

# Public Rights of Way Sub Committee

## Agenda

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<b>Date:</b>	<b>Monday, 13th March, 2023</b>
<b>Time:</b>	<b>2.00 pm</b>
<b>Venue:</b>	<b>Committee Suite 1,2 &amp; 3, Westfields, Middlewich Road, Sandbach CW11 1HZ</b>

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

It should be noted that Part 1 items of Cheshire East Council decision 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**

To note any apologies for absence from Members.

2. **Declarations of Interest**

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

3. **Minutes of Previous Meeting** (Pages 5 - 14)

To approve the minutes of the meeting held on 5 December 2022.

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 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.

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For requests for further information

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Also in accordance with 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. **Town and Country Planning Act 1990 Section 257: Proposed Diversion of Public Footpath No. 36 in the Town of Sandbach (part)** (Pages 15 - 22)

To consider an application for the diversion of part of Public Footpath No. 36 in the town of Sandbach.

6. **Wildlife & Countryside Act 1981 - Part III, Section 53. Application No. MA/5/245. Application for the addition of Public Footpaths at Plumley Nature Reserve / Lime bed** (Pages 23 - 44)

To consider an application to amend the Definitive Map and Statement to add various public footpaths to the site known as Plumley Nature Reserve / Plumley Lime beds.

7. **Wildlife & Countryside Act 1981 - Part III, Section 53. Application No. CO/8/41: Application for the Addition of a Public Bridleway, Watch Lane, Moston** (Pages 45 - 76)

To consider an application to amend the Definitive Map and Statement to add a Public Bridleway at Watch Lane in the Parish of Moston.

8. **Wildlife & Countryside Act 1981 - Part III, Section 53. Application No.CO/8/49: Application to add a Public Footpath between Dingle Lane and Footpath No.11 Sandbach** (Pages 77 - 92)

To consider an application to amend the Definitive Map and Statement to add a public footpath between Dingle Lane and Footpath No.11 in the town of Sandbach.

9. **Informative Report: Secretary of State decisions for Highways Act 1980 S119 Diversion of Footpath No. 4 Parish of Poole, Diversion of Footpath No. 5 in the Parish of Adlington and Diversion of Footpath No. 2 in the Parish of Eaton.** (Pages 93 - 98)

To note the decision made by the Planning Inspectorate on behalf of the Secretary of State on the Orders made by the Council to divert Footpath No. 4 in the Parish of Poole, Footpath No. 5 in the Parish of Adlington and Footpath No. 2 in the Parish of Eaton under the Highways Act 1980 s119.

10. **Informative Report: Secretary of State decision for Wildlife And Countryside Act 1981 - Part III, Section 53. Application to upgrade Public Footpaths Nos. 8 Marbury cum Quoisley and No. 3 Wirswall to Bridleways** (Pages 99 - 102)

To receive an informative report in respect of the decision made by the Planning Inspectorate on behalf of the Secretary of State on the Order made by the Council to upgrade Public Footpaths Nos. 8 Marbury cum Quoisley and No. 3 Wirswall to Bridleways under the Wildlife and Countryside Act 1981 section 53.

11. **Informative Report: Public Rights of Way Fees and Charges 2023-24** (Pages 103 - 108)

To receive an informative report which outlines the fees and charges for 2023-24 for charged-for services provided by the Public Rights of Way team.

**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, 5th December, 2022 in the Committee Suite 1,2 & 3,  
Westfields, Middlewich Road, Sandbach CW11 1HZ

**PRESENT**

Councillor L Crane (Chair)  
Councillor S Edgar (Vice-Chair)

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

**OFFICERS IN ATTENDANCE**

Genni Butler, Acting Public Rights of Way Manager  
Richard Doran, Countryside Service Development Manager  
Vicky Fox, Planning Lawyer  
Clare Hibbert, Definitive Map Officer  
Jennifer Ingram, Definitive Map Officer  
Karen Shuker, Democratic Services Officer

The Chair welcomed the following two new Officers to the Public Rights of Way Team who would be observing the meeting.

John Lindsay, Definitive Map Officer  
Richard Chamberlain, Public Path Orders Officer

**11 APOLOGIES FOR ABSENCE**

There were no apologies for absence.

**12 DECLARATIONS OF INTEREST**

In the interests of openness and transparency Councillor R Moreton declared that he knew Mrs Andrea Bossen, the applicant who would be speaking on agenda item 6 in relation to the application for the Deletion of Public Footpath No. 66, Congleton, but he had not discussed the item with her.

**13 MINUTES OF PREVIOUS MEETING****RESOLVED**

That the minutes of the meeting held on 1 August 2022 be confirmed as a correct record.

**14 PUBLIC SPEAKING TIME/OPEN SESSION**

Mr David Nixon, Moston Parish Councillor and the applicant in respect of agenda item 5 Wildlife & Countryside Act 1981 – Part III, Section 53. Application No. CO/8/39: Application to add a Public Bridleway between Dragons Lane and Plant Lane, Moston, addressed the Committee.

Mr Nixon complimented the Officers on their work carried out on the investigation into the application and understood the recommendation to add a Restricted Byway based on the balance of probabilities. Mr Nixon informed the Committee that there were concerns raised by the residents of Moston and provided details of the use of the track over the last 80 years which included, the grazing of cattle, walkers and horse riders, but also included anti-social behaviour and drug use. This had resulted in the Parish Council erecting stainless steel posts at either end of the track to prevent vehicular access, but to still allow space for walkers, cyclists and horse riders to access the track. Following the erection of the posts the anti-social behaviour had ceased and in the last 20 years it had never been questioned nor any request made for access by horse and carriage. Following the sale of part of an adjoining field in 2011 development concerns were raised about the nature of the track which was not shown on the Definitive Map. As a result, the application was submitted for a bridleway in 2014. Walkers and horse riders continued to use the track and in 2020 during the lockdown many families started using the track as an exercise route. Quad bikers also started to use the track which discouraged walkers from using it and it started to be used as an outdoor toilet. Environmental Health were unable to help as the track was not on the Definitive Map and horse riding and walking usage had never recovered since then. A bridleway, as applied for, would provide the perfect solution, but the recommendation brought to Committee raises concerns as the post which would allow walkers and hose riders, but protected the track from use by vehicles over the last 20 years, was consider not to be wide enough for a restricted byway. Therefore, if the recommendation were to be approved there would be a cost-effective solution where by one post be removed and the keys held by the Public Rights of Way team or the Parish Council.

Mrs Andrea Bossen, the applicant in respect of agenda item 6 Wildlife & Countryside Act 1981 – Part III, Section 53. Application No. CO/8/54: Application for the Deletion of Public Footpath No. 66, Congleton, addressed the Committee.

Mrs Bossen felt that not all the evidence had been included in the agenda pack, several statements within the report were incorrect and the level of attention to detail in considering the detail and facts was fatally flawed and superficial. Mrs Bossen felt that the report misinformed the reader regarding the submission date of the application, which should have read 2020, not 2022. There were superficial errors and a lack of accuracy contained within statements, assertions, conclusions, and omissions which had been made throughout the document. The report also incorrectly

identified the route crossed through two different land ownerships but according to Land Registry it passed through three ownerships. Mrs Bossen felt that inaccuracies of this type illustrated and verified that the facts had not been accurately or properly identified or reported to Committee members as the information had not appeared to have been checked. The external consultant had stated in the report that they had walked the whole route of Footpath No. 66, which was incorrect as they had only walked the part of the route to be deleted. Mrs Bossen felt that the report made assertions about the Definitive Map process, which had the relevant date as 1 November 1953 for Congleton, and that all the statutory advertising processes had been followed. Mrs Bossen did not believe this was correct and despite research carried out there was no evidence of notices relating to provisional or definitive stages from 1950 to 1953 as per the appendix contained within the report. Mrs Bossen felt that this was misleading and that if evidence of those notices could not be presented to the Committee it could be asserted that Cheshire County Council had acted ultra vires by failing to comply with the statutory advertising process. Mrs Bossen stated that 1971 was the definitive date for Congleton as per the Gazette which was some 20 years later than the date stated in the report. Mrs Bossen felt that the recommendations within the report were misdirection, the report should be dismissed as flawed, and revisited at a later date.

Mr Nixon and Mrs Bossen were thanked for attending and addressing the Committee.

**15 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53.APPLICATION NO.CO/8/39: APPLICATION TO ADD A PUBLIC BRIDLEWAY BETWEEN DRAGONS LANE AND PLANT LANE, MOSTON**

The Committee considered a report detailing the investigation into an application made by Mr David Nixon in 2014 to amend the Definitive Map and Statement to add a Public Bridleway between Dragons Lane and Plant Lane in the parish of Moston.

Section 53(2)(b) of the Wildlife and Countryside Act 1981 required that the Council should 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: -

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

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

- (i) that a right of way which is not shown on 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. All the evidence must have been evaluated and weighed, and a conclusion reached whether, on the 'balance of probabilities' the rights subsist. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, were not relevant to the decision.

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

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

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

The documentary evidence that had been examined included County Maps, Tithe Records, Railway Plan Records (1871), Ordnance Survey Records, Finance Act 1910, Definitive Map Process – National Parks and Access to the Countryside Act 1949, Land Registry information, photographs, and other evidence.

Witness evidence included 11 user evidence forms. In total 7 witnesses were contacted to be interviewed. Interviews with 3 were held face to face and the remaining 4 were conducted as phone interviews. The users all clearly referred to the same route, all believed it to be a bridleway and could give evidence of use from 1936 to 2014 on foot, by horse and by bicycle.

5 of the witnesses mentioned the erection of bollards at either end to prevent the use of the route by vehicles. Upon interviewing it was established that the Parish Council erected the bollards (just over 5ft apart) sometime in the early 2000s to prevent quad bikes and vehicles going down the route and to discourage anti-social behaviour, which there had been an issue with. None of the witnesses mentioned any challenges to use on foot, horse, or bicycle by any landowner, and no one was given permission to use the route or had any connection with the land or landowners in question.

In the relevant 20-year period prior to the application 1994-2014, no challenge to use of the route had been identified and therefore the 20-year period of deemed dedication had been satisfied.

The Committee considered the application and noted that following consultation with the user groups/organisations; statutory undertakers and landowners which included the ward member for Moston, Moston Parish Council, Sandbach Footpath Group and United Utilities that no objections had been received. Mr David Nixon, Moston Parish Council attended the meeting and spoke in respect of access and vehicular use historically and more recently, along the proposed route.

The Committee agreed on the balance of probabilities, that restricted byway rights subsisted along the claimed route. The balance of user evidence supported the case that a public bridleway, at least, subsisted along the routes A-B (Plan No. WCA/025) and combined with the documentary evidence that the route historically was evidenced to have had public road status.

It was considered that the requirements of Section 53(3)(c)(i) had been met and the Committee agreed that a Definitive Map Modification Order be made to record a Restricted Byway between Dragons Lane and Plant Lane and thus amend the Definitive Map and Statement.

**RESOLVED** (by Majority) 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 to add a Restricted Byway as shown between point A and B on Plan No. WCA/025.
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.
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

**16 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53. APPLICATION NO. CO/8/54: APPLICATION FOR THE DELETION OF PUBLIC FOOTPATH NO.66, CONGLETON.**

The Committee considered a report detailing the investigation into an application made by Andrea Bossen, the landowner of the property Puddle Bank, Congleton, at the far southern end of Public Footpath No.66. The application was to amend the Definitive Map and Statement to delete part of Public Footpath Congleton No. 66. The report considered the evidence submitted and researched in the application to delete part of Public Footpath No. 66, Congleton. The evidence consisted of a detailed letter from the applicant with reference and statements as to why they believed the route should be deleted. It included reference to historical documents such as the Enclosure Award, sale plans, Tithe Map, Finance Act Map, Peak and Northern Footpath Society reports and more.

The Committee noted that the date of the application made by Andrea Bossen had been incorrectly stated as '2022' in the report and in fact it should have read February 2020.

A site visit was made on 25th August 2022. The route was walked in full south to north and back again and an interview conducted and documented with the applicant. The landowner at the north end at Castle Farm had not responded to the consultation but a brief phone conversation was held as well as speaking to other residents on the ground at Castle Farm on 25th August 2022.

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: -

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

“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 could consist of documentary historical evidence or user evidence or a mixture of both. All the evidence must have been evaluated and weighed before a conclusion was reached. Any other issues, such as safety, security, suitability, desirability, cost or the effects on property or the environment, are not relevant to the decision.

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

The following case law test and government guidance notes needed to be considered when considering deletion cases:

- DEFRA Government Circular 1/09 (1990)
- Trevelyan v SOS [2001] EWCA Civ 266
- Planning Inspectorate Rights of Way Section Advice No 9 (2006).

Documentary evidence submitted included 1798 Enclosure Award, Congleton Tithe Map and Apportionment 1845, Ordnance Survey Records, Bartholomew's Half Inch to a Mile, Finance Act 1910, National Parks and Access to the Countryside Act 1949, Land Registry Information.

Additional documentary evidence provided by the applicant included a photograph, sale particulars for Puddle Bank Farm and Peak and Northern Counties Footpaths Preservation Society reports.

Consultation letters and a plan of the application route had been sent out to the Ward Member, Town Council, user group organisations, statutory undertakers, and landowners on 26th July 2022. Further letters had been sent to the landowners at either end of the application route. There were 5 formal written responses from consultees received which included: -

- The Open Spaces Society representative - sent a brief response to say they would object if a deletion order was made as they did not believe there was any information to support a deletion order.
- The Congleton Ramblers Group representative responded with a table of the groups record of surveying the public footpath in 2013, 2014 and 2018 where it was recorded as an open and available route. They also stated the public footpath was a vital recreation route and had obviously been walked for a long period of time and noted a further inspection in 2019 by the group noting it remained open.
- The Sandbach Footpath Group representative responded to say they objected to the possibility of Footpath No. 66 being deleted as it was a direct and natural link that had been used for many years since the early 1950s and was not a useless route. They mentioned if there had been a problem with people walking near the farm, that the path could be diverted at that location, or a permissive route put in place.
- A local resident responded stating the route was a useful way connecting routes on and around the slopes leading up to Congleton Edge and Mow Cop and mentioned it could be possibly diverted around farm if it was an issue.
- BT Openreach responded to say they have no issues with the application from a utility stance.

Mrs Bossen attended the committee and spoke in support of the application.

In response to questions and comments raised by Members, the Definitive Map Officer reported that:

- In respect of whether another application could be submitted to delete the footpath, it could be considered if it had been shown that some new evidence had come to light not previously considered.
- In respect of timings of objections made during the legal procedures of the Definitive Map process these were in the 1950's/1960's and that no objections had been received during this period.
- The applicant had a right of appeal to the Secretary of State if the application was refused.
- The landowner could apply to have the route diverted if there was a suitable alternative put forward.

- The report included an appendix which listed the evidence provided by the consultant following the investigation, and it was the Definitive Map Officers role to interpret that evidence which had been presented by the consultant.

The report concluded that overall whilst there were always possibilities mistakes could have happened in the past when the Definitive Map was drawn up, in this case it did not appear that sufficient robust evidence had come to light to overturn the Definitive Map and Statement to delete the route.

The Committee considered the comments from the Applicant, the historical evidence and user evidence submitted and the Definitive Map Officer's conclusion and considered that the evidence was not sufficient to overturn the presumption that the Definitive Map was correct. In particular, it was clear that the correct legal procedures were followed during the time of recording Public Footpath No. 66 on the Definitive Map and Statement with no objections being received at the time. In addition, there was also evidence of the public having used the footpath over many years and it served as a key link in the overall network. Therefore, the committee considered that the requirements of Section 53(3)(c)(iii) had not been met in relation to deleting a public footpath and that the Definitive Map and Statement should not be modified.

**RESOLVED** (by majority)

1. That an Order is not made under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to delete Public Footpath Congleton No. 66 as shown on Plan No. WCA/026.
2. The application be refused on the grounds that there is not any robust evidence to overturn the legal presumption that the Definitive Map and Statement are correct.

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

The Committee received an information report which detailed the decision made by the Planning Inspectorate on the Order made by the Council to modify the Definitive Map and Statement by adding a footpath in Cranage.

The Committee heard that following the referral of this Order to the Planning Inspectorate following an objection; a site meeting was held with an appointed Inspector. Along with consideration of the submitted evidence and correspondence with the affected parties, the Inspector determined that the Order not be confirmed.

**RESOLVED:**

That the report be noted.

**18 INFORMATIVE REPORT - BRADWALL PERMISSIVE PATH AGREEMENT**

The Committee considered a report detailing a new permissive path agreement in the Parish of Bradwall between the Council, Bradwall Parish Council and respective landowners.

Bradwall Parish Council had secured the agreement of third party landowners for the creation of a permissive footpath in the parish as shown on Plan No. PPA/007 appended to the report. The aim of the 273m long path was to form a safe and pleasant off-road link alongside a section of Bradwall Road where there was no footway, limited verges and limited sightlines. There had been an increase in the number of walkers from Sandbach using this road to form circular routes using other public footpaths in the area.

The Parish Council would be bearing all costs of construction, maintenance, and liabilities throughout the duration of the agreement which would be in place for an initial term of 3 years. Cheshire East Council was a signatory to the agreement so that it was formally recorded with the Highway Authority.

**RESOLVED**

That the report be noted.

**19 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.

The Committee noted that in paragraph 6.2.1 of the report it should read that a decision had been taken under delegation which related to:

“Highways Act 1980 Section 119 Proposed Diversion of Public Footpath No.14 in the Town of Alsager (part)”.

**RESOLVED**

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

The meeting commenced at 2.00 pm and concluded at 3.05 pm

Councillor L Crane (Chair)



*Working for a brighter future together*

## **Public Rights of Way Sub Committee**

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<b>Date of Meeting:</b>	13 <sup>th</sup> March 2023
<b>Report Title:</b>	Town and Country Planning Act 1990 Section 257 Proposed Diversion of Public Footpath No. 36 in the Town of Sandbach (part).
<b>Report of:</b>	Jayne Traverse, Executive Director Place
<b>Report Reference No:</b>	To be confirmed by Democratic Services
<b>Ward(s) Affected:</b>	Sandbach Elworth

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### **1. Purpose of Report**

- 1.1.** The report outlines the investigation to divert part of Public Footpath No. 36 in the Town of Sandbach following receipt of an application from a Network Rail.
- 1.2.** The report makes a recommendation based on that information, for a quasi-judicial decision by Members as to whether or not a diversion Order should be made for that section of public footpath.
- 1.3.** The work of the Public Rights of Way team contributes to the Corporate Plan priority "A thriving and sustainable place", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

### **2. Executive Summary**

- 2.1.** This report outlines the investigation to divert part of Public Footpath No. 36 in the Town of Sandbach. This includes a discussion of the consultations carried out in respect of the proposal and the legal tests to be considered for a diversion Order to be made under Town and Country Planning Act 1990.

- 2.2.** The recommendation will be that a Public Path Diversion Order be made under Section 257 of the Town and Country Planning Act 1990 on the grounds that Cheshire East Borough Council is satisfied that it is necessary to do so in order to enable development to be carried out.

### **3. Recommendations**

- 3.1.** A Public Path Diversion Order be made under Section 257 of the Town and Country Planning Act 1990 on the grounds that Cheshire East Borough Council is satisfied that it is necessary to do so in order to enable development to be carried out.
- 3.2.** Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, and in the event that planning consent has been granted, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
- 3.3.** In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

### **4. Reasons for Recommendations**

- 4.1.** In accordance with Section 257 of the Town and Country Planning Act 1990 (“TCPA”) as amended by Section 12 of the Growth and Infrastructure Act 2013:

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

(a) an application for planning permission in respect of development has been made under Part 3, and

(b) if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.”

- 4.2.** The Council, as the Local Planning Authority, can make an Order diverting a footpath if it is satisfied that it is necessary to do so to enable development to be carried out, providing that the application has been formally registered with the Council.

- 4.3.** It is considered that it is necessary to divert part of Footpath No. 36 in the Town of Sandbach as illustrated on Plan No. TCPA/075, to allow for the

proposed works to reconstruct the footbridge as detailed in Planning Application 22/1649C.

## **5. Other Options Considered**

**5.1.** Not applicable – this is a non-executive matter.

## **6. Background**

- 6.1.** An application has been received from Network Rail requesting that the Council make an Order under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 36 in the Town of Sandbach as it is deemed necessary to allow for the proposed works to reconstruct a footbridge which carries the footpath over the railway.
- 6.2.** Public Footpath No. 36 in the Town of Sandbach commences at its junction with Public Footpath No. 35 in the Town of Sandbach and continues in a generally northerly direction to the Bradwall parish boundary for approximately 660 metres.
- 6.3.** The existing alignment of Public Footpath No. 36 in the Town of Sandbach will be directly affected by the construction of a new footbridge over the railway therefore the diversion is required to preserve the public rights of way.
- 6.4.** The length of Public Footpath No. 36 in the Town of Sandbach to be diverted is shown as a bold black line on Plan No. TCPA/075 between points A-B-C. It commences at point A and continues in a generally south easterly direction for approximately 12 metres to point B, it then continues in a generally easterly direction for approximately 9 metres to point C. This route is currently not available for use as it is obstructed by the current footbridge. An alternative, permissive route is in place on site which follows a similar route to the proposed diversion.
- 6.5.** The proposed diversion of part of Public Footpath No. 36 in the Town of Sandbach is shown as a dashed black line between points A-D-C on Plan No. TCPA/075. An extract of the developer's plan is also shown with the new footbridge being displayed in red, the current footbridge is displayed in green. It will commence at point A and will run in a generally easterly direction for approximately 15 metres to point D. The first 10 metres will run along the existing hard surfaced track with a width of 2 metres. The final 5 metres of this section will be enclosed with 1800mm high palisade fencing on both sides and will be a width of 2 metres increasing to 3 metres by point D with a tarmacked surface. It will then run in a generally southerly direction for approximately 13 metres to Point C for a total of 28 metres, this part of the path will run up a new set of stairs for the new footbridge, this will be 2.3

metres wide and the stairs will be made from steel with handrails both sides. The full specification for the staircase can be found in the planning documents under reference 22/1649C.

## **7. Consultation and Engagement**

**7.1.** The Ward member for Sandbach Elworth, Sandbach Town Council, the user groups, statutory undertakers, and the Council's Nature Conservation Officer have been consulted and have raised no objections at the time of writing this report. Any objections or comments received following the writing of this report will be reported on verbally to the Committee.

## **8. Implications**

### **8.1. Legal**

**8.1.1.** Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the Local Highway Authority to confirm the Order itself, and may lead to a hearing or Public Inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.

### **8.2. Finance**

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

### **8.3. Policy**

**8.3.1.** There are no direct policy implications.

### **8.4. Equality**

**8.4.1.** An assessment in relation to the Equality Act 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current one.

### **8.5. Human Resources**

**8.5.1.** There are no direct human resource implications.

### **8.6. Risk Management**

**8.6.1.** There are no direct risk management implications.

### **8.7. Rural Communities**

**8.7.1.** There are no direct implications for rural communities.

### **8.8. Children and Young People/Cared for Children**

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

**8.9. Public Health**

8.9.1. There are no direct implications for public health.

**8.10. Climate Change**

8.10.1. 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.

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

<b>Access to Information</b>	
Contact Officer:	Laura Allenet – Public Path Orders Officer <a href="mailto:Laura.allenet@cheshireeast.gov.uk">Laura.allenet@cheshireeast.gov.uk</a> 01270 686053
Appendices:	Plan No. TCPA/075
Background Papers:	The background papers and file relating to the report (File Ref: 262/600D) can be inspected by contacting the report writer.

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362250

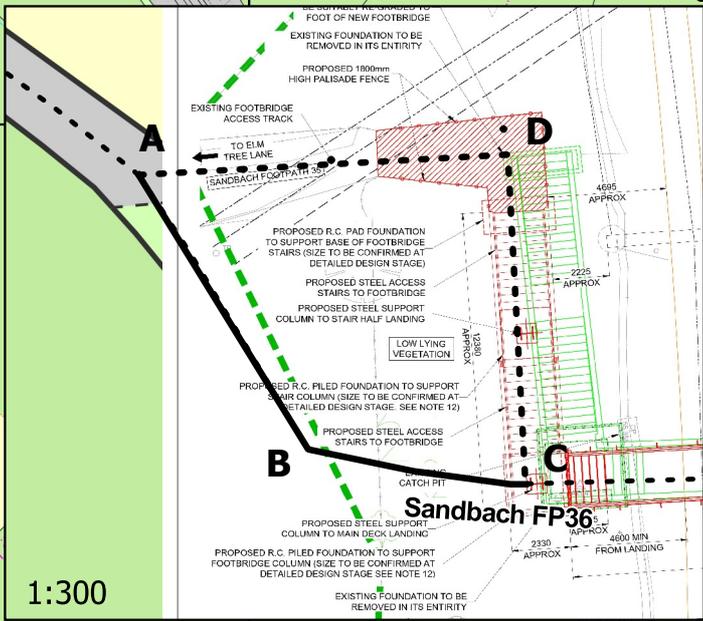
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362000

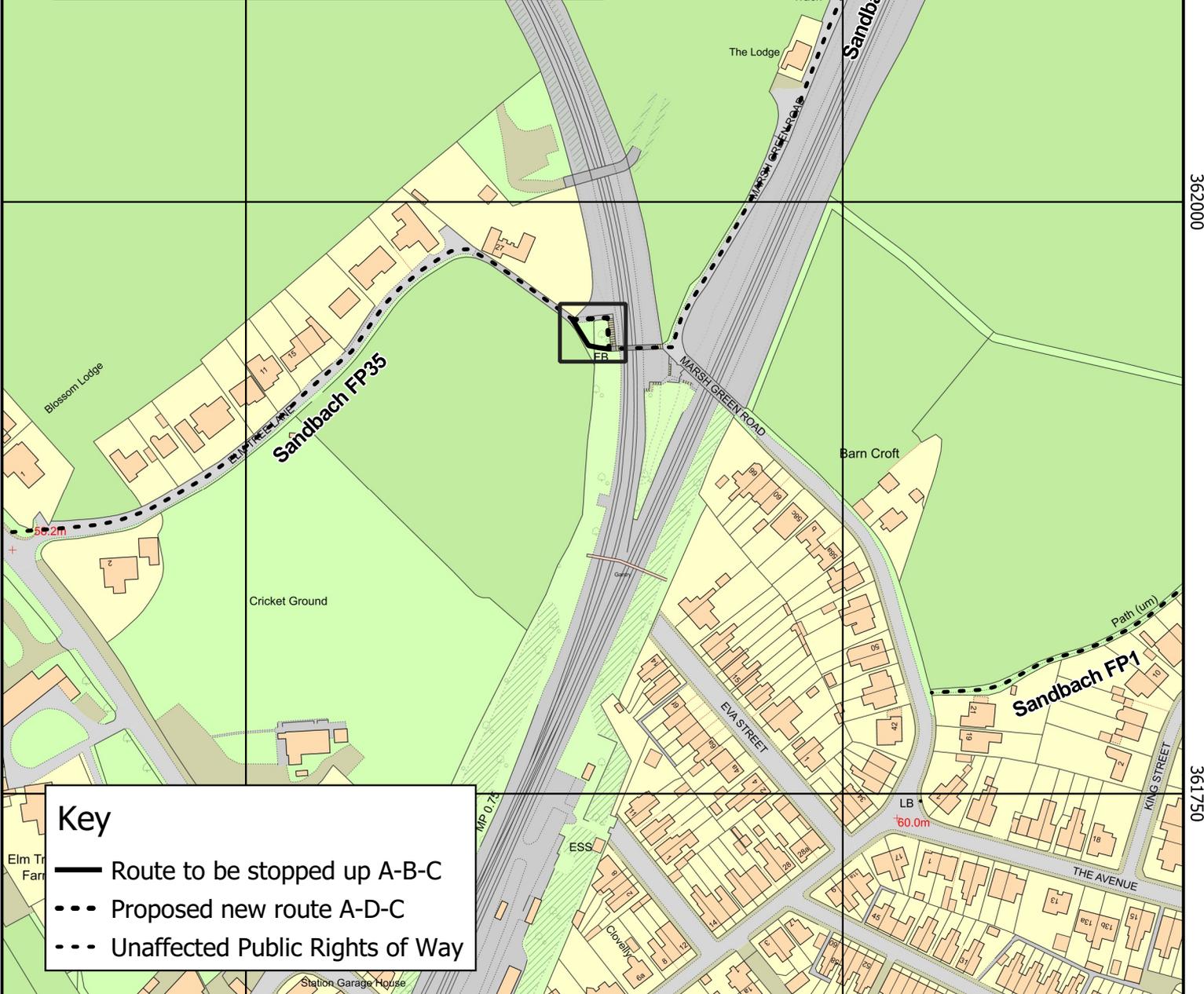
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361750

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1:300



**Key**

- Route to be stopped up A-B-C
- Proposed new route A-D-C
- Unaffected Public Rights of Way



1:2,500

Proposed Diversion of Public Footpath  
No. 36 in the Town of Sandbach

Plan No.TCPA/  
075

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



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*Working for a brighter future together*

## **Public Rights of Way Sub-Committee**

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<b>Date of Meeting:</b>	13 March 2023
<b>Report Title:</b>	Wildlife & Countryside Act 1981 – Part III, Section 53. Application No. MA/5/245 Application for the addition of Public Footpaths at Plumley Nature Reserve / Lime beds
<b>Report of:</b>	Jayne Traverse, Executive Director Place
<b>Ward(s) Affected:</b>	Chelford

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### **1. Purpose of Report**

- 1.1.** This report outlines the investigation into an application made by Plumley with Toft and Bexton Parish Council in 2010 and registered in 2011, to amend the Definitive Map and Statement to add various public footpaths to the site known as Plumley Nature Reserve / Plumley Lime beds. This report includes a discussion of the consultations carried out in respect of the claim, the historical evidence, witness evidence and the legal tests for a Definitive Map Modification Order to be made. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to add various public footpaths to the Definitive Map and Statement.
- 1.2.** The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

### **2. Executive Summary**

- 2.1** The report considers the evidence submitted and researched in the application to add various public footpaths at the Plumley Nature Reserve / Lime beds site. The evidence consists of use on foot by individual witnesses over a period of over 50 years. The report determines whether on the balance of probabilities the status of public footpaths has been acquired. The reputation of the routes as historical physical features is demonstrated through the Ordnance Survey maps since at least the 1930s and provides good reputational evidence of both

a circular route and a route heading east off the circular route. The user evidence investigated and discussed provides evidence of use by users on foot over a relevant 20 year period leading to the assertion that Public Footpath rights have been acquired.

### **3. Recommendations**

- 3.1** 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 Public Footpaths at the Plumley Nature Reserve / Plumley Lime beds site as shown between points A-B-C-D-A and A-E-F-G on Plan No. WCA/028.
- 3.2** 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.
- 3.3** In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

### **4. Reasons for Recommendations**

- 4.1** The evidence in support of this claim must show, on the balance of probabilities, that public footpath rights are reasonably alleged to exist along the claimed routes. It is considered there is sufficient use of the routes without force, secrecy, or permission, that is without interruption and as of right; to support the existence of public footpath rights along the routes shown between points A-B-C-D-A and A-E-F-G on Plan No. WCA/028.
- 4.2** It is considered that the requirements of Section 53(3)(c)(i) have been met in relation to public footpaths and it is recommended that the Definitive Map and Statement should be modified to show Public Footpaths as per the application on the tracks within the Plumley Nature Reserve / Lime beds site.

### **5. Other Options Considered**

- 5.1.** Not applicable – this is a non-executive matter.

## 6. Background

### 6.1. Introduction

- 6.1.1** The Application was made to Cheshire East Council in March 2010 by Plumley with Toft and Bexton Parish Council, to add various public footpaths to the Plumley Nature Reserve / Plumley Lime beds site. The application consisted of user evidence forms, a sales particular document and photographs. A total of 12 user evidence forms were submitted demonstrating use on a foot. The forms were filled out and signed in two separate time periods (8 forms in 2009 and 4 in 2012/13). In addition, one form filled out was submitted twice for the same couple, but the second form did contain extra background information.
- 6.1.2** In 2022 when the application was assessed the original application of 2010 was reviewed and the Parish Council was contacted as it was a little ambiguous as to the exact routes they were claiming as no marked-up plan was provided in the original application. On the original 2010 application the route claimed was described as being from Ascol Drive entrance and back again in a loop to Ascol Drive. An application map was provided in the form of a covering letter referencing an attached map and stating that the claimed routes were the pecked line tracks on that Ordnance Survey map. No actual clear plotting of the route was separately marked up on the map, the routes were just described. This application map showed Ordnance Survey markings of a double pecked line track route as a circular route included a spur running off to the east. In 2022, to avoid doubt, the routes have been clarified with the Parish Council by them marking up exactly those routes that they are claiming. The claimed routes do correlate with the map showing pecked line tracks on the Ordnance Survey base map attached to the original application.
- 6.1.3** From discussion with present and past landowners the application site has an interesting history with various landownership changes. From 1914-1916 the site was turned over to making explosives for military purposes and then was owned by the ICI Chemical company in various guises from the 1920/30s for many years for making chemicals of various kinds. From the 1990s onwards the Ammonia Soda Company was making ammonia soda for various bleaches. The Cheshire Wildlife Trust also managed the site on behalf of ICI for many years around the later 1990s (when it also became a nature reserve). The land then passed to a company in Scotland, before going onto the market again in around 2000, when the Parish Council attempted to buy the site, unsuccessfully, before another purchaser bought the entire site in 2009. They then sold the site in more recent times to the now current two landowners who own roughly half the site each with a fence down the middle marking their

respective boundaries on the ground. The current landowners are mentioned in more detail in section 6.5.8 of this report.

- 6.1.4** The application site is known locally as Plumley Nature Reserve or Plumley Lime beds based on its history outlined above. The application site is designated as a site of Special Scientific Interest (SSSI) and was also designated more recently in 2018 as an Ancient Scheduled Monument (SAM) for its history as a Sodium Ash and Calcium Nitrate Works site.

*Description of the Application Route*

- 6.2.1** The claimed public footpaths are split into two key sections. The first section is a circular loop off Ascol Drive on landowner No.1's land and the second section is a winding linear route off the loop to the east of the site around a large lime bed on landowner No.2's land.

The circular route section starts from its junction with Plumley Footpath No. 15 near to the southern end of Ascol Drive, just by the woodland edge at Grid Ref: SJ 7055,7516, Point A on Plan No. WCA/028. At this point there are now some double locked metal gates. The route runs south in a circular loop on woodland tracks to its most southerly point at Grid Ref: SJ 7088,7487, Point B on Plan No. WCA/028. From here it heads back in a north north westerly direction back to Point A. Parts of the tracks in the woodland are good and stone surfaced and a fair width while other sections are very overgrown with vegetation with the odd tree fallen across and of a muddier surface. The linear second section heading east starts at the same point as the northern tip of the loop at Point A off Plumley Footpath No. 15, and heads east skirting around a large lime bed at Grid Ref SJ 7081, 7515 near Point E on Plan No. WCA/028. It then reconnects with Plumley Footpath No. 15 at Point G. There is also a length running in a southerly direction to end at a lagoon at Grid Ref: SJ 7103,7517 south of Point F at Point Y.

The routes pass various historical features within the woodland including a large old ammunition building at Grid Ref SJ 7064,7493 between Points A-B; various old low level hardcore remains near the eastern side of the circular loop from the soda production days and a large lime bed on the linear eastern arm around Grid Ref: SJ 7103,7517 near Point E. There are also two short dead-end spurs of tracks identified as D-X and F-Y on Plan No. WCA/028.

The surface of the routes vary from being a hard-core track to a mud woodland narrow path, with onsite inspection recording an average width of 4 metres. No width was stated on the

application form. Measurements from Ordnance Survey mapping of the tracks around the site indicate the route varies in width from 2.9 metres to 7.4 metres.

### 6.3 Main Issues

**6.3.1** 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:-

**6.3.2** One such event, (section 53(3)(c)(i)) is where

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

- (i) that a right of way which is not shown on 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, subsection to section 54A, a byway open to all traffic.

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

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

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

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

**6.3.4** In the case of, *R (on the application of Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural*

*Affairs (2007)*, the House of Lords considered the proviso in section 31(1) of the Highways Act 1980:

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

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

- 6.3.5** For public rights to have come into being through long use, as stated above, a twenty year period must be identified during which time, use can be established. Where no challenge to the use has occurred, this period can be taken as the twenty years immediately prior to the date of the application. In this case the date of challenge can be identified as 2009 when the previous landowner of the whole site put very prominent notices up to challenge use. This landowner has provided a copy of the notices that were put up around the whole boundary of the site which said *“Keep Out! Private Property. Trespassers will be prosecuted”*. This landowner also confirmed that as the notices were often vandalised or ripped down, he had to replace them several times.

#### **6.4** *Investigation of the Claim*

- 6.4.1** 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 1.

#### **6.5** *Documentary Evidence*

##### *County Maps 18<sup>th</sup>/19<sup>th</sup> Century*

- 6.5.1** These are small scale maps made by commercial map-makers, some of which are known to have been produced from original surveys and others are believed to be copies of earlier maps. All

were essentially topographic maps portraying what the surveyors saw on the ground. They included features of interest, including roads and tracks. It is doubtful whether mapmakers checked the status of routes or had the same sense of status of routes that exist today. There are known errors on many map-makers' work and private estate roads and cul-de-sac paths are sometimes depicted as 'cross-roads'. The maps do not provide conclusive evidence of public status, although they may provide supporting evidence of the existence of a route.

In this instance these maps do not show any evidence of the claimed routes.

### *Tithe Records*

#### **6.5.2** *Tithe Map and Apportionment 1846*

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.

The Tithe Map of Plumley dated 1845, is a second-class map, and shows nothing of the claimed routes. Ascol drive from Ordnance Survey maps did not appear until the 1900s so does not appear on the Tithe Map as a feature either. Holford Hall to the east is present and there is some clear bounded lane feature running south west from Holford past the application site.

#### **6.5.3** *Ordnance Survey Records*

Ordnance Survey (O.S.) 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 is not evidence of the existence of a right of way. It can be presumed that this caveat applied to earlier maps.

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

The claimed routes are not shown in anyway on this early map. Ascol Drive has not yet been constructed at this point in time and there is just a small track feature marked around what is now the site edge.

*O.S. 2nd Edition County Series 25" to 1 mile 1890*

The claimed routes are not shown clearly on this map. Ascol Drive has not yet been constructed at this point in time and there is just the same small track feature marked around what is now the site edge, as on the 1st Edition mapping.

*O.S. 3rd Edition County Series 25" to 1 mile 1910*

The claimed routes are not shown clearly on this map. However, Ascol Drive to the north has appeared as a double track line feature and there is a boundary forming around what would become a woodland site. However, in 1910 the site clearly has many buildings or structures in situ as the map shows a large Ammonia Soda Works and with track links and sidings joining the railway line to the south. To the east there also appears to be a lagoon or raised areas marked within the site.

*O.S. 1:10,000 New Series (1936)*

The claimed routes all now appear very clearly as marked tracks within what is now a woodland site and annotated as a Nature Reserve. A remnant works buildings remains in the middle of the site and there is a lagoon to the east.

**6.5.4** *Bartholomew's Half Inch to a Mile*

These maps were revised for the benefit of tourists and cyclists with help from the Cyclists' Touring Club (CTC). Local CTC members would generally have cycled every available route in their area, and it is subsequently assumed that any route that appeared on these maps had initially at least, been used without hindrance. These maps were well used by cyclists for their outings so the depiction here is likely to have led to it being used.

Examination of Bartholomew's maps for the said location in this application from 1902, 1904, 1920.1923 and 1941 do not show anything of the claimed routes or woodland area. This is not

surprising given that Ordnance Survey did not depict the area in any detail until around the 1930s and the purpose of the Bartholomew's maps was more for cycle touring. Holford Hall to the northeast is marked as well as the road network running east/west to the north of the site.

#### **6.5.5** *Finance Act 1910*

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

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

A working copy of the finance plan has been examined in Cheshire Archives which is of generally poor quality and an uncoloured map. It annotates the site as Ammonia Soda Works and encompasses most of the now woodland site referenced as parcel 189. Where Footpath No. 15 runs along the northern boundary of the site this is excluded from adjacent land parcels and unnumbered indicating it was excluded from hereditaments and therefore most likely considered public at the time.

#### **6.5.6** *Pre Definitive Map Records*

The Public Rights of Way team hold records that pre-existed the Definitive Map process. The route is not shown on any of these maps.

#### **6.5.7** *Definitive Map Process – National Parks and Access to the Countryside Act 1949*

The Definitive Map and Statement is based on surveys and plans produced 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.

There is no depiction of the claimed routes on the Definitive Map, Draft, Provisional or Parish Survey Map. The nearest footpath shown in this location on these maps is Footpath No. 15 which is shown running along the northern edge of the woodland outside the site boundary. The Footpath Society Survey Map also does not show the claimed routes but has what later became Footpath No. 15 marked as a C.R.F (cart road mainly used as a footpath).

*Section 31(6) Highways Act 1980*

Under this provision of the Act, a landowner may submit a Statement and Plan to the local authority, declaring the extent of their landownership and depicting the rights of way that they accept to exist. This and a subsequent statutory declaration, have the effect of asserting that the landowner has no intention of dedicating any further right of way over their land.

The Council do not hold any statutory declarations regarding this application site.

**6.5.8** *Land Registry Information*

The claimed routes are on land with two affected landowners. Recent Land Registry searches were carried out in 2022. Landowner 1 is a company which owns the land on which the circular loop is identified within the application. Landowner 2 is a private landowner owning land adjacent to the application site and the land on which the linear spur coming off the circular loop is located. The boundary between the two landownerships is marked on Plan No. WCA/028.

**6.5.9** *Photographs and other evidence*

No photographs were submitted with the application. Officer photographs of the site were taken in 2011 and again recently in 2022.

It has also recently come to light that, as well as being a Site of Special Scientific Interest, the application site has also been designated as an Ancient Scheduled Monument since 2018 for its former use as a Soda Ash and Calcium Nitrate Works.

## 6.6 *Witness Evidence*

- 6.6.1 The Application was made in 2010 seeking to record several footpaths on the basis of long usage by the public. One form, filled out in dual names, duplicates forms that were later filled out individually so has not been included in the analysis, although it does contain extra background information which has been considered. A chart illustrating the user evidence from the total number of 12 witnesses is attached at Appendix 2.
- 6.6.2 In general terms the form's questions have been answered correctly, with quite a bit of additional information in some cases. Most users live in Plumley with some in nearby Northwich, representing the public at large, and attesting to up to a total of 57 years of usage. There is some variability in the hand drawn maps each user has submitted with their application, and they differ in showing different points used to access or leave the Nature Reserve / Lime beds area.
- 6.6.3 All users believe the claimed routes to be public footpaths, have used them on foot, by themselves and with others, and have seen other people using them on foot, many of whom they knew. They all describe a similar woodland path, with a natural surface, although there was a difference of opinion about whether the path was enclosed or not, and whether path furniture was to be found, or the existence of signs or notices, possibly due to varying memories over a 57-year time span.
- 6.6.4 Two of the users mention being given permission by the Cheshire Wildlife Trust warden, one of whom seems to have worked with the warden at the nature reserve. It has since been clarified by speaking to some landowners and some of the users, that the Cheshire Wildlife Trust may have given permission to users to walk the site but that they never technically owned the site, rather having managed the site for ICI. Further investigation with the Cheshire Wildlife Trust as to this historical permission unfortunately did not reveal any more detail.
- 6.6.5 One of the main issues with the user evidence is the fact that at least 5 of the users who completed forms are now confirmed deceased and many of the rest are very elderly or not available. Only two of the original users has been contactable to date for a phone interview.

- 6.6.6 Several of the witnesses refer in statements made in autumn 2009, to obstructions and notices being put in place “recently”. Therefore, without further evidence provided by a landowner, it is reasonable to assume that 2009 is the date of the first challenges of public user and therefore the relevant 20-year period for deemed dedication to have occurred is consequently 1989- 2009.
- 6.6.7 There are 12 users within the period of 1989-2009 with 10 of them claiming use throughout this period. They all claimed usage on foot. Therefore, there has clearly been enough use, by the public between 1989 and 2009, to make a prima facie argument for deemed dedication of a footpath.
- 6.6.8 Nearly all the witnesses claim to have used the path on a regular weekly to monthly basis, with one claiming use up to 5 times a week at one extreme, and another saying “occasionally”.
- 6.6.9 All the use appears to have been “as of right” rather than “by right” without any interruption for a full 20-year period. It does not appear any interruption to use occurred until about 2009, when several refer to obstructions in place such as gates and barbed-wire, and signs informing that the land was private and to keep out. Whilst the 20 year period covers the foot and mouth epidemic when paths were closed to the public, this is exempt in law from interrupted use.
- 6.6.10 Until signs were put up in 2009 by the previous landowner (copy of notices by previous landowner have been supplied with the notice wording having read: *“Keep Out! Private Property. Trespassers will be prosecuted”*), no evidence has come to light of any landowner previous to that having carried out any clear overt actions of a lack of intention to dedicate. Indeed, it could be deemed that the public were very much openly invited historically to the site given it was a Nature Reserve at one point (albeit not by the landowner specifically but by the Wildlife Trust as their land manager). However, the majority of the users did not mention gaining permission from anyone to use the site or being invited to use site.
- 6.6.11 In this case the majority of the original witnesses who filled in witness evidence forms are now deceased, have moved out of the area or were not available to contact. An interview with the past landowner who owned the entire site and also both current landowners has been possible and provided a lot of the history to the site. Phone interviews were held with two of the original witnesses and some follow up additional information was gained

from users from the parish council who did not originally fill in forms.

6.6.12 From the two interviews conducted with users they both clearly used the claimed footpaths unhindered and uninterrupted until 2009 when the notices went up which deterred use of the site and included their memory of the gate near Point A also being locked at this time. Current landowner 2 has lived near to the site since the late 1980s and provided a lot of the historical background to the usage of the site outlined in Section 6.1.3. Landowner 1 has only taken over the site in more recent years post-2009 so has limited knowledge on its history.

6.6.13 There are two dead end spurs within the application, D-X and F-Y on Plan No. WCA/028. These spurs obviously do not connect to another public highway but may have been considered leading to places of 'public resort' in the form of waterbodies. However, from the desktop analysis and interviews these spurs have been less mentioned and probably less used than the rest of the footpaths claimed. The loop on landowner 1's land was clearly very popular and the spur running off to the east onto landowner 2's land also provided a key link to join the other public footpaths in the area.

## 6.7 *Conclusion*

6.7.1 The documentary evidence considered in this case demonstrates that the site as a woodland /nature reserve did not really come into being physically until around the 1930s. In the early 1900s evidence on Ordnance Survey maps can be seen of the historical ammonia works site. Other maps examined do not add any additional evidence by not showing many physical features at the time of their production.

6.7.2 Under s.31(1) of the Highways Act 1980 a right of way can come into being by prescription unless there is evidence to the contrary. The use of the route on foot can be demonstrated by the witness evidence over the 20 year period 1989 to 2009. This use can also be supported by the significant length of use up to this period. The use provided is fairly frequent and regular and as it covers a long time period can be considered suitable for the acquisition of rights to have been demonstrated.

6.7.3 There is not considered to be enough evidence, however, of use of the spurs D-X and F-Y and also whilst these could have led to

a place of resort they do not join any other public highways and have not been mentioned clearly enough in the desktop analysis by users or during interviewing to suggest sufficient evidence of use.

- 6.7.4 The evidence in support of this application must show, on the balance of probabilities, that public footpath rights subsist along the claimed routes. The balance of user evidence supports the case that public footpath rights subsist along the routes A-B-C-D-A and A-E-F-G on Plan No. WCA/028, therefore, it is considered that the requirements of Section 53(3)(c)(i) have been met and it is recommended that a Definitive Map Modification Order is made to add these public footpaths at the Plumley Nature Reserve / Lime beds site and thus amend the Definitive Map and Statement.

## **7. Consultation and Engagement**

- 7.1 Consultation letters and a plan of the claimed routes were sent out to the Chelford Ward Member; Plumley with Toft and Bexton Parish Council; User Groups/Organisations and statutory undertakers via email on the 25<sup>th</sup> September 2022. Letters were sent to the current landowners also.
- 7.2 There were a few responses from the consultees.
- 7.3 The Cheshire East Council Conservation Officer responded to say that the application site is designated as a Site of Special Scientific Interest. Another local resident sent a brief response to simply state they agree that a footpath on the site would be an excellent idea and keep walkers on the hard track and had walked other footpaths in the area. Various other responses from the Parish Council came in at a much later date and are discussed in the witness evidence section of this report.

## **8. Implications**

### **8.1. Legal**

8.1.1 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.

8.1.2 Upon determination of this application, the authority must serve notice on the applicant to inform them of the decision. Under Schedule 14 of the WCA, if the authority decides not to make an order, the applicant may, at any time within 28 days after service of the notice, appeal against the decision to the Secretary of State. The Secretary of State will then

consider the application to determine whether or not an order should be made and may give the authority directions in relation to the same.

8.1.3 Legal implications are also included within the report.

**8.2. Finance**

8.2.1 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.

**8.3. Policy**

8.3.1 There are no direct policy implications of this report.

**8.4. Equality**

8.4.1 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.

**8.5. Human Resources**

8.5.1 There are no direct implications for Human Resources

**8.6. Risk Management**

8.6.1 There are no direct implications for risk management

**8.7. Rural Communities**

8.7.1 There are no direct implications for Rural Communities.

**8.8. Children and Young People/Cared for Children**

8.8.1 There are no direct implications for Children and Young People.

**8.9. Public Health**

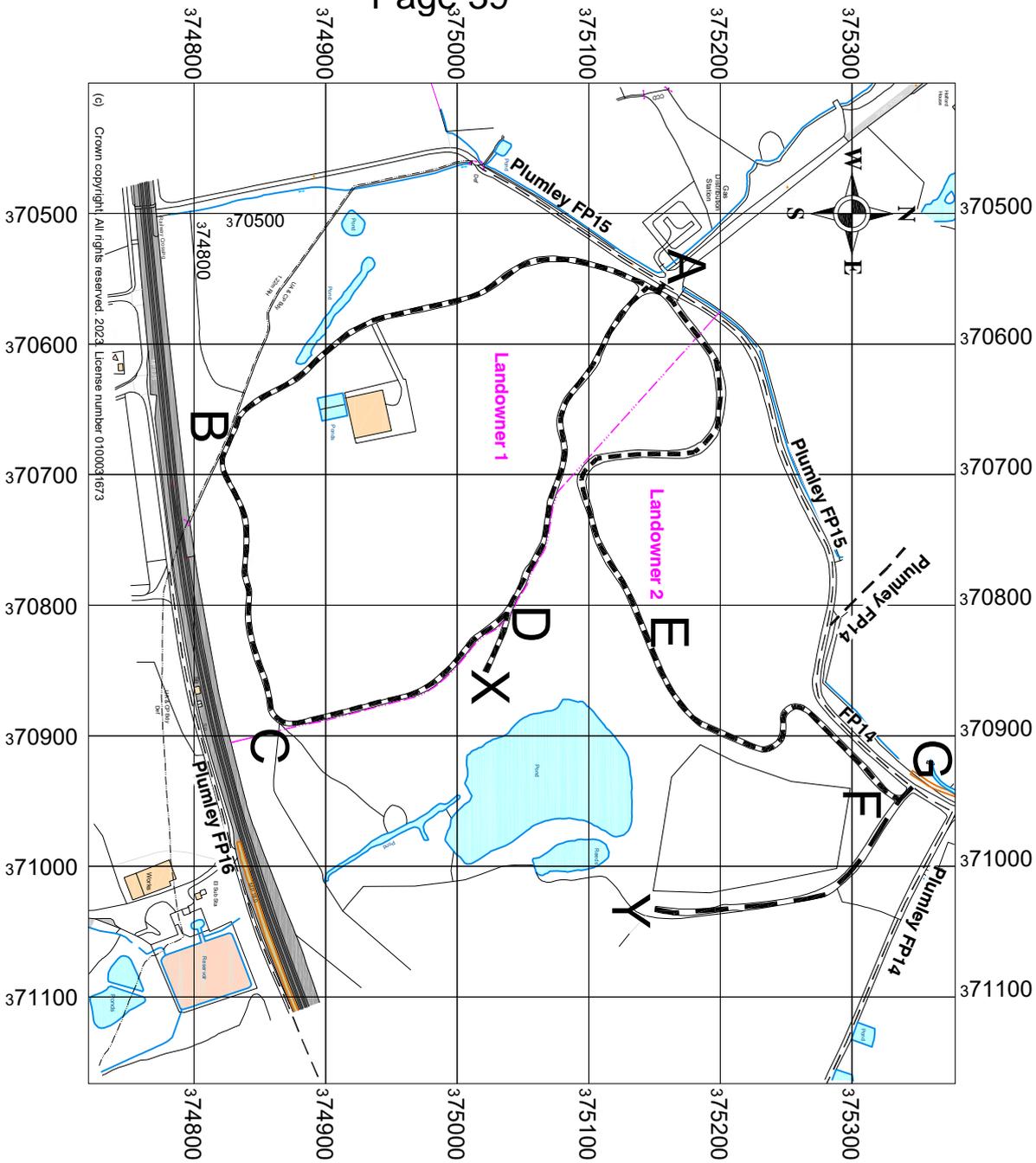
8.9.1 There are no direct implications for Public Health.

**8.10. Climate Change**

8.10.1 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.

8.10.2 The addition of public footpaths to the Definitive Map represents the formal recognition of pedestrian rights, creating more opportunities for leisure and the potential for the improvement/promotion of healthy lifestyles as part of a recognised recreational route.

<b>Access to Information</b>	
Contact Officer:	Clare Hibbert clare.hibbert@cheshireeast.gov.uk 01270 686063
Appendices:	Appendix 1 – Archive List Appendix 2 – User Evidence Chart Plan No. WCA/028
Background Papers:	File No. MA/5/245



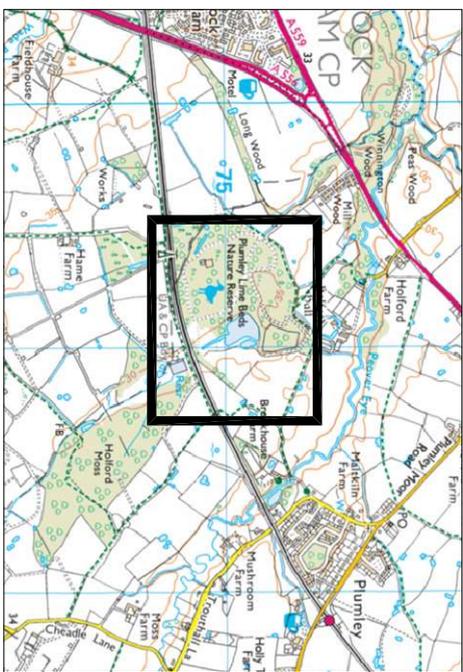
**Key:**

**Claimed Footpath**  
 A ■■■ B ■■■ C ■■■ D ■■■ A  
 D ■■■ X  
 A ■■■ E ■■■ F ■■■ G  
 F ■■■ Y

**Unaffected Public Footpaths**  
 - - - - -

**Landowner Line**  
 - - - - -

**SCALE 1:5000 @ A3**



SJ 70 75  
 WA16 0UA

**Cheshire East Council**  
 Wildlife and Countryside Act 1981 S.53  
 Addition of Footpaths at Plumley Lime Beds,  
 Parish of Plumley with Toft and Bexton. MA 5 245.

Plan No. WCA/028



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**APPENDIX 1****List of Archive Documents –****Application No. MA/5/245****Application to add public footpaths at Plumley Limebeds/Nature Reserve, Plumley**

PROW = Public Rights of Way Unit

CRO = Cheshire Record Office

TNA = The National Archives, Kew

<b>Primary Sources</b>	<b>Date</b>	<b>Site Shown/Mentioned</b>	<b>Reference Number/Source</b>
<b>County Maps</b>	1777-1831	Routes not shown	Cheshire Local History Society Online
<b>Tithe Records</b>			
Tithe Map	1845	Routes not shown only Holford Hall to east and bounded lane north of site.	CRO EDT 326/2
<b>Ordnance Survey Maps</b>			
O.S. 1" to 1 mile 1 <sup>st</sup> Edition	1871	Routes not shown as physical feature	PROW/Cheshire East Council
O.S. 2 <sup>nd</sup> Edition 1:25 inch	1890	Routes not shown as physical feature	PROW/Cheshire East Council
O.S. 3 <sup>rd</sup> Edition 1:25inch	1910	Routes not shown as physical feature however Ascol Drive to the north appears and Ammonia Soda Works annotated.	PROW/Cheshire East Council
O.S. 1" to 1 mile New Series	1936	Routes clearly shown as physical track feature within woodland site and annotated as Nature Reserve.	PROW/Cheshire East Council
<b>Bartholomew's Maps</b>	1902/1923 & 1942	Does not show claimed routes	Online (National Library of Scotland)
<b>Finance Act</b>			
Working Copy Map	1910	Routes not shown. Base mapping annotates Ammonia Soda Works and encompasses most of site in parcel 189.	CRO NVB XXXIV.7 – Cheshire Sheet

<b>Local Authority Records</b>			
Walking Survey Schedules and Maps	1951	Routes not shown	PROW Unit
Draft Map	1950's	Routes not shown	PROW Unit
Provisional Map	1952	Routes not shown	PROW Unit
Definitive Map & Statement	1953	Routes not shown	PROW Unit
<b>Additional records</b>			
Photos	2022	Site photos taken in 2022 of claimed route	PROW Unit – see photo sheet



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*Working for a brighter future together*

## **Public Rights of Way Sub-Committee**

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<b>Date of Meeting:</b>	13 March 2023
<b>Report Title:</b>	Wildlife & Countryside Act 1981 – Part III, Section 53. Application No. CO/8/41: Application for the Addition of a Public Bridleway, Watch Lane, Moston.
<b>Report of:</b>	Jayne Traverse, Executive Director Place
<b>Ward(s) Affected:</b>	Brereton Rural

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### **1. Purpose of Report**

- 1.1. This report outlines the investigation into an application made by Mr David Nixon to amend the Definitive Map and Statement to add a Public Bridleway at Watch Lane in the Parish of Moston. This report includes a discussion of the consultations carried out in respect of the claim, the historical evidence, witness evidence and the legal tests for a Definitive Map Modification Order to be made. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to add a Public Right of Way to the Definitive Map and Statement.
- 1.2. The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

### **2. Executive Summary**

- 2.1 The report considers the evidence submitted and researched in the assessment of an application to add a public bridleway in the Parish of Moston. The evidence consists of use on foot, horseback and pedal cycle by individual witnesses over a period of over twenty years and historical documents that demonstrate the existence/status of a route historically

forming part of the ordinary road network over a period of over 200 years. The report determines whether on the balance of probabilities the status of public bridleway or higher rights has been acquired. The reputation of the route as a thoroughfare linking two adopted roads is demonstrated through the County Maps, Tithe Map, Ordnance Survey maps and others and provides good evidence of a route with rights of bridleway status at least. Research has found that historically the claimed route was also part of the Ordinary Road Network and vehicles passed along it as with the other parts of Watch Lane. In 1952 a Traffic Regulation Order permanently restricted use by vehicles on part of the lane. The user evidence investigated and discussed provides evidence of use by those on foot, horseback and pedal cycle over a relevant 20 year period leading to the assertion that at least Public Bridleway rights have been acquired over time. The conclusion reached by Officers is that it is recommended the claimed section be recorded as a Restricted Byway.

### **3. Recommendations**

- 3.1** An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to add a Restricted Byway as shown between points A and B on Plan No. WCA/027.
- 3.2** 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.
- 3.3** In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

### **4. Reasons for Recommendations**

- 4.1** The evidence in support of this claim must show, on the balance of probabilities, that public restricted byway rights subsist along the claimed route. It is considered there is sufficient use of the route without force, secrecy, or permission, that is without interruption and as of right; to support the existence of restricted byway rights along the route shown between points A - B on Plan No. WCA/027. It is also considered that the historical evidence discovered demonstrates the existence of higher rights than a footpath or bridleway along the route consistent with a restricted byway.
- 4.2** It is considered that the requirements of Section 53(3)(c)(i) have been met in relation to restricted byway rights and it is recommended that the

Definitive Map and Statement should be modified to show a Restricted Byway along Watch Lane between points A - B on Plan No. WCA/027.

## 5. Other Options Considered

5.1. Not applicable.

Option	Impact	Risk
N/A	N/A	N/A

## 6. Background

### 6.1. Introduction

**6.1.1** The Application was made to Cheshire East Council in November 2014 by Mr David Nixon to add a Public Bridleway to the section of unadopted part of Watch Lane in the Parish of Moston. The application consisted of user evidence and a few letters (one from applicant and some letters relating to neighbouring landowner). A total of 13 user evidence forms were submitted demonstrating use on foot, horseback and pedal bicycle.

### 6.2. Description of the Application Route

**6.2.1** The claimed route commences at the eastern end from a car park at Watch Lane Flash (point A on Plan No. WCA/027, OS grid reference SJ 7272 6068) which is a fishing area with various lakes in the surrounding fields. The route proceeds along a slightly raised embankment (via an initial gap between posts with another barrier adjacent) and runs in a south westerly direction. It passes a junction with Public Footpath No.7 (which is to the south) before turning in a more north westerly direction where it re-joins the adopted section of Watch Lane at the western end by Watch Lane Farm (point B on Plan No. WCA/027, OS grid reference SJ 7225 6062).

**6.2.2** The surface of the route is a mixture of stone/gravel/earth with small trees/shrubs on both sides of the route that take up some of the usable width. The width of the usable route varies but is on average for the most part approximately 7 metres getting slightly wider as it approaches Watch Lane Farm. The width between the solid bounded feature lines marked on modern maps (therefore including the usable width), varies between approximately 5 metres and up to 20 metres, with its widest point in the middle of the application route.

### 6.3 Main Issues

**6.3.1** 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:-

**6.3.2** One such event, (section 53(3)(c)(i) is where

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

- (i) that a right of way which is not shown on 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, subsection to section 54A, a byway open to all traffic.

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

**6.3.3** Where the evidence in support of the application is user evidence, section 31(1) of the Highways Act 1980 applies. This states:

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

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

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

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

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

- 6.3.5** For public rights to have come into being through long use, as stated above, a twenty year period must be identified during which time use can be established. Where no challenge to the use has occurred, this period can be taken as the twenty years immediately prior to the date of the application. In this case the date of challenge can be identified as the date on which the application was submitted being 14<sup>th</sup> November 2014.
- 6.3.6** The Planning Inspectorate guidelines state, “Section 31, Highways Act 1980, as amended by section 68 of Natural Environment and Rural Communities Act (NERC) 2006, provides that use of a way by non-mechanically propelled vehicles (such as a pedal cycle) can give rise to a restricted byway”.
- 6.3.7** The case of *Whitworth v Secretary of State for the Environment, Food and Rural Affairs* (2010) is often quoted where there is evidence of use on horseback and pedal cycle. Section 30 of the Countryside Act 1968 gave pedal cyclists the right to ride on a bridleway; consequently, any use from 1968 onwards is said to be “by right”. In *Whitworth* the route was found to have pre-existing bridleway status, i.e. it was decided the status was a bridleway prior to 1968. It was suggested that subsequent use by cyclists of an accepted, but unrecorded, bridleway, where use of the bridleway would have been permitted by virtue of section 30 of the Countryside Act 1968, could not give rise to anything other than a bridleway.

**6.3.8** The Natural Environment and Rural Communities Act 2006 Section 67 (1) extinguished existing motor propelled vehicular rights where they were not recorded on the Definitive Map and Statement (DMS) at commencement (i.e. 2006) although there are a few exceptions to this outlined in subsections S67(2) & (3) of the Act.

**6.3.9** Two of the exceptions are Section 67(2)(b) and 67(2)(e) of the Act:

(b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.6) (list of highways maintainable at public expense).

and:

(e) it was created by virtue of use by such vehicles during a period ending before 1<sup>st</sup> December 1930.

These particular exceptions are discussed at paragraph 6.7.3 and 6.7.4 below, and it is explained why Officers believe the circumstances of this case do not meet these exceptions.

#### **6.4** *Investigation of the Claim*

**6.4.1** 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 1**.

#### **6.5** *Documentary Evidence*

##### *County Maps 18<sup>th</sup>/19<sup>th</sup> Century*

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

**6.5.2** *William Swire and W.F Hutching's map of the County of Cheshire, 1830*

This appears to be a first-class map bearing the words "From actual accurate Survey, Made in the years 1829 and 1829". The claimed route appears depicted as a category 'Cross Road' at a time before 1835 when maintenance fell on inhabitants of the Parish. It was clearly in existence as a highway therefore before the 1835 Highways Act and is depicted as a historical minor road.

**6.5.3** *Bryant's map of Cheshire 1832*

This map correlates closely with modern day surveys. The claimed route is named and depicted as category 'Lanes & Bridle Ways' and is therefore further evidence it was in existence prior to 1835.

**6.5.4** *Moston Tithe Map 1846*

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.

The Tithe Map of Moston shows the claimed route and the rest of the adopted sections of Watch Lane as a clear through route bounded by two solid lines and no parcel numbering. It is depicted the same as other known public highways. The parcel is not numbered and therefore will not be shown in the accompanying apportionment.

**6.5.5** *Enclosure Award & Map*

No Enclosure Award of Map exists for the Parish of Moston in the 1700s.

#### **6.5.6** *Ordnance Survey Records*

Ordnance Survey (O.S.) 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 is not evidence of the existence of a right of way. It can be presumed that this caveat applied to earlier maps.

##### *O.S. 1<sup>st</sup> edition 1 inch 1842*

The claimed route is shown as a defined feature and annotated as Watch Lane.

##### *O.S. 1<sup>st</sup> , 2<sup>nd</sup> , 3<sup>rd</sup> Edition County Series 25" to 1 mile 1875, 1897, 1909*

All three editions show the claimed route in the same way. The claimed route is shown a defined feature and annotated as Watch Lane. The claimed route section also has a defined track feature down the middle shown by double pecked lines between defined solid bounded boundary lines.

An old parish division boundary line is also annotated by dots along Watch Lane and annotated with 4ft R.H which refers to the distance from the root of the hedge to the boundary line.

##### *O.S. revised New Series 1:63,360 (1 inch:1 mile) 1897*

The claimed route is shown as a very clear through-route from Crabmill Lane to Red Lane bounded by solid lines and being slightly wider in the middle where the fishing ponds are now located.

##### *O.S. Book of Reference 1876*

The claimed route is described in a manner which fails to confer any indication of status, in this case as "Road" in parcel number "266".

#### **6.5.7** *Bartholomew's Half Inch to a Mile*

These maps were revised for the benefit of tourists and cyclists with help from the Cyclists' Touring Club (CTC). Local CTC members would generally have cycled every available route in their area, and it is subsequently assumed that any route that appeared on these maps had initially at least, been used without hindrance. These maps were well used by cyclists for their outings so the depiction here is likely to have led to it being used.

The 1902, 1923 and 1941 versions show the route as a road of different descriptions from 'Indifferent Roads' (Passable) to (Passable by Cyclists) to 'Other Road and Tracks'. Therefore, the claimed route continues to be shown as a minor road on the Ordinary Public Road Network well into the motoring age.

#### **6.5.8** *Finance Act 1910*

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

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

The Finance Act Survey map shows the claimed route including the entire length of Watch Lane as uncoloured and excluded from surrounding hereditaments and is depicted as a route of two parallel solid black lines. This therefore suggests that the route was considered to be a public highway at the time of the Finance Act Survey but does not itself provide evidence about the class of rights that existed over it.

#### **6.5.9** *List of Streets and Traffic Regulation Order (TRO) 1952*

The claimed route (part of Watch Lane) is not shown on the Council's List of Streets which shows highways maintainable at public expense, although at its western and eastern end it currently joins parts of Watch Lane which are recorded on the List of Streets (route numbers: UY117/B at the eastern end and UY1117 at the western end). It is believed the full length of Watch Lane was once on the List of Streets, but how or when this section was removed is not known.

From examining minutes of the County Council's Roads and Bridges Committee, there is reference in 1950 to "Watch Lane U/C, Elton – Subsiding Roadway" which is clearly referring to the claimed route with a resolution that the flooded portion of this road be closed for vehicles under the provisions of Sec 85 Highways Act 1835. However, no Stopping Up (extinguishment) Order made under the Highways Act has been found.

It would seem that rather than stopping up the highway permanently it was subsequently decided to make a Traffic Regulation Order (TRO) instead. With TRO Orders the highway rights remain albeit with restrictions on the use. The legal Order was produced and dated on 8<sup>th</sup> August 1952 and subsequently advertised in the London Gazette on 9<sup>th</sup> September 1952. The Order clearly states that a section of Watch Lane (approximately 212 metres), was restricted for vehicular use. Rights of passage for pedestrians, horse riders, pedal cyclists and horsedrawn carriages remained. The section subject to the TRO is from approximately point A (on Plan No. WCA/027) in a south westerly direction for approximately 212 metres. This section covers part of the claimed route.

It is not known if the claimed route was removed from the List of Streets following this TRO, though this would not have been a reason to remove it, as the highway rights were not stopped up and legally still existed. Also the section that is not recorded on the List of Streets is longer than that which is subject to the TRO. Today there is a modern 'road closed' highways sign located at the eastern end of the route.

#### **6.5.10** *Pre-Definitive Map Records*

The Public Rights of Way team hold records that pre-existed the Definitive Map process. The route is not shown on any of these maps.

#### **6.5.11 *Definitive Map Process – National Parks and Access to the Countryside Act 1949***

The Definitive Map and Statement is based on surveys and plans produced 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.

The claimed route is not shown on any of the 1950s records and maps leading up to the formation of the Definitive Map and Statement. The route is not shown on the Definitive Map, Draft Map or Provisional Map. Neither is it recorded on the Elton (Moston) footpath walking survey schedules. In 1970 the parishes of Elton and Tetton joined and became Moston. What is recorded however on all maps is Public Footpath No. 7 which joins the claimed route towards its western end and on the Moston walking survey schedule sheet is recorded as termination on “*Watch Lane - UC/3/26, 200yards SE of Watch Lane Farm*”.

#### ***Section 31(6) Highways Act 1980***

Under this provision of the Act, a landowner may submit a Statement and Plan to the local authority, declaring the extent of their landownership and depicting the rights of way that they accept to exist. This and a subsequent statutory declaration, have the effect of asserting that the landowner has no intention of dedicating any further right of way over their land.

There is no statutory declaration for the claimed route, but this is not surprising given there is no known landowner registered at Land Registry.

#### **6.5.12 *Land Registry Information***

The applicant highlighted within their application that there is no known/registered landowner along the claimed route. This has been confirmed with the Land Registry in 2022. The applicant did supply at the time of application Land Registry details of the landowner that abuts the claimed route.

#### **6.5.13 *Photographs and other evidence***

No photographs of the claimed route were supplied with the application, but a series of photos were taken in 2022 and are included at Appendix 3.

In 2018 a company called LandAspects working on behalf of Natural England completed an investigation as part of the “Discovery of Lost Ways” national project. They completed and supplied the Council with a review of documentary evidence in relation to this route. A report on this claimed route dated 16<sup>th</sup> May 2018 was produced by LandAspects. This report concluded that the route should be a public carriageway and that it met the legal tests under the Wildlife and Countryside Act 1981 to be added to the Definitive Map & Statement as a route with public vehicular rights. However this status can no longer be recorded due to the implications of the NERC Act, this is discussed at paragraphs 6.3.8 and 6.3.9 above.

## **6.6** *Witness Evidence*

- 6.6.1 The Application was made in November 2014, with 13 supporting user evidence forms, seeking to add a length of roadway between Watch Lane Farm and the Watch Lane Flash nature reserve as a bridleway. All 13 witnesses completed the forms correctly, with only a few questions unanswered, and most provided additional information. 12 provided evidence of use from 1962 to 2014, while the 13<sup>th</sup> provided evidence between 1942 and 1955. There is ample evidence of use from 1980 to suggest that this route has been well used over many years on foot, horseback and pedal cycle.

No evidence of challenge to public use has been shown, apart from the erection of signs and bollards to prevent vehicular access. No attempt has been made to prevent pedestrians, horseriders, pedal cyclists and horse-drawn carriages from gaining access. Therefore, the challenge date is taken as the date of the application – November 2014 – and the relevant 20 year period is thus 1994-2014. It is noted that in any one year, most users are represented as multi users of the route and therefore the maximum number of users of all kinds in any one year is 12. A chart illustrating the user evidence from the total number of 13 witnesses is attached as Appendix 2.

- 6.6.2 All users claim to have used the route in some form on a frequency ranging between weekly and monthly, with some daily.

This demonstrates sufficient frequency of use for any landowner to have observed it and taken actions to dissuade users if they had wished to prevent it.

- 6.6.3 All 13 witnesses seem to have been acting “as of right” not “by right” following permission or invitation. The only exception to this is user No. 12 who appeared on follow up to have used the route as an angler of Elworth Angling Society. The overwhelming majority of the use attested to is over the whole length of the route claimed and can be reasonably described as public in nature. For example, they are not using it with permission or as private access. Furthermore, the users themselves appear to represent the public at large, and not a small interest group or family.
- 6.6.4 Apart from the excepted provision in any time period including 2001, when areas of the countryside were closed because of foot and mouth disease, there is no period within the relevant 20 years when use was interrupted.
- 6.6.5 No evidence from any landowner has been seen. However, it is noted that several witnesses mention being seen by nearby residents while using the route and talking to an adjacent landowner who owned land adjacent in the 1990s and grazed cattle. It seems likely that no attempts have been made by any landowners to prevent dedication – the only action taken has been to prevent vehicular use of the route.
- 6.6.6 There is unanimity that the route claimed has not changed and follows the enclosed roadway of Watch Lane. Whilst witness No.11 answered in their user evidence form that ‘no the route has not been on the same alignment’, on interviewing it has been clarified that this should have stated that there has been no change of alignment. From O.S. map editions going back to the 19<sup>th</sup> century it is clear that Watch Lane has not changed course in recent history.
- 6.6.7 2 users (Nos. 4 & 9) were interviewed in person in December 2022, 3 (Nos. 2, 5 & 7) took part in phone interviews and one emailed (No. 12) some information and the others have not been able to be contacted. Of those interviewed all confirm the above summary of multi user evidence and indeed confirm that they all saw others using the route as well. Few of the horseriders remember being able to canter two a breast when the route was

less overgrown, and it has been used as a circular route to keep off the roads.

- 6.6.8 The application demonstrates a sufficient volume and frequency of public usage along a specific claimed route to reasonably allege that dedication of a bridleway occurred in the period 1994 – 2014.

## 6.7 *Conclusion*

- 6.7.1 The documentary evidence considered in this case demonstrates the existence of the route known as Watch Lane as a bounded lane which includes the claimed route that was clearly part of the Ordinary Road Network from early commercial maps. Indeed, as far back as 1830 the route was depicted as a public road of some sort. The claimed route has been an unaltered clear physical feature in the landscape from at least the 1800s. The tithe map also concurs with this albeit difficult to draw from this map alone its public status or otherwise. Likewise, the Finance Act Map also shows the route as a clear physical feature in the landscape and the fact the route is uncoloured and separate from surrounding hereditaments indicates public highway status of some degree. From research it has been demonstrated that the route did indeed have historical vehicular use and a legal Traffic Regulation Order was made in 1952 that permanently stopped up vehicular use on part of the claimed route.
- 6.7.2 The Green Lane Association state that they believe the route was historically a public road which Officers agree is backed up by historic evidence. Whilst the claimed route is currently not on the List of Streets, making it a highway maintainable a public expense, it had been until 1952. Past highway committee minutes provide clear evidence that the section of Watch Lane in this application must have been on the List of Streets prior to this date as there was discussion of proposals to legally close it as a public highway to vehicles, under section 85 Highways Act 1835.
- 6.7.3 The Natural Environment and Rural Communities Act (NERC) 2006 Section 67 (1) extinguished existing motor propelled vehicular rights where they were not recorded on the Definitive Map and Statement (DMS) at commencement (i.e. 2006) although there are a few exceptions to this, outlined in subsections S67(2) & (3) of the Act.

Officers consider that two of the subsection exceptions (that vehicular rights have not been extinguished) require discussion in this case, Sections 67(2) (b) and 67(2)(e) of the Act reading:

(b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.6) (list of highways maintainable at public expense).

and:

(e) it was created by virtue of use by such vehicles during a period ending before 1<sup>st</sup> December 1930.

Officers consider the other exemptions outlined in subsections S67(2) & (3) do not apply to this case.

6.7.4 If the claimed route fits into one or both of the exceptions (b) and (e) above the only outcome for this claimed route is for it to still have vehicular rights and be recorded as a Byway Open to All Traffic (BOAT). However, Officers do not consider that the exceptions apply. With regard to s 67(2)(b) the claimed section of Watch Lane was not on the List of Streets immediately before commencement of the Act in 2006; and although the evidence suggests it perhaps should have been, the fact is it was not.

6.7.5 An Inspector's decision dated 2<sup>nd</sup> December 2021 considered an Order made by Cornwall Council, the Order is titled "*The Cornwall Council (Addition of Restricted Byway from Road U6177 at Mawgan-in-Pydar School to Road U6177 at Lanvean in the Parish of St Mawgan-in-Pydar) Modification Order 2017*". The Planning Inspectorate Order Ref: ROW/3230685. In that case following a Public Inquiry the Inspector confirmed the Order. In that case the Parish Council argued that the omission of the road from the Council's 'List of Streets' had been an error of documentation and the Inspector should take the view that the route should have been recorded and treat it as such. The Inspector was neither satisfied nor persuaded that it was possible or appropriate to take this action and concluded that the Order route was not shown on the 'List of Streets' immediately prior to commencement of the 2006 Act and therefore vehicular rights were not saved from extinguishment by virtue of this exception.

6.7.6 With regard to s67(2)(e) the Inspector in the Cornwall case stated that the exemption to extinguishment of vehicle rights in this subsection relies on the route being *created* by virtue of use by vehicles during a period ending before 1 December 1930. The

Inspector was satisfied that use was established long before the beginning of the twentieth century and therefore did not consider that vehicular rights are saved from extinguishment by the exemption in subsection 67(2)(e) of the 2006 Act.

- 6.7.7 A High Court appeal against the Secretary of State for the Environment, Food and Rural Affairs and Cornwall Council was made by the Trail Riders Fellowship and Green Lane Association Limited to have the Modification Order quashed. The two grounds for appeal were the lawfulness of the Inspector's application of Section 67(2) of NERC 2006 and decision to not insist that a reference to the Ordnance Survey Map be included in Part II of the Order. A decision by The Honourable Mrs Justice Steyn DBE in the High Court of Justice dismissed both grounds. Citation number: [2022] EWHC 1804 (Admin) 16<sup>th</sup> June 2022.
- 6.7.8 This High Court challenge to this case shows that the Inspector correctly applied the exemptions. As the circumstances in respect to these two exemptions are similar to the Watch Lane claim, Officers consider the exemptions do not apply in this case and therefore the vehicle rights are extinguished under the NERC Act 2006.
- 6.7.9 With regard to the user evidence, under s.31(1) of the Highways Act 1980 a right of way can come into being by prescription unless there is evidence to the contrary. The use of the route by those on foot, horseback and cyclists can be demonstrated by the witness evidence over the 20 year period 1994 to 2014. This use can also be supported by the significant length of use up to this period. The use provided has been frequent and regular and as it covers a long time period can be considered suitable for the acquisition of rights to have been demonstrated. Therefore at least bridleway rights exist.
- 6.7.10 The evidence in support of this application must show, on the balance of probabilities, that restricted byway rights subsist along the claimed route. The balance of user evidence certainly supports the case that a public bridleway, at least, subsists along the route shown between points A and B on Plan No. WCA/027 and, combined with the documentary evidence, that the route historically is evidenced to have had public road status. However, due to the implications of NERC Act (see paragraph 6.7.3), that higher status cannot now be recorded, this means the status on balance has to be lower, that of restricted byway status (use on foot, pedal cycle, horseback and horse-drawn carriage). It is considered that the requirements of Section 53(3)(c)(i) have been

met and it is recommended that a Definitive Map Modification Order is made to record a Restricted Byway along Watch Lane, in the Parish of Moston, between points A and B on Plan No. WCA/027 and thus amend the Definitive Map and Statement.

## **7. Consultation and Engagement**

- 7.1** Consultation letters and a plan of the claimed route were sent out to the Ward Member; Parish Council; User Groups/Organisations; statutory undertakers and landowners on the 6<sup>th</sup> October 2022.
- 7.2** There were two responses from the consultees.
- 7.3** Moston Parish Council sent a very short email response simply stating that they support the application.
- 7.4** GLASS (Green Lane Association) sent a lengthy response accompanied by various maps. In general, they made the point backed up by map evidence from various commercial maps that demonstrates the claimed route had been part of the Ordinary Road Network since the earliest map (Swire and Hutchings' Map 1830). They stated they believed that further research would show the route to be a publicly maintainable road and that the Definitive Map Modification Order determination should not conclude with the recording of a Public Right of Way, but rather the Council's Highways records should reflect the existence of a public all-purpose carriageway. They touched on various pieces of legislation including the Natural Environment and Rural Communities Act 2006 and their interpretation on the law regarding motor propelled vehicles in application to the claimed route along Watch Lane. This is discussed in more detail in the conclusion in Section 6.7

## **8. Implications**

### **8.1. Legal**

**8.1** 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.

**8.2** Upon determination of this application, the authority must serve notice on the applicant to inform them of the decision. Under Schedule 14 of the WCA, if the authority decides not to make an order, the applicant may, at any time within 28 days after service of the notice, appeal against the decision to the Secretary of State. The Secretary of State will then

consider the application to determine whether an order should be made and may give the authority directions in relation to the same.

8.3 Legal implications are also included within the report.

## **8.2. Finance**

8.2.1 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.

## **8.3. Policy**

8.3.1 There are no direct policy implications of this report.

## **8.4. Equality**

8.4.1 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.

## **8.5. Human Resources**

8.5.1 There are no direct implications for Human Resources

## **8.6. Risk Management**

8.6.1 There are no direct implications for risk management

## **8.7. Rural Communities**

8.7.1 There are no direct implications for Rural Communities.

## **8.8. Children and Young People/Cared for Children**

8.8.1 There are no direct implications for Children and Young People.

## **8.9. Public Health**

8.9.1 There are no direct implications for Public Health.

## **8.10. Climate Change**

8.10.1 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.

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

<b>Access to Information</b>	
Contact Officer:	Jennifer Ingram Jennifer.ingram@cheshireeast.gov.uk 01270 686063
Appendices:	Plan No. WCA/027  Appendix 1 – Archive List Appendix 2 – User Evidence Chart Appendix 3 – Photo sheet
Background Papers:	File No. CO/8/41

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**APPENDIX 1****List of Archive Documents –****Application No. CO/8/41****Application to add a Public Bridleway on unadopted section of Watch Lane, Moston**

PROW = Public Rights of Way Unit

CRO = Cheshire Record Office

TNA = The National Archives, Kew

<b>Primary Sources</b>	<b>Date</b>	<b>Site Shown/Mentioned</b>	<b>Reference Number/Source</b>
<b>County Maps</b>			
Swire & Hutchings Map	1830	Described as Cross Road	CRO /PM 13/8
Bryants Map	1832	Described as Lane & Bridle Ways and part of Ordinary Road Network	CRO/ M5.2
Bartholomews Map	1902/1923 & 1942	Variable descriptions from indifferent roads to Other Roads and Tracks	Online (National Library of Scotland)
<b>Tithe Records</b>			
Tithe Map	1846	Route shown as clear physical feature unnumbered indicating public status	CRO EDT 156/2
<b>Ordnance Survey Maps</b>			
O.S. 1" to 1 mile 1 <sup>st</sup> Edition	1842	Route shown as physical feature	PROW/Cheshire East Council
O.S. 2 <sup>nd</sup> Edition 1:25 inch	1897	Route shown as physical feature	PROW/Cheshire East Council
O.S 1" to 1mile New Series	1902	Route is marked from key as 3 <sup>rd</sup> class metalled road	PROW/Cheshire East Council
O.S. 3 <sup>rd</sup> Edition 1:25 inch	1909	Route shown as physical feature	PROW/Cheshire East Council
OS Book of Reference	1876	No indication of status but referred to as Road for whole route	PROW/Cheshire East Council
<b>Finance Act</b>			
Working Copy Map	1910	Route shown uncoloured and excluded from surrounding hereditaments	CRO NBB 49/12 – Cheshire Sheet XLIX.12

		therefore indicating public status	
<b>Local Authority Records</b>			
Walking Survey Schedules and Map	Early 1950's	Route not shown as PROW on 1952 survey schedules and map but as clear physical feature	PROW Unit
Draft Map	1950's	Route not shown as PROW but clear physical feature	PROW Unit
Provisional Map	1952	Route not shown as PROW but clear physical feature	PROW Unit
Definitive Map & Statement	1953	Route not shown as PROW but clear physical feature	PROW Unit
<b>Additional records</b>			
Photos	2022	Site photos taken in 2022 of claimed route	PROW Unit – see photo sheet
List of Streets	2022	Not Shown	CE Highways Unit
Highways Minutes	1951	Resolution that flooded section (claimed section) of Watch Lane should be closed	CRO CCC/8/1
London Gazette	1952	Notice of TRO on part of claimed route restricting vehicles	PROW Unit
Traffic Regulation Order	1952	Restriction on vehicular usage on part of claimed route	PROW Unit
Lost Ways Report by Landaspects	2018	Concluded route was a public carriageway and should be added to Def Map & Statement.	PROW Unit

372000

372250

372500

372750

373000

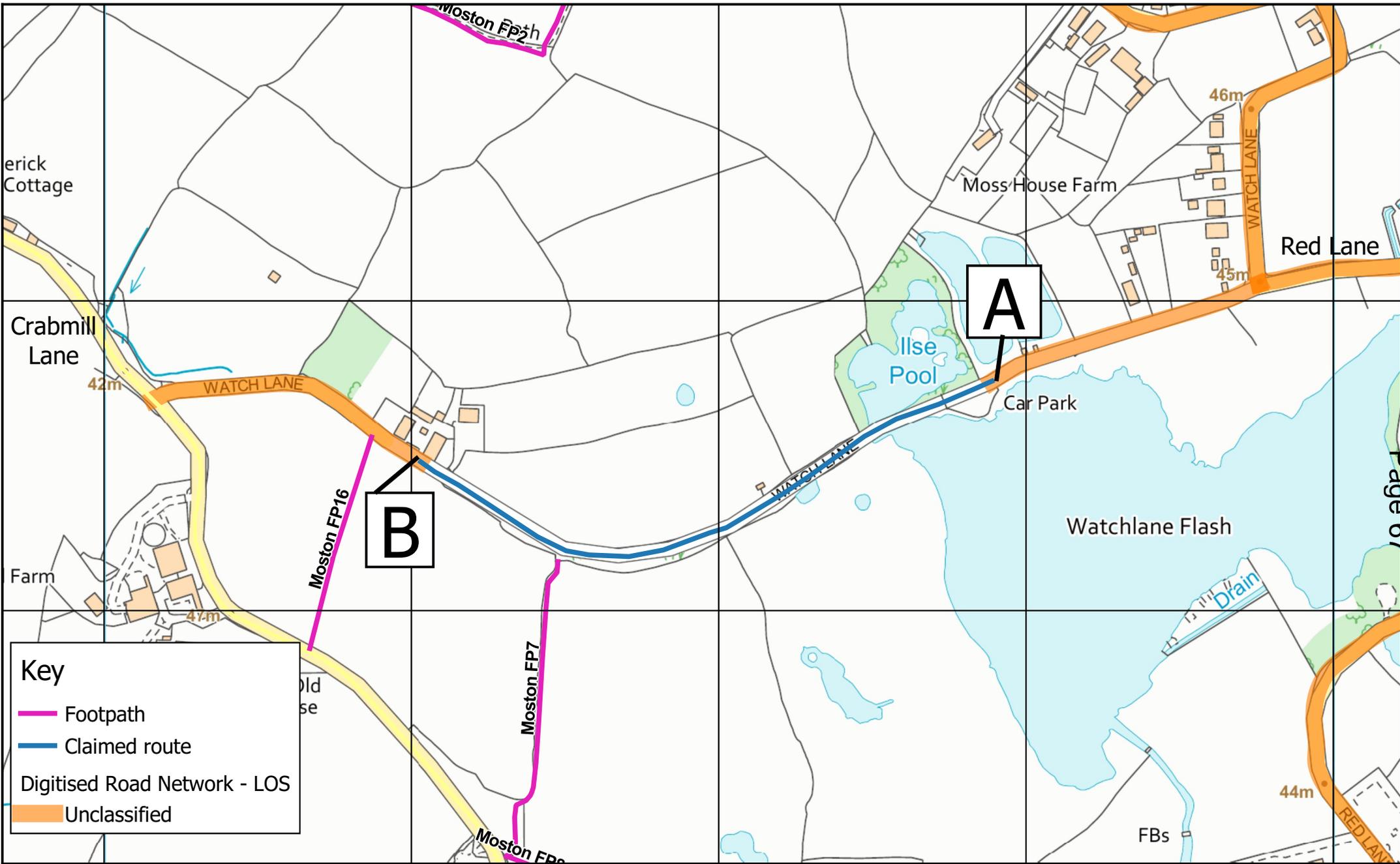
360750

360750

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**Key**

- Footpath
- Claimed route
- Digitised Road Network - LOS
- Unclassified



1:4000

Wildlife & Countryside Act 1981 – Application No. CO/8/41: Application for the Addition of a Public Bridleway, Watch Lane, Moston.

Plan No:  
WCA/027

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



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**Watch Lane, Moston**  
**Definitive Map Modification Order application**  
**Application no: CO/8/41**  
**Photograph sheet (Photos taken autumn 2022)**

1. Eastern end of claimed route (road closed side, gap and barrier)



2. Road Closed sign at eastern end, next to fishing ponds.



**3. Route heading west from eastern end**



**4 From claimed route approx. half way along looking south at junction with claimed route and existing Public Footpath No. 7**



**5. Low level bollard about halfway along route to one side**



**6. Claimed route approaching western end**



**7. Route at western end approaching Watchlane Farm**



**8. Western end of route where joins adopted highway outside Watchlane Farm**



9. From western end looking east back along claimed route.



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*Working for a brighter future together*

## **Public Rights of Way Sub-Committee**

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<b>Date of Meeting:</b>	13 March 2023
<b>Report Title:</b>	Wildlife & Countryside Act 1981 – Part III, Section 53. Application No.CO/8/49: Application to add a Public Footpath between Dingle Lane and Footpath No.11 Sandbach
<b>Report of:</b>	Jayne Traverse, Executive Director Place
<b>Ward(s) Affected:</b>	Sandbach Town

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### **1. Purpose of Report**

- 1.1. This report outlines the investigation into an application made by Mr Trevor Boxer (Sandbach Footpath Group) to amend the Definitive Map and Statement to add a public footpath between Dingle Lane and Footpath No.11 in the town of Sandbach. This report includes a discussion of the consultations carried out in respect of the claim, the historical evidence, user evidence and the legal tests for a Definitive Map Modification Order to be made. The report makes a recommendation based on that information, as to whether an order should be made to add a Public Footpath to the Definitive Map and Statement.
- 1.2 The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

### **2. Executive Summary**

- 2.1 The report considers the evidence submitted and research into the application to add a Public Footpath between Dingle Lane and Footpath No.11 Sandbach. The evidence consists of use on foot by individual witnesses over a period of 20 years and historical documents that demonstrate the existence/status of the route over a period of 200 years.
- 2.2 The report determines whether on the balance of probabilities the status of footpath has been acquired and/or whether the route has higher rights.

The documentary evidence considered in this case demonstrates the existence of the route as from the early 19<sup>th</sup> Century. The user evidence investigated and discussed provides strong evidence of use by foot over a relevant 20 year period and, in conjunction with the historical evidence, leads to the assertion that footpath rights exist, the rationale for this legal status being explained in the report.

### **3. Recommendations**

- 3.1** An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to add a footpath as shown between point A and B on Plan No. WCA/262/029 at Appendix 3.
- 3.2** 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 of the power conferred on the Council by the said Act.
- 3.3** In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

### **4. Reasons for Recommendations**

- 4.1** The evidence in support of this claim must show, on the balance of probabilities, that public footpath rights subsist along the claimed route. It is considered there is sufficient use of the route without force, secrecy, or permission, that is without interruption and as of right; to support the existence of footpath rights along the route shown between point A – B on Plan No. WCA/262/029 at Appendix 3.
- 4.2** It is considered that the requirements of Section 53(3)(c)(i) have been met in relation to footpath rights and it is recommended that the Definitive Map and Statement should be modified to show a Footpath between Dingle Lane and Footpath No.11 Sandbach.

### **5. Other Options Considered**

- 1.1.** Not applicable this is a non-executive matter.

### **6. Background**

## **6.1 Introduction**

**6.1.1** The application was made to Cheshire East Council on 31<sup>st</sup> March 2016 by Mr Trevor Boxer of Sandbach Footpath Group to add a footpath between Dingle Lane (leading from Well Bank) to Footpath No.11 in the town of Sandbach. The application consisted of user evidence forms and maps. A total of 12 user evidence forms were submitted demonstrating use on foot.

**6.1.2** Further evidence was submitted in the form of copy of the 1911 Ordnance Survey map.

**6.1.3** The applicant appealed non-determination in September 2021 to the Secretary of State, who directed the Council on the 17<sup>th</sup> of February 2022 to determine the application by the 17<sup>th</sup> of February 2023. During 2022, it was hoped that the matter could be resolved via dedication, however that wasn't forthcoming and the Council has proceeded to determination.

## **6.2 Description of the application route.**

**6.2.1** The claimed route commences from the public highway known as Dingle Lane (UY2126) and runs in a north easterly direction, to its termination at the junction with Footpath No.11 Sandbach.

**6.2.2** The first section of the route runs between No. 7 Dingle Bank and Dingle Farm, bounded on both sides by boundary walls. Slightly further along from the farm entrance there is an unlocked field gate with gap alongside. Beyond the field gate, going north easterly, the route continues between a boundary wall and temporary construction fencing. The surface at this point is a natural well-trodden path for approximately 58 metres. Here the boundary of the route changes to natural hedging for approximately 152 metres to where it terminates at the junction with Footpath No.11 Sandbach.

## **6.3 Main issues**

**6.3.1** 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 to them to be requisite in consequence of the occurrence of certain events:-

**6.3.2** One such event, (section 53(3)(c)(i) is where

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

- (i) that a right of way which is not shown on 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.

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

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

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

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

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

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

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

requirement of the proviso. It was also held that the lack of intention to dedicate means “at some point during that period”, it does not have to be continuously demonstrated throughout the whole twenty-year period.

For public rights to have come into being through long use, as stated above, a twenty-year period must be identified during which time use can be established. Where no challenge to the use has occurred, this period can be taken as the twenty years immediately prior to the date of the application. In this case the date of challenge can be identified as the date on which the application was submitted, being 31<sup>st</sup> March 2016.

#### **6.4 Investigation of the Claim.**

**6.4.1** 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 1.

#### **6.5 Documentary Evidence**

##### *County Maps 18<sup>th</sup>/19<sup>th</sup> Century*

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

The claimed route was not shown on any of the early commercial maps at the time of when they were surveyed.

##### **Tithe Records**

**6.5.2** Tithe Awards were prepared under the Tithe Commutation Act 1836, which commuted the payment of 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 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.

The Sandbach Township Tithe Map & Apportionment 1841 shows the full extent of the claimed route marked by one single dashed line and is within numbered parcels - parcel No. 400, described as “over dingle field & parcel No. 265”. The tithe appointment shows that there was a tithe payable from Lord Hungerford, Crewe, for both fields with no description of the claimed route was found.

### **Finance Act 1910**

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

The claimed route is partially shown on the map as two solid lines within a coloured hereditament numbered 209 with no description, indicating the road was not considered public highway at the time of the survey.

### **Ordnance Survey Records**

**6.5.5** Ordnance Survey (O.S.) 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 is not evidence of the existence of a right of way. It can be presumed that this caveat applied to earlier maps.

*O.S. 1<sup>st</sup> edition 1 inch 1856 (Old Series) & 1887 (New Series)*

The 1<sup>st</sup> edition 1 inch of 1856 map does not show the route on this early map. The New Series 1 inch edition of 1887 shows the route as a single dashed line.

O.S. Cheshire Sheet L.NW Six-inch, 1899, 1911 & 1946

The route is shown on this map again as double solid lines with a single line across the route at the north of the route.

O.S. 3<sup>rd</sup> Edition 1 inch Revised 1905, published 1907.

The map shows the route as a single dashed line.

*O.S. Map: 1:500, sheet SJ 76 SE, Date 1989*

The route is shown as a double solid line.

*O.S. Map: 1:1000, sheet SJ 76 SE, Date 1979*

The route is shown as a double solid line.

#### **6.5.6 Definitive Map Process – National Parks and Access to the Countryside Act 1949**

The Definitive Map and Statement is based on surveys and plans produced 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.

The green book, a pre-definitive map record, sheet No 14 SW, shows the claimed route as a double solid line, but is shown uncoloured on the map, therefore considered not to be public at the time of the survey.

The walking survey map did not identify the claimed route as being public, but clearly shows the claimed route as a physical feature bounded by two solid parallel lines joining Dingle Lane and Footpath No.11 Sandbach. However the parish survey sheets describe Footpath No.11 by '*Path commences at Congleton Road, 80 yards east of the entrance to "Parkhouse Farm" and runs in a south westerly direction and terminates at Well Bank north of "Dingle Lane"*'. This description appears to include the claimed route.

The claimed route also is not marked on the Provisional Map of 5<sup>th</sup> November 1953 as public, but clearly shows the claimed route as a physical feature bounded by two solid parallel lines joining Dingle Lane and Footpath No.11 Sandbach. The route was therefore not marked on the final Definitive Map, hence this application.

Whilst the surveys of the early 1950s do not show the claimed route as public, they do show the route as a clear throughfare between Dingle Lane and Footpath No.11 Sandbach and depicted by parallel solid black lines.

#### **6.5.7 Photographs and other evidence**

During the investigation into this claim photographs were taken in November 2022. The photographs of the route demonstrate that the route is significantly used by the public by the evidence of a well-trodden route on the ground.

Aerial photographs from 1971 to 2015 show the claimed route on the ground as a well-trodden desired route along the entire length of the claimed route.

## **6.6 Witness Evidence**

**6.6.1** The Application, when made on 31<sup>st</sup> March 2016, was accompanied by 12 user evidence forms. Since that time, 1 of the users is now deceased. In total 11 witnesses were contacted to be interviewed. Interviews with 8 were held face to face and 1 was conducted as a phone interview. The users all clearly refer to the same route, all believe it to be a footpath and can give evidence of use from 1985 to 2016 on foot. User evidence from the total number of 11 witnesses is illustrated in a chart at Appendix 2.

The use of the route appears to have been recreational and for active travel. The use of the route was along the full length and for a range of activities, including walking, walking dogs, walking to school and accessing the local shops.

The witnesses refer to the lack of maintenance of the route, and how it has become narrower and overgrown over time. Much of the route is enclosed by hedging on either side, but there is a small section at the southern end of the route where the boundary is walled and fenced. The witnesses all claim the course of the route has not changed in recent memory.

None of the witnesses mentioned any challenges to use on foot, by any of the landowners, and none was given permission to use the route or had any connection with the land or landowners in question. None of the witnesses mentioned seeing any notices along the route to suggest that the route was private.

In the relevant 20 year period retrospective to the application, 1996-2016, no challenge to use of the route has been identified and therefore the 20 year period of deemed dedication has been satisfied. During this period, 11 people claim use throughout the time on foot – 1 of which also claimed very occasional use by bicycle. The use varied in frequency from people using it occasionally to daily and varied through time.

From the interviews it appears to have been a very well-known and used route.

It can be concluded from the user evidence presented, and more detailed interviewing of witnesses, that a prima facie case of sufficient evidence of use in the relevant 20 year period has been made for deemed dedication to have occurred as a public footpath.

## **6.7 Conclusion**

**6.7.1** The documentary evidence considered in this case demonstrates the existence of the route from the mid-18<sup>th</sup> Century. The Tithe Map of 1841 shows the route as a single dashed line within numbered parcels. The Finance Act shows the route within coloured hereditaments, the parish records of the 1950s describe the claimed route as a through-route. In addition, the O.S. map records also provide evidence of the existence of the claimed route at the time of the survey.

**6.7.2** Under s.31(1) of the Highways Act 1980, a right of way can come into being by prescription unless there is evidence to the contrary. The use of the route by walkers can be demonstrated by the witness evidence over the 20 year period 1996-2016. This use can also be supported by the significant length of use up to this period. The use provided is reasonably frequent and covers a long time period and can be considered suitable for the acquisition of rights to have been demonstrated. From interviewing particularly, it has been demonstrated that there is certainly sufficient use to demonstrate footpath rights have come in to being.

**6.7.3** The evidence in support of this application must show, on the balance of probabilities, that footpath rights subsist or reasonably alleged to subsist along the claimed route. The balance of user evidence combined with documentary evidence certainly support the case that a public footpath subsists along the routes A-B (Plan No. WCA/262/029). It is therefore considered that the requirements of Section 53(3)(c)(i) have been met and it is recommended that a Definitive Map Modification Order is made to record a Public Footpath between Dingle Lane and Footpath No.11 Sandbach and amend the Definitive Map and Statement.

## **7. Consultation and Engagement**

**7.1** Consultation letters and a plan of the claimed route were sent out to the Ward Member; Town Council; user groups/organisations; statutory undertakers and landowners.

No responses have been received from the landowners at the time of writing this report. The following responses were received:

Ward Councillors covering the Sandbach area were consulted with: Councillor Crane covering the Ward of Sandbach, Ettiley Heath and Wheelock, responded to say she fully supported the application, and no response was received from Cllr Benson, of Sandbach Town Ward.

Sandbach Town Council responded to say that the Town Council had no objection and support the Definitive Map designation of this footpath.

The Open Spaces Society area officer responded stating that they strongly support the application and that they have personally walked the route for nearly 30 years. The Access Field Officer for The British Horse Society responded on the 20<sup>th</sup> December 2022 with a holding objection until they had the opportunity to review the application further. On the 22<sup>nd</sup> December 2022 they responded to their initial email and removed their holding objection.

United Utilities also responded to state they had no objection to the application.

## **8. Implications**

### **8.1 Legal**

**8.1.1** 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.

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

### **8.2 Finance**

**8.2.1** 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.

### **8.3 Policy**

There are no direct policy implications of this report.

**8.4 Equality**

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.

**8.5 Human Resources**

There are no direct implications for Human Resources

**8.6 Risk Management**

There are no direct implications for risk management

**8.7 Rural Communities**

There are no direct implications for Rural Communities.

**8.8 Children and Young People/Cared for Children**

There are no direct implications for Children and Young People.

**8.9 Public Health**

There are no direct implications for Public Health.

**8.10 Climate Change**

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.

The addition of a footpath to the Definitive Map represents the formal recognition of pedestrian rights, creating more opportunities for active travel and leisure and potentially reducing the use of cars for short local journeys. It also has the potential for the improvement and promotion of healthy lifestyles.

<b>Access to Information</b>	
Contact Officer:	John Lindsay john.lindsay@cheshireeast.gov.uk 01270 686203
Appendices:	Appendix 1 – Archive List Appendix 2 – User Evidence Chart Plan No. WCA/262/029
Background Papers:	File no. CO/8/49

## APPENDIX 1

**List of Archive Documents – Application No. CO/8/49  
Claim for Footpath in the Town of Sandbach**

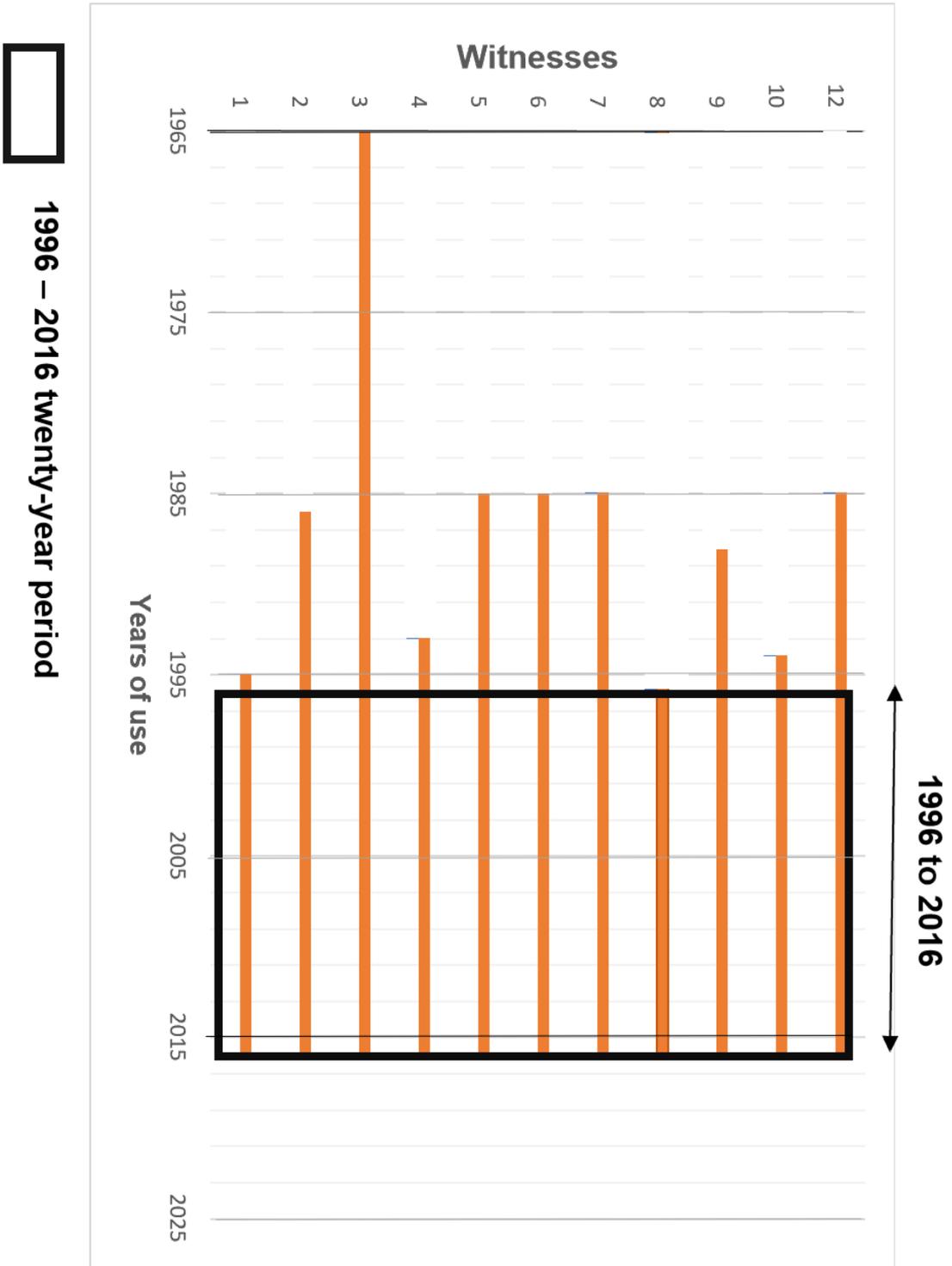
**PROW = Public Rights of Way**

**CRO = Cheshire Record Office**

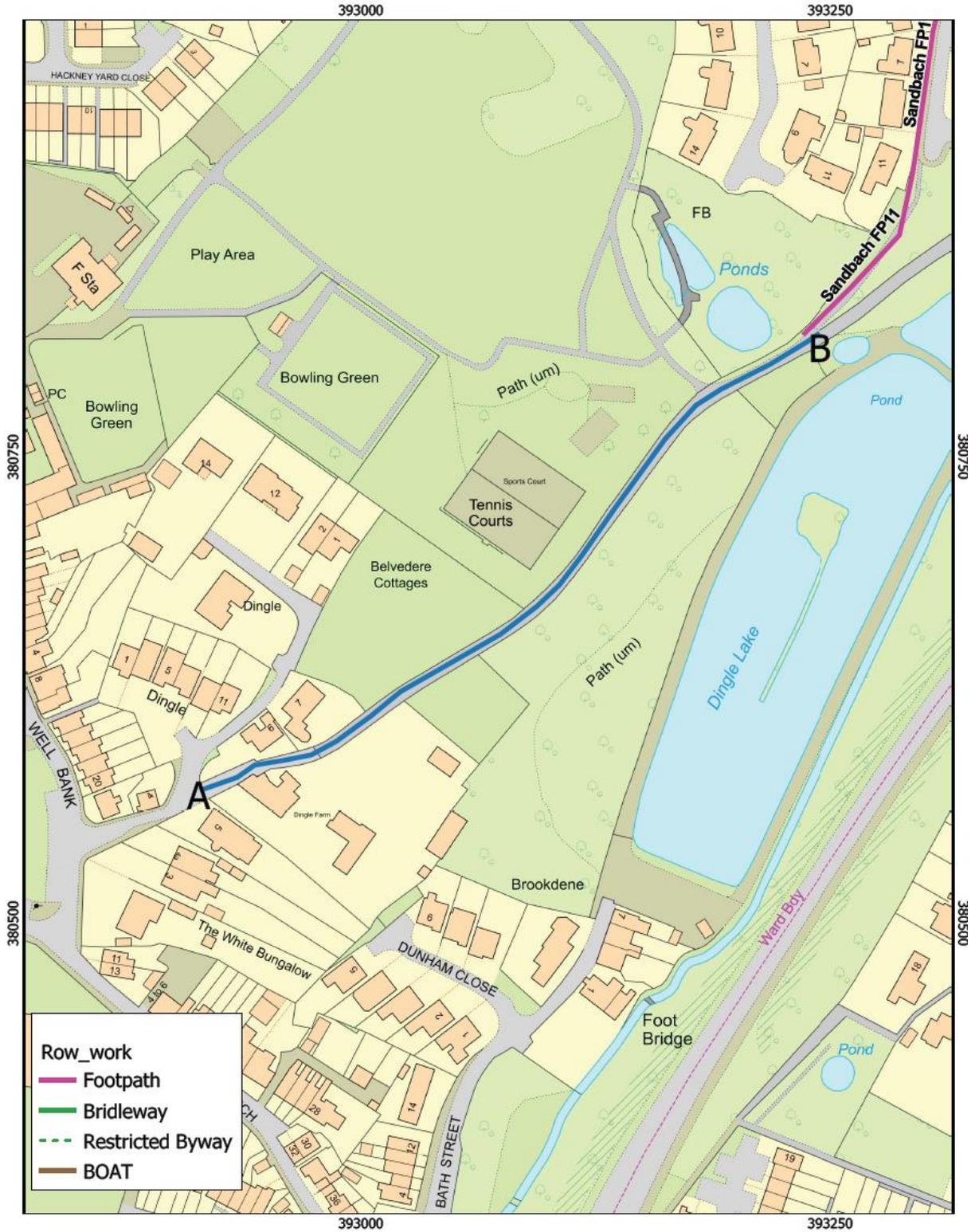
<b>Primary Sources</b>	<b>Date</b>	<b>Site Shown/Mentioned</b>	<b>Reference Number/Source</b>
Burdett	1794	Claimed Route not shown	<a href="https://maps.nls.uk/counties/cheshire">https://maps.nls.uk/counties/cheshire</a>
Cary J	1809	Claimed Route not shown	<a href="https://maps.nls.uk/counties/cheshire">https://maps.nls.uk/counties/cheshire</a>
Greenwoods	1819	Claimed Route not shown	<a href="https://maps.nls.uk/counties/cheshire">https://maps.nls.uk/counties/cheshire</a>
Bryants	1831	Claimed Route not shown	<a href="https://maps.nls.uk/counties/cheshire">https://maps.nls.uk/counties/cheshire</a>
Swire & Hutching	1830	Claimed Route not shown	<a href="https://maps.nls.uk/counties/cheshire">https://maps.nls.uk/counties/cheshire</a>
Bartholomew Half-inch to a mile	1902 - 1906	Claimed Route not shown	<a href="https://maps.nls.uk/counties/cheshire">https://maps.nls.uk/counties/cheshire</a>
Bartholomew Half-inch to a mile	1937 - 1961	Claimed Route not shown	<a href="https://maps.nls.uk/counties/cheshire">https://maps.nls.uk/counties/cheshire</a>
Tithe Map	1841	Claimed Route shown as a single dash line.	CRO EDT 351/2a
Tithe Apportionment	1841	Claimed route not described in numbered parcels	CRO EDT 351/2b & /2a
Enclosure Records		None available	N/A
Finance Act		Claimed route shown within coloured hereditament's	CRO IR/132/2/2/266
Ordnance Survey 1 <sup>st</sup> Edition 1inch, sheet 73	1856	Claimed Routes not shown	<a href="#"><u>Ordnance Survey Maps - National Library of Scotland (nls.uk)</u></a>
Ordnance Survey, New Series 1:25 inch, sheet 110	Published 1887, Surveyed 1870 to 1877	Claimed Routes shown as a single dashed line.	<a href="#"><u>Ordnance Survey Maps - National Library of Scotland (nls.uk)</u></a>

Ordnance Survey 3 <sup>rd</sup> Edition 1:25 inch, Sheet 110	Revised 1905, Published 1907.	Claimed Routes shown as a single dashed line.	<a href="#">Ordnance Survey Maps - National Library of Scotland (nls.uk)</a>
Cheshire Sheet L.NW Ordnance Survey Six-inch England and Wales	Revised 1897, Published: 1899	Claimed Routes shown as double solid lines and has a line across the claimed route at the northern end.	<a href="#">Ordnance Survey Maps - National Library of Scotland (nls.uk)</a>
Cheshire Sheet L.NW Ordnance Survey Six-inch England and Wales	Revised: 1907 Published: 1911.	Claimed Routes shown as double solid lines and has a line across the claimed route at the northern end.	<a href="#">Ordnance Survey Maps - National Library of Scotland (nls.uk)</a>
Cheshire Sheet L.NW Ordnance Survey Six-inch England and Wales	Revised: 1938 Published: ca 1946.	Claimed Routes shown as double solid lines and has a line across the claimed route at the northern end	<a href="#">Ordnance Survey Maps - National Library of Scotland (nls.uk)</a>
Ordnance Survey Map: 1:500, sheet SJ 76 SE	1989	Claimed Routes shown as double solid lines	PROW/Cheshire East Council
Ordnance Survey Map: 1:10000, sheet SJ 76 SE	1979	Claimed Routes shown as double solid lines	PROW/Cheshire East Council
Aerial Photographs	1971 to 2015	Claimed Route shown as a defined route.	CRO Cheshire Tithe Maps Online ( <a href="#">cheshireeast.gov.uk</a> )
The Green Book, Pre-Definitive Map Record, Sheet No 14 SW		Uncoloured on the map but shown as a double solid line.	PROW/Cheshire East Council
Draft Definitive Map	1950	Claimed Routes shown as two solid lines	PROW/Cheshire East Council Offices
Parish survey sheets	1952	Route described as <i>terminates at Well Bank north of "Dingle Lane"</i>	PROW/Cheshire East Council Offices
Provisional Definitive Map	1953	Claimed Routes shown as two solid lines	PROW/Cheshire East Council Offices
Definitive Map & Statement	1953	Claimed Routes shown as two solid lines	PROW/Cheshire East Council Offices

APPENDIX 2



APPENDIX 3



CO/8/49 Claimed Footpath from Dingle Lane to Footpath No11 Sandbach A - B

Plan No. WCA/ 262/029

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



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## **Public Rights of Way sub committee**

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**Date of Meeting:** 13<sup>th</sup> March 2023

**Report Title:** Informative Report:  
Secretary of State decisions for Highways Act 1980  
S119 Diversion of Footpath No. 4 Parish of Poole,  
Diversion of Footpath No. 5 in the Parish of Adlington  
and Diversion of Footpath No. 2 in the Parish of Eaton.

**Report of:** Jayne Traverse, Executive Director Place

**Ward(s) Affected:** Bunbury, Poynton West and Adlington, and Eaton  
Wards

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### **1. Purpose of Report**

- 1.1. This report is an informative to brief Members on the decision made by the Planning Inspectorate on behalf of the Secretary of State on the Orders made by the Council to divert Footpath No. 4 in the Parish of Poole, Footpath No. 5 in the Parish of Adlington and Footpath No. 2 in the Parish of Eaton under the Highways Act 1980 s119.
- 1.2. The work of the Public Rights of Way team contributes to the Corporate Plan priority "A thriving and sustainable place", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

### **2. Executive Summary**

- 2.1 The report informs Members that following the referral of these Orders to the Planning Inspectorate following objection, they have been determined by written representations and subsequently confirmed.

### **3. Recommendations**

- 3.1. No decision is required by Committee

#### **4. Reasons for Recommendations**

- 4.1. Not Applicable and other options are therefore not relevant.

#### **5. Background**

- 5.1. Once a proposed diversion has been determined by the Public Rights of Way Sub-Committee a legal Order is made, which may then be the subject of objections. If objections are not withdrawn, this removes the power of the Local Highway Authority to confirm the Order itself, and may lead to a hearing or Public Inquiry. It follows that the Committee decision may be confirmed or not confirmed. The following Diversion Orders have been recently determined by the Planning Inspectorate by the written representations process.
- 5.2. The Cheshire East Borough Council (Footpath No. 4 (Part) Parish of Poole) Public Path Diversion Order
- 5.2.1. The Cheshire East Borough Council (Footpath No. 4 (Part) Parish of Poole) Public Path Diversion Order was made on 28<sup>th</sup> March 2019. Public notice of the Order having been made was published in the local press, posted on site and served on the relevant organisations on 3<sup>rd</sup> April 2019.
- 5.2.2. The advertising of the Order attracted one objection from the Open Spaces Society, the initial objection was that the proposed diversion did not meet the legal tests and also failed to resolve the issues that the applicant claimed to be the reason for the diversion. Officers had extensive conversations and correspondence with the Open Spaces Society to attempt to understand and resolve the objections.
- 5.2.3. It was understood that their objections were that the diversion was
- a) less convenient because it ran around the edge of the field,
  - b) less enjoyable because it was enclosed at 2.5 metres width with potential for overgrowth and future maintenance
  - c) unknown status of part of Cinder Lane.
- 5.2.4. However, subsequent to the submission of the Order to the Planning Inspectorate, the objection from the Open Spaces Society was withdrawn.
- 5.2.5. The Order was confirmed by the Planning Inspectorate on the 15<sup>th</sup> March 2022.
- 5.3. The Cheshire East Borough Council (Footpath No. 5 (part) Parish of Adlington) Public Path Diversion Order 2018
- 5.3.1. The Cheshire East Borough Council (Footpath No. 5 (part) Parish of Adlington) Public Path Diversion Order was made on 3<sup>rd</sup> March 2018. Public notice of the Order having been made was published in the local press, posted on site and served on the relevant organisations on 16<sup>th</sup> March 2018.

- 5.3.2. The advertising of the Order attracted two objections. One was from Cadent Gas which was later withdrawn leaving one outstanding objection. The objection from a member of the public was related to the new termination point of the diversion as it was considered to be inappropriate leading to users having to walk along the road.
  - 5.3.3. Officers responded to the objection, addressed the point raised and sought the withdrawal of the objection.
  - 5.3.4. No statement of case was submitted from the objector to the Planning Inspectorate so the decision from the Inspector was based on the initial objection.
  - 5.3.5. The Inspector concluded that the diversion is expedient in the interests of the landowners and that it would not be substantially less convenient to the public.
  - 5.3.6. The Order was confirmed by the Planning Inspectorate on 1<sup>st</sup> June 2022.
- 5.4.** The Cheshire East Borough Council (Footpath No.2 (part) Parish of Eaton Public Path Diversion Order 2019
- 5.4.1. The Cheshire East Borough Council (Footpath No.2 (part) Parish of Eaton Public Path Diversion Order 2019 was made on 21 February 2019. Public notice of the Order having been made was published in the local press, posted on site and served on the relevant organisations on 7<sup>th</sup> March 2019.
  - 5.4.2. Advertising of the Order attracted three objections. Officers responded to the objections, addressed the points raised and sought the withdrawal of the objections. Two objections were withdrawn and one objection was sustained by the Open Spaces Society. The main objections that the Society had were as follows:
    - a) The definitive line was obstructed
    - b) The proposed route failed to meet the legal tests and the diversion was excessive in satisfying the privacy and security rationale for the diversion in the interests of the applicant
    - c) The proposed route was substantially narrower than 2.5 metres for a considerable proportion of its length and was less than 1 metre wide in parts
    - d) The conditions underfoot, were unacceptable, and substantially worse following some rain.
    - e) The proposed enclosure was oppressive and therefore unacceptable.
  - 5.4.3. Subsequent to the submission of the Order to the Planning Inspectorate, the objection from the Open Spaces Society was withdrawn.
  - 5.4.4. When submitting the Order, The Cheshire East Borough Council requested that a number of minor modifications relating to the alignment and the description of the new route be made if it was confirmed. The modified Order was advertised on 21<sup>st</sup> July 2022 and this was subsequently confirmed as an unopposed Order on 3<sup>rd</sup> November 2022.

## **6. Consultation and Engagement**

- 6.1.** This is an Informative report, so no further consultation has been undertaken. All relevant parties were provided with a copy of the Inspectors' decision letters.

## **7. Implications**

### **7.1. Legal**

- 7.1.1. There are no further legal implications for the Authority.

### **7.2. Finance**

- 7.2.1. There are no potential further financial implications.

### **7.3. Policy**

- 7.3.1. There are no direct policy implications.

### **7.4. Equality**

- 7.4.1 There are no direct equality implications.

### **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

### **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 diversions of the Public Footpaths contributes to the management of the public rights of way network for members of the public on foot with the potential for the improvement and promotion of active healthy lifestyles and wellbeing.

<b>Access to Information</b>	
Contact Officer:	Laura Allenet Laura.allenet@cheshireeast.gov.uk 01270 686053
Appendices:	N/A
Background Papers:	243D/575, 003D/547 and 117D/572

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## **Public Rights of Way sub committee**

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<b>Date of Meeting:</b>	13 March 2023
<b>Report Title:</b>	Informative Report: Secretary of State decision for Wildlife And Countryside Act 1981 – Part III, Section 53. Application to Upgrade Public Footpaths Nos. 8 Marbury cum Quoisley and No. 3 Wirswall to Bridleways
<b>Report of:</b>	Jayne Traverse, Executive Director Place
<b>Ward(s) Affected:</b>	Wrenbury

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### **1. Purpose of Report**

- 1.1. This report is an informative to brief Members on the decision made by the Planning Inspectorate on behalf of the Secretary of State on the Order made by the Council to upgrade Public Footpaths Nos. 8 Marbury cum Quoisley and No. 3 Wirswall to Bridleways under the Wildlife and Countryside Act 1981 section 53.
- 1.2. The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

### **2. Executive Summary**

- 2.1 The report informs Members that following the referral of this Order to the Planning Inspectorate following an objection, it has been determined by written representations and subsequently confirmed.

### **3. Recommendations**

3.1. The report is for information only - no decision is required by Committee

#### **4. Reasons for Recommendations**

4.1. Not Applicable.

#### **5. Background**

5.1. Once a Definitive Map Modification Order (DMMO) application has been determined by the Public Rights of Way Sub-Committee, a legal Order is made, which may then be the subject of objections. If objections are not withdrawn, this removes the power of the Local Highway Authority to confirm the Order itself, and the case has to be referred for determination to the Planning Inspectorate on behalf of the Secretary of State, it follows that the Committee decision may be confirmed or not confirmed. The Modification Order in relation to the upgrade of these footpaths has been determined by the Planning Inspectorate by the written representations process.

5.2. The Cheshire East Borough Council Definitive Map and Statement (Upgrading of Public Footpaths No. 8 Parish of Marbury cum Quoisley and No. 3 Parish of Wirswall to Bridleways) Modification Order 2017, was made on 12<sup>th</sup> January 2017.

5.3. Public notice of the Order having been made was published in the local press, posted on site and served on the relevant organisations on 12<sup>th</sup> April 2017. The advertising of the Order initially attracted three objections. Officers responded to the objections, addressed the points raised and sought the withdrawal of the objections. Two objections were withdrawn, and one objection was sustained.

5.4. No statement of case was submitted from the objector to the Planning Inspectorate so the decision from the Inspector was based on the initial objection.

5.5. The objector questioned the claimed status of the Order route. Although the objector contended that there were many documentary sources that did not show the Order route as a bridleway, none of those sources were submitted for consideration.

5.6. The Order was confirmed by the Planning Inspectorate on the 6<sup>th</sup> August 2020.

5.7. Following the confirmation there has been a delay in advertising the confirmation to the public. This has been due to Officers monitoring the ground conditions and ensuring they are suitable for use as a bridleway. One section of the bridleway is particularly wet underfoot; and there was concern

for those using the route on horseback. Officers consulted the landowner, who undertook drainage works, and representatives of The British Horse Society prior to advertising the confirmation of the Order on 14<sup>th</sup> December 2022. In addition new bridle gates and signposts have now been installed.

## **6. Consultation and Engagement**

- 6.1.** This is an Informative report, so no further consultation has been undertaken. All relevant parties were provided with a copy of the Inspectors' decision letters.

## **7. Implications**

### **7.1. Legal**

- 7.1.1. There are no further legal implications for the Authority.

### **7.2. Finance**

- 7.2.1. There are no potential further financial implications.

### **7.3. Policy**

- 7.3.1. There are no direct policy implications.

### **7.4. Equality**

- 7.4.1 There are no direct equality implications.

### **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

### **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 upgrade of the Public Footpaths to Public Bridleways contributes to the management of the public rights of way network for members of the public on foot, horseback and pedal cycle with the potential for the improvement and promotion of active healthy lifestyles and wellbeing.

<b>Access to Information</b>	
Contact Officer:	Jennifer Ingram jennifer.ingram@cheshireeast.gov.uk 01270 686158
Appendices:	N/A
Background Papers:	CN/7/23



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## **Public Rights of Way Sub Committee**

---

**Date of Meeting:** 13 March 2023

**Report Title:** Informative Report:  
Public Rights of Way Fees and Charges 2023-24

**Report of:** Jayne Traverse, Executive Director Place

**Ward(s) Affected:** All

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### **1. Purpose of Report**

- 1.1 This report outlines the fees and charges for 2023-24 for charged-for services provided by the Public Rights of Way team.
- 1.2 The work of the Public Rights of Way team contributes to the Corporate Plan priority "A thriving and sustainable place", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

### **2. Executive Summary**

- 2.1 This report outlines the fees and charges for 2023-24 for charged-for services provided by the Public Rights of Way team.

### **3. Recommendation/s**

- 3.1. That the report be noted.

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

- 4.1. The report is for information only.

### **5. Other Options Considered**

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

## 6. Background

- 6.1 Charges are made for services provided by the Public Rights of Way team in six principle areas where recovery of costs is permissible within the relevant legislation:
- Public Path Orders
  - Temporary Closures
  - Land Searches
  - Landowner declarations, deposits and statements
  - Enforcement action cost recovery
  - Meetings, site visits and notice posting at the request of landowners/developers.
- 6.2 Powers for the recovery of costs are set out in various pieces of statutory legislation and reflect full cost recovery of all reasonable costs involved in pursuing the matter, including overheads. Costs are based on time analysis of staff based on the final scale point of salary grade with overheads included at the corporate agreed rate. Legislation does not permit the making of a profit. Advertising costs are recovered direct from the applicant, where applicable.
- 6.3 An annual review of the fees and charges has been conducted. The charges for 2023-24 have been reviewed, increased by inflation, reflect corporate staff time recharge rates and have been rounded up, as per Council policy. The annual review highlighted steps in some of the processes which are now undertaken digitally rather than in person and hence has resulted in a reduction in some fees.
- 6.4 Charges for Public Path Orders are set to recover all administrative costs of the process, with charges made in accordance with “The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993” as amended by “The Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996”.
- 6.5 Charges for temporary closures of Public Rights of Way are also set to recover all administrative costs of the process, separated into those requiring only notices to be processed and those requiring legal orders to be made, again to reflect the different tasks involved in each process.
- 6.6 Land Searches are a discretionary task in which a request is made for formal confirmation of whether or not there are Public Rights of Way recorded on the Definitive Map within a defined area. Charges are set to recover all administrative costs, and to reflect similar charges levied by Cheshire East Highways for similar services.

- 6.7 Landowner declarations, deposits and statements made under the Highways Act 1980 section 31(6) attract a charge set to recover all administrative costs, and are made under the provisions of Commons Act 2006 S15A and S15B.
- 6.8 Enforcement action costs are charged on the basis of actual costs incurred by the Public Rights of Way team, contractors and police, as applicable.
- 6.9 Costs for meetings, site visits and notice posting at the request of a landowner or developer are charged on the basis of Officer time and mileage.
- 6.10 The fees and charges for the 2023-24 financial year are detailed below, along with those for 2022-23.

<b>Service</b>	<b>2022-23</b>	<b>2023-24</b>
<b>Public Path Orders</b>		
Highways Act 1980	£5,185	£5,410
Town & Country Planning Act 1990 – single property / mineral application	£5,555	£5,795
Town & Country Planning Act 1990 – multiple properties	£6,135	£6,405
<b>Temporary Closures</b>		
3 day event closure	£455	£420
Motor event closure	£215	£220
5 day or 21 day closure or extension	£160	£165
6 month temporary closure Order	£455	£420
6 month extension Order via Secretary of State	£320	£330
<b>Land Searches</b>	£95	£105
<b>Highways Act 1980 S31(6) deposits and statements on behalf of landowner applicants:</b>		

• deposited statement and plan with consecutive statutory declaration	£320	£350
• a statutory declaration relating to a current, valid statement and plan	£160	£175
<b>Meetings, site visits, notice posting at request of landowner/developer</b> - rate per Officer per hour plus mileage	£55	£60
<b>Enforcement cost recovery</b> - rate per Officer per hour plus mileage, plus any contractor and police fees	£55	£60

## 7. Consultation and Engagement

7.1.1 Approval for the changes has been obtained from the Head of Service, who has the appropriate delegated powers. The revised fees and charges schedule has been submitted as part of the Council-wide fees and charges process.

## 8. Implications of the Recommendations

### 8.1. Legal

8.1.1. There are no legal implications.

### 8.2. Finance

8.2.1. There are no additional financial implications.

### 8.3. Policy

8.3.1. The Public Rights of Way Charging Policy will be updated when the revised fees and charges come into operation in 2023-24.

### 8.4. Equality

8.4.1. There are no equality implications.

### 8.5. Human Resources

8.5.1. There are no human resource implications.

### 8.6. Risk Management

8.6.1. There are no risk management implications.

### 8.7. Rural Communities

8.7.1. There are no implications for rural communities.

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

8.8.1. There are no implications for children and young people.

**8.9. Public Health**

8.9.1. There are no implications for public health.

**8.10 Climate Change**

8.10.1 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.

8.10.2 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

<b>Access to Information</b>	
Contact Officer:	Genni Butler Acting Public Rights of Way Manager genni.butler@cheshireeast.gov.uk
Appendices:	N/a
Background Papers:	The background papers/information relevant to this report can be obtained by contacting the Officer above.

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