

Highways and Transport Committee

Agenda

Date:	Thursday, 4th April, 2024
Time:	10.00 am
Venue:	The Capesthorpe Room - Town Hall, Macclesfield SK10 1EA

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 foot of each report. It should be noted that Part 1 items of Cheshire East Council decision making and Overview and Scrutiny 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 interests, other registerable interests, and non-registerable interests in any item on the agenda.

3. **Minutes of Previous Meetings** (Pages 3 - 30)

To approve as a correct record the minutes of the previous meetings held on 25 January 2024 and 30 January 2024.

4. **Public Speaking/Open Session**

In accordance with paragraph 2.24 of the Council's Committee Procedure Rules and Appendix on Public Speaking, set out in the [Constitution](#), a total period of 15 minutes is allocated for members of the public to put questions to the committee on any matter relating to this agenda. Each member of the public will be allowed up to two minutes each to speak, and the Chair will have discretion to vary this where they consider it appropriate.

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.

For requests for further information

Contact: Nikki Bishop, Democratic Services Officer

Tel: 01270 868462 Email: Nikki.bishop@cheshireeast.gov.uk

5. **Bus Service Review 2024** (Pages 31 - 74)

To consider a report which sets out proposals for a strategic bus service review of the Council's support for local bus services.

6. **A500 Crewe Corridor** (Pages 75 - 94)

To consider a report on the A500 Dualling Scheme.

7. **Finalising development of a Lane Rental Scheme** (Pages 95 - 116)

To consider a report on the proposed development and implementation of a lane rental scheme for Cheshire East Council.

8. **Ward Member Budget Scheme Update** (Pages 117 - 134)

To receive an update on the Ward Member Budget Scheme.

9. **Application No. MA/5/222 Application for the addition of a Bridleway between Moss Lane and Newton Hall Lane, Mobberley also known as Graveyard Lane** (Pages 135 - 174)

To consider an application to amend the Definitive Map and Statement.

10. **Application No. CN/7/34: Applications for the Upgrading to Bridleway of Public Footpaths 21 and 22 Buerton and in Shropshire, Application 251 for the addition of a Bridleway in Shropshire** (Pages 175 - 220)

To consider an application to amend the Definitive Map and Statement.

11. **Wildlife & Countryside Act 1981 -Part III, Section 53, Application No: MA/5/248: Application for the Addition of a Public Restricted Byway / Byway Open to All Traffic along Teggsnose Lane, Nr Macclesfield** (Pages 221 - 252)

To consider an application to amend the Definitive Map and Statement.

12. **Wildlife & Countryside Act 1981 - Part III, Section 53, Application No. MA/5/256: Application for the Addition of a Public Footpath from the east end of existing Public Footpath No. 6 near Toft Church to join Public Footpath No. 4 in Windmill Wood in the Parish of Toft** (Pages 253 - 294)

To consider an application to amend the Definitive Map and Statement.

13. **Work Programme** (Pages 295 - 298)

To consider the Work Programme and determine any required amendments.

THERE ARE NO PART 2 ITEMS

Membership: Councillors C Browne, L Braithwaite, R Chadwick, P Coan, A Coiley, L Crane (Vice-Chair), H Faddes, A Gage, M Goldsmith (Chair), C Hilliard, H Moss, J Priest, M Sewart, J Snowball and B Drake

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Highways and Transport Committee**
held on Thursday, 25th January, 2024 in the The Capesthorpe Room - Town
Hall, Macclesfield SK10 1EA

PRESENT

Councillor C Browne (Chair)
Councillor L Crane (Vice-Chair)
Councillors L Braithwaite, R Chadwick, P Coan, A Coiley, H Faddes, A Gage,
C Hilliard, A Moran, H Moss, J Priest and M Sewart

OFFICERS IN ATTENDANCE

Tom Moody, Director of Highways and Infrastructure
Richard Hibbert, Head of Strategic Transport and Parking
Domenic De Bechi, Head of Highways
Mandy Withington, Legal Services
Andrew Poynton, Senior Planning and Highways Lawyer
Steve Reading, Principal Accountant
Wendy Broadhurst, Finance Partner
Lorraine Rushton, Parking Services Manager
Mark Fleming, Project Manager, Transport
Katie Small, Democratic Services Manager

18 APOLOGIES FOR ABSENCE

There were no apologies for absence.

19 DECLARATIONS OF INTEREST

There were no declarations of interest.

20 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meeting held on 23 November 2023 be approved
as a correct record

21 PUBLIC SPEAKING/OPEN SESSION

Ms Carol Jones attended to speak in relation to item 6 - Notice of Motion:
£2 Bus Fare Cap and asked how the committee expected to increase bus
use and awareness of the £2 fare cap to those who were not on social
media.

In response, the Chair advised that the Council was working with local bus
operators through the Enhanced Partnership Board and Forum, and the

approach to engagement and promotion was set out at paragraph 15 of the report. Some examples included all member bulletins, Town and Parish Council newsletters, internally through the staff newsletter, local bus user groups and also increasing public awareness through vehicles operating in Cheshire East including Flexi Link and Ansa refuse collection vehicles.

Councillor Valerie Herbert (Prestbury Parish Council) spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Herbert stated that the Parish Council was mindful that Cheshire East needed to find money somewhere but believed there were better options than imposing car park charges. The revised proposal for free parking at Springfield School at pick up and drop off times was appreciated but did not allay fears. Prestbury Parish Council was strenuously opposed to car parking charges and felt there would be a negative impact on the economy of the village, both from a customer and employee perspective. Businesses had worked hard to recover from the pandemic and were dealing with the cost of living. Staff recruitment could become an issue and customers were likely to choose out of town shopping areas with free parking. Rail travellers had 'voted with their feet' when charges were introduced at Prestbury station a few years ago. Walking in many parts of Prestbury was not an option due to narrow or non-existent pavements. Voluntary organisations could seek alternative venues or see a dramatic fall in membership which may make them unviable. Generally poor mobile phone signal could mean not collecting as much money as envisaged. Residents may visit doctors in Alderley Edge or Bollington, both with free parking, leading to a loss in health services. Some residents had no parking for their homes and would need affordable permits to continue parking in the nearest car park. Councillor Herbert suggested that the committee should instruct officers to engage with Town and Parish Councils to find a better solution.

Mr Carol Hamilton spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Mr Hamilton stated that he had been Chair of Prestbury Business Forum and worked to ensure the sustainability of the village's commercial centre which was small, with only 29 commercial premises. The loss of shops in the village would have a greater impact than in neighbouring towns. Prestbury had the added challenge of being surrounded by greenbelt which meant no population growth. Given these factors, Prestbury was not an attractive location for prospective business owners. Many of the business owners were approaching retirement age and replacements would need to be found. The two selling points that had been used in recruiting replacements were free parking and the affluence of the local community. If the proposed parking charges were introduced, the already difficult business environment would get worse. It was accepted that the Council needed to raise more revenue but felt that residents of Prestbury were paying a fair share with per capita residential rates payments being the highest in the borough. It was asked that the committee give authority to officers to discuss other options with the Town and Parish Council.

Councillor John Stewart (Bollington Town Council) spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Stewart stated that Bollington Town Council and the vast majority of residents wanted the committee to remove Bollington from the proposals. The car park affected is at the heart of the community with no on street parking nearby. Town vitality would be adversely impacted. Nearly 1700 signed a petition against the charges. Bollington was the only town without a rail station in the consultation and had suffered severe cuts in public transport. As a linear town, Councillor Stewart felt that Bollington should be given special consideration. Many residents did not have off road parking and relied on public car parks. These proposals go against the neighbourhood plan to progress standard residential and public parking provision within Bollington and would have a severe long-term detriment to the community. Bollington Town Council recognised that Cheshire East had not had appropriate funding over many years and had a significant challenge and the Town Council was open to considering alternatives.

Councillor Michael Unett (Alsager Town Council) spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Unett stated that the charging proposal would have a significant impact on the vitality of Alsager and would impact neighbouring areas that use Alsager as a key service centre. The impact of charges would be significant and local businesses were already struggling with increased overheads and online competition. Mitigations for some schools and residential parking were welcomed but there was no mitigation for the displacement of cars on neighbouring streets and existing dangerous parking could be exacerbated. There was concern that the consultation may not have followed the principles outlined by the government's consultation principles 2018 or the local government association guidance section 4. If the additional proposals were implemented, it would negate the mitigations. It was felt that this was not a town by town review but a 'one size fits all' policy driven by revenue not fairness. 96% of the consultation respondents were against the proposals. There was significant strength of feeling against proposals and Councillor Unett urged the committee to listen to residents and reject the proposals.

Michael Willcocks (Audlem Medical Practice) spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Mr Willcocks stated that the GP partners and practice manager submitted an impact statement during the consultation phase. The car park used by patients at the practice enabled a holistic level of care. The GP practice was fulfilling over 500 appointments per week which was 10% of its patient list every week. The impact statement listed in detail the ways in which all patients would be affected and the vulnerability of the more elderly population and those in social housing. There was also a concern about the impact on staff retention. Mr Willcocks stated that good health was not just determined by access to primary care but also access to clubs, societies,

support groups and activities to improve health which was supported by the adjacent car parks.

Councillor Robert Douglas (Congleton Town Council) spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Douglas disagreed with the assumption that, after increasing parking charges in Congleton by 150% -169%, demand would only reduce by 5%. Councillor Douglas felt that the views of residents had been ignored and asked that the committee would have a named vote.

Councillor Suzy Firkin (Congleton Town Council) spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Firkin stated that 629 Congleton residents responded to the consultation and Congleton Town Council submitted a detailed response. Many suggestions were made so that the proposed changes were practical and did not impact those who could least afford. Little change had been made to the proposals following these suggestions. Councillor Firkin was concerned to see proposals for delegated powers to bring in further charging, including extending the charging period to 10pm which would impact town centre residents who made use of overnight car parks due to a lack of parking at their homes. Councillor Firkin felt that these changes needed to be assessed by those with relevant local knowledge.

Councillor Chris Jackson (Holmes Chapel Parish Council) spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Jackson stated that Holmes Chapel Parish Council was frustrated and concerned that the recommendations did not reflect the views expressed in the consultation responses. The introduction of charging to the town's two small car parks would have an impact on the local economy. As a local service centre, the provision of free parking attracted visitors to use local businesses. Strong representation had been received from those businesses about the impact on customers and employees and the Parish Council endorsed those concerns. There were also concerns about the displaced parking that would result and that attempting to prevent this through additional restrictions would exacerbate the situation. Despite a number of Freedom of Information requests and a meeting with officers, the Parish Council remained unconvinced that the data with regard to both revenue and cost were reliable. Councillor Jackson believed this should be subject to further review taking into account local circumstances.

Sue Helliwell spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Ms Helliwell stated that Cheshire East had issued a press release on 17 January which she felt indicated that it was a foregone conclusion that parking charges were coming to Alsager despite over 95% of consultation responses objecting. Ms Helliwell felt that the respondents' views had been overwhelmingly ignored. The car parks were also used for school pick up and drop offs and access to a food bank. Market towns needed support to bring shoppers in and protect jobs.

Brian Bugeja spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review) on behalf of a group in Audlem set up to challenge the parking charges. Mr Bugeja asked what the reasons were for the committee relying on a flawed parking strategy report and stated that Audlem would be the only rural community to have its free parking removed. 98% of consultation respondents in Audlem were against the charges and 1,800 signed a petition. The charges were proposed to start from 8am although the school drop off time was 8.45am. Audlem did not have access to the same levels of public transport as other towns in the borough.

The Chair responded that the parking strategy reports were drafted to inform the MTFS proposal that was agreed at full Council in February 2023. This was designed to assess current parking arrangements and usage. The basis for recommending the charges was to amend the legacy charging review in accordance with the high level parking strategy, adopted in 2019 as part of the local transport plan. This strategy established a principal that the use of car parks was a discretionary service provided by the Council. As all car parks incur costs to maintain, a number of these costs were disproportionate in rural locations. Parking charges in themselves did not prevent anyone receiving or accessing health services and all blue badge holders were offered free parking with no time limit on Cheshire East managed car parks and there were no proposals to change that. Regarding school pick up and drop off issues highlighted during the consultation, proposals had been amended to accommodate this but for Audlem only 6 of the responses received mentioned this issue.

Geoff Seddon (Audlem Parish Council) spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review) Mr Seddon stated that he was opposed to charges on Audlem's only public car park and felt that the Jacobs review seemed to have been a desktop exercise which contained errors and no road safety assessment appeared to have taken place. The Council's road safety officer who was aware of the existing road safety issues in Audlem was not consulted. There was limited on street car parking with no prospect of providing any more in the village centre. Jacobs had stated there would be a 20% displacement of vehicles from the car park which was up to 13 vehicles every hour and vehicles already parked on double yellow lines. Mr Seddon felt that if charges were introduced the viability of the independent shops would be under serious threat and it would be likely that residents would travel to towns where there was free parking at supermarkets but more importantly the medical practice would be impacted by the charges. Mr Seddon requested that the Committee deferred the decision on Audlem until a road safety assessment had been seen by the committee.

Councillor Laurence Clarke (Poynton Town Council) spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Clark stated that Poynton Town Council and the people of Poynton were concerned that proposal to abolish free parking at the only

public car park in the centre of the village would seriously damage the local economy. Faced with charges, many people would prefer to drive a few miles to park for free. The Committee were reminded that a large part of Poynton's car park was leased to Waitrose which allowed two hours free parking and would reduce the number of people using the Cheshire East section of the car park. Cheshire East figures showed that the charges would only raise about £37,500 and after paying 20% in back to HMRC, would only leave £31,269 and then the cost of issuing tickets and staff and the paying staff to enforce would have to be deducted

Councillor Tim Wheatcroft (Sandbach Town Council) spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Wheatcroft made a request that enough information was provided for local councils to have the opportunity to consider carpark charging to be met from the precept before a decision on parking charges was made. There was no response from Cheshire East to the widespread concerns as to the likely effect of the proposal on the town centres economic recovery, recovery that a Highways proposal was supposed to support. Highways proposals obsess with the turnover of cars, double yellow lines, and restrictions that have been managed without for years and were not policed very well anyway.

In response the Chair referred Councillor Wheatcroft to recommendation 5 of the agenda which would enable conversations and detailed discussions and negotiations with town and parish councils to take place over potentially transferring. So subject to agreement by the committee or recommendation 5 officers would be able to go in to detailed discussions not only with Sandbach but other town and parish councils, who have an expressed an interest as well.

Diane Tams spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Ms Tams stated that whilst there was understanding in respect of the need for financial cutbacks and recognising the challenges faced by the Council, the Council was asked to consider the distinct differences between a village and the town. The introduction of parking charges designed for larger urban areas could have a disproportionate impact on the community and Councillors were asked to take in to account the specific needs and challenges faced by smaller communities.

In response the Chair stated that there were 2 Cheshire East Council operated car parks in Holmes Chapel which incurred costs of operation and in accordance with the Council's policy, consideration needed to be given to car park users in meeting or helping to make those costs. Recommendation 5 of the agenda would enable the Council to enter into negotiations with the Parish Council regarding asset transfer. The Council had reflected on Holmes Chapel as a smaller town centre by recommending that it was not placed in the higher tariff band.

Peter Offer spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Mr Offer stated that he was amazed to see that Cheshire East charged itself rates on its own car parks, which didn't seem to be solving its problems altogether. A car park was a road in practice and in law and its sole use was for parking cars. For example, in Sandbach there was delineated linear parking in various places, but no rates were charged on that which were set out as a car park. The only difference was that those roads were through roads.

In response the Chair stated that Business rates were collected by local authorities, but they were charged by central government on all assets that were not used for domestic purposes and there was no exception made for local authorities. Valuations for business rates were set by the Valuations Office agency. The Council did not calculate its own business rates, for every pound that Cheshire East Council collected in business rates approximately 70 pence was passported directly to national government so there was a real cost involved there and it was not a case of the Council recycling its own money.

Lucy Garner spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Ms Garner stated that Cheshire East were not considering the long-term impact of their short-term goals. If small businesses were forced to close because of lack of footfall it would create a bigger, more devastating problem and the knock-on effect of the charges would be devastating. The corporate plan objectives were not met by this proposal 1) A thriving and sustainable place - A great place for people to work, live, and visit. Ms Garner stated that people do not visit ghost towns and they were not good locations for businesses due to parking. 2) Welcoming, safe and clean neighbourhoods – Ms Garner stated that If shops closed towns would decline, they would become unsafe and undesirable places. 3) Reduce impact on the environment – Ms Garner stated that with no local town worth visiting, car travel would increase to free out of town supermarkets increasing pollution which undermined the objective of being a carbon neutral Council by 2025.

Poverty had increased according to the Councils JSNA report so risking town centre closure, there would be reduced access to local services which would disproportionately affect the poor and disadvantaged.

Kathryn Flavell spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Ms Flavell stated that Cheshire East Council were not saying that there was going to be no parking. The most important point was that either nobody paid or everybody paid. Crewe and Nantwich, had been paying for parking for decades, and those people, those residents, particularly in Crewe, which was one of the most deprived towns in the country, had been supporting all of the towns that had enjoyed free parking. Nantwich was a thriving town and that had had parking for a long time. Even if people travelled out of the area to a free car park it was going to cost them more than what it would cost to park in Sandbach. If people were so passionate about independent shops surely

they would not boycott them because they had been asked to pay 60 pence for parking, how was that helping local residents?

Councillor Sarah Bennett-Wake spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Bennett Wake stated that in respect of parking charges having a detrimental impact on local businesses, this had not been the case in Macclesfield. With one in five councils struggling because the cost of living crisis, high inflation and 63% less funding from government, it only seemed fair that everyone should pay for parking spaces. It was a national issue and the autumn statement provided no new funding for local authorities despite the cross-party county Councils Network highlighting councils were under extreme financial pressure, facing a total of 4 billion funding deficits over three years.

Councillor Ken Edwards spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Edwards requested that line 10 of the Charging Proposal be dropped which would introduce charges to Pool Bank Car Park Bollington. Councillor Edwards stated that there was no off road accommodation for cars and narrow streets which were heavily parked on. There were electric vehicle charging points on the car park which were paid for by Bollington Town Council. When car park charging had been considered previously it had been rejected on the grounds of the overwhelming service to residents and businesses that the car park free at the point of use offers, which meant it got maximum use for the economy at any point of time, thus freeing seriously overcrowded streets. The Committee were asked to have the long-term interest of the Bollington Community in mind and drop the proposal.

Councillor John Place spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Place stated that his understanding was that car parking charges had not been put up since 2018. Further opportunity for town and parish councils to talk about the devolution issue was welcomed. Residents were fearful of the impact of the charges and feel like the threat of Section 114 and revenue which was the driver. Councillor Place stated that what the report had done was it had got a uniform view across the whole of Cheshire East of what the issues were and it was hoped that there would be space beyond the next consultation period for whatever decision the committee made, so that those conversations could take place because a lot of the residents and businesses involved Bollington were prepared in other ways to help with the financial situation

Councillor Rachel Bailey spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Bailey thanked the public speakers for speaking at the committee meeting, and for raising their concerns. Councillor Bailey stated that the concerns which were akin to those raised when green bin charges were implemented within Cheshire East, which Councillor Bailey said was decreed as being agreed at budget setting in 2023. Councillor Bailey said that she believed that Councils and

Local Governments had a responsibility to understand the areas which their decisions effect and respond appropriately.

Councillor Bailey stated that the concerns were those similar to the “pay to pray” campaign for Sunday parking charges previously in Crewe and Nantwich, and residents of Audlem would have to “pay to mourn” and raised concerns about the cumulative cost associated for those who visited cemeteries to mourn each day. Councillor Bailey asked Members to consider deferral as she stated there were no assurances regarding the return to the Council’s finances, the strategy was incomplete and contained errors, and mention of the Cheshire East Rural Action Plan was missing.

Councillor Bailey asked Members if they were aware of the Rural Action Plan, and whether comments made about Councillor Moreton not being able to serve on the Committee of which they were a member, made them feel under pressure to support the recommendations. Councillor Bailey asked what would happen if the scheme didn’t return the financial benefit needed, and the impact of this on the Council’s reputation?

Councillor Rob Moreton spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Moreton stated that if he were still a member of the Highways and Transport Committee that he would vote against the proposals. Councillor Moreton said that over 600 residents from Congleton took part in the consultation, with over 400 of those commenting on the Roe Street car park, which only had 25 spaces, which were used mainly by those visiting the nearby medical centre. Councillor Moreton stated that he was uncomfortable with the Council taxing the sick to park there, and asked how cost effective it was to install a machine on a car park with only 25 spaces?

Councillor Moreton asked Members to look again at this car park and asked for it to remain free, stating that they shouldn’t be charged for being ill.

Councillor Moreton stated that residents would accept an inflationary increase to parking fees, but 150% was too high, and that those who parked in those car parks would have to decide between paying double to park, or buying lunch, which he said would seriously harm the revenue of local shops and the high street, which were struggling already.

Councillor Moreton understood that the Council was struggling due to a lack of funding from central government, but stated that the Council should not lose sight that residents were already going through a cost-of-living crisis and needed support.

Councillor Moreton said that the library made Councillors and residents feel their views were listened to, and recommendations were changed and aligned with what was suggested, but in his view, the car parking consultation was different and risked putting people off taking part in future

consultations. Councillor Moreton said that Congleton, Sandbach, Holmes Chapel, Alsager, and other surrounding areas felt their voices had not been listened to.

Councillor Sue Adams spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Adams stated that she did not believe that her, or that of Disley Parish Council's pre-consultation or consultation comments had been listened to. Councillor Adams said that she had emailed Cheshire East Council in September 2023, saying that the number of parking spaces in the August 2023 report was incorrect, which would lead to an overstatement of predicted income. Councillor Adams stated that Cheshire East Council would not be able to charge for parking spaces owned by Disley Parish Council or Peaks and Plains Housing.

Councillor Adams said that there were logistical problems with car park charges in Disley and that she had invited Cheshire East officers to Disley to explain the issues but had not received a reply. Councillor Adams stated that shops and other businesses would be adversely impacted with many already struggling to survive.

Councillor Adams said there had been much talk about equity in charging for parking, but market forces were much more relevant in Disley, which was about 2 miles away from free parking in neighbouring towns, and Disley would likely lose business to those places and Cheshire East would lose business rates.

Councillor Adams said some residents were struggling to do their shopping and that the Community Centre and library users would be adversely impacted.

Councillor Adams said a key priority of the Parish Council's, health and well-being agenda was to reduce social isolation and promote social inclusion; the car parks were used for patients at Schoolhouse surgery, parents of Disley Primary School pupils for dropping off and collecting children, carers visiting Peaks and Plains, social housing.

Councillor Adams said that parking charged in Cheshire East would make a minimal contribution to the Council budget.

Councillor Adams said that health and social care services have many volunteers in Disley who helped to provide social support for vulnerable residents, and the Parish Council worked with the local GP practice and other organizations to improve the health and wellbeing and for residents, much of this support was based from the community hub. Councillor Adams said that parking charges would undermine their work and therefore adversely impact budgetary situation. Councillor Adams said that the centre of Disley was very congested and an air quality management area and car parking charges would make the situation worse because it would encourage, and increase, parking on-street.

Councillor Adams said that the proposals were not open, fair, or green.

Councillor Nicola Cook spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Cook said no Councillor became a Councillor wanting to impact the health, livelihood and wellbeing of residents, and that as a Council they had a responsibility for a budget of over £300,000,000, their role was to ensure that they were sensitive to the needs of local communities.

Councillor Cook said that Sandbach was a historic market town which was based on the concept of free parking. Councillor Cook said that the secondary schools, health centre, independent, shops and housing were based on the concept of free car parking and the reality of the proposals would be that teachers, healthcare assistants, shop workers, would be spending an extra £500 a year on car parking at a time when which could be devastating for many residents.

Councillor Cook said that she understood how difficult things were for residents, and over 3000 residents in Sandbach were strongly against car parking charges.

Councillor Cook said that whilst the consultation indicated that officers had listened and incorporated feedback, she said that her own responses had not been considered and that the consultation was ignored.

Councillor Cook said that the car parking consultation did not mention Cheshire East's Business Vitality Plan which stated that free car parking should be protected in Sandbach, and the Sandbach neighbourhood plan. Councillor Cook also said that the consultation ignored safety concerns, which would be caused by "Sandbach Common" being used as a large car park throughout the day by drivers wishing to ignore car parking charges.

Councillor Cook encouraged the committee to review these recommendations.

Councillor Janet Clowes spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Clowes thanked those who had made the journey to Macclesfield to speak at the meeting.

Councillor Clowes said that Appendix C of the report identified the quarterly and annual permit scheme on specific car parks in Cheshire East, but had been unable to find the following information:

What rationale had been applied to each car park that qualified it for permit use? What determined the subscription rate mentioned? Was there mention of a three, six or nine month permit fee?

Councillor Clowes said that Cheshire East permits related to specific vehicles and car parks and suggested that this was an income limiting deterrent to permit subscriptions. Councillor Clowes said that Northumberland County Council operated a system which enabled residents to park in any car park across their council area, provided each

car park was within the same tier and was well subscribed, meaning that their permit fees were far lower than those being proposed in Cheshire East.

Councillor Clowes said that the price of permits was important in relation to introducing a cash free payment that may be attracted to those who preferred not to use cards or phone apps.

Councillor Clowes noted that the Committee discussed the Notice of Motion submitted by herself and Councillor Sewart, at the July Council relating to the National Parking Platform (NPP) which the committee resolved to note, but not join, due to financial implications, and an existing contract which expired in October, and that the Committee also resolved to monitor the NPPs in September. Councillor Clowes noted that recommendation 12 in the report acknowledged the annual savings that may be made by moving to a cash free system and suggested this may be higher if the prepaid permit scheme was reconfigured to incentivize its use.

Councillor Clowes said that there were still no comments on the savings which may be made in terms of enforcement and income from more effective enforcement remittance, for example via vehicle licence recognition, scanning or scan permit cards.

Councillor Clowes said that there were pilots in place to be able to model these impacts and asked that officers do so as part of the early 2024-2025 preparatory.

Councillor Clowes spoke in relation to agenda item 9 (Third Financial Review 2023/2024). Councillor Clowes said that no reference had been made in the report to costs necessary to prepare the lane rental scheme database, or the submission to the Secretary of readiness for 2024-2025 despite this budget amendment being approved by Council in February 2023.

Councillor Clowes said it would be a useful income whilst also improving the efficiency of rogue management for residents and road users. Councillor Clowes said that there was an addendum to that amendment now, because as of the 15th January 2024, the government announced an open consultation on fines and lane rental surplus funds, which included the introduction of a digital service that was used by every Utility Company, Highway Authority and Contractors in England to plan and manage road works.

Councillor Clowes said that every highway authority operated a permit scheme, which allowed for the proactive planning and management of works which had been proven to reduce the impacts of works on congestion.

Councillor Clowes said that the lane rental scheme would allow authorities to charge up to £2500 a day for works on the busiest roads at the busiest times.

Councillor Clowes said that the actions she would like the Committee to look at, was if they were in support of implementing this programme at pace in 2024-2025, so that the Council responded properly to the Government Street works open consultation.

Councillor Clowes said that if the proposed measures were applied, it would serve to significantly increase revenue.

Councillor Anderson spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Anderson said that she believed that Town and Parish Councils were asked if they wanted to take over car parks, but did not think that any did.

Councillor Anderson said that Wilmslow had always had car parking charges and Wilmslow Town Council had looked at what could be done to improve the town's footfall. Councillor Anderson said that Wilmslow instigated a "Town Centre Manager" which now supported the town. Councillor Anderson said that she would recommend town centres putting a bid in place for a Town Centre Manager for their towns.

Councillor Anderson spoke in relation to agenda item 6 (Notice of Motion: £2 Bus Fare Cap). Councillor Anderson said that she was pleased to see the £2 bus fare cap extended to the end of the year and was pleased to see that the Council are looking at how to advertise it more widely. Councillor Anderson said that she hoped Cheshire East would consider working with Town and Parish Councils and Ward Councillors to get the message out aside from social media.

Councillor Anderson said that information on the usage of bus stops should be examined to see where bus routes can be made more efficient, and hoped that officers would look at how to get more residents to and from work and back home from work on buses.

Councillor Anderson asked that officers look at what can be done with large employment sites such as Astra Zeneca, Royal London, or Barclays, to encourage commuting by bus.

Councillor John Bird spoke in relation to agenda item 5 (Medium Term Financial Strategy - Parking Review). Councillor Bird said that he would like to thank the officer for the detailed report and commended those trying to find a way forward through the difficult times the Council has ahead.

Councillor Bird said that Cheshire East's Local Authority Plan stated it would deliver sustainable growth to meet the aspirations of the borough. Councillor Bird said that the report made references to enabling and supporting individual towns and villages to ensure that good quality, well designed, sustainable development was at the heart of the local plan. Councillor Bird said that if Cheshire East were to break up local towns, that was not going happen.

Councillor Bird said that he did not think that the needs of residents had been properly looked into and that roads would become unsafe as roads would become clogged as residents wouldn't use the car parks, and therefore income would not be generated.

Councillor Liz Wardlaw spoke in relation to agenda item 9 (Third Financial Review 2023/2024). Councillor Wardlaw said that in her ward of Odd Rode they had winter gritting removed, had numerous potholes, roads were in a poor state, had very few buses, and had one Cheshire East car park which housed six cars which was in a very poor state.

Councillor Wardlaw said that residents travelled to Alsager and Congleton in the main to visit facilities such as GPs, shops or chemists. Councillor Wardlaw said that Congleton nurses had approached her and advised that the fees for daily parking would add £1000 a year to their costs. Councillor Wardlaw asked whether cash payment machines would be available. Councillor Wardlaw said charging parents to park to drop off their children was unrealistic and said that the Council was further going to debilitate the high street economy by charging people who went out in the evening.

Councillor Wardlaw said that the committee system was currently under review but what needed to be reviewed was the removal of Councillor Rob Moreton from the Highways and Transport committee.

Councillor Wardlaw said that, with reference to agenda item number 8, the committee must scrutinise its decision making.

22 MEDIUM TERM FINANCIAL STRATEGY - PARKING REVIEW

The Committee considered the report which set out proposals on the implementation of changes to the public parking provision in Cheshire East, following statutory consultation.

There was an extensive debate, during which the following points were raised:

- The provision of car parks was a discretionary service.
- Cheshire East had increased parking charges only once since 2009 despite inflation increasing.
- The proposals were seeking to address unfairness with some areas of the borough paying for parking while others did not.
- The Council was experiencing financial challenges as a result of costs incurred in petitioning for HS2.
- There was unprecedented demand for special educational needs provision which was affected the Council's budget.
- The Council was experiencing challenges as a result of high interest rates and inflation.
- The Council was incurring costs of £400,000 for car parks that they were receiving no revenue for.

- The proposals had responded to consultation feedback by not recommending on-street 30 minute waiting limits and retaining the 'free after 3pm' initiative.
- Savings would need to be met from other services if these proposals were not approved.
- There was evidence of other towns within the borough, such as Nantwich, not being negatively impacted by parking charges.

During the debate, amendments to recommendations 1-11 were proposed and seconded which sought to include the following wording:

That a half hour tariff should be available in at least one car park in each town or parish in the borough.

That pre-paid tickets should be usable on all Cheshire East car parks.

The proposer and seconder of the recommendations agreed to accept the amendments, subject to the latter including the wording that *'this recommendation is added to the work programme as a matter requiring urgent attention'*.

The amendments therefore became part of the substantive motion.

Following debate on the substantive recommendations, these were put to the vote and recommendations 1 – 11 were carried by majority.

During the debate on recommendations 12 – 16 an amendment was proposed and seconded which was that:

that payment by cash should be retained on at least one car per town or parish.

The proposer and seconder of the recommendations agreed to accept the amendment.

The amendment therefore became part of the substantive motion.

Following debate on recommendations 12 – 16, these were put to the vote and recommendations 12, 14, 15 and 16 were carried by majority.

Recommendation 13 was lost.

RESOLVED:

That the Highways and Transport committee:

1. Consider the outcomes of the statutory consultation on proposals to extend and revise the Council's Pay & Display parking provision with a view to ensure car parks are provided and managed more consistently and equitably throughout the Borough.

2. Subject to a half hour tariff being available in at least one car park in each town or parish in the borough, approve the introduction of changes to the Councils parking regime, in accordance with the measures defined in Appendix 3 of this report and authorise the Director of Governance and Compliance to make all necessary arrangements to bring into effect the recommendations.

3. Note that a series of mitigation measures have been identified to manage any potential displacement of car parking as a result of these changes. Members are advised that these measures are expected to require further statutory consultation prior to the making of relevant Traffic Regulation Order. As such ward councillors and town/parish councils will be consulted as part of these procedures.

4. Authorise the Director of Highways and Infrastructure to monitor the impact of these changes, commence the necessary statutory consultations and implement these mitigation measures where there is evidence of a need to do

so. Monitoring will take place before and after the implementation of new parking charges to assess any impacts arising.

5. Authorise the Executive Director of Place to engage and agree devolution of any car parks to Town and Parish Councils, where they have expressed a willingness to pursue this option, noting that these negotiations will be pursued so that Cheshire East Council is neither better nor worse off than if proposals for car parking charges were implemented. Otherwise, in circumstances where a car park is underutilised and demand can be met in other facilities, arrange for the closure and disposal of car parks. Subject to approval, town and parish councils will be informed of these opportunities to ensure they may fully consider these options.

6. Agree that the legacy arrangement to refund parking costs for users of Crewe and Nantwich leisure centres be terminated, to ensure consistency with other Council leisure centres.

7. Authorise the Executive Director of Place to review parking charges annually in future years as part of the annual review of Fees and Charges. These reviews will take account of annual inflation and other relevant factors, and Committee will be notified of future changes in advance of a statutory consultation period.

8. Agree that proposals relating to the future provision of staff and member parking permits be subject to consultation with staff, members and representative bodies as part of updating the Council's Corporate Travel Plan.

9. Note that the initial trial of demand-responsive parking tariffs will commence following the opening of the new Royal Arcade MSCP in Crewe.

10. Note the implementation plan for these proposals, which is designed to provide the maximum timely contribution to the MTFS outcomes.

11. Subject to decisions on the earlier recommendations in the report, approve a Supplementary Capital Estimate to provide for the costs of extending pay and display parking provision and associated mitigation measures, which are estimated to be £0.9m. This will be funded by prudential borrowing and repaid through service budgets.

11a. That the possibility of pre-paid tickets being usable on all Cheshire East car parks be added to the work programme for further consideration on 4 April 2024.

12. That payment by cash should be retained on at least one car per town or parish Pay & Display car parks. Users will have the options to pay by card, phone or contract parking permit purchase at all other car parks. Removing the need to collect cash payments will reduce operating costs (cash collection) by circa £100,000 annually. Mindful that cash payments are a high proportion of parking transactions in Cheshire East, typically over 40% of total payments; consideration of moving to cashless payment should take account of the progress of the National Parking Platform (NPP). This is intended to provide a consistent parking App for users nationwide. Timing a transition to cashless to coincide with NPP will enable the Council to draw on promotional, awareness-raising media supporting the national initiative.

13. Revoking the offer of “4 free days” that is currently available to town and parish councils where charges apply would increase annual revenues by £120,000 (estimated). This offer would be retained in circumstances where the town or parish council offered to fund the revenue lost by suspending parking charges for 4 days.

14. Introduction of a Sunday parking charge could yield additional revenues,
as follows: Option B is based on weekday parking charges being extended to Sundays which is estimated to yield £180,000 per annum (full year effect). There will be additional operational costs for enforcement cover during Sundays, in order to ensure compliance with the extended charging periods. In this regard, a flat daily charge on Sundays is preferable as it minimises the requirement of extra enforcement patrols.

15. Extension of parking charges to cover evening periods (6pm to 10pm) is estimated to yield annual revenues of £300,000. There will be additional operational costs for enforcement cover during evenings, in order to ensure compliance with extended charging periods.

The meeting was adjourned for a short break.

Councillor P Coan left the meeting and did not return.

23 NOTICE OF MOTION: £2 BUS FARE CAP

The Committee considered a report in response to the Notice of Motion proposed at Full Council on 18 October 2023 which asked for the Director of Highways and Infrastructure to develop and launch a publicity strategy to locally promote the extension and usage of the £2 bus fare cap. The motion was proposed by Councillor A Gage and seconded by Councillor H Moss.

There was an option to use some of the next tranche of Bus Service Improvement Plan Plus (BSIP+) funding and this had been discussed at a recent Enhanced Partnership Board where operators were widely supportive of the proposal. The public strategy was outlined which included promotion through social media, Town and Parish newsletter, local bus user groups and advertising on vehicles who operated on routes in Cheshire East.

Members welcomed any scheme which increased bus patronage following the loss of funds related to HS2 but agreed that there needed to be more long term investment and commitment to a sustainable bus network.

Resolved (unanimously):

That the Highways and Transport Committee

1. Note the update on the £2 Fare Cap applying to local buses in England.
2. Endorse that the Council continues to work in partnership with local bus operators to publicise the fare cap.
3. Note the high level of public awareness of the fare cap and comment on the potential future opportunities for the Council to promote it further.

24 HIGHWAYS AND INFRASTRUCTURE: 2023/24 MID-YEAR REVIEW

The Committee received a report on the performance to mid-year across Infrastructure and Highways services for 2023-4. The report provided an update on activity across the service and progress of the delivery of the maintenance and management services delivering major infrastructure projects and development of bus services, cycling schemes and management cost services.

Members welcomed the significant amount of work carried out around Active Travel with routes and projects around Macclesfield, Crewe and Handforth. In response to a question raised about what the timescales were for the commencement of the work in Handforth on the Manchester

Road project it was agreed that a written response would be provided outside of the meeting.

In relation to a question raised in respect of whether trees were being replaced which had either fallen down due to the weather or were diseased, officers reported that it was dependent on location and that it would be considered on a case by case basis as it was a complicated process.

The Committee thanked the team for all of their hard work and welcomed the news that the Council was bidding for further funding from the Environment agency to address flooding issues.

RESOLVED:

That the Highways and Transport Committee

1. Note the performance of Infrastructure and Highways Service to mid-year 2023-4.
2. Note the on-going work of the Highways Service to support delivering the Council's Brighter Futures customer strategy.

25 LEAD LOCAL FLOOD AUTHORITY: 2023/24 ANNUAL REVIEW

The Committee received a report on activity in relation to Cheshire East Council's role as Lead Local Flood Authority for Quarter 1 and 2 (mid-year) 2023-24.

Four key areas were outlined from the report which were:

- An improvement in responding to planning applications which had increased to over 90%
- Preparations were underway to provide planning advice through an approval body which would allow the Council to influence on how developments go in and the drainage measures they would bring in the future.
- Preparing and Maintaining a Local Flood Risk Management Strategy.
- Applying for retrospective schemes which may allow the Council to recover money for betterment that it had previously spent.

In response to Members comment and questions officers reported that

- In respect to highways maintenance a commissioned service was delivered through a thin client contract management team.
- In relation to concerns about surface water flooding, one of the instances the team had to deal with was the increase in the number of extreme weather events which saw a lot of rainfall on already saturated land which created service flow. This meant that focus

was on keeping the drainage infrastructure in as good a condition as possible with the funding that was available.

- An additional resource had been introduced in the last six months to lead local flood team to deal with oversight of business cases and funding applications. This had resulted in an additional £20k of funding.

RESOLVED:

The Highways and Transport Committee

1. Note the update on activity in relation to the Council's role as Lead Local Flood Authority undertaken in Quarter 1 and 2 (mid-year) 2022/23.

26 THIRD FINANCIAL REVIEW 2023/24

The Committee received the report which provided the third review of the Cheshire East Council forecast outturn for the financial year 2023/24. Committee Members were asked to consider the serious financial challenges being experienced and recognise the important activities being undertaken to minimise the impact on services.

Members noted the difficult financial pressures facing the Council and that the Highways and Infrastructure Service had a gross pressure of £2.2m.

In response to questions raised in relation to the Lane Rental Scheme, it was noted that the Council had been initiating benchmarking with other relevant authorities that had put together proposals and delivered upon such schemes. This was to be able to understand the extent of the work, any constraints and whatever information necessary to put forward a positive case. The Council would have to develop a package on which they wished to consult, prior to the scheme and demonstrate that Cheshire East could manage such a scheme. The Council would then seek approval of the proposals. The purpose of the lane rental scheme was to encourage statutory undertakers to take on their duties on the roads when there was less traffic - and charge those who wished to carry out their work at peak times, so it would be important to be cautious on income potential.

A detailed report would be submitted to the Highways and Transport Committee in April 2024 which would provide further details on the process and timescales.

RESOLVED:

The Highways and Transport Committee:

1. Notes the report of the Finance Sub Committee: Finance Sub Committee, 11th January, 2024.

2. Notes the factors leading to a forecast Net Revenue financial underspend of £0.2m against a revised budget of £11.2m (1.8%), for Highways and Transport Committee services.
3. Notes the forecast and the need for further mitigations to be identified.
4. Notes the in-year forecast Capital Spending of £68.1m against an approved MTFs budget of £63.9m, in respect of Highways and Transport Committee projects.
5. Notes the contents of Annex 1 and Appendix 6 and note that any financial mitigation decisions requiring approval will be made in line with relevant delegations.

27 PROW: GRAVEYARD LANE, MOBBERLEY DEFINITIVE MAP MODIFICATION ORDER APPLICATION

RESOLVED:

That this report be deferred to a future meeting of the Highways and Transport Committee.

28 PROW: TOFT DEFINITIVE MAP MODIFICATION ORDER APPLICATION

RESOLVED:

That this report be deferred to a future meeting of the Highways and Transport Committee.

29 APPOINTMENTS TO THE PUBLIC RIGHTS OF WAY CONSULTATIVE GROUP

RESOLVED: (By Majority)

That the Highways and Transport Committee

1. Retain the current Membership of Councillors L Crane and H Faddes of the Highways and Transport Committee to the Public Rights of Way Consultative Group.
2. Agree the Terms of Reference for the Public Rights of Way Consultative Group attached as appendix 1 to the report.

Councillor Arthur Moran wished it to be recorded that he abstained from the vote.

30 WORK PROGRAMME

The Committee considered the Work Programme. It was noted that the two Public Rights of Way reports which had been deferred would be added to the Work Programme for 4 April 2024.

The following items would also be added:

- In relation to minute 22, a report on pre-paid tickets being usable on all Cheshire East car parks be added to the work programme for 4 April 2024
- A report on a review of Member Budgets at a date to be agreed.

RESOLVED:

That the Work Programme, with the amendments highlighted above be noted.

31 HIGHWAYS SERVICE CONTRACT PEER REVIEW

The Committee considered a report which proposed a process and timetable to conduct an objective review and inform the Council's decision in respect of the break clause in relation to the 15-year contract (the "Highway Service Contract" or "HSC") that the Council entered into with Ringway-Jacobs Limited to deliver highway services. The Committee were also asked to consider the legal and financial implications of assessing the performance of the HSC.

An amendment was proposed and seconded in respect of recommendation 1c which be amended to read "Leader of the CEC Conservative Group or nominated person". This was carried unanimously.

RESOLVED: (Unanimously)

That the Highways and Transport Committee

1. Agree that a review of the Highways Service Contract (HSC) is undertaken and:

- a) Commence a peer review through which the Contract is assessed to inform future decisions regarding the HSC.
- b) Delegate authority to the Director of Highways and Infrastructure to finalise the scope of the HSC Peer Review.
- c) Approve that a Member Advisory Panel is established with the proposed membership as set out below and the Terms of Reference as set out in Appendix A.

The Chair of the Highways and Transport Committee

The Vice Chair of the Highways and Transport Committee

The Chair of the Finance Sub-Committee

Leader of the CEC Conservative Group or nominated person.

2. Note that a further report with a recommendation will be brought to the Highways and Transport Committee regarding the HSC in summer 2024 following the completion of the review.

The meeting commenced at 10.30 am and concluded at 3.00 pm

Councillor C Browne (Chair)

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Highways and Transport Committee**
held on Tuesday, 30th January, 2024 in the Capesthorpe Room, Macclesfield
Town Hall

PRESENT

Councillor C Browne (Chair)
Councillor L Crane (Vice-Chair)

Councillors M Brooks, L Braithwaite, R Chadwick, P Coan, A Coiley,
D Edwardes, H Faddes, A Gage, A Moran, H Moss and M Sewart

OFFICERS IN ATTENDANCE

Tom Moody, Director of Highways and Infrastructure
Richard Hibbert, Head of Strategic Transport and Parking
Domenic De Bechi, Head of Highways
Hayley Kirkham, Programme Director HS2
Mandy Withington, Legal Services
Steve Reading, Principal Accountant
Rachel Graves, Democratic Services Officer

34 APOLOGIES FOR ABSENCE

Apologies were received from Councillors C Hilliard and J Priest.
Councillors M Brooks and D Edwardes attended as substitutes.

35 DECLARATIONS OF INTEREST

No declarations of interest were made.

36 PUBLIC SPEAKING/OPEN SESSION

Councillor J Clowes spoke in relation to the Conservative Group proposals relating to the Highways and Transport budget proposals which she had circulated to the Committee. She stated that she had taken advice from officers and the S151 Officer and that they were proposals which could be added to the MTFS. The projects may not realise actual savings in year but needed preparation in time for future MTFS discussions and budget programming.

37 MEDIUM TERM FINANCIAL STRATEGY CONSULTATION 2024/25 - 2027/28 PROVISIONAL SETTLEMENT UPDATE

The Committee considered a report which sought feedback on the responsibilities of the Committee as consultees, on the development of the Cheshire East Medium-Term Financial Strategy 2024/25 to 2027/28.

There remained a shortfall of £12.7m across all committees to be resolved and further budget change proposals were sought to help present a balanced budget. The Highways and Transport budget for 2023/24 was £11.0m. Expenditure was forecast to increase by £5.8m next year. The budget could increase by £1.2m due to funding constraints and as a result Highways and Transport would need to find savings of £4.6m to reduce the £5.8m growth pressures to an affordable level of £1.2m. At this stage £1m of savings had been identified.

Officers reported that the High-Level Business Cases would be available for Members in time for the Corporate Policy Committee on the 13 of February.

Members asked questions and provided comments in relation to the proposals. These included:

Pay Inflation –it was asked why 3% figured was being used as in previous year had used 5% and this was below what the actual pay award had been. In response it was stated that the pay award was subject to negotiation and the percentage was difficult to predict particularly when it was a fixed sum. The existing MTFS forecast that the average increase would be around 3% for 2024/25.

High Level Business Cases – it was stated that reference had been made previously to the business cases being considered by the Committee, but they were not included in the report. In response it was reported that the process had changed and that the high level business cases were being collated for the meeting of the Corporate Policy Committee on 13 February.

Ongoing funding for highways – it was asked how much money the Council needed to put into the highways budget to have an adequate maintenance plan. In response it was stated that the funding received was not adequate compared to the level of work necessary to maintain the highways network to the standard the Council would like to achieve. 12 months ago the Council had a £180m backlog of repair work which was now closer to £200m.

Public Consultation – it was asked how the public views would be reflected in the final budget proposals. In response it was stated that the public consultation had closed on 29 January and the outcomes would be reported to the Corporate Policy Committee on 13 February.

Bus Service subsidy – it was asked how the savings were going to be made. In response it was reported that there was £2.5m growth for local buses. The savings related to the level of supported local bus services and the recent tendering offered up savings of £250k.

Conservative Group Highways and Transport budget proposals – Cllr M Sewart reported that the number in the proposals was out of sync and that they should read as follows:

- Provision of Car Parks – it was proposed:
 - Ai) that the parking disposal strategy be included on the Highways and Transport Committee work programme with clear times schedules for completion, related consultations, outcomes and implementation.
 - Aii) that this work recognised the synergies between other Council areas (assets, planning) and consequently the need for cross-committee engagement (Economy and Growth, Finance Sub Committee, Corporate Policy Committee and other committees impacted by end-use proposals)
 - Aiii) that the Parking Disposal Strategy be identified as a prospective MTFS item to be clearly noted in the current 2024/25 MTFS documentation.

- Permit system for Pay and Display car parks – it was proposed :
 - Bi) as this had direct implications for the Highways and Transport Committee Budget, it should be included in the quarterly MTFS reports coming to the Committee so that the Committee could offer robust oversight and scrutiny on the progress of the Implementation Plan. Savings could be made by moving to the National Parking Platform (NPP) at some point in 2024.
 - Bii) proposed that the Council registers its interest in the NPP with the relevant NPP implementors at the earliest opportunity.
 - Biii) the Implementation Plan should include the NPP within its implementation schedules (to commence post September 2024), including the graduated move from cash to alternative payment options.
 - Biv) no fiscal evaluation has been made of the impacts of cash-payments in relation to reduced enforcement costs. This should be conducted to further support the NPP business case.
 - Bv) a review of the proposed permit system be further evaluated in lines with other Local Authority systems in order to create a cash-free ‘permit options’ alternative that was sufficiently flexible to incentivise (not disincentivise) its use.

- Lane Rental Scheme – it was proposed
 - Ci) that the item be added to the 2024/25 MTFS as no financial element was accounted against this item in 2023/24.
 - Cii) was expedited in readiness for the April 2024 meeting when a report would be brought to the Committee.
 - Ciii) a realistic financial appraisal be conducted to set a realistic fiscal target against the Highways and Transport Committee Budget in 2024/25.

- Civ) the item be included as part of the quarterly MTFs reports to Committee in order that Members were able to offer early and continuing scrutiny and oversight of the policy and its implementation.
- Cv) the Council respond to the 'Open Consultation' and that Members be involved in the process where possible.
- Government Pothole Funding – it was proposed
 - Di) that the Committee sought further financial advice from the S151 Officer that enables the Council to optimise “the resurfacing of carriageways, cycleways, and footways to prevent potholes and other road defects from occurring”, with a focus on resilient repairs that offer extended functionality.
 - Dii) as the grant impacted of the 2024/25 MTFs, the planned and implemented spend be reported to the Committee as part of the MTFs quarterly reviews
- A500 Dualling Middlewich Bypass – it was proposed:
 - Ei) the item be included as part of the MTFs and included on the Work Programme, enabling the Committee to have early sight and involvement in these developments prior to the recommendation stage.
 - Eii) the project had synergies with other Service Committees (eg: Economy & Growth, Finance Sub-Committee) and this should be recognised in any proposals going forward.

It was proposed and seconded that the Conservative Group proposals and the proposals in the budget consultation be recommended to the Corporate Policy Committee for inclusion in the Council's budget 2024/25.

RESOLVED: That the Committee

- 1 recommend to the Corporate Policy Committee, for their meeting on 13 February 2024, all proposals within the budget consultation, as related to the Committee's responsibilities, for inclusion in the Council's budget for 2024/25.
- 2 the additional proposals from the Conservative Group be recommended to the Corporate Policy Committee for inclusion in the Council's budget proposals.

The meeting commenced at 10.00 am and concluded at 10.38 am

Councillor C Browne (Chair)

OPEN

Highways & Transport Committee

4 April 2024

Bus Service Review 2024

Report of: Tom Moody, Director of Highways and Infrastructure

Report Reference No: HTC/04/24-25

Ward(s) Affected: All Wards

Purpose of Report

- 1 The report presents proposals for a strategic bus service review of the Council's support for local bus services. The review will ensure that spending provides value for money and best meets the needs of passengers within prevailing budget constraints.
- 2 The method for this review incorporates the Council's bus support criteria (as approved by the Highways and Transport Committee in November 2023), performance data and accessibility analysis. The review includes a period of consultation and engagement with the bus industry, service users, wider stakeholders and local businesses and residents.
- 3 The report also provides an update on the Council's Bus Service Improvement Plan (BSIP), which is being refreshed to update the vision, objectives and ambition for local bus services up to 2040. In line with Department for Transport (DfT) guidance published in January 2024, the updated BSIP will be submitted to DfT by 12th June 2024.

Executive Summary

- 4 The bus network in Cheshire East plays a key role in providing access to jobs and services by connecting people to places. Buses are an essential component of an integrated transport network. They have a vital role in delivering key Council policy priorities for the economy, social cohesion, environmental sustainability, including decarbonisation.

- 5 The local bus network is made up of 37 bus services, of which 21 services are fully supported by the Council (57%), a further 8 are partially supported by the Council (22%), such as evening journeys. 8 services (22%) operate on a fully commercial basis. The Council currently spends £2.5m supporting bus services which are not commercially viable but are deemed important and socially necessary.
- 6 The last bus service review was undertaken in 2017 and much has changed in that time. In 2020 the Covid-19 pandemic struck with significant impacts for passenger transport services and government published the National Bus Strategy in March 2021, which sets out to rebuild bus patronage to 2019 levels and beyond.
- 7 The Council's first BSIP was published in October 2021 during the period of recovery from the Covid pandemic. Although the number of fare-paying passengers has now returned to pre-Covid levels, the number of the concessionary passholders is still at around 70% of pre-Covid levels. The mission to rebuild patronage is ongoing, with a need to respond to the cost of living crisis and changes to working, shopping and leisure activities that have affected travel patterns.
- 8 The objectives of the bus service review are to:
 - a. Maximise opportunities to focus limited resources in the areas of greatest need.
 - b. Ensure supported services complement, not compete, with commercial services.
 - c. Maximise opportunities to extend the role of commercial services or transfer supported services to the commercial network.
 - d. Ensure that the network is coherent in terms of passenger needs, bus operations and value for money.
 - e. Work in partnership with operators to develop the best possible outcomes.
 - f. Identify opportunities to modernise flexible, demand responsive transport to complement fixed route bus service provision.
- 9 A methodology has been prepared based on an evidence-led approach which ensures our planning is informed and influenced by robust data and stakeholder consultation. The key tasks in the methodology are set in Appendix 1, including the bus support criteria, performance data, accessibility mapping and gap analysis.
- 10 An 8-week consultation is proposed between May and June 2024 to seek the views of bus operators, service users, local businesses and residents. A Consultation and Engagement Plan is included at Appendix 2. The Enhanced Partnership (EP) for buses has a key role to play in

the bus service review – the governance structure for the EP is included at Appendix 3.

RECOMMENDATIONS

The Highways and Transport Committee is recommended to:

1. Agree that a review of the supported bus network commences in April 2024.
2. Approve the objectives and methodology (see Appendix 1) for undertaking the bus service review and delegate to the Director of Highways and Infrastructure provision to make all necessary arrangements to complete the bus service review.
3. Approve the proposed approach to stakeholder and public consultation in line with the Consultation and Engagement Plan at Appendix 2 and Communications Plan at Appendix 4.
4. Delegate authority to the Director of Highways and Infrastructure to prepare the BSIP refresh in consultation with the Enhanced Partnership Board and submit a draft to DfT by their deadline of 12th June 2024. Noting that a further report to Highways and Transport Committee will follow in June 2024 seeking endorsement of this updated document.
5. Note that a report will be provided to Highways and Transport Committee in November 2024 setting out the recommendations for the supported bus network in Cheshire East.

Background

- 11 The Council's existing supported bus contracts expire at the end of March 2025, so there is a need to review existing service provision to ensure tendered services offer value for money and provide the best possible coverage to meet the needs of users and residents. Outcomes of this bus service review will inform the specification of tenders for re-procurement of services after the review.
- 12 In 2021, the Council was awarded £1.2m from the DfT Rural Mobility Fund to deliver a flexible, demand responsive transport (DRT) service in the south and west area of Nantwich – Go-Too was launched in October 2021 as a 3-year pilot project.
- 13 As part of the bus service review, careful consideration will be given to the blend between fixed route and flexible transport services. There are

many lessons learnt from the Go-Too pilot project which can be applied across the borough and there are clear opportunities to modernise the FlexiLink service and respond to consultation results from September 2023. These services will be included in the bus service review 2024.

- 14 A successful bus service is good for the economy, for the environment, for the cost of living and for the quality of life in the towns and villages across the borough. The Council's Bus Service Improvement Plan (BSIP) is how the Council set out our vision for growing bus patronage in the local area.
- 15 The DfT BSIP guidance issued in January 2024 set out the key themes of the 2024 BSIP, which are:
 - a. Update the baseline to 2023/24: updating the 2021 BSIP's account of the current situation to reflect all developments since 2021, including the evolution of the local bus market post-pandemic and its issues and opportunities; highlighting achievements made since 2021 in progress with the delivery of locally-driven change through the Enhanced Partnership.
 - b. Setting out the improvement programme for 2024/25: to reflect the known funding envelope of BSIP funding (phases 2 and 3 for Cheshire East) and all other funding sources for BSIP delivery, including the Council's own resources.
 - c. Getting ready for 2025 and beyond: refreshing the plans ambition and content to set out a high quality and flexible pipeline of prioritised proposals for the four years 2025/26 to 2028/29, within the BSIP's overall 10 year plus vision, attractive to funders, and ready for delivery as opportunities for funding arise.
- 16 Every local transport authority needs to produce a 2024 BSIP to secure the release of funding for 2024/25. BSIPs should be comprehensive and authoritative, whilst also being concise and accessible to the public.

Consultation and Engagement

- 17 A period of stakeholder and public consultation is proposed for 8 weeks between May and June 2024. Views will be sought from bus industry, service users, passenger groups, Town and Parish Councils, wider stakeholders, local businesses, and residents. A Consultation and Engagement Plan has been developed in conjunction with the Council's Research & Consultation Team (see Appendix 2), as well as a Communications Plan (see Appendix 4).

Reasons for Recommendations

- 18 The proposals will ensure that the Council’s expenditure on local bus services meets the needs of residents and continues to provide value for money. With supported bus contracts coming to an end on 31st March 2025, there is a need to review the existing service provision to ensure the Council continue to provide services in a lawful manner. Completing the review and updating our BSIP ensures we meet DfT’s national guidance placing Cheshire East Council in the strongest possible position to attract future funding from central government.

Other Options Considered

- 19 The alternative option is to do nothing and contracts would expire and services would cease. However, it has been 7 years since the last review and continuing with the existing network would miss the opportunity to evaluate the network and make appropriate adjustments which could benefit passengers and maximise value for money within budget constraints.

Option	Impact	Risk
Do Nothing	Supported bus contracts will end and supported services will stop operating in March 2025.	Ceasing all supported bus services will have a knock-on effect on commercial routes leading to their withdrawal (at least in part).
Do Same	Re-procure supported bus contracts as currently provided. The bus network will operate as it does currently, potentially not aligned with strategic priorities and not maximising value for money.	The supported network will not meet the needs of bus users and not offer the potential for quality enhancement or growth.

Implications and Comments

Monitoring Officer/Legal

- 20 The statutory basis for subsidising public passenger transport services is found within Section 63 of the Transport Act 1985. A condition of a

subsidy is where the service in question would not be provided, or would not be provided to a particular standard, without subsidy, and provided that open and competitive tenders are invited for the provision of the service.

- 21 In exercising or performing this function, the council must have regard to the transport needs of the elderly and the disabled.
- 22 The Council should keep any policies, plans and strategies under review and updated as necessary. The last Bus Service Review took place in 2017 which predates the current adopted Local Transport Plan.
- 23 In proposing to consult the Council must be mindful of the Gunning principles which are:
 - consultation must take place when the proposal is still at a formative stage;
 - sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response;
 - adequate time must be given for consideration and response; and
 - the results of consultation must be conscientiously taken into account.
- 24 When the bus market was deregulated in the 1980s there was no clear definition of a socially necessary service. Rural areas are less likely to have bus services as there is less population density when compared to urban areas. It was expected that local authorities would be able to subsidise routes that bus operators did not find profitable, but there is no requirement for local authorities to provide socially necessary bus services. Over time, pressures on local authority budgets have made it more difficult for local authorities to fund services that are not commercially viable.
- 25 Local authorities have powers to provide services, under tender, to meet public transport requirements within their area that would not be met in any other way. This is common practice. Some services in any given area are likely to be subsidised as councils have deemed them important routes for social and economic reasons. Bus operators must give notice to the local authority and Traffic Commissioner that they plan to introduce, change or withdraw a bus route.

- 26 In 2023/24 the Council had a budget of £2,562,396 for supported local bus services. These costs will be funded by the Council’s supported bus budget, DfT Local Transport Fund (LTF) grants, DfT Bus Service Operator Grant (BSOG) allocation and other fee income. The costs incurred to complete the review of local supported bus services, including the public and stakeholder consultation, will be funded from the Council’s supported bus budget.
- 27 The Council has been awarded £1,187,596 from the BSIP+ funding from central government. DfT make clear in the associated Memorandum of Understanding that to be eligible for future funding, including 2024/25 BSIP+ funding, the overall authority budget must be maintained at least at the same level. DfT expect the grant funding to be spent within a reasonable timeframe and outputs delivered within 12 months of funding receipt.
- 28 The DfT have also announced BSIP/BSIP+ funding allocations for 2024/25 which are set out in the below table. A delivery plan is currently being developed and will be reported to Committee in June 2024.

Cheshire East Funding Allocation	2023/24	2024/25
BSIP + (Phase 2)	£1,187,596	£1,187,596
BSIP (Phase 3)	0	£2,268.000

Policy

- 29 Cheshire East’s Corporate Plan recognises the importance of the bus network in supporting key strategic objectives such as reducing air pollution, reducing carbon emissions, enabling housing and employment growth, improving quality of place and protecting the environment.
- 30 The Local Transport Plan (2019-2024) outlines the role transport will play in supporting the long-term goals to improve the economy, protect the environment, improve health and wellbeing and the quality of place. The methodology used to undertake this network review must reflect this framework, considering social, economic and environmental impacts of bus services across the borough.
- 31 Cheshire East’s Bus Service Improvement Plan (BSIP) sets out the ambition for the bus network to improve the speed, reliability and quality of public transport, to encourage more residents to choose bus, make fewer car journeys and contribute to carbon reduction.

An open and enabling organisation	A council which empowers and cares about people	A thriving and sustainable place
<p>Ensure that there is transparency in all aspects of council decision making.</p> <p>Support a sustainable financial future for the council, through service development, improvement and transformation.</p> <p>Promote and develop the services of the council through regular communication and engagement with all residents.</p>	<p>Work together with our residents and partners to support people and communities to be strong and resilient.</p> <p>Reduce health inequalities across the borough.</p>	<p>A great place for people to live, work and visit.</p> <p>To reduce the impact on our environment.</p> <p>A transport network that is safe and promotes active travel.</p> <p>Thriving urban and rural economies with opportunities for all.</p> <p>To be carbon neutral by 2025.</p>

Equality, Diversity and Inclusion

- 32 The Council will fully evaluate the equality implications of the proposed bus service review and BSIP refresh through an Equality Impact Assessment (EqIA). The draft EqIA will be updated following consultation with protected equality groups, particularly young people, older people and people with disabilities. A draft EqIA is included at Appendix 5.

Human Resources

- 33 There are no direct implications for Human Resources.

Risk Management

- 34 In terms of governance and corporate oversight, a Bus Strategy Programme Board has been established including colleagues from key enabling services, such as legal, finance, research & consultation, and communications. This will ensure that the process of undertaking a bus service review is robust, as well providing as oversight of the BSIP refresh. A detailed risk register for the project has been developed and will be maintained throughout the life of the project.

Rural Communities

- 35 The Corporate Plan outlines targets to reduce areas of the borough not served by public transport. The Council has already demonstrated a

commitment to this through its successful bid to DfT funding as part of the Rural Mobility Fund, subsequent operations of the Go-too service and continued delivery of the boroughwide FlexiLink service.

- 36 The Corporate Plan also identifies the desire for thriving and active rural communities by 2025. The Council's Rural Action Plan (2022) highlights the importance of public transport links to help small businesses access markets or making it practical for employees to seek work in rural communities. Transport can also bring customers and tourists to local rural businesses such as shops, hotels and B&Bs. The importance of local buses for rural communities has been reflected within the review methodology through accessibility analysis, considering how best to serve areas of the borough that are not served by conventional fixed route services, whilst offering services that are value for money. This accessibility analysis ensures bus services remain accessible for those who need them most.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

- 37 The methodology takes account of requirements for home to school transport, including the current transformation programme that is working to optimise travel to and from schools and colleges. The Corporate Plan outlines the significant pressures in Children's Services, particularly placements for looked after children and services for children with special educational needs, including home to school transport. A significant number of school children across the borough use buses to access educational establishments.

Public Health

- 38 There are pockets of deprivation in Cheshire East related to income, health and life chances. Bus services enable a greater proportion of residents to access important services such as health care facilities. The continued delivery of these services therefore helps to address the Corporate Plan target to reduce health inequalities across the borough. The Index of Multiple Deprivation (IMD) is currently used to prioritise services and will be used as part of this methodology to assess accessibility within highly deprived areas where bus routes provide a lifeline for these communities.

Climate Change

- 39 Cheshire East Council have committed to be carbon neutral by 2025 and to influence carbon reduction across the borough in order to become a carbon neutral borough by 2045. Growing patronage on local

bus services is a key part of the programme to decarbonise of the transport network in the borough.

Access to Information	
Contact Officer:	Richard Hibbert Richard.Hibbert@cheshireeast.gov.uk
Appendices:	<ol style="list-style-type: none">1. Proposed Methodology2. Consultation and Engagement Plan3. Enhanced Partnership for Buses – Governance4. Communications Plan5. Equality Impact Assessment
Background Papers:	None

Appendix 1 – Bus Service Review Methodology

- 1 A methodology has been developed split over several tasks. These tasks include the identification of a reference case for future service proposals to be built upon, comprehensive data analysis to assess the 'need' for bus services across the borough, and development of proposals to ensure continued service coverage whilst maximising value for money.
- 2 The Council will engage with bus operators through the Enhanced Partnership at key stages to ensure that industry knowledge, experience and expertise inform and influence the review. There will also be an 8-week consultation with residents, businesses and stakeholders in May-June 2024.

Task 1: Bus Support Criteria (Reference Case)

- 3 The bus support criteria (approved by Committee in November 2023) enable existing and any potential future contracts to be tested using a fair, transparent and accountable process to manage contracts within budget constraints, provide maximum value for money and support wider strategic priorities in the Council. The application of the bus support criteria provides the reference case and a baseline against which to compare and to test future proposals. Task 1 is then supplemented by more detailed data and evidence outlined below.

Task 2: Bus Performance Data (Ticketer)

- 4 Since the previous bus service review the quantity and quality of data available regarding supported services has improved considerably. The availability of data sources, including ticketer data to show usage/patronage, negates the need for a detailed passenger survey on this occasion. Available data sources including ticketer will be analysed in detail to understand current service performance across the borough.

Task 3: Accessibility Mapping

- 5 Accessibility mapping will be undertaken to understand the impact of supported bus services by place, time of day and day of week. Mirroring the methodology adopted in 2017, and enabling a comparison between now and then, travel times will be assessed to the 9 key service centres and 2 principal towns within the borough:

Alsager	Middlewich
Congleton	Nantwich
Crewe	Poynton
Handforth	Sandbach
Knutsford	Wilmslow
Macclesfield	

- 6 Accessibility by public transport will be analysed for the following time periods:
- Morning peak period, weekdays
 - Evening peak period, weekdays
 - Off-peak period, weekdays
 - Evenings
 - Sundays
- 7 This mapping will help to show the added value provided by services across the borough at various times of the day. This process will be re-run following the development of service proposals to understand the impact/benefits/limitations of a new supported bus network.
- 8 This accessibility mapping will be expanded further using available local and national datasets within GIS to consider:
- Accessing shops, leisure and recreation
 - Accessing jobs, education and training
 - Accessing health, medical and welfare facilities
 - Reducing carbon emissions
 - Providing bus services for older and disabled people
 - Providing bus services for deprived areas within the borough.

Task 4: Gap Analysis and Developing Proposals

- 9 Utilising the evidence base, options for redefining the local supported bus network will be developed. Proposals will be drawn up considering the overarching BSIP aims and objectives for the borough, the bus service review objectives, accessibility mapping, service patronage and an assessment of service need.

Task 5: Assessment of Redefined Network

- 10 At this stage the new network proposals will be tested to enable a comparison with the reference case / baseline from task 1. This task is important as it will ensure that the Council is able to respond to challenges about any impacts likely to result from service changes.
- 11 A gap analysis will also be conducted for the developed proposals to identify any locations where loss of connectivity could be experienced. It will then be necessary to consider the extent to which flexible transport could provide a solution (current provision is FlexiLink and Go-Too).

Consultation, Engagement and Communications Plan

Name of engagement / consultation activity:	Bus Service Review – Public Consultation
Project Senior Responsible Officer (SRO):	Richard Hibbert
Project Manager (PM):	Jenny Marston
Project service / team:	Strategic Transport

Project Board – Corporate Input:
Strategic Transport & Parking
Children & Families – Home to School Transport
Research & Consultation
Communications
Legal
Finance
Procurement

Version control:			
Version	Author	Date	Description
v1	Chris Taylor	16/02/24	Consultation, Engagement and Communications Plan for the Bus Service Review.

Project purpose and background

An explanation of the issues and the purpose of the project, key information to set the scene

The bus network in Cheshire East plays a key role in providing access to jobs and services and connecting people and places. Buses are an essential component of an integrated transport network. They have a vital role in delivering key Council policy priorities for the economy, social cohesion, environmental sustainability, including decarbonisation.

The local bus network is made up of 37 bus services, of which 21 services are fully supported by the Council (57%), 8 are partially supported by the Council (22%), such as evening journeys, and 8 services (22%) are fully commercial. The Council currently spends £2.5m supporting bus services which are not commercially viable but are deemed important and socially necessary.

The last strategic bus service review was undertaken in 2017 and much has changed in that time. In 2020 the Covid-19 pandemic struck with significant impacts for passenger transport services and government published the National Bus Strategy in March 2021, which set out to rebuild bus patronage to 2019 levels and beyond.

A methodology has been prepared based on an evidence-led approach which ensures our planning is informed and influenced by robust data and stakeholder consultation. The key tasks

in the methodology are set out as an appendix to the Committee report, including the bus support criteria, performance data, accessibility mapping and gap analysis.

It is proposed to carry out an 8 week consultation between May and June 2024 to seek the views of bus operators, service users, local businesses and residents. The Enhanced Partnership (EP) for buses has a key role to play in the bus service review.

With supported bus contracts due to come to an end on 31st March 2025, there is a need to review the existing service provision to ensure retendered services offer value for money and the best possible coverage to serve residents of the borough with the right services in the right places. This bus service review will help to inform the process of retendering of services.

In 2021, the Council was awarded £1.2m from the DfT Rural Mobility Fund to deliver a flexible, demand responsive transport (DRT) service in the south and west area of Nantwich – Go-Too was launched in October 2021 as a 3 year pilot project.

As part of the bus service review, careful consideration will be given to the blend between fixed route and flexible transport services. There are many lessons learnt from the Go-Too pilot project which can be applied across the borough and there are clear opportunities to modernise the FlexiLink service and respond to consultation results from September 2023. These services will be included in the bus service review 2024 and associated consultation process.

Project Strategic Objectives

What the key strategic objectives of the project are, and how these relate to the corporate plan

The objectives of this review are to:

- a. Maximise opportunities to focus limited resources in the greatest areas of need.
- b. Ensure supported services complement, not compete, with commercial services.
- c. Maximise opportunities to extend the role of commercial services or transfer supported services to the commercial network.
- d. Ensure that the network is coherent in terms of passenger needs, bus operations and value for money.
- e. Work in partnership with operators to develop the best possible outcomes.
- f. Identify opportunities to modernise flexible, demand responsive transport to complement fixed route bus service provision.

Any proposals as a result of this Bus Service Review will need to align with current corporate priorities, policy objectives in the Local Transport Plan (LTP), Bus Service Improvement Plan (BSIP) objectives, the needs of local communities, and the challenges facing the bus industry including Covid-19 recovery and driver shortages.

Engagement approach

A description of the engagement approach to be used, describing the various engagement stages and methods

Engagement with local bus operators will take place through the Enhanced Partnership (EP) Board and Forum – this will ensure that industry knowledge, experience and expertise inform and influence the review, as well as bus user groups and neighbouring authorities where there are cross-boundary services. Within the Board, all bus operators who operate within the Cheshire

East EP Plan and Scheme area will be invited and entitled to participate, ensuring that the whole industry have an opportunity to input to the consultation.

A period of public consultation and stakeholder engagement is proposed to service proposals reflects the views of service users, residents, businesses and wider stakeholders. The consultation is planned to be launched during May/June for 8 weeks. It is important for the Council to be open and transparent on the details of each proposal to ensure they are fully understood.

Stakeholders and methods

A summary of the people and groups you want to engage / consult with from your stakeholder analysis including impacted groups from your equality impact assessment. The methods you will use to gather information, based on the best ways to target your key audiences or impacted groups

Stakeholder	Method	What stage
Bus Operators	Enhanced Partnership Board and Forum	<ul style="list-style-type: none"> Pre-Consultation Stage Consultation Stage Post-Consultation Stage
Bus User Groups	Focus Groups	<ul style="list-style-type: none"> Consultation Stage
CEC Members	Members Briefing	<ul style="list-style-type: none"> Pre-Consultation Stage Consultation Stage Post-Consultation
CEC Residents	Online survey and paper copies at Libraries and Customer Contact Centres	<ul style="list-style-type: none"> Consultation Stage
Town & Parish Councils	Email	<ul style="list-style-type: none"> Consultation Stage
Enhanced Partnership Board: <ul style="list-style-type: none"> Chair of H&T Committee Deputy Chair of H&T Committee Head of Highways Head of Strategic Transport & Parking All Bus Operators 	EP Board meetings (quarterly)	<ul style="list-style-type: none"> Pre-Consultation Stage Consultation Stage Post-Consultation Stage
Enhanced Partnership Forum <ul style="list-style-type: none"> All local bus operators Community Transport Operators Town & Parish Councils Bus User Groups Train Operating companies Other Statutory consultees Healthcare and education Police Chamber of Commerce Neighbouring Authorities & LEP 	EP Forum meetings	<ul style="list-style-type: none"> Consultation Stage

• Traffic Commissioner		
Equality Groups – e.g. Cheshire Centre for Independent Living and Cheshire Eye Society	Targeted engagement	• Consultation Stage
Transport Focus – National Representative Body of Bus Users	Meeting/discussion	• Consultation Stage

Activity plan

The time to take for each stage including preparation, live engagement / consultation, analysis phase and feedback phase

Activity	Who / team responsible	Estimated date / timescales
<i>e.g., Draft questions</i>	<i>e.g., John Smith, Public health</i>	<i>e.g Before 10th June</i>
Draft consultation questions and supporting documents. Review and feedback of consultation questions and supporting documents Design paper copies of the questionnaire Finalise consultation questions and supporting documents / sign off. Send paper copies to print / distribute to libraries and customer contact centres.	Strategic Transport	Before 30 th April 2024
Conduct Public Consultation	Strategic Transport	01/05/2024 – 26/06/2024
Analysis and Feedback	Consultation Team	26/06/2024 – 24/07/2024

Communication plan

Communications tactics to promote the engagement / consultation

Activity	Audience	Channel	Date timescale /	Aim Messages /	Who
Press Release	Residents and wider stakeholders	Issued to all media	May 2024	Inform residents, outline the purpose of the consultation.	Media Team/Rhiannon Hilton.

Town and Parish Councils	All Town and Parish Council's	Email	May 2024	Inform Town & Parish Councils of purpose of consultation.	Strategic Transport
Bus Operators	All bus operators	Email	May 2024	Inform operators of the consultation launch.	Strategic Transport
Bus User Groups	All bus user groups	Email	May 2024	Inform user groups of purpose of consultation.	Strategic Transport
Other key Stakeholders	All key stakeholders	Email	May 2024	Inform key stakeholders of purpose of consultation.	Strategic Transport

Analysis, Reporting and feedback

How will analysis be carried out / how will the draft feedback be reported and shared with participants.

Analysis tools and expertise required:	
Reporting required:	Full reporting of consultation findings
Public feedback methods:	

Budget and Resource

What funding and resources do you need in order to successfully deliver the plan?

Budget / costs:	TBC – Transport Policy Revenue Budget
Resources:	Strategic Transport Team, R&C Team, Communications

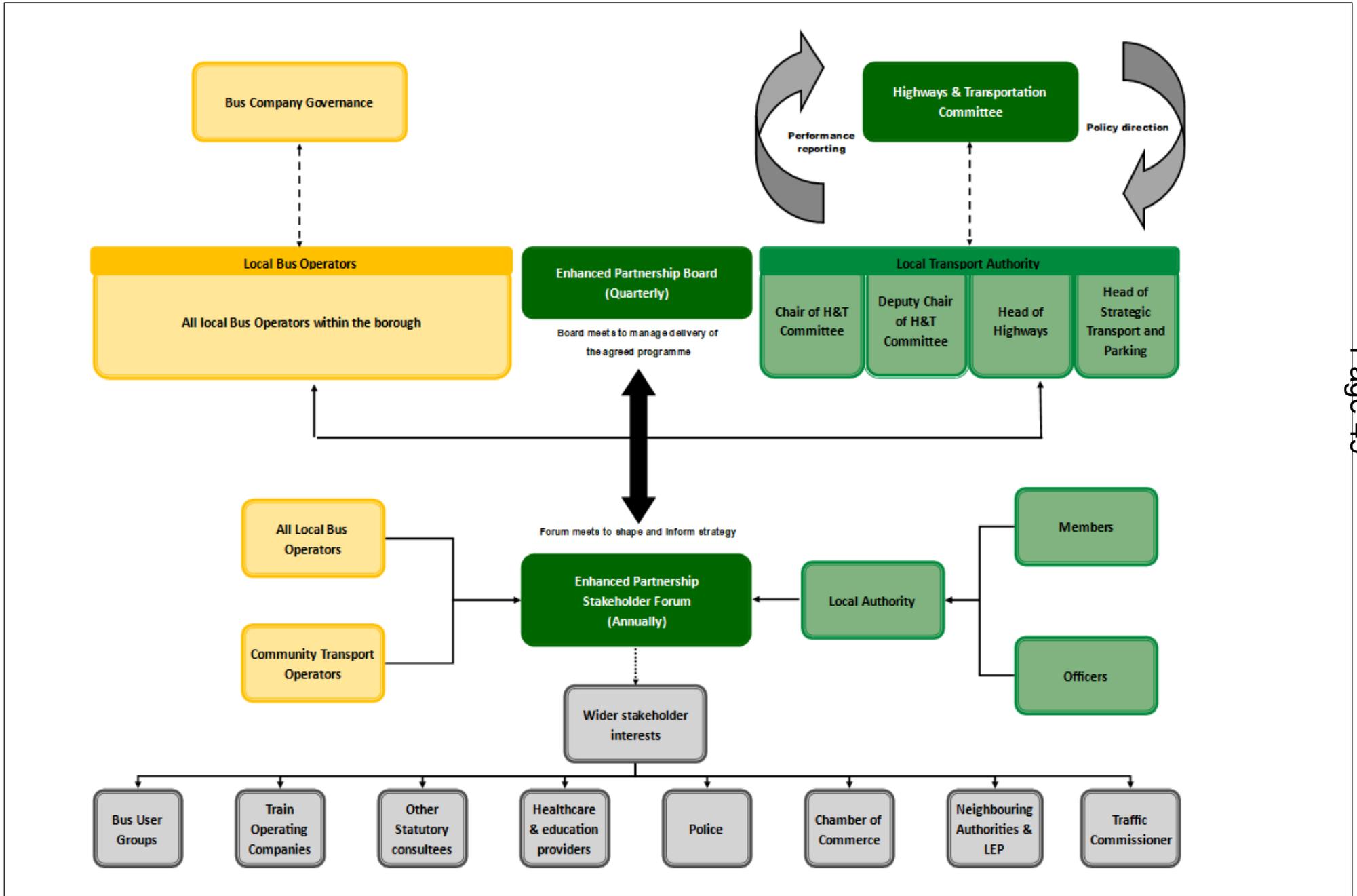
Risk Assessment

What are the anticipated risks and mitigations?

Risk	Mitigation
Public not understanding the purpose of the consultation / inability to interpret	Use of plain English
Wording/jargon is too technical	Use of plain English
Consultation material too lengthy	Keep consultation questions short and concise
Not getting consultation started by May.	Weekly project plan, key milestones identified with sufficient lead in time built in.
Limited responses to the consultation	Communications and promotions to encourage responses. Ensure consultation material is

	engaging. Regular stakeholder engagement to keep interested parties engage.
Local elections – It becomes a political issue	Ensure consultation is complete well before Purdah

Appendix 3: Enhanced Partnership for Buses – Governance Structure



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Appendix 4: Communications Plan - Bus Service Review 2024

Contents

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Classification, resources and timescale

Service	Strategic Transport		Committee	Highways & Transport	
CP Priority			CS Priority		
Subject	Bus Service Review – Public Consultation				
Comms lead	Rhiannon Hilton		Type	Public Consultation	
Budget			Bloom	N/A	
Start	01/05/2024	Go-live	01/05/2024	End	26/06/2024

Background / narrative

An overview of the project.

The bus network in Cheshire East plays a key role in providing access to jobs and services and connecting people and places. Buses are an essential component of an integrated transport network. They have a vital role in delivering key Council policy priorities for the economy, social cohesion, environmental sustainability, including decarbonisation.

The local bus network is made up of 37 bus services, of which 21 services are fully supported by the Council (57%), 8 are partially supported by the Council (22%), such as evening journeys, and 8 services (22%) are fully commercial. The Council currently spends £2.5m supporting bus services which are not commercially viable but are deemed important and socially necessary.

The last strategic bus service review was undertaken in 2017 and much has changed in that time. In 2020 the Covid-19 pandemic struck with significant impacts for passenger transport services and government published the National Bus Strategy in March 2021, which set out to rebuild bus patronage to 2019 levels and beyond.

A methodology has been prepared based on an evidence-led approach which ensures our planning is informed and influenced by robust data and stakeholder consultation. The key tasks in the methodology are set out as an appendix to the Committee report, including the bus support criteria, performance data, accessibility mapping and gap analysis.

It is proposed to carry out an 8 week consultation between May and June 2024 to seek the views of bus operators, service users, local businesses and residents. The Enhanced Partnership (EP) for buses has a key role to play in the bus service review.

With supported bus contracts due to come to an end on 31st March 2025, there is a need to review the existing service provision to ensure retendered services offer value for money and the best possible coverage to serve residents of the borough with the right services in the right places. This bus service review will help to inform the process of retendering of services.

In 2021, the Council was awarded £1.2m from the DfT Rural Mobility Fund to deliver a flexible, demand responsive transport (DRT) service in the south and west area of Nantwich – Go-Too was launched in October 2021 as a 3 year pilot project.

As part of the bus service review, careful consideration will be given to the blend between fixed route and flexible transport services. There are many lessons learnt from the Go-Too pilot project which can be applied across the borough and there are clear opportunities to modernise the FlexiLink service and respond to consultation results from September 2023. These services will be included in the bus service review 2024 and associated consultation process.

Communications objectives/outcomes

Communications activity tries to change what people:		
Know	➔	Provide or clarify information and/or correct misinformation, misconception – in ways that are accessible and easy to understand
Think	➔	Put information into context of other knowledge and values, helping people reflect on what information means to them
Feel	➔	Nudge emotional response and personal relationship to knowledge
Do	➔	Provoke or call to action

Communications-specific outcomes and objectives for this plan

- Clearly describe the proposals for any bus service adjustments within Cheshire East and why these adjustments are necessary.
- Set the context for why the Bus Service Review is being undertaken and how proposals have been developed.
- Stress the impact of not implementing any service proposals on the viability of services going forward.
- Encourage Cheshire East residents to take part in the public consultation due to take place in May/June 2024.

Audiences and stakeholders

Communications activity can take people on an engagement journey:					
Unaware >>>>	Aware >>>>>	Informed >>>	Interested >>>	Involved >>>	Leadership
We must consider people's starting attitude and position in relation what we are doing:					
Advocate	Agnostic	Sceptical	Critical	Cynical	

Edit / add new rows as the project requires

Audience / stakeholder	Notes
Residents and customers	
Children, young people, parents and carers	
Under-served communities	
CEC Staff	
CEC Councillors	
Community, voluntary and faith sector	

Audience / stakeholder	Notes
Key community influencers	
Businesses (local, regional and national)	
Developer and investor community	
Service delivery partners	
Schools, colleges, early years providers	
Town and parish councils	
MPs	
Local, regional and national public sector agencies.	
Neighbouring Authorities	
Vulnerable Groups – including Cheshire Eye Society, Cheshire Centre for Independent Living	

Tactics / Approach

How we are going to achieve the communications objectives / outcomes

- Issue press releases, promoted also via social media, to outline clearly why the Bus Service Review is being undertaken, why the public are being engaged, what the proposals are and what the outcomes of this process will be.
- Press releases/social media must generate interest in the topic to encourage participation in the public consultation.
- Briefings to key stakeholders in advance of consultation going live and during the first week of consultation.

Products/types of activity

Examples of what we are going to do

- Press releases prior to and during public consultation to encourage uptake.
- Social media posts to encourage participation in the public consultation.
- Enhanced Partnership (EP) Board and Forum meetings to discuss with operators and service users.
- Briefings with key stakeholders.

Key messages

The key messages and lines to take

- The last network review was undertaken 7 years ago and since then the bus network has encountered significant challenges and change.
- The key objectives for the bus service review are:
 - a. Maximise opportunities to focus limited resources in the greatest areas of need.
 - b. Ensure supported services complement, not compete, with commercial services.
 - c. Maximise opportunities to extend the role of commercial services or transfer supported services to the commercial network.
 - d. Ensure that the network is coherent in terms of passenger needs, bus operations and value for money.
 - e. Work in partnership with operators to develop the best possible outcomes.
 - f. Identify opportunities to modernise flexible, demand responsive transport to complement fixed route bus service provision.
- The messaging will make clear that proposals for service changes and alterations are subject to consultation and that there is an opportunity for operators, service users, residents, businesses and stakeholders to inform and influence the process.

Action plan and timeline

#	Date/time	Activity/Event	Comms/lead	Audience(s)	Channel	Notes
1	Before 01/05/2024	Councillor Briefings	Rhiannon Hilton	Committee Members	Teams Meeting	
2	01/05/2024	Press Release regarding Bus Service Review and public consultation start date.	Rhiannon Hilton	General Public/residents of Cheshire East	Press	
3	01/05/2024	Social media post regarding Bus Service Review and public consultation start date.	Rhiannon Hilton	General Public/residents of Cheshire East	Social Media platforms	
4	01/05/2024	Online publication regarding Bus Service Review and public consultation start date.	Rhiannon Hilton	General Public/residents of Cheshire East	Online (council webpage)	

#	Date/time	Activity/Event	Comms/lead	Audience(s)	Channel	Notes
5	29/05/2024	Press Release at halfway stage to further encourage participation in public consultation	Rhiannon Hilton	General Public/residents of Cheshire East	Press	
6	29/05/2024	Social media post at halfway stage to further encourage participation in public consultation	Rhiannon Hilton	General Public/residents of Cheshire East	Social Media platforms	
7	29/05/2024	Online publication at halfway stage to further encourage participation in public consultation	Rhiannon Hilton	General Public/residents of Cheshire East	Online (council webpage)	
9	TBC	Media release/social media to promote outcome of the consultation	TBC	General public and stakeholders	Website, media release & social media	

Evaluation, performance, reporting

How are we going to demonstrate how well we have delivered the communications objectives and outcomes?

This will be measured directly by the number of respondents taking part in the public consultation.

Report on media pickup indicating what audiences are being reached.

Social media engagement.

Appendix 1: Communications products

Record / link to final versions of media releases, statements and other products.

TBC

Appendix 2: Notable coverage

List press, online, broadcast and social coverage

TBC

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Appendix 5 – Bus Service Review 2024

Equality Impact Assessment (EIA) Engagement and our equality duty

Whilst [the Gunning Principles](#) set out the rules for consulting ‘everyone’, additional requirements are in place to avoid discrimination and inequality.

Cheshire East Council is required to comply with the Equality Act 2010 and the Public Sector Equality Duty. The Equality Act 2010 simplified previous anti-discrimination laws with a single piece of legislation. Within the Act, the Public Sector Equality Duty (Section 149) has three aims. It requires public bodies to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act, by consciously thinking about equality when making decisions (such as in developing policy, delivering services and commissioning from others)
- advance equality of opportunity between people who share a protected characteristic and people who do not share it, by removing disadvantages, meeting their specific needs, and encouraging their participation in public life
- foster good relations between people who share a protected characteristic and people who do not

The Equality Duty helps public bodies to deliver their overall objectives for public services, and as such should be approached as a positive opportunity to support good decision-making.

It encourages public bodies to understand how different people will be affected by their activities so that policies and services are appropriate and accessible to all and meet different people’s needs. By understanding the effect of their activities on different people, and how inclusive public services can support and open up people’s opportunities, public bodies are better placed to deliver policies and services that are efficient and effective.

Complying with the Equality Duty may involve treating some people better than others, as far as this is allowed by discrimination law. For example, it may involve providing a service in a way which is appropriate for people who share a protected characteristic, such as providing computer training to all people to help them access information and services.

The Equality Act identifies nine 'protected characteristics' and makes it a legal requirement to make sure that people with these characteristics are protected from discrimination:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnerships
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Applying the equality duty to engagement

If you are developing a new policy, strategy or programme you may need to carry out an Equality Impact Assessment. You may be able to ascertain the impact of your proposal on different characteristics through desk-based research and learning from similar programmes, but you also need to carry out some primary research and engagement. People with protected characteristics are often described as 'hard to reach' but you will find everyone can be reached – you just need to tailor your approach, so it is accessible for them.

Contacting the [Equality and Diversity mailbox](#) will help you to understand how you can gain insight as to the impacts of your proposals and will ensure that you help the Council to comply with the Equality Act 2010 and the Public Sector Equality Duty.

Section 1 – Details of the service, service change, decommissioning of the service, strategy, function or procedure

Proposal Title	Bus Service Review 2024
Date of Assessment	05/02/2024
Assessment Lead Officer Name	Chris Taylor
Directorate/Service	Highways and Transport
Details of the service, service change, decommissioning of the service, strategy, function or procedure.	<p>The bus network in Cheshire East plays a key role in providing access to jobs and services and connecting people and places. Buses are an essential component of an integrated transport network. They have a vital role in delivering key Council policy priorities for the economy, social cohesion, environmental sustainability, including decarbonisation.</p> <p>The local bus network is made up of 37 bus services, of which 21 services are fully supported by the Council (57%), 8 are partially supported by the Council (22%), such as evening journeys, and 8 services (22%) are fully commercial. The Council currently spends £2.5m supporting bus services which are not commercially viable but are deemed important and socially necessary.</p> <p>The last strategic bus service review was undertaken in 2017 and much has changed in that time. In 2020 the Covid-19 pandemic struck with significant impacts for passenger transport services and government published the National Bus Strategy in March 2021, which set out to rebuild bus patronage to 2019 levels and beyond.</p> <p>A methodology has been prepared based on an evidence-led approach which ensures our planning is informed and influenced by robust data and stakeholder consultation. The key tasks in the methodology are set out as an appendix to the Committee report, including the bus support criteria, performance data, accessibility mapping and gap analysis.</p> <p>It is proposed to carry out an 8 week consultation between May and June 2024 to seek the views of bus operators, service users, local businesses and residents. The Enhanced Partnership (EP) for buses has a key role to play in the bus service review.</p>

	<p>With supported bus contracts due to come to an end on 31st March 2025, there is a need to review the existing service provision to ensure retendered services offer value for money and the best possible coverage to serve residents of the borough with the right services in the right places. This bus service review will help to inform the process of retendering of services.</p> <p>In 2021, the Council was awarded £1.2m from the DfT Rural Mobility Fund to deliver a flexible, demand responsive transport (DRT) service in the south and west area of Nantwich – Go-Too was launched in October 2021 as a 3 year pilot project.</p> <p>As part of the bus service review, careful consideration will be given to the blend between fixed route and flexible transport services. There are many lessons learnt from the Go-Too pilot project which can be applied across the borough and there are clear opportunities to modernise the FlexiLink service and respond to consultation results from September 2023. These services will be included in the bus service review 2024 and associated consultation process.</p>
<p>Who is Affected?</p>	<p>At this stage the proposals are yet to be developed. A second iteration of this EqIA will be developed following the development of consultation proposals outlining all parties likely to be impacted by specific service adjustments.</p> <p>Prior to the development of these proposals, the below are likely to be affected:</p> <ul style="list-style-type: none"> • The general public (including residents and visitors to the Borough); • Cheshire East Council stakeholders; • Public transport operators and staff; • Local businesses/organisations; • Schools and education establishments; • Neighbouring local authorities; • Governmental bodies (e.g. Local Enterprise Partnership); • Statutory transport bodies (e.g. Department for Transport and Transport for the North).

	<ul style="list-style-type: none"> • Partner organisations • Town and Parish Councils; • Umbrella organisations for people with specialist transport needs; such as: <ul style="list-style-type: none"> ○ AgeUK ○ Space4Autism ○ Disability Information Bureau (DIB) ○ Cheshire Centre for Independent living ○ Deafness Support Network ○ ADCA Medical Transport Service ○ Congleton Disabled Club ○ Care4CE ○ Leonard Cheshire Disability ○ The Stroke Association • Transport interest groups; Such as: <ul style="list-style-type: none"> ○ Crewe & District Bus Users Group ○ Transition Wilmslow ○ Active Travel Congleton ○ Travel Cheshire • Environmental groups • MPs <p>This list has been devised considering the current users of bus services across the borough who would be affected positively or negatively by service adjustments.</p>
<p>Links and impact on other services, strategies, functions or procedures.</p>	<p>Cheshire East’s corporate plan recognises the importance of the bus network in supporting key strategic objectives such as reducing air pollution, reducing carbon emissions, enabling housing and employment growth, improving quality of place and protecting the environment.</p> <p>The Local Transport Plan (2019-2024) outlines the role transport will play in supporting the long-term goals to improve the economy, protect the environment, improve health and wellbeing and the quality of place.</p>

The methodology used to undertake this network review must reflect this framework, considering social, economic and environmental impacts of bus services across the borough.

Cheshire East's Bus Service Improvement Plan (BSIP) sets out the ambition for the bus network to improve the speed, reliability and quality of public transport, to encourage more residents to choose bus, make fewer car journeys and contribute to carbon reduction.

Depending on the proposals put forward, there may also be an impact upon home to school travel across the borough. Pre-consultation engagement is proposed with all groups to explore potential impacts prior to formal consultation commencing. This will ensure that any issues can be identified and mitigated prior to the formal consultation stage. Once proposals have been developed a second iteration of this EqIA will be developed outlining more specifically the impact of any service changes on particular services.

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<p>How does the service, service change, strategy, function or procedure help the Council meet the requirements of the Public Sector Equality Duty?</p>	<p>The Public Sector Equality Duty is a legal requirement contained within the Equality Act 2010 which requires public authorities and others carrying out public functions to have due regard to the need to:-</p> <ul style="list-style-type: none"> • Eliminate unlawful discrimination, harassment and victimisation • Advance equality of opportunity between people who share a protected characteristic and those who do not • Foster good relations between people who share a protected characteristic and those who do not <p>The above aims may be more relevant to some proposals than others, and they may be more relevant to some protected characteristics than others. However, it is advisable that the proposal be assessed against each of the above aims.</p> <p>Ensuring pre-consultation engagement takes place prior to a formal consultation will provide better evidence as to how the council is fostering good relations and advancing equality of opportunity.</p> <p>Conducting a bus service review and public consultation exercise will ensure that any changes to the supported bus network will, where possible, not impact users who are considered to have protected characteristics.</p>
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Section 2- Information – What do you know?

What do you know?	What information (qualitative and quantitative) and/or research have you used to commission/change/decommission the service, strategy, function, or procedure?
Information you used	<p>Patronage data for the Council’s supported bus network reveals that a significant number of passengers use concessionary passes. As of February 2024, this equates to over 24,000 passengers which is 36% of total travellers on supported bus services. This data is informed by regular passenger number updates that are received from bus operators of these services. These concessionary pass holders are likely to have one or multiple protected characteristics, including disabilities and being of young or old age.</p>

	<p>Bus services across Cheshire East are available to all people and therefore any service changes as a result of the Bus Service Review and consultation have the potential to impact others with protected characteristics including gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religious or faith groups, sex and sexual orientation.</p> <p>Proposals will be developed in collaboration with groups that represent those who share one or more protected characteristic. This will be undertaken to support the consultation activity and ensure proposals are robust.</p> <p>Once proposals have been developed, the direct impact of any service alterations upon protected groups will be explored in greater detail and presented in future iterations of this EqIA.</p>
Gaps in your Information	<p>There is a higher incidence of bus use amongst young people, older people, people with disabilities and women. We therefore anticipate that any alterations to services will disproportionately impact on these population groups. Currently data regarding certain protected groups and bus utilisation is sparse. The public consultation provides an opportunity to have greater engagement with these groups to ensure any proposals consider the potential impact and potential mitigation measures. This will be undertaken once proposals have been developed/refined and available for discussion.</p>

3. What did people tell you?

What did people tell you	What consultation and engagement activities have you already undertaken and what did people tell you? Is there any feedback from other local and/or external regional/national consultations that could be included in your assessment?
Details and dates of the consultation/s and/or	Pre-consultation engagement will be used to understand what the impacts of change could be for users (in particular those with protected characteristics) and to help build improved relationships with the Council. This engagement will also allow for the impact of proposals to be understood early and mitigation to be built into the proposals.

<p>engagement activities</p>	<p>Consultation and engagement are yet to be undertaken. Future iterations of the EqIA will be developed following the development of service alterations/proposals.</p> <p>At this stage a period of consultation is planned to run for 8 weeks during May and June 2024.</p>
<p>Gaps in consultation and engagement feedback</p>	<p>At this stage a list of key stakeholders has been drawn up and engagement will be ongoing throughout the process of option development and following development of a preferred approach through public consultation. This engagement will be undertaken through email and telephone correspondence as well as focus group sessions with interested stakeholders.</p>

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4. Review of information, consultation feedback and equality analysis

Protected characteristics groups from the Equality Act 2010	What do you know? Summary of information used to inform the proposal	What did people tell you? Summary of customer and/or staff feedback	What does this mean? Impacts identified from the information and feedback (actual and potential). These can be either positive, negative or have no impact.
Age	<p><i>A key market for bus services across Cheshire East are both residents of old and young age. Within Cheshire East there are over 40,000 young people and 80,000 people of retirement age (Census, 2021).</i></p> <p><i>Alterations may result in services operating in a different way, which may have a disproportionate impact on older people and young people.</i></p> <p><i>UK Statistics (Age UK) show that those aged 70-84 are the most likely to use the bus at least weekly (61.2% do so), followed by those aged 85+ (57.1%, whilst people aged 60-69 are least likely to use the bus weekly (39.3%).</i></p> <p><i>Alternatively, UK statistics (National Travel Survey 2022) show that those aged 17 to 20 made up the highest</i></p>	<p><i>Pre-consultation engagement with groups representing old and young travellers will be undertaken, as well as contact with more general bus user groups.</i></p> <p><i>Formal engagement and consultation yet to be undertaken.</i></p>	<p><i>Potential Negative (but depending on proposals)</i></p>

	<i>proportion of their trips using public transport modes (22%).</i>		
Disability	<i>Any alterations to services as a result of the review may adversely impact on disabled transport users. Disability and accessibility statistics for England demonstrate that disabled adults appear to rely more on the bus than non-disabled adults. Adults with disabilities made a greater proportion of their travel by bus 7% compared with 5% for adults without disabilities.</i>	<i>Pre-consultation engagement with groups representing disabled travellers will be undertaken, as well as contact with more general bus user groups. Formal engagement and consultation yet to be undertaken.</i>	<i>Potential Negative (but depending on proposals)</i>
Gender reassignment	No information reviewed at present	<i>Engagement and consultation yet to be undertaken.</i>	
Pregnancy and maternity	No information reviewed at present	<i>Engagement and consultation yet to be undertaken.</i>	
Race/ethnicity	No information reviewed at present	<i>Engagement and consultation yet to be undertaken.</i>	
Religion or belief	No information reviewed at present	<i>Engagement and consultation yet to be undertaken.</i>	

Sex	<p>Nationally public bus services are generally used more by women than by men – consequently any alteration to bus service provision may have a greater effect on women.</p> <p>A study by TfL revealed that within the UK women are more likely to use the bus at least once a week (64%) than men (57%).</p>	<p>Pre-consultation engagement with groups representing female travellers will be undertaken, as well as contact with more general bus user groups.</p> <p>Formal engagement and consultation yet to be undertaken.</p>	Potential Negative (but depending on proposals)
Sexual orientation	No information reviewed at present	Engagement and consultation yet to be undertaken.	
Marriage and civil partnership	No information reviewed at present	Engagement and consultation yet to be undertaken.	

5. Justification, Mitigation and Actions

Mitigation	What can you do?
<p>Please provide justification for the proposal if negative impacts have been identified?</p> <p>Are there any actions that could be undertaken to mitigate, reduce or remove negative impacts?</p> <p>Have all available options been explored? Please include details of alternative options and why they couldn't be considered?</p>	<p>Actions to mitigate any negative impacts or further enhance positive impacts</p> <p>Engagement with old, young and disabled groups will be undertaken at the pre-consultation stage to understand the likely impact of bus service changes and dependence on bus services at present. This will enable mitigations to be built into the proposals prior to consultation.</p>

Please include details of how positive impacts could be further enhanced, if possible?	
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6. Monitoring and Review -

Monitoring and review	How will the impact of the service, service change, decommissioning of the service, strategy, function or procedure be monitored? How will actions to mitigate negative impacts be monitored? Date for review of the EIA
Details of monitoring activities	<p>Any service changes as a result of the bus service review will be subject to performance monitoring (in terms of patronage by time of day and day of week), analysis of complaints post scheme implementation, and equality monitoring data through passenger surveys and transport focus' Your Passenger Journey Survey.</p> <p>This monitoring will also evaluate information on whether actions to mitigate negative impacts have achieved their desired outcome.</p>
Date and responsible officer for the review of the EIA	Richard Hibbert, 27/02/2024

7. Sign Off

When you have completed your EIA, it should be sent to the [Equality, Diversity and Inclusion Mailbox](#) for review. If your EIA is approved, it must then be signed off by a senior manager within your Department (Head of Service or above).

Once the EIA has been signed off, please forward a copy to the Equality, Diversity and Inclusion Officer to be published on the website. For Transparency, we are committed to publishing all Equality Impact Assessments relating to public engagement.

Name	
Signature	
Date	

8. Help and Support

For support and advice please contact EqualityandInclusion@cheshireeast.gov.uk

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Highways and Transport Committee**4 April 2023****A500 Crewe Corridor****Report of: Tom Moody – Director of Highways & Infrastructure****Report Reference No: HTC/01/24-25****Ward(s) Affected: Haslington****Purpose of Report**

1. To authorise the preparation of an Updated Outline Business Case for a redefined A500 Dualling Scheme in response to the government's cancellation of the northern sections of HS2.
2. To approve the withdrawal of the current Compulsory Purchase Order and Side Roads Order for the existing A500 scheme, pending the development of the Updated Outline Business Case.
3. This report contributes to developing a transport network that is safe and promotes active travel, which is listed as a key priority in the Council's Corporate Plan.

Executive Summary

4. This report recommends a change to the scope of the Council's existing A500 scheme which has become necessary as a result of the cancellation of HS2 to Crewe. The change would ultimately result in the removal of all scheme costs from the Council (which were previously £34m), those funds being replaced by additional Department for Transport funding.
5. This report is a result of recent discussions with the Department for Transport, the outcome of which represent a major achievement and will deliver a significant improvement to our current capital budget position.
6. The business case for the scheme in its current form relied heavily on the arrival of HS2 at Crewe following the HS2 Phase2a Hybrid Bill which gained Royal Assent in 2021.

7. The promoters of HS2 had also agreed to contribute financially to the A500 Dualling Scheme as it would help to mitigate the effects of HS2 construction traffic on the road network.
8. Cancellation of the northern section of HS2 to Crewe, along with recent exceptionally high construction inflation rates has therefore undermined the business case that supported the scheme's inclusion in the Department for Transport's (DfT) Major Road Network (MRN) programme. This means that it is highly unlikely that the existing scheme would be successful at Full Business Case stage, meaning it would not receive the DfT grant allocation of £55.1m and the significant costs incurred by the Council of developing the scheme to that point would be abortive.
9. This report recommends that the Council revises the scope of the A500 scheme via the preparation of an Updated Outline Business Case for a redefined A500 scheme to mitigate the impacts of the cancellation of HS2, whilst retaining the scheme's position in the Major Roads Network Programme and increasing the MRN grant funding towards the scheme.
10. The report recommendations include the withdrawal of the Compulsory Purchase Order ("CPO") and Side Roads Order ("SRO") for the full dualling scheme whilst, where possible, completing land acquisitions required for the construction of the full scheme at a future date, should further funding become available.
11. The report outlines why this approach will result in a significantly improved financial outcome for Cheshire East in terms of the funding for an updated scheme which would maximise the value of this Government investment in Cheshire East in the absence of HS2.

RECOMMENDATIONS

The Highways and Transport Committee is recommended to:

1. Authorise the Director of Highways and Infrastructure to:

- a. Take all steps necessary to prepare an Updated Outline Business Case for a redefined A500 Scheme to produce a fundable scheme to be brought to a future meeting of the committee for approval for submission to the Department for Transport. (Appendix 2 is a non-exhaustive list of the types of work that will be required)
- b. Appoint a contractor through the SCAPE Framework to provide a scheme design and delivery feasibility report for any new elements of the updated scheme and to continue to develop those elements of the original scheme that remain.

2. Authorise the Head of Estates to:

- a. Where land negotiations for the full A500 Dualling scheme are advanced, to continue to seek to acquire the land and rights required, by agreement, to support the delivery of the updated scheme objectives and so that the full scheme could be implemented at a future time, should funding be made available, and to instruct the Director of Governance and Compliance to negotiate and enter into any agreement necessary to complete such acquisitions.
- b. Recommend that Full Council approve a Supplementary Capital Estimate for £2.435m, to a new capital scheme in the MTFs titled 'A500 Corridor OBC Update' that is fully funded by the DfT to provide funding for the preparation of the Outline Business Case Update for a revised scheme. This forms a change to the MTFs approved at Council on 27 February 2024.
- c. Recommend to the Chair of the Finance Sub Committee and the S.151 Officer that expenditure be approved from the existing A500 scheme budget on the following:
 - i. Completion of the purchase of land, by agreement, that will also be necessary for any redefined scheme, or to support the future implementation of the full dualling, should funds become available.
 - ii. Costs of "mothballing" the existing A500 scheme in terms of meeting existing commitments, finishing pieces of work, paying outstanding fees, etc

which is estimated at up to £2m (£1m in 2024/25 and £1m in 2025/26) and is included in the MTFs approved by Council on 27 February 2024 as a scheme requiring further approval before further expenditure.

3. Authorise the Director of Governance and Compliance to:

- a. Withdraw :
 - i. the sealed and made Compulsory Purchase Order known as "The Cheshire East Council (A500 Dualling Meremoor Moss Roundabout to M6 Junction 16) Compulsory Purchase Order 2023" and,
 - ii. (b)the sealed and made Side Roads Order known as "The Cheshire East Council (A500 Dualling Meremoor Moss Roundabout to M6 Junction 16) (Classified Road) (Side Roads) Order 2023".

both made on 4 July 2023.

- b. Undertake all necessary and appropriate notification processes to inform all affected landowners (as named in the schedule to the CPO and as notified of the SRO), Statutory Undertakers and the National Casework Team at the Department for Transport of the formal withdrawal of the Orders.

Background

12. The A500 Dualling scheme involves the construction and widening of the existing A500 for 3.3km from Mere Moor Moss Roundabout to the east to the roundabout servicing the M6 at Junction 16.
13. The Council is the promoter of the existing A500 Dualling scheme and submitted a business case for the scheme to the Department for Transport (DfT) in 2018 as part of a competitive national process. The Council was successful in the process and the scheme was included in the DfT's Major Roads Network (MRN) programme, along with the award a provisional grant allocation of £55.1m. The total estimated scheme cost is £89.5m.
14. After scheme development and design, the scheme obtained planning permission in February 2023.
15. The Council made and published a Compulsory Purchase Order and Side Roads Orders (CPO / SRO) to acquire the land and rights to construct the A500 Dualling scheme in July 2023.
16. The CPO / SRO objection period took place between July 2023 and September 2023 and five objections were received. The Council is therefore required to follow the statutory process which would normally involve the matter being determined before an inspector at a public inquiry.
17. On 4 October 2023, the Prime Minister announced that the northern sections of the HS2 project were to be cancelled. This included the legs immediately south of Crewe (Phase 2a) and the length between Crewe and Manchester (Phase 2b).
18. The Outline Business Case (OBC) that had been submitted to DfT to gain the provisional grant award was in line with the Treasury's five case model and in line with government guidance on the modelling and appraisal of transport schemes.

19. The OBC for the A500 Dualling Scheme was strongly linked to Government's proposed investment in HS2, and the planned HS2 services at Crewe Station, with one of the Scheme's Objectives as follows:
 - (a) To support the delivery of key national infrastructure e.g. HS2 and the Crewe Hub Station.
20. Furthermore, HS2 was also providing funding for the scheme in recognition that the dualling scheme would provide necessary capacity for the construction traffic needed to build HS2 Phase 2b. The exact value of this support had yet to be confirmed; but was expected to be several million pounds.
21. The cancellation of HS2 therefore has undermined the Strategic Business Case for the current A500 Dualling scheme.
22. Recent changes to the DfT scheme assessment guidance (WEBTAG) and the exceptionally high levels of inflation in recent years prompted the Council to commission an assessment of the estimated Benefit Cost Ratio (BCR) for the present scheme, if it progressed to Full Business Case submission. This assessment concluded that the BCR would be likely to be in the "Low" category, with a risk of dropping into the "Poor" category.
23. As a result of the combined impacts on the Strategic Business Case and the scheme's Benefit Cost Ratio, it is now thought unlikely that the existing scheme could obtain a positive investment decision at Full Business Case stage (the final stage of funding decision making) in its current form.
24. The Council has therefore now paused progress with the statutory process so that consideration can be given to updating the current scheme to deliver a wider set of benefits that would mean that it would still be fundable.
25. As part of the Council's overall response to the cancellation of the northern sections of HS2, discussions have been held with DfT officials to assess if the A500 Dualling scheme could be modified to address the impacts of the cancellation of HS2 on the scheme's business case whilst retaining the investment (and therefore DfT grant) in the current programme.
26. The outcome of those discussions is that DfT have agreed that an Updated Outline Business Case for the A500 scheme is justified due to the unexpected and direct impacts caused by Government's decision to cancel HS2. DfT has suggested that an update to the OBC should be prepared, which they are prepared to fully fund. If approved, this would allow a modified A500 scheme to remain on the DfT Major Roads

Network programme and progress towards a Full Business Case for DfT funding with the additional work to revise the scheme scope and prepare the OBC update to be funded by the DfT. This report recommends commencing the preparation of an Updated OBC.

27. It should be noted that if the Updated Outline Business Case (OBC) is accepted by DfT, then the Council would normally need to forward fund the further development of the scheme towards Full Business Case submission at risk. As the precise details of the redefined scheme are obviously not available yet, the costs of taking the scheme from OBC to FBC can only be approximately estimated, but these could be in the order of £3m – which would all ultimately be funded by DfT following FBC approval as part of the total scheme costs.
28. Having had the Updated OBC approved, however, the risk of the scheme not progressing would be minimised and the likely costs of progressing the scheme to FBC would be more accurately known. A decision as to whether the Council would forward fund the development of the FBC would be taken at that time.

Consultation and Engagement

29. The preparation of the updated A500 Scheme and Outline Business Case will be subject to consultation with existing key stakeholders of the current scheme and any new stakeholders that may be identified in the development of the updated scheme in line with an engagement plan which will be prepared as part of the work towards the Outline Business Case.
30. Any further planning application that may/will be required to implement the updated scheme will be subject to the usual statutory public consultation process.

Reasons for Recommendations

Updated A500 Scheme

31. The DfT discussions referred to above have resulted in agreement that an updated scheme could be more focussed on improving access to Crewe Railway Station from the A500 corridor for all modes of transport, whilst retaining the key element of the scheme which address congestion on the A500, that being the improvement of Mere Moor Moss Roundabout and the approaches to it.
32. It is thought that such a refocussed scheme would deliver a large proportion of the transport benefits of the current scheme (by improving the roundabout) as well as wider transport and regeneration benefits that would come from improving road access to Crewe Station. Subject to further feasibility work, such a scheme could deliver greater transport

benefits than the existing scheme at an equivalent, or less cost and would therefore present better value for money, making it a more investable scheme for the DfT through the Major Roads Network Programme, as it would have a higher benefit cost ratio under the current scheme assessment guidance.

33. Another advantage of an updated scheme is that following the “Network North” announcement on funding uplift following the cancellation of the northern sections of HS2, the A500 scheme is now expected to receive up to 100% DfT grant towards the estimated total scheme costs at Updated Outline Business Case stage.
34. Previously, the DfT grant was for 85% of OBC costs. As the current scheme’s OBC was completed in May 2019, ie before the recent exceptional construction inflation rates, the estimated scheme costs were significantly lower than they are now. An updated Outline Business Case would “re-base” the costs of the scheme to current prices and thus, in principle, require much less or no local contribution as the DfT grant would be 100% of the re-based costs. This would be a significant advantage to the Council as the current funding arrangements require a local contribution of £34.4m to the existing scheme (including developer S106 contributions). This is also explained in the Financial Implications section.
35. Appendix 1 is a schematic plan to indicate the types of improvements that may be provided as part of an updated A500 scheme. It is not an exhaustive set of interventions. More options would be considered as part of the process towards an Updated OBC. Recent discussions with DfT have confirmed that this approach and possible interventions would be eligible for MRN funding.
36. In order for the Council to provide DfT with an acceptable Updated OBC, the Council must adhere to the following principles:
 - (a) the overarching scheme objectives must be largely consistent with those for the existing scheme aside from those that are directly related to HS2.
 - (b) the updated scheme must be for interventions that are permitted for funding from within the DfT’s Major Roads Network Programme.
37. The Updated OBC will be a significant piece of work. It will contain a full business case appraisal of the updated scheme. It may take approximately 18 months to complete. Prior to making a full commitment to produce a full Updated OBC, there will be an interim stage, after initial feasibility work but prior to the detailed work, where officers will need to consider the likelihood of the Updated OBC being approved by the DfT, taking into account, amongst other factors, the likely benefit cost ratio of

the updated scheme. This will inform a decision on whether to proceed to completion of the Updated OBC.

38. It is anticipated that a further report will be brought to this committee to consider the completed Updated OBC and to consider its submission to DfT for their approval.

Future implementation of the full A500 Dualling scheme

39. The long term aim of the Council is still be to promote the full dualling of the section the A500 between Meremoor Moss roundabout, it is unlikely that current scheme will receive a positive funding decision from DfT at Full Business Case stage for the reasons stated above.
40. A prime objective of the updated scheme therefore should be that should a funding opportunity arise in the future, then the full dualling scheme could be completed i.e. nothing in the updated scheme should prejudice the future completion of the dualling scheme.

Withdrawal of Compulsory and Side Road Orders

41. The Background section of this report describes why the A500 Dualling scheme in its current form is now unlikely to receive a positive funding decision from DfT at the Full Business Case stage.
42. In order to take a Compulsory Purchase Order forward, the Council needs to show how it can justify the proposal to compulsorily acquire the land needed for the scheme.
43. The Council as the acquiring authority needs to be sure that that the purposes for which the compulsory purchase order is made justify the interfering with human rights of those with an interest in the land affected.
44. The minister when confirming the order has to take a balanced view between the intentions of the authority and the concerns of those with an interest in the land. In order to do this the Council must be able to demonstrate that there are sufficiently compelling reasons for the powers to be sought and that the scheme is unlikely to be blocked by any physical, resource or legal impediments. Resources impediments include the sources of funding and the timing of the funding. Given the above, that there is a doubt over securing the necessary funding for the current scheme from the DfT, it will be necessary to withdraw both the CPO and the SRO.

Land and rights acquisition

45. The recommendations in this report to continue to acquire land and rights necessary for the full dualling scheme supports the continued aim of the council to promote the full dualling of the A500.

46. There are parcels of land which would be required for both the existing dualling scheme and the re-defined scheme. Where this is the case, it is recommended in this report that acquisition by agreement is progressed, the costs of which would form part of the redefined A500 scheme costs.

Other Options Considered

Option	Impact	Risk
Do nothing (i.e. continue to pursue completion of the current A500 Dualling Scheme.	<ul style="list-style-type: none"> • The Council would attend the planned public inquiry into the CPO / SRO's and continue to work towards a Full Business Case for the full scheme. • If the scheme received Full Business Case approval (which is unlikely), this would result in the Council contributing either £16m or £27m towards the scheme, subject to confirmation of DfT Uplift of £11m), compared with a nil contribution for the recommended option. • The Council funding required to take the existing scheme through the Public Inquiry and to Full Business Case is estimated at £1.65m to add to the £11m scheme development costs to date. 	<ul style="list-style-type: none"> • It would be difficult to be successful at the Inquiry in the current circumstances (see above) • If the scheme passed the public inquiry stage, based on current evidence, it is unlikely the DfT would reach a positive investment decision. • If the Full Business Case was not approved, this could not be recouped. • The Council's total expenditure to that point (FBC approval) on the scheme (approx. £11.3m) would be charged to the revenue account, unless a capitalisation directive was received to allow it to be capitalised. However, this could not be guaranteed.
Cancel the A500 scheme altogether.	<ul style="list-style-type: none"> • The Council would inform the DfT that they are withdrawing the scheme and all work would cease on scheme development. • The scheme would lose its place on the national Major Roads Network programme and the anticipated DfT 	<ul style="list-style-type: none"> • The Council would need to write off the work done to date on the scheme and the cost of this work (c£11m) would need to be funded from the revenue account unless a capitalisation directive was received to allow it to be capitalised. However, this could not be guaranteed.

	<p>grant of £55.1m would be lost.</p> <ul style="list-style-type: none"> • Uncertainty around the project would cease. • An improvement scheme would still be needed at Meremoor Moss roundabout to enable the delivery of key elements of the Council's Local Plan 	<ul style="list-style-type: none"> • There would be significant reputational risks to the Council with Government, especially as the OBC update option was recommended and would be funded by DfT. This is likely to impact the Council's ability to secure future DfT funding through future planned MRN rounds and Network North Local Integrated Transport Settlement funding.
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Implications and Comments

Monitoring Officer/Legal

47. The power to withdraw the Compulsory Purchase Order and the Side Roads Order for the existing A500 Dualling scheme were delegated to the Director of Governance and Compliance by the Committee on 13 January 2022.
48. The circumstances outlined in this report mean that there are impediments to implementation of the existing A500 Dualling scheme, so the Council will need to withdraw the orders. The Council cannot justify the use of compulsory purchase powers as it no longer has sufficient compelling reasons to do so.
49. When the updated scheme is fully developed, the S106 developer contributions to the scheme referred to in this report will need to be assessed to confirm that the contributions can still be applied to the updated scheme.

Section 151 Officer/Finance

50. The existing A500 Dualling scheme is included in the Medium Term Financial Strategy (MTFS) and is shown as fully funded by a combination of DfT grant funding, S106 developer contributions (to be forward funded by the Council) and by a Council direct contribution, as shown in **Table 1** below.
51. **Table 1** shows the Council's contribution to the current scheme to be £27.0m which will be required to be funded from prudential borrowing. Where the S106 contributions are not yet received by the date of construction, they will be also forwarded funded by the Council in line with

previous Cabinet / Committee approvals to give a maximum Council contribution of £34.4m.

52. **TABLE 1 – Existing funding arrangements for A500 Full Dualling scheme**

	£m		
DfT Grant (of which £1.8m received)	55.1		
Local Contribution	34.4	Made up as follows:	£m
		Secured S106 contributions (paid)	1.6
		Secured S106 contributions (not yet paid)	0.8
		Anticipated S106 contributions	5.0
		CEC capital contribution	27.0
		(Sub-total)	34.4
Total Funding	89.5		

53. **Table 2** below shows the potential funding position of an Updated A500 scheme if the funding principles that are being discussed with DfT are confirmed.
54. If it assumed that the updated A500 scheme would have broadly the same scheme costs as the current scheme (This may not actually be the case – but can be used for now to allow a direct comparison to be made) and the DfT agreement to “re-base” the scheme costs when the new OBC is approved (as described earlier in the report), then the funding position could change to as shown in the **Table 2** below.

55. **TABLE 2 – Funding arrangements for proposed Updated A500 scheme following DfT discussions:**

	£m		
DfT Scheme Grant (of which £1.8m already received)	82.1		
Further DfT Grant for development of Updated OBC)	2.4		
Local Contribution	7.4	Made up as follows:	£m
		Secured S106 contributions (paid)	1.6
		Secured S106 contributions (not yet paid)	0.8
		Anticipated S106 contributions	5.0
		CEC capital contribution	0.0
		(Sub-total)	7.4
Total Funding	91.9		

56. The table shows that if the Updated OBC is accepted by DfT along with the “re-basing” principle, then there would be no Council contribution to the scheme. This is compared to the up to £34.4 m which is included in the current MTFs.
57. The production of the Updated OBC will take approximately 18 months, so implementation of the updated A500 scheme would be delayed by approximately 2 years (allowing for DfT approvals) compared to the current programme for the existing scheme.
58. A 2 year delay to the implementation profile for the A500 Dualling Scheme was incorporated into the MTFs as approved by Council on 27 February 2024. A residual budget for 2024/25 and 2025/26 was retained to enable the Council to undertake the necessary work regarding land negotiations, land purchase, CPO procedures and/or mothballing the scheme, which are covered in the recommendations of this report.
59. If the recommendations in this report are accepted, the expenditure profile of the A500 scheme would not need to be adjusted from the profile in the MTFs approved by Council on 27 February as the £2m allocated between 2024/25 and 2025/26 would be sufficient to fund the costs relating to the report’s recommendations.
60. It should also be noted that until the OBC, and then ultimately the Final Business Case (FBC) are approved by DfT, the updated scheme cannot progress to construction as the full DfT scheme funding (which would be a

grant) would not be made available. DfT however are in the process of agreeing to fund all of the estimated £2.435m development costs for the Updated OBC, which would not be refundable if, for example, the Updated OBC was ultimately not approved by DfT. This removes a significant part of the development risk from the Council.

61. All the tables above contain the approximately £11m of costs to date which have been spent on developing the full dualling scheme and on acquiring land and rights necessary to construct it. Discussions are underway with DfT to determine precisely how these costs will be accounted for within the overall updated scheme costs. The Council's aim is that these costs are fully re-imbursed as part of the final funding arrangements.
62. The Council will continue to seek contributions from developments that will benefit from the mitigation provided by this scheme. This will be done in order to firstly minimise any funding required from the Council and then from the DfT grant.
63. The existing A500 scheme is currently identified as a scheme that is subject to a capital review and cannot proceed until that review is completed. The capital review is not complete. Any urgent requests to spend on the scheme prior to the completion of the review requires approval from the Chair of the Finance Sub Committee and the S.151 Officer. Recommendation 2c is for this committee to make that request.
64. The work to prepare the Updated OBC is externally funded and an Supplementary Capital Estimate is appropriate for this element of the proposal.
65. With adjustments to the MTFs to accommodate the funding arrangements shown in **Table 2**, the re-defined A500 scheme funding proposals recommended in this report (subject to Council and DfT approval of the OBC) should be included in the MTFs in line with the recommendations in this report.
66. In summary, the recommendations in this report, if approved, will represent a significant improvement to the Council's current financial situation. This is because the current requirement for up to £34.4m of Council contribution to the A500 scheme would not be required, removing the prudential borrowing requirement and making additional revenue budget available for other services (eg highways) or to contribute to savings targets.

Policy

67. The Council has a clear commitment to deliver the A500 scheme to deliver growth and relieve congestion and has invested significant sums in

developing the scheme. The recommendations of this report ensure that delivery of the full scheme remain possible, if funding becomes available, whilst making best use of the current funding available as a result of the inclusion in the DfT national Major Roads Network programme.

68. The Corporate Plan priorities that the proposal aligns with are presented in the table below.

An open and enabling organisation	A thriving and sustainable place
<ul style="list-style-type: none"> • Ensure that there is transparency in all aspects of council decision making. • Look at opportunities to bring more income into the borough. 	<ul style="list-style-type: none"> • A transport network that is safe and promotes active travel.

Equality, Diversity and Inclusion

40. There are no equality implications associated with this report. An Equality Impact Assessment will be produced as part of the scheme development.

Human Resources

41. It will be necessary to ensure that sufficient resource is allocated in Estates, Highways and Legal Services to support delivery of the scheme. If additional temporary resources are required these will be met from the project budget.

Risk Management

42. Key risks to the Council relate to the affordability of the updated scheme and this will be addressed through the continued development of the funding strategy via discussions with DfT. Whilst it is unlikely that a CPO will be required for the re-defined scheme, this cannot be certain at this stage, meaning that another CPO process may need to be entered into at some stage.
43. A risk register will be developed through the lifecycle of the scheme, but many of the risks and constraints relating to much of the scheme are already understood as a result of the A500 Dualling scheme development to date.

44. The Council will be required to accept all responsibility for cost increases beyond the cost envelope provided within Financial Implications section and continue to be responsible for forward funding the S106 developer contributions at risk as the assumed funding from section 106 agreements is not all secured.

Rural Communities

45. The withdrawal of the compulsory purchase and side road orders for the existing A500 Full Dualling scheme will have a clear impact on any landowners and tenants of any of the land (mainly agricultural) affected by the orders.
46. Other than those mentioned in the previous paragraph above, there are no other direct implications for rural communities that are different from those on any other community grouping.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

47. There are no direct implications for children and young people that are different from that on any other community grouping.

Public Health

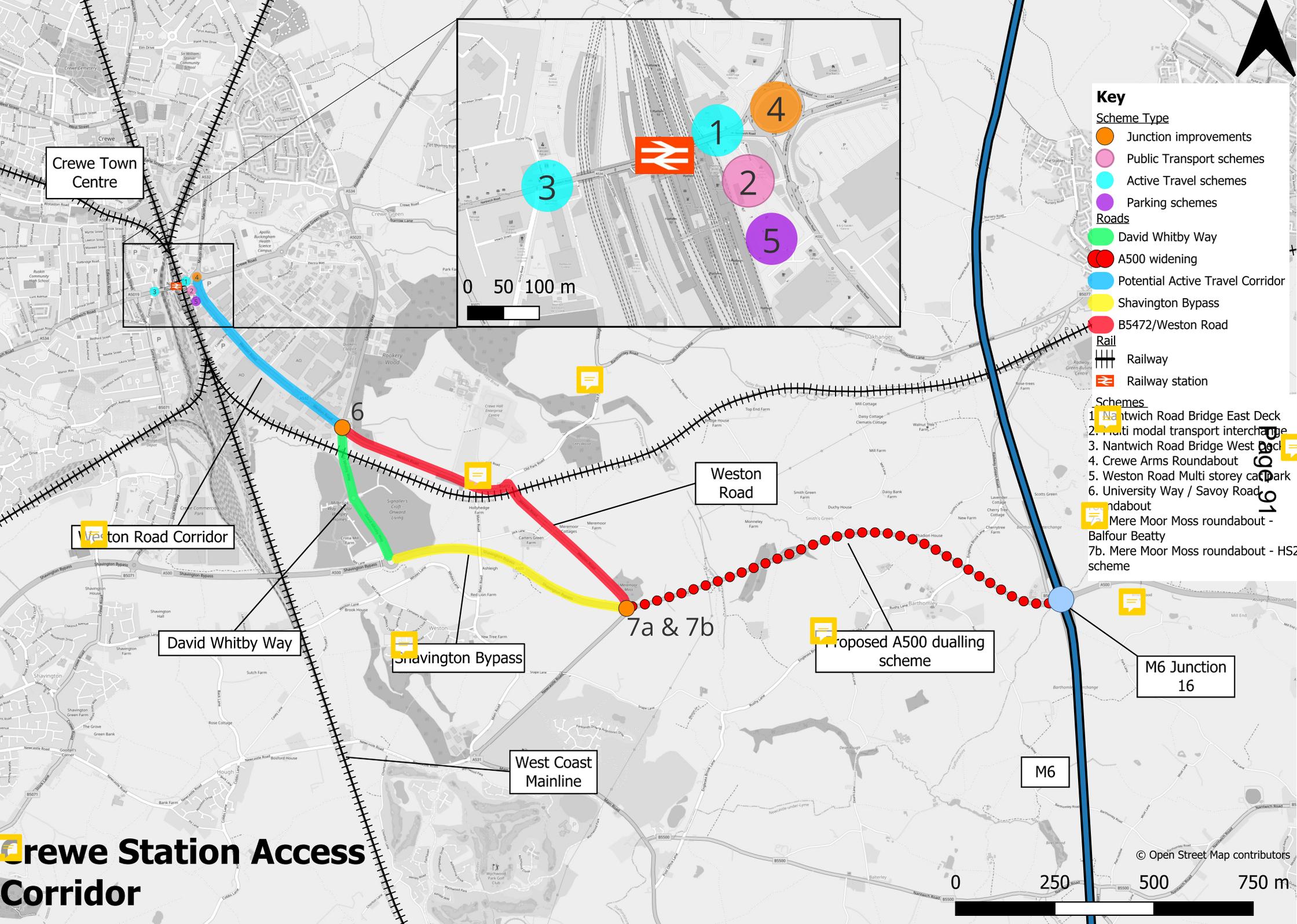
48. A refocussing of parts of the updated scheme on access to Crewe Station via active modes will contribute positively to public health and help address local inequalities.

Climate Change

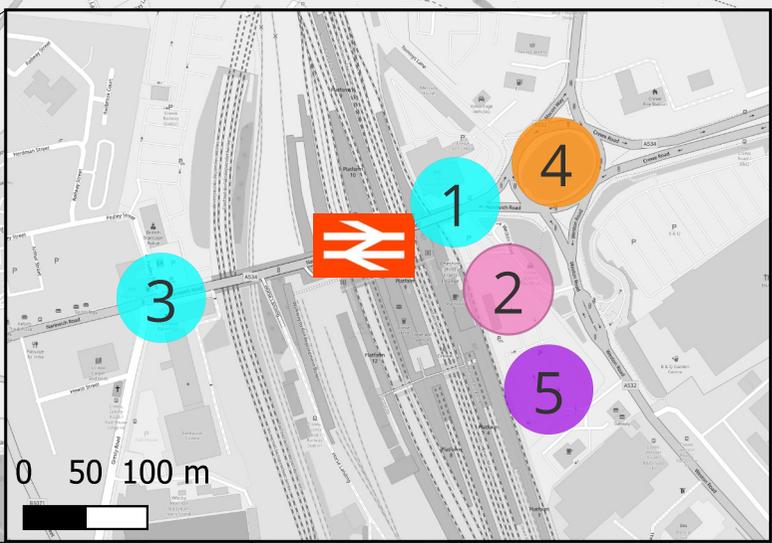
49. A refocussing of parts of the updated scheme on access to Crewe Station via active modes will contribute positively to the climate change agenda and promote healthy lifestyles.

Access to Information	
Contact Officer:	Chris Hindle, Head of Infrastructure chris.hindle@cheshireeast.gov.uk
Appendices:	Appendix 1 – Sketch plan of potential interventions Appendix 2 – Example activities required for preparation of the Updated Outline Business Case.

Background Papers:	Purpose
<u>Cabinet 9th May 2017</u>	Approve the Scheme objectives and the preferred route option to provide a Dual Carriageway of the A500 and approval of further scheme development.
<u>Cabinet 12th June 2018</u>	Approve the submission of the Outline Business Case for the scheme to the DfT and to authorise officers to take all necessary actions to progress the scheme to the point of a decision from DfT on the Full Business Case.
<u>Cabinet 15th January 2019</u>	Authorised putting in place a contract with Balfour Beatty to provide works and services necessary for the scheme and completion SRO and CPO.
<u>Cabinet 9th July 2019</u>	Authorise the use of the powers of compulsory purchase to undertake the acquisition of land and new rights required for the construction of the Scheme.
<u>Cabinet 5th May 2020</u>	Authorise the use of powers of Compulsory Purchase to undertake the acquisition of land and new rights required for the construction of the Scheme reflecting the revised land requirement necessary to deliver the Scheme.
<u>Highways and Transport Committee 13 January 2022</u>	Authorise the making of a Compulsory Purchase Order and Side Roads Order for delivery of the A500 Dualling scheme (including additional land)



Crewe Town Centre



0 50 100 m

- Key**
- Scheme Type**
- Junction improvements
 - Public Transport schemes
 - Active Travel schemes
 - Parking schemes
- Roads**
- David Whitby Way
 - A500 widening
 - Potential Active Travel Corridor
 - Shavington Bypass
 - B5472/Weston Road
- Rail**
- Railway
 - Railway station
- Schemes**
1. Nantwich Road Bridge East Deck
 2. Multi modal transport interchange
 3. Nantwich Road Bridge West Deck
 4. Crewe Arms Roundabout
 5. Weston Road Multi storey car park
 6. University Way / Savoy Road
- Roundabout
- Mere Moor Moss roundabout - Balfour Beatty
- Mere Moor Moss roundabout - HS2 scheme

Weston Road Corridor

Weston Road

David Whitby Way

Shavington Bypass

7a & 7b

Proposed A500 dualling scheme

M6 Junction 16

West Coast Mainline

M6

Crewe Station Access Corridor

0 250 500 750 m

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Appendix 2 – Example work required for preparation of the A500 Updated Outline Business Case.

1. Prepare an engagement plan for the updated scheme.
2. Review the existing scheme objectives (and update where necessary) for inclusion in the Updated Outline Business Case.
3. Define the updated scope of the scheme from a long list of scheme options to achieve the scheme objectives.
4. Prepare an options assessment report and a preferred and low cost option.
5. Engage the supply chain as necessary to undertake required activities.
6. Gain any necessary planning approvals for the updated scheme including revising as necessary, the planning approval for the A500 scheme.
7. To continue to seek developer contributions to the scheme which will be used to minimise the public funding of the scheme.
8. Regularly update the Chair of the Committee on the preparation of the Updated Outline Business Case.
9. Enter into any agreements necessary with Network Rail / Train operators to ensure the protection of any rail assets and secure their involvement in any emerging proposals that impact railway assets.
10. Engage contractors as necessary for early contractor involvement (ECI).
11. Consultations as may be necessary.
12. Liaison with statutory undertakers.
13. Liaison with parties with affected land or any other interests.
14. Surveys including but not limited to ecology, topography, ground investigations, structural surveys.
15. Cost estimating
16. Traffic surveys and traffic modelling.
17. Design development.
18. Business case preparation.

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OPEN

Highways and Transport Committee

4 April 2024

Finalising development of a Lane Rental Scheme

Report of: Tom Moody, Director of Highways and Infrastructure

Report Reference No: HTC/03/24-25

Ward(s) Affected: All Wards

Purpose of Report

- 1 A lane rental scheme allows a local highway authority to charge those working on the highway (“street works promoters”) for the time that their works occupy the highway. A scheme charges street works promoters, focusing on strategic and traffic-sensitive streets at the busiest times of day. Its purpose is primarily to encourage working on busy streets to be planned at the least busy times, thereby reducing congestion.
- 2 This report describes the process to finalise the development and implement a lane rental scheme for Cheshire East Council (CEC). It seeks approvals to proceed with development of a scheme and consultation upon the scheme under delegation to officers, with the proposed scheme (as developed following consultation) to be brought to this Committee for approval prior to applying to the Secretary of State.
- 3 Development and implementation of a lane rental scheme supports the Green Corporate Plan objective, by contributing to reducing congestion and pollution and making Cheshire East a great place to live and work.

Executive Summary

- 4 This report outlines the legislative background and basis that will enable CEC to develop its Lane Rental Scheme (LRS). Subject to approval of the recommendations:
- (a) The scheme potential will be evaluated and it will be developed in line with government guidance.
 - (b) It will then be consulted upon before bringing the final scheme proposal to this Committee for approval. Government guidance specifies a list of stakeholders to be consulted, who are predominantly statutory undertakers.
 - (c) Subject to this final approval, an application will then be made to the Secretary of State.
- 5 An LRS is considered a positive step that aligns with the council's strategic objectives. It is expected to have a positive effect on managing traffic and reducing the causes of climate change.
- 6 With Committee approval, the LRS will be developed and consulted upon as soon as possible. It is anticipated that it can practically be implemented early in the 2025-6 financial year. This remains subject to receiving the necessary approvals. The proposed timescale is as follows:
- (a) The financial assessment and proposal for consultation will be prepared by the end of May 2024.
 - (b) Consultation will run during June and July 2024.
 - (c) Following consultation the results will be collated and amendments considered.
 - (d) The final proposal will be submitted to the November 2024 Highways and Transport Committee.
 - (e) Assuming approval is given, the application to the Secretary of State will be made as soon as possible following this.

RECOMMENDATIONS

The Highways and Transport Committee is recommended to delegate to the Director of Highways and Infrastructure to:

1. Finalise development of a Lane Rental Scheme proposal;
2. Conduct consultation upon the proposed scheme; and
3. Present the proposed scheme (as developed following consultation) to this Committee for approval prior to applying to the Secretary of State.

Background

- 7 The New Roads and Street Works Act 1991 (NRSWA), as amended by the Transport Act 2000 and the Traffic Management Act 2004 (TMA), contains provision for Highway Authorities to operate Lane Rental Schemes. Although this legislation is now over 20 years old, the guidance and regulations for Highways Authorities to develop schemes have only emerged from 2017 to 2023.
- 8 Lane rental sits alongside street works permitting, which Cheshire East implemented in November 2014 as part of the West and Shires Permit Scheme (WaSP). Under permitting, street works promoters apply to the council (as Street Works Authority) for a permit to carry out street works.
- 9 Prior to developing an LRS, it is expected that an authority's permit scheme has achieved its objectives to:
 - (a) Co-ordinate and complete works on the network, alongside the utilisation of appropriate traffic management and conditions; and
 - (b) Proactively reduce the duration of works and works being completed at traffic sensitive times.
- 10 CEC is proven to have a well-run street works permit scheme that delivers multiple objectives in an effective manner. However, under the scheme there are (i) no costs associated with the length of the works and (ii) no financial or commercial incentives for works promoters to complete works in a shorter duration or outside of traffic sensitive times.
- 11 Department for Transport (DfT) trials have demonstrated that impact on works duration and operating at traffic-sensitive times are correlated to charging. Maximum impact was achieved when the maximum charges are applied. Trials indicated that the duration of works could potentially reduce by up to 50%.
- 12 Government guidance for developing Lane Rental Schemes states that proposals must "*focus specifically on those critical parts of the highway network where the costs of disruption caused by works are greatest*" and limits LRSs to 5% of a Highway Authority's network. In CEC's case, this would apply to no more than circa 135km of roads.

Developing an LRS

- 13 Progressing with the development of an LRS is a positive step that aligns with the council's strategic objectives for both managing traffic on its highway network and reducing the causes of climate change. It is therefore recommended to proceed with this as soon as practicable. CEC has already expressed interest in developing an LRS to DfT.
- 14 The legal process for applying for an LRS is described in paragraphs 23 to 25 under *Legal Implications* below. The consultation process is described in paragraphs 18 to 20 below under *Consultation and Engagement*.

- 15 Developing a proposal requires the following stages, which this report seeks approval from the Committee to proceed with under delegation to officers:
- (a) Determining the parts of the CEC highway network to which the LRS applies.
 - (b) Assess the likelihood and numbers of works on that network and understand the financial implications of operating the LRS.
 - (c) Develop a proposed scheme, based upon this information. Appendix 2 contains details that the proposed scheme will contain.
 - (d) Consult upon the proposed scheme.
- 16 Following consultation, responses will be reviewed and changes to the proposed scheme will be considered. The proposed scheme will then be brought back to this Committee to seek approval to apply to the Secretary of State.
- 17 Due to the anticipated benefits, we will seek to implement the LRS as soon as possible. A working timescale for taking these actions is reasonably anticipated to be implemented early in the 2025-6 financial year.

Consultation and Engagement

- 18 A Highway Authority applying for an LRS must have carried out a full consultation to a variety of affected stakeholders (such as all works promoters and statutory undertakers) working within the affected network area.
- 19 A proposal will be developed as soon as practicable to contain the details in Appendix 2.
- 20 Consultation will then take place with a range of statutory undertakers and street works promoters as the principal parties affected by the proposed LRS as well as several other specified parties. Paragraph 73 of the Government guidance (listed on page 9 as a Background Paper) lists the minimum consultees and this will be adhered to.

Reasons for Recommendations

- 21 The recommendations are to enable a scheme to be developed and consulted upon and realise the benefits outlined in paragraph 13 above.

Other Options Considered

- 22 The alternative to developing an LRS is to not do so. Not doing so would fail to achieve the objectives and benefits described in paragraph 13 above. This is the default position should the Committee not approve this report.

Option	Impact	Risk
Do nothing – not develop a Lane Rental Scheme	The benefits outlined in paragraph 13 above will not be realised.	The risk of this is considered very unlikely due to the alignment with CEC's objectives.

Implications and Comments

Monitoring Officer/Legal

- 23 The New Roads and Street Works Act 1991 (NRSWA), as amended by the Transport Act 2000 and the Traffic Management Act 2004 (TMA), contains provision for Highway Authorities to operate Lane Rental Schemes. The relevant regulations are the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012 ("the Regulations") made under Section 74A of NRSWA.
- 24 Section 74A of NRSWA enables highway authorities, with the approval of the Secretary of State, to charge street works undertakers a daily charge for each day during which their works occupy the highway – commonly referred to as "lane rental".
- 25 The power for the Local Authority to introduce a Lane Rental Scheme in England is subject to the final approval from the Secretary of State:
- (a) A Highway Authority applying for an LRS must have carried out a full consultation to a variety of affected stakeholders (such as all works promoters and statutory undertakers) working within the affected network area.
 - (b) The Secretary of State can approve a LRS, request modifications, or reject it.
 - (c) DfT is expected to review and assess all applications with a decision communicated within 30 days of receipt of the application.
 - (d) Once an application is successful, it takes a minimum of three months to produce and complete the necessary Order, which will become a statutory instrument.
- 26 The Regulations prevent the application of lane rental charges on streets that have not been designated as traffic-sensitive or protected by the highway authority.

- 27 The Regulations also exempt street works:
- (a) whose impact is confined solely to the verge of a highway;
 - (b) in a traffic-sensitive street, other than at a traffic-sensitive time; or
 - (c) in the footway of a traffic-sensitive street, at a traffic-sensitive time, so long as the works do not involve breaking up the street or tunnelling or boring under it.

Section 151 Officer/Finance

- 28 While an LRS provides an opportunity for CEC to charge for lane rental, the scheme requires careful appraisal of the revenue implications and costs to the council. It should be borne in mind that the purpose of an LRS is to improve traffic, congestion and pollution.
- 29 Costs of developing the proposal and LRS, including consultation, will be funded in-year by the Highways service from existing staff budgets and recovered as a part of future charges under the scheme.
- 30 Part of CEC's preparation of a proposal will include an analysis of the impact on income. This may include areas where combined income from Street Works Permitting, and lane rental may decrease. For example:
- (a) An LRS will involve discounts and reduced charges to drive improved behavioural change. This allows the works promoters to have choices to avoid cost wherever possible.
 - (b) Charging is expected to increase the prospect for multiple statutory undertakers to co-ordinate their activities and thus reduce the occupation of the highway, as a reduced charge will be applied for the highway occupation.
- 31 Works carried out by Cheshire East Highways (CEH) on behalf of CEC will also be subject to lane rental charges. For some instances it will be possible to mitigate this by planning works at specified times. However, it is expected that there will be an additional cost with scheme delivery, which will be factored into the financial assessment of the LRS.
- 32 Like Street Works Permitting, while the LRS will allow CEC to charge for lane rental, the revenue can only be used for prescribed purposes. These purposes are set out in the guidance and can be summarised as:
- (a) Reasonable costs to the Authority of developing, operating and evaluating the scheme.

- (b) Surplus revenue may be used for capital or revenue schemes to reduce the disruption or other adverse effects arising as a result of street works. This may include:
 - (i) investment in innovation and developing new products or disruption-saving techniques;
 - (ii) trials of new techniques and products;
 - (iii) installing ducting to enable apparatus to be accessed more easily and without causing disruption to traffic;
 - (iv) measures to improve the information about the location of underground pipes, wires, and other apparatus;
 - (v) measures to help abate noise, pollution or safety hazards arising from street works;
 - (vi) repairing defects caused by utility street works; and / or
 - (vii) implementing measures to mitigate congestion caused by street works.

- 33 CEC will be required to demonstrate how it will spend revenue from the LRS as part of its application. Once operational, it will be required to collate and publish records of how revenue collected from an LRS has been spent.

- 34 The potential financial benefit for CEC from entering into an LRS should therefore be considered cautiously and from the perspective that any additional revenue will be utilised to fund specific capital and revenue works as described above. Such programmes will be developed in line with CEC’s highway asset management strategy and to support the delivery of its statutory duties.

Policy

- 35 Developing an LRS contributes to delivery of the priorities in the [Corporate Plan](#) as follows:

An open and enabling organisation	A council which empowers and cares about people	A thriving and sustainable place
Support a sustainable financial future for the council, through service development, improvement and transformation	Reduce health inequalities across the borough (secondary impacts)	A great place for people to live, work and visit Reduce impact on the environment

Equality, Diversity and Inclusion

- 36 An Equality Impact Assessment has been completed for this decision and is shown in 0. There are no adverse impacts on equalities, diversity or inclusion as a result of this decision.

Human Resources

- 37 Developing the proposal will be undertaken by officers within the Highways Service and our delivery partner, Cheshire East Highways (CEH). Expert resource and advice will be obtained as required through the partnership arrangements under CEC's Highways Service Contract. This will be funded within existing resources with costs recouped through the final scheme.
- 38 Operating an LRS will require additional staff, which will be recruited by CEH. The cost of these staff will be funded by the LRS. Staff levels will be determined by the financial assessment of the scheme.

Risk Management

- 39 Developing an LRS carries the following risks:
- (a) The Secretary of State may not approve the application for Cheshire East to introduce a Lane Rental Scheme. This places a risk on CEC of not recovering the costs of developing the scheme. However, this is mitigated by the fact that as CEC already operates a successful street works permit scheme, it is likely to ultimately obtain approval.
 - (b) There is a risk that the Secretary of State will be delayed in approving an LRS application. This will result in loss of opportunity to implement the scheme and the revenue from that. The 'cost' will be a loss of opportunity to conduct works that otherwise would not have been possible.
 - (c) The level of anticipated behavioural change is difficult to define therefore the actual revenue and total associated management costs cannot be precisely defined. This is mitigated by:
 - (i) The financial appraisal that will be conducted in developing the scheme;
 - (ii) The ability to vary costs once a scheme is in operation; and
 - (iii) The 'cost' will be a loss of opportunity to conduct works that otherwise would not have been possible.
 - (d) If Committee reject the proposal following consultation, there will be significant lost officer time from the production of the scheme.

Rural Communities

- 40 Where areas of CEC's highway network in rural communities are traffic-sensitive, there is likely to be a positive impact on managing street works. There are no adverse impacts on rural communities as a result of this decision.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

- 41 There are no adverse impacts on children or young people as a result of this decision.

Public Health

- 42 Implementing an LRS is likely to have a secondary benefit of improving the health and wellbeing of Cheshire East residents as a result of decreased congestion and pollution. Since street works are likely to be carried out at less traffic-sensitive times, this is likely to have positive health benefits from stress related to congestion and travel. There are no adverse impacts on public health as a result of this decision.

Climate Change

- 43 A LRS will have a number of positive impacts on climate change:
- (a) Improved management of road and street works reduces congestion and queueing times, directly reducing pollution and CO₂.
 - (b) Reducing the duration of street works at peak times reduces disruption for road users. It is also likely to distribute works across the day, which will reduce the CO₂ impact of traffic.
 - (c) Giving incentive to street works promoters to minimise their occupation of the network should reasonably be expected to encourage them to innovate in how they carry out works. This may lead to increased use of non-excavation technologies.

Access to Information	
Contact Officer:	Domenic de Bechi, Head of Highways Domenic.deBechi@cheshireeast.gov.uk
Appendices:	Appendix 1: Equality Impact Assessment (EIA) Appendix 2: Details of the proposed Cheshire East Lane Rental Scheme
Background Papers:	Lane Rental Schemes: Guidance for English Authorities (Department for Transport, June 2021)

OPEN

Equality Impact Assessment (EIA)

Engagement and our equality duty

Whilst [the Gunning Principles](#) set out the rules for consulting 'everyone', additional requirements are in place to avoid discrimination and inequality.

Cheshire East Council is required to comply with the Equality Act 2010 and the Public Sector Equality Duty. The Equality Act 2010 simplified previous anti-discrimination laws with a single piece of legislation. Within the Act, the Public Sector Equality Duty (Section 149) has three aims. It requires public bodies to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act, by consciously thinking about equality when making decisions (such as in developing policy, delivering services and commissioning from others)
- advance equality of opportunity between people who share a protected characteristic and people who do not share it, by removing disadvantages, meeting their specific needs, and encouraging their participation in public life
- foster good relations between people who share a protected characteristic and people who do not.

The Equality Duty helps public bodies to deliver their overall objectives for public services, and as such should be approached as a positive opportunity to support good decision-making.

It encourages public bodies to understand how different people will be affected by their activities so that policies and services are appropriate and accessible to all and meet different people's needs. By understanding the effect of their activities on different people, and how inclusive public services can support and open up people's opportunities, public bodies are better placed to deliver policies and services that are efficient and effective.

Complying with the Equality Duty may involve treating some people better than others, as far as this is allowed by discrimination law. For example, it may involve providing a service in a way which is appropriate for people who share a protected characteristic, such as providing computer training to all people to help them access information and services.

The Equality Act identifies nine 'protected characteristics' and makes it a legal requirement to make sure that people with these characteristics are protected from discrimination:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnerships
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Applying the equality duty to engagement

If you are developing a new policy, strategy or programme you may need to carry out an Equality Impact Assessment. You may be able to ascertain the impact of your proposal on different characteristics through desk-based research and learning from similar programmes, but you also need to carry out some primary research and engagement. People with protected characteristics are often described as 'hard to reach' but you will find everyone can be reached – you just need to tailor your approach, so it is accessible for them.

Contacting the [Equality and Diversity mailbox](#) will help you to understand how you can gain insight as to the impacts of your proposals and will ensure that you help the Council to comply with the Equality Act 2010 and the Public Sector Equality Duty.

Details of the service, service change, decommissioning of the service, strategy, function or procedure

Proposal Title	Application for a Lane Rental Scheme
Date of Assessment	9 February 2024
Assessment Lead Officer Name	Domenic de Bechi
Directorate/Service	Highways and Infrastructure
Details of the service, service change, decommissioning of the service, strategy, function or procedure.	<p>CEC currently operates a street works permit scheme. It is proposed to extend this to develop a lane rental scheme in line with government guidance.</p> <p>A lane rental scheme will allow CEC to manage traffic on the busiest roads on its network at the busiest times. It will encourage, through a charging and incentive mechanism, street works promoters to carry out works at less busy times.</p> <p>This proposal is to develop a scheme for consultation, prior to application to the Secretary of State.</p>
Who is Affected?	<p>The highway asset in Cheshire East is the most visible, financially valuable asset owned by the Council. Users of the busiest streets on the council's highway network will be affected by this proposal.</p> <p>The impact of this proposal will affect street works promoters. It will not have direct impacts on how street works are managed to avoid adverse consequences for highway users, which will remain the same.</p>

<p>Links and impact on other services, strategies, functions or procedures.</p>	<p>The change will affect anyone planning or proposing street works on CEC's busiest streets, which will form the lane rental network. Using streets at the busiest times will be subject to a charge. There will be incentives to conduct street works at less busy times.</p>
<p>How does the service, service change, strategy, function or procedure help the Council meet the requirements of the Public Sector Equality Duty?</p>	<p>CEC's management of street works is the primary means through which the impact of those works is managed to meet the Public Sector Equality Duty. A lane rental scheme does not fundamentally affect how street works are managed in respect of equality, diversity and inclusion.</p>

Information – What do you know?

<p>What do you know?</p>	<p>What information (qualitative and quantitative) and/or research have you used to commission/change/decommission the service, strategy, function, or procedure?</p>
<p>Information you used</p>	<p>The work undertaken by the Highways service has a positive effect on local people and communities generally, but particularly older and younger people, pregnant women, people with children and people with disabilities.</p> <p>The service area has a number of data sources which can help inform the impact of street works upon people with protected characteristics. This includes third party claim data, formal correspondence and latest industry guidance.</p>
<p>Gaps in your Information</p>	<p>The service area doesn't have usage figures for the entire network and thus it isn't possible to fully understand exactly where specific user groups are using the network. Work is being considered to address this gap.</p>

What did people tell you?

<p>What did people tell you</p>	<p>What consultation and engagement activities have you already undertaken and what did people tell you? Is there any feedback from other local and/or external regional/national consultations that could be included in your assessment?</p>
<p>Details and dates of the consultation/s and/or engagement activities</p>	<p>Consultation will be undertaken as part of the process for developing the lane rental scheme. Demonstrating that CEC has consulted will be required as part of any application to the Secretary of State to implement a scheme. This decision is required to develop the scheme and consult.</p>
<p>Gaps in consultation and engagement feedback</p>	<p>Consultation is yet to be undertaken.</p>

Review of information, consultation feedback and equality analysis

Protected characteristics groups from the Equality Act 2010	What do you know? Summary of information used to inform the proposal	What did people tell you? Summary of customer and/or staff feedback	What does this mean? Impacts identified from the information and feedback (actual and potential). These can be either positive, negative or have no impact.
Age	N/A	N/A	N/A
Disability	N/A	N/A	N/A
Gender reassignment	N/A	N/A	N/A
Pregnancy and maternity	N/A	N/A	N/A
Race/ethnicity	N/A	N/A	N/A
Religion or belief	N/A	N/A	N/A
Sex	N/A	N/A	N/A
Sexual orientation	N/A	N/A	N/A
Marriage and civil partnership	N/A	N/A	N/A

Justification, Mitigation and Actions

<p>Mitigation</p>	<p>What can you do?</p> <p>Actions to mitigate any negative impacts or further enhance positive impacts</p>
<p>Please provide justification for the proposal if negative impacts have been identified?</p> <p>Are there any actions that could be undertaken to mitigate, reduce or remove negative impacts?</p> <p>Have all available options been explored? Please include details of alternative options and why they couldn't be considered?</p> <p>Please include details of how positive impacts could be further enhanced, if possible?</p>	<p>This will be reviewed following consultation, which will identify potential impacts.</p>

Monitoring and Review -

<p>Monitoring and review</p>	<p>How will the impact of the service, service change, decommissioning of the service, strategy, function or procedure be monitored? How will actions to mitigate negative impacts be monitored? Date for review of the EIA</p>
<p>Details of monitoring activities</p>	<p>Once implemented, minor changes can be made to the lane rental scheme following annual evaluations.</p>
<p>Date and responsible officer for the review of the EIA</p>	<p>Head of Highways</p>

Sign Off

When you have completed your EIA, it should be sent to the [Equality, Diversity and Inclusion Mailbox](#) for review. If your EIA is approved, it must then be signed off by a senior manager within your Department (Head of Service or above).

Once the EIA has been signed off, please forward a copy to the Equality, Diversity and Inclusion Officer to be published on the website. For Transparency, we are committed to publishing all Equality Impact Assessments relating to public engagement.

Name	Domenic de Bechi, Head of Highways
Signature	
Date	9 February 2024

OPEN**Details of the proposed Cheshire East Lane Rental Scheme**

44 The Cheshire East Lane Rental Scheme (CELRS) will be developed to meet the following requirements, which have been extracted from government guidance.

Streets where charges may be applied

45 The CELRS will define a network of streets where lane rental charges shall apply (the "Lane Rental Network"). This network will be based on evidence from the evaluation of the CEC's street works permit scheme, demonstrating that:

- (a) Highway works in those streets cause the highest levels of disruption; and
- (b) Are where a lane rental charge will have the most effect in reducing disruption.

46 Methods for demonstrating the reduction in disruption will be put in place to inform the evaluation of the scheme.

47 In selecting this network, consideration will be given to works that affect both carriageway and footway. Footpaths and bridleways will not be subject to lane rental as they are explicitly excluded by law.

Types of works

48 Any street or highway works on the Lane Rental Network will be subject to charges unless:

- (a) The charging regime specifically waives those charges;
- (b) Works are solely confined to the verge;
- (c) Works are in a traffic sensitive street other than at a traffic-sensitive time;
- (d) Works are in the footway of a traffic sensitive street at a traffic-sensitive time but do not affect the carriageway; or
- (e) Works are diversionary works.

49 Emergency works that must be carried out during the charging period for public safety or damage to property will provide a charge-free period to deal with the emergency. Street works promoters will be required to evidence the emergency.

Charges

- 50 The CELRS will set out a scheme of charges to apply. The maximum daily lane rental charge is £2,500 by law and CEC will set out the basis on which it proposes to justify charges. Where the maximum charge applies, discounts available to undertakers will be specified.
- 51 CEC will demonstrate that the proposed charges can reasonably be expected to provide an effective financial incentive for works promoters to adopt less disruptive working practices. It will also demonstrate that they are no higher than is necessary to achieve this.
- 52 Daily charges will be the same for all types of work. The use of higher charges for remedial work will be considered to give incentive to avoid the need for remediation.
- 53 Charges will apply at the times of day and days of week where disruption is highest. There will be opportunities to provide incentives to works promoters to carry out works in less disruptive ways. CEC's Environmental Health team will be consulted on charges that may incentivise works that cause noise pollution.
- 54 The CELRS will consider how to offer promoters incentives to combine works with other promoters (including CEH and other CEC services) to minimise disruption.
- 55 Lane rental charges will be in addition to s74 NRSWA charges for over-run of street works. Inspections of works on the Lane Rental Network will be undertaken by CEH's street works inspectors and charges will be applied for items of signing, lighting and guarding equipment left on site in a similar way to under the permit scheme.

Application of revenues

- 56 It is anticipated that additional staff will be required by CEH as follows:
- (a) A Lane Rental Team Leader, to manage the team;
 - (b) Senior Network Inspectors, to monitor works taking place on the network to ensure safety compliance and adherence to the scheme;
 - (c) Permit Technicians, to co-ordinate works and events on the lane rental network and work with permit scheme technicians to co-ordinate the wider network; and
 - (d) Permit Compliance Technicians, to administer the LRS.
- 57 In addition to staff costs, there will be further operating costs covering training, equipment, professional services and software development.
- 58 Any surplus income generated by the scheme will be re-invested back into highway improvement works that will benefit the network users within Cheshire East. Such works will reduce disruption or counter the adverse

effects arising from street works reinstatements. Examples of the types of works are shown in paragraph 32(b) of the main report.

- 59 The application to the Secretary of State will demonstrate the process for understanding the surplus income and developing programmes of such works. An annual account will be kept of revenues and how they are spent.

Systems

- 60 The principal system for managing the CELRS will be Street Manager. This is currently used for the street works permit scheme. CELRS will be integrated with street works permit management.

- 61 Detailed and accurate information will be provided to works promoters on where lane rental charges apply. This will be done via the National Street Gazetteer. Opportunities will be sought to provide data to works promoters in formats compatible with their works management systems.

Dispute resolution

- 62 Consideration will be given to the process for handling disputes under CELRS.

Transition and implementation

- 63 The proposed scheme will include an implementation plan. This will seek to develop a period of shadow / trial running prior to the operational period.

- 64 Transition plans will also cover how works that have already been permitted when the LRS comes into effect will be handled.

Evaluation

- 65 A plan will be provided for how the CELRS will be evaluated and the costs justified. This will also indicate how CEC will review the operation of the scheme and make minor amendments to it as a result of operational feedback.

- 66 The costs of evaluation will be met from the scheme.

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Highways and Transport Committee**4 April 2023****Ward Member Budget Scheme Update****Report of: Tom Moody, Director of Highways and Infrastructure****Report Reference No: HTC/05/24-25****Ward(s) Affected: All Wards****Purpose of Report**

1. To provide an update on the operation of the Ward Member Budget Scheme (WMBS) in its first year of operation (2023-4) since approval at Committee following initial two-year trial period (2021-3).

Executive Summary

2. In April 2021 a trial WMBS was introduced to replace the existing area highway groups.
3. A paper was presented to the Highways and Transport Committee in September 2022 that resulted in approval of a new WMBS. This report provides an update on the progress of the new scheme to date in year one (2023/24) including successes and challenges.

RECOMMENDATIONS

The Highways and Transport Committee is recommended to:

1. Note the progress made on the operation of the Ward Member Budget Scheme during its first year of operation during 2023-24 and the ongoing work being undertaken with local ward members to identify works and deliver on these across the network.
2. Note the proposed steps being taken as set out within the report to improve the overall scheme delivery.
3. Approve, for the 2024-25 financial year, the annual allocation per elected member of £4,512*.

4. Agree that all Members are provided with a quarterly electronic update on the scheme by the Highways service.

**Noting the decision of Council on 27 February 2024 to reduce Council investment within the capital programme, as set out in paragraph 29 of this report.*

Background

4. The Ward Member Budget scheme was introduced on a trial basis in April 2021 to replace the old Area Highway Groups. The trial ran for two years (2021-2 and 2022-3), with each member allocated a capital budget of £4,200 per annum to use on a specified list of highway activities provided by the Service.
5. The Highways and Transport Committee received an update on the ward budget scheme at its meeting in January 2022, followed by a final report in September 2022 with recommendations on how to deliver and manage the scheme in future years.
6. The Committee approved:
 - A capital budget of £6,500 per Member, per annum (55% increase);
 - The scheme to operate over a four-year period from April 2023 to March 2028 - a total of £26k to each Member plus £20k per annum of administrative costs (£553k per annum and £2.212m over the four years);
 - The previous application process to no longer be used;
 - Individual ward work programmes to be developed based on local intelligence gathered, and engagement with Members; and
 - The proposed new approach will enable much greater interaction between Highways Officers and Members, supporting a key theme coming out of the Member Satisfaction Survey at the time.
7. The revised approach aimed to achieve a number of benefits:
 - To continue to provide a locally determined element within Highways capital works, that contributes to achieving the council's asset management objectives.

- Members would retain the flexibility to prioritise work at the start of each financial year and whether to spend their allocation equally over the four years, combine multiple years or join with fellow Member ward budgets to deliver larger value works.
- Seeking to avoid applications being voided on the basis that they are either not compliant with policy or are already being delivered within the committed Highways work programme. Existing data within systems like Fix My Street would be used to inform work programmes.
- The process would allow a known quantum of work to be programmed from the start of each year, rather than trying to fit in ad-hoc as and when Member applications are received and validated. This would make delivery of the Member budgets more cost-efficient and generate increased value for money.
- Provide greater certainty around budget spend each year. The move to a request-based process aimed to remove reliance on receiving valid Member applications.

Scheme update

8. This is the first year of the four-year scheme. It must be acknowledged that in any programme where decisions are required at the beginning to develop the programme there will inevitably be a degree of delay while those decisions are taken. Progress to end of January 2024 is as follows:
- (a) Participation: All members have been contacted and 76 of the 82 ward members have contacted the officers administering the scheme or sent requests for consideration.
- (b) The current status of requests by stage of scheme completion is as follows:

Request Status	Number of Requests	Percentage of total
1. Received	254	100%
2. Approved and being developed for delivery	207	81%
3. Approved and work completed	7	3%
4. Approved and work programmed	11	4%
5. Rejected (<i>Not policy compliant or budget insufficient</i>)	29	11%

- (c) All received requests (item 1 in table above) are further broken down in Appendices 1 to 3, as follows:
 - (i) Appendix 1 gives a breakdown of the requests by work category.
 - (ii) Appendix 2 by status whether approved or rejected.
 - (iii) More detail on rejected requests is provided in Appendix 3 (Item 5 in the above table), giving the reason for rejection.
- (d) Scheme administration:
 - (i) A separate budget is provided for administration of the scheme, which was set at £20,000 per annum. This pays for officer time to provide specialist input necessary to review and develop requests and is essential to delivery. Administration is funded from the limited capital allocation the service has available to deliver essential maintenance and improvements to the public highway.
 - (ii) To date, in 2023-4 the time required for officers to administer the scheme has exceeded £30,000. These costs are spread across those for all members. A proposed solution to encourage greater individual responsibility by members is to include the budget for administration costs within the individual member allocations.

Delivery timescales

- 9. Within the WMBS there are a variety of distinct types of highways work that can be requested by members. This is to ensure that:
 - (a) Works carried out qualify within the definition of capital spend; and
 - (b) The works contribute to asset management priorities.
- 10. The time from submission of a request can vary significantly and can be a source of frustration to members. The most common reasons for requests not being progressed is that they do not meet policy requirements or are unaffordable.
- 11. To help address this issue, case studies are shown in Appendix 3 for some types of work that can be requested. Each identifies issues that can be encountered, such as whether work is seasonal or can be

done all year. They provide a typical timeline, together with the activities that Highways officers must undertake to get the request from concept to construction.

Improving scheme delivery

12. Engagement between members and the senior highways officers (SHOs) has improved since the scheme first began in April 2023. This has enabled the SHOs to understand members' priorities and requests and use their local knowledge and available data to help advise where members can best utilise their budget in line with asset management priorities.
13. However, as can be seen in 8 above, there is still significant room to improve in this area. Making improvements needs members to understand how the scheme operates and better collaboration with officers to operate it effectively.
14. Priorities for improvement are identified as to:
 - (a) Encourage effective use of staff resource and reduce administration time to meet the budgeted time.
 - (b) Ensure work is primarily focused on statutory and essential works within the annual capital programme and routine and reactive service delivery.
 - (c) Identify key priorities early in each ward, what works can address these and take timely decisions on which schemes to deliver.
15. To support delivering these improvements, it is proposed to:
 - (a) Continue to communicate with members regarding what the WMBS can be used for and regarding current status of allocations.
 - (b) From the 2024-5 financial year, to include administration costs in the annual member allocations.

Consultation and Engagement

16. Two Member Tutorials were delivered by the Highways Service in December 2022 to launch the new scheme. These explained how the new scheme would operate and covered lessons learned from the trial period.
17. Local elections were held in May 2023 returned a significant proportion of new Members. It was recognised that new members

would require tutorials to explain the scheme but may also want to review any priorities agreed with their predecessors. Information on the highways service (including the WMBS) was provided to all Members following the elections. Two specific tutorials were also delivered to Members via Teams in December 2023.

18. The SHOs have also contacted Members to discuss priorities in their wards.
19. The Highways Service has continued to communicate with Members regarding the scheme during 2023-4. The latest contact in November 2023 provided an update on their budget position, including spend to date, progress on proposals (where received) and an offer to contact their SHO to discuss existing proposals or to identify proposals for consideration. There was a subsequent update at the end of February 2024.

Reasons for Recommendations

20. The Highways Service currently has insufficient capital funding to maintain the current condition of highway infrastructure. The WMBS utilises over £2m of capital funding and it is important that this contributes towards the Council’s Highway asset management objectives.
21. The scheme must therefore deliver value for money for ward Members and the Council and whilst aligning to the asset management approach to maintaining and improving the public highways for the benefit of residents, businesses and other users.
22. Officers’ primary focus is to deliver the statutory and essential works required to deliver a safe and well-maintained public highway for the Council as Highways Authority. It needs to be recognised that these resources are finite.

Other Options Considered

Option	Impact	Risk
Not applicable		

Implications and Comments

Monitoring Officer / Legal

23. The Localism Act 2011 introduced the General Power of Competence, which allows the Council to do anything an individual can do, provided it is not prohibited by other legislation. These powers replaced the previous wellbeing powers; however, the use of these powers must be in support of a reasonable and accountable decision made in line with public law principles.

The powers under the Localism Act are drafted wide enough to authorise local authorities to adopt schemes like ward budgets.

24. Furthermore Section 111 of the Local Government Act 1972 enables the Council to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge of any of its functions, whether or not involving expenditure, borrowing or lending money, or the acquisition or disposal of any rights or property.
25. The Council has a fiduciary duty at all times to the taxpayers and must fulfil its duty in a way that is accountable to local people.
26. The Council as the local highway authority have a statutory duty under section 41 Highways Act 1980 to maintain a highway, the Council should ensure that this scheme does not interfere with that statutory duty.

Section 151 Officer / Finance

27. The scheme budget is £553k per annum. The funding is split between Department for Transport block grant (£370k) and Council investment in Managing and Maintaining the highway (£183k) and is contained in the Medium-Term Financial Strategy (MTFS).
28. This reduces the budget to deliver statutory and essential work in other areas of Highway services. Works to deliver statutory and essential work will be communicated to members later in 2024.
29. The current financial pressures the Council is under have brought significant focus on the borrowing costs of the corporate capital programme. The Council's annual investment in managing and maintaining the highway has been reduced by its decision of 27 February 2024. The annual amount per member is therefore:
 - (a) £370k Department for Transport block grant;
 - (b) Divided by 82 = £4,512.
30. Members can roll budgets over to accrue or combine ward budgets to fund larger schemes over the four-year period. The potential for observed underspends is greater if a large proportion of members choose to do so. This affects the cost of servicing the cost of associated borrowing and adds to the Council's financial pressures.
31. Increased Value for Money: The current WMBS approach is intended increase delivery efficiency. It seeks to deliver this through earlier presentation of requests and priorities for assessment, planning and programming of work, rather than the ad hoc nature of the trial system.

32. This will also enable the Highways Service to integrate delivery of these smaller value works into the larger highway maintenance programmes. This helps ensure the best value possible is being achieved from the funds the Council has allocated for the maintenance and improvement of the public highway.
33. The WMBS contributes to delivery of the priorities in the [Corporate Plan](#) as follows:

An open and enabling organisation	A council which empowers and cares about people	A thriving and sustainable place
Ensure that there is transparency in all aspects of council decision making.	N/A	A transport network that is safe and promotes active travel. Safer and well-maintained roads

Equality, Diversity and Inclusion

34. There are no adverse equality, diversity or inclusion implications resulting from this report.

Human Resources

35. Existing staff resources within the Highways Service will be utilised to manage and administer the WMBS. There are no human resource implications of this strategy.
36. The roles and responsibilities of these staff are focused on the delivery of the statutory duties and essential works placed upon the Highways Service. Time spent on non-statutory elements (i.e. those elements that are not directly to meet the council's statutory obligations or to reduce the cost of meeting statutory obligations) reduces the time available for staff for statutory and essential works.

Risk Management

37. The legal risks to the operation of the WMBS are set out in paragraphs 23 to 24 of this report.
38. The financial risks to the operation of the WMBS are set in paragraphs 25 to 32 of this report.

Rural Communities

39. There are no direct adverse impacts rural community resulting from this report.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

40. There are no direct adverse impacts on children and young people resulting from this report.

Public Health

41. There are no direct adverse impacts on public health resulting from this report.

Climate Change

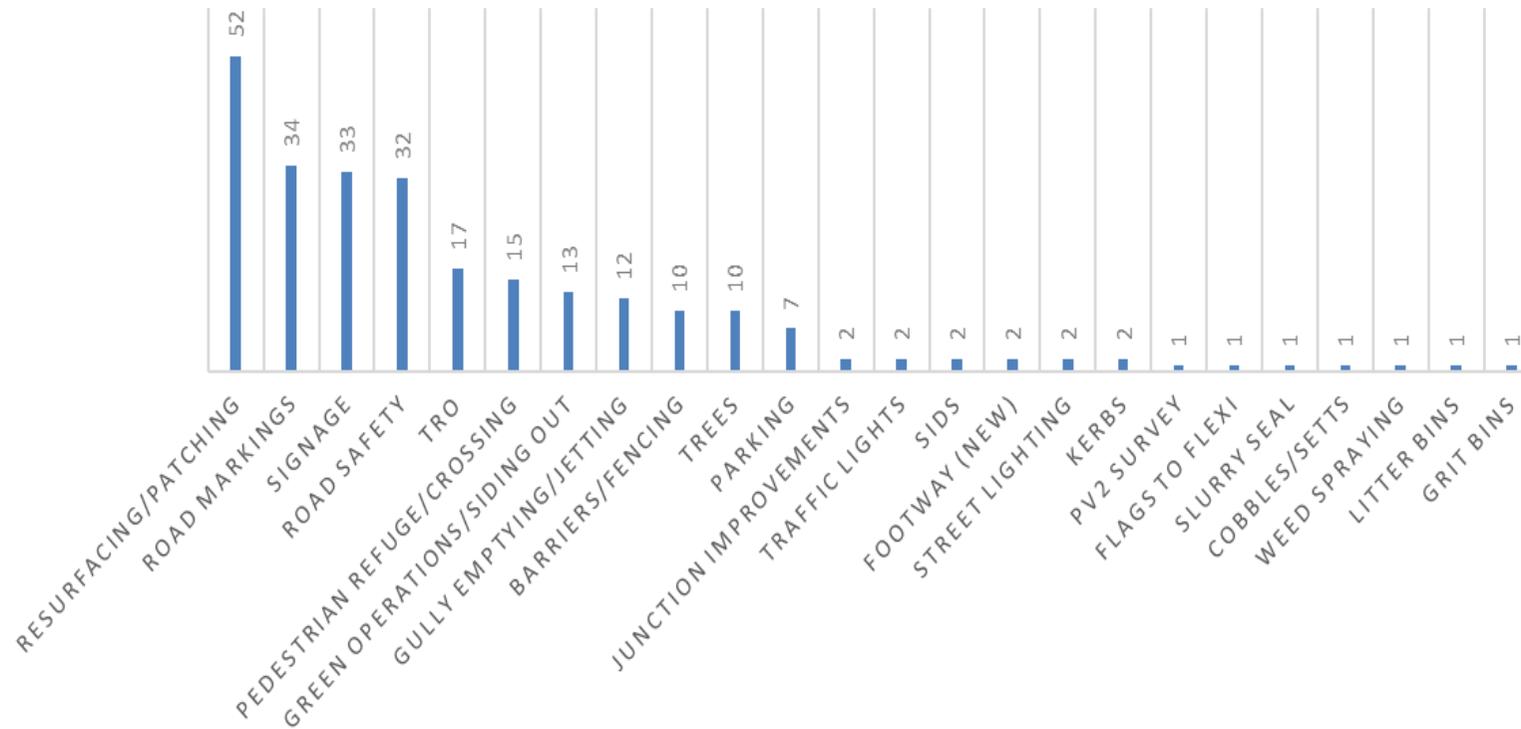
42. There are no direct adverse impacts on climate change resulting from this report.

Access to Information	
Contact Officer:	Domenic de Bechi, Head of Highways Domenic.deBechi@cheshireeast.gov.uk
Appendices:	Appendix 1: Breakdown of all requests by work category Appendix 2: Breakdown of all requests by status Appendix 3: Breakdown of rejected requests and reasons Appendix 4: Case study slides
Background Papers:	Purpose
(Public Pack)Agenda Document for Highways and Transport Committee, 22/09/2022 10:30 (cheshireeast.gov.uk)	Review of Highways Ward Member Budget Scheme (Page 277-288 of Committee Agenda Document pack).

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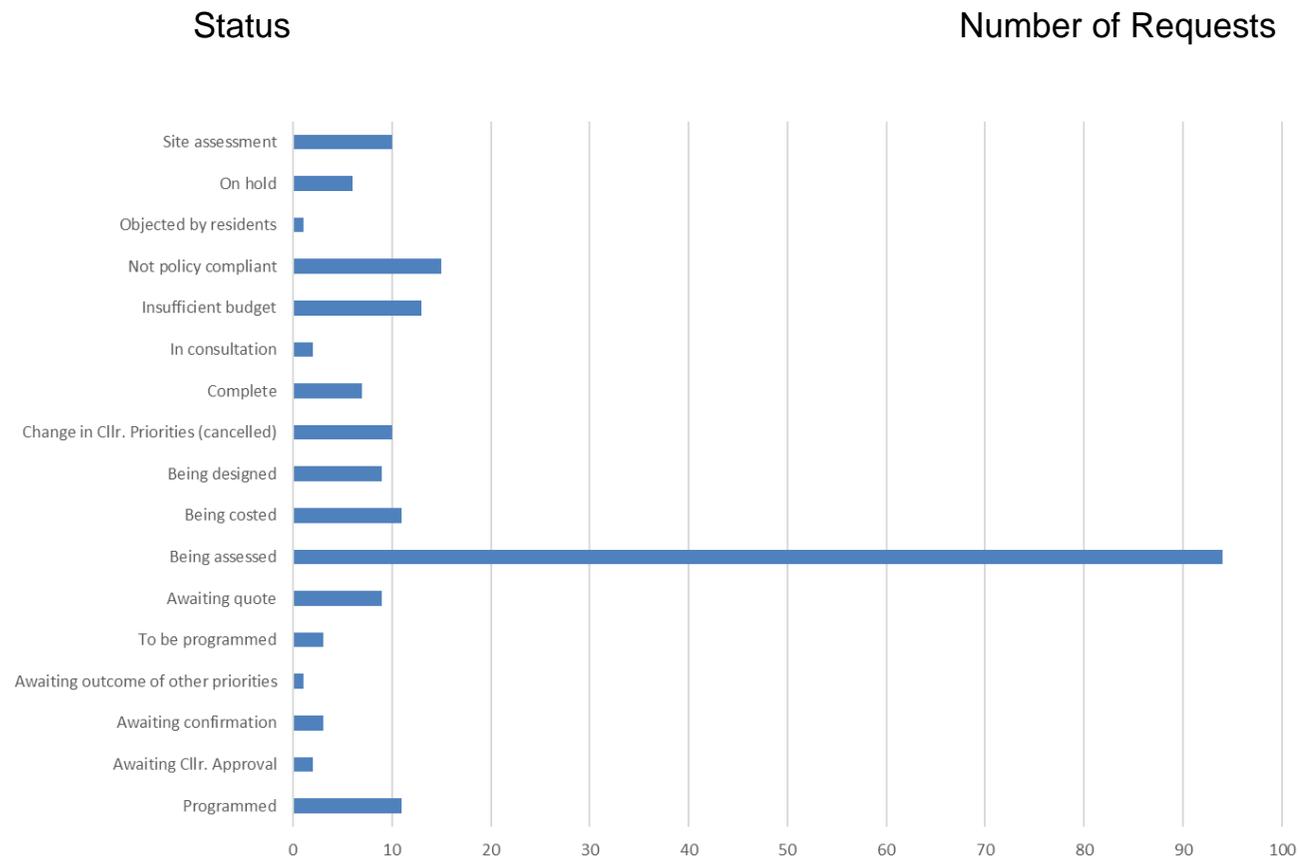
Breakdown of all requests by work category

REQUESTS BY CATEGORY



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Breakdown of all requests by status



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Breakdown of rejected requests and reasons

Category	Description	Reason
Barriers/railings	A knee-rail or similar barrier	Not policy compliant
Pedestrian crossing	Dropped-kerb with tactile paving	Insufficient budget
Signage	Entrance signs to Village	Not policy compliant
Planters	Installation of planters	Not policy compliant
Speed limit review	Stocks Lane speed review	Insufficient budget
Zebra crossing improvements	Review/Improvements to existing zebra	Insufficient budget
Active Travel scheme	Feasibility of active travel scheme between roundabout and junction on major route	Insufficient budget
L2 - carriageway patching	Carriageway patching	Insufficient budget
Pedestrian crossing	Pedestrian refuge facilities at both ends of street	Insufficient budget
TRO	Holmesville Avenue, extend double yellow lines	Insufficient budget
Tree planting	Earle Street	Not policy compliant
Zebra crossing upgrade to Pelican crossing	Gresty Road	Insufficient budget
Footway surface treatment	Various road on housing estate. Potential to joint fund with another Cllr which was declined	Insufficient budget
Sign cleaning/clearance	Various locations. Potential to joint fund with another Cllr which was declined	Insufficient budget
Signs	Parish boundary signs at all appropriate locations	Not policy compliant
Flood alleviation	Flood alleviation schemes to known problem areas	Insufficient budget
Planting wildflowers	Selected verges	Not policy compliant
TRO	Provision of junction protection markings	Not policy compliant
Disabled parking bays and vehicle crossings	Nicholson Close	Not policy compliant
Relocation of lamposts	Brocklehurst Avenue and Greystoke Road	Not policy compliant
Pedestrian crossing	A533 Request for pedestrian crossing	Insufficient budget
New signage	30mph sign	Not policy compliant
Traffic regulation order (new/amend)	Double yellow lines in various locations along Crewe Road	Objected by residents
Bollards	Cliff Road - Installation of bollards to protect the pavement	Not policy compliant
Traffic lights	Water Lane	Insufficient budget
Speed reduction	Request for a speed/safety review from 60 down to 40 mph	Not policy compliant
Speed reduction	Request for a speed/safety review	Not policy compliant
Speed reduction	Newcastle Road	Not policy compliant
Street name plate	The Broadlands	Not policy compliant

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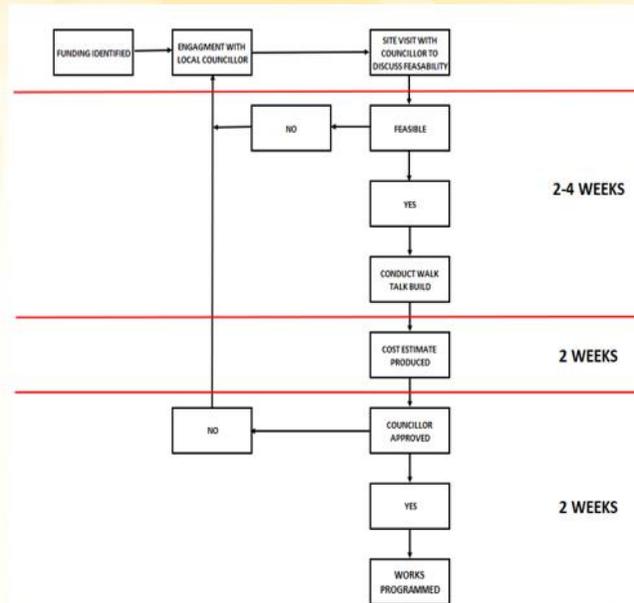
Case study slides

Street Name Plates

- Replacement of damaged/missing name plates
- Deliverable all year round
- Typical cost £500



Timeline for request to be process, assessed, costed, programmed and delivered is typically **6-8 weeks**:



Carriageway Patching

Hand Lay Patching

- Suitable for localised carriageway patching
- Static site (1 site per day)
- Deliverable all year round
- Typical cost per day £4,000 including traffic management



Working for a *brighter future* together

Surface Treatment Patching

- Suitable for shallow carriageway repairs (urban areas)
- Transient site (multiple sites can be visited per day)
- Seasonal work 1 April and 31 October
- Typical cost per day £3,000 – 4,000



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All changes have been saved

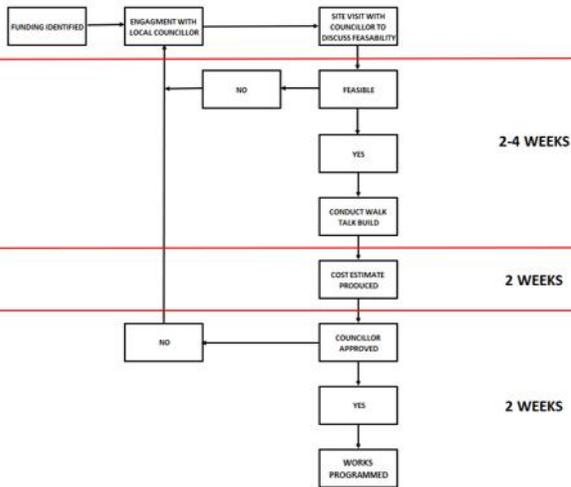
Footway Patching

- Suitable for small scale repairs
- Static site (1 site per day)
- Deliverable all year round
- Typical cost £3,500 including traffic management



- Timescale for delivery of work typically **8-12 weeks**.
- Your Senior Highways Officer will advise best type of treatment for the road/footway selected

Footway and Carriageway patching



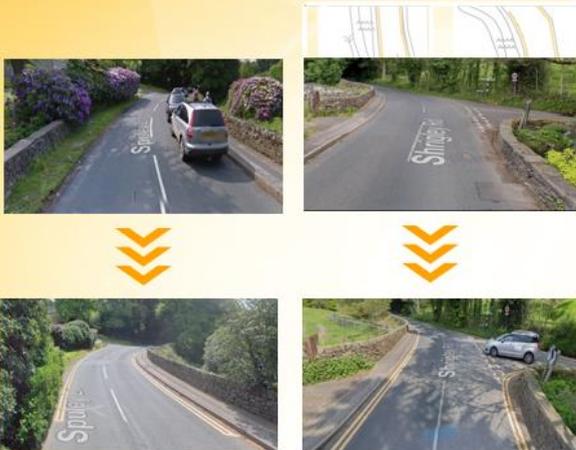
Working for a brighter future together

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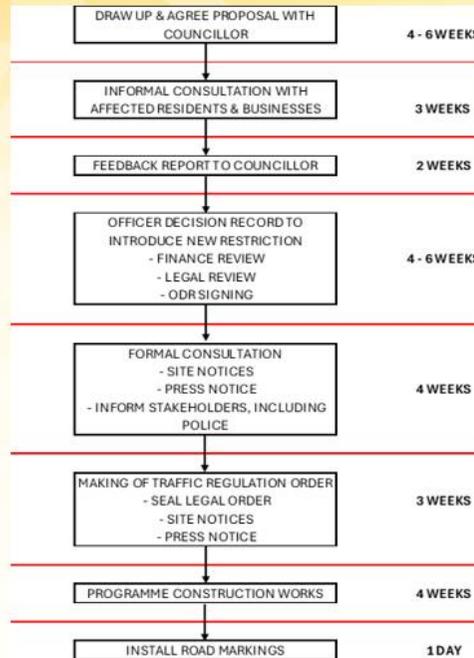


Traffic Regulation Orders

- New parking restrictions
Double Yellow Lines scheme for Shrigley Road / Spuley Lane (Parked cars blocking the junction)
- Deliverable all year round
- Typical cost £5,000 – 6,000



- Timescale for delivery typically **6 – 9 months** if no objections received



Working for a brighter future together

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Highways and Transport Committee**4 April 2024****Report Title:** Wildlife & Countryside
Act 1981 – Part III, Section 53.

Application No. MA/5/222 Application for
the addition of a Bridleway between Moss
Lane and Newton Hall Lane, Mobberley
also known as Graveyard Lane.

Report of: Peter Skates, Acting Executive Director, Place**Report Reference No: HTC/36/23-24****Ward Affected: Mobberley****Purpose of Report**

- 1 This report outlines the investigation into a 2003 application made by Alderley Edge, Wilmslow and District Footpaths Preservation Society (“the Society”) to modify the Definitive Map and Statement of Public Rights of Way (the “DM”) by the addition of a Bridleway over a route running between Newton Hall Lane and Moss Lane otherwise known as “Graveyard Lane”. This report includes a discussion of the consultations carried out in respect of the claim, the documentary and witness evidence investigated and the legal tests for the making of a Definitive Map Modification Order (“DMMO”). The report makes a recommendation based on this information for quasi judicial decision by Members as to whether an Order should be made to add a Bridleway.
- 2 The work of the Public Rights of Way team contributes to the Corporate Plan, the “thriving and sustainable place” priority, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

Executive Summary

- 3 The report considers the evidence submitted and researched in the application to record a Bridleway between Newton Hall Lane and Moss

Lane in Mobberley. The route is also known as Graveyard Lane, a name given, it is assumed because of a seventeenth century Quaker burial site adjacent to the route.

- 4 The evidence consists of use, on foot and with horse by individual witnesses over a period from the 1970s to 2003, at which date the application was submitted. There is secondary evidence of a continued public use which is discussed in the report. The report determines whether on the balance of probabilities rights of use as a Bridleway have been acquired. An historic depiction of the route is demonstrated through commercial maps from the late 18th century and Ordnance Survey mapping from the mid nineteenth century. Together with the initial and then contemporary evidence of use by the public on foot and with horse and bicycle, there is a strong assertion that Bridleway rights have been acquired.

RECOMMENDATIONS

The Highways and Transport Committee is recommended to:

1. Decide that 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 a Bridleway between Newton Hall Lane and Moss Lane, Mobberley as shown between points A-B on Plan No. WCA/34.
2. Decide that 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.

Background

- 5 The application was made to the former Cheshire County Council (“CCC”) in May 2003 by the Society asking for an Order to add a bridleway to the DM. The application was supported by eight user evidence forms and some documentary evidence. A supplementary letter set out certain details; that the route at that time was given no formal status although it had been the route to the Quaker burial ground since 1669; photographs were submitted which show the in-situ bridleway fingerposts and condition of the route; bridleway signs had been erected at both ends of the route since approximately 1993 and the

CCC abandoned review of the DM which had intended to record the route as bridleway. The CCC abandoned review was the consequence of the enactment of the 1981 Act. Prior to that date, the Surveying Authority (the CCC), under the National Parks and Countryside Act 1949, had a duty to review the DM every 5 years then this was changed to a “rolling review” so the DM is constantly being modified.

- 6 The application was investigated in 2007 by CCC and approval was given to create the bridleway by agreement with landowners and adjacent landowners under Section 25 of the Highways Act 1980 (see [Agenda for Public Rights of Way Committee on Monday, 16th September, 2013, 4.00 pm | Cheshire East Council](#)). The process was not completed because it was not found possible to collate a comprehensive set of agreements for the whole length of the lane. It has become apparent that the procedure to record a route by agreement with the landowners will not succeed and it is therefore recommended by this report that the route is recorded by the making of a Definitive Map Modification Order.

Description of the application route

- 7 The route runs in a south-east direction from Newton Hall Lane (C106) at OS grid reference SJ 8048 8029 (point A on Plan No. WCA/34 “the Plan”) to Moss Lane (UW2144) at SJ 8110 8000 (point B on the Plan), approximately 2.2km east from the centre of the village of Mobberley. Newton Hall Lane is a connecting lane between Mobberley and Wilmslow and Moss Lane is a cul-de-sac. There are two Public Footpaths Nos. 44 and 45 Mobberley that connect with this route and can be seen on the Plan. The name of the lane indicates an interesting history associated with a graveyard labelled on historic maps as the Quaker burial ground.
- 8 The route has been diverted at the east end, in the early 1980s and a public right of way is acknowledged by the landowner on its current alignment. The route with this alignment is shown on the Plan that is the subject of this report and recommendation.
- 9 The route is an unsealed mostly gravel surface. Between boundaries at the west end, it is a variable width between 6.6 metres and 2.7 metres and at the eastern end, it is restricted to approximately 1.8 metres wide between boundaries. The width is that which is found on the ground and between boundaries. The location of gates are shown on the Plan. The Plan also shows the location of finger posts with footpath and bridleway blades.

Main Issues

- 10 Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Council shall keep the DM under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events:-
- 11 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.”
- 12 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.
- 13 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”.
- 14 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 application was made in 2003, and the statutory period of use would be 1983 to 2003.
- 15 Public rights can also be established under common law based on evidence of public use and there is no requirement for a period of

twenty years. Establishing rights under common law relies on there being an owner with capacity to dedicate or evidence that there was no capacity to dedicate. In the absence of knowing who the owner was, satisfactory evidence of user by the public would establish rights. In this case, it seems that since the 2003 application was made, the landowners have been willing to enter a creation agreement for a bridleway, the route has been signed with bridleway signs since c.1993 and promoted as a signposted recreational route. In addition, consultees attest to regular use with horses and cycles as well as on foot which are all indicative of rights acquired under common law.

- 16 Restrictions on the recording in the DM for mechanically propelled vehicles (motorised vehicles) have been made by section 67 of part 6 of the Natural Environment and Rural Communities Act 2006 which was enacted on 2nd May 2006. Section 67 (i) states; 'An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement...was not shown on a Definitive Map and Statement.' Section 67 (2) to (8) provides exceptions to the extinguishment of unrecorded rights of way for mechanically propelled vehicles if an application for a DMMO to record a Byway Open to All Traffic had been made before the 'relevant date' (20th January 2005). In this case, no such application had been made and any public rights for motorised traffic users will have been lawfully extinguished. Sub-section 67(5), (7) and 70(4) together retain rights for people to access their land and property. Section (5) preserves, for a person with an interest in land, what may have been public rights which became a private right to the benefit of that land. Private rights co-exist with public rights on many public rights of way.

The Investigation

- 17 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.

County Maps 18th/19th Century

- 18 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 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 public status, although they may provide supporting evidence of the existence of a route.

- 19 On Stuart's map of 1794 the route is not shown, nor burial ground noted. On Bryant's map of 1831, the burial ground is a useful identifier of the route and is given prominence as the "Quakers Burying Ground" adjacent to a route leading west beyond "Graveyard Farm" to a junction opposite "Barlow Ho." [House]. The lane is depicted in the class of "Lanes and Bridleways" described on the map key. The Swire and Hutchings map of 1829, notes the "Quaker burying ground" and a route which is a through route to Newton Hall Lane. It is depicted the same as "cross lane" on the key. In this instance these maps show a route in the early nineteenth century.

Tithe Map and Apportionment for Mobberley, 1847

- 20 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. The 1836 Act relieved the Tithe Commissioners of the need to certify all maps. The Mobberley Award is however, certified by the commissioners and so is viewed as a first-class map.
- 21 It was not the purpose of the Awards to record public highways. Although depiction of both private occupation and public roads may provide good supporting evidence of the existence of a route, especially since they were implemented as part of a statutory process. 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.
- 22 The preamble to the Mobberley Award lists the total quantities of tithes to be commuted and includes a description of four acres, two rood, 16 perch as "occupation road". Hereditament 648 is listed as Grave Yard Lane, owned by the executors of the Late John Bray and occupied by Jeffrey Bray (who also occupied Grave Yard house and yard). At the eastern termination of the lane, hereditament 632a is described as "road" in the ownership of the devisees in Trust of the late Thomas Wright and occupied by Thomas Norbury. There is a separate plot for highways, numbered 1702 and listed in the ownership of the Highways of the Parish. Elsewhere on this Award there are other plots which are described as "road" and are in private ownership, indicating the recognition of untitheable land which was also considered to be an occupation road.

- 23 The Tithe map adds to the reputation of a route that was in existence and whilst the Award does not set out to establish status of highways, the indicated is that Graveyard Lane was considered to be an occupation road not a public highway.

Ordnance Survey Records (OS)

- 24 OS 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 its maps to the effect that the depiction of a road is not evidence of the existence of a right of way. It is argued that this disclaimer was solely to avoid potential litigation. Dr Yolande Hodson has written widely on the interpretation of the OS map. Dr Hodson was formerly employed by the Military Survey and then by the Map Room of the British Museum. In publication, she has described the tension in the twentieth century within the OS to agree on what would be shown on the maps, at which scale and for which audience and what symbols should be used to depict the condition and status of roads and ways. She has indicated that the OS are good evidence of the existence of a way or path and can support any other evidence claiming public rights of way, but they are limited in proof for public status.

- 25 OS 1" to 1mile series, 1848.

The application route is shown running between single weight solid lines. At the western termination a line across the route indicates a gate at the junction opposite Barlow House, and at the eastern termination a line indicates it is gated. The graveyard is labelled.

- 26 OS 1st Edition County Series 25" to 1 mile, 1871.

This route crosses three map sheets. The route is shown with single solid lines. "Burial ground" is noted. At Newton Hall Lane the junction with Graveyard Lane is marked by a line across the junction indicative of a gate. The lane has not been given a parcel number.

- 27 OS 2nd Edition County Series 25" to 1 mile, 1898.

The route crosses three map sheets. The route is shown with single solid lines, the style is on the characteristic sheet. The track is not braced to the adjacent land. Sheet XXVII.8 shows the middle section and the route is labelled "Graveyard Lane" parcel number 404.

- 28 OS 3rd Edition County Series 25" to 1 mile, 1909.

The route runs between solid lines and the parcel number is 518 not braced to the adjacent land. Sheet XXVII.2 shows the east end of the route. The termination at Moss Lane is marked by a line across the track indicating a gate. On Sheet XXVII.8 the lane is numbered parcel 404 and not braced. The disused burial ground is noted. On map sheet XVIII.12 the route is numbered 365 and is not braced to adjacent lane.

- 29 OS Popular Series 1" Sheet 44, 1923 and 1941 and map sheet 101, 1947.

Newton Hall Lane is shown coloured solid yellow, one line weighted, classed on the map key as road, "fit for ordinary traffic"; Moss Lane and Graveyard Lane shown as broken yellow infill, single weight lines, classed as roads under 14' wide and "indifferent". Graveyard Farm is labelled but not the burial ground. The map key includes a notation that private roads are uncoloured. The subsequent 1941 published map does not have this specification listed in the key. The 1941 map colours roads Moss Lane, Graveyard Lane and Newton Hall Lane red, but the printing quality makes it impossible to differentiate the line weight and class of road. On a different sheet, "101", part of Moss Lane, Graveyard Lane are coloured red, line weight equivalent to "other motor roads", "narrow" "good" on the map key. The disclaimer of the representation on the map includes road, tracks and footpath as "no evidence of the existence of a right of way".

The OS map series is good evidence of the physical continuity of the route from commencement of mapping. The route is shown as not braced to adjacent land indicating the boundaries were fixed features. The lines across the route indicating gates strongly suggests control over the lane whereby the route was not part of the ordinary road network. The Popular map series suggests the "gates" were not an obstruction to use in the early to mid-twentieth century.

Bartholomew's Half Inch to a Mile

- 30 Bartholomew was a Scottish company with a good reputation of publishing maps from the late 19th century. Between c.1911 and 1928 there was an arrangement with the Cyclists' Touring Club for their members to send in revisions and their logo was shown on the maps where this arrangement was in place. The maps were based on OS base maps. The maps set out a classification of use, although there is a caveat that the depiction of any route was not evidence of a public right of way and background to the maps indicates that they relied on user reviews to make any corrections. Comparison of map publication dates may show any consistent depiction of a particular route.

- 31 The 1904 publication is at scale half inch, sheet 8 covers Mobberley. The route is shown as a dashed red line, which is on the map key as secondary good roads. The 1920 map which is the following publication of this sheet, shows this route as uncoloured, classed as inferior and not to be recommended. The 1941 publication of re-numbered map sheet 28 covering Mobberley, shows Moss Lane and Graveyard Lane with dashed yellow infill, classed as serviceable roads on the map key. The maps show the route was considered inferior from the first publication, but there is an indication by comparing the map series that the route was considered to be accessible with a cycle.

Finance Act 1910

- 32 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. It is thought that exclusion of highways on the maps came under S35(1) of the Act not to charge on land or an interest in land held by a rating authority. 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.
- 33 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.
- 34 Two of the working map sheets of the western end and eastern end, sheets XXVII.7 and .12 were available to view at the Cheshire Record Office. They show the route as excluded from hereditaments. The Planning Inspectorate guidelines suggests this may be indicative of a public route but is not conclusive of public nor of a vehicular route. The map has little information and the hereditaments outlined in red ink showing graveyard lane is unnumbered. It was most likely considered public at that time. The book of reference shows that none of the adjacent hereditaments claimed a reduction for a public right of way.

Pre DM Records

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

DM Process – National Parks and Access to the Countryside Act 1949

- 36 The DM 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 DM.

The Draft DM was produced with no claim over Graveyard Lane, but Footpath No. 45 joins the lane, with a stile at the junction, opposite Footpath No. 45 is the commencement of Footpath No. 42 and a stile at the junction. North of this crossing is the junction with Footpath No. 44 and Graveyard Lane, with a stile at the junction. The Provisional Map also shows the connecting footpaths, no status for Graveyard Lane is recorded on the Statement the description given is solely "Graveyard Lane". It is indicative that the reputation of the route was as a public right of way in the form of a highway.

Land Registry information

- 37 As part of the lane is unregistered, notice of the 2003 application had been served on the land from November to December 2003. No new owner came forward to claim ownership. Consultations to owners and occupiers were sent 1 November 2023 and acknowledgement of the consultation was received from two landowners, requesting further clarification of the current legal position and corrections of address details.

Photographs

- 38 Photographs were taken for the 2003 application investigation and also for comparison in November 2023. Evidence of continuation of signage, surface and route are apparent between these dates.

Witness evidence and STRAVA data

- 39 The witness evidence submitted with the original application indicates use was made of the route by the public walking and horse riding. A chart illustrating the users who supported the 2003 application can be found at Appendix 2. This use covers the statutory period of claim. The consultation response from the user groups confirms continuity of use on foot and horse riding and cycling. The description of recent and current use is without challenge nor obstruction.
- 40 Use is mainly on foot, with weekly or less use. Horse-riders were generally using the route on a weekly basis. Use was recreational, no one sought permission or was given permission and there were no reports of gates that were forced or signs that said the route was private.
- 41 The 2003 application users noted alterations to the route: a garage was built before 2003 and has since been dismantled. A gate was erected

in approximately 2002 or 2003 but does not get closed. New fencing and an evergreen hedge were installed at the eastern end, at Moss Cottage. Users noted the eastern end of the route was overgrown.

- 42 One user visited friends at Graveyard Farm. Others noted that they had conversed with owners/adjacent owners without a challenge. One user was associated with a former horse-riding school on Newton Hall Lane. Users also recalled bridleway signs were in place c.1993. The 1993 date accords with the publication date of a CCC leaflet of cycle rides in Cheshire describing the route as used by horse-riders and cyclists.
- 43 Strava Data is a dataset which derives from personal usage records which are recorded digitally. The raw data is made available to access organisations and will show as heat maps of use on foot and by cycle aggregated from the previous two years. It should be noted the data is only from people who have elected to be included with public data. A December 2023 snapshot of usage shows the application route is more heavily used by walkers than the connecting footpaths. The maps do not record horse-riding activity but show that cyclists have used the route almost to the same frequency as the ordinary road network.

Consultation and Engagement

- 44 In addition to the owners and occupiers, a consultation with the Plan was sent on 1st November 2023 to the Mobberley Ward Member, the Mobberley Parish Council and the local user groups.
- 45 The Parish Council requested further information about the application and have not made any further response.
- 46 The CycleWilmslow group and the Wilmslow U3A cycling group have written in support of the claim. They say the groups are already using the route on a regular basis. A representative of the local rambling group, Mid Cheshire Footpath Society, confirms that he has regularly walked the route and the group has a promoted walk incorporating this route. He recalls having seen horse-riders but not on the dates. A representative of the Peak and Northern Footpath Society supports the making of an Order to add this route to the record, additional comments were made that the society had paperwork indicating the route was already on the record as a bridleway. This refers back to a CCC review of the DM in the 1980s which was abandoned (paragraph 5 above). The Strava data corroborates the consultee comments on the popularity of the route.
- 47 A representative of the North Cheshire Riders group (horse-riding) quoted from the group archives indicating that there is considerable user evidence available as the route is an essential link for riders because it forms a circular riding circuit to Paddock Hill (east of the

route) and has been regularly used. Since 2012, it was said, the application route had been incorporated into the Northern Heritage Loop of the Laureen's Ride promoted route for horse-riders and cyclists, which was quoted as additional evidence of current and regular use.

- 48 Landowners and occupiers were all sent letters of consultation and a copy of the Plan submitted with this report. One owner expressed concern that the proposed recorded rights would have an impact on the occupiers right of access. It was explained that private rights can co-exist with the public rights, where private rights already exist, and these were preserved by law as discussed at para 16.

Reasons for Recommendations

- 49 Under Section 53 of the 1981 Act, the Council has a duty as the Surveying Authority to keep the DM under continuous review. Section 53 (c) allows for an authority to act on the "discovery of evidence" that suggests that the DM needs to be amended. The authority must investigate and determine that evidence and decide on the outcome whether to make a DMMO or not.
- 50 The documentary evidence has shown the route was a feature at least in the early nineteenth century, as shown by county commercial maps. The route continues to be shown on subsequent maps, such as the OS and Bartholomew's. Maps produced under a statutory process, such as the Tithe Award and the Finance Act, cannot determine the status but suggest at an earlier period use was as an occupation route as indicated by ownership and gates. At a later date, use seems to be public as shown by Bartholomew's map and the record of the connecting public footpaths on the DM. The indication is that the documentary evidence shows the route was not considered to be part of the ordinary road network but had an undetermined public status.
- 51 Witness evidence from pre 2003 and since then shows regular and uncontested use by walkers and horse-riders, with additional evidence of use by cyclists indicating a public reputation for this route as a bridleway. The CCC indicated the status would be recognised by recording a bridleway in the 1980s but the legal context changed and the process was left to be dealt with under the 1981 Act. The route was signed and incorporated into recreational cycling and horse-riding publications and has been in use as a bridleway since the 2003 application was submitted.
- 52 Landowners have not submitted evidence to rebut the claim, neither at the earlier investigations under CCC nor under the current investigation. The attempts to record the status by creation agreements is indicative that the landowners and occupiers accept the status of a bridleway. It seems therefore that there is insufficient evidence of any lack of

intention to dedicate public rights. The available and relevant evidence is supportive of a reasonable allegation in favour of presumption of dedication under common law. There is sufficient evidence to support an inference of dedication under common law.

Implications and Comments

Monitoring Officer/Legal

- 53 The Council is complying with its legal duties as stated in paragraphs 10-16.
- 54 The Human Rights Act is also of relevance. Whilst article 1 to the first protocol (peaceful enjoyment of property) and article 8 (right to respect for family, private life and home) are engaged, it is important to note that these rights are qualified, not absolute, which means that they can be interfered with in so far as such interference is in accordance with domestic law and is necessary in a democratic society for the protection of the rights and freedoms of others. It is considered that any interference occasioned by the making of a Modification Order is both in accordance with domestic law (the Wildlife and Countryside Act 1981) and is in the public interest as it is necessary in a democratic society for the protection of the rights and freedoms of others, namely the public who wish to use the way.
- 55 Should Members resolve that a Modification Order be made in accordance with highways legislation, this is merely the start of the legal process. Once a Modification Order is made, it must be publicised, and any person will have an opportunity to formally object to it. Should objections be received, the Modification Order would have to be referred to the Secretary of State who would usually hold a Public Inquiry before deciding upon whether or not to confirm the Modification Order.
- 56 Please note that the Council will not disclose the user evidence forms that form part of the background documentation at this stage in the process. The Council considers that the information provided within the user evidence documentation is exempt information under s1&2 Schedule 12A Local Government Act 1972, as amended.
- 57 Under the Wildlife and Countryside Act 1981, there is no such statutory right prior to an Order having been made - persons affected are entitled to the information in the event that an Order is made following the Committee decision.

Section 151 Officer/Finance

- 58 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.

Policy

- 59 The work of the Public Rights of Way Team contributes to the Green aim of the Corporate Plan, the “thriving and sustainable place” priority, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

A thriving and sustainable place

- A great place for people to live, work and visit
- Welcoming, safe and clean neighbourhoods
- Reduce impact on the environment
- A transport network that is safe and promotes active travel
- Thriving urban and rural economies with opportunities for all
- Be a carbon neutral council by 2027

Equality, Diversity and Inclusion

- 60 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.

Human Resources

- 61 There are no direct implications for Human Resources.

Risk Management

- 62 There are no direct implications for risk management.

Rural Communities

- 63 There are no direct implications for Rural Communities.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

- 64 There are no direct implications for Children and Young People.

Public Health

- 65 There are no direct implications for Public Health.

Climate Change

- 66 The Council has committed to becoming carbon neutral by 2027 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint.
- 67 The addition of a public bridleway to the Definitive Map represents the formal recognition of pedestrian, horse-riding and cyclists rights, creating more opportunities for leisure and the potential for the improvement/promotion of healthy lifestyles as part of a recognised recreational route.

Access to Information	
Contact Officer:	Adele Mayer, Definitive Map Officer adele.mayer@cheshireeast.gov.uk
Appendices:	Appendix 1 documentary evidence Appendix 2 User evidence chart Appendix 3 Plan No. WCA/34 Appendix 4 Site Images
Background Papers:	Case File MA-5-222 Application to add a bridleway, Mobberley. The background information may be requested by contacting the report author

Appendix 1

OPEN

Application No. MA/5/222**Application to add a bridleway between Newton Hall Lane and Moss Lane, Mobberley**

PROW = Public Rights of Way, Cheshire East Council

CRO = Cheshire Record Office

TNA = The National Archives, Kew

SML = maps online at National Library of Scotland

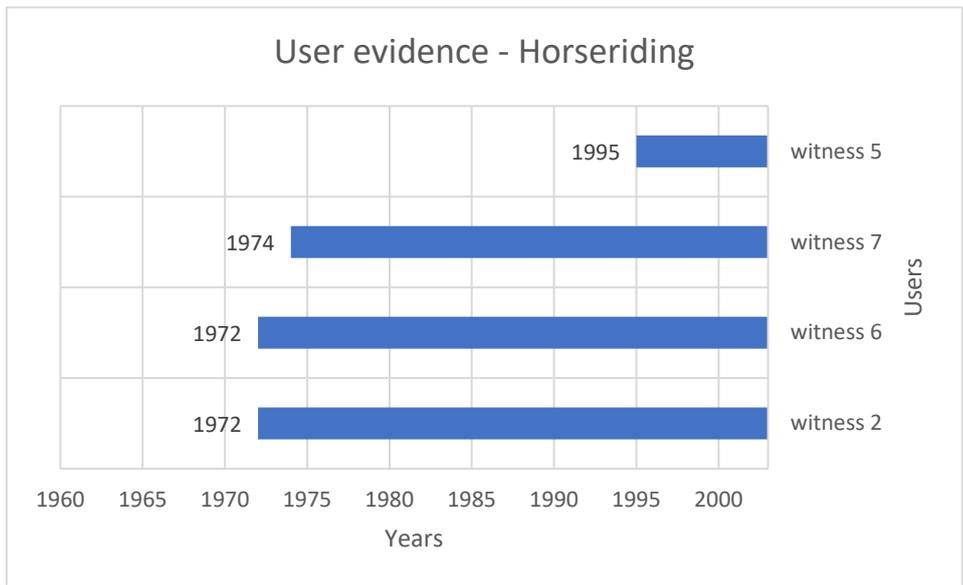
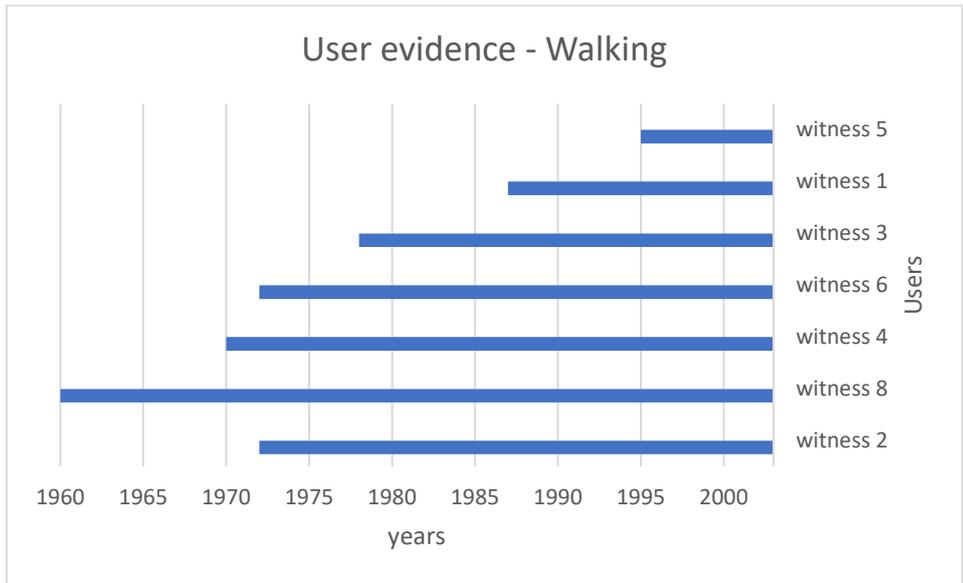
Primary Sources	Date	Site Shown/Mentioned	Reference Number/Source
County Maps			
James Stuart	1794	Not shown	CRO 111834
Swire and Hutchings	1829/30	Route shown	CRO PM 13/8
Bryant map	1831	Route shown	CRO searchroom
Tithe Records			
Tithe Map	1847	Route shown, owners and occupiers listed	CRO EDT 278/2
Ordnance Survey Maps			
OS 1" to 1 mile 1 st Edition Sheet 80NE	1848	Route shown as minor road, graveyard farm depicted	PROW/Cheshire East Council

OS 1:25 inch 1st Edition	1871	Route shown single weight lines, labelled Graveyard Lane. Solid line across junction with Newton Hall Road (labelled Barlowhouse Lane). No line across at Moss Lane.	PROW
OS 1:25 inch 2nd Edition	1898	Route shown, single weight solid lines, labelled Graveyard Lane. Line across at junction with Moss Lane. Broken line across junction at Barlowhouse Lane	SML/PROW
OS 1:25inch 3 rd Edition	1909	Route shown single weight solid lines and labelled graveyard lane	SML/PROW
OS 1" to 1 mile Popular Series	1921, 1941 and 1947	Route is shown; coloured solid red in class of "other motor roads narrow good".	SML
Bartholomew's Maps	1904/1941	1904 shown as broken red infill, classed as second class road. 1941 shown with broken yellow infill, classed as "serviceable" roads	SML 1904:Sheet 8 CTC logo roads revised by the CTC. Reproduced by permission of OS special local revisions. SML 1941:Sheet 28 general acknowledgement of

			corrections submitted by users
Finance Act			
Working Copy Map	1910	Route excluded from hereditaments between Newton Hall Lane and last section at east end. Map Sheet OS:27.12 the lane is numbered 379 hereditament	CRO NVB27.7, 12 Cheshire Sheet, book of reference not available (ie no information for 379)
Local Authority Records			
Walking Survey Schedules and Maps	1951	Route not recorded	PROW
Draft Map	1950's	Route not recorded	PROW
Provisional Map	1952	Route not recorded	PROW
Definitive Map & Statement	1953	Route not recorded	PROW
Additional records			
Photos	2023	Site photos taken in 2023 of claimed route	PROW – photo sheet
“Popular Maps”	1999	Yolande Hodson	London, Charles Charles Close \society

Consistency Guidelines	27.01.2022	Planning Inspectorate	Gov.Uk
Strava Data	12.2023		Strava Metro online

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380500

380750

381000

380250

380250

380000

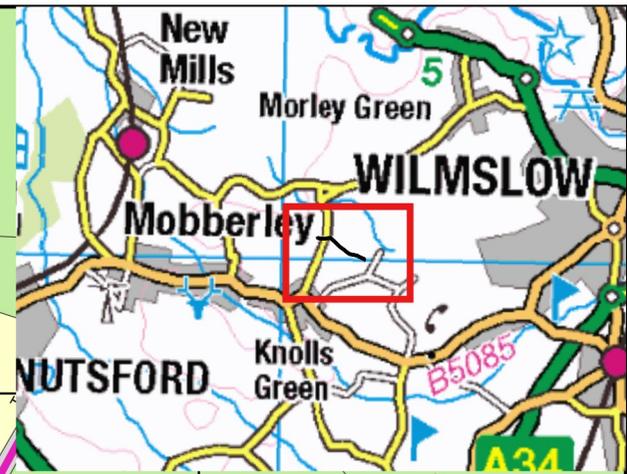
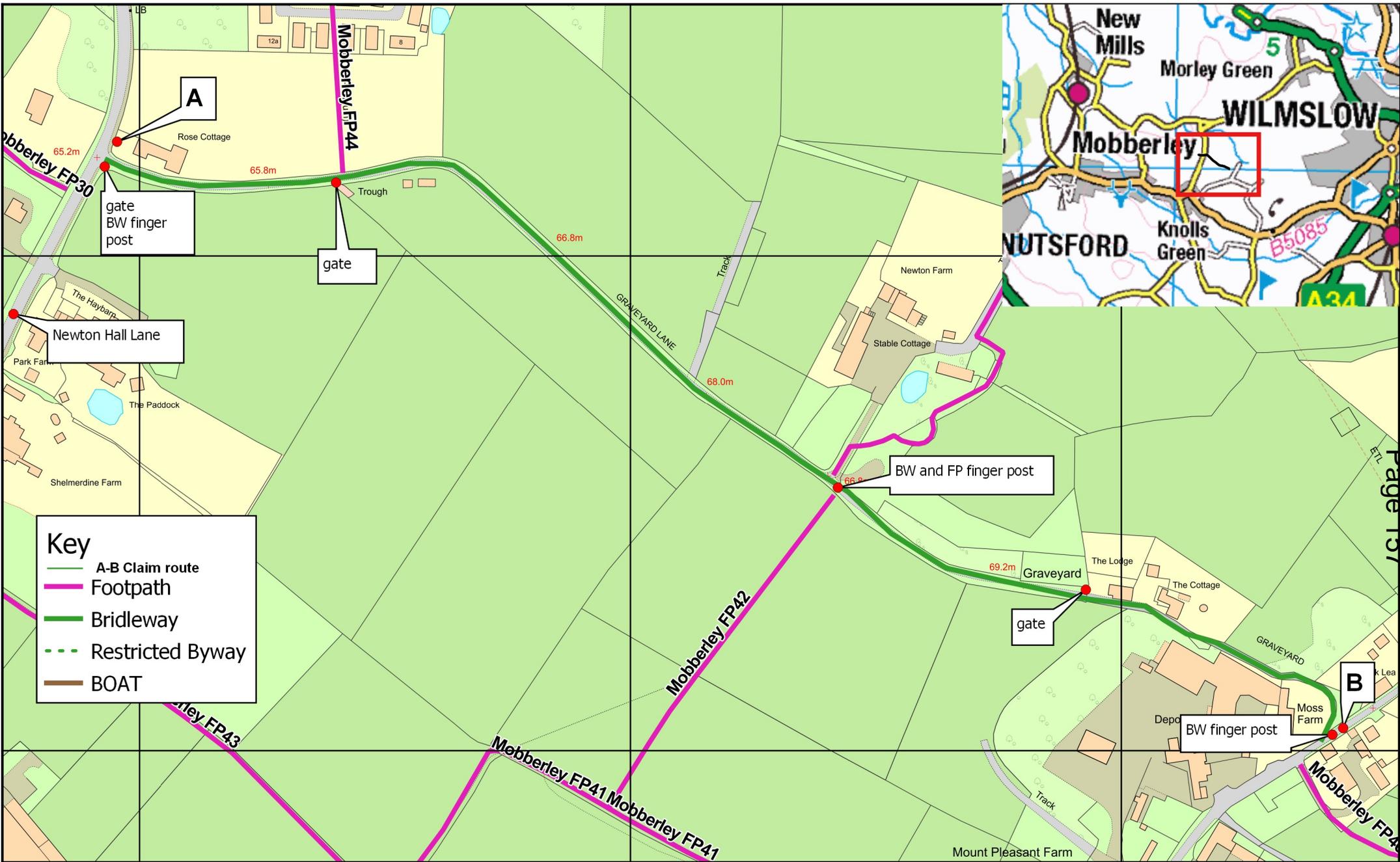
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Page 157



Key

- A-B Claim route
- Footpath
- Bridleway
- - - Restricted Byway
- BOAT



1:2500

Wildlife and Countryside Act 1981
 Application MA-5-222: to add a bridleway to the parish of Mobberley

Plan No.
WCA/34

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



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Graveyard Lane

Officer photos 7 nove 2023



commence at Point ANewton Hall Lane





gate posts point A





Gate in area before FP44









gate before Newton Farm entry/FP45



FP45/finger post with BW blade





No through route sign and footpath to Moss Lane sign adjacent to FP45 south





Post includes signs for the cottage and the lodge and no through route sign





Wall adjacent to the quaker graveyard
Wall at edge of yard for the cottage/the lodge





Enclosed route round \moss cottage





Buildings associated with moss cottage,







junction with Moss Lane





Moss Lane finger post with BW blade

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OPEN

Highways and Transport Committee

4 April 2024

Wildlife & Countryside Act 1981 – Part III, Section 53.

Application No. CN/7/34: Applications for the Upgrading to Bridleway of Public Footpaths 21 and 22 Buerton AND in Shropshire, Application 251 for the addition of a Bridleway in Shropshire

Report of: Peter Skates, Acting Executive Director, Place

Report Reference No: HTC/12/24-25

Ward Affected: Audlem

Shropshire Ward Affected: Market Drayton East, Norton in Hales & Woore & Woore Parish

Purpose of Report

- 1 This report outlines the investigation into two applications made by The British Horse Society to Cheshire East Borough Council and Shropshire County Council. The applications seek in Cheshire East to upgrade to a bridleway two Public Footpaths 21 and 22 in the parish of Buerton ("FPs 21 and 22"). A bridleway is a right of way on foot, on a horse and by grant of the Countryside Act 1968, a right to ride a bicycle. The Cheshire East application reference is CN-7-34 and is shown between points A to B to C on the plan WCA/033 ("the plan")
- 2 This report includes a discussion of the consultations carried out in respect of the claim, the historical evidence and the legal tests for a Definitive Map Modification Order ("DMMO") to be made. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to

upgrade the public footpaths to a bridleway and to add a bridleway in Shropshire.

- 3 In Shropshire the application seeks the addition of a bridleway. Shropshire County Council (“SCC”) registered the application with the reference application 251. The application provides the link between the eastern end point of the claim in Cheshire East to the Audlem Road, A525 and is shown on the plan between points C to D. The SCC Full Council Meeting have delegated the determination of this application to Cheshire East. Their report is available on this link: [Agenda for Council on Thursday, 14th December, 2023, 10.00 am — Shropshire Council](#)
- 4 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.

Executive Summary

- 5 The report considers the evidence submitted and researched in the application to upgrade FP21 and FP22 and the addition of a bridleway in Shropshire. The two footpaths run between the adopted highway known as Hankins Hey Lane then runs east crossing the county boundary before the junction with Audlem Road. The route passes through a farm which is known as College Fields Farm on all of the available maps. The evidence consists solely of historical documents including nineteenth century commercial maps, Ordnance Survey (“OS”) maps and commercial twentieth century maps such as Bartholomews.
- 6 There is currently no public footpath recorded over the land in Shropshire, however it seems reasonable to presume that a footpath over the land is recorded. The landowner has agreed to dedicate a public footpath in recognition of pedestrian rights. Therefore, this report proposes SCC entering into a dedication agreement with Landowner 1 to create a public footpath under Section 26 of the Highways Act 1980.
- 7 Both applications are considered under S53(c)(ii) of the 1981 Act where the discovery of evidence, when considered with all relevant evidence, shows that a highway shown on the Definitive Map (“DM”) as a highway of a particular description ought to be there shown as a highway of a different description. In Shropshire the investigation has looked at whether there are higher rights than footpath pending the dedication of a footpath.
- 8 The maps demonstrate the existence of the route over a period of almost 200 years. The routes are shown over this time with variable width. There is evidence of gates and it being partially bound (eg. by a

hedge). This is shown by solid lines and the unbound section is indicated by broken lines.

- 9 The report determines whether on the balance of probabilities the status of the bridleway should be recorded by showing that the footpaths in Cheshire East and Shropshire have acquired and/or already had higher rights.
- 10 The applications claimed the reputation of the route as a thoroughfare linking two adopted roads. This report concludes that on the analysis of County Maps, Tithe Maps and OS and commercial maps on the balance of probabilities higher rights than a footpath cannot be proven to subsist over the route shown on the plan between points A-B-C-D.

11

RECOMMENDATIONS

The Highways and Transport committee is recommended to decide:

1. That the application for the upgrade to bridleway of FP21 and 22 Buerton is to be refused on the grounds that it cannot be demonstrated that higher rights subsist.
2. That SCC enter into a dedication agreement to modify the Definitive Map and Statement for Shropshire by adding a Footpath between the county boundary and Audlem Road, Woore as shown between points C and D on Plan No. WCA/33

Background

Description of Route

- 12 A footpath is a right of way on foot only and a bridleway is a right of way on foot, on a horse or leading a horse and by grant of the Countryside Act 1968, a right to ride a bicycle.
- 13 FP22 commences from the southeast termination of the adopted road Hankins Hey Lane (UY 1437) at OS grid reference ("OSGR") SJ 6945 4237. The footpath runs in a generally south east then east south easterly direction towards the farm called "College Fields" ("the farm") to the junction with FP21 at OSGR SJ 7045 4118. The route then runs in a

north easterly direction to the administrative county boundary at OSGR SJ 7089 4268. The footpath connects with the Shropshire claim for a bridleway running from the county boundary in a north easterly direction to the junction with the A525 Woore Road at OSGR SJ 7101 4276. The application route, including the section in Shropshire therefore links two ends of adopted highway and can be seen on the plan between points A, B, C and D.

- 14 From Hankins Hey Lane, the route veers east over an unsealed surface. The boundary for Three-Wells cottage sitting at the junction with Hankins Hey Lane, includes an area of open scrub land on the north side of FP22. The track continues for approximately 25 metres bounded by hedges on both sides. The track is unmetalled and poorly drained. At approximately 190 metres further east the track is crossed by 2 field gates with pedestrian kissing gates to the side. These gates have been erected fairly recently in 2021, replacing field gates and stiles. The route then crosses a watercourse. The footpath continues east crossing an open field, a field gate gives access to the next field, running in a hollow, to the approach to the boundary of the farm. On the north side is a junction with Footpath 19 Buerton.
- 15 At the approach to the farm, the path runs over a stoney farm track bounded intermittently on one side by a hedge. East of the farm buildings, FP22 terminates at the junction with FP21 which runs on a south to north line. The track remains stoney, is poorly drained and is currently heavily used by farm vehicles. There are currently no gates across the track in this area, although at the farm there is evidence of abandoned gate posts on the west side of the track entrance to the farmyard. On the east side of the yard entrance, an abandoned gate lay on the south side of the track which indicates a second gate which would have crossed the track. At this junction, there is a field gate and an indication of a stile to the side of the gate serving FP22. At approximately 215 metres north from the junction, FP21 connects with Footpath 23 Buerton. The track commences heading in a north east direction along a semi metalled, stoney surface. A hedge runs along one side of the track.
- 16 At the parish and county boundary the track crosses a brook and the track has an open field gate, recorded on the 1950s parish survey. The track continues in Shropshire, as a semi-metalled track between wide verges and hedges to the junction with the A525 Audlem Road.

Legal matters

- 17 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:-

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

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

ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.

19 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.

20 The applicant relies primarily on documentary evidence and has to show an inference in the evidence that the way was already recognised as being a highway, other than footpath, by the start of the period covered by living memory, coupled with the absence of anything to show that the public recognition was misplaced. In this class of common law, the case recognises that the facts point one way, and it is immaterial if the early owners cannot be identified or a date of dedication cannot be identified. In effect, the applicant either must show the routes were recorded on the DM incorrectly and should have been shown as a bridleway or that bridleway rights have been established since the DM was published. If there is insufficient evidence to show what is claimed, then what is shown on the DM must stay and be treated as definitive and there should be no change.

21 In addition, it must be shown that it is new evidence that is being considered other than the evidence that was originally considered before the DM was published. The reasons for this are set out by “Burrows v Secretary of State for Environment, Food and Rural Affairs (2004).”

22 An investigation of the available evidence including the applicants submitted 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**.

Documentary Evidence

County Maps eighteenth and nineteenth century

- 23 These are small scale maps made 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 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 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 public status, although they may provide supporting evidence of the existence of a route.
- 24 Greenwoods Map of Shropshire dated 1827 is a map that shows the main routes and not much else, and not the claim route. Greenwoods maps were known as being accurate. Swire and Hutchings 1829 Cheshire map indicates Hankins Hey Lane but does not show the application route. The cartography in this area of the map is not very accurate when compared with the near contemporary Bryant's map. Bryant's Map of 1831 shows the route from Hankins Hey lane running east as a solid double line, depicted with sections of broken lines to buildings at the location of the farm. The route continues to the main road in Shropshire. The map suggests the routes were classed as "lanes and bridleways" however this isn't indicative of status.

Buerton Tithe Map and Apportionment certified 1845 and Mucklestone (Woore township) Tithe Map 1838

- 25 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 are 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. In Cheshire there appears to be no tithe map which has produced a map key. Map symbols were already in use on nineteenth century maps and some common symbols appear on the maps which were mostly understood by the people using the maps. On the Buerton map this includes "bracing", a brace is a line indicating that the land and the feature are connected. Non tithed roads and tracks

are quite often separated because they do not deliver a titheable commodity (such as a crop). For this reason, a non-tithed road is indicative of treatment for tithes and not for public highway.

- 26 The Tithe apportionment for Buerton is certified by two commissioners, indicative that the map was to the standard of a first-class map. At the end of the list of apportionments is a line for parcel numbered 750 and described as "Public Road". The "public roads" parcel included Hankins Hey lane, as far south and east past Three- Wells cottage to a point where the track is crossed by a line possibly indicating a gate. This is not shown as a through route. From the east of the end of the "public road", the parcel was owned and occupied by John Brookes, and was inclusive of the track, as far as a field west of the farm. From the farm to Woore Road the track is coloured ochre but incorporated into the adjacent land by brackets, indicating it was not a separate feature. The parcel is owned by John Mason Parsons and occupied by John Miles.
- 27 The small section of the route in Shropshire lies in the tithe apportionment for Woore township in the parish of Mucklestone, the route is drawn in the same style as the main road is drawn and is unnumbered. The main road is sign posted on the map as "from Audlem" indicating a thoroughfare. The claim route is not signed as a through route. The triangle of land between the main road, the route and the parish boundary is listed as plot number 406, the ownership is by G W Kenrick with J Mountford in occupation. The ownership is not the same as that on the Cheshire side of the parish boundary (see above). Although the route is unnumbered and drawn similarly to the main road, it is not signed as a thoroughfare and it cannot be assumed the route is part of the ordinary highway network because the purpose of the map was not to attribute status of highways.

OS maps

- 28 OS 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 its maps to the effect that the depiction of a road is not evidence of the existence of a right of way. It is argued that this disclaimer was solely to avoid potential litigation. Dr Yolande Hodson has written widely on the interpretation of the OS map. Dr Hodson was formerly employed by the Military Survey and then by the Map Room of the British Museum. In publication, she has described the tension in the twentieth century within the OS to agree on what would be shown on the maps, at which scale and for which audience and what symbols should be used to depict the condition and status of roads and ways. She has indicated that the OS

are good evidence of the existence of a way or path and can support any other evidence claiming public rights of way, but they are limited in proof of public status.

29 OS 1" edition Sheet LXXIII1833

30 This route is shown as a continuation of Hankins Hey Lane, running between lines solid and infrequently broken lines to the farm. Running in a north easterly direction to the county boundary, the route has variable lines of both solid and broken (solid boundary and unfenced).

31 OS 6" edition 1882 (and Shropshire 1888)

The 6" maps show the route and lines across the track for gates, and broken lines and solid lines as shown on the 25" series. The section in Shropshire is shown with solid double lines.

32 OS 1st Edition County Series 25" to 1mile 1875

Hankins Hey Lane is shown with running between single weight lines to Three Wells cottage. The route continues as single weight lines and is parcel numbered 414. The end point of 414 isn't clearly shown because the map is littered by tree symbols but appears to end west of a watercourse. At the watercourse the route continues between broken lines, braced to the adjacent land. A field boundary field west of the farm, indicates there was a gate. The track continues enclosed by single weight lines braced to the land on the north side. East of the farm, the track runs north, across a line indicating a gate, between variable broken and solid lines to the county boundary. The broken lines are braced to the adjoining land. Brace joins land together to give a single field parcel number.

33 OS 2nd Edition County Series 25" to 1 mile 1898 Cheshire sheet LXVI.7 1880 Shropshire sheet III.5

The application route crosses 2 map sheets. On the Cheshire sheet, Hankins Hey Lane is depicted running between a double weight line and a single weight line as far as Three-Wells cottage. Beyond Three-Wells cottage the track runs between single weight lines with a gate before reaching the watercourse. Running east beyond the watercourse, the route runs between single weight broken lines depicting an unfenced length. The route is braced to the adjoining land. The route runs up to the first field west of the farm and is gated. On the southern side of the farm, the route is enclosed by single weight lines, gated at the farm itself. East of the farm, the application route is gated on the north side. The route runs between irregular solid and broken lines and the route is braced to the adjoining land. On the Shropshire Sheet, the route is enclosed by single weight lines.

- 34 OS 3rd Edition County Series 25" to 1 mile 1909 Cheshire Sheet LXVI.7
1901 Shropshire Sheet III.15

The route is again shown unchanged throughout from the previous edition.

- 35 OS revised New Series 1: 63,360 (1 inch: 1 mile) 1897 on application sheet 123 Stoke Upon Trent.

- 36 The route from Audlem Road to College Fields, is depicted as minor road on the key, with part bounded and part unbound lines. There is an apparent route to the farm Hankins Hey, shown as unbound. At the farm, the route running west to Threewells is marked by a dashed line on the key described as footpath. Since the map includes the caveat that the representation of track etc is no evidence of a right of way, even the depiction of footpath on the line of FP22 is no indication this map is more than background evidence for the route.

- 37 OS 1" popular edition sheet 52 1921/1942

- 38 Hankins Hey Lane is uncoloured, depicted, as the key classes, a bad road under 14" wide. On the key it is also stated that "Private Roads are uncoloured". The route is shown as partly fenced, uncoloured.

- 39 Bartholomews Commercial maps

- 40 Bartholomew was a Scottish company with a good reputation of publishing maps from the late 19th century. Between c1911 and 1928 there was an arrangement with the Cyclists Touring Club for their members to send in revisions and their logo was shown on the maps where this arrangement was in place. The maps were based on OS base maps. The maps set out a classification of use, although there is a caveat that the depiction of any route was not evidence of a public right of way and the known background to the maps indicates that they relied on user reviews to make any corrections. Comparison of maps at successive publication dates may show any consistent depiction of a particular route.

- 41 The 1902 map key does not characterise uncoloured depictions of roads and the route from Audlem Road to the farm and west to Three-Wells Cottage is shown as single weight double lines uncoloured. There is a footnote to the map "The uncoloured roads are inferior and not to be recommended to cyclists". It also includes the disclaimer "the representation of a road or footpath is no evidence of the existence of a right of way". A later map, 1941, depicts the same route, single weight lines and uncoloured. According to the classification the route is not classed at all, it is shown as "other roads" and the caveat as above. As described above, the Bartholomew maps evolved with feedback from

contributors. The later maps are more indicative of public routes if they positively class a route according to the key by usage. That hasn't happened here.

Finance Act 1910-1920

- 42 The Finance Act 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.
- 43 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.
- 44 The map for this area was missing in the Cheshire Record Office. The Book of reference to the map was available and listed College Fields, Three-Wells Cottage and woodland. Of the properties listed and assumed to be the area of interest, none claimed a deduction for public rights of way.

Sales catalogue

- 45 Promotional material for selling a large estate included a sales catalogue produced by a property agent. The description of the property sometimes gives an indication of access and may contain a plan of the area. They are not legal documents but may support the determination of status of access routes across the estate.
- 46 The Sales catalogue was produced by the auctioneers, Messrs Millar, Son and Co of Pall Mall, London. The publication date is 8 May 1911 and the estate was described as freehold dairy and hunting including "College Fields" a "Freehold Dairy Farm and Hunting Establishment". There is a plan with the catalogue based on OS mapping and a caveat that any quantities are not guaranteed to be accurate. The plan indicates access by letter key, but no further detail is included. The catalogue description for College Fields farm, Lot 15, includes plot 191 described as roadway (but is restricted to a small length on the south side of the farm building) and 197 described as pasture but the associated woods and coverts includes plot 197 in Woore township which is described as "roadway". The plot numbers are those shown on

the OS map and none others are listed as “roadway”. Which indicates it is a descriptor not an allocation of status.

DM process

- 47 The Public Rights of Way team hold records that pre-existed the Definitive Map process and date to approximately 1930. This is represented by a District map which recorded “footpaths” and a record of the maintenance issues. The route is shown as footpaths numbered 41 and 42 on the Nantwich footpath map. And a note is made of no record of the footpaths having been repaired. There is a gap in between the east termination of 41 and the south-north line of 42. The gap is the farm and the field west of the farm. The records show that the footpaths were recorded prior to the DM.
- 48 The DM 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 DM and for this area that is 1955 and became the relevant date of the survey. The DM for this area was published 1975 and the claim routes are shown as footpath. The DM is conclusive evidence of the existence of public rights of way shown at the relevant date. Section 56 of the 1981 Act provides that the DM is conclusive evidence of the matters contained within (without prejudice to the outcome of any applications made under Schedule 14)
- 49 A route was not shown on the Shropshire DM.
- 50 The Buerton parish survey map shows the two routes as a footpath. The schedule for this parish has been lost. FP22 is shown running from the southerly termination of Hankins Hey Lane which is coloured yellow on this map. A purple line depicting footpath runs easterly towards the watercourse, annotated with “FB” (footbridge) and F2 (field gate 2). There is a field gate (3) at the boundary between 2 fields to the east, and field gate (4) at the boundary of the field east of the farm and a final field gate (5) at the farm yard. The footpath joins FP21 east of the farmyard. Two field gates (10 and 11) enclose the junction. The application route runs northeast from this point to the annotated field gate (12) and cart bridge at the Shropshire County border. The Footpath Society Map is the same base map, with routes drawn on in red pencil. The relevant footpaths are drawn, more significantly this map connects the Cheshire footpath across the county border in Shropshire to a junction at Audlem Road.

The Draft map shows the footpaths in purple. The field gates and bridges are annotated at the same locations as on the parish survey (above). The Provisional maps shows there were no changes to the

footpaths indicating no successful appeal against the depiction of the routes as footpath. The DM was published 1973 although based on the survey of 1955. There are no objections or representations on record.

Land Registry

- 51 The western end of the claim route at Point A is incorporated with the title held by Landowner 1. The land over which the mid-section of FP22 is incorporated with the ownership of Landowner 2. The owner of the eastern length of FP22 and all of FP21 and across the track in Shropshire is in the ownership of Landowner 3.
- 52 Landowner 2 has provided additional documents. The documents comprise a memorandum on the conveyance dated 1945 and 1960; in which the free right of way for the owner or owners of the road (with specified and any forms of transport) is conveyed as an easement to an adjacent farm. Whilst this document is a private document, it is indicative that rights are granted to a neighbouring property over a way which was not reputed to be an ordinary public road. The land comprising the track in Shropshire is described in a conveyance of the land for College Fields farm dated 1922; "all that strip of land used as a roadway situate in the parish of Woore in the county of Salop ...". In the same conveyance the free right of way passage is granted to the farm over the route leading to Three-Wells Cottage (and known as FP22), indicating that the reputation of this was also as a private route and not part of the ordinary road network.

Photographs of the location

- 53 A site visit was carried out in November 2023 and features noted in addition to use of photographs taken in 2021 and 2022 by the area prowl maintenance officer.

Consultation and Engagement

- 54 Consultation letters and a plan of the claimed route were sent to the registered landowners, ward members, parish councils and user groups. The following responses were received:
- 55 The Shropshire Councillor Roy Aldcroft acknowledged he was not familiar with the route to offer any evidence.
- 56 Buerton parish council made local enquiries but did not identify anyone with regular use of the routes with a horse, or any other parish records of such use. Woore Parish Council responded to say they would support an Order for a bridleway, however this was not supported by evidence of use or otherwise.

- 57 Landowner 1 described how they had challenged the occasional use of the route by the Staffs hunt during the last 30 years of their occupation of the land. For several years and until the last 2 years a rope has been strung across the entrance to the track at the junction with Hankins Hey Lane to prevent access other than pedestrians. Corroboration of the rope was recorded by a photograph taken in 2021 by a prov council officer. Otherwise, they had no knowledge of anyone else on horseback trying to use the route.
- 58 Landowner 2 has confirmed to their knowledge, no horse riders have been seen using the route.
- 59 Landowner 3 has also confirmed that under their ownership they had no knowledge of horse riders using the route. For a short period, they gave permission for a hunt to take place over their land. This has now stopped. They also supplied paperwork relating to footpath furniture repairs in 2021. The documentation confirms that in 2021 a stile and heavy field gate were in place which would have been obstructions to riding a horse.
- 60 The Mid Cheshire Footpath Society responded to say they had no objection to an upgrade. The Peak and Northern Footpath Society after checking their archives responded to say they had no evidence to add to the application. They were able to confirm from local users that no horse riders were known to use the routes. Shropshire Ramblers had no comments to make. Shropshire Open Spaces representative had no objection to the proposal and expressed support for the change.

Reasons for Recommendations

- 61 Under Section 53 of the 1981 Act, the Council has a duty as the Surveying Authority to keep the DM under continuous review. Section 53 (c) allows for an authority to act on the “discovery of evidence” that suggests that the DM needs to be amended. The authority must investigate and determine that evidence and decide on the outcome whether to make a DMMO or not.
- 62 The application for an upgrade to a bridleway status is supported by documentary evidence, extracts from the Tithe Map and OS and commercial maps and other documents. It is likely that the “new evidence” required by the Act to effect a change is constituted by the Bartholomews maps and possibly the Popular OS map editions. The application route runs over recorded public footpaths so the evidence needs to be cogent/strong that higher rights than footpath should be recorded.

- 63 The Tithe Maps suggests the routes were partly non-tithed but mostly were incorporated with the surrounding field and therefore tithed. The nineteenth century and OS maps indicate a route which was partially enclosed, partly gated and nothing that would indicate the status and nature of the status until the OS 3rd edition 25" series which annotates FP22 as "FP" meaning footpath. The application is based on the OS depicting routes as part of the ordinary road network, but further analysis showed this isn't the case. The twentieth century commercial maps are more indicative that the route was not considered as either suitable or available to the public, other than where it is shown as footpath. The earlier nineteenth century maps are indicative the route had no higher public rights, the later OS maps indicate use as a footpath (the one with the dashed line) but there is no conclusive map or collection that could point to higher rights than FP. The maps that have gone through a legal process are indicative that there were no public rights other than a cul-de-sac section from Hankins Hey Lane as far as the watercourse.
- 64 In addition to the cumulative consideration of the available maps, the landowners submitted comments indicating there had been no known use of the routes by horse riders (or cyclists) and title deeds for the main landholding shows that the routes did not have the reputation of a public road and because of this set out private easements of access over land neighbouring land.
- 65 The parish councils and user groups have been supportive or neutral of the claim but had brought forward no other evidence in support.
- 66 Having regard to the totality of the evidence provided by the applicant and of the evidence found during the investigation, there is insufficient cogent evidence to demonstrate on a balance of probabilities that the claim route has the historical status of bridleway or has acquired higher rights by other means.

Other Options Considered

- 67 If the authority was to do nothing it would not comply with Section 53 of the Wildlife and Countryside Act 1981, which requires the Council to keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as required.

Implications and Comments

Monitoring Officer/Legal

- 68 The Council is complying with its legal duties as stated in paragraphs 17-22).

- 69 The Human Rights Act is also of relevance. Whilst article 1 to the first protocol (peaceful enjoyment of property) and article 8 (right to respect for family, private life and home) are engaged, it is important to note that these rights are qualified, not absolute, which means that they can be interfered with in so far as such interference is in accordance with domestic law and is necessary in a democratic society for the protection of the rights and freedoms of others. It is considered that any interference occasioned by the making of a Modification Order is both in accordance with domestic law (the Wildlife and Countryside Act 1981) and is in the public interest as it is necessary in a democratic society for the protection of the rights and freedoms of others, namely the public who wish to use the way.
- 70 Should Members resolve that a Modification Order be made in accordance with highways legislation, this is merely the start of the legal process. Once a Modification Order is made, it must be publicised, and any person will have an opportunity to formally object to it. Should objections be received, the Modification Order would have to be referred to the Secretary of State who would usually hold a Public Inquiry before deciding upon whether to confirm the Modification Order.

Section 151 Officer/Finance

- 71 No impact.

Policy

- 72 The work of the Public Rights of Way Team contributes to the Green aim of the Corporate Plan, the “thriving and sustainable place” propriety, and the policies and objectives of the Councils statutory Rights of Way Improvement Plan.

A thriving and sustainable place

- A great place for people to live, work and visit
- Welcoming, safe and clean neighbourhoods
- Reduce impact on the environment
- A transport network that is safe and promotes active travel
- Thriving urban and rural economies with opportunities for all
- Be a carbon neutral council by 2025

Equality, Diversity and Inclusion

- 73 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.

Human Resources

- 74 There are no direct implications for Human Resources.

Risk Management

- 75 There are no direct implications for risk management.

Rural Communities

- 76 There are no direct implications for Rural Communities.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

- 77 There are no direct implications for Children and Young People.

Public Health

- 78 There are no direct implications for Public Health.

79 *Climate Change*

- 80 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.

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

Access to Information	
Contact Officer:	Adele Mayer, Definitive Map Officer adele.mayer@cheshireeast.gov.uk
Appendices:	Appendix 1 documentary Appendix 2 Plan No WCA/033 Appendix 3 Site Image
Background Papers:	Case File CN-7- Application to upgrade a footpath to a bridleway in the parish of Buerton . The background information may be requested by contacting the report author SCC Application 251

Appendix 1

OPEN**List of Archive Documents –****Application No. CN/****Application to upgrade**

PROW = Public Rights of Way CE

CRO = Cheshire Record Office

TNA = The National Archives, Kew

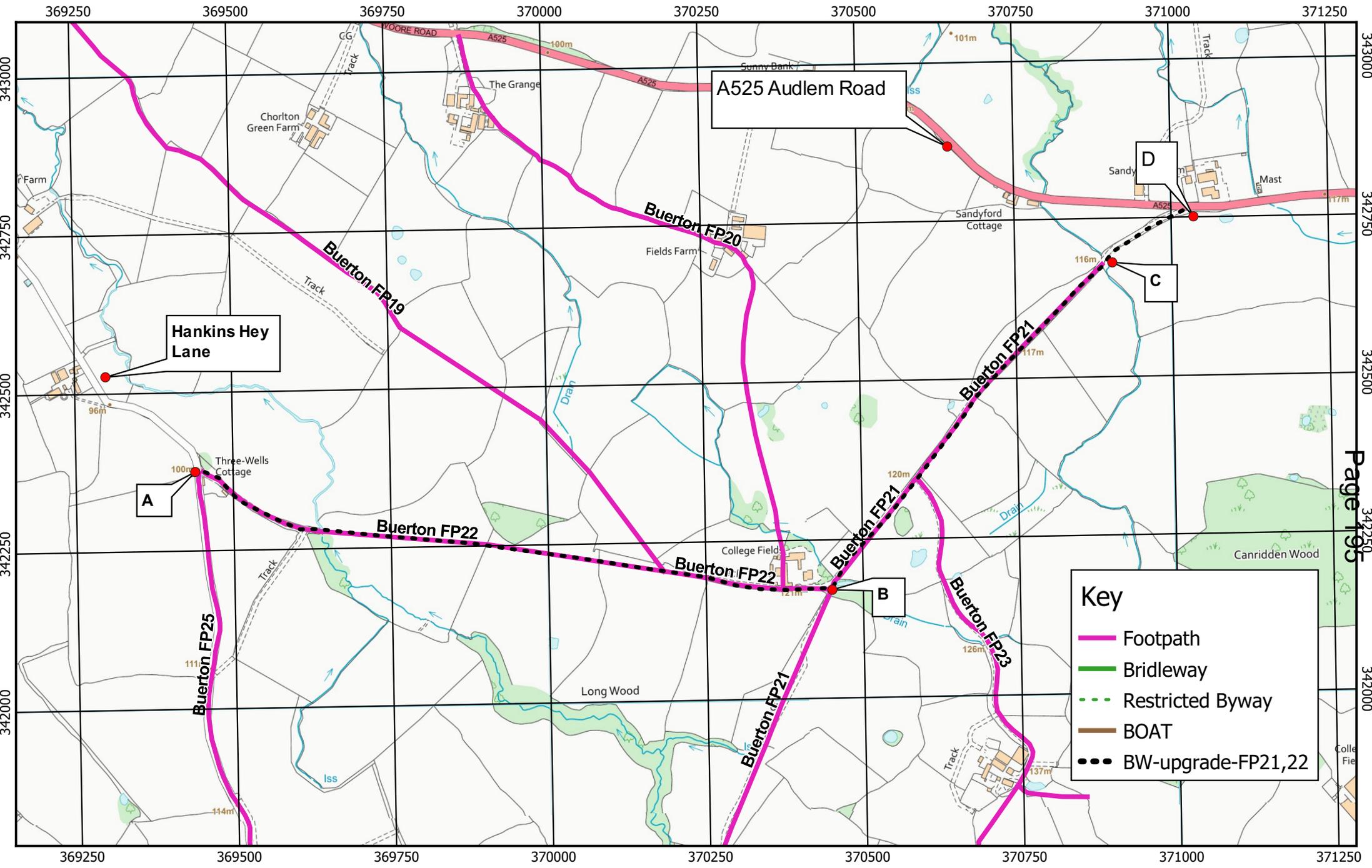
SML = Scottish Map Library

Shropshire PROW

Primary Sources	Date	Site Shown/Mentioned	Reference Number/Source
County Maps			
Bryant	1831	Yes broken lines, indication of unbound and gated. Key suggests these are “lanes and bridleways”	SML
C and J Greenwood	1827	Not shown	Shropshire PROW
Swire And Hutchings	1829	Not shown	SML
Tithe Records			
Tithe Map Buerton township parish of Audlem	1844	yes	CRO EDT 74/2
Tithe Map Mucklestone parish, Woore township	1838	yes	Staffordshire Past Track website www.search.staffspastrack.org.uk
Ordnance Survey Maps			
OS 1” to 1 mile 1 st Edition	1833	Route of FP21 shown part fenced to farms: FP22 shown as part fenced but mid section dashed line	PROW caveat. PROW/Cheshire East Council

OS 1" to 1 mile Popular Edition Sheet 52 Stoke On Trent.	1921/1940 Both publications depict routes the same	Route shown double lines, part broken lines. key indicates FP22 classed as "other road". FP21 shown south of farm as FP/BW. Difference of the 2 not differentiated.	SML prow caveat.
OS 1" New series revised. Sheet 123 Stoke Upon Trent	1897	FP21 is shown as a partly bounded track; FP22 is shown as one dashed line = FP, between the farm and the watercourse.	SML Prow caveat
OS 1st Edition 1:25 inch	1875/Shropshire 1879	Shropshire Sheet, Main road is coloured. Claim route is uncoloured.	PROW/SML
OS 2 nd Edition 1:25 inch Cheshire sheet LXVI.7 Shropshire sheet III.15	1898 Cheshire /1901	yes	PROW/SML
OS 3 rd Edition 1:25inch	1909/	. 1909 Cheshire Sheet LXVI.7 1901 Shropshire Sheet III.15	PROW/SML
OS 6" edition	1882 (and Shropshire 1888)		PROW/SML
Bartholomew's Maps	1902 scale 1" 2 miles/1941	Shows as double line, no colouring ; the later map as before	SML key on map: line across route at farm (compared across map, few routes show line across, this is thought to be deliberate).CTC revised logo on map. Route not in the classification. 1941 key on map and note reduced by permission from OS with local revision. Acknowledgement of users corrections. Shows routes unmarked, line across at farm.
Finance Act			

Working Copy Book of Reference	1910		CRO NVA2/10 Audlem NVA2/50 Buerton
Local Authority Records			
Walking Survey Schedules and Maps	1955	Routes shown as FP	PROW
Draft Map	1956	Routes shown as FP	PROW
Provisional Map	1969	Routes shown as FP	PROW
Definitive Map & Statement	1973	Routes shown as FP	PROW
Additional records			
Photos	2021/22/ 23	Site photos taken in 2022 of claimed route	PROW
Estate Sales Catalogue	1911	No description of routes	Shropshire Archives 1096/57



1:7500

Wildlife and Countryside Act 1981 : Application CN-7-34 for the upgrade of Public Footpaths 21 and 22 in the parish of Buerton and Shropshire Application 251 for the addition of a bridleway in the parish of Woore

Plan No.
WCA/033

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



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Site visit Buerton 21 and 22 14 nove 2023

From the west, junction at Hankins Hey Lane, google image 2009



Below: image taken in 2021



Below: Area of open or "waste" land on left side





below: vicinity of termination point of Hankins Hey Lane shown on Tithe map





Above and below: vicinity of watercourse: closed field gates and 2 kissing gates



Continuation east of junction of FP19 Buerton below (images taken in 2021/2022)





























Western corner of farm buildings – no gate or posts obvious across the track
Below field gate abandoned by outbuilding shown on track image below





Junction with FP21: FP21 continues to the left and FP22 is to the right





Track carrying FP21
Below junction with FP23 – note field gate and “stile” on FP21





Farm access drive and FP21 (looking southwards). Indicative of part hedged



County/parish boundary. Field gate open. Track runs over brook which is culverted



Shropshire length of track

Junction with Audlem Road same date, 2009 as at Hankins Hey (no change 2023)





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Highway and Transport Committee

4 April 2024

**Wildlife & Countryside Act 1981 –Part III,
Section 53, Application No: MA/5/248:
Application for the Addition of a Public
Restricted Byway / Byway Open to All
Traffic along Teggsnose Lane, Nr
Macclesfield**

Report of: Peter Skates, Acting Executive Director of Place

Report Reference No: HTC/11/24-25

Ward(s) Affected: Macclesfield East

Purpose of Report

1. This report outlines the investigation into the application made by Mr C Eagles to amend the Definitive Map and Statement to add a Public Restricted Byway / Byway Open to All Traffic between Buxton Old Road along Teggsnose Lane to join existing Public Footpaths no's: 4 & 5 near Teggsnose Farm and also a second connecting route to the east of Teggsnose Lane to join existing Public Footpath no: 3 as shown on the plan ref: WCA/343/039 from A-B-C-D (**see Appendix 1**).
2. This report includes a discussion of the consultations carried out in respect of the claim, historical documentary 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 Restricted Byway or Byway Open to All Traffic to the Definitive Map and Statement.
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.

Executive Summary

4. The report considers the evidence submitted and researched in the application to add a Public Restricted Byway / Byway Open to All Traffic in the Town of Macclesfield. The evidence consists of use on foot by individual witnesses over a period of over twenty years and historical documents that demonstrate the existence/status of a physical track feature for the whole claimed route for well in excess of 30 years. The report determines whether on the balance of probabilities the status of Public Restricted Byway / Byway Open to All Traffic has been acquired. The reputation of the route as a thoroughfare linking the Old Buxton Road with Teggsnose Farm and also to the northwest in the direction of Tegg's Nose Country Park is demonstrated through the Tithe Map and Ordnance Survey maps and others and provides good reputational evidence of a route with rights of footpath status at least. The user evidence, recent site visit and interviews with current and past rangers investigated and discussed provides evidence of use by those on foot over a relevant 20-year period leading to the assertion that at least Public Footpath rights have been acquired over time.

RECOMMENDATIONS

The Highways and Transport Committee:

1. Decide that a Definitive Map Modification Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 adding a Public Footpath as shown on Plan No WCA/343/039.
2. Decide that public notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
3. Note that in the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

Background

5. The Application was made to Cheshire East Council on 27th September 2012 by Mr C Eagles to add a Public Restricted Byway / Byway Open to All Traffic off the Buxton Old Road leading along known as Teggs nose Lane in the parish of Macclesfield East plus a short connecting route off in a northwest direction. The application consisted of 6 user evidence forms and some photographs.

6. The claimed route commences at Point A (Grid Ref: SJ 94454,73116) off the Buxton Old Road and then proceeds along Teggsnose Lane to Point B (Grid Ref: SJ 94411,72807) where there is a wider area before continuing south just north of Teggsnose Farm to meet Public Footpaths 4 & 5 at Point C (Grid Ref: SJ94408,72723). In addition, there is also a short connecting route of a second claimed route from Point B off Teggsnose Lane leading in a north easterly direction to Point D (Grid Ref: SJ 94571, 72914) where it joins existing Public Footpath no:3.
7. The width of the route varies along its length but is approximately 5 metres wide between boundaries and is a physical track like feature for much of its length. It is bounded by stone wall and stock fences as a clear bounded feature.
8. Photographs of the claimed route can be seen at **Appendix 4** and includes photographs of the existing barrier with interrogated sign just slightly south of Point B of the claimed route.
9. There is only one registered landowner on the claimed route. Landowner 1 owns from Point A-B of the claimed route and half of the route between Point B-D leading from Point B. Section B-C of the claimed route is un-registered along with the other section of route between B&D. There are various abutting landowners including Cheshire East Council, the owner of Teggsnose Farm and a few others.

Legal matters

10. 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:-
11. Section 53(3)(c)(i) is relevant 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.
12. 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.

13. 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.”

14. 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”.

15. 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.
16. 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 was the date of the application being 27th September 2012.

17. 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 (ie 2006) although there are a few exceptions to this outlined in subsections S67(2) & (3) of the Act.

Consultation and Engagement

18. Only a few responses were received during consultation.
19. The water company United Utilities responded to state none of its apparatus would be affected by the claimed route.
20. Natural England responded to state they had no objections as the location of the claimed route was far enough away to having any measurable effect on Goyt Valley SSSI and association Special Protection Area (SPA) and Special Area of Conservation (SAC).
21. Cheshire East Ramblers responded to state they had checked their files going back to the early 2000's and had no information on this specific route.
22. Interviews were also carried out during November 2023 with just a few of the users who had originally submitted evidence forms although unfortunately not all were available or contactable.
23. Landowner 1 who owns most of the claimed route (A-B) and first half of route (B-D) from Point B was interviewed and stated he clearly does not think the route is a public footpath. He did mention that he had put up "no footpath" signs up over the years but they had been ripped down but unfortunately had no evidence of this. He stated that there had also been a long-standing issue with parking off the Buxton Old Road and was aware of Teggsnose Farm initially putting a barrier at Point A in 2012 briefly on his land before moving to near Point B.
24. The abutting landowner around Point B-D being Cheshire East council was also interviewed (namely the Countryside Ranger at Tegg's Nose Country Park). The Ranger stated that during his approx. 10 years as Ranger the claimed route had always been well used by people on foot especially as a circular route in and out of the Park. It was confirmed that the Park put up a notice after discussing with Teggsnose Farm off Buxton Old Road that says "**no access to Teggs Nose Farm**" to prevent delivery drivers using the lane. Two previous Rangers before the current one was also interviewed and their comments are summarised in the user evidence section of this report but again confirm the route has been well used by the public on foot for a very long time well in excess of 20 years.

25. 3 users who completed user evidence forms that were submitted with the application were interviewed in November 2023. More detail on their comments and our findings can be viewed in Section “user evidence” paragraphs 62-72 of this report.

Reasons for Recommendations

26. An investigation of the available evidence has been undertaken. The documentary evidence that has been examined is referred to below and a list of all the evidence taken into consideration can be found in **Appendix 2**.
27. The user evidence submitted with the application plus information gained from interviews and strava data shows this is a well used route and has been for many years. The predominant use has been on foot. Historical documentation is interesting and varied but ultimately shows that there has been a clear through route for well over 20 years and indeed back to inclosure.

Historical Evidence

Ordnance Survey (O.S.) Records

28. 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.
29. **Ordnance Survey 1: 25 inch (1850's)** map shows Teggsnose Lane as a clear physical feature bounded by solid double lines for the whole claimed route and annotated Teggsnose Lane including the connecting second route to the leading off the Lane to the east. The working quarry to the southeast can also be seen linking to the claimed route.
30. **Ordnance Survey 1st Edition 1:25 inch (c1889)** map shows Teggsnose Lane as a clear physical feature bounded by solid double lines for the whole claimed route and annotated Teggsnose Lane including the connecting second route to the leading off the Lane to the east. The working quarry to the southeast can also be seen linking to the claimed route.
31. **Ordnance Survey 2nd Edition 1:25 inch(c1915)** map shows map shows Teggsnose Lane as a clear physical feature bounded by solid double lines for the whole claimed route and annotated Teggsnose Lane.

It also shows by bounded solid lines the connecting second route leading off the Lane to the east. The working quarry to the southeast can also be seen linking to the claimed route.

32. **Ordnance Survey 3rd Edition 1:25 inch (c1919-1942)** map shows Teggsnose Lane as a clear physical feature bounded by solid double lines for the whole claimed route and annotated Teggsnose Lane. It also shows the connecting second route leading off the Lane to the east. The working quarry to the southeast can also be seen linking to the claimed route.

Old County Commercial maps

33. These are small scale maps made 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 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 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 public status, although they may provide supporting evidence of the existence of a route.
34. Burdett map of 1794 is of very limited use as it doesn't show the claimed route only surrounding major roads and routes. By 1830 the Swire and Hutching map does appear to show part of the claimed route off the Buxton Old Road towards Teggsnose Farm but nothing more and no linking second route to the east. However, by the 1831 Bryant map this shows all of the claimed route both the north /south section off the Buxton Old Road plus a clear route to the east towards Tegg's Nose and also a clear route off the claimed route to the quarry to the southeast.

Macclesfield Enclosure Award (1804)

35. The purpose of enclosure was to replace the communal system of open field cultivation and common grazing with a system of land divided into individual plots and fields, redistributed amongst the existing owners. There were three methods of inclosing land: informal enclosure, enclosure by agreement (but often confirmed by a court of law, and enclosure by private or general act of parliament. None of these belong to a strict period in time. By the end of the 18th century all pro-cesses were in use. Non-parliamentary enclosure was nationally the dominant form. Parliamentary enclosure was effectively halted in 1876.
36. Early 18th century enclosure awards were usually the result of private acts of parliament or agreements sponsored by individuals. The General

Enclosure Acts of 1801 and 1845 provided a standard set of clauses, speeding up the procedure and reducing costs.

37. Enclosure Awards are usually in two parts, the handwritten award and the accompanying plan, the Commissioners responsible for producing the document were empowered to stop up, divert and create public highway and private roads through and to enclosed land. Particular attention should be paid to the wording of the award, and whole document should be read in conjunction with the accompanying maps and the relevant Act(s) of parliament. They vary in quality, scale and detail.
38. The copy studied (Macclesfield Enclosure Award, 1804) is not an original but has been transcribed from a (presumably original) copy held by the Town Clerk of Macclesfield. It is signed and certified as a true copy in 1935 by Mr Arthur Smith of Gawsorth, Cheshire. Mr Arthur Smith was an active representative of the Peak District and Northern Counties Footpath Society in the mid twentieth century so was well known and respected for involvement in access.
39. The plan is not entirely a copy of the original, which is incomplete. The area in question has been reconstructed using OS mapping, Tithe Map and the text of the Award. This is explained at the bottom of the plan.
40. The Award was signed and dated on the 9th October 1804, and was preceded by an enabling Act in 1796. This is an interesting situation, since the Award was made after the Inclosure Consolidation Act 1801; but empowered by a private Act preceding the 1801 Act. It certainly has the appearance of a post-1801 Act Award.
41. The important parts of the Award are found on pp.12 &14. With reference to the points marked A, B, C & D on the Teggs Nose Lane plan:
 - (i) the length A-B is referred to as a part of Private Road or Way "R" 24 feet in width.
 - (ii) the length B-D is referred to as a part of Highway or Road "Q" 30 feet in width.
 - (iii) the length B-C is not referred to at all.
42. To make matters more complicated, the length B-D is described as both part of public road Q and private road R.
43. Also, what is currently referred to as "Teggs Nose Lane" (A-B) leading to "Teggs Nose Farm" was not named in 1804, and probably neither existed before Enclosure. Instead "Teggs Nose Road" was some distance to the east leading to what is now "Clough House".
44. In conclusion, the 1804 Award tells us that B-D is likely to be public and may enjoy higher rights than a footpath. It was awarded at a width of 30 feet (9.14 metres) and was to be publicly maintained once the works to

bring it into being were completed. Additionally, it would have originated to the north-east on the Buxton Old Road next to the present Tegg's Nose Country Park.

45. By contrast the 1804 Award sets out A-B "forever hereafter" as a private occupation road.

Tithe Map 1846

46. 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.
47. The Tithe Map dated 1849 very clearly shows all of the claimed route bounded by solid double lines. The section of the claimed route A-B-C is coloured light yellow and the same as the surrounding public roads. Section B-D is outlined in blue similar to the surrounding fields.

Bartholomew's Half Inch to a Mile

48. 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.
49. Two versions of the Bartholomew map were examined (1906 and 1924). Both versions show the whole of the claimed route as a very clear through route bounded by solid lines all the way along the route joining the Buxton Old Road, route to east to Country Park and linking to Teggsnose Farm to south.

Finance Act Map 1910

50. 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.

51. 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.
52. The Finance Map of (Cheshire XXXVII.9) original in The National Archives unfortunately does not exist. The working copy from Cheshire East Archives has the whole of the claimed route bounded by double solid lines. The route is annotated as "Teggsnose Lane" and separate from the surrounding land hereditaments for most of the route heading south towards Teggsnose Farm. The route is white and similar style and annotation to the other existing public roads so some assumption for public status could be drawn. The last bit of the claimed route near Teggsnose Farm and the spur running east is incorporated into a hereditament to the west of Teggsnose Farm and could also be public but this is not as clear.
53. The Valuation Books from Cheshire East Archives under "PROW and User" has a deduction for £30. The Field Books from Kew like the Valuation Book also state, there is a reduction of £30 for PROW or user, but unusually the Field Book breaks this down into £2 for the PROW and £28 for an easement for Tegg's Nose Quarry. It also states that the deduction for PROW is in fields 27 & 31 (as also shown on the OS map 1st edition of the area) and amounts to 166 yards. This deduction could relate to the existing public right of way (Public Footpath No 4) southeast of Teggsnose Farm which the claimed route joins at the south rather than the claimed route itself, but it is unclear. It could also possibly relate to the short second claimed route leading off Teggsnose Lane. In the Definitive Statement for Public Footpath 3 which this second claimed route joins Footpath 3 is described as "167 yards due east of Teggsnose Lane". In summary the Finance Act Map and associated records are too inconclusive to confidently draw anything from in regard to Public Rights of Way.

The Definitive Map records

54. 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.

55. The Definitive Map, Provisional and Draft Map do not show any of the claimed route marked only existing nearby Public Footpaths. The Parish Footpath map does have all of the claimed route marked in blue but then note that the route/s were omitted but no reason why.
56. The Definitive Map Statements accompanying the Definitive Map described the existing public footpaths the claimed route joins to the south and to the east. To the south it joins Public Footpaths no's 4 & 5 which are described on the original survey forms as joining the lane via stone stiles which are in situ today. To the east the claimed route joins Public Footpath no: 3 which is described as "from the Buxton Old Road in a south-westerly direction to a road leading from Teggnose Lane approximately 170 yards east of Teggnose Lane".

Highways Records – List of Streets

57. It appears that in the early 1980's at least part of the route must have been on the list of streets as the schedules then recorded under unsurfaced public roads a route quoted as Tegg's nose Quarry Road which must at least in part refer to the claimed route section off the Buxton Old Road before it turns southeast to the now redundant quarry. By 1989 the schedules referred to route Teggnose Lane off Buxton Old Road as Private and not a public road. Therefore, it appears the route was at least in a large part on the list of streets as a public road maintainable at public expense but was later removed somewhere between the mid 1980's and late 1980's.

Section 31 (6) Deposit, Highways Act 1980

58. Under the above legislation it is possible for landowners to deposit a statutory declaration and map of their land identifying all the legal existing Public Rights of Way but stating they do not wish to dedicate any additional Public Rights of Way on their land. This deposit is lodged with the Local Authority and is a means of protecting themselves from historical use prior to the date they lodge the deposit. It should be submitted at least every 20 years to keep a continuous protection in place. No such deposit has been lodged relating to this claimed route.

Other information – Strava Data

59. There was limited user evidence submitted with the application. However, a site inspection demonstrated frequent use today along with Ranger's awareness of providing knowledge that over many years the route has been very regularly used on foot.
60. In addition, a heat map extracted from Strava shows currently at least that there is regularly public use of the route on foot at least for the sections of the claimed route A-B-D.

User evidence

61. There are 6 user evidence forms supporting the claim. The user evidence forms (UEFs) were completed by local people living in the SK10/11 area (including the applicant), and all giving evidence of at least 20 years use of the claimed route. All users mention use going back to the 1970's. The forms and attached plans have been filled in with some care and most include information about a barrier put up in 2012. Detailed user evidence charts showing year of use can be seen at **Appendix 3**.
62. The route claimed is clearly identified by all users as an enclosed path shown on OS maps and referred to locally as "Teggs Nose Lane"
63. The date when the first challenge to public use was made is clear. Several users refer to a gate/barrier being put up off the Buxton Old Road initially before being moved up nearer Teggsnose Farm end. Interviewing has established the barrier went up in 2012. Therefore, the relevant 20-year period in which deemed dedication may be calculated is **1992-2012**.
64. Within the period 1992-2012, all 6 of the users have used the path throughout the 20 years, with all claiming use over most of that period.
65. The frequency of the claimed route is fairly high with all users using the route at least weekly if not more frequently. It was clear from the site visit undertaken also in November 2023 that the claimed route is in high use as 10 people were seen walking the route some with dogs some without in the time span of about 40 minutes.
66. There is a mixed view from the UEF's as to what status users believe the route to be with many stating they believe the route to be vehicular highway and two saying public footpath and bridleway. There was also a mixed response on their use of route with most saying foot and car and 2 also mentioning horse and bike. On interviewing the few that were contactable most appeared to put vehicular highway because they drove and parked at the bottom of the lane at the Buxton Old Road end and then got out to use route. The predominate use on interviewing though and from viewing the site is overwhelming majority of use on foot.
67. There is no mention by users of any act by a landowner or agent to prevent their use of the path, even temporarily, until December 2012. Even then the barrier installed didn't prevent use of the route on foot as there was and is now a gap to one side wide enough for pedestrians to pass. The barrier when initially installed briefly off the Buxton Old Road did for a few months prevent cars parking to one side as they do now and have done though.

68. The evidence given by the users in their UEFs show that no actions appear to have been taken by the landowner, until December 2012, to challenge the public's belief that the route enjoys public rights.
69. Interviews took place during November 2023 with the applicant, and two other users. Unfortunately, the others have been difficult to contact. All those interviewed remember a clear through route that has been used by people on foot for well in excess of 20 years going back to the 70's. No one interviewed said they had ever asked permission to use the route or been challenged in any clear overt way by landowners.
70. It is noted that the application was for a Restricted Byway / Byway Open to All Traffic. However, during interviewing though it was clear that this may have been due more to the fact vehicles park at the bottom end just off the Buxton Old Road rather than use the route as a through route as members of the public. Also, whilst on form there is also some limited mention of horse and cycle use it is clear on analysis that the predominate use of all of the claimed route including the connecting route to the east has been on foot.
71. Both the current and two previous rangers from Tegg's Nose Country Park have been interviewed and all state the same points (i) that the route has been regularly used for a very long period of time ie over 20 years (ii) users on foot have always been able to practically used the route (ii) apart from recent roadside sign aimed at vehicles and vehicles barrier no other obstacles or signage has been witnessed on the route.
72. The landowner of Teggsnose Farm has also been contacted and asked some questions via e-mail as he lives out of the country. The owner has made a very brief statement that they already believe the route to be a public footpath.

Conclusion on Evidence

73. Whilst only 6 UEF's were submitted with the application with the interviews, a site visit and talking to the current and previous rangers at Tegg's Nose Country Park abutting it is clear usage of the claimed route has been evidenced to be very extensive by users on foot for a very long period of time going back to the 1970's. Current usage is also evidence from Strava data. Even when the barrier was installed in 2012 users have continued to use the route on foot by using the bypass gap.
74. Documentary evidence from old ordnance survey maps and the tithe map and other old county maps shows all of the claimed route has been a clear physically defined feature back to the 18th century. The finance act map and inclosure award are rather ambiguous in some regard

although they do indicate some public status along at least part of the routes but not enough to draw clear higher rights for the whole claimed route. It is interesting that the claimed route at least leading to the quarry was a public road in the past but has been removed but again this is not unusual and ties up with the multi-purpose element of the route of the public using it historically and it being in part a route to a quarry.

75. The key piece of case law mentioned at the start of this report at Godmanchester 2007 is particularly relevant and states where at least 20 years evidenced use claim will be successful:

“...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 (which in this case is 1992-2012).

76. Whilst there is some contradiction in what Landowner 1 stated about having put up notices in the past to say “no footpath” none of the users have mentioned this or remember any such notices. Without such evidence of such notices to back up the opposite the application therefore meets the 20-year test.
77. Given that higher rights of vehicular access have not been demonstrated on the claimed route as a through route from use or documentary evidence from highway to highway the effect of NERC Act as outlined in the Legal Matters section of this report are not relevant.

Recommendation

78. It is recommended that the council make a Legal Order to add a Public Footpath to the Definitive Map and Statement. For the reasons explained in this report there is not sufficient evidence to support any higher status of the claimed route even though the application was for Restricted Byway / Byway Open to All Traffic. Sufficient use of the route for 20 years has been satisfied to meet the legal tests and make an Order.

Council Policies

79. 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.

Other Options Considered

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

Implications and Comments

Monitoring Officer/Legal

81. The legal implications in relation to highways law are set out in the Legal matters section of this report (paragraph 10).

The Human Rights Act is also of relevance. Whilst article 1 to the first protocol (peaceful enjoyment of property) and article 8 (right to respect for family, private life and home) are engaged, it is important to note that these rights are qualified, not absolute, which means that they can be interfered with in so far as such interference is in accordance with domestic law and is necessary in a democratic society for the protection of the rights and freedoms of others. It is considered that any interference occasioned by the making of a Modification Order is both in accordance with domestic law (the Wildlife and Countryside Act 1981) and is in the public interest as it is necessary in a democratic society for the protection of the rights and freedoms of others, namely the public who wish to use the way.

Should Members resolve that a Modification Order be made in accordance with highways legislation, this is merely the start of the legal process. Once a Modification Order is made, it must be publicised, and any person will have an opportunity to formally object to it. Should objections be received, the Modification Order would have to be referred to the Secretary of State who would usually hold a Public Inquiry before deciding upon whether or not to confirm the Modification Order.

Please note that the Council will not disclose the user evidence forms that form part of the background documentation at this stage in the process. The Council considers that the information provided within the user evidence documentation is exempt information under s1 & 2 Schedule 12A Local Government Act 1972, as amended.

Under the Wildlife and Countryside Act 1981, there is no such statutory right prior to an Order having been made - persons affected are entitled to the information in the event that an Order is made following the Committee decision.

Section 151 Officer/Finance

82. 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. The maintenance of the Public Right of Way, if added to the Definitive Map and Statement, would fall to the landowner and Council in line with legislation. The associated costs would be borne within existing Public Rights of Way revenue and capital budgets.

There are no financial implications.

Policy

83. 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.

A thriving and sustainable place

- A great place for people to live, work and visit
- Welcoming, safe and clean neighbourhoods
- Reduce impact on the environment
- A transport network that is safe and promotes active travel.
- Thriving urban and rural economies with opportunities for all
- Be a carbon neutral council by 2025

Equality, Diversity and Inclusion

84. 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.

Human Resources

85. There are no direct implications for Human Resources.

Risk Management

8. There are no direct implications for risk management.

Rural Communities

87. There are no direct implications for Rural Communities.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

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

Public Health

89. The recommendations are anticipated to offer a positive overall impact on the health and wellbeing of Cheshire East residents.

Climate Change

90. The recommendations will help the Council to reduce its carbon footprint and achieve environmental sustainability by reducing energy consumption and promoting healthy lifestyles.

Access to Information	
Contact Officer:	John.Lindsay John.Lindsay@cheshireeast.gov.uk
Appendices:	Appendix 1 – Plan no: WCA/343/039 Appendix 2 – Archive List Appendix 3 – User Evidence Chart & Usage Type Chart Appendix 4 – Photographs of claimed route (Nov'23)
Background Papers:	File no: MA/5/248

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APPENDIX 1

A

BUXTON OLD ROAD

294.7m

281.8m

278.0m

271.0m

269.3m

269.4m

276.9m

Pond

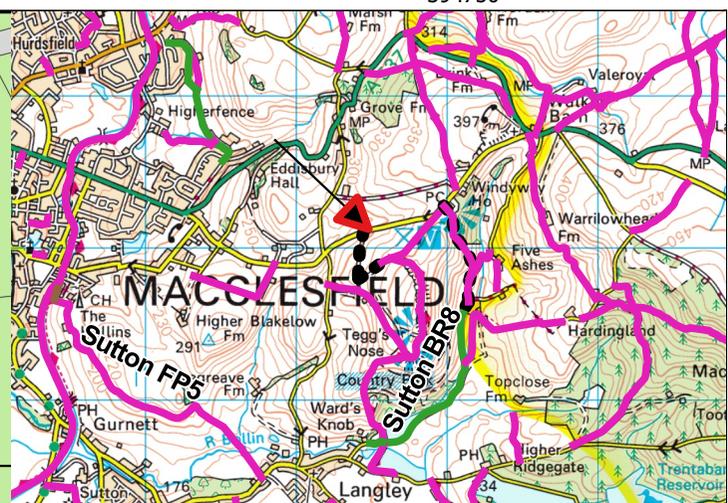
B

D

C

Macclesfield FP5

Macclesfield FP29



Key

- Footpath
- Bridleway
- Claimed Route A-B-C-D



1:2500

Wildlife & Countryside Act 1981 application MA/5/248 addition of a footpath between Buxton Road Footpaths No5 & No4 Macclesfield A-C, and between B-D Footpath No3.

Plan No.
WCA/
343/039

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



373000

372750

373000

372750

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APPENDIX 2

List of Archive Documents –

Application No. MA/5/248

Application for the Addition of a Public footpath along Teggs Nose Lane, Macclesfield

PROW = Public Rights of Way Unit

CRO = Cheshire Record Office

TNA = The National Archives, Kew

Primary Sources	Date	Site Shown/Mentioned	Reference Number/Source
Macclesfield Inclosure Award & Map	1804	Complex and inconclusive part of claimed route may have public status but as a whole claimed route not.	CRO QDE/2
Tithe Map	1848	The claimed route is shown as a clear physical route.	CRO EDT 254/2
Finance Act	1910	Shown as clear physical feature. Some mention of deduction for PROW but within larger heredaments so unclear	CRO NVB_XXXVII.9 (Working Copy) CRO valuation books NVA/4/13 TNA Filed books Ref: 3380
Old County Maps			
Burdett	1794	Dosent show claimed route just surrounding main roads	PROW Unit
Swire & Hutching	1830	Part of claimed route shown off Buxton Old road	PROW Unit
Bryant	1831	All of the claimed route shown	PROW Unit
Bartholommews	1906 & 1924	Clear through route between two solid lines	PROW Unit
Ordnance Survey Maps			
O.S. 1" to 1 mile 1 st Edition	1850	Shows clear through route of whole of claimed route	PROW/Cheshire East Council

O.S. 1st Edition 1:25 inch	1889	Shows clear through route of whole of claimed route	PROW/Cheshire East Council
O.S 2 nd Edition 1:25inch	1815	Shows clear through route of whole of claimed route	PROW/Cheshire East Council
O.S 3 rd Edition 1:25 inch	1919- 1942	Shows clear through route of whole of claimed route	PROW/Cheshire East Council
Local Authority Records			
Draft Map	1950's	Claimed route not shown only other PROW in area	PROW Unit
Provisional Map	1952	Claimed route not shown only other PROW in area	PROW Unit
Definitive Map & Statement	1953	Claimed route not shown only other PROW in area	PROW Unit
Additional records			
Photos	2023	Site photos taken in 2023 of clamed route	PROW Unit – see photo sheet at Appendix 3
Strava Heat map	2024	Shows nearly all of claimed route in regular use by public on foot or cycle. Less so near Teggs nose Farm end.	PROW Unit
Cheshire East Highways Records – List of Streets	1980's	Part of route was listed on there as route to Teggs Nose Quarry but later removed by late 1980's.	PROW Unit

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APPENDIX 4 - Photographs of Teggs Nose Lane DMMO application

Taken November 2023

- 1. Point D where meets Public Footpath 3 looking in direction of Point B**



- 2. Between Point D and Point B looking into direction of Point B.**



3. Point B where junction and wider area of ground.



4. Barrier with gap for foot users at Point B looking towards Point C



5. Point B zoomed in on notice engraved on barrier that says "Access to Teggs Nose Farm only"



6. Point B bypass around gate for walkers.



7. Point C near Teggs Nose Farm where joins public highways with footpaths crossing.



8. Between Point B and A heading in direction of Point A



9. Continued between Point B and Point A heading towards Point A



10. Approaching Point A near roadside from Point B



11. Cars parked to one side near Point A



12. Notice put up by Country Park just off roadside at Point A



13. Point A – claimed route off Old Buxton Road.



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Highways and Transport Committee**4 April 2024**

**Wildlife & Countryside Act 1981 – Part III,
Section 53, Application No. MA/5/256:
Application for the Addition of a Public
Footpath from the east end of existing Public
Footpath No. 6 near Toft Church to join Public
Footpath No. 4 in Windmill Wood in the Parish
of Toft.**

Report of: Peter Skates, Acting Executive Director, Place

Report Reference No: HTC/34/23-24

Ward(s) Affected: Plumley with Toft and Bexton

Purpose of Report

1. This report outlines the investigation into the application made by Mr Brian Chaplin (representing the South Knutsford Residents' Group) to amend the Definitive Map and Statement to add a Public Footpath between existing Public Footpath No. 6 near Toft Church to join existing Public Footpath No. 4 in Windmill Wood as shown on Plan No. WCA/037 from A-B-C (see Appendix 4). This report includes a discussion of the consultations carried out in respect of the claim, historical documentary 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 Footpath to the Definitive Map and Statement.
2. The work of the Public Rights of Way team contributes to the green aim of the Corporate Plan, the "thriving and sustainable place" priority, and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

Executive Summary

3. The report considers the evidence submitted and researched in the application to add a Public Footpath in the Parish of Plumley with Toft and Bexton. The evidence consists of use on foot by individual witnesses over a period of over twenty years and historical documents that demonstrate the

existence/status of a physical track feature for the whole claimed route for well in excess of 30 years. The report determines whether on the balance of probabilities it can be reasonably alleged that public footpath rights have been acquired. The reputation of the route as a thoroughfare linking the church to the western side of Windmill Wood is demonstrated through the Tithe Map and Ordnance Survey maps and others and provides good reputational evidence of a route with rights of footpath status at least. The user evidence investigated and discussed provides evidence of use by those on foot over a relevant 20 year period leading to the assertion that Public Footpath rights have been acquired over time.

RECOMMENDATIONS

The Highways and Transport Committee is recommended to:

1. Decide that a Definitive Map Modification be Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 adding a Public Footpath as shown on Plan No. WCA 037.
2. Decide that public notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
3. Note that in the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

Background

The Application

4. The Application was made to Cheshire East Council on 26th February 2019 by Mr Brian Chaplin on behalf of the South Knutsford Residents' Group to add a Public Footpath between Toft Church and the western side of Windmill Wood in the Parish of Plumley with Toft and Bexton. The application consisted of user evidence forms and a few letters. A total of 16 user evidence forms were submitted demonstrating use on foot. This application has been investigated and researched by an external consultant.
5. The claimed route commences at Point A on Plan No. WCA/037 (Ordnance Survey grid ref. SJ 7591 7660) off existing Public Footpath No: 6 and proceeds in an easterly direction across farmland but on a defined physical feature bounded on both sides by hedge/fence to Point B (grid ref. SJ 7915 7663) where it enters Windmill Wood via a culvert/bridge. It then proceeds in an easterly direction through Windmill Wood along a woodland path to join existing Public Footpath No.4 at Point C (grid ref. SJ 7637 7664).

6. The width of the route varies along its length but is approximately 3 metres wide and is a physical track feature for much of its length.
7. Photographs of the claimed route can be seen at Appendix 3 and includes photographs of the existing signs up at both ends of the claimed route.
8. There are 2 landowners along the claimed route. Landowner 1 (Toft Estate) owns the land covering the route from Point A near Toft Church to Point B where the claimed route enters Windmill Wood. Landowner 2 owns from Point B on the western edge of Windmill Wood to Point C where the claimed route joins Public Footpath No. 4.

Legal matters

9. 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:-

Section 53(3)(c)(i) is relevant 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 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 can be reasonably alleged to subsist. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.

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”.

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 just before the application was submitted when the claimed route was stopped up in various ways on 12th December 2018 (date route was obstructed).

Consultation and Engagement

10. A mixture of responses was received during the consultation. North and Mid Cheshire Ramblers and the Open Spaces Society responded in full support of the application. The Ramblers’ Footpath Secretary stated they themselves had used the claimed route on several occasions including in 2016 when they led a Ramblers guided walk along the route. They noted from their archive

records at least 3 occasions that the Ramblers had led walks along the claimed route. The Open Spaces Society stated they were aware of the application long before it was submitted and believed it to be extraordinarily well founded. They mention they were aware that Windmill Wood had been subject to extensive recreational use since WW1 with access from Toft Church. They also commented that the community had recently attempted to buy the woods

11. The Toft Estate, being Landowner 1, responded with various objections to the claimed route. They mention over the years they have had increasing amounts of issues with people trespassing on the Estate to access neighbouring Windmill Wood. They state that the claimed route formed part of the original drive to Toft Hall from Chelford Road and people used to walk from the church car park to the wood. However, the estate also became aware of people wandering off the claimed route into neighbouring fields and utilising the private church car park for parking. They mention damage done to crops and fences and that people had been challenged and there are visible signs in the car park saying for church visitors only. They understand signs have been erected by the Estate in various locations but did not state exactly where, saying "*Toft Estate – Private Land-No Right of Public Access*". They mention the legal tests for claims set out in Section 31 of the Highways Act 1980 and their belief the claim should fail because the use has been by force and not "as of right" and they do not believe there is full use of a 20 year period by users. They again mention signage has been erected within the 20 year period to indicate private land and adjoining landowners and the church have approached people asking them to leave. They also believe others would oppose the application.
12. No response was received from Plumley with Toft and Bexton Parish Council and also no response was received from Knutsford Town Council who were also consulted. Ollerton with Marshall Parish Council abutting the location asked to be consulted and were but then decided to make no comments. It is noted however that in 2019 a previous councillor at the time did email the council to state they supported the landowners in closing the route and thought it was a shame that a few unruly dog owners had led to the closure of the route.
13. Interviews were carried out during November 2023 with both Landowner 1 (Toft Estate), Toft Church, Landowner 2 (a recent new landowner of Windmill Wood) and numerous users who had completed user evidence forms and this is discussed in the user evidence section of this report.
14. Landowner 1 (Toft Estate) during interview explained the long history of the Estate dating back 600 years and that parts of the Estate had been sold off in sections over the years. The Estate used to also own Windmill Wood but this was sold off in the 1960s. Historically the owner of the Estate explained the whole of the claimed route was a permissive path on a hearsay local basis and there were never any issues until about the 1990s / 2000 onwards when dog fouling and non-church parking started to cause issues as well as other anti-social behaviour such as trespassing off the route into adjoining fields.

Due to the issues the Estate arranged for a contractor to install high green wire mesh fence on the route in 2018 and also the same year a notice was put in the church car park to clearly state use for church goers only. The Estate also stated they understood there had been a sign up at the Windmill Wood end of the claimed route along the lines of “no public access” facing both directions along with fencing but had no photographic evidence of this nor detail of where the fencing was located.

15. Landowner 2 (Windmill Wood) has only just purchased the woodland in the last few months. The landowner was interviewed as they had a fair amount of knowledge passed to them from the previous landowner who had owned the woodland from 1978 until recently. The main points that were mentioned were that they were aware that the previous owner had had numerous issues with the public walking all over the woods and had struggled to control them. The previous owner had apparently made numerous verbal attempts to see people out of the woodland and erected numerous signs on the land along the lines of “ Private Woodland – keep to the Footpath, shooting in progress” (mostly next to existing Footpath No. 11 near the northern edge of the woodland). The current owner also understands some other notices put up were ripped down. Contact has been made with the previous owner to establish whether they have any photographic evidence of signage they erected around Point B of the claimed route where it enters the woodland via a bridge / culvert. No such photographic evidence has come to light to date.
16. The previous landowners of Windmill Wood have also been contacted directly and the couple have both each signed and submitted statutory declarations about their knowledge of use of the woodland whilst it was in their ownership. They have made it clear that, having owned the woods from 1978 until 2023 when they were sold, , they made extensive attempts to make it clear to the public that, apart from the legal existing public rights of way, the woods were private, and they did not agree to people wandering all over the woods or ever intend to dedicate any additional access. In the detailed signed statutory declaration provided by one of the couple, they refer to signage erected high on trees stating, ‘private woodland’ and refer to a public inquiry dealing with the addition of Public Footpath No. 11, Toft and No. 27, Knutsford in 1989. They attached the Planning Inspectorate’s decision and their own proof of evidence from when the Inquiry was held. The proof relating to the footpaths claimed at that time (not the current claimed route) states that “*After all the vandalism I decided that steel signs were needed instead of wooden ones on the trees and from 1979 onwards I erected steel signs on the trees*” but also goes on to mention “*Further there have been similar signs at each end of the path running from Chelford Road through Windmill Wood to the church*” and thereby makes some reference to the claimed route. They go on to detail in their recent statement that signs were put up along the route of the claimed footpath at the woodland edge on a tree by a gate that was facing Toft Church to deter trespassers coming onto the land, but the signs were constantly removed or vandalised. They continually put up signs to tell people to keep off

the land stating it was private. They also mention that from time to time a gate was left open by trespassers and that when that happened, they would simply close it.

17. Further to the interview with Landowner 2, the background documents to the application have been supplied to them. Subsequently they have sought a barrister's opinion (KC), who have submitted 'Interim Representations', this document is appended to the report as Document 1. The content forms the basis of their objection to the proposal.

Historical Evidence

18. 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.

Ordnance Survey (O.S.) Records

19. 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.
20. **Ordnance Survey 1 inch to 1mile (1848)** map shows a very clear through route along the claimed route all the way from the A50 past the church and right through Windmill Wood.
21. **Ordnance Survey 1st Edition 1:25 inch (c1871)** map shows a clear track like through route feature depicted by double pecked lines incorporating the claimed route all the way from the A50 (Holmes Chapel Road) then running past St John's Church through fields and entering Windmill Wood and continuing through the middle of Windmill Wood. There also appears to be a line across the entrance to the wood, possibly indicative of a gate.
22. **Ordnance Survey 2nd Edition 1:25 inch (c1898)** map shows the same as the 1871 one with a clear track feature through route from the A50 past the church, across fields and continuing on through Windmill Wood. There is now also clear access to the church marked by pecked lines. The solid line is in evidence at the entrance to Windmill Wood.
23. **Ordnance Survey 3rd Edition 1:25 inch (c1909)** map shows the same as the 1898 map with a clear track feature through route from the A50 past the church, across fields braced to adjoining land and continuing on through Windmill Wood. There is now also clear access to the church marked by

pecked lines. Also, there is the solid line across entrance to wood suggesting a gate at this location and at the road junction end too.

24. **Ordnance Survey 1inch Old County Series maps (1887-1972).** The published editions from 1887 - 1953 all show the claimed route as a clear physical through route from incorporating the claimed route but running all the way from the A50 to the west of Toft Church and through middle of Windmill Wood to the Chelford Road. The later 1972 version shows the same but the route is just depicted as a single pecked line along this route.

County Maps 18th/19th century

25. These are small scale maps made 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 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. The maps do not provide conclusive evidence of public status, although they may provide supporting evidence of the existence of a route.
26. Of the maps that were available to view, Burdett 1794, Bryants 1819 and Swire and Hutchings 1830, all show that the claimed route was depicted as a distinct through route between two main roads. It is shown bounded on Burdett's map and edged with dotted lines on Bryant's and Swire and Hutchings suggesting an open, unfenced edge to the track. It is shown running off the A50 to the west of the church and running all the way through Windmill Wood to exit onto the Chelford Road near Toft Lodge. Historically the claimed route was clearly part of a longer route running as far as from Toft Hall to the west of the A50 and linking to the Lodge to the east.

Tithe Map 1846

27. 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.

28. The Tithe Map of 1848 in the Township of Over Knutsford shows the route as a clear physical track feature from the A50 and through Windmill Wood to the Chelford Road similar to the Ordnance Survey maps of this time. The route on this map is uncoloured.

Bartholomew's Half Inch to a Mile

29. 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.
30. Several versions of the Bartholomew map were examined (1902, 1923, 1941 and 1943). All versions show the whole of the claimed route as a very clear through route bounded by solid lines all the way along the route and as an uncoloured lane ("other road").

Finance Act Map 1910

31. 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.
32. 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.
33. Both the working plans from Cheshire Archives (ref: NVB XXXV) and the original valuation plan from Kew show the claimed route marked as a physical track feature from Toft Church then running right through Windmill Wood. The claimed route runs through and is incorporated into 2 different fairly large hereditament land parcels on both maps. Unfortunately, the valuation book to accompany the working map copy for the area it falls in (Altrincham District) does not exist and the Field Book to accompany the original valuation map is on order from Kew. However, if the valuation book did exist any deductions for Public Rights of Way are likely to be difficult to pin down to the claimed route given the large hereditaments the claimed route lies in.

Aerial photos

34. Aerial photos of the claimed route have been examined from 1971 to 2023. In 1971 only really the church and the woodland can be seen, with no clear aerial evidence of the route, although this may be due to ploughing which appears on some fields in the area. From 1999 all the way through to the present day, the claimed route can be seen as a clear physical feature from Toft Church heading east across fields bounded by hedges and continuing as a track feature in Windmill Wood.

The Definitive Map records

35. 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.
36. These are interesting for this case as the Definitive Map, Provisional and Draft Map and Parish Footpath map do not show the claimed route marked. Only existing Public Footpath No. 6 leading to Toft Church in the east and Public Footpath No. 4 running north/south across Windmill Wood are shown.
37. However, the Footpath Preservation Society map of 1952 shows the claimed route clearly marked all the way from the A50 past the church and running right through the middle of Windmill Wood and exiting on the Chelford Road to the east. The path schedule referring to Public Footpath No. 6 that ends by the church states "No road beyond church". Some notes attached to schedules from the Society mention some additional footpaths including the claimed route described as "Continuation of route eastwards from St. John's Church to Windmill Wood to Parish Boundary" but then later at the bottom of the pages it says "No information, Omit" for this route but with no reasoning as to why.

Section 31 (6) Deposit, Highways Act 1980

38. Under the above legislation it is possible for landowners to deposit and statutory declaration and map of their land identifying all the legal existing Public Rights of Way but stating they do not wish to dedicate any additional Public Rights of Way on their land. This deposit is lodged with the Local Authority and is a means of protecting themselves from historical use prior to the date they lodge the deposit. It should be submitted at least every 20 years to keep a continuous protection in place. No such deposit has been lodged relating to this claimed route or Windmill Wood in its entirety.

Planning Inspectorate Decision (1989)

39. In 1989 a Planning Inspectorate Inquiry was held regarding the addition of Public Footpaths No. 11, Toft and No. 27, Knutsford, which was confirmed by the Inspector and resulted in the addition of those footpaths to the Definitive Map and Statement. Whilst this concentrates on another route in Windmill Wood it is interesting and related to the current claim as it demonstrates the large volume of usage of the woodland going back to before the 1960s. The Inspector concluded that prior to the 1960s there had been no clear challenge by the historical landowners even though from 1978 the then landowner did make attempts with signage and fencing. However, in the 1989 case, that did not overturn the extensive historical usage that had previously been unchallenged.

User evidence

40. There are 16 user evidence forms supporting the claim. The user evidence forms completed by local people, all living within the WA16 post code area, and all giving evidence of at least 20 years' use of the claimed route. In one instance use is attested since about 1951. The forms and attached plans have been filled in with some care and most include quite a lot of information and details about old gates, signs, and recent obstructions. Detailed user evidence charts showing the years of use can be seen at Appendix 2.
41. The route claimed is clearly identified by all users as the enclosed path shown on O.S. maps leading generally east/west between St. John's Church and Windmill Wood, continuing into the wood to meet Footpath No. 4, which runs generally north/south.
42. The date when the first challenge to public use was made is clear. Several users refer to the obstructing fence being erected some 20m to the east of the church car park across the claimed route in December 2018, with user No.16 stating precisely that it was on December 12th 2018. Therefore, the relevant 20 year period in which deemed dedication may be calculated is 1998-2018.
43. Within the period 1998-2018, 14 of the users have used the path throughout the 20 years, with 2 more claiming use over most of that period. User No. 5 had 2 short breaks in use in 2000 and 2007, while user No. 6 had not used the path since 2010. There is a substantial body of user evidence within the period 1998-2018, with as many as 15 people claiming use within any single year, and at least 14 every year. This is ample use in terms of numbers to allege deemed dedication has occurred.
44. A normal pattern of use is seen, with some users saying only 3 or 4 times a year at one extreme, to others claiming daily use or 3 to 4 times a week at the other extreme. A minimum of 10 users claim use at least once a week. The

significance of this is that the frequency of use is sufficient to ensure that the landowner (or agent) is very likely to observe public use of the path, and if wished, to show their non-intention to dedicate by taking action to prevent it. 90% of users stated they never had permission to use the route or met the landowner or agent whilst user the route.

45. Although the users all live in a relatively small area (the WA16 postcode), they can clearly be regarded as “the public”. There are no obvious family connections between them, or multiple users from the same address; but they have come together as the South Knutsford Residential Group in order to make this application.
46. User No.13 is an exception amongst the 16 users. They have used the expression “concessionary path” in their description of the route. This might suggest that they believe it not to be an unrecorded public right of way but a permissive path. Unfortunately, it was not possible to interview this witness. Otherwise, all the other users believe that they are exercising a public right, rather than one being granted to them.
47. There is no mention by users of any act by a landowner or agent to prevent their use of the path, even temporarily, until December 2018. As described above, the users claim that they have been using the path throughout the full period 1998-2018. During the foot and mouth epidemic in 2001, many public paths were closed, but this period is allowed to be discounted from the calculation.
48. The evidence given by the users in their evidence forms show that no actions appear to have been taken by the landowner, until December 2018, to challenge the public’s belief that the route enjoys public rights. The landowners are stating that there were notices at the Windmill Wood end but have provided only some evidence of this in their recent statutory declaration. This contradicts all the users who were interviewed who clearly stated they saw no notices as they entered the wood from the church by the bridge/culvert to where they joined Public Footpath No. 4.
49. Interviews took place during November 2023 with seven witnesses, and it was overwhelmingly clear from those interviewed that the claimed route has been extensively used and enjoyed by not just these users but many more. This is emphasised by a press cutting provided from the Knutsford Guardian in 2018 which highlighted the outrage when the route was closed off in 2018. Numerous people also have provided photographs of the route overtime to show how much more open and obvious the route was. The route until 2018 had no gate or barriers at the church end and led along an open grassy track; at the Windmill Wood end where all users said there was an old metal gate on a bridge that was always open, and that they never saw any signs on this bridge entering the woodland for over 20 years. Photos taken in 1978 also demonstrate how open the route was, with defined features.

50. Many of the users were interviewed in detail about signage and as stated above none of them had ever seen any signs on the claimed route and made this very clear. They did however acknowledge that they used other public rights of way in Windmill Wood such as Public Footpath No. 11 near the northern edge of the wood and Public Footpath No. 19 (Knutsford) leading northwest out of the woodland. A few users did say they saw signs along Public Footpath No. 11 regarding keeping to the footpath and also a sign just off Public Footpath No.19 of a similar nature to deter people wandering into the woodland. However, no one remembers ever seeing any notices along the short section of the claimed route in the woods from the bridge entrance into Windmill Wood and to where it joins Public Footpath No. 4 (Point B).
51. During a recent site visit one notice high up on a tree as the claimed route approaches Public Footpath No. 4 between Point B and C was seen reading: “ Private Woodland – keep to the Footpath, shooting in progress” although no users mentioned this sign specifically and it is unclear how long this has been in-situ. Interestingly this sign was not that close to a recorded Public Footpath, there being only the claimed route in the vicinity, and consequently could be interrupted in a different way. It could indicate that the nearby claimed footpath was the referred ‘footpath’ in the sign and consequently an accepted route.
52. All those interviewed remember a clear through route that has been used by people on foot for well in excess of 20 years and going back to the 1970s. No one interviewed said they had ever asked permission to use the route or been challenged in any clear overt way by landowners.

Conclusion on the Evidence

53. Usage of the claimed route has been evidenced to be very extensive dating back to 1950s but predominately from 1970 until 2018 when the route was blocked off at both ends. The key piece of case law mentioned at the start of this report, *Godmanchester 2007* is particularly relevant and states where at least 20 years evidenced use claim will be successful:

“...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 (which in this case is 1998-2018). The use was also in daytime and not in secret and there were no gates forced by users.

54. The previous landowners of Windmill Wood have made some strong statements in their recent statutory declarations about their attempts to keep

people out of the woodland with signage over many many years and signs being taken down and vandalised. There is a clear contradiction in what the previous landowner of Windmill Wood and Toft Estate are saying about signage rebuttal and no intention to dedicate the route with what the users have been clear and unanimous in stating that they never saw any signage of any sort on the claimed route and have signed statements to say so. It is clear that there are strong contradictions between what the users and the landowners are stating regarding the claimed route. However, taking into account the legal tests, with the lack of evidence of signs or historical locked gates on the claimed route i.e., photographic evidence to support the text in the statutory declarations, it would appear on the balance of probabilities that the claimed route could still be deemed to reasonably be alleged to exist and meet the 20 year test.

Reasons for Recommendations

55. The evidence in support of this claim must show, on the balance of probabilities, that public footpath rights are reasonably alleged to subsist along the claimed route. It is considered there is sufficient use of the claimed route without force, secrecy, or permission, that is without interruption and as of right that in conjunction with the historical documentary evidence discovered demonstrates a physical clear through route that has been in existence and used for well over 20 years. Thus supporting the test of being reasonably alleged to exist in relation to public footpath rights between points A-B-C as shown on Plan No. WCA/037.
56. The work of the Public Rights of Way team contributes to the green aim of the Corporate Plan, the “thriving and sustainable place” priority, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

Other Options Considered

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

Implications and Comments

Monitoring Officer/Legal

58. The Council is complying with its legal duties as stated in paragraph 9.

The Human Rights Act is also of relevance. Whilst article 1 to the first protocol (peaceful enjoyment of property) and article 8 (right to respect for family, private life and home) are engaged, it is important to note that these rights are qualified, not absolute, which means that they can be interfered with in so far as such interference is in accordance with domestic law and is necessary in a democratic society for the protection of the rights and freedoms of others. It is considered that any interference occasioned by the making of a Modification Order is both in accordance with domestic law (the Wildlife and Countryside Act 1981) and is in the public interest as it is necessary in a democratic society for

the protection of the rights and freedoms of others, namely the public who wish to use the way.

Should Members resolve that a Modification Order be made in accordance with the legislation, this is merely the start of the legal process. Once a Modification Order is made, it must be publicised, and any person will have an opportunity to formally object to it. Should objections be received, the Modification Order would have to be referred to the Secretary of State who may hold a Public Inquiry before deciding upon whether or not to confirm the Modification Order.

Please note that the Council will not disclose the user evidence forms that form part of the background documentation at this stage in the process. The Council considers that the information provided within the user evidence documentation is exempt information under s1&2 Schedule 12A Local Government Act 1972, as amended.

Under the Wildlife and Countryside Act 1981, there is no such statutory right prior to an Order having been made - persons affected are entitled to the information in the event that an Order is made following the Committee decision.

Section 151 Officer/Finance

59. 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. The maintenance of the Public Right of Way, if added to the Definitive Map and Statement, would fall to the landowner and Council in line with legislation. The associated costs would be borne within existing Public Rights of Way revenue and capital budgets.

Policy

60. The work of the Public Rights of Way team contributes to the green aim of the Corporate Plan, the “thriving and sustainable place” priority, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

A thriving and sustainable place

- A great place for people to live, work and visit
- Welcoming, safe and clean neighbourhoods
- Reduce impact on the environment
- A transport network that is safe and promotes active travel.
- Thriving urban and rural economies with opportunities for all
- Be a carbon neutral council by 2027

Equality, Diversity and Inclusion

61. 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.

Human Resources

62. There are no direct implications for Human Resources.

Risk Management

63. There are no direct implications for risk management.

Rural Communities

64. There are no direct implications for Rural Communities.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

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

Public Health

66. The recommendations are anticipated to offer a positive overall impact on the health and wellbeing of Cheshire East residents.

Climate Change

67. The recommendations will help the Council to reduce its carbon footprint and achieve environmental sustainability by reducing energy consumption and promoting healthy lifestyles.

Access to Information	
Contact Officer:	Clare Hibbert Clare.Hibbert@cheshireeast.gov.uk
Appendices:	Appendix 1 – Archive List Appendix 2 – User Evidence Chart & Usage Type Chart Appendix 3 – Photographs of claimed route (Nov'23) Appendix 4 – Plan No: WCA/037 Appendix 5 - Interim Representations
Background Papers:	File no: MA/5/256

APPENDIX 1**List of Archive Documents –****Application No. MA/5/256****Application for the Addition of a Public footpath off Public Footpath no: 6 (near Toft Church) to join Public Footpath no: 4 in Windmill Wood**

PROW = Public Rights of Way Unit

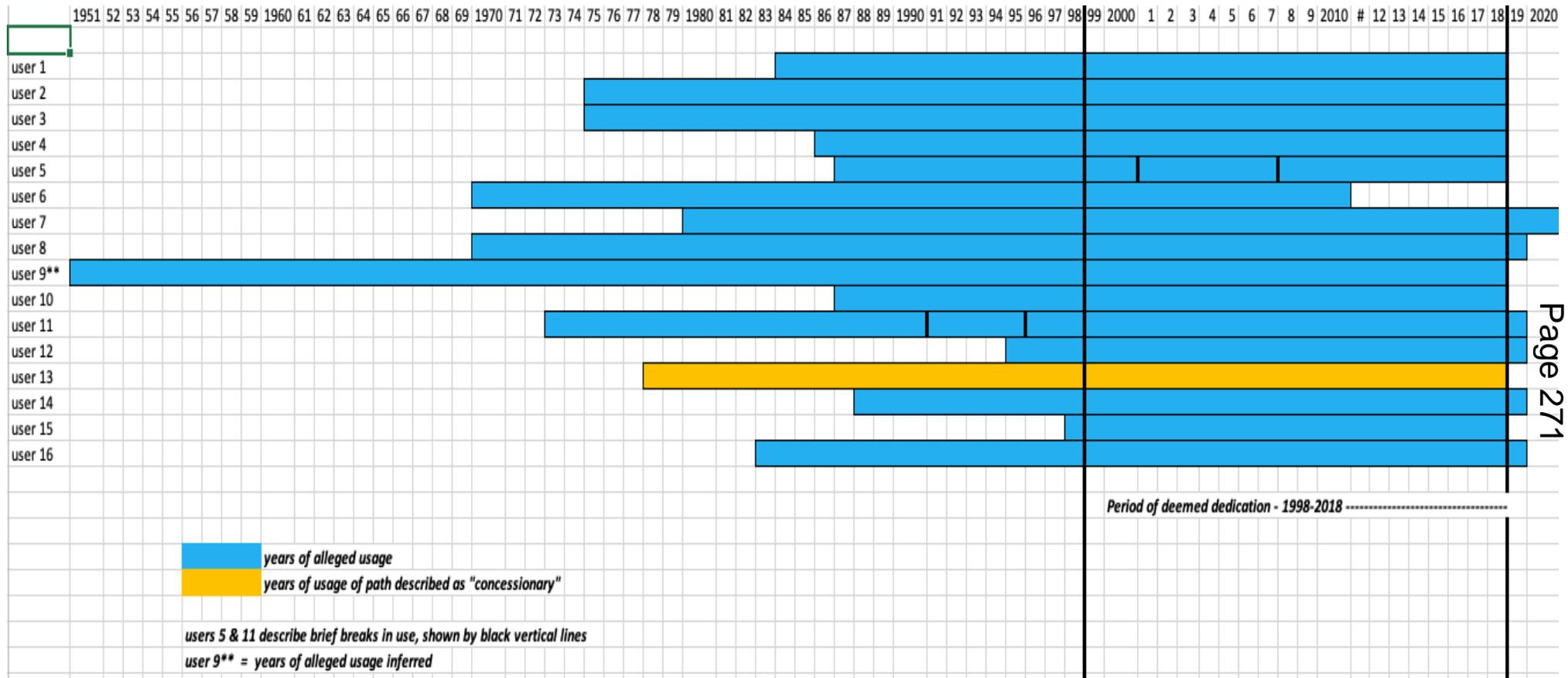
CRO = Cheshire Record Office

TNA = The National Archives, Kew

Primary Sources	Date	Site Shown/Mentioned	Reference Number/Source
County Maps			online – Cheshire Local History Society
Burdett	1794	Shown as a bounded lane	
Bryant	1819	Shown as a track, unbounded	
Swire & Hutchings	1830	Shown as a track, unbounded.	
Tithe Records			
Tithe Map	1848	The claimed route is shown as a clear physical track through route to Windmill Wood	CRO EDT 316/2
Finance Act	1910	Shows claimed route as physical track feature within 2 larger heraditaments	TNA XXXV 2 (sheet 291) CRO Working copy (MVB XXXV 2)
Bartholomews Map	1902 & 1941	Shows claimed route as uncoloured “other road)	PROW/Cheshire East Council
Ordnance Survey Maps			
O.S. 1” to1 mile 1 st Edition	1884	Shows clear through route of whole of claimed route	PROW/Cheshire East Council
O.S. 1st Edition 1:25 inch	1871	Shows clear through route of whole of claimed route	PROW/Cheshire East Council
O.S 2 nd Edition 1:25inch	1898	Shows clear through route of whole of claimed route	PROW/Cheshire East Council
O.S 3 rd Edition 1:25 inch	1909	Shows clear through route of whole of claimed route	PROW/Cheshire East Council
OS 1 Inch County Series maps	1887 - 1972	All show clear through route of whole claimed route	PROW/Cheshire East council

Local Authority Records			
Draft Map	1950's	Claimed route not shown only other PROW in area	PROW Unit
Provisional Map	1952	Claimed route not shown only other PROW in area	PROW Unit
Footpath Preservation Soc Map	1952	Does mark claimed route up clearly but them note to Omit	PROW Unit
Definitive Map & Statement	1953	Claimed route not shown only other PROW in area	PROW Unit
Aerial photos	1971-2017	All show clear through route of claimed route bounded by hedges in fields and entering Windmill wood	PROW Unit
Additional records			
Photos	2023	Site photos taken in 2023 of clamed route	PROW Unit – see photo sheet at Appendix 3
Photos	1978	Shows route completely open with no barriers.	PROW Unit
Photos	Various	Sheets provided by one of the users interviewed	PROW Unit
Planning Inspectorate Decision	1989	Relates to Public Footpath no: 11 in Windmill Wood	PROW Unit
Newspaper Cutting (Knutsford Guardian)	2018	Residents anger when Toft Estate close claimed route	PROW Unit

Appendix 2 – User evidence graph: Toft DMMO



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Appendix 3 - Photographs of Toft Church to Windomill Wood DMMO footpath claim

Photographs taken November 2023

1. Public Footpath no: 6 off public road leading to. Toft Church



2. Toft Church car park



3. Sign in Church Car park about private car park and dogs on leads.



4. Point A - start of claimed route from padlocked wooden field gate



5. Just few metres east of Point A - claimed route very overgrown and with high green mesh fence blocking access (installed more recently by Toft Estate)



6. Point B – Culvert/Bridge looking in direction of Point A. Old metal gate and large tree trunk across route. Route is therefore blocked off between A-B in recent times.



7. Route heading east from Point B bridge/culvert towards Point C into Windmill Wood



8. Point C where claimed footpath joins other public footpaths in Windmill Wood looking in direction of Point B.



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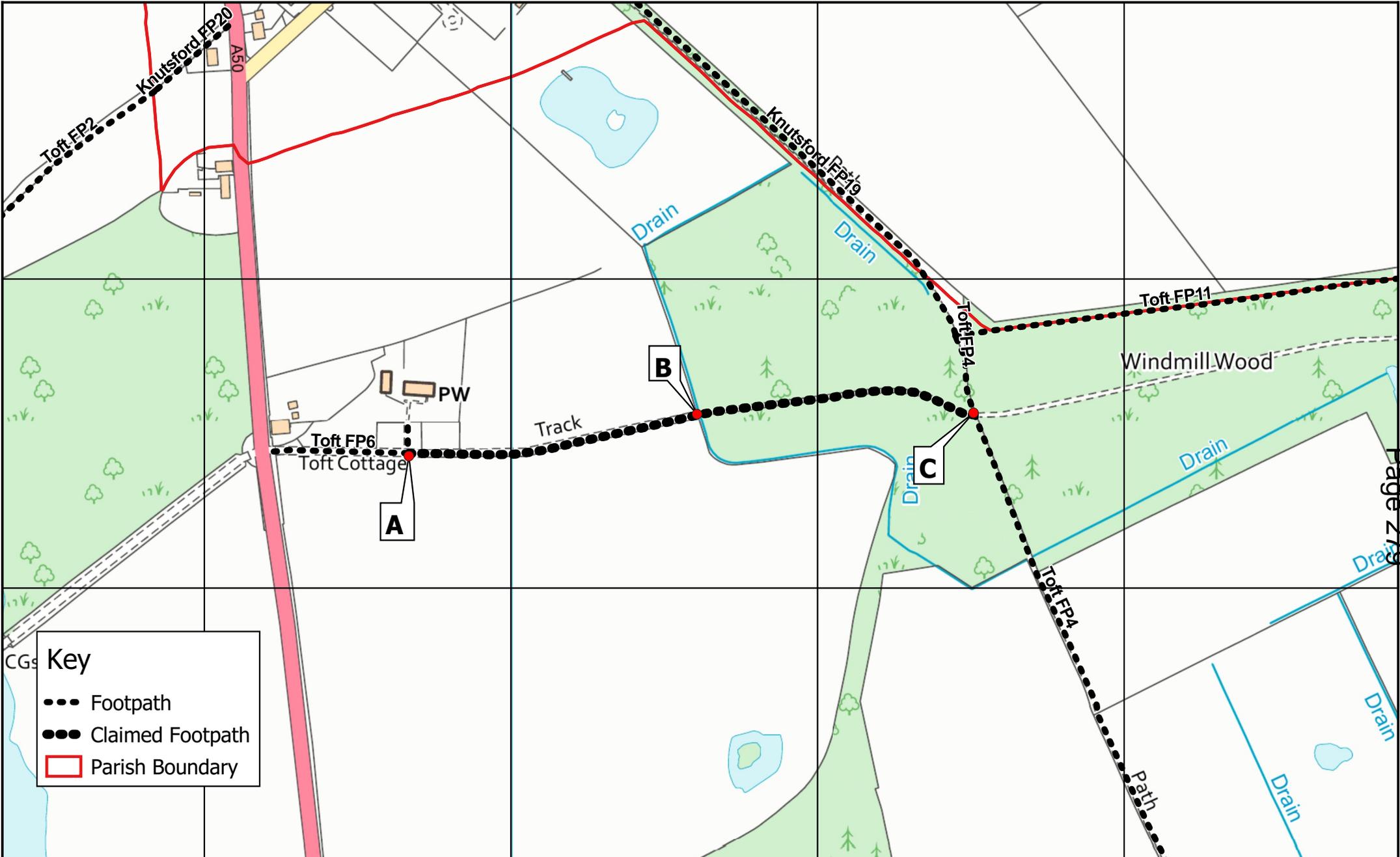
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Key

- Footpath
- Claimed Footpath
- ▭ Parish Boundary



1:4000

Wildlife & Countryside Act 1981 s.53
 Addition of a Footpath from Toft FP 6 to Toft FP 4
 Parish of Toft

Plan No.
 WCA/037

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



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**RE: APPLICATION FOR ADDITION OF A FOOTPATH TO DEFINITIVE MAP
FROM FOOTPATH NO 6 TO FOOTPATH NO 4 IN
WINDMILL WOOD IN PARISH OF TOFT**

INTERIM REPRESENTATIONS ON BEHALF OF LANDOWNER

Introduction

1. These are the interim representations of the Owner of Windmill Wood (“the Landowner”) in respect of the application (“the Application”) of Mr Brian Chaplin made on behalf of the South Knutsford Residents Group dated 26 February 2019 for the addition to the Definitive Map of a footpath between Toft Church at the end of Toft Footpath No 6 to Toft Footpath No 4 in Windmill Wood in the Parish of Plumley with Toft and Bexton (“the claimed route”).
2. The Landowner has had sight of the officer report of Mr Peter Skates, the Director of Growth and Enterprise at Cheshire East Council (“the Council”), dated 25 January 2023 (“the OR”). The Landowner is the owner of the land between points B-C of the claimed route as identified on the plan at Appendix 4 to the OR. In advance of inviting and receiving specific representations from the relevant landowners on the Application and its supporting evidence, it is noted that the OR pre-judges the matter by expressly recommending that a Definitive Map Modification Order (“DMMO”) be made by the Council. It has been stated in correspondence to the Landowner’s legal representatives that:¹

¹ E-mail from Clare Hibbert dated 6/2/24 at 1:09pm.

“As the report was deferred and you may have comments to make on the evidence, there may be minor amendments to be made to this report in advance of the next Committee”. (Emphasis added).

The Landowner reserves his position on the validity of that approach.

3. These representations are “interim” given that, despite numerous requests, the relevant background documentation supporting the OR was not provided to the Landowner until relatively recently. Further investigations are currently taking place in the light of that evidence provided, the results and implications of which will be provided to the Council when available. Even at this stage, unredacted versions of the user evidence forms and witness statements on the very basis of which the OR recommends that a DMMO be made have not been provided to the Landowner. The Landowner repeats its request for copies of such unredacted documentation in the interests of fairness to enable full and final representations to be made. There is a legal requirement for the Council to provide background documents relied upon in making a decision as contained in s.100D of the Local Government Act 1972, as amended. The user evidence on which the decision is based is not “exempt” given that such information is specifically provided by the authors to support an application to make a DMMO, which has implications not only to the public at large but very serious implications for relevant landowners. The identity of individuals who contend they have used the claimed route is vital to enable the Landowner to comment upon whether those particular users have used the claimed route “as of right”. In the absence of sight of such documentation on which basis the Council’s decision will be made, the Landowner is seriously and unfairly prejudiced. It is clearly in the public interest for the Landowner to be given a fair opportunity to comment upon such evidence in advance of any DMMO being made.

Legal Framework

4. In making its decision whether to make the DMMO, the Council must reach a careful and properly informed decision with a proper appreciation and weighing of all available evidence and of any legal principles that apply. In *R. v Isle of Wight County Council ex parte O’Keefe*,² Macpherson J. stated:

² (1990) 59 P. & C.R. 283 at 288.

“And in an opposed case the matter must still be "decided" properly, and with a proper appreciation and weighing of the available evidence and any legal principle which may have to be applied, since both the facts and the law bear upon the question whether or not a right of way can be shown to subsist or be reasonably alleged to subsist.”

In that case, the county council’s decision to make a DMMO was found to be unlawful in that the OR failed to fully and properly assess the objector’s evidence, and failed to properly assess the strength or otherwise of the applicant’s evidence in the light of the objector’s evidence. It is therefore imperative that full consideration is given to the Landowner’s evidence in determining whether to make an Order, and not merely to potentially make “*minor amendments*” to an existing committee report already recommending the making of a DMMO as a result of such evidence.

Previous Application

5. The first and crucial factual evidence of note is that the claimed route has been subject to a previous application to record it on the Definitive Map. That information is clearly set out in a previous Inspector’s decision dated 11 October 1989 (“the ID”), albeit the decision itself concerned a different route in Windmill Wood. Despite the author of the OR referring to the ID and thus being aware of it,³ no reference whatsoever is made in the OR to the previous unsuccessful application in relation to the claimed route, let alone an assessment of its implications. It is not only surprising, but extremely concerning, that such a crucial and highly relevant factual matter has not been addressed.

6. At paragraph 10 of the ID, the Inspector recorded the evidence of the County Council, the predecessor to the Council, as follows in relation to the claimed route at the time of the preparation of the Definitive Map in around 1953:

“The footpaths shown on the first draft of the Definitive Map included ... an east-west line from the Lodge to Toft Church along the carriageway through Windmill Wood. But following objections raised by the landowner the matter was reviewed at a hearing in 1963: it was decided that a case for that right of way had not been

³ See para 38 of OR.

established and it was deleted, except for a short section of about 100 metres between Toft Church and Holmes Chapel Road.”

That carriageway, namely the claimed route, was a private vehicular carriageway which had been used “*in days gone by*” to serve Toft Hall.⁴ It was found that no public footpath existed over it in 1963.

7. That previous application is of particular importance in that it is evidence that:
 - a. No public footpath was found to exist over the claimed route in 1963 after evidence was heard and assessed at a formal hearing.
 - b. The Council’s predecessors specifically acknowledged that position in 1989.
 - c. The landowners have consistently objected to any public rights of way existing over the claimed route.
 - d. The line of the claimed route was a private vehicular carriageway in the past. That explains its physical existence being depicted on old maps.
 - e. That application caused the landowner at the time, and subsequent landowners, to take specific measures thereafter to ensure no public right of way was created over the claimed route, as evidenced in the then landowner’s proof of evidence submitted to the 1989 inquiry, the contents of which were accepted by the Inspector.

Documentary Evidence

8. Turning to the available documentary evidence considered in the OR, which notably excludes the evidence of the previous 1963 decision and the evidence before the 1989 inquiry, the OR considers each document in turn. A number of Ordnance Survey maps are referred to between 1848 and 1972. It is pointed out in the OR that they show a route on the ground. However, it is well established that Ordnance Survey maps are not evidence of the status of a route, but only of what the surveyor physically found on the ground on the date of the survey. Indeed, they contain an express disclaimer to that effect.
9. In *Attorney-General v Antrobus*,⁵ Farwell J stated in relation to Ordnance Survey Maps:

⁴ Para 5 ID.

⁵ [1905] 2 Ch 188 at 203.

“Such maps are not evidence on questions of title, or questions whether a road is public or private, but they are prepared by officers appointed under the provisions of the Ordnance Survey Acts, and set out every track visible on the face of the ground, and are in my opinion admissible on the question whether or not there was in fact a visible track at the time of the survey.” (Emphasis added).

Similarly, in *Moser v Ambleside Urban District Council*⁶, Pollock MR stated:

“If the proper rule applicable to ordnance maps is to be applied, it seems to me that those maps are not indicative of the rights of the parties, they are only indicative of what are the physical qualities of the area which they delineate”. (Emphasis added)

More recently, Cooke J. observed in *Norfolk CC v Mason*:⁷

“Throughout its long history the OS has had a reputation of accuracy and excellence..... It has one major, self-imposed, limitation; it portrays physical features, but it expresses no opinion on public or private rights”. (Emphasis added).

10. Thus, although Ordnance Survey Maps may identify a visible route on the ground at the time of the survey, that is merely evidence of that physical feature and not of its status. Those maps are *not* evidence as to whether the claimed route is a public right of way.

11. The position is similar in relation to other maps referred to, and such limitation is expressly acknowledged in the OR. In relation to the county maps, it is stated at para 24 of the OR, *“they may provide supporting evidence of the existence of a route”*; whilst para 26 of the OR notes that Tithe Maps *“may provide good supporting evidence of the existence of a route”*. Further, there is no information provided by the Finance Act 1910 records to assist in demonstrating whether the claimed route had any public rights of way over it.

12. The OR goes on to refer to the Definitive Map records. Somewhat incredulously, it does not refer to the hearing in 1963 at which the inclusion of the claimed route was objected

⁶ (1925) 89 JP 118 at 119.

⁷ [2004] NR205111.

to and was subject to a formal hearing after which a decision was made that no public rights of way were shown to exist over it.

13. It is very clear from the documentary evidence that not one piece of evidence referred to in the OR supports the existence of public rights of way over the claimed route. Such evidence merely demonstrates that a physical route existed on the ground. The OR makes no reference to any of those documents identifying that the claimed route was a public right of way. At its very highest, the documentary evidence is neutral in effect in that regard. However, when the previous hearing is taken into account, the Definitive Map Records positively support a finding that there was no public right of way over it as of 1963.
14. Moreover, although the documentary evidence does indicate that a physical route existed on the ground, that has always been acknowledged. That was made clear in the ID at para 5 in which the Inspector described the claimed route which was used as a private vehicular carriageway in the past. That is further confirmed by the Council's interview notes with the landowner of A-B of the claimed route in which they explained: "*Historically the claimed route formed the private driveway that went from Chelford Road to the east past the church (pre church) to the Hall.*" It therefore clearly existed on the ground as a route. Yet, there is no evidence whatsoever that the public used it at that time or that any public rights existed over it. Instead, the evidence explains the reason for the claimed route being marked on the old maps as physically existing, which relevant factor is unfortunately not acknowledged in the OR.
15. It follows that there is no support from available documentary evidence to reasonably allege that the claimed route is a public footpath.

User Evidence

16. The issue then arising is whether the user evidence provided is such to demonstrate that a reasonable allegation has been demonstrated that the claimed route is a public footpath. In so recommending, despite doing so in advance of taking into account the Landowner's representations on the evidence, the OR suggests that there is such a reasonable allegation purely on the basis of the presumption of dedication contained in s.31 Highways Act 1980.

17. Any presumption of dedication under s.31 must be based upon a specific 20 year period which is to be “*calculated retrospectively from the date when the right of the public to use the way is brought into question*”: s.31(2). The claimed route is stated by users to have been obstructed by a fence in December 2018 which is regarded by the OR as having brought the public’s use of the route into question. The identified relevant period is therefore December 1998 until December 2018.
18. In order for the presumption to arise, the claimed route must have been “*actually enjoyed by the public as of right and without interruption for a full period of 20 years*”. In the absence of the unredacted statements of evidence of use by identified individuals, the Landowner reserves his right to adduce further evidence once such evidence being relied upon by the Council is made available.
19. However, in these interim representations, the Landowner firmly contends that, irrespective of other elements of the statutory criteria which he reserves the right to comment upon, particularly in respect of the extent of the use of the claimed route over the relevant 20 year period and any interruptions to that use, any such use has not been “as of right” throughout that period.

As of Right Use

20. In order to be “as of right”, the use must have been exercised “*nec vi, nec clam, nec precario*”, namely without force, without secrecy and without permission.
21. In assessing whether a use is without force, it is important to note that “force” for such purposes does not merely mean physical force. Use is by force in law, namely *vi*, if it involves climbing over or breaking down fences or gates, but also if it is done under protest and thus contentious, such as by ignoring clear and visible signs or challenges made. Hence, Lord Rodger stated in the Supreme Court in *Lewis v. Redcar and Cleveland Borough Council (No.2)*⁸ that:

“*it would be wrong to suppose that user is ‘vi’ only where it is gained by employing some kind of physical force against the owner. In Roman law, where the expression*

⁸ [2010] 2 AC 70 at [88].

originated, in the relevant contexts vis was certainly not confined to physical force. It was enough if the person concerned had done something which he was not entitled to do after the owner had told him not to do it. In those circumstances what he did was done vi”.

22. In relation to signs or notices erected by a landowner, the issue of *vi* was considered by the Court of Appeal in *Betterment Properties (Weymouth) Limited v. Dorset County Council*,⁹ which was not affected by the subsequent decision of the Supreme Court. Patten LJ stated:-

“if the landowner displays his opposition to the use of his land by erecting a suitably worded sign which is visible to and is actually seen by the local inhabitants then their subsequent use of the land will not be peaceable. It is not necessary for Betterment to show that they used force or committed acts of damage to gain entry to the land. In the face of the signs it will be obvious that their acts of trespass are not acquiesced in.”

23. However, signs are often repeatedly removed after being erected and re-erected, placing a landowner in a difficult position with users then contending they never saw the signs. That issue in the context of use being *vi* was also considered by the Court of Appeal in *Betterment Properties* in which Patten LJ stated:-

*“It seems to me that there is a world of difference between the case where the landowner simply fails to put up enough signs or puts them in the wrong place and a case such as this one where perfectly reasonable attempts to advertise his opposition to the use of his land is met with acts of criminal damage and theft. The judge has found that **if left in place**, the signs were sufficient in number and location; and were clearly enough worded; **so as to bring to the actual knowledge of any reasonable user of the land that their use of it was contentious**. In these circumstances is the landowner to be treated as having acquiesced in that user merely because a section of the community (I am*

⁹ [2012] EWCA Civ 250 at [8].

prepared to assume the minority) were prepared to take direct action to remove the signs?”¹⁰ (Emphasis added).

He went on to state:-

“It would, in my view, be a direct infringement of the principle (referred to earlier in the judgment of Lord Rodger on Redcar (No. 2)) that rights of property cannot be acquired by force or by unlawful means for the Court to ignore the landowner's clear and repeated demonstration of his opposition to the use of the land simply because it was obliterated by the unlawful acts of local inhabitants. Mrs Taylor is not entitled in effect to rely upon this conduct by limiting her evidence to that of users whose ignorance of the signs was due only to their removal in this way. If the steps taken would otherwise have been sufficient to notify local inhabitants that they should not trespass on the land then the landowner has, I believe, done all that is required to make users of his land contentious.”¹¹

24. Thus, the legal position is that provided the landowner has erected signage of such a nature that, if left in place, a reasonable user would have been aware that their use of the land was contentious, then such use is not as of right. If such signage has been continually removed, that fact cannot be relied upon by users. A landowner is only required to erect such signage as is reasonable, and to replace it insofar as reasonable.
25. Applying those legal principles to the available evidence, it is abundantly clear that the landowners have, over the years, continually erected signage in Windmill Wood indicating that the public must not trespass in the Wood other than to use the public footpaths. Any use of the Wood other than via the footpaths, which are clearly signed, was contentious and so not as of right.
26. The following pieces of entirely consistent evidence are of particular note in that regard. In his Proof of Evidence to the 1989 Inquiry, the then landowner of Windmill Wood, who had owned it since 1978, stated, in evidence that was subject to an inquiry process, that he had taken extensive steps to indicate that the Wood was private. Signs were

¹⁰ At [60].

¹¹ At [63].

erected stating “private woodland – keep out – no right of way”. Those signs applied to the entire Wood. They were continually removed and he replaced them. In addition, of specific relevance to the claimed route, he stated at para 1(iv) of his Proof that:

*“After all the vandalism I decided that steel signs were needed instead of wooden ones on the trees and in 1979 onwards I erected steel signs on the trees. There is a sign at each end of the proposed footpath. Further, **there have been similar signs at each end of the path running from Chelford Road through Windmill Wood to the church.**”* (Emphasis added).

27. Importantly, that evidence of signage was accepted by the Inspector. Moreover, in the ID at para 36, he notes and accepts the evidence that the previous landowner prior to 1978 took all reasonable steps, particularly after the 1963 hearing, to ensure that trespassers were warned off the Wood *in its entirety* by way of notices, fencing and by his staff.
28. The County Council, as the Council’s predecessors, did not contest the evidence of signage. It was noted at para 6 ID that in a letter dated 1 December 1980 from the landowner of the Wood between 1962 and 1978, he stated that throughout his period of ownership, active steps were taken to prevent access to the Wood by fencing, turning back trespassers, and indicating by notices that the Wood was private and the public were to keep to the footpath, namely Toft No. 4.
29. The landowner of the Wood from 1978 until 2023, namely throughout the entire relevant 20 year period, has given sworn evidence in a statutory declaration as to the steps he took throughout his period of ownership to indicate that the Wood was private land. The contents of his statutory declaration are of crucial significance. He confirms his evidence given to the 1989 Inquiry. He emphasises that the signage erected applied to *the entire Wood*. He was thereby making it clear that the Wood *as a whole* was private land and the public were not entitled to trespass on any part of it, save to use the recognised footpaths. At para 38, he points out:

“As stated, signs were put up along the route of the claimed footpath and at the end of the claimed footpath at the boundary of land with Toft Church. The signs at the

boundary were placed on a tree by a gate. The sign was facing Toft Church to deter trespassers coming on to the land. The signs were constantly removed/vandalized throughout our ownership and invariably took different forms, whether size, content, or its material. One thing is certain, we continually placed signs telling people to keep off the land and that it was private.”

He goes on at para 41 to confirm he continued to put signs up *along the claimed route*, but they were removed or vandalized. Further, throughout his ownership, he always challenged trespassers in the Wood, including in the area of the claimed route: para 42. He then makes the very telling observation at para 43 as to why he would have gone through all the stress, time, effort and cost of defending the application in 1989 and then not have continued to protect the Wood as he had done previously. It would have been nonsensical for him to take that approach in such circumstances.

30. Such evidence by the landowner over the relevant 20 year period is extremely compelling, and is entirely consistent with that contained in his Proof of Evidence many years earlier, which evidence was not contested by the County Council and was accepted by an Inspector. To summarily dismiss it on the basis that no photographs of the signs have been produced, as the OR seeks to do, entirely fails to assess that detailed evidence either properly or at all or to give it any appropriate consideration.

31. Moreover, that evidence is supported by that of the Ward Councillor. He specifically notes in his correspondence to the Council dated 21 April 2019 that:

“The Windmill Wood section has never been ‘permissive’ with many ‘private’ warning signs fixed to trees for many years of which there is pictorial evidence.”

That cogent independent evidence is simply not referred to in the OR for no explicable reason. It is clearly a highly relevant piece of available evidence to be taken into account.

32. Furthermore, the information supplied by the landowner of A-B of the claimed route further supports the erection of signage all over the Wood, and yet that evidence has

similarly not been properly assessed in the OR. It was pointed out by that landowner in interview that there had always been a sign up at the point where the claimed route meets Windmill Wood along the lines of no public access, and that the previous owners of the Wood (Redacted) “had put signs up all over wood”.

33. In addition, although photographic evidence is not a pre-requisite, there is a photograph of one sign in any event in a newspaper article dated 2 November 1994, within the relevant 20 year period, annexed to (Redacted) sworn statutory declaration. The contents of the press article are also particularly noteworthy in which it is stated:

“Walkers are angry at being told to keep to the path in a woodland in Knutsford. Signs have been pinned to trees in Toft Wood banning trespassers.”

It is reported that one local walker informed the press “that dog walkers were ‘up in arms’ about the new signs”. That supports the evidence that signs requiring the public to keep to the footpath were erected in the Wood and that dog walkers were aware of them.

34. Therefore, there is an abundance of consistent evidence that signage was erected in the Wood during the relevant 20 year period clearly informing the public that they were required to keep to the footpaths, which were notably signed. Despite frequent vandalism of such signage, it was regularly replaced by the then landowner. Such evidence is extensive and over a significant period of time, including evidence from an Inspector, the County Council, a Ward Councillor, and the views of local walkers given to the press. In the particular circumstances, the relevant landowner could do no more. That clear, cogent, extensive and consistent evidence clearly demonstrates that the use during the relevant period was *vi* and so not as of right. The Landowner also provided details of Parish Councillor, (Redacted), to the Council whom it is understood supported the position that (Redacted) regularly requested trespassers not to use the Wood. As far as the Landowner is aware, Councillor (Redacted) has regrettably not been asked to provide any evidence.

35. In addition, there is also evidence of challenges being made to users, which also results in the use being *vi*. Such references are made in both Mr and Mrs (Redacted) respective

statutory declarations. Indeed, Mrs Redacted notes her husband was assaulted on a number of occasions when requesting users to leave due to trespassing, resulting in several incidents being reported to the police and she identifies the crime reference numbers received. It should be noted that Mr and Mrs Redacted owned and occupied the Wood from 1978 to 2021 save for a three year period from 2009 to 2021 and were not therefore absent landowners. Moreover, Mr and Mrs Redacted no longer have any legal or personal interest in the Wood nor do they have any connect with the current Landowner.

36. It is thus evident that there can be no reasonable allegation that the use has been as of right throughout the relevant 20 year period in the light of such clear and cogent evidence that the use was with force.

37. Furthermore, even if the s.31 presumption of dedication was established, the above evidence is also sufficient to demonstrate that the relevant landowner did not have any intention to dedicate the claimed route as a public footpath during the relevant 20 year period and so the proviso to s.31 would be established.

Conclusion

38. In conclusion, the available evidence when considered as a whole fails to demonstrate a reasonable allegation that a public footpath subsists over the claimed route. Instead, the consistent evidence of the actions of the relevant landowners from the 1960's onwards to date serves to demonstrate that there has been no dedication of the claimed route, and that the statutory criteria for presumed dedication under s.31 of the Highways Act 1980 is not established. It follows that the legal test for making a DMMO is not met, and the Council ought to determine not to make the Order sought.

39. We reserve our position to submit further evidence in relation to this matter for the reasons referred to in paragraph 3 above.

DATED: 18 March 2024

Ruth Stockley K.C.

Kings Chambers

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Highways and Transport Committee Work Programme 2024-25

Report Reference	Highways and Transport Committee	Report Title	Purpose of Report	Lead Officer	Consultation	Equality Impact Assessment	Corporate Plan Priority	Part of Budget and Policy Framework	Exempt Item
April 2024									
HTC/01/24-25	04/04/24	A500 Update	To update committee on progress and make decisions on the Compulsory Purchase Orders for the A500 Dualling scheme	Director of Highways and Infrastructure	No	Yes	Open	Yes	No
HTC/36/23-24	04/04/24	PROW: Graveyard Lane, Mobberley Definitive Map Modification Order Application	The report outlines the investigation of an application to amend the Definitive Map and Statement by adding a public bridleway. This 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.	Acting Executive Director, Place	Yes	No	Green	No	No
HTC/34/23-24	04/04/24	PROW: Toft Definitive Map Modification Order Application	The report outlines the investigation of an application to amend the Definitive Map and Statement by adding a public footpath. This 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.	Acting Executive Director, Place	Yes	No	Green	No	No

Highways and Transport Committee Work Programme 2024-25

HTC/03/ 24-25	04/04/24	Finalising application for a Lane Rental Scheme	To outline the process required to develop a Lane Rental Scheme, and to seek approval to develop and consult upon a proposed scheme.	Director of Highways and Infrastructure	Yes	Yes	Open	No	No
HTC/04/ 24-25	04/04/24	Bus Service Review	To present and seek approval of a methodology for carrying out a strategic review of the bus network in Cheshire East and the Council's associated support. The report will also seek approval to launch a consultation to seek the views of service users, the bus industry, stakeholders and wider public.	Director of Highways and Infrastructure	Yes	Yes	Open	No	No
HTC/05/ 24-25	04/04/24	Ward Member Budget Scheme Update	To provide an update on the use of ward member allocations for Highways.	Director of Highways and Infrastructure	No	No	Open	No	No
HTC/11/ 24-25	04/04/24	PROW: Tegg's Nose, Macclesfield Definitive Map Modification Order Application	The report outlines the investigation of an application to amend the Definitive Map and Statement by adding a public right of way. This 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.	Acting Executive Director, Place	Yes	No	Green	No	No
HTC/12/ 24-25	04/04/24	PROW: Buerton Definitive Map Modification Order Application	The report outlines the investigation of an application to amend the Definitive Map and Statement by adding a public bridleway. This includes a discussion of the consultations carried out in respect of the claim, the historical evidence and the legal tests for a Definitive Map Modification Order to be made. The report makes a	Acting Executive Director, Place	Yes	No	Green	No	No

Highways and Transport Committee Work Programme 2024-25

			recommendation based on that information, for quasi-judicial decision by Members.						
June 2024									
HT/26/2 1-22	20/06/24	Flowerpot Junction Improvement Scheme	<p>Authorise to make Compulsory Purchase Orders and Side Roads Orders for the delivery of the Flowerpot Junction Improvement Scheme.</p> <p>Approve the forward funding of the additional developer contributions in accordance with the capital programme</p>	Director of Highways and Infrastructure	No	No	Green	Yes	Yes
HTC/06/ 24-25	20/06/24	Service Budgets 2024/25 (Highways & Transport Committee)	The purpose of this report is to set out the allocation of approved budgets for 2024/25 for services under the Committee's remit, as determined by Finance Sub Committee	Director of Finance and Customer Services	No	No	Open	Yes	No
HTC/13/ 24-25	20/06/24	Extent of Highway Adoptions - Grange Way Estate	to brief the committee on the outcome of the due diligence undertaken across plots of land on the Grange Estate, Sandbach Elworth in the context of these continuing to be maintained at public expense as part of the adopted highway.	Director of Highways and Infrastructure	No	No	Open	Yes	No
HTC- 10/24/25	20/06/24	Parking Permits	To provide members with an overview of the type of permits available for use in Cheshire East Council car parks	Director of Highways and Infrastructure	No	No	Open	Yes	No
HTC/15/ 24-25	20/06/24	Appointments to Sub Committees, Working Groups, Panels, Board and Joint Committees	To appoint members to the Public Rights of Way Consultative Group and to agree the Terms of Reference for the Public Rights of Way Consultative Group and to note the membership of the Enhanced Partnership Board.	Head of Democratic Services and Governance	No	No	Open	No	No

Highways and Transport Committee Work Programme 2024-25

September 2024									
HT/45/2 2-23	19/09/24	A500 Dualling – Approval to submit Full Business Case	To approve the full business for the scheme for submission to DfT	Director of Highways and Infrastructure	No	No	Green	No	No
HTC/07/ 24-25	19/09/24	Crossings Strategy Consultation Outcome Report	Feedback following consultation	Director of Highways and Infrastructure	No	No	Open; Green; Fair	No	No
HTC/09/ 24/25	19/09/24	National Parking Platform Update	To provide committee with a status update on the development of the National Parking Platform and to consider its application in Cheshire East	Director of Highways and Infrastructure	No	TBC	Open	No	No
November 2024									
HTC/09/ 23-24	21/11/24	Tree Planting and Verge Maintenance (Nature Based Approach) Policy	To seek approval for highways to adopt a tree planting and verge maintenance policy to allow its implementation from 2023/24 onwards.	Director of Highways and Infrastructure	Yes	No	Open; Green	Yes	No
HTC/14/ 24-25	21/11/24	Application to approve a Lane Rental Scheme	To outline the process required to develop a Lane Rental Scheme and to consider implementation of the scheme	Director of Highways and Infrastructure	No	Yes	Open	No	TBC