

# Public Rights of Way Sub Committee

## Agenda

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**Date:** Monday 3 July, 2023  
**Time:** 2.00 pm  
**Venue:** Committee Suite 1,2 & 3, Westfields, Middlewich Road,  
Sandbach CW11 1HZ

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

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

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

1. **Appointment of Chair**

To appoint a Chair for 2023/24.

2. **Appointment of Vice Chair**

To appoint a Vice Chair for 2023/24.

3. **Apologies for Absence**

To note any apologies for absence from Members.

4. **Declarations of Interest**

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

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

To approve the minutes of the meeting held on 13 March 2023.

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For requests for further information

**Contact:** Nikki Bishop

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**E-Mail:** [Nikki.bishop@cheshireeast.gov.uk](mailto:Nikki.bishop@cheshireeast.gov.uk)

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

In accordance with Public Speaking Appendix, members of the public may speak on a particular application after the Chair has introduced the report, provided that notice has been given in writing to Democratic Services three clear working day before the meeting. A total of 6 minutes is allocated for each application, with 3 minutes for objectors and 3 minutes for supporters. If more than one person wishes to speak as an objector or supporter, the time will be allocated accordingly or those wishing to speak may agree that one of their number shall speak for all.

Also in accordance with the Committee Procedural Rules and Public Speaking Appendix a total period of 15 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the body in question. Individual members of the public may speak for up to 2 minutes but the Chair will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.

Members of the public wishing to speak are required to provide notice of this at least three clear working days' in advance of the meeting and should include the question with that notice.

7. **Wildlife and Countryside Act 1981- Part III, Section 53 Application No. MA/5/231: Applications for the Upgrade of Footpaths Nos.23 and 25, Great Warford to Bridleway** (Pages 15 - 36)

To consider an application to amend the Definitive Map and Statement to upgrade Footpaths Nos.23 and 25, Great Warford to Bridleways.

8. **Wildlife & Countryside Act 1981 - Part III, Section 53. Application No.CO/8/56: Application to add a Public Footpath between Wright Lane and Footpath No.14 Sandbach** (Pages 37 - 56)

To consider an application to amend the Definitive Map and Statement to add a public footpath between Wrights Lane and Footpath No.14 in the town of Sandbach.

9. **Highways Act 1980 Section 119 Proposed Diversion of Public Footpath No. 7 in the Parish of Brindley** (Pages 57 - 66)

To consider an application to divert part of Public Footpath No. 7 in the Parish of Brindley following receipt of an application from the landowner.

10. **Town and Country Planning Act 1990 Section 257 Proposed Diversion of Public Footpath No. 5 in the Parish of Crewe** (Pages 67 - 74)

To consider an application to divert part of Public Footpath No. 5 in the Town of Crewe following receipt of an application from a developer.

11. **Public Rights of Way Annual Report 2022-23** (Pages 75 - 104)

To receive the Public Rights of Way Annual Report 2022-23.

**Membership:** Councillors H Faddes, L Crane, A Coliey, S Edgar, A Harrison, R Moreton, K Parkinson.

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**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Public Rights of Way Sub Committee**  
held on Monday, 13th March, 2023 in the Committee Suite 1,2 & 3,  
Westfields, Middlewich Road, Sandbach CW11 1HZ

**PRESENT**

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

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

**OFFICERS IN ATTENDANCE**

Richard Doran, Countryside Service Development Manager  
Genni Butler, Acting Public Rights of Way Manager  
Laura Allenet, Public Path Orders Officer  
Claire Hibbert, Definitive Map Officer  
Jennifer Ingram, Definitive Map Officer  
John Lindsay, Definitive Map Officer  
Vicky Fox, Planning and Highways Lawyer  
Nikki Bishop, Democratic Services Officer  
Karen Shuker, Democratic Services Officer

**20 APOLOGIES FOR ABSENCE**

There were no apologies for absence.

**21 DECLARATIONS OF INTEREST**

In the interests of openness and transparency Councillor Laura Crane declared that, as a Sandbach Ward Member (Wheelock), she had a personal interest in item 8 however this interest was neither disclosable pecuniary or prejudicial.

**22 MINUTES OF PREVIOUS MEETING****RESOLVED**

That the minutes of the meeting held on 5 December 2022 be confirmed as a correct record.

**23 PUBLIC SPEAKING TIME/OPEN SESSION**

Mr David Nixon, Moston Parish Councillor, addressed the Committee in relation to item 7 - Wildlife & Countryside Act 1981 - Part III, Section 53.

Application No. CO/8/41: Application for the addition of a Public Bridleway, Watch Lane, Moston.

Mr Nixon complimented Officers on their work carried out on the investigation into the application and stated that he understood the recommendation to add a Restricted Byway based on the balance of probabilities.

Mr Nixon informed the Committee that there were concerns amongst local residents of Moston in relation to antisocial behaviour, fly tipping and the use of drugs in the area of Watch Lane which became prevalent in 2000. Since the installation of a barrier by Elworth Angling Society close to the Red Lane end of Watch Lane the issues with antisocial behaviour, fly tipping and the use of drugs ceased in this area of the application. However, these issues were still prevalent in the area close to Watch Lane Farm where no barrier had been installed. Mr Nixon stated that there were also issues with vehicles becoming stuck on this part of Watch Lane and suggested that signage was needed.

Mr Nixon stated that there was now a sense of relief within the local community that the investigation found no evidence of challenge to public use, apart from the erection of signs and bollards to prevent vehicular access. Local residents were pleased that the barrier installed by the Elworth Angling Society would not need to be removed. Mr Nixon stated that he and local residents would like to see a similar barrier installed near Watch Lane Farm.

**24 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:  
PROPOSED DIVERSION OF PUBLIC FOOTPATH NO. 36 IN THE  
TOWN OF SANDBACH (PART)**

The Committee considered a report detailing the investigation to divert part of Public Footpath No. 36 in the town of Sandbach following receipt of an application from Network Rail to reconstruct a footbridge over the railway to the north of Sandbach Station.

In accordance with Section 257 of the Town and Country Planning Act 1990 ("TCPA") as amended by Section 12 of the Growth and Infrastructure Act 2013:

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

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

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

Diversion of part of Public Footpath No.36 had been requested to allow for the proposed works to reconstruct the footbridge as detailed in Planning Application 22/1649C (which had subsequently been approved). It was noted that the existing alignment of Public Footpath No.36 would be directly affected by the construction of a new footbridge over the railway therefore the diversion was required to preserve the public right of way.

The Committee considered the application and noted that no objections had been received from the Ward Member for Sandbach Elworth, Sandbach Town Council, the user groups, statutory undertakers, and the Council's Nature Conservation Officer. Peaks and Northern Footpaths Society had subsequently submitted comments confirming that they were content with the proposals.

The Committee concluded that it was necessary to divert part of Public Footpath No.36 in the Town of Sandbach to enable the proposed works to be carried out.

**RESOLVED (unanimous)**

That

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

**25 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53. APPLICATION NO. MA/5/245. APPLICATION FOR THE ADDITION OF PUBLIC FOOTPATHS AT PLUMLEY NATURE RESERVE / LIME BED**

The Committee considered a report detailing the investigation into an application made by Plumley with Toft and Bexton Parish Council in 2010 and registered in 2011, to amend the Definitive Map and Statement to add various public footpaths to the site known as Plumley Nature Reserve / Plumley Lime beds.

Section 53 (2)(b) of the Wildlife and Countryside Act 1981 required that the Council should keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear

requisite in consequence of the occurrence of certain events, as set out within the officer report.

The Committee considered the application and noted that during the consultation period with the Chelford Ward Member; Plumley with Toft and Bexton Parish Council, landowners, user groups/organisations and statutory stakeholders no objections were raised. However; landowner 2 had subsequently voiced concerns around the environment and conditions of the site and had since expressed further concerns around health and safety and antisocial behaviour.

It was highlighted by the Cheshire East Council Nature Conservation Officer that the application site was designated as a Site of Special Scientific Interest. A local resident also responded to put on record their agreement for a footpath on the site.

The Committee considered the evidence submitted which consisted of user evidence forms, a sales particular document and photographs. A total of 12 user evidence forms were submitted demonstrating use on foot. Out of the 12 witnesses, only two were available for interview. Use had covered a 57 period in total with 10 of the 12 witnesses having used the route during the relevant period of 1989 to 2009, when the use was challenged by locked gates and signage. All the use appears to have been “as of right” rather than “by right” without any interruption for a full 20-year period.

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”.

The Committee agreed that, on the balance of probabilities, the requirements of Section 53(3)(c)(i) had been met and that a Definitive Map Modification Order should be made to add the public footpaths (outlined in Plan No. WCA/028) at the Plumley Nature Reserve / Lime Beds site and thus amend the Definitive Map and Statement. However it was considered there was not enough evidence, of use of the spurs D-X and F-Y.

**RESOLVED (unanimous):**

That

- 1) An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement

by adding Public Footpaths at the Plumley Nature Reserve / Plumley Lime beds site as shown between points A-B-C-D-A and A-E-F-G on Plan No. WCA/028.

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

**26 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53. APPLICATION NO. CO/8/41: APPLICATION FOR THE ADDITION OF A PUBLIC BRIDLEWAY, WATCH LANE, MOSTON**

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

Section 53 (2)(b) of the Wildlife and Countryside Act 1981 required that the Council should keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events, as set out within the officer report.

The Committee considered the application and noted that following consultation with the Local Ward Member, Moston Parish Council, user groups/organisations, statutory undertakers and landowners that two responses had been received. Moston Parish Council indicated their strong support for the application. The Green Lane Association responded to state that the claimed route had been part of the Ordinary Road Network since the earliest map (Swire and Hutchings' Map 1830) and that the Definitive Map Modification Order determination should not be concluded with the recording of a Public Right of Way, but rather the Council's Highways records should reflect the existence of a public all-purpose carriageway. Subsequently, an email had been received from the Treasurer of Elworth Angling Society representing the club and its members. He stated that when approached in 2014 the view of the Angling Society was that it would have little detriment to the Society if the path was made into a public footpath or bridleway as use by the public was sporadic. However, the Treasurer stated that the Society had concerns around the increase of use and that there were issues with irresponsible dog walkers and consequently, the Elworth Angling Society objected to the application.

The Committee considered evidence submitted and researched in the assessment of the application which consisted of use on foot, horseback and pedal cycle by individual witnesses over a period of over twenty years. The documentary evidence considered in this case demonstrated the existence of the route known as Watch Lane as a bounded lane which included the claimed route that was clearly part of the Ordinary Road Network from early commercial maps.

Councillor Gilbert referred to the length of highway that would remain adopted (western end of Watch Lane) and the issues this could give rise to in the future. Officers confirmed that signage could be installed at Crabmill Lane to make it clear this is not a through route for vehicles.

The Committee concluded that the evidence in support of the claim, on the balance of probabilities, that restricted byway rights subsist along the claimed route.

**RESOLVED (by majority)**

That

- 1) An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to add a Restricted Byway as shown between points A and B on Plan No. WCA/027.
- 2) Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Act.
- 3) In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

**27 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53. APPLICATION NO.CO/8/49: APPLICATION TO ADD A PUBLIC FOOTPATH BETWEEN DINGLE LANE AND FOOTPATH NO.11 SANDBACH**

The Committee considered a report detailing the investigation into an application made by Mr Trevor Boxer (Sandbach Footpath Group) to amend the Definitive Map and Statement to add a public footpath between Dingle Lane and Footpath No.11 in the town of Sandbach.

Section 53 (2)(b) of the Wildlife and Countryside Act 1981 required that the Council should keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events, as set out within the officer report.

The Committee considered the application and noted that following consultation with Sandbach Ward Members, Town Council, user groups/organisations, statutory undertakers and landowners that no objections had been received.

The Committee considered evidence submitted and researched in the assessment of the application which consisted of use on foot by individual witnesses over a period of twenty years and historical documents that demonstrated the existence/status of the route over a period of 200 years.

Members sought reassurance that this particular application had not been prioritised over other more applications where use had been challenged. Officers confirmed that the applicant had made an application to the Secretary of State in 2021 because the application had not been determined within 12 months. A direction to determine the application by February 2023 was received.

Members queried the application process involving witnesses aged 70+. It was confirmed that within the Statement of Priorities under which all applications are considered, there was an allocation given to those witnesses aged 70 and above.

Committee Members concluded that the balance of user evidence combined with documentary evidence clearly supported the case that a public footpath subsisted along the routes A-B (Plan No WCA/262/029) and therefore the requirements of Section 53(c)(i) had been met.

**RESOLVED (unanimous)**

That

- 1) An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to add a footpath as shown between point A and B on Plan No. WCA/262/029 at Appendix 3.
- 2) Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the of the power conferred on the Council by the said Act.
- 3) In the event of objections to the Order being received, Cheshire East Borough Council.

**28 INFORMATIVE REPORT: SECRETARY OF STATE DECISIONS FOR HIGHWAYS ACT 1980 S119 DIVERSION OF FOOTPATH NO. 4 PARISH OF POOLE, DIVERSION OF FOOTPATH NO. 5 IN THE PARISH OF ADLINGTON AND DIVERSION OF FOOTPATH NO. 2 IN THE PARISH OF EATON.**



The Committee received an informative report detailing a decision made by the Planning Inspectorate on behalf of the Secretary of State on the Orders made by the Council to divert Footpath No. 4 in the Parish of Poole, Footpath No. 5 in the Parish of Adlington and Footpath No. 2 in the Parish of Eaton under the Highways Act 1980 s119.

Committee Members noted that:

- Footpath No.4 (Part) Parish of Poole for a Public Path Diversion Order was confirmed by the Planning Inspectorate on 15 March 2022.
- Footpath No.5 (Part) Parish of Adlington for a Public Path Diversion Order was confirmed by the Planning Inspectorate on 1 June 2022.
- Footpath No.2 (Part) Parish of Eaton for a Public Path Diversion Order was modified and confirmed as unopposed on 3 November 2022.

**RESOLVED:**

That the report be noted.

**29 INFORMATIVE REPORT: SECRETARY OF STATE DECISION FOR WILDLIFE AND COUNTRYSIDE ACT 1981 - PART III, SECTION 53. APPLICATION TO UPGRADE PUBLIC FOOTPATHS NOS. 8 MARBURY CUM QUOISLEY AND NO. 3 WIRSWALL TO BRIDLEWAYS**

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

The Committee noted that the Order was confirmed by the Planning Inspectorate on 6 August 2020 and that Public Footpaths No. 8 and No. 3 were now open as Bridleways.

**RESOLVED:**

That the report be noted.

**30 INFORMATIVE REPORT: PUBLIC RIGHTS OF WAY FEES AND CHARGES 2023-24**

The Committee received an information report which outlined the fees and charges for 2023-24 for charged-for services provided by the Public Rights of Way team.



**RESOLVED:**

That the report be noted.

The meeting commenced at 2.00 pm and concluded at 2.50 pm

Councillor L Crane (Chair)

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

**03 July 2023**

**Wildlife and Countryside Act 1981– Part III,  
Section 53 Application No. MA/5/231:  
Applications for the Upgrade of Footpaths  
Nos.23 and 25, Great Warford to Bridleway.**

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**Report of: Peter Skates, Director of Growth and Enterprise**

**Ward(s) Affected: Mobberley**

### **Purpose of Report**

- 1 The report outlines the investigation of an application made by Mrs L Roberts to amend the Definitive Map and Statement by the upgrading of two public footpaths to bridleways. 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 as to whether an Order should be made to upgrade the Footpaths to Bridleways.
2. The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

### **Executive Summary**

3. The report considers the evidence submitted and researched in the application to upgrade Public Footpaths Nos. 23 and 25 Great Warford to bridleways. The evidence consists of some use on horseback by individual witnesses and the submission of historical documents. The report determines whether on the balance of probabilities the status of public bridleways has been shown to subsist. The depiction of the routes as historical physical features in full or in part, is demonstrated through various maps such as County Maps and Ordnance Survey maps, Finance Act plans and Tithe Map and apportionment. There is very little user evidence, only two users with use spanning one year and

six years respectively. The evidence investigated has clearly shown the existence of the route over a significant time period but the status of the route has not been demonstrated so far as to indicate that a bridleway subsists on the balance of probabilities.

## RECOMMENDATIONS

The Public Rights of Way Sub Committee is recommended to:

1. Decide that a Modification Order **not** be made under s.53 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to upgrade Public Footpaths Nos. 23 and 25 Great Warford to bridleway.
2. Decide that the application be refused on the grounds that there is not sufficient evidence to demonstrate that a bridleway subsists on the balance of probabilities.

## Background

### 3. *Introduction*

- 4.1. This application was submitted in June 2004 by Mrs L Roberts to modify the Definitive Map and Statement for the Parish of Great Warford by upgrading Public Footpaths Nos. 23 and 25 to bridleways. The application consisted of user evidence from two individuals claiming use on horseback and references to multiple historical documents including the Tithe Map; Finance Act Map; hereditament & Field Books; County Maps; Ordnance Survey maps & an extract from an Ordnance Survey Hill Sketch.

### 5. *Description of the Application Route.*

- 5.1 Footpath No.23 runs from Noah's Ark Lane (UW 2641) to its junction with Footpaths Nos. 24 and 25 to the north of Springfield Farm. Footpath No. 25 runs easterly from this point to its junction with Warford Lane (UW 2642). The start of the route runs along the access drive to two properties: Noahwood House and Noah's Ark Barn. Adjacent to Noahwood House the current alignment of the Footpath runs north easterly away from the immediate vicinity of the properties and then parallel to Noah's Ark Barn in the adjacent field. This section of path was diverted under s.119 of the Highways Act 1980 in 2002. The application relates to the original alignment of the path which runs directly to the north northeast of Noah's Ark Barn across what is currently a garden and drive/parking area. The diverted route and original alignment

converge again just to the south east of Noah's Ark Barn where the path turns generally southerly across a small pasture field to a pedestrian gate where it enters a further long pasture field exiting via a kissing gate to then join a track through a small wooded area; this track then runs easterly to the north of Springfield Farm and joins the access drive to the Farm which it follows to the junction with Warford Lane. The width of the route varies along the length of the route being approximately 3 metres from Point A to Point B on Plan No. WCA/030, then no specific width as it crosses two pasture fields until it joins the track at Point C where it is approximately 2.5 metres widening to approximately 3 metres again along the surfaced drive to Point D.

### 5.3 *Investigation of the Claim*

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**.

### 5.4 *Documentary Evidence*

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

- 5.4.1 These are small scale maps made by commercial map-makers, some of which are known to have been produced from original surveys and others are believed to be copies of earlier maps. All were essentially topographic maps portraying what the surveyors saw on the ground. They included features of interest, including roads and tracks. It is doubtful whether mapmakers checked the status of routes or had the same sense of status of routes that exist today. There are known errors on many map-makers' work and private estate roads and cul-de-sac paths are sometimes depicted as 'cross-roads'. The maps do not provide conclusive evidence of public status, although they may provide supporting evidence of the existence of a route.
- 5.4.2 *"Among nearly 700 separate printed maps of Cheshire relating to the period from 1577 to 1900 only a handful were based on systematic and first-hand surveys of the countryside."* (The Historic Society of Lancashire and Cheshire Occasional Series Volume 1 – A survey of the County Palatine of Chester P.P. Burdett 1777). Aside from the Ordnance Survey maps which are listed later; the ones referenced below are four of a total of five of those based on

a first-hand survey, excluding Christopher Saxton's map of 1577.

- 5.4.3 *P.P. Burdett 1777*: The route is not shown on this map. On the *Greenwood map of 1819* part of the route from Warford Lane westwards is shown and depicted as 'cross road' in the key. Other routes shown in this partial way are now recorded in a mixture of ways, some as footpaths and some not recorded at all. On *Swire and Hutching's map of 1829* the route is shown throughout with the northern section of Noah's Ark Lane where it crosses Pownall Brook not shown at all. The property now known as Noahwood House is recorded as 'Brook House' on this plan. Again, the depiction is 'cross road'. A *Bryant's Map 1831* shows the route throughout and on the coloured version is depicted under 'Lanes and Bridleways' on the key. 'Brook House' is again annotated on this plan. The eastern extent of the route on *Swire and Hutching's* and *Bryant's* map is clearly shown running in a south easterly direction and not due easterly as the footpath is currently recorded.

#### *Tithe Records*

- 5.5 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. A map was produced by the Tithe Commissioners which showed parcels of land with unique reference numbers, and these were referred to in the apportionment document, which contained details of the land including its ownership, occupation and use. The Tithe Map and Award were independently produced by parishes and the quality of the maps is variable. It was not the purpose of the awards to record public highways. Although depiction of both private occupation and public roads, which often formed boundaries, is incidental, they may provide good supporting evidence of the existence of a route, especially since they were implemented as part of a statutory process. Non-depiction of a route is not evidence that it did not exist; merely that it did not affect the tithe charge. Colouring of a track may or may not be significant in determining status. In the absence of a key, explanation or other corroborative evidence the colouring cannot be deemed to be conclusive of anything.

The Tithe Map of the township of Great Warford is a first-class map dated 1842. A first class map is one that was an original survey and is considered legally accurate of all that it depicts. It shows the section of the route from its western end from Noah's Ark Lane to a point east of Brook House recorded with a plot name of road and a land use of thoroughfare. This apportionment, number 307, also includes a section of Noah's Ark Lane itself. The two sections of Noah's Ark Lane either side were excluded from apportionments. The next parcel of land where the route runs is numbered 299 and is recorded with the plot name, Barn Field and the land use as pasture. There is no reference to the route and no physical depiction of it on the mapping in the form of a pecked or double pecked line. The next plot is not within an apportionment parcel, and this forms the track from the west of Springfield Farm and up to its junction with Warford Lane although for part of this route, it runs on a different alignment to the currently recorded footpath in the same way as shown on two of the County Maps. This is recorded in the same way as other roads in the parish, however comparing it with other cul de sac routes and their status today, some are now footpaths and others have no status at all. It is an equally mixed picture for how plots with the land use of 'thoroughfare' are now recorded.

#### *Quarter Sessions*

- 5.6 The Quarter Sessions index 1762-1967 in the County Record Office was consulted and no evidence for a legal diversion or stopping up of any part of the claimed route was found.

#### *Plan of an Estate in the Township of Great Warford 1844*

- 5.7 This plan depicts seven lots of land for sale in the area around the route. The area around Brook House and Springfield Farm are shown as Lot 6. The section of route shown as excluded from hereditament on the Tithe Map is also shown as not included within this lot and again appears to form part of the surrounding road network although as a cul de sac. There was no Book of Reference to accompany the plan so it is not known how the land was described.

## *Ordnance Survey Records*

- 5.8 Ordnance Survey (O.S.) mapping was originally for military purposes to record all roads and tracks that could be used in times of war; this included both public and private routes. These maps are good evidence of the physical existence of routes, but not necessarily of status. Since 1889 the Ordnance Survey has included a disclaimer on all of its maps to the effect that the depiction of a road is not evidence of the existence of a right of way. It can be presumed that this caveat applied to earlier maps.

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

This mapping shows the route throughout and recorded in a similar way to how it is shown on Bryant's Map of 1831. There are solid lines across the route shortly after its junction with Noah Ark's Lane and another at the end of the section that runs southerly and before it turns easterly, west of Springfield Farm. The route is bounded on both sides throughout excepting along the north south section where it is bounded on the east side and shown with a pecked line along its western edge.

### *O.S. 1<sup>st</sup> Edition County Series 25" to 1 mile 1875*

The route is shown throughout, it has a solid line across the beginning of the route at the western end. This could indicate a gate or some structure. The first section is bounded both sides past Brook House with a solid line ending this section. It is then shown as a double pecked line through the pasture running south and easterly. This indicates that it was unfenced or unenclosed. There is a further solid line shown and then the route is bounded on both sides from the north of Springfield Farm to its junction with Warford Lane.

### *O.S. 2<sup>nd</sup> Edition County Series 25" to 1 mile 1897*

The route is shown throughout in the same way as on the 1<sup>st</sup> edition with the exception of a solid line now shown at the eastern end of the route where it meets Warford Lane. There was no Book of Reference available to see the descriptions allocated to the different plot numbers on this map.

### *O.S. 3<sup>rd</sup> Edition County Series 25" to 1 mile 1909*



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

*O.S. revised New Series 1: 63,360 (1 inch: 1 mile) 1902-3 (Cassini Map)*

The route is only partly shown here running from Warford Lane to Springfield Farm as a bounded track and referred to in the key as an unmetalled road. There is no depiction for the continuation of the route through to Brook House and Noah's Ark Lane.

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

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

The 1902 edition shows the route as uncoloured. On the key these are described as 'inferior and not to be recommended to cyclists'. On the 1920 edition the route is shown in the same way with the same notation. On this map Noah's Ark Lane is also shown as uncoloured. On the revised map of 1941 the route is again uncoloured and recorded as 'other roads' on the key. Noah's Ark Lane is shown with a dashed line and recorded as a 'serviceable road'.

#### *Finance Act 1910*

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

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

The plan for this area is recorded on O.S base map 3<sup>rd</sup> edition and the routes recorded are consequently shown in the same way. The plan shows the route within two hereditaments, numbers 1039 and 1036. There are deductions recorded for rights of way on hereditament 1039 of £8; this parcel includes Brook House and the pasture to the south where the path runs. Springfield Farm is included within hereditament 1036 and shows a deduction of £15 for rights of way. Taking the approximate lengths of the paths as they were then known to exist, there is approximately slightly less than twice the amount in hereditament 1036 as there is in hereditament 1039 which would account for the difference in deductions. There is no record of the status of the routes in the 'Domesday Book'.

*Plans and elevations of hospital buildings c.1905*

- 5.10 The property known as Brook House formed part of the Mary Dendy Hospital at one time. The hospital which spanned a number of properties in the Great Warford area was set up to provide education for children with learning disabilities. This plan dated 1905 shows proposed extensions to Brook House possibly in preparation for housing children. The route is shown only as far as the edge of Springfield Farm and in a similar way to the 3<sup>rd</sup> Edition O.S. map.

*Great Warford Civil Parish Meetings/Minutes 1894-1937*

- 5.11 The minutes of the 27<sup>th</sup> September 1920 record a reference to correspondence from the Footpath Association to the Parish Council regarding a footpath from Pownall Brow through Brook Farm. It was decided that the Parish write to a Mr Blakeway to inform him that this is a recognised footpath and that users of such are not on sufferance i.e. there by permission. A further entry of the 12<sup>th</sup> April 1921

recorded there was no further correspondence from the Footpath Association and nothing heard from Mr Blakeway.

There is reference in a minute of 28<sup>th</sup> January 1936 to a letter from the Footpaths Preservation Society, London, stating the Society had written on previous occasions to a Mr Hayman asking him to replace a stile at the end of the footpath at Springfield Farm. He had not complied, and the Society were requesting the Parish Council to write with the same request, which they agreed to do. As there was a junction of three footpaths at Springfield Farm it is not possible to say whether this related to Footpath No. 23 or 25.

#### *Pre-Definitive Map Records*

- 5.12 The Public Rights of Way team hold records that pre-existed the Definitive Map process. The route is shown on the Macclesfield Footpath Map annotated with a dashed line which indicates 'Footpaths, repairs of which in the past have been doubtful'. The date of this Map is unknown. There are no other specific records relating to this path from this era.

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

- 5.13 The Definitive Map and Statement is based on surveys and plans produced in the early 1950s by each parish in Cheshire, of all the ways they considered to be public at that time. The surveys were used as the basis for the Draft Definitive Map.

The survey schedules for Footpath Nos. 23 and 25 have 'Bridle Road' shown with 'Footpath' crossed out. In the general description for Footpath No. 25 it is recorded that the old footpath which ran across the fields from Springfield Farm in a north easterly direction towards Pownall Brow and its junction with Warford Lane, has been 'done away with' and this Bridle Road put in its place. There are other notes with the surveys that record the agreement to discontinue the path across the fields in favour of the farm drive noting that the Alderley Edge Footpaths Preservation Society are

in support. There is no formal record of an alteration to this path in terms of a diversion order or any other legal process. Footpath No. 23 is described as a good metalled drive for about 200 yds which would take it to the edge of the paddock currently adjacent to Noah's Ark Barn. Field Gates are recorded at this junction and again at the next field boundary and the junction with the track where it bears easterly. The Parish Map also records these field gates plus at a further one at the north of Springfield Farm and a wicket gate recorded at the junction with Warford Lane. The Footpath Preservation Map shows a gate at the Noah's Ark Lane junction and two stiles, one at the point where the path turns to run easterly from a southerly direction and another north of Springfield Farm.

At the Draft Map stage both these routes are recorded as footpaths with field gates shown along the route. There are no records to indicate why or how this change came about but it could just be at the stage the County Council were coordinating the records and inspectors were checking the routes. This then remains the case through the Provisional stage to its final iteration on the Definitive Map. There were opportunities for formal objection by the public to the Draft stage and by landowners to the Provisional stage but neither of these was utilised in this instance.

#### *Land Registry Information*

- 5.14 There are three separate landownerships along the route of the path. They are the occupants of Noahwood House at the western end then the owners of Noah's Ark Barn with the majority of the route in the ownership of Springfield Farm. However, there is a section of the access track to Springfield Farm from where the entrance to the Farm joins the track to the junction with the two tracks that diverge north easterly and south easterly.

#### *Witness Evidence*

- 5.15 There were three user evidence forms submitted with the application. Two of these claimed use of the route on horseback. One had used the route twice in the year 1980 - 81 and the other had used the route twice a year during the years 1964 – 1970. It has not been possible to speak to these users for further information of their use. However, on face value this level of use would not be sufficient to suggest a level capable of claiming rights under S.31(1) of the Highways Act 1980.

An interview was held with the applicant by telephone. They stated that they often use the route on foot to visit their horse which is liveried at Springfield Farm and has been for about 30 years. They believe the route was blocked at the Noahwood House end for several years in the 1990s and would not have been available for any type of user. As far as they understand it the owners of Springfield Farm would not be averse to the recording of a bridleway. There used to be a showground on land at Springfield Farm which held horse/riding club events and consequently large numbers of horses would have been accessing the site potentially along the route from Noah's Ark Lane and not just along the route in Springfield Farm ownership.

## 6. Main Issues

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

- 6.2 One such event, (section 53(3)(c)(ii)) 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;

The evidence can consist of documentary/historical evidence or user evidence or a mixture of both. All the evidence must be

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

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

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

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

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

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

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

- 6.5 In consideration of the evidence there is a clear history of the existence of the route from the earliest map of Swire and Hutching's in 1828 when the route first appears, throughout through the Tithe Map, Ordnance Survey maps, Sales plan, Finance Act, Parish records, Definitive Map records etc. However, the depiction of the route is mixed and the alignment has also changed over time. At the eastern end of the route the original alignment of the route ran south easterly; this is demonstrated in all the documents considered up until the first edition O.S. map where the straight east west alignment of Footpath No. 25 is first shown. There is an absence of map evidence between 1843 and 1870 so it is unclear when this change occurred. A further change to the accepted footpath route happened in 1951 when the Parish Meeting accepted the removal of the footpath across fields running north easterly towards Pownall Brow in exchange for the current route of Footpath No. 25 along Springfield Farm Drive. This suggests that until this time the route along the drive was possibly not considered a right of way. and in which case. the disappearance of the historic route running south easterly sometime between 1843 and 1870. would have excluded any access other than by now defunct footpath.

The depiction of the route on County maps is categorised as 'Cross Road' or 'Lane and Bridleway'. It is not known what the definition of Cross Road was intended to be, and it might refer to private roads as well as public. The Tithe Map shows that the eastern extent of the route potentially fell into the same category as other known roads in the Parish and this is replicated on the Sales Plan a year or two later; however when looking at how other cul de sac routes shown in this way are currently recorded in the Parish there is a mix between being recorded as footpaths or not recorded at all. Equally the western end of the path is recorded as 'thoroughfare' and the treatment of similarly recorded routes on the Definitive Map is a mix of footpath or unrecorded. The Finance Act records reductions for rights of way on both the hereditaments affected but there is no record of the status of these paths.

It is known that Brook House formed part of a collection of buildings housing children with special educational needs, although how long this was the case is not clear. Whether or not the existence of a bridleway directly through the site would have influenced the selection of this property for such a purpose cannot be determined.

The Parish Minutes demonstrate that the routes in the vicinity of Brook House and Springfield Farm were considered to be footpaths during the 1920s and 30s by the Parish and also by the walking societies.

The only record of significance that suggests the route was thought to be a bridleway were the walking schedules compiled by the Parish Meeting in the early 1950s. There is a possible explanation for this in that the route of Footpath No. 25 was substituted for a footpath crossing fields and physically it had the capacity to be a bridleway. This entailed that a connecting path would need to be shown as bridleway to create a through route. This is a purely speculative suggestion, but it might hold an element of truth given that at the Draft stage of the Definitive Map process the routes reverted to being shown as footpaths and stayed that way through the full legal process to the final Definitive Map stage with no further consideration given to the status of bridleway.

## **Consultation and Engagement**

- 7.1 Consultation letters and a plan of the claimed route were sent out to the Ward Member; Parish Council; User Groups/Organisations; statutory undertakers and landowners on the 6<sup>th</sup> January 2023.
- 7.2 A response from East Cheshire Ramblers commented that they would wish to see the surface improved if the claim to upgrade were successful.
- 7.3 One of the landowners responded requesting further information. During a telephone discussion a strong objection to the application was expressed. They stated that they keep ponies in the field the path crosses and would not want horses passing through. Knowing that the path had been diverted in 2002 they found it hard to understand how higher rights could now be claimed on the original route. Following a site visit in early June, a further email was sent to state their objection and to query why the route could not follow the diverted footpath if the claim was to be successful. They state that they were not made aware of the claim when they bought the property six years ago as it did not show up on any searches. They would have concerns about security and currently have electronic gates across the driveway, also the area in front of the property is where they park their vehicles which could be damaged by passing horses. Their dog is usually at large in the garden and they have two rescue ponies in the adjacent paddock; they would have concerns about the safety of these animals with gates being left



open and also the potential stress of encountering passing horses. The claim is causing immense upset to themselves and their family.

7.4 The Peak and Northern Footpath Society responded to say they had no comment to make.

7.5 Cadent Gas also responded with no objection to make.

### **Reasons for Recommendations**

8. The evidence in support of this application must show, on the balance of probabilities, that bridleway rights subsist along the claimed route. The balance of historic evidence does not support the case that a bridleway subsists along the routes A-B-C-D (Plan No. WCA/030); therefore, it is considered that the requirements of Section 53(3)(c)(ii) have not been met and it is recommended that this application be refused.

9. 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**

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

### **Implications and Comments**

#### *Monitoring Officer/Legal*

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

#### *Section 151 Officer/Finance*

12. If an appeal is successful and the subsequent Order objected to this may lead to a subsequent hearing/inquiry, for which the Council would be responsible for any costs involved in the preparation and conducting of such although as a directed Order the Council would be at liberty to take a neutral stance. The maintenance of the Public Right of Way, if upgraded on 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*

13. 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*

14. 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*

15. There are no direct implications for Human Resources.

*Risk Management*

16. There are no direct implications for risk management.

*Rural Communities*

- a. 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)*

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

*Public Health*

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

*Climate Change*

- d. There are no direct implications for Climate Change. .

<b>Access to Information</b>	
Contact Officer:	Clare Hibbert <a href="mailto:clare.hibbert@cheshireeast.gov.uk">clare.hibbert@cheshireeast.gov.uk</a>
Appendices:	Plan No. WCA/030 & Appendix 1
Background Papers:	File MA/5/231

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**APPENDIX 1****List of Archive Documents –****Application No. MA/5/231****Upgrade of Public Footpaths Great Warford Nos. 23 & 25 to Bridleway**

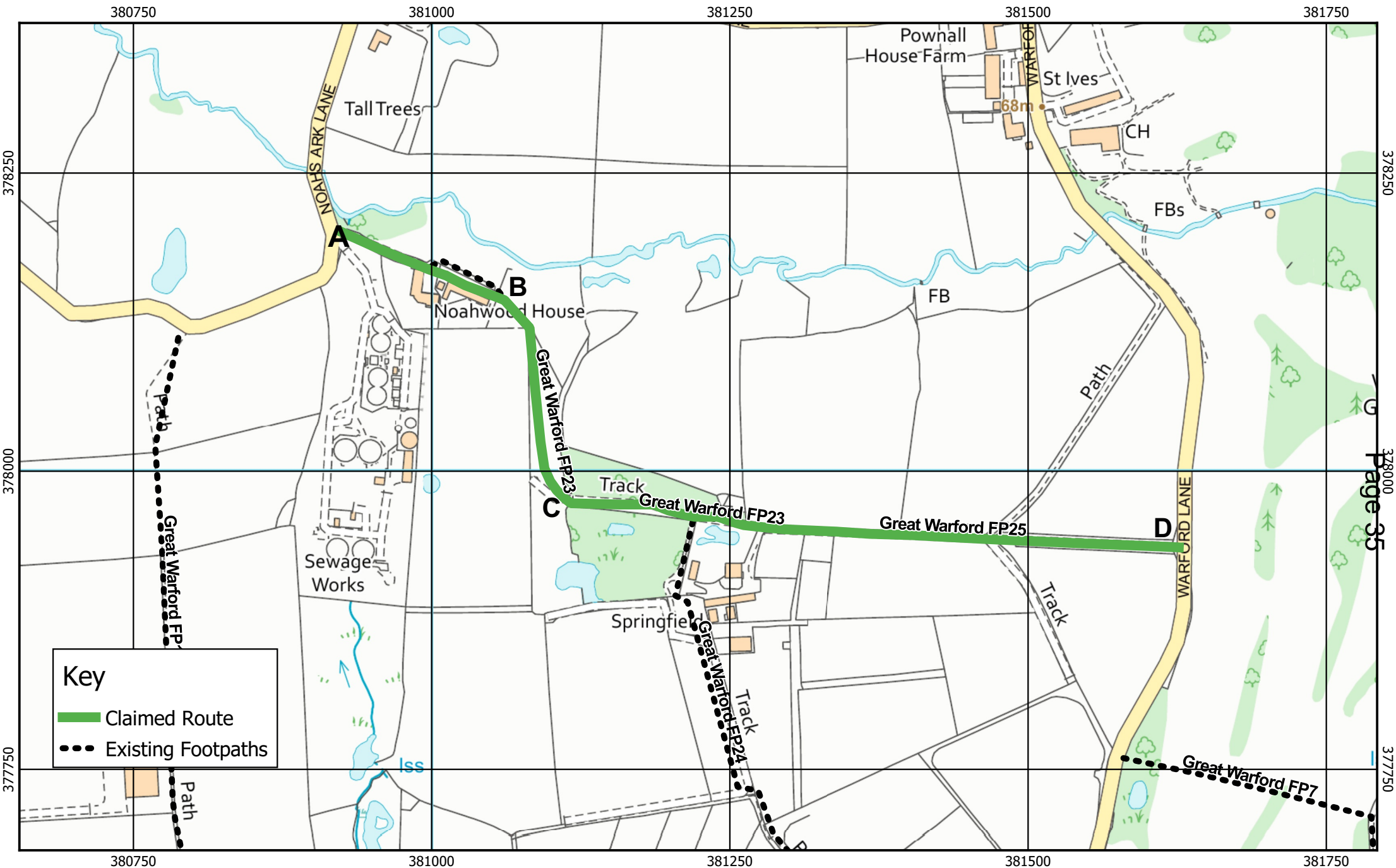
PROW = Public Rights of Way Unit

CRO = Cheshire Record Office

TNA = The National Archives, Kew

<b>Primary Sources</b>	<b>Date</b>	<b>Site Shown/Mentioned</b>	<b>Reference Number/Source</b>
<b>County Maps</b>			
Burdett PP	1777	Route not shown	County Maps online (Cheshire Local History Association)
Greenwood C	1819	Part shown, eastern end	County Maps online (Cheshire Local History Association)
Swire & Hutchings	1829	Route shown throughout	<a href="https://maps.nls.uk/view/220113196">https://maps.nls.uk/view/220113196</a>
Bryant A	1831	Route shown throughout	County Maps online (Cheshire Local History Association)
<b>Tithe Records</b>			
Tithe Map	1842	Parts shown, western end and eastern end	CRO EDT 179/2 (403856)
Tithe Apportionment	1841	Part excluded from tithes, eastern end.	CRO EDT 179/1(142279)
<b>Ordnance Survey Maps</b>			
O.S. 1" to 1 mile 1 <sup>st</sup> Edition	1843	Route shown	PROW/Cheshire East Council
O.S. 1 <sup>st</sup> Edition 1:25 inch	1874	Route shown	PROW/Cheshire East Council
O.S. 2 <sup>nd</sup> Edition 1:25 inch	1897	Route shown	PROW/Cheshire East Council
O.S. 3 <sup>rd</sup> Edition 1:25 inch	1909	Route shown	PROW/Cheshire East Council
O.S. Book of Reference	1875	Not available	CRO Research Room
O.S. Hill Sketch			TNA NRA OS
Bartholomew's half inch 1902 new series	1904	Route shown, uncoloured	<a href="https://maps.nls.uk/view/75202820">https://maps.nls.uk/view/75202820</a>
Bartholomew's revised half inch 1923 new series	1920	Route shown, uncoloured	<a href="https://maps.nls.uk/view/75202820">https://maps.nls.uk/view/75202820</a>
Bartholomew's revised half inch	1941	Route shown, uncoloured	<a href="https://maps.nls.uk/view/128076603">https://maps.nls.uk/view/128076603</a>
<b>Finance Act</b>			
Working Sheet	1910	Not excluded from	TNA NR 132-1-93
Valuation Book	1910	Deductions for PROW recorded	CRO NVA 4/2
<b>Quarter Sessions</b>			
Index	1782 - 1967	Nothing shown	CRO QAR 107-109

<b>Other Plans</b>			
Plan of Land in Great Warford (sales particulars)	1844	Part of route excluded from sales	CRO DCB/2114/118
Plan & elevations of Hospital buildings – Lees House, <b>Brook House</b> & Warford Hall	1905	Physical route shown	CRO NHM/11/3837/98
Mary Dendy Hospital Great Warford. Development Brief. Macclesfield B.C.	1988	No reference to Brook House	CRO 230518
<b>Railway Plans</b>			
Manchester & Audley Railway	1825	Nothing shown	CRO QDP 75
Manchester to Madeley (Staffs) Railway	1830	Nothing shown	CRO QDP 99
Birkenhead, Lancashire & Cheshire Junction Railway	1845	Nothing shown	CRO QDP 246
Macclesfield, Knutsford & Warrington Railway	1865	Nothing shown	CRO QDP 445
<b>Parish Records</b>			
Great Warford Civil Parish Meetings & Minutes	1894-1937	References to route as FP.	CRO PC 26
<b>Local Authority Records</b>			
Footpaths Map – Macclesfield	1930's	Path shown	PROW Unit
Pre Definitive Map -Green Book	1950's	Route not annotated	PROW Unit
Walking Survey Schedules and Maps	Early 1950's	FP 23 & 25 Recorded as 'Bridle road'	PROW Unit
Draft Map	1954	Routes shown as Footpaths 23 & 25	PROW Unit
Provisional Map	1968	Routes shown as Footpaths 23 & 25	PROW Unit



**Key**

- Claimed Route
- Existing Footpaths



1:4000

# Application to Upgrade Great Warford FP's 23 & 25 to Bridleways

Plan No.  
WCA/030

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



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

**3<sup>rd</sup> July 2023**

**Wildlife & Countryside Act 1981 – Part III, Section 53.  
Application No.CO/8/56: Application to add a Public  
Footpath between Wright Lane and Footpath No.14 Sandbach**

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**Report of: Peter Skates, Director of Growth and Enterprise**

**Ward(s) Affected: Sandbach Heath and East**

### **Purpose of Report**

1. This report outlines the investigation into an application made by Mr Trevor Boxer (Sandbach Footpath Group) to amend the Definitive Map and Statement to add a public footpath between Wrights Lane and Footpath No.14 in the town of Sandbach. This report includes a discussion of the consultations carried out in respect of the claim, the historical evidence, user evidence and the legal tests for a Definitive Map Modification Order to be made. The report makes a recommendation based on that information, 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 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**

- 3 The report considers the evidence submitted and research into the application to add a Public Footpath between Wrights Lane and Footpath No.14 Sandbach. The evidence consists of use on foot by individual witnesses over a period of 20 years and historical documents that demonstrate the existence/status of the route over a period of nearly 200 years.
- 4 The report determines whether on the balance of probabilities the status of footpath has been acquired. The documentary evidence considered in this case demonstrates the existence of the route as from the 18<sup>th</sup> Century. The user evidence investigated and discussed provides strong evidence of use by foot

over a relevant 20 year period and, in conjunction with the historical evidence, leads to the assertion that footpath rights exist, the rationale for this legal status being explained in the report.

## RECOMMENDATIONS

The Public Rights of Way Sub Committee is recommended to:

1. Decide that a Modification Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Public Footpath as shown between points A and B on Plan No. WCA/262/031 at Appendix 3.
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 to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

## 4. Background

### 4.1 Introduction

**4.1.1** The application was made to Cheshire East Council on 29<sup>th</sup> September 2021 by Mr Trevor Boxer of Sandbach Footpath Group to add a footpath between Wrights Lane (leading from Heath Road) to Footpath No.14 in the town of Sandbach. The application consisted of user evidence forms and maps. A total of 19 user evidence forms were submitted demonstrating use on foot.

**4.1.2** The applicant appealed non-determination on 14<sup>th</sup> November 2022 to the Secretary of State because the Council had not determined the application within 12 months. The Council responded to a request for information on the 5<sup>th</sup> January 2023. Since then, the Council has not received a direction from the Secretary of State but has proceeded to determine application in the absence of a direction.

### 4.2 Description of the application route.

**4.2.1** The claimed route commences from the junction with the adopted public highway known as Wrights Lane (UY2320), at Ordnance Survey (O.S) grid reference: SJ 76780 60784. It then runs in a north easterly direction to O.S grid reference: SJ 76870 60992 to its termination at the junction with Footpath No.14 Sandbach.

- 4.2.2** The route is bound on one side with a newly erected closed boarded fence around a housing development on the west and a overgrown hedge on the east. The surface throughout is a natural trodden path for approximately 215 metres in length.

### **4.3 Main issues**

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

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

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

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

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

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

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

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

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

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

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

For public rights to have come into being through long use, as stated above, a twenty-year period must be identified during which time use can be established. Where no challenge to the use has occurred, this period can be taken as the twenty years immediately prior to the date of the application. In this case the date of challenge can be identified as the date on which the application was submitted, being 29<sup>th</sup> September 2021.

#### **4.4.1 Investigation of the Claim.**

**4.4.1** An investigation of the available evidence has been undertaken. The documentary evidence that has been examined is referred to below and a list of all the evidence taken into consideration can be found in Appendix 1.

#### **4.5 Documentary Evidence**

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

**4.5.1** These are small scale maps by commercial mapmakers, some of which are known to have been produced from original surveys and others are believed to be copies of earlier maps. All were essentially topographical maps portraying what the surveyors saw on the ground. They include

features of interest, including roads and tracks. It is doubtful whether mapmakers checked the status of the routes or had the same sense of status of routes that exist today. There are known errors on many mapmakers work and private estate roads and cul-de-sac paths are sometimes depicted as cross-roads. The maps do not provide conclusive evidence of the existence of a route.

The claimed route was shown on the Bryants 1831 map as two solid lines, which indicates at the time of the survey the route was similar character to the surrounding highways and was recorded as such. Although, it isn't shown on Burdett 1777, Greenwood 1819, Bartholmews 1902 and Swire & Hutching 1830 at the time of when they were surveyed.

### **Tithe Records**

**4.5.2** Tithe Awards were prepared under the Tithe Commutation Act 1836, which commuted the payment of tax (tithe) in kind, to a monetary payment. The purpose of the award was to record productive land on which a tax could be levied. The Tithe Map and Award were independently produced by parishes and the quality of the maps is variable. It was not the purpose of the awards to record highways. Although depiction of both private occupation and public roads, which often formed boundaries, is incidental, they may provide good supporting evidence of the existence of a route, especially since they were implemented as part of a statutory process. Non-depiction of a route is not evidence that it did not exist; merely that it did not affect the tithe charge. Colouring of a track may or may not be significant in determining status. In the absence of a key, explanation, or other corroborative evidence the colouring cannot be deemed to be conclusive of anything.

The Sandbach Township Tithe Map & Apportionment c1841 shows the full extent of the claimed route marked by two solid lines and is shaded, similar to the surrounding highways. In the absence of a key on the map, status can't be determined but the route is clearly shown. It is not numbered or within numbered parcels, therefore there is no entry in the appointment, which indicates the route wasn't tithable.

### **Finance Act 1910**

**4.5.4** The Finance Act of 1910 involved a national survey of land by the Inland Revenue so that an incremental value duty could be levied when ownership was transferred. Land was valued for each owner/occupier and this land was given a hereditament number. Landowners could claim

tax relief where a highway crosses their land. Although the existence of a public right of way may be admitted it is not usually described or a route shown on the plan.

The claimed route is shown on the map as two solid lines not in a coloured hereditament, uncoloured routes could indicate it was a public highway of some status. It isn't numbered, and due to the condition of the map the adjoining parcel number is faded to the extent that the number couldn't be read.

### **Ordnance Survey Records**

**4.5.5** Ordnance Survey mapping was originally for military purposes to record all roads and tracks that could be used in times of war; this included both public and private routes. These maps are good evidence of the physical existence of routes, but not necessarily of status. Since 1889 the Ordnance Survey has included a disclaimer on all of its maps to the effect that the depiction of a road is not evidence of the existence of a right of way. It can be presumed that this caveat applied to earlier maps.

*O.S. 1<sup>st</sup> edition 1 inch to a mile 1842 (Old Series)*

The 1<sup>st</sup> edition 1 inch of 1842 map show the route on this early map as two solid lines, which indicates a second/third class road.

O.S. one-inch England & Wales 1872 - 1914

The route is shown as double solid lines.

O.S. One-inch "Popular" Edition England & Wales, 1919 – 1926

The route is shown as double solid lines.

*O.S. Map: 1:500, sheet SJ 76 SE, Date c1875*

The route is shown as a double solid line.

*O.S. Map: 1:1000, sheet SJ 76 SE, Date c1898*

The route is shown as a double solid line.

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

The Definitive Map and Statement is based on surveys and plans produced in the early 1950s by each parish in Cheshire, of all the ways

they considered to be public at that time. The surveys were used as the basis for the Draft Definitive Map.

The walking survey map did not identify the claimed route as being a public right of way, but clearly shows the claimed route as a physical feature bounded by two solid parallel lines joining Wrights Lane and Footpath No.14 Sandbach. The parish records for the area do not mention the route.

The claimed route also is not marked on the Provisional Map of 5<sup>th</sup> November 1953 as public right of way, but clearly shows the claimed route as a physical feature bounded by two solid parallel lines joining Wrights Lane and Footpath No.14 Sandbach. The route was therefore not marked on the final Definitive Map, hence this application.

#### **4.5.7 Photographs and other evidence**

During the investigation into this claim photographs were taken in June 2023. The photographs of the route demonstrate that the route is significantly used by the public by the evidence of a well-trodden route on the ground.

Aerial imagery from 1971-73, 1999-03, 2010, 2015-17, and 2019-21 show the hedge line where the claimed route runs along the entire length.

#### **4.6 Witness Evidence**

**4.6.1** The application, when made on 29<sup>th</sup> September 2021, was accompanied by 19 user evidence forms. Since that time, 1 of the users has moved out of the country and two others do not wish to provide additional evidence. Out of the 19 who submitted user evidence forms 3 people had not used the route for the required 20 year period.

In total 19 witnesses were contacted to be interviewed. Interviews with 10 users were conducted as a phone interviews. The users all clearly refer to the same route, all believe it to be a footpath and can give evidence of use from 1965 to 2021 on foot. User evidence from the total number of 19 witnesses is illustrated in a chart at Appendix 2.

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

The witnesses refer to the lack of maintenance of the route, and how it has become narrower and overgrown over time. All of the route is enclosed by hedging or fencing on either side but is overgrown along the central section. The witnesses all claim the course of the route has not changed in recent memory.

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

In the relevant 20 year period prior to the application, 2001-2021, no challenge to use of the route has been identified and therefore the 20 year period of deemed dedication has been satisfied. During this period, all 19 people claimed use throughout the time on foot – 1 of which also claimed very occasional use by bicycle. The use varied in frequency from people using it occasionally to daily and varied through time.

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

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

## **4.7 Conclusion**

**4.7.1** The evidence in support of this application must show, on the balance of probabilities, that footpath rights subsist or reasonably alleged to subsist along the claimed route.

**4.7.2** The documentary evidence considered in this case demonstrates the existence of the route from the mid-18<sup>th</sup> Century. The Tithe Map of 1841 shows the route as two solid lines outside of numbered parcels. The Finance Act 1910 map shows the route uncoloured and outside of coloured hereditaments. The Bryants 1831 county map shows the route as two solid lines, but it is not shown on any of the other early county maps, the O.S. map records also provide evidence of the existence of the claimed route at the time of the survey, but not clear evidence as to the status.



- 4.7.3** Under s.31(1) of the Highways Act 1980, a right of way can come into being by prescription unless there is evidence to the contrary. The use of the route by walkers can be demonstrated by the witness evidence over the 20 year period 2001-2021. This use can also be supported by the significant length of use up to this period. The use provided is reasonably frequent and covers a long time period and can be considered suitable for the acquisition of rights to have been demonstrated. From interviewing particularly, it has been demonstrated that there is sufficient use to demonstrate footpath rights have come in to being.

## **5. Consultation and Engagement**

- 5.** Consultation letters and a plan of the claimed route were sent out on the 23<sup>rd</sup> March 2023, to the Ward Member; Town Council; user groups/organisations; statutory undertakers and landowners.

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

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

The Congleton Ramblers responded stating that they “had no objection to the route being made a Public Right of Way”. A named individual also responded to state that they “had no objection”. Openreach also responded, stating that they had no objection to the application.

There were no other responses to the consultation.

## **Reasons for Recommendations**

- 6.** The balance of user evidence combined with documentary evidence support the case that a public footpath subsists along the routes A-B (Plan No. WCA/262/031). It is therefore considered that the requirements of Section 53(3)(c)(i) have been met and it is recommended that a Definitive Map Modification Order is made to record a Public Footpath between Wrights Lane and Footpath No.14 Sandbach and amend the Definitive Map and Statement.
- 7.** 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**

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

## Implications and Comments

### *Monitoring Officer/Legal*

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

### *Section 151 Officer/Finance*

10. 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*

11. 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*

12. 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*

13. There are no direct implications for Human Resources.

### *Risk Management*

14. There are no direct implications for risk management.

### *Rural Communities*

15. 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)*

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

*Public Health*

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

*Climate Change*

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

<b>Access to Information</b>	
Contact Officer:	John Lindsay <a href="mailto:john.lindsay@cheshireeast.gov.uk">john.lindsay@cheshireeast.gov.uk</a>
Appendices:	Appendix 1 – Archive List Appendix 2 – User Evidence Chart Appendix 3 – Plan No. WCA/262/031
Background Papers:	CO-8-56

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## DMMO DOCUMENTARY RESEARCH CHECKLIST

<b>District</b> Sandbach	<b>Parish</b> Sandbach Heath	<b>Route</b> Wrights Lane Footpath
<b>Date</b>		

Document	Date	Reference	Notes
<b>County Maps</b>			
Burdett PP	1777	CRO PM12/16	not shown
Greenwood C	1819	CRO PM13/10	not shown
Swire and Hutching	1830	CRO PM13/8	Not shown
Bryant A	1831	CRO Searchroom M.5.2	Shown throughout
<b>Inclosure Award</b>			No enclosure records
<b>Tithe Records</b>			
Apportionment			
Apportionment			
Map	1841	EDT 351/2a	Route shown throughout
<b>Ordnance Survey</b>			
1" First Edn	1842	PROW UNIT	The 1 <sup>st</sup> edition 1 inch of 1842 map show the route on this early map as two solid lines.
one-inch England & Wales	1872	ls	The route is shown as double solid lines.
One-inch "Popular" Edition England & Wales	1919	nls	The route is shown as double solid lines.
1:500, sheet SJ 76 SE,	c1875	nls	The route is shown as double solid lines.
1:1000, sheet SJ 76 SE	c. 1898	nls	The route is shown as double solid lines
<b>Finance Act 1910</b>			
Working Sheets	c.1910	IR 132/2/267	Shown on the plan

**Parish Records**

Route not shown or described within the parish records

**Road Maps, Atlases and Guides** (eg Bartholomew, Michelin)

Bartholnew	1902	nls	Route not shown
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**Rights of Way Act 1932****Local Authority Records**

Draft Definitive Map & Statements	1950	PROW Unit	
Provisional Definitive Maps and Statements	1953	PROW Unit	
Definitive Map and Statement	1953	PROW Unit	
Original Parish Surveys	Early 1950s	PROW Unit	
			<i>Due to be available electronically</i>
<b>Aerial Imagery</b>			
Aerial Photo	1971-1973	CRO	
Aerial Photo	1999-2003	CRO	
Aerial Photo	2010	CRO	
Aerial Photo	2015-2017	CRO	
Aerial Photo	2019-2021	CRO	

**OTHER DOCUMENTS RESEARCHED/CHECKED**

**NOTES**

Wherever possible, refer to original document (it may be coloured), and if more than one copy is available, check all copies, because they may contain different details.

***County Maps***

*Cary 1787* – published in “A New Map of England and Wales with part of Scotland”. Turnpike roads and cross roads marked together with distances.

*Cary 1823* – published in Cary’s “Newe and Correct English Atlas”. Reprint of 1787 original with additions. New turnpike roads shown

***Tithe Records***

“Agreement” – voluntary tithe agreement between landowners and tithe owners

“Award” – compulsory tithe award imposed by commissioners if no agreement forthcoming

For list of First Class maps see publication “Tithe Maps at the CRO”

Tithe Files – correspondence, reports, plans often detailed where commutation in dispute

***Ordnance Survey***

Boundary Remark Books – strip maps recording public boundaries

Boundary Sketch Maps – skeleton maps drawn from boundary remark books

Journals of Inspection – forms documenting public inspection of original boundary sketch maps etc

Boundary Record Maps – successors to Boundary Remark Books, discontinued 1893

Object Name Books – man made and natural objects recorded with names determined by local usage

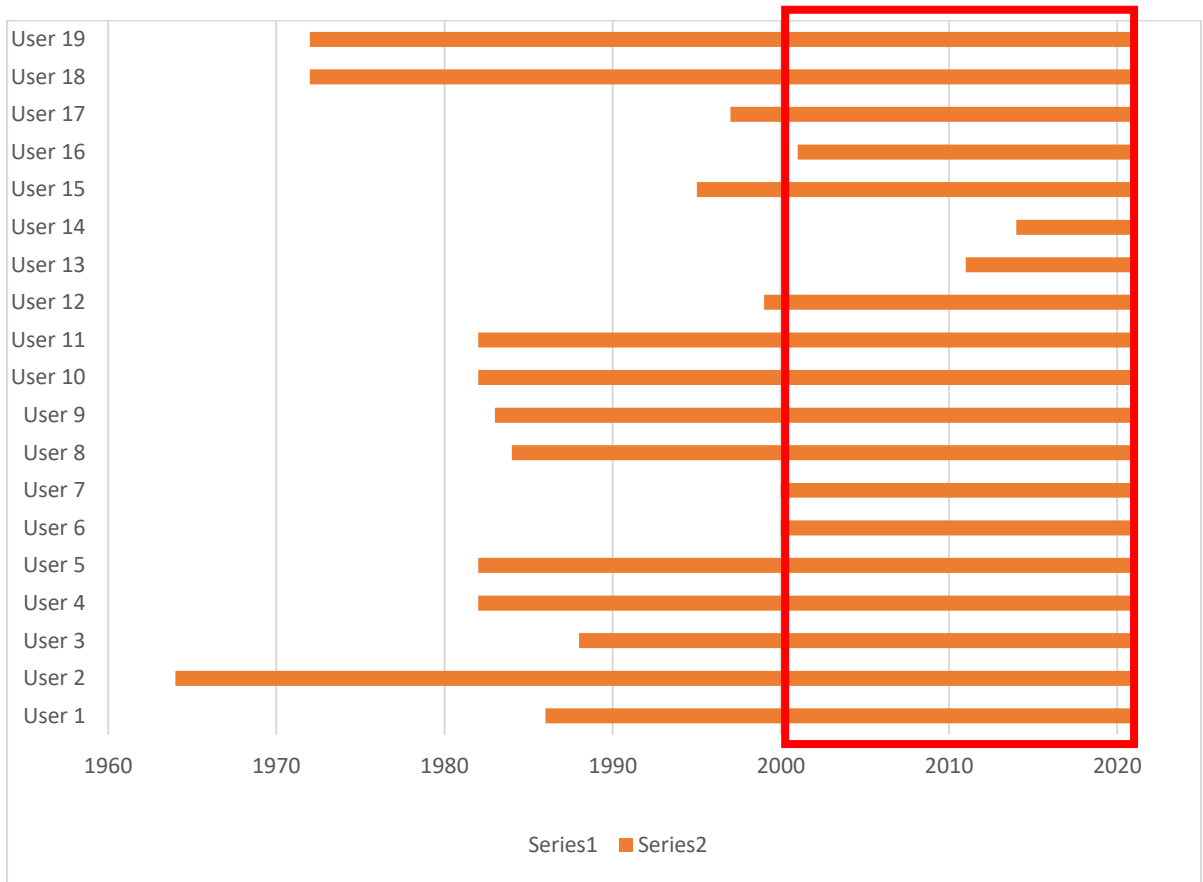
***Finance Act 1910***

Form 37 – record of provisional valuation of each hereditament, can be cross referenced exactly with Record Maps, may contain details of large estates not included in Field Books.

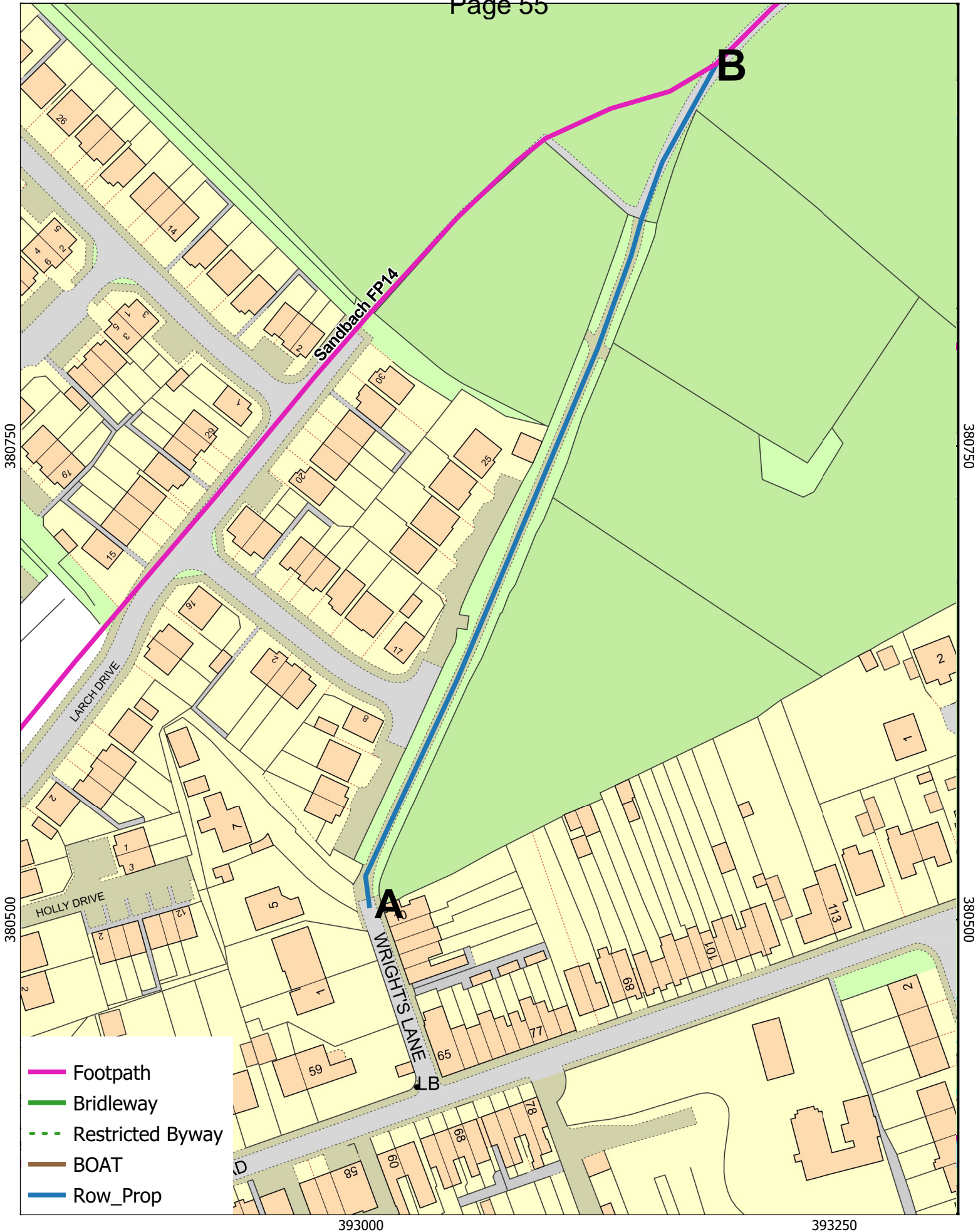
***NOTE: THIS IS INTENDED AS AN AIDE MEMOIRE ONLY; NOT ALL REFERENCES MAY BE AVAILABLE, RELEVANT OR NECESSARY***

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1:2500

Claimed Footpath from points A - B,  
Wrights Lane to Footpath No14  
Sandbach

Plan No.  
WCA/  
262/031

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



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## **Public Rights of Way Committee**

**03 July 2023**

### **Highways Act 1980 Section 119 Proposed Diversion of Public Footpath No. 7 in the Parish of Brindley**

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**Report of: Peter Skates, Director of Growth and Enterprise**

**Ward(s) Affected: Wrenbury**

#### **Purpose of Report**

- 1 The report outlines the investigation to divert part of Public Footpath No. 7 in the Parish of Brindley following receipt of an application from the landowner.
- 2 The report makes a recommendation based on that information, for a quasi-judicial decision by Members as to whether or not a diversion Order should be made for that section of public footpath.
- 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 This report outlines the investigation to divert part of Public Footpath No. 7 in the Parish of Brindley. This includes a discussion of the consultations carried out in respect of the proposal and the legal tests to be considered for a diversion Order to be made under the Highways Act 1980.
- 5 The recommendation will be that a Public Path Diversion Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No. 7 in the Parish of Brindley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/150 on the grounds that it is expedient in the interests of the landowners.

## RECOMMENDATIONS

The Public Rights of Way Sub Committee is recommended to:

1. Decide that a Public Path Diversion Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No. 7 in the Parish of Brindley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/150 on the grounds that it is expedient in the interests of the landowners.
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 Acts.
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

- 6 An application has been received from Robert Walker of Brindley House in Brindley requesting that the Council make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 7 in the Parish of Brindley.
- 7 Public Footpath No. 7 Brindley, commences at its junction with Public Footpath No. 5 Brindley and continues in a generally east south easterly direction for approximately 934 metres to Brindley Lea Lane (UX1650). The section of path to be diverted is shown by a solid black line on Plan No. HA/150 between points A-B.
- 8 The land over which both the length of Public Footpath No. 7 Brindley to be diverted and the proposed diversion runs is owned by the applicant of the proposed diversion.
- 9 The length of Public Footpath No. 7 Brindley to be diverted runs in a generally east south easterly direction between points A-B for approximately 361 metres. It commences at point A and runs through Cope's Copse, passing between Brindley House and a pond. The path then continues along the grassed verge adjacent to the stone driveway,

then enters open pasture field before joining the loose stone track. The path continues along the stone track until meeting point B.

- 10 The proposed diversion would follow the route A-C on Plan No. HA/150 through Cope's Copse. At point C it will meet Public Footpath No. 10 Brindley at a new junction. This section of path will have no path furniture on it and will be enclosed to a width of no less than three metres with a woodland floor.
- 11 The owner of Brindley House has experienced issues with members of the public straying from the definitive line of the footpath and walking along the public driveway up to the house. The proposed diversion will take users further from the property and will be a fully enclosed path making it harder for users to stray. The proposed diversion will increase the privacy of the landowner as they will be able to enjoy their private garden without intrusion.
- 12 Many users are often hesitant walking paths such as this which pass through private gardens and so close to properties, as they feel like they are intruding; the proposed diversion would enable users to walk the footpath without that concern and follow a route through a relatively natural woodland rather than agricultural field.

## Consultation and Engagement

- 13 Former Ward Councillor Stanley Davies, Brindley Parish Council, the user groups, the Council's Nature Conservation Officer and statutory undertakers have been consulted and no objections have been raised. If a diversion Order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 14 The Clerk to the Parish Council responded with the following:  
  
*'I would support this footpath amendment and agree with the comments in the consultation letter. The new route would be more enjoyable for walkers and give more privacy to landowner. Cope's Copse is a pretty mixed species area planted by a previous owner of the property identified in application.'*

The Peak and Northern Footpaths Society (PNFS) Area Officer responded with the following:

*'I have walked the line of this proposed route and on behalf of PNFS have no objections to it.'*

## Reasons for Recommendations

- 15 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowner.
- 16 Section 119 of the Act also stipulates that a public path diversion order shall not alter the point of termination of the path if that point is not on a highway, or, where it is on a highway, otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
- 17 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in this section of the report.
- 18 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State.
- 19 In considering whether or not to confirm the Order, in addition to the matters discussed at paragraphs 6 to 12 above, the Secretary of State where the Order is opposed, or the Council where the Order is unopposed, must be satisfied that the path or way is not substantially less convenient as a consequence of the diversion having regard to the effect:
- The diversion would have on the public enjoyment of the path as a whole.
  - The effect that the coming into operation of the Order would have as respects other land served by the existing public right of way.
  - The effect that any new public right of way created by the Order would have as respects the land over which the rights are so created and any land held with it.
- 20 In confirming an Order the Secretary of State where the Order is opposed, or the Council where the Order is unopposed, will also have regard to any material provision of the Rights of Way Improvement Plan prepared by the local highway authority and the effect of the path or way on the needs of agriculture, forestry and biodiversity.
- 21 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

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

## Implications and Comments

### *Monitoring Officer/Legal*

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

### *Section 151 Officer/Finance*

- 24 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 would continue to be the responsibility of 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*

- 25 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*

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

*Human Resources*

27 There are no direct human resource implications.

*Risk Management*

28 There are no direct risk management implications.

*Rural Communities*

29 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)*

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

*Public Health*

31 *There are no direct implications for public health*

*Climate Change*

32 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.

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

<b>Access to Information</b>	
Contact Officer:	Richard Chamberlain– Public Path Orders Officer  <a href="mailto:Richard.chamberlain2@cheshireeast.gov.uk">Richard.chamberlain2@cheshireeast.gov.uk</a>  01270 371384
Appendices:	Plan No. HA/150
Background Papers:	The background papers and file relating to the report can be inspected by contacting the report writer.



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### Key

- Unaffected Public Right of Way
- Route to be stopped up A-B
- ... Proposed New Route A-C



1:2500

Plan No. HA150

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

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**Public Rights of Way Sub Committee****03 July 2023****Town and Country Planning Act 1990  
Section 257 Proposed Diversion of  
Public Footpath No. 5 in the Parish of  
Crewe****Report of: Peter Skates, Director of Growth and Enterprise****Ward(s) Affected: Crewe East****Purpose of Report**

- 1 The report outlines the investigation to divert part of Public Footpath No. 5 in the Town of Crewe following receipt of an application from a developer.
2. The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

**Executive Summary**

3. This report outlines the investigation to divert Public Footpath No. 5 in the Town of Crewe and includes a discussion of the consultations carried out in respect to the proposals and the legal tests to be considered for a diversion order to be made under the Town and Country Planning Act 1990.
4. The recommendation will be that the Public Footpath diversion order be made under section 257 of the Town and Country Planning Act 1990 on the grounds that Cheshire East Council is satisfied that it is necessary to do so in order to enable development to be carried out.

## RECOMMENDATIONS

The Public Rights of Way Sub Committee is recommended to:

1. Decide that a public path diversion order be made under section 257 of the Town and Country Planning Act 1990 for Public Footpath No. 5 in the Town of Crewe as shown on Plan No. TCPA/076 on the grounds that Cheshire East Borough Council is satisfied that it is necessary to do so in order to enable development to be carried out.
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, and in the event that planning consent has been granted, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
3. 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

4. An application has been received from Bowsal Developments Ltd. and Housing 21 requesting that the Council make an Order under section 257 of the Town and Country Planning Act 1990 to divert part of the Public Footpath No. 5 in the Town of Crewe as it is deemed necessary to allow for the construction of up to 47 retirement living (extra care) new dwellings and the associated infrastructure. Planning documents can be accessed via the Planning Portal using reference 22/4698N, this application is yet to be determined.
5. Public Footpath No. 5 in the Town of Crewe commences at its junction with Crewe Bridleway No. 34 and runs for approximately 86 metres in a generally north westerly direction to its junction with Herbert Street (UY378/A).
6. The existing alignment of Public Footpath No. 5 in the Town of Crewe will be directly affected by the construction of the 47 retirement apartments and associated infrastructure (22/4698N) therefore the diversion is required to preserve the public right of way.
7. That length of Public Footpath No. 5 in the Town of Crewe to be diverted is shown as a bold black line on Plan No. TCPA/076 between points A to B. It commences at point A where there is a redundant stile and continues in a generally north westerly direction for approximately 86 metres across a mixed surface of tarmac and loose stone to point B. At point B the definitive line terminates at the junction with Herbert Street (UY378/A).



8. The proposed diversion of Public Footpath No. 5 in the Town of Crewe is shown as a dashed black line between points C to D. It commences at point C at the junction with Crewe Bridleway No. 34 and will continue in a generally north north westerly direction for approximately 42 metres to point D at the junction with Herbert Street (UY378/A).
9. At point C an accessible chicane barrier delineating the junction with Crewe Bridleway No.34 will be fitted to minimise risk of collision at junction. The path will be surfaced with porous tarmac with a width of 3 metres for approximately 32 metres. The proposed route includes permissive cyclist usage of the footpath and the owners have consented to take on ongoing maintenance of the Footpath. This length will be bordered to the west by a verge measuring 0.6 metres width and a close-boarded fence measuring 1.8 metres in height. To the east the path will be bordered by an existing pond leading to a 1 metre verge and planted hedge line approximately 42metres. Over approximately 16 metres the path width will then gradually reduce to 2 metres in width as it meets the proposed vehicular turning head of the development. Dropped kerbs will be installed at either side of the driveway access for the adjacent property and a wooden close-boarded fence measuring 1.2 metres in height will line the western edge of the diversion before ending at point D.

## **Consultation and Engagement**

5. The Ward Members for Crewe East, Crewe Town Council, the user groups, statutory undertakers, and the Council's Nature Conservation Officer have been consulted and have raised no objections.

## **Reasons for Recommendations**

6. In accordance with section 257 of the Town and Country Planning Act 1990 ("TCPS") as amended by section 12 of the Growth and Infrastructure Act 2013:  
  
“(1A) Subject to the section 259, a competent authority may by Order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that-  
  
(a) An application for planning permission and respected development have been made under Part 3, and  
  
(b) if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.”
7. The Council, as the Local Planning Authority, can make an Order diverting a footpath if it is satisfied that it is necessary to do so to enable

development to be carried out, providing that the application has been formally registered with the Council.

8. It is considered that it is necessary to divert Public Footpath No. 5 in the Town of Crewe as illustrated on Plan No. TCPA/076, to allow the construction of up to 47 living extra care apartments and associated infrastructure as detailed within the planning reference 22/4698N.
9. 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**

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

### **Implications and Comments**

#### *Monitoring Officer/Legal*

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

#### *Section 151 Officer/Finance*

12. 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 would continue to be the responsibility of 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*

13. 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

- |   |
|---|
| <ul style="list-style-type: none"><li>• Thriving urban and rural economies with opportunities for all</li><li>• Be a carbon neutral council by 2025</li></ul> |
|---|

*Equality, Diversity and Inclusion*

14. An assessment in relation to the Equality Act 2010 has been carried out by the Public Paths Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current one.

*Human Resources*

- 2 There are no direct implications for Human Resources.

*Risk Management*

- 3 There are no direct implications for risk management.

*Rural Communities*

- 4 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)*

- 5 There are no direct implications for Children and Young People

*Public Health*

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

*Climate Change*

- 7 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:	Richard Chamberlain – Public Path Orders Officer <a href="mailto:Richard.chamberlain2@cheshireeast.gov.uk">Richard.chamberlain2@cheshireeast.gov.uk</a>

Appendices:	Plan No. TCPA 076
Background Papers:	The background papers and file relating to the report can be inspected by contacting the report writer.

356750

356750

356500

356500

356250

356250

372250

372500

Crewe FP4

Crewe FP5

Crewe BR34

Haslington BR43

Crewe BR34

## Key

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



1:2500

Plan No. TCPA/076

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

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**Public Rights of Way Sub Committee****3<sup>rd</sup> July 2023****Public Rights of Way Annual Report  
2022-23 and Work Programme 2023-24****Report of: Peter Skates, Director of Growth and Enterprise****Ward(s) Affected: All****Purpose of Report**

1. The report aims to inform readers about the work of the Public Rights of Way (PROW) team, including achievements and challenges.
2. The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

**Executive Summary**

3. This report records the achievements of the Council in terms of its PROW functions during the year 2022-23 and sets out the proposed work programme for the year 2023-24. Details are set out in Appendices 1, 2 and 3.

**RECOMMENDATIONS**

The Public Rights of Way Sub Committee is recommended to:

1. Note the report.

**Background**

4. The work of the Public Rights of Way Team is reviewed on an annual basis and the forward work programme is outlined. The report covers both the duties and the powers of the Council as set out in highways legislation. The assessment is made in the context of the Natural

England national targets for Public Rights of Way, which have as their aim that the network in England and Wales should be:

- legally defined,
- properly maintained; and,
- well publicised.

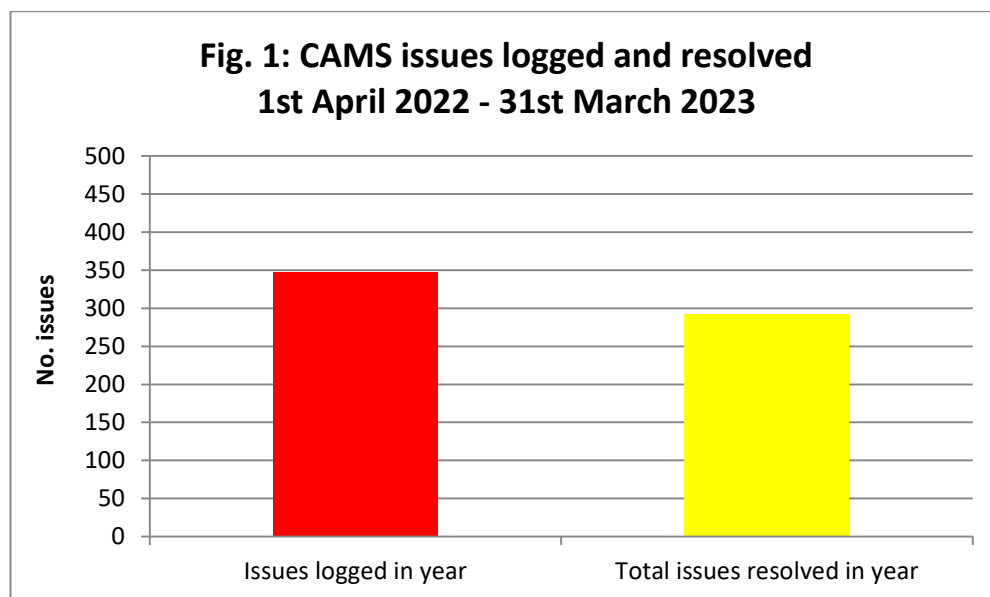
Each area is examined individually below, with the specific achievements of 2022-23, together with the work programme for 2023-24, contained in the relevant Appendices.

#### **4.1 Network Management and Enforcement**

- 4.1.1 Three full time equivalent Network Management and Enforcement Officer positions cover the borough, dealing with the protection and maintenance of the network. Within each area, the Officers are responsible for maintenance and enforcement to remove obstructions and keep the path network available and easy to use. A report detailing the work undertaken in relation to Network Management and Enforcement is attached at Appendix 1, with a summary highlighted below. The Officers operate on an area basis, with each area covering around one third of the length of the 1946km network. During the year, 2 Officers left the Council to move onto jobs in other local authorities, resulting in a backlog of issues across the network.
- 4.1.2 No cases required the Council to undertake enforcement action during 2022-23, with all other reported obstructions being removed following conversations or exchange of correspondence including legal notice. This indicates the generally good working relationships held with landowners and land managers, who, it is recognised, have many competing pressures and priorities to deal with, particularly following the pandemic's lockdowns which caused additional problems due to increased path usage and dog ownership.
- 4.1.3 The previously reported 3 long-term closures on the network due to legal, environmental, or other reason remain. No further progress has been made in the resolution of 2 these due to staff resources, with the third case one that is in the hands of National Highways. In addition, a further 5 long-term closures are in place due to bridges and/or river bank erosion. More frequent extreme weather events are exacerbating such issues, which are complicated and costly to resolve.

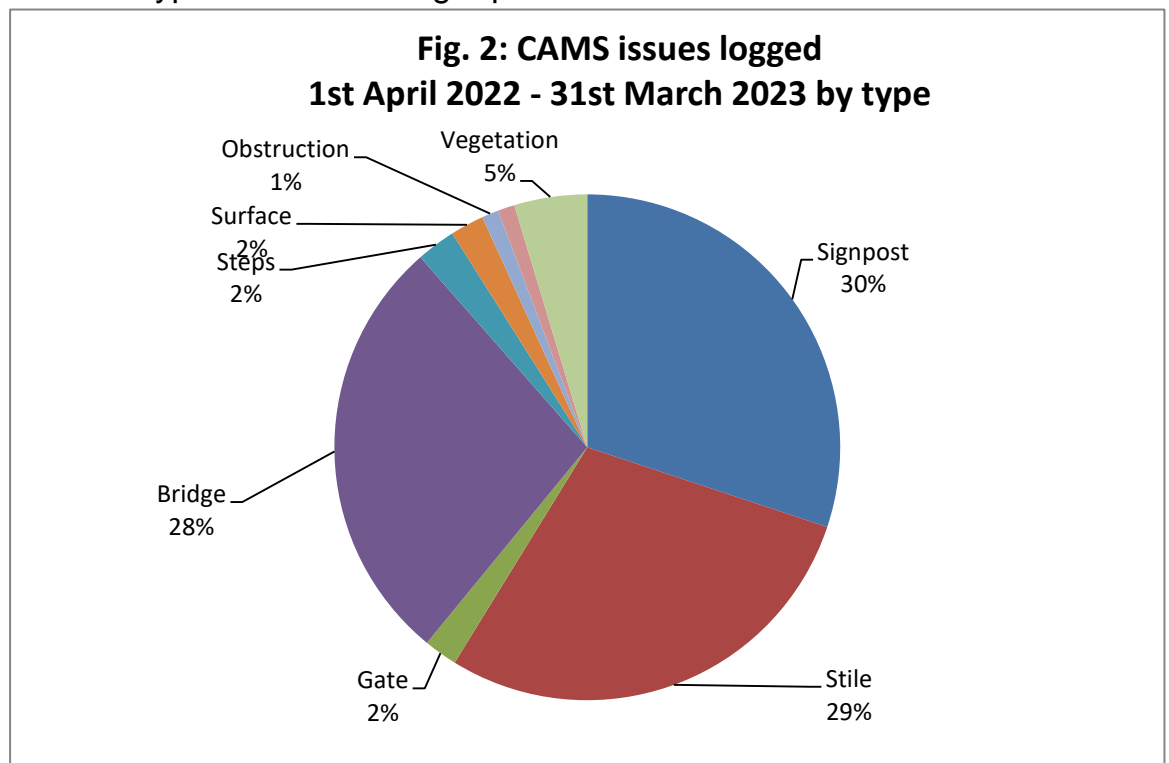


- 4.1.4 528 different Public Rights of Way benefitted from vegetation cutting in the year in order to help keep the routes open and available for the public, a total length 115km of path.
- 4.1.5 348 path problem reports have been logged within the team's mapping and database software "CAMS" (Countryside Access Management System) during the year 2022-23, having been reported by the public, landowners or Officers. We are grateful for those who report such issues, and user groups who undertake regular surveys, in acting as our 'eyes and ears' out on the network so that such issues can be resolved, and paths improved.
- 4.1.6 The charts below illustrate the numbers and types of problems reported recorded in the CAMS system. In Fig. 1 the shortfall between issues logged in year and issues both logged and resolved in year is due to the number of issues that become complex legal matters, taking longer to resolve, or those matters which span the end of the financial year. In addition, this year, due to staff vacancies, we have had to prioritise work and have not been able to resolve all issues within the normal timescales.



- 4.1.7 In Fig. 2 the numbers of different types of issues are very similar to previous years, showing relative consistency in the frequency of

different types of issue being reported.

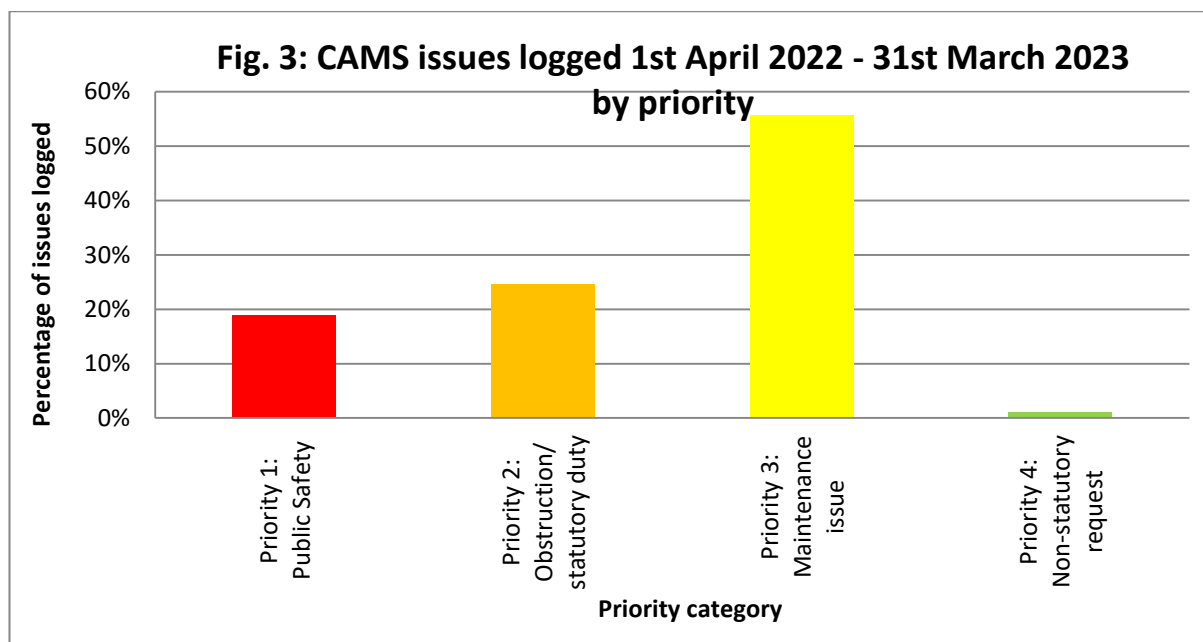


- 4.1.8 The numbers of items of furniture installed by the team during the year are given in the table below, and record an increase as workstreams continue to recover from the pandemic, despite staff vacancies:

Furniture item	No. installed
Fingerposts	119
Waymark posts	62
Stiles	39
Pedestrian gates	44
Kissing gates	76
Bridleway gates	8
2-in-1 combination gates	7
Handrails	47
Bridges	44
<b>TOTAL</b>	<b>446</b>

- 4.1.9 Fig. 3 shows a change compared to the previous year in relation to the priority assigned to issues reported: those relating to public safety, obstruction/statutory duty and non-statutory requests all were reduced, whilst those relating to maintenance increased to over 50% of issues logged.

- 4.1.10 It should be noted that many urgent issues, such as fallen trees, are frequently reported but not entered onto the database as they are resolved through by communication with landowners, rather than PROW contractors. Likewise, damaged bridges that cannot be repaired through framework contractor arrangements will be dealt with by specialist contractors and therefore again are not logged through the CAMS system which is used to issue work to PROW framework contractors.



- 4.1.11 It should be noted that the above figures do not include the large number of daily enquiries that the team receives and responds to by telephone, email, letter, web enquiry form and in person. Further, many issues are resolved without the need for them to be logged on the CAMS system in order to be issued to contractors for remedy and therefore the above should be viewed simply as an indication of the range of matters dealt with by the team.
- 4.1.12 In addition to day-to-day path management, the team also prepare for, procure, and manage the delivery of improvement projects including drainage works and surfacing works. Examples of work conducted in this are given in Appendix 1. The Officers also work with a number of volunteer groups who undertake improvement projects on PROW, numbering 9 in the year. Such works are key to delivering improvements which would be hard to justify under current resources, and yet deliver results which our local communities are keen to see. Furthermore, works on the ground and Public Path Order cases can

also resolve known mapping anomalies, of which 3 were concluded in the year. The team works closely with the Legal Orders team on all legal processes affecting the network, as well as liaising closely with developers, utility companies, landowners, user groups, Parish and Town Councils and other stakeholders with interests in the network.

## **4.2 Path Inspection**

- 4.2.1 Proactive inspection of the network is not feasible with the resources available. We are dependent on, and grateful for, the reporting of issues by members of the public and, in particular, user groups.
- 4.2.2 The previous random survey undertaken annually by Officers has been removed from the work programme in order to focus Officer time on other priorities. Instead, we are grateful for the network survey results undertaken by the East Cheshire Ramblers and Peak and Northern Footpaths Society. In 2022-23, volunteers inspected 59% of the path network in the borough, a proportion far greater than could be achieved in house. The results for class A and B paths (good/no fault and acceptable/fault but not serious) was 94%, a very high statistic. We are aware, however, of the continued high level of issue reports being received regarding furniture, surfaces and vegetation, and the number of temporary closures whilst bridge or river bank repairs are required. In addition, vacancies of 2 Officer posts on the Network Management team during 2022-23 and into 2023-24 have resulted in a backlog of issues requiring attention.

## **4.3 Technical Administration**

- 4.3.1 The Public Rights of Way team benefits from the work of one Technical Administration Officer who undertakes numerous technical and financial tasks to ensure the efficient running of the PROW team and office and assists with tasks for the Countryside Ranger Service.
- 4.3.2 The Officer processes search requests from developers and solicitors requesting confirmation of the information recorded on the Definitive Map for specific areas of land. During 2022-23, 43 search requests were processed, a large decrease in demand compared to the previous year.
- 4.3.3 The Officer also processed 310 applications for parking permits and 126 applications for canoe permits on behalf of the Countryside Ranger Service,

- 4.3.4 In addition to assigned tasks, the Officer is also the public's first point of contact for the team, receiving and assigning general enquiries via phone, letter, email and web form. The team's central email account received 2,124 emails in the year comprising enquiries, requests for legal processes and network issue reports whilst 685 online problem report forms were received about issues on the path network.
- 4.3.5 During the year, the team received and responded to 7 Freedom of Information requests tasks which take large amounts of time to respond to. In addition, the team responded to 3 enquiries from MPs and 33 enquiries received via the Members' Enquiries Service, Chief Executive Office or Leader's office.

#### **4.4 Rights of Way Improvement Plan (ROWIP) - Access Development**

- 4.4.1 During the year, the Countryside Access Development Officer continued to cover the Acting Public Rights of Way Manager role. This has resulted in a reduced output in the implementation of the ROWIP, access development projects and proactive development of green space access opportunities, although the work of the whole team contributes to the delivery of the ROWIP.
- 4.4.2 However, a number of new projects have been initiated and existing projects already in train have been progressed. In addition, leisure and active travel aspirations have continued to have been fed into strategic development proposals and other partnership work across the borough (see Appendix 2).
- 4.4.3 The Countryside Access Development Officer role is also responsible for the administration of the Cheshire East Countryside Access Forum. In addition, the role facilitates the Rights of Way Consultative Group, advises local user groups, encourages the promotion of walks and rides and responsible access and responds to general enquiries and requests for information.

#### **4.5 Legal Orders Team**

- 4.5.1 By the end of the year, the team comprised seven Officers (5 full-time and 2 part-time). The Legal Orders team operate on a caseload basis and deal with Public Path Orders (diversions and extinguishments), Definitive Map Modification Orders (changes to the

Definitive Map), emergency and temporary closures, landowner deposits and statements and planning application consultations, as well as day to day enquiries from the public and landowners. Appendix 3 provides a review of work undertaken and the forward work programme.

- 4.5.2 The team has 3 Public Path Order Officers who process applications for diversions and extinguishments and temporary closures. These posts are managed on a net nil basis, with the salaries covered by administration fees. Recruitment to a vacancy has enabled the staffing of the team to return to 3 in number after a number of years of reduced capacity.
- 4.5.3 During 2022-23 the team assessed 311 planning applications in order to ensure the protection and seek enhancement of the PROW network, a slight decrease on the previous year. This is a task which has set deadlines and involves protracted tracking of the application processes and associated input. Whilst some responses are straightforward, others involve continued correspondence to seek the best possible outcome for the protection and enhancement of the PROW network.
- 4.5.4 Additionally, 91 temporary closures were processed, predominantly following application from developers and utility companies, as well as in-house requirements to protect the public, a reduction from the number processed in the previous year. These processes can involve repeated negotiation and communications between applicants and Officers, involve public notice being made and initiate large numbers of enquiries from the general public. Closures because of HS2 advanced works are now coming into effect and, whilst the Council does not grant such closures, Officer time is invested to seek to limit the impact of such closures.
- 4.5.5 The team received and processed 3 deposits, statements and declarations from landowners under section 31 of the Highways Act 1980, a decrease on the number seen in the previous year. The team also responds to enquiries for information following Local Land Charge searches, numbering 33 during the year, as well as internal requests for Definitive Map information.
- 4.5.6 With 26 cases in progress, 9 Town and Country Planning Act section 257 Orders to enable development to go ahead were made during

the year and 3 Orders were confirmed. No case files had to be submitted to the Secretary of State for determination following the receipt of objections. These applications take precedence over Highway Act 1980 diversions in the interest of landowners or the public due to the tight timetables involved in the planning and construction process. The need to respond to these in parallel with the planning process and the consequent work generated liaising with developers and colleagues in the Planning Department has a significant impact on other areas of work and has increased of recent years.

- 4.5.7 3 Highways Act 1980 Public Path Orders were made, and 5 Orders confirmed, with 8 cases in progress. No case files had to be submitted to the Secretary of State for determination following the receipt of objections. The waiting list for this area of work now sits at 64 applications, a slight reduction from the previous year.
- 4.5.8 The team also comprises 4 Definitive Map Officers, following the recruitment of an additional Officer to a newly created post, formed to help reduce the waiting list of Definitive Map Modification Order applications. 12 Definitive Map Modification Order application cases were in progress during the year, with 3 Orders being made following determination, and one determination not resulting in an Order.
- 4.5.9 During the year, the Council received no directions from the Secretary of State to determine a Definitive Map Modification Order application following appeal from the individuals who submitted the application because the Council had not determined the case within 12 months of registration.
- 4.5.10 At the end of the 2022-23 year, the waiting list of Definitive Map Modification Order applications stood at 43, a reduction from 48 at the end of the previous year. 1 new application was registered during the year.
- 4.5.11 In addition to the above work, each year a Legal Event Order is completed to collate all Order cases completed during the year; this is the administrative function which legally changes the Definitive Map and Statement. Due to other priorities, this task was not undertaken, and all Orders will be collated into the next Legal Event Order.

## **4.6 Policies**

- 4.6.1 The policies currently in place reflect the following activity:
- Network management and enforcement protocol;
  - Policy for structures on Public Rights of Way;
  - Prioritisation system for different categories of maintenance & enforcement issues on Public Rights of Way;
  - Statement of Priorities for Definitive Map Modification Order applications;
  - Charging policy for Public Path Orders, searches & temporary closures and Highways Act 1980 section 31 deposits and statements – reviewed annually; and,
  - Policy for determination of uncontested Public Path Order applications by Public Rights of Way Manager in consultation with the Chair and Vice Chair of the Public Rights of Way Sub Committee.

#### **4.7 Countryside Access Forum and ROW Consultative Group**

- 4.7.1 The primary purpose of the Forum is to provide advice to Cheshire East Borough Council, and other bodies, such as Government Departments, Natural England, the Forestry Commission, English Heritage, Sport England and Town and Parish Councils, on how to make the countryside more accessible and enjoyable for open air recreation, in ways which address social, economic and environmental interests. The Forum consists of volunteer members. Further details on the role of the Forum, the interest areas of its members and its annual reports can be found on the Forum's webpage at [www.cheshireeast.gov.uk/cecaf](http://www.cheshireeast.gov.uk/cecaf).
- 4.7.2 The Access Forum is complemented by the Cheshire East Rights of Way Consultative Group which meets twice yearly, now virtually, with Officers from the team. The Group operates to achieve the following purposes:-
- to enable interest groups (users, landowners and others) to engage in constructive debate and discussion about issues of law, policy, principle and work programming with Members and Officers of the Cheshire East Council,
  - to encourage understanding of each others' concerns; and,
  - to participate in the consultation process and ongoing monitoring associated with the Rights of Way Improvement Plan.



## **4.8 Budget**

- 4.8.1 The annual budget for the years 2022-23 and 2023-24 are set out in the table below. During 2022-23 financial year, as in the previous, the budgets remained as forecast throughout the year, allowing the team to plan spending efficiently.
- 4.8.2 However, income generated during the year continued to be dramatically below target due to the complexity of cases and hence reduced throughput, reduction in demand for searches, and a long term vacancy in the team.
- 4.8.3 Officers have secured a range of external grant funding totaling £13.9k, primarily from user groups, for the improvement of the network, which helps to deliver great value and service for the public.
- 4.8.4 The PROW team secure competitive prices through a tendered framework of PROW contractors who undertake works on the ground at the direction of the Network Management and Enforcement Officers. This framework was re-procured during the year with an experienced, though limited, field of tenderers. As was anticipated, costs for services increased significantly in line with inflation. We are always mindful of the value for money we, the public and landowners, benefit from through experience and good working relationships within the tendered framework which consists of a relatively few, specialist contractors.
- 4.8.5 The PROW team's core capital budget allocation from the Local Transport Plan remained at a level 20% lower than had been allocated previously, impacting on what was delivered on the network. Further business cases to secure the necessary capital funding are required, with over £700k of investment anticipated to be needed in order to continue current and future repair and replacement schemes on bridges and structures, and this remains a key concern going forwards.
- 4.8.6 In contrast, on the revenue budget, additional resource was secured for the employment of consultants and a new Definitive Map Officer to help address the waiting list of Definitive Map Modification Order applications. In 2023-24, additional funding has been secured to cover increases in costs for supplies and services, and also to recruit an additional Network Management Officer to assist with the demands

on the network. That increase can be seen in the table below which summarises the budgets available.

	<b>2022-23</b>	<b>2023-24</b>
<b>Length of PROW network</b>	1952km	1952km
<b>Total PROW revenue budget</b>	£573k	£705k
<b>Network maintenance budget</b>	£62k revenue + £87k capital	£143k revenue + £87k capital
<b>Maintenance budget per PROW km</b>	£76/km	£118/km
<b>Other funding</b>	<ul style="list-style-type: none"> <li>• £48k flooding investment</li> </ul>	<ul style="list-style-type: none"> <li>• £176k Congleton FP28 towpath s106</li> <li>• £18.5k Wilmslow RB87 s106</li> <li>• £93k Alsager FP26 s106</li> <li>• £98k A6MARR PROW Complementary Measures package</li> </ul>

## 4.9 Conclusion

- 4.9.1 As in previous years, the Public Rights of Way team has delivered a very high standard of service to the public. The good condition of the network is highly regarded by user groups, the processing of legal orders continues to serve both users and landowners, and the high standard of response and service from the team as a whole is widely recognised.
- 4.9.2 This year, the impact of extreme weather events has been limited, yet the vulnerability of the network to such events and the requirement for investment to be able to repair and protect paths and structures is not diminished. The continued high usage of paths and the pressures that puts on assets and the issues caused to landowners, particularly by irresponsible dog owners, adds to the impacts being experienced on the network.
- 4.9.3 On the legal process side of the team's work, the Definitive Map Modification Order application waiting list is now again actively being addressed, supported by additional resources.

- 4.9.4 In another area of legal processes undertaken by the team, demand for Public Path Orders continues to remain high, with perpetual waiting lists.
- 4.9.5 The long-anticipated implementation of the Deregulation Act 2015 is likely to see DEFRA prioritising implementation of the right to apply for public path diversion and extinguishment orders; currently it is a power of the local authority, rather than a duty. Along with the right to apply is an 8-week determination timeframe for applications which will necessitate a fresh appraisal of resources, policies and procedures to deal with the resultant workload implications.
- 4.9.6 Whilst the Covid-19 pandemic lockdowns fade into memories, and society focusses, understandably, on other challenges, the experiences of the past few years have reinforced the vital importance of the PROW network for our communities' physical and mental wellbeing, and in doing so, the validity of continuing to protect the necessary resources to maintain that asset.

## **Consultation and Engagement**

- 5. Consultation is not required. The annual report and its content is widely shared with interested parties.

## **Reasons for Recommendations**

- 6. The report is for information only.
- 7. 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**

- 8. Not applicable.

## **Implications and Comments**

*Monitoring Officer/Legal*

- 9. There are no direct financial implications.

*Section 151 Officer/Finance*

- 10. The Public Rights of Way service has a revenue and capital budget which is set during the Medium Term Financial Strategy (MTFS)

process. It has also accessed additional funding during 2022-23 which has been used for local path improvements and investment in paths and bridges following flooding and river erosion events.

### *Policy*

11. 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*

12. There are no direct implications for *Equality, Diversity and Inclusion*.

### *Human Resources*

13. There are no direct implications for Human Resources.

### *Risk Management*

14. The lack of resource for proactive network surveying puts the Council at potential risk of claims for accidents arising from users of the network. During the year no claims were registered with the Council’s Insurance team.

### *Rural Communities*

15. There are direct positive effects from the Public Rights of Way network for rural communities, through connectivity, access to services, leisure and active travel.

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

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

### *Public Health*

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

*Climate Change*

18. 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.
19. The work of the Public Rights of Way team encourages a reduction in carbon emissions and increased environmental sustainability by reducing energy consumption and promoting healthy lifestyles through active travel.

<b>Access to Information</b>	
Contact Officer:	Genni Butler, Acting Public Rights of Way Manager <a href="mailto:genni.butler@cheshireeast.gov.uk">genni.butler@cheshireeast.gov.uk</a>
Appendices:	Appendix 1 Network Management & Enforcement Appendix 2 ROWIP Appendix 3 Legal Orders
Background Papers:	N/a

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## Appendix 1 – Network Management and Enforcement

Measure of Success	Source	Achievements 2022-23 (2021-22)	Anticipated work programme 2023-24
All footpaths, bridleways and byways correctly signposted where they leave a metalled road.	C/side Act 1968 NERC Act 2006	<ul style="list-style-type: none"> <li>181 signs erected across the borough (230)</li> </ul>	<ul style="list-style-type: none"> <li>Installation of additional signs and replacement signs following loss and damage to ensure the requirements of Countryside Act 1968 s 27 are fulfilled.</li> </ul>
All PROW clear of obstructions, misleading notices, other hindrances or impediments to use.	HA 1980 s130	<ul style="list-style-type: none"> <li>Enforcement actions saw 0 notices served for cropping and 1 for general obstructions (0 and 1, respectively).</li> <li>39 “7 day” warnings were issued in relation to cropping offences (0).</li> <li>0 enforcement actions were required to physically remove obstructions on the PROW network (2).</li> <li>2 s130A notices were received (0) and actioned resulting in the removal of obstructions</li> </ul>	<ul style="list-style-type: none"> <li>Carry out necessary enforcement work in line with adopted protocols to ensure that the duty set out in Highways Act 1980 is fulfilled.</li> </ul>
Surface of every PROW is in proper repair, reasonably safe and suitable for the expected use.	HA 1980 s41	<ul style="list-style-type: none"> <li>A routine maintenance programme is in operation, with a total length of 115 km having received routine strimming during the year (113).</li> <li>1 s56 notice was received (0) and responded to.</li> </ul>	<ul style="list-style-type: none"> <li>The annual maintenance programme will be rationalised across the borough to ensure consistency</li> <li>The development of the input of volunteers in the inspection and maintenance of PROW.</li> <li>Officers will continue to work with colleagues in other departments and other partners in order to facilitate additional funding for special projects in relation to PROW wherever possible.</li> </ul>

Measure of Success	Source	Achievements 2022-23 (2021-22)	Anticipated work programme 2023-24
All PROW inspected regularly by or on behalf of the authority.	HA 1980 s58	<ul style="list-style-type: none"> <li>Small scale bridges are inspected every three years. In practice, however, other priorities mean that such work is not always achieved, and paths in general are not proactively inspected due to a lack of resources. This could result in a lack of a legal defence to claim(s) for personal injury.</li> <li>Larger/complex structures are inspected regularly by CE Highways.</li> <li>Network Management Officers hold bi-annual meetings with the relevant representative of the walking, cycling and equestrian user groups, are in regular contact with users throughout the year and receive user group inspection reports.</li> </ul>	<ul style="list-style-type: none"> <li>Network Management Officers will continue to hold bi-annual meetings with the relevant representatives of the walking, equestrian and other user groups to agree work priorities and to discuss the results of the survey work carried out by these groups.</li> </ul>
The authority is able to protect and assert the public's rights and meet other statutory duties (e.g. to ensure compliance with the Rights of Way Act 1990).	HA 1980 s130	<ul style="list-style-type: none"> <li>All cropping obstructions were responded to within 4 weeks of reporting – in practice this will not have been achieved due to vacancies and higher priority issues.</li> </ul>	<ul style="list-style-type: none"> <li>Continue to adhere to the response times set out in the current standard.</li> </ul>
Waymarks or signposts are provided at necessary locations and are adequate to assist users. Waymarking scheme/initiative in place.	C/side Act 1968 s27	<ul style="list-style-type: none"> <li>Waymarking is undertaken by staff and contractors as appropriate. Additionally waymarkers are provided to registered PROW volunteers to enable them to replace missing and damaged waymarkers.</li> </ul>	<ul style="list-style-type: none"> <li>Waymarking and signposting will be undertaken as appropriate.</li> </ul>



## Appendix 1 – Examples of improvement projects delivered

**Audlem Footpath No. 26:** Audlem Ramblers, working in partnership with the Parish Council and the Peak and Northern Footpath Society, have created a 65m long raised walkway over a section of footpath that is boggy the majority of the year and yet forms a popular circular route for residents, linking in with the Shropshire Union Canal towpath. The project involved innovative use of a product called Flex MSE to create a causeway and the construction of a boardwalk.



**Before**



**After**

**Baddiley Footpath No. 8:** On a difficult site and working with the landowner, steps leading up to a stile were removed and a ramp of compacted hardcore put in its place.



**Before**



**After**



**Bunbury Footpath No. 23:** Working with volunteers at Bunbury Mill, a path that was difficult to navigate was refurbished. A leaning tree was removed, a wobbly stile replaced and a boardwalk extended to overcome waterlogging. This is a popular path used by local residents and visitors to the Mill.



**Before**



**After**

**Sutton Footpath No. 5:** Replacement 8m bridge on a popular walk from nearby Macclesfield and Langley.



**Before**



**After**



**Wincle Footpath No. 38:** Replacement 3m bridge on very popular route alongside the River Dane in picturesque Wincle.



**Before**



**After**

**Plumley Footpath No. 16:** replacement of a flight of steps.



**Before**



**After**



**Mobberley Footpath No. 11:** replacement of a flight of steps.



**Before**



**After**

**Accessibility improvements:** investment in durable metal path furniture, such as the following examples of a gate replacements of stiles on a Public Footpaths, results in reduced maintenance, reduced liabilities and more accessible routes:

**Somerford Footpath No.6:** on a popular walk on the urban fringes of Congleton.



**Before**



**After**



**Haslington Footpath No. 9:** A very popular walk on the edge of Haslington and part of the village circular walk.



**Before**



**After**

**Sandbach Footpath No. 14:** A very popular walk on the urban fringe of Sandbach Town.



**Before**



**After**

**Mottram St Andrew Footpath No. 22:** A footbridge washed away in storms and was replaced with a larger footbridge with handrails.



**Before**




**After**

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## RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2022-23

Policy Ref.	ROWIP Ref.	Achievements 2022-23	Ongoing targets 2023-24
H2 H3 S7 S8	Various	<b>Planning Applications, Pre-Applications and Developer Contributions</b> <ul style="list-style-type: none"> <li>Planning applications and pre-applications commented upon from the perspective of active travel and leisure walking, cycling and horseriding, putting forward ROWIP aspirations.</li> <li>Developer contributions sought and secured for off-site improvement through section 106 agreements, unilateral undertakings and s278 agreements</li> <li>Initiation of s106-funded improvement works in Alsager, Wilmslow and Congleton</li> <li>Securing improvements to Public Rights of Way and other walking and cycling access routes, to be delivered by developers within sites.</li> </ul>	<ul style="list-style-type: none"> <li>Ongoing, as arising.</li> </ul>
H2 H3 S7 S8	X15	<b>Publicity to promote walking, cycling and horse riding</b> <ul style="list-style-type: none"> <li>Articles submitted for Council newsletters and social media feeds for all news items, as arising.</li> <li>Suggestions for walks, cycle rides and horse riding routes published on <a href="#">Free walk leaflets for Cheshire East</a> and <a href="#">Cheshire Walks - Visit Cheshire</a>.</li> <li>Walks and countryside site leaflets distributed via countryparks, visitor information centres, libraries and on request to members of the public.</li> <li>Countryside Ranger Service events promoted via social media channels.</li> </ul>	<ul style="list-style-type: none"> <li>Work ongoing.</li> </ul>
H2 H3 S7 S8	n/a	<b>Rights of Way Consultative Group</b> <ul style="list-style-type: none"> <li>Twice yearly liaison meetings for PROW team and user group representatives.</li> <li>Updates provided on long term closures of PROW due to legal / resource issues.</li> <li>Improvements to the online collection of information on issue reports.</li> <li>Updates from local groups.</li> <li>Ongoing management of register of volunteers and issuance of Letters of Authority for volunteers assisting with waymarking and minor vegetation cutting and additionally legal order notice checking.</li> </ul>	<ul style="list-style-type: none"> <li>Work ongoing.</li> </ul>

## RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2022-23

Policy Ref.	ROWIP Ref.	Achievements 2022-23	Ongoing targets 2023-24
H2 H3 S7 S8	n/a	<p><u><a href="#">Cheshire East Countryside Access Forum</a></u></p> <ul style="list-style-type: none"> <li>• Secretariat duties for Forum, a statutory body, whose members are volunteers, which advises the Council on matters relating to countryside access. The Forum: <ul style="list-style-type: none"> <li>○ continued to hold quarterly meetings and recruited new members to increase the experience, knowledge and capacity of the Forum</li> <li>○ continued to monitor the Rights of Way Improvement Plan delivery and Public Rights of Way team resources</li> <li>○ contacted the head of Cheshire Farms Service about exploring the opportunities to improve the public rights of way network on its farms portfolio</li> <li>○ wrote to the head of the Legal department of the Council to seek that appropriate legal, as well as financial, resources were allocated to the resolution of the long term temporary closure of Brereton Bridleway No. 31 due to river erosion</li> <li>○ continued representation on the Lindow Moss Partnership project aiming to explain the history and value of Lindow Moss landscape</li> <li>○ noted that the latest NFU Mutual rural crime survey highlighted the implications of dog attacks on livestock</li> <li>○ received a number of presentations by HS2 Ltd to provide updates on the progress of Phase 2a and Phase 2b</li> <li>○ received a presentation from the Council's Economic Development team providing an overview of the Council's development proposals at the Handforth Garden Village site to the east of Wilmslow.</li> <li>○ continued to post on the Forum's FaceBook account in order to promote sharing of information including on responsible access to the countryside.</li> </ul> </li> </ul> 	<ul style="list-style-type: none"> <li>• Work ongoing.</li> </ul>



## RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2022-23

Policy Ref.	ROWIP Ref.	Achievements 2022-23	Ongoing targets 2023-24
H3 S7 S8	Various	<p><b>Road and rail infrastructure schemes</b></p> <ul style="list-style-type: none"> <li>• Influencing road and rail infrastructure schemes through design development, the planning system and Side Road Orders to achieve best possible outcomes for non-motorised users, and ensuring delivery of infrastructure on the ground as well as legal records.</li> <li>• A556/M56 junction, SEMMMS A6-Manchester Airport Relief Road, Congleton Link Road, A500 dualling, M6 missing Restricted Byway Bridge, Middlewich Eastern Bypass and Poynton Relief Road.</li> <li>• Continued input of ROWIP aspirations into options and designs to maximise opportunities for improving routes for active travel and leisure walking, cycling and horse riding.</li> <li>• Response to consultation and negotiation with HS2 scheme designers for improved accommodation of Public Rights of Way and rural lanes, to protect and enhance leisure and active travel routes affected by HS2 proposals.</li> <li>• Continued liaison with Strategic Infrastructure team on planning and delivery of active travel schemes under the Cycling Strategy.</li> </ul> <div data-bbox="537 810 994 1273"> </div> <p>Diagram showing the priorities of the Local Transport Plan 2019-2024</p>	<ul style="list-style-type: none"> <li>• Work ongoing.</li> </ul>

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### Appendix 3 - Legal Orders Team

Area of work	Source	Work completed 2022-23 (work completed during 2021-22)	Waiting list / backlog	Anticipated work programme 2023-24
<b>Legal event Orders - no backlog of legal events requiring orders to be made</b>	W&C Act 1981 s53(2) (a) & s53(3) (a)	Legal Event Modification Order not made for all legal events in 2022-23 due to other work priorities	n/a	Legal Event Modification Order to be made for all legal events in 2023-24
<b>Definitive Map Modification Orders - no backlog of applications to modify the Definitive Map</b>	W&C Act 1981 Sch 14	<ul style="list-style-type: none"> <li>12 applications under active investigation (9)</li> <li>3 Schedule 14 applications determined (3)</li> </ul>	43	6 applications determined
<b>Definitive Map Modification Orders - no backlog of decided applications/other cases awaiting Definitive Map Modification Orders</b>	Former Countryside Agency national target	<ul style="list-style-type: none"> <li>2 Orders confirmed (0)</li> <li>0 Orders confirmed with modifications (0)</li> <li>0 refusal to make Order appealed (0)</li> <li>0 appeals against non-determination within 12 months (2)</li> <li>0 case referred to Planning Inspectorate (0)</li> </ul>	0	<ul style="list-style-type: none"> <li>Continue to make orders as soon as reasonably practicable.</li> <li>Contested Orders to be submitted to PINs as soon as reasonably practicable.</li> <li>Directed applications/orders to be processed as required, within resource constraints.</li> </ul>
<b>Map consolidation - the authority has considered the need to consolidate the Map and take any necessary action</b>	W&C Act 1981 s56	On hold due to resource limitations.	n/a	On hold due to resource limitations.
<b>Definitive Map - no other matter affecting the Definitive Map outstanding</b>	Former Countryside Agency national target	0 anomalies corrected (3)	List of 465 known map anomalies	No progress can be made without additional staff resource, unless resolved through other legal process.
<b>Planning application consultations</b>	HA80 s130	311 (356)	n/a	65 received April and May. (390 a year pro-rata)
<b>Temporary &amp; emergency closures</b>	RTRA84	91 (114)	n/a	As required

Area of work	Source	Work completed 2022-23 (work completed during 2021-22)	Waiting list / backlog	Anticipated work programme 2023-24
<b>Public Rights of Way searches</b>	WCA81 s57	43 – direct (143)  33 – following Local Land Charge results (35)	n/a	As required
<b>Landowner deposits, statements and declarations</b>	HA80 s31	3 (7)	n/a	As required
<b>Public Path Orders</b>	HA80	<ul style="list-style-type: none"> <li>• 8 cases in progress (9)</li> <li>• 3 Orders made (3)</li> <li>• 5 Orders confirmed (8)</li> <li>• 0 Orders contested (0)</li> <li>• 0 cases referred to Planning Inspectorate (2)</li> </ul>	64	3 Orders made
<b>Public Path Orders</b>	TCPA90	<ul style="list-style-type: none"> <li>• 26 cases in progress (16)</li> <li>• 9 Orders made (0)</li> <li>• 3 Orders confirmed (3)</li> <li>• 0 Order contested (0)</li> <li>• 0 cases referred to Planning Inspectorate (0)</li> </ul>	0	As required
<b>Deeds of Dedication</b>	LA11	0 (0)	n/a	1
<b>Cycle Tracks Orders</b>	CTA84	0 (0)	n/a	0

HA80: Highways Act 1980  
 RTRA84: Road Traffic Regulation Act 1984  
 LA11: Localism Act 2011

WCA81: Wildlife and Countryside Act 1981  
 TCPA90: Town and Country Planning Act 1990  
 CTA84: Cycle Tracks Act 1984