S. grid reference SJ 6474 5285.
- 5.7. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request if it considers it expedient in the interests of the landowner to make an order to divert the footpath.
- 5.8. The land over which run both the sections of footpath to be diverted, and the diversion routes, are owned by the applicant.
- 5.9. Referring to Plan No. HA/147, two sections of Henhull Footpath No.4 are proposed for diversion, both linked by a short section of the current footpath.

First section

- 5.10. The first section starts at its junction with Worleston Footpath No's 3 and 4 at the parish boundary (point A) and runs in a generally south, south westerly direction to terminate at point B.
- 5.11. It is on this section of footpath on which the house, garage and gardens have been built.
- 5.12. The new route would also start at its junction with Worleston Footpath No's 3 and 4 and would run in a generally south westerly direction to point E and then in a generally south easterly direction to point F and then in a

generally west, south westerly direction to terminate on the current route at point B.

Second section

- 5.13. The second part starts at point C and runs in a generally south, south easterly direction to terminate at point D.
- 5.14. Within the planned development, the developers have proposed a diversion that would re-align this section of footpath onto a tarmac footpath to be constructed as part of planned landscaping within the development.
- 5.15. The new route will start at point C and run in a generally south, south westerly direction to point G and then south, south easterly direction to point H and finally southerly to terminate on re-joining the current footpath at point D.
- 5.16. The first section of Henhull FP4 running between points A-E-F-B, would form part of a new walkway/cycleway that would have a tarmac surface and width of 3 metres. The second section running between points C-G-H-D, would have a surface of compacted stone with timber edging and be 2 metres wide.
- 5.17. In summary, the new route sections would not be significantly less enjoyable or convenient than the current sections of footpath. The proposal will reduce the need for users to cross or walk along roads and maintain the footpath network such that a public right of way will still be available between Waterlode and Worleston Footpath No's 3 and 4, albeit the nature of the route will be different due to the change in use of the land for residential development.
- 5.18. This diversion would be made in the interests of the developers.

6. Consultation & Engagement

- 6.1. Bunbury Ward: Councillor Sarah Pochin has been consulted. No comments have been received.
- 6.2. Acton, Edleston and Henhull Parish Council, and Nantwich Town Council have been consulted. No comments were received.
- 6.3. The user groups have been consulted. No comments were received.
- 6.4. The statutory undertakers have been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

6.5. The Council's Nature Conservation Officer has been consulted, and no comments have been received.

7. Implications of the Recommendations

7.1 Legal Implications

7.1.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the 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.

7.2 Finance Implications

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

7.3 Policy Implications

7.3.1 There are no direct policy implications.

7.4 Equality Implications

7.4.1 An assessment in relation to the Equality Act 2010 has been carried out and it is considered that the proposed diversion would be more convenient to use than the current one as the surfacing will be improved.

7.5 Human Resources Implications

7.5.1 There are no direct human resources implications.

7.6 Risk Management Implications

7.6.1 There are no direct risk management implications.

7.7 Rural Communities Implications

7.7.1 There are no direct implications for rural communities.

7.8 Children and Young People/Cared for Children

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

7.9 Public Health Implications

7.9.1 There are no direct implications for public health.

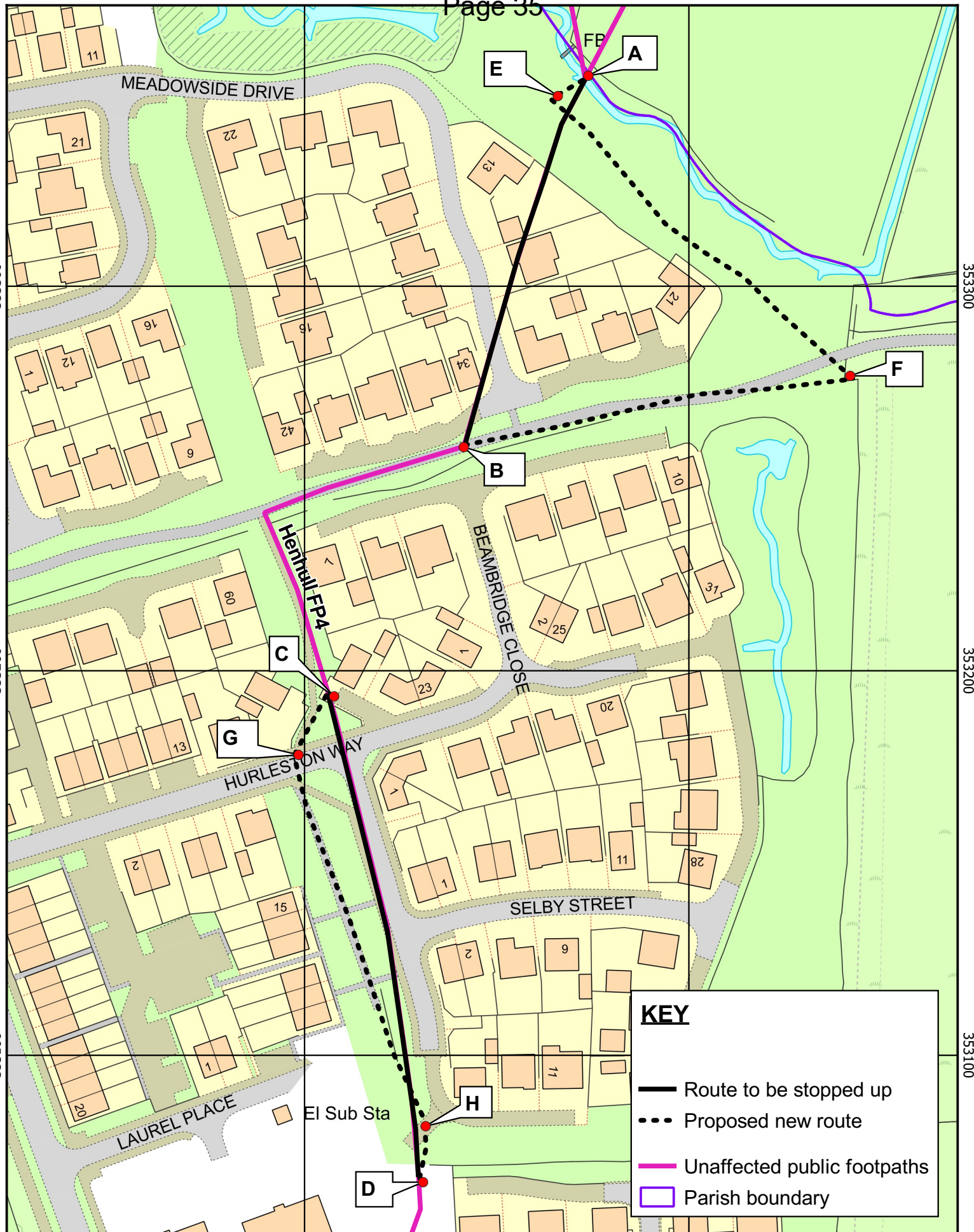
7.10 Climate Change Implications

7.10.1 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.

7.10.2 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.

Access to Information	
Contact Officer:	Marianne Nixon, Public Path Orders marianne.nixon@cheshireeast.gov.uk 01270 686 077
Appendices:	Plan No. HA/147
Background Papers:	The background papers relating to this report can be inspected by contacting Marianne Nixon and quoting the following file reference: File No. 154D/595

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1:1250

Proposed diversion of parts of Henhull FP4

Plan No.
HA/147

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Working for a brighter future together

Date of Meeting:	6 th December 2021
Report Title:	Town and Country Planning Act 1990 s257 Application for the Diversion of Public Bridleway No's 10 and 11 (part), Parish of Arclid
Report of:	Jayne Traverse, Executive Director Place
Ward(s) Affected:	Brereton Rural

1. Executive Summary

- 1.1. The report outlines the investigation to divert Public Bridleway No. 10, and part of Public Bridleway No. 11 in the Parish of Arclid. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way team as an application has been received by a developer following a planning consent. This application was originally submitted by Bathgate Silica Sand Ltd to apply for permission to extend silica and sand workings at Arclid quarry, in a south westerly direction and to revise the development programme and restoration scheme approved under permission 09/2291W (Planning reference: 19/3951W).
- 1.2. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an order should be made to divert the sections of bridleway concerned.
- 1.3. Diversion of the above bridleways has been requested since their current alignment would otherwise be destroyed by sand excavation.
- 1.4. The work of the Public Rights of Way team contributes to the three Corporate Plan aims "We will provide strong community leadership and work transparently with our residents, businesses and partners to deliver our ambition in Cheshire East", "We aim to reduce inequalities, promote fairness and opportunity for all and support our most vulnerable residents" and "We

will lead our communities to protect and enhance our environment, tackle the climate emergency and drive sustainable development”.

2. Recommendation/s

- 2.1. That an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert Public Bridleway No 10 and part of Public Bridleway No. 11 in the Parish of Arclid, as illustrated on Plan No TCPA/068 on the grounds that the Council is satisfied that it is necessary to do so to allow development to take place.
- 2.2. Public Notice of the making of the order be given and in the event of there being no objections within the period specified the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
- 2.3. In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3. Reasons for Recommendation/s

- 3.1. In accordance with Section 257 of the Town and Country Planning Act 1990 as amended by Section 12 of the Growth and Infrastructure Act 2013:

“(1A) Subject to section 259, a competent authority may by order authorise the stopping up or diversion in England of any footpath, bridleway or restricted byway if they are satisfied that—

an application for planning permission in respect of development has been made under Part 3, and if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.
- 3.2. Thus the Council, as the Local Planning Authority, can make an Order diverting a bridleway if it is satisfied that it is necessary to do so to enable development to be carried out, providing that the application has been formally registered with the Council.
- 3.3. It is considered necessary to divert Public Bridleway No. 10 and part of Public Bridleway No. 11 in the Parish of Arclid as illustrated on Plan No. TCPA/068 to enable the sand excavations to go ahead as detailed within Planning Application: 19/3951W.
- 3.4. The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

4. Other Options Considered

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

5. Background

- 5.1. An application has been received from Bathgate Silica Sand Ltd, requesting that the Council make an Order under section 257 of the Town and Country Planning Act 1990 to divert Public Bridleway No's 10 and 11 (part) in the Parish of Arclid.
- 5.2. Sand extraction is currently taking place at Arclid Quarry and planning permission (Planning reference: 19/3951W) was granted to the Archibald Bathgate Group on 28th January 2021 to extend their operations further, by undertaking additional excavations beneath land located to the south west of the quarry site. Over this land currently run Arclid bridleway No.10 and part of Arclid bridleway No.11. Therefore, to enable the sand extraction to continue, it is necessary to firstly divert the bridleways to new alignments further south west such that they would align along the perimeter boundaries of the quarry excavation area.
- 5.3. At present, the land over which the new alignments would run is pastureland and arable farmland. The sand excavations will change the nature of this land but, once complete, a comprehensive restoration plan will be undertaken to restore and relandscape the area. The land is owned by the applicant.
- 5.4. The new bridleway sections would be the same as the current routes to be diverted. They would have a surface of compacted loose aggregate material that would freely drain, would be 4 metres wide and enclosed by a post and wire netting fence (which would be removed once the excavations are complete, and the landscape restored). The only difference would be that two bridlegates would be installed at each end of the diversion route at its junctions with Hood Lane, and the current route (points F and T on Plan No. TCPA/068). The current routes to be diverted are free from path furniture.
- 5.5. Elaborating, Plan No. TCPA/068 shows the bridleway sections to be diverted and the new routes, using colour coding.

Diversion of Arclid Bridleway No 10

- 5.6. Arclid Bridleway No 10 to be diverted starts at its junction with Hood Lane (point A). From this point, the bridleway undulates along a southern field boundary in a generally west, north westerly direction (points A-B-C-D-E) terminating at point E where a 90 degree bend takes the bridleway in a northerly direction.

- 5.7. The proposed new route will start at its junction with Hood Lane further south to the current route (point F). From this point, it would pass through a bridle gate to then run in a generally north westerly direction (points F-G-H-I-J-K) before bearing in a northerly direction to point L and then in a generally easterly direction (points L-M-N-E) terminating at point E where it re-joins the current bridleway.

Diversion of Arclid Bridleway No 11 (part)

- 5.8. The part of Arclid Bridleway No 11 proposed for diversion starts at point O. From point O, it runs in a generally north, north easterly direction (points O-P), and then west, north westerly (points P-Q-R-S-T), to terminate opposite the junction to Arclid Cottage Farm (point E).
- 5.9. The proposed new route would have the same start point at point O, but would run in a generally westerly direction (points O-U-V) and then run in a generally northerly direction (points V-T) to terminate on re-joining the current route at point T, after passing through a bridle gate.

6. Consultation & Engagement

- 6.1. Brereton Rural Ward: Councillor John Wray was consulted and no comments were received.
- 6.2. Also consulted were Councillor Sam Corcoran and Councillor Michael Benson of neighbouring wards, Sandbach Heath and East and Sandbach Town respectively. No comments were received in direct relevance to the proposal.
- 6.3. Arclid Parish Council has been consulted and registered that Councillors have no objection to the diversion proposals.
- 6.4. The user groups have been consulted. The Peak and Northern Footpath Society (PNFS) registered no objection. No other comments were received.
- 6.5. The statutory undertakers have been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 6.6. The Council's Nature Conservation Officer has been consulted, and no comments have been received.

7. Implications of the Recommendations

7.1 Legal Implications

7.1.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the 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.

7.2 Finance Implications

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

7.3 Policy Implications

7.3.1 There are no direct policy implications.

7.4 Equality Implications

7.4.1 An assessment in relation to the Equality Act 2010 has been carried out and it is considered that the proposed diversion would not be significantly less convenient to use than the current one.

7.5 Human Resources Implications

7.5.1 There are no direct human resources implications.

7.6 Risk Management Implications

7.6.1 There are no direct risk management implications.

7.7 Rural Communities Implications

7.7.1 There are no direct implications for rural communities.

7.8 Children and Young People/Cared for Children

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

7.9 Public Health Implications

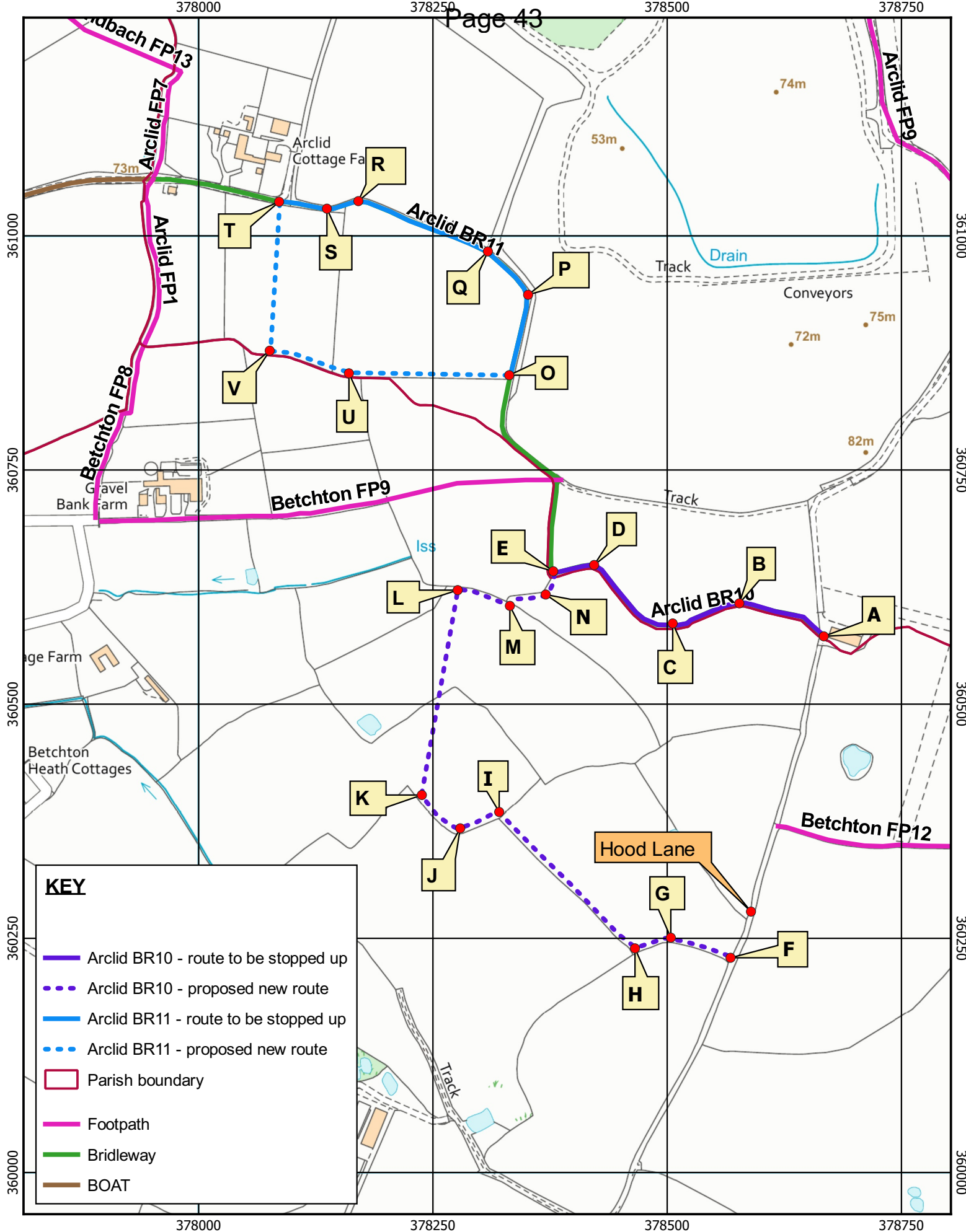
7.9.1 There are no direct implications for public health.

7.10 Climate Change Implications

7.10.1 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.

7.10.2 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.

Access to Information	
Contact Officer:	Marianne Nixon, Public Path Orders marianne.nixon@cheshireeast.gov.uk 01270 686 077
Appendices:	Plan No. TCPA/068
Background Papers:	The background papers relating to this report can be inspected by contacting Marianne Nixon and quoting the following file reference: File No. 016D/594



1:5000

Proposed diversion of Arclid BR10 and part of Arclid BR11

Plan No.
TCPA/068



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Working for a brighter future together

Date of Meeting:	6 th December 2021
Report Title:	Town and Country Planning Act 1990 s257 Application for the Diversion of Public Footpath No's 43 and 46 (parts), Parish of Poynton with Worth
Report of:	Jayne Traverse, Executive Director Place
Ward(s) Affected:	Poynton West and Adlington

1. Executive Summary

- 1.1. The report outlines the investigation to divert part of Public Footpath No's 43 and 46 in the Parish of Poynton with Worth. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way team as an application has been received by a developer following a planning consent. This application was originally submitted by Persimmon Homes to apply for permission to build 133 residential properties on land off Hazelbadge Road with associated access improvements, landscaping and public open spaces (Planning reference: 17/6471M). The permission was inherited by Elan Homes on purchase of the land from Persimmon Homes.
- 1.2. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an order should be made to divert the section of footpath concerned.
- 1.3. Diversion of parts of the above footpaths has been requested since their current alignment would otherwise be obstructed by several of the residential properties within the development.
- 1.4. The work of the Public Rights of Way team contributes to the three Corporate Plan aims "We will provide strong community leadership and work transparently with our residents, businesses and partners to deliver our

ambition in Cheshire East”, “We aim to reduce inequalities, promote fairness and opportunity for all and support our most vulnerable residents” and “We will lead our communities to protect and enhance our environment, tackle the climate emergency and drive sustainable development”.

2. Recommendation/s

- 2.1. That an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No’s 43 and 46 in the Parish of Poynton with Worth, as illustrated on Plan No TCPA/067 on the grounds that the Council is satisfied that it is necessary to do so to allow development to take place.
- 2.2. Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
- 2.3. In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3. Reasons for Recommendation/s

- 3.1. In accordance with Section 257 of the Town and Country Planning Act 1990 as amended by Section 12 of the Growth and Infrastructure Act 2013:

“(1A) Subject to section 259, a competent authority may by order authorise the stopping up or diversion in England of any footpath, bridleway or restricted byway if they are satisfied that—

an application for planning permission in respect of development has been made under Part 3, and if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.
- 3.2. Thus the Council, as the Local Planning Authority, can make an Order diverting a footpath if it is satisfied that it is necessary to do so to enable development to be carried out, providing that the application has been formally registered with the Council.
- 3.3. It is considered necessary to divert part of Public Footpath No’s 43 and 46 in the Parish of Poynton with Worth as illustrated on Plan No. TCPA/067 to enable the residential development to go ahead as detailed within Planning Application: 17/6471M.
- 3.4. The proposal contributes to the Corporate Plan aims ‘Open’, ‘Fair’ and ‘Green’ , 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 Elan Homes, requesting that the Council make an Order under section 257 of the Town and Country Planning Act 1990 to divert parts of Public Footpath No's 43 and 46 in the Parish of Poynton with Worth.
- 5.2. Public Footpath No. 43 Poynton with Worth commences at its junction with Public Footpath No. 46 Poynton with Worth at O.S. grid reference SJ 9136 8396 and meanders in a generally north easterly direction, initially enclosed between fencing and then, on passing through a kissing gate, unenclosed across pastureland to terminate at its junction with Restricted Byway No. 39 in the Parish of Poynton with Worth, at O.S. grid reference SJ 9149 8421. In total, the footpath covers a distance of approximately 347 metres.
- 5.3. Public Footpath No. 46 Poynton-with-Worth commences on Hazelbadge Road at O.S. grid reference SJ 9116 8417 and runs in a generally northerly direction along the road to enter an enclosed fenced footpath. At its junction with Public Footpath No. 43 Poynton-with-Worth, it forks left in a generally north westerly direction and on passing through a kissing gate, then runs unenclosed, across the same pastureland to terminate at its junction with Restricted Byway No. 39 in the Parish of Poynton-with-Worth at O.S. grid reference SJ 9137 8378. In total, the footpath covers a distance of approximately 467 metres.
- 5.4. The land over which run both the sections of footpath to be diverted and the diversion routes, are owned by the applicant.
- 5.5. Persimmon Homes bought the land off Hazelbadge Road for development and were granted planning permission on 2nd November 2020 for 133 residential properties on land off Hazelbadge Road with associated access improvements, landscaping and public open spaces (Planning reference: 17/6471M).
- 5.6. In August 2021, Elan Homes purchased the land from Persimmon Homes and inherited the planning permission (Planning reference: 17/6471M) accordingly.
- 5.7. The existing alignments of the footpath sections proposed for diversion by Elan Homes will be directly obstructed by several residential properties within their

development. Referring to Plan No. TCPA/067, the footpath sections to be diverted are colour coded.

Diversion of part of Public Footpath No 43 in the Parish of Poynton-with-Worth

- 5.8. The section of this footpath to be diverted is shown by a solid **red** line on Plan No. TCPA/067 running between points A-B-C-D. The proposed diversion of this footpath is illustrated with a **red** dashed line on the same plan, running between points A-E-F.
- 5.9. The section of Public Footpath No 43 in the Parish of Poynton-with-Worth to be diverted starts just before a kissing gate into a pasture field to the north (point A). From this point, it runs between fencing in a generally southerly direction to point B, and then a westerly direction to point C, and then in a southerly direction to terminate at its junction with Public Footpath No 46 in the Parish of Poynton-with-Worth (point D).
- 5.10. It is proposed that this footpath section be diverted to align mainly through landscaped areas where it would be unenclosed. Starting at point A and running in a generally southerly direction to point E and then in a generally westerly direction adjacent to Hazelbadge Road, to terminate at its junction with Hazelbadge Road at point F.

Diversion of part of Public Footpath No.46 in the Parish of Poynton-with-Worth

- 5.11. The section of this footpath to be diverted is shown by a solid **purple** line on Plan No. TCPA/067 running between points G-D-H. The proposed diversion of this footpath is illustrated with a **purple** dashed line on the same plan, running between points G-I-J.
- 5.12. The section of Public Footpath No 46 in the Parish of Poynton-with-Worth to be diverted starts just before a kissing gate into a pasture field to the north (point G). From this point, it runs between fencing in a generally south easterly direction to point D, and then in a southerly direction to terminate on Hazelbadge Road at point H.
- 5.13. It is proposed that this footpath section also be diverted to align mainly through landscaped areas where it would be unenclosed. Starting at point G and running in a generally easterly direction to point I and then in a generally south easterly direction to terminate at its junction with the proposed route for Public Footpath No 43 in the Parish of Poynton-with-Worth at point J.
- 5.14. Both new routes would have a surface of buff coloured, self binding gravel that will be timber edged to a width of 2.0 metres.

6. Consultation & Engagement

- 6.1. Poynton West and Adlington Ward: Councillor Michael Beanland and Councillor Mike Stuart have been consulted. No comments have been received.
- 6.2. Poynton Town Council has been consulted and registered that members have no objection to the diversion proposals.
- 6.3. Relevant to the proposal, the town council members requested that suitable provision should be made during construction of the new footpaths to ensure that members of the public can continue to access them safely. It was explained that the developer would need to formally close the current public footpaths for a period of time whilst the development was constructed, including the new diversion routes, but an alternative route for the public would be provided by the developer whilst the public footpaths through the development site were formally closed.
- 6.4. The town council members also requested that the two kissing gates on the northern boundary of the site on Public Footpath No's 43 and 46, should be of sufficient dimensions that it is possible to get a bicycle through them easily as both of these paths lead ultimately to the A555 bypass and may be used by people for cycling. It was explained that it is illegal to cycle along a public footpath and as such, kissing gates to enable passage for cyclists would be inappropriate.
- 6.5. The user groups have been consulted.
- 6.6. The East Cheshire Ramblers registered no objection to the diversion proposals and noted that the proposed route is 'off-road', and passes through attractive green areas of the site. Concern was expressed regarding possible impact on the diversion route for Poynton-with-Worth Footpath No 43 if Poynton Brook were to flood or to erode the river bank. It is considered by the developer that there is sufficient distance between the proposed new route and the riverbank not to be of concern, and site investigations support this.
- 6.7. Further inspection of the riverbank will be undertaken during the winter months by the developer and should any areas of erosion be identified, the developer will seek to enter into discussions with the Lead Local Flood Authority (LLFA) to agree suitable erosion mitigation measures.
- 6.8. No other comments were received.
- 6.9. An Environmental Protection Officer from the council registered no objection with the diversion proposal although may need to look at the proposed

surfacing and perhaps request some soil sampling in that area to satisfy any concerns relating to a claim that the land may be contaminated.

- 6.10. The Peak and Northern Footpath Society (PNFS) submitted a number of queries relating to the proposed diversion.
- 6.11. Similarly, to the East Cheshire Ramblers, members of the PNFS raised concerns about flood risks and potential erosion of the riverbank, and possible future problems that could affect the diversion route (points A – E on plan no. TCPA/067) for Poynton-with-Worth FP43. The height of the new route above the brook was also questioned. A similar response was given to that for the East Cheshire Ramblers.
- 6.12. It was also confirmed to PNFS that there is no intention to connect Poynton-with-Worth Footpath No 43 with Poynton-with-Worth Footpath No 88 at present.
- 6.13. This is the correspondence to date with the PNFS. Any further comments received will be reported verbally at the committee meeting. At the time of writing, the Society had not registered any objection to the proposed diversion.
- 6.14. The statutory undertakers have been consulted have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 6.15. The Council's Nature Conservation Officer has been consulted, and no comments have been received.

7. Implications of the Recommendations

7.1 Legal Implications

7.1.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the 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.

7.2 Finance Implications

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

7.3 Policy Implications

7.3.1 There are no direct policy implications.

7.4 Equality Implications

7.4.1 An assessment in relation to the Equality Act 2010 has been carried out and it is considered that the proposed diversion would be no less convenient to use than the current one.

7.5 Human Resources Implications

7.5.1 There are no direct human resources implications.

7.6 Risk Management Implications

7.6.1 There are no direct risk management implications.

7.7 Rural Communities Implications

7.7.1 There are no direct implications for rural communities.

7.8 Children and Young People/Cared for Children

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

7.9 Public Health Implications

7.9.1 There are no direct implications for public health.

7.10 Climate Change Implications

7.10.1 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.

7.10.2 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.

Access to Information	
Contact Officer:	Marianne Nixon, Public Path Orders marianne.nixon@cheshireeast.gov.uk 01270 686 077
Appendices:	Plan No. TCPA/067
Background Papers:	The background papers relating to this report can be inspected by contacting Marianne Nixon and quoting the following file reference: File No. 247D/596

KEY

- Poynton FP43 - route to be stopped up
- - - Poynton FP43 - Diversion route
- Poynton FP46 - route to be stopped up
- - - Poynton FP46 - Diversion route
- KG Kissing Gate
- Unaffected Public Footpaths



1:1250

Proposed Diversion of Parts of Poynton-with-Worth
Footpath Numbers 43 and 46

Plan No.
TCPA/067



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Working for a brighter future together

Public Rights of Committee

Date of Meeting:	6 th December 2021
Report Title:	Application for the stopping up of a strip of land to the rear of 205A Mow Cop Road, Mow Cop under the provisions of Section 116 Highways Act 1980.
Report of:	Director of Governance and Compliance
Ward(s) Affected:	Odd Rode

1. Executive Summary

- 1.1. This report deals with an application by Michael Skerratt of 205A Mow Cop Road, Mow Cop requesting that the Council make an application to the Magistrates Court under Section 116 Highways Act 1980 that the strip of land shown shaded red in Appendix 2 is stopped up.

2. Recommendations

- 2.1. That the Public Rights of Way committee declare unnecessary the area of highway land shown on the attached plan in Appendix 2, and authorise the submission of an application to the Magistrates' Court, for all highway rights to be stopped-up over this area, in accordance with Section 116 of the Highways Act 1980

3. Reasons for Recommendations

- 3.1. The application is recommended for approval as:
- 3.1.1. The strip of land is considered unnecessary in accordance with Section 116(1)(b) of the Highways Act 1980 as set out in the report.

3.1.2. The proposals are consistent with the Council's Policy on obstructions (where long standing and impractical to remove) and are in accordance with Section 116 of the Highways Act 1980.

3.1.3. The Council has the power under Section 117 of the Highways Act 1980 to make such an application on behalf of another person.

4. Other Options Considered

4.1. That an order be made under Section 118 of the Highways Act 1980 to stop up the width of footpath shown in Appendix 2.

4.2. Section 118 of the Highways Act 1980 stops up footpath rights over land. Directly to the north west of 205A Mow Cop Road, Mow Cop is the "The Mill", a former textile mill which is now luxury flats. During the working life of the mill a path connected from the rear of the mill to the land in question and additional highway rights including vehicular rights may have been created over the land. It is prudent to ensure that all highway rights are stopped up over the land in question.

4.3. In addition to the reason set out in 4.2 using the process in Section 116 of the Highways Act 1980 is a process that allows this matter to be expedited.

5. Background

5.1. 205A Mow Cop Road, Mow Cop is situated in the southern part of the village of Mount Pleasant. To the north east lies Mow Cop and to the south open fields and Kidsgrove beyond. The applicant has lived at the property since December 2015.

5.2. To the south of the property runs Footpath 59 Odd Rode which is a short length of public footpath that connects Chapel Street / Mow Cop Road to the road The Hollow.

5.3. Footpath 59 Odd Rode was added to the definitive map following a Definitive Map Modification Order approved with modifications in 2000 by the Secretary of State.

5.4. In January 2018 notice was received from the Land Registry that an application had been lodged for registration of a piece of land to the rear of 205A Mow Cop Road, Mow Cop. The Land Registry regularly inform the Council of new registrations when they are made adjacent to existing highway.

5.5. On consulting the Council’s records, the Public Rights of Way team instructed Legal Services to lodge an objection on the basis that the land in question formed part of the width of Footpath 59 Odd Rode. An objection was lodged with the Land Registry. The Land Registry on considering the evidence from both parties was unable to decide the case and passed the matter to the Lands Tribunal. Following negotiations in the Land Tribunals the Council agreed to suspend any enforcement act whilst the applicant sort to resolve the matter.

5.6. In April 2020 a Section 117 Highways Act 1980 application was received from the applicant requesting that the Council make an application to the Magistrates Court under Section 116 of the Highways Act 1980 that a width of footpath, shown in Appendix 2, should be stopped up.

5.7. Point A to B is 2.2 metres wide and point C to D is 3.2 metres wide. The length of the strip is 40 metres.

5.8 The remaining width of Footpath 59 Odd Rode immediately to the rear of 205A Mow Cop Road, Mow Cop (shown in Appendix 3), should the Public Rights of Way committee be minded to approve the recommendation, would leave approximately 3 metres at its widest point (below A to B) and 1.4 metres at its narrowest part (to the west of C to D). It should be noted by the Committee that these widths are currently available to the public.

5.9 Section 116(1) of the Highways Act 1980 states:

“Subject to the provisions of this section, if it appears to a magistrates’ court, after a view, if the court thinks fit, by any two or more of the justices composing the court, that a highway (other than a trunk road or a special road) as respects which the [highway] authority have made an application under this section—

(a)is unnecessary

.....

the court may by order authorise it to be stopped up or, as the case may be, to be so diverted.

”

A “highway” is defined under section 328(1) of the Highways Act 1980 as:

“the whole or a part of a highway”. It therefore follows that “part of a highway” can apply to the width of a highway.

5.10 On applying the test of whether the land in question is unnecessary we can look at several factors.

First, that the land in question has been unavailable for a significant length of time and to the author’s knowledge no complaints have been made to the

Council during this time. The fence line can be clearly seen in the aerial photographs in Appendix 5.

Second, that the footpath would historically have connected with a path to the rear of “The Mill”, shown in the plan annexed in Appendix 4. Now that “The Mill” has been converted to private apartments and the land to the rear has been converted to shared open space for the occupants the purpose for which the land was used, to transport materials and people to and from the mill, has ceased.

Third, informal enquiries made of the statutory undertakers has revealed that no services are under the land. Should the land be stopped up there would be no requirement for the Council or the landowner to divert any service.

Fourth, that should the Magistrates Court approve an Order the public would be able to utilise Footpath 59 Odd Rode as they currently do and would not suffer detriment compared to the current position.

5.11 Appendix 1 shows the line of the Footpath 59 Odd Rode.

Appendix 2 shows the area proposed to be stopped up.

Appendix 3 shows the area of Footpath 59 which would remain available. The committee should note that this is the currently available footpath.

Appendix 4 shows the 1910 edition of the Ordnance Survey map. On the plan an access link from Footpath 59 Odd Rode to the rear of “The Mill” can be seen.

Appendix 5 shows a series of aerial photographs of the area over a number of years. These show a clear separation of the land in question from Footpath 59 Odd Rode.

Appendix 6 shows photographs from the report authors’ site visit in July 2021. The photographs proceed from The Hollow end to the Chapel Street end. There is clear evidence of the available route being used by the public although it was overgrown. As the photographs were taken not long after a national lockdown and during the summer months this is unsurprising.

6. Consultation and Engagement

- 6.1. Informal consultation has been carried out with the parish council, user groups and statutory undertakers prior to bringing this matter to committee.
- 6.2. Should the Public Rights of Way Committee be minded to approve the recommendation formal notification will be given to all interested parties as well as those required by statute.
- 6.3. Following informal consultation Odd Rode Parish Council stated that they would be unlikely to refuse consent for an Order in the Magistrates Court to

be applied for. Under Section 116 of the Highways Act 1980 the Parish Council has a veto over any Section 116 order being made.

- 6.4.** Following informal consultation, the Peak and Northern Footpaths Society responded requesting further information from the author, which was duly provided. No further position statement has been provided from the Peak and Northern Footpaths Society.
- 6.5.** Following informal consultation, the Open Spaces Society responded through their local correspondent that they would likely object to the proposal as it interferes with the definitive line of the footpath. That additional land indicated to the north of the proposed area to be stopped up is possibly highway and that the land has value as highway.

7. Implications

7.1. Legal

- 7.1.1.** Before an application can be made to the Magistrates' court it will be necessary to notify certain parties of the proposal and to publicly advertise the council's intention to make the application. In considering the application, the court will determine whether the highway is unnecessary and in doing so, will consider any representations received. It is a possibility, therefore, that the Magistrates may refuse the application. If the application is successful, the highway rights are extinguished, and ownership of the surface will revert to the subsoil owner.
- 7.1.2.** The remaining width of footpath lying adjacent to the area proposed to be stopped up will be unaffected and remain as a public footpath.

7.2. Finance

- 7.2.1.** There are no direct financial implications of these proposals as the costs associated with the process, including applying to the Magistrates Court, will be recovered from the applicant on a cost recovery basis.

7.3. Policy

- 7.3.1.** There are no direct policy implications.

7.4. Equality

- 7.4.1.** There are no direct equality implications as a result of the proposals.

7.5. Human Resources

- 7.5.1.** There are no direct implications for human resources.

7.6. Risk Management

7.6.1. There are no direct implications for risk management.

7.7. Rural Communities

7.7.1. There are no direct implications for rural communities.

7.8. Children and Young People/Cared for Children

7.8.1. There are no direct implications for children and young people/cared for children.

7.9. Public Health

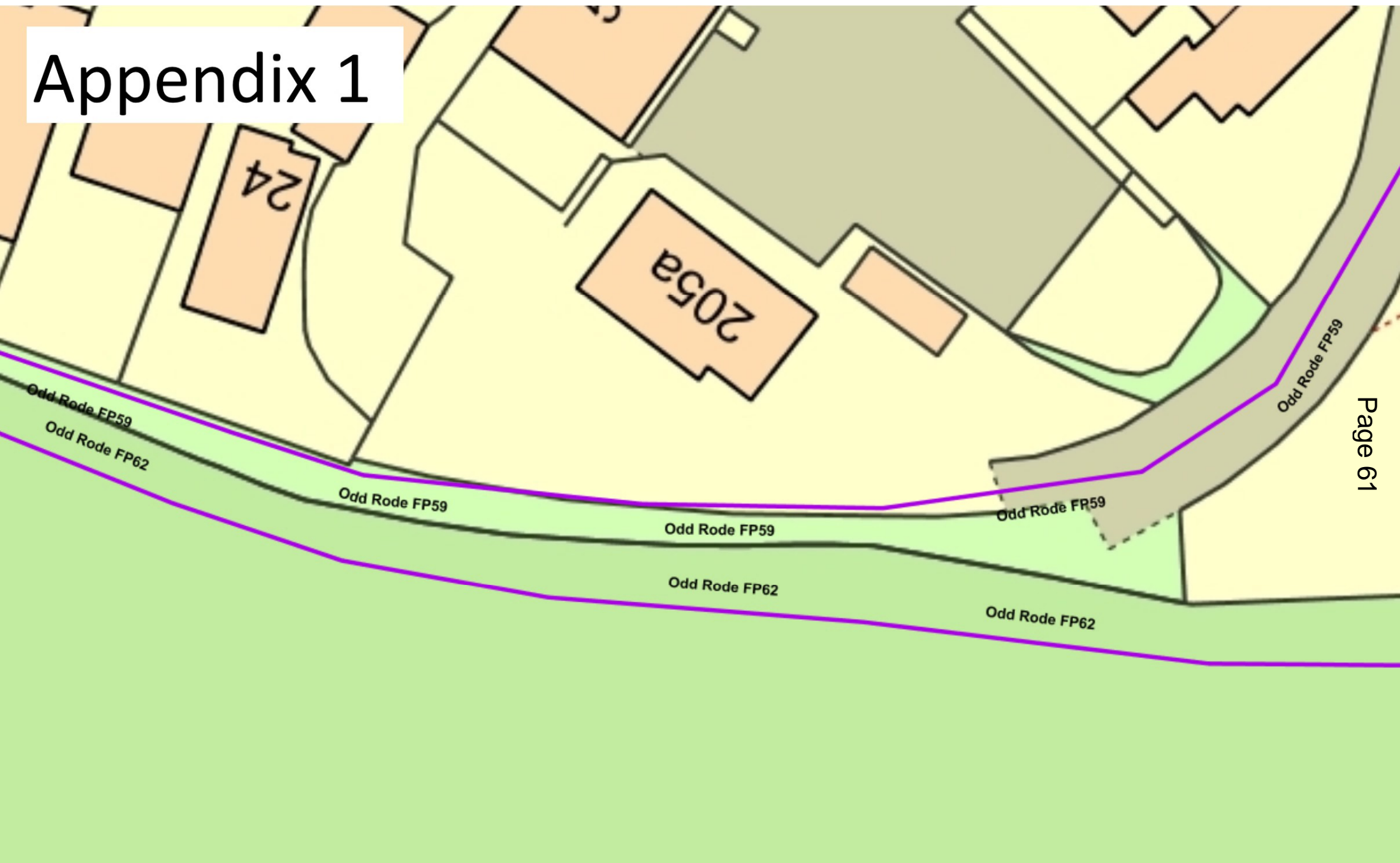
7.9.1. There are no direct implications for public health.

7.10. Climate Change

7.10.1. 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.

Access to Information	
Contact Officer:	Andrew Poynton, Planning and Highways Lawyer andrew.poynton@cheshireeast.gov.uk 01270 685848
Appendices:	Appendix 1 – Line of FP59 Odd Rode Appendix 2 – Plan of area proposed to be stopped up. Appendix 3 – Plan showing remaining width of Footpath 59 should the area of land be stopped up. Appendix 4 – OS Map dated 1910 Appendix 5 – Aerial photographs of area Appendix 6 – Photographs of the footpath taken from the authors site visit in July 2021.

Appendix 1



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Area to be Stopped Up

Shaded Red



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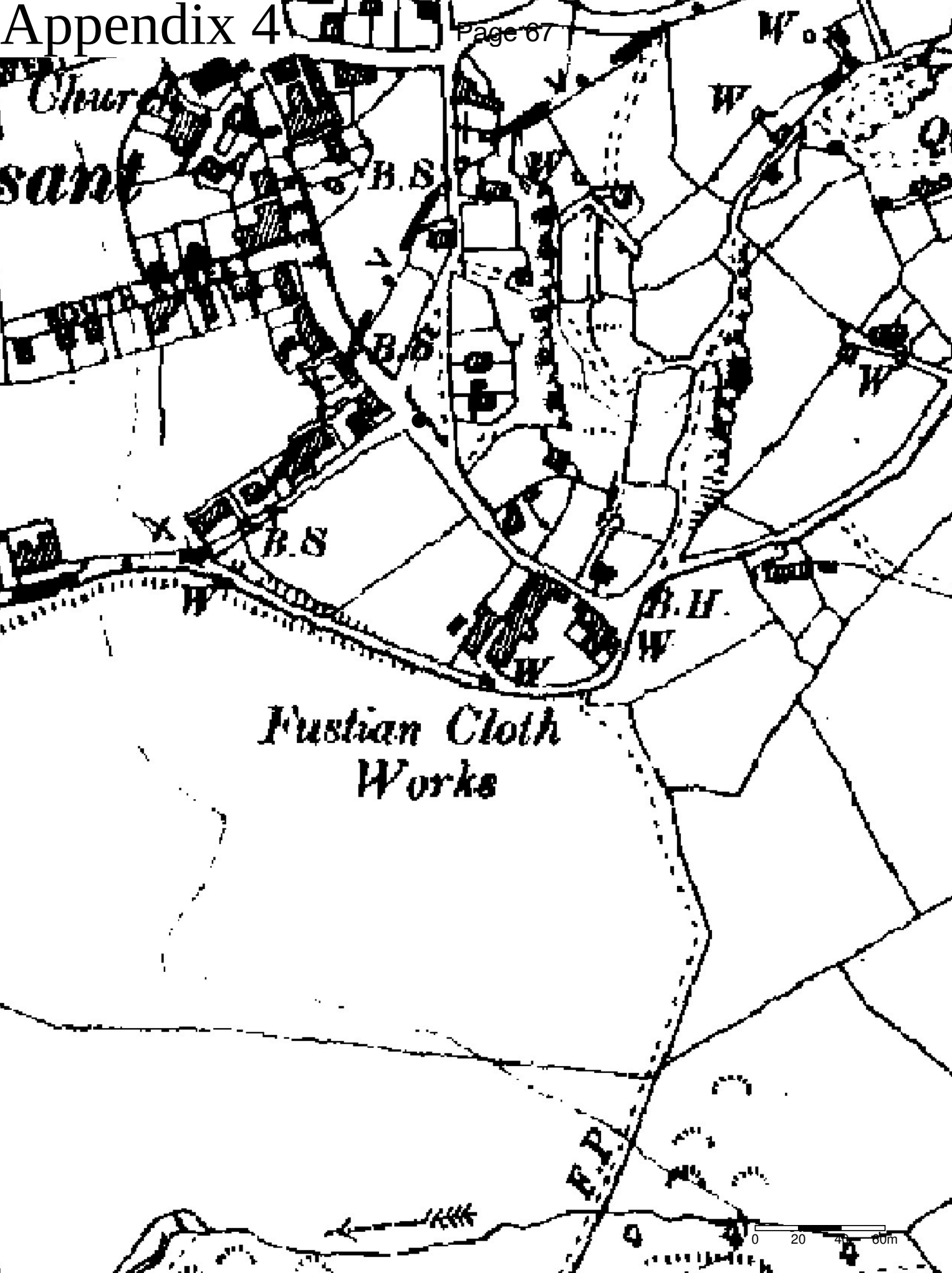
Odd Rode FP 59

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Plan No.

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

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18/11/2021

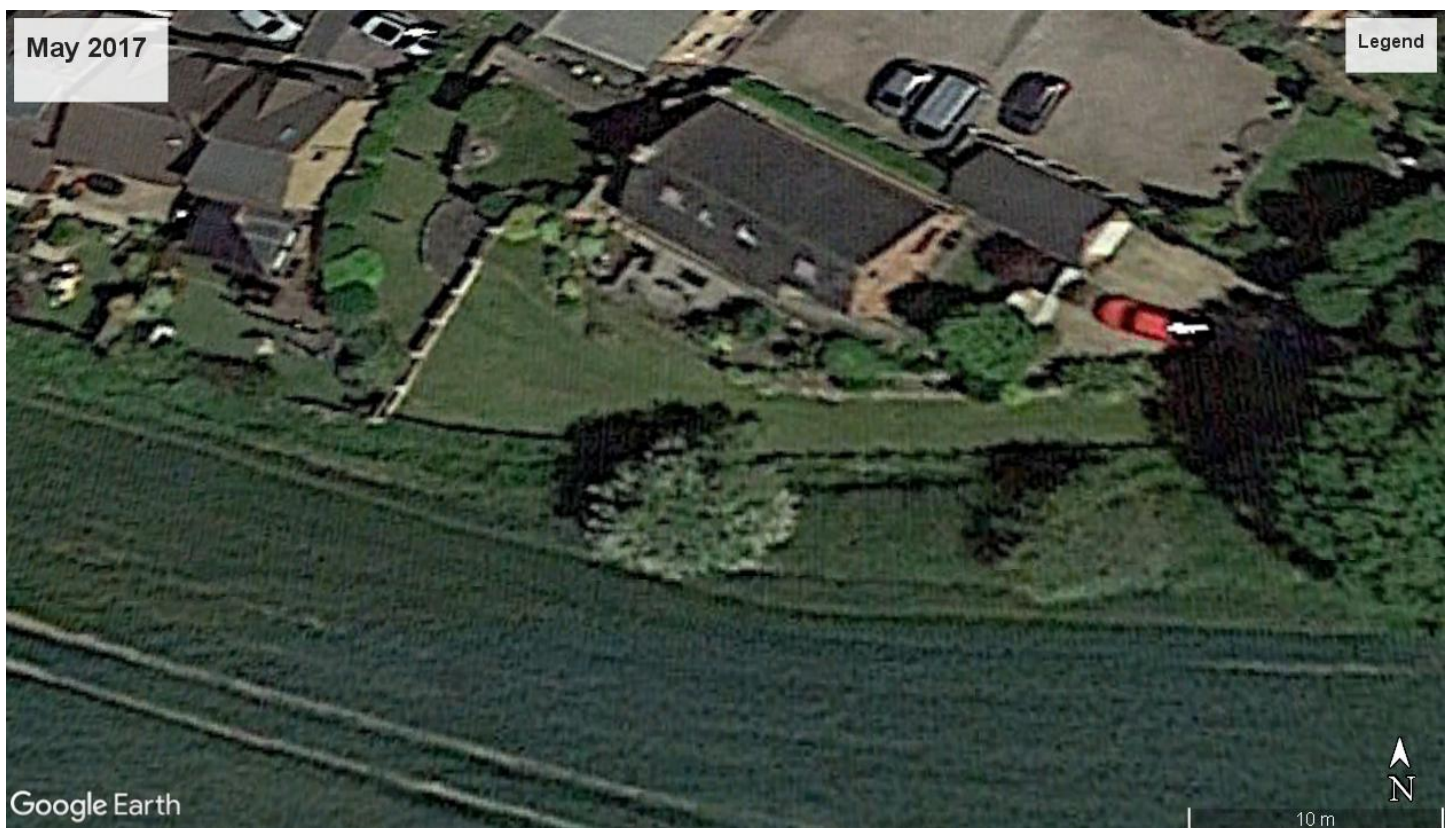


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Appendix 5









Appendix 6







