

CHESHIRE EAST COUNCIL

REPORT TO: RIGHTS OF WAY COMMITTEE

Date of meeting: 1 March 2010
Report of: Greenspaces Manager
Subject/Title: Wildlife and Countryside Act 1981 – Part III, Section 53
Application to Upgrade a Public Footpath between Knutsford Road, Chorley and Moor Lane, Wilmslow to Public Bridleway Status (Public Footpath Nos. 29, 15 (Part), 14, 10 (Part), 9 (Part), 27 Parish of Chorley And Footpath No. 40 (Clay Lane) Parish Of Wilmslow); and Application to Upgrade Public Footpath No. 42 (Filter Bed Lane) to Public Bridleway Status, Parish of Wilmslow

1.0 Report Summary

- 1.1 The report outlines the investigation of two applications, made by the Border Bridleways Association, to upgrade a number of Public Footpaths to Public Bridleway status in the Parish of Chorley and the Parish of Wilmslow. This includes a discussion of the consultations carried out in respect of the applications, 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.

2.0 Recommendations

- 2.1 An Order be made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by upgrading to Public Bridleway, the route as shown between points A-B-C-D-E-H-G on drawing number MO/001;
- 2.2 The application to modify the Definitive Map and Statement to record public bridleway rights between points H and F as illustrated on drawing number MO/001 be refused on the grounds that there is sufficient evidence to show that the landowner has rebutted the presumed dedication by indicating he had no intention to dedicate the way;
- 2.3 Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Act.
- 2.4 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 The evidence in support of this application must show, on the balance of probabilities that a reasonable allegation has been made that public bridleway rights subsist along the claimed routes. It is considered that there is sufficient user evidence to support the existence of public bridleway rights along the route A-B-C-D-E-H-G on drawing no. MO/001. On the balance of probabilities, the requirements of Section 53 (3)(c)(ii) have been met and it is recommended that the Definitive Map and Statement should be modified to upgrade the route from a Public Footpath to a Public Bridleway.
- 3.2 User evidence is considered under section 31(1) of the Highways Act 1980, public bridleway rights can come into existence by prescription unless there is evidence to the contrary. For the section of the claimed route between points H and F, as illustrated on drawing number MO/001, it is considered there is sufficient evidence to show that the landowner has rebutted the presumed dedication, by indicating he had no intention to dedicate the way as a bridleway. The requirements of Section 53 (3)(c)(ii) have therefore not been met and it is recommended that the application is refused for this section of the claimed route.

4.0 Wards Affected

- 4.1 Alderley.

5.0 Local Ward Members

- 5.1 Councillor Carolyn Andrew
Councillor Liz Gilliland
Councillor Frank Keegan.

6.0 Policy Implications including - Climate change - Health

- 6.1 Not applicable.

7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)

- 7.1 Not applicable.

8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)

- 8.1 Not applicable.

9.0 Legal Implications (Authorised by the Borough Solicitor)

- 9.1 If the Committee fails to make a decision as to whether there should be a modification order, the applicant may make representations to the Secretary of State for a direction that the application be determined within a specified period. If the Committee decides not to make an order, the applicant may appeal against the decision.
- 9.2 The legal implications are contained within the report.

10.0 Risk Management

- 10.1 Not applicable.

11.0 Background and Options

11.1 Introduction

- 11.1.1 An application was submitted in January 2008 (Application No.1) by The Border Bridleways Association, to modify the Definitive Map and Statement by upgrading a number of public footpaths to public bridleways. The public footpaths together make up a route from Knutsford Road to Moor Lane. Drawing No MO/001 shows the claimed route between points A-B-C-D-E-F (OS Grid References SJ 8185 7871 to SJ 8251 8020).
- 11.1.2 A further application was submitted in May 2008 (Application No.2) by The Border Bridleways Association to modify the Definitive Map and Statement by upgrading Public Footpath No. 42 in the Parish of Wilmslow. Known as 'Filter Bed Lane' this footpath runs between Upcast Lane and Clay Lane. Drawing No MO/001 shows the claimed route between points G-H (OS Grid References SJ 8307 7950 to SJ 8233 7996).
- 11.1.3 Both applications are based on user evidence, although historical evidence has also been considered. For application no.1 user evidence was received from 31 individuals; for application no.2, 23 individuals completed user evidence forms. Nineteen individuals had used both claimed routes and because of the close proximity of the routes it was decided to investigate both applications at the same time.

11.2 Description of the Claimed Routes

- 11.2.1 The claimed route of application no.1 begins at point A (on drawing no. MO/001) at the junction of Knutsford Road and Edge View Lane. The claimed route runs along Edge View Lane in a generally northerly direction to point B. Edge View Lane is unadopted, the surface is compacted stone. At point B the claimed route turns in a generally easterly direction to point C; the route then continues in a generally northerly direction to point D. The surface between point B and the junction with Gore Lane is metalled; then from this point to roughly half way between points C and D, next to Freya's Folly Stables, the surface is compacted stone. The section of footpath no. 14 from Freya's Folly

Stables to point D is much narrower than the rest of the route (approximately 1-1.5 metres), it is unsurfaced and there are a number of large trees in the centre of the path. Following many complaints about the surface of this section of the route, works to improve it have recently been completed; vegetation was cleared and it now has a compacted stone surface. This area from Freya's Folly to point D was originally open woodland and the footpath was unfenced. Sometime in the 1980's many trees were felled and the footpath was fenced off. At point D the claimed route joins the end of Clay Lane. The claimed route continues in a north easterly direction to The Yews at point E. This section has been improved by the landowners over the years and is currently a wide stone surface track with a ditch at the side. From point E the route continues in a north easterly direction to join Moor Lane at point F, Clay Lane is unadopted and this section also has a compacted stone surface. Near to point F, adjacent to Lea Farm Kennels (now known as Studholme Kennels) is a metal field gate with a kissing gate to the side (point G3 on drawing no. MO/001). This is currently the only gate on the claimed route; a gate has been in place at this location since approximately 1980. During the last few years there have also been gates at points G1 and G2, but these have now been removed.

- 11.2.2 The claimed route of application no.2 begins at point G (on drawing no. MO/001) on Upcast Lane. The claimed route follows the full length of Footpath No. 42 Wilmslow in a north westerly direction to join Clay Lane at point H. The claimed route is known as 'Filter Bed Lane', it is unadopted and the surface is compacted stone. There is a wooden field gate at point G (on drawing no. MO/001) this has generally been left open by the adjacent landowner Dr Thompson of Davenport House Farm.

11.3 *The Main Issues*

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

- 11.3.2 One such event (section 53(3)(c)(ii)) requiring modification of the map by the upgrading of a right of way, is the discovery of evidence by the Council which, when considered with all other relevant evidence available, shows:-

“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;”

This is commonly demonstrated by user evidence. All the evidence must be evaluated and weighed and a conclusion reached whether, on the balance of probabilities, either the alleged rights subsist or are reasonably alleged to subsist. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.

- 11.3.3 Where the evidence in support of the application is user evidence, section 31(1) of the Highways Act 1980 applies, this states:-

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

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

- 11.3.4 Use of the route by horse riders appears to have been brought into question for the first time in 2006. It was at this time a gate for stock control was authorised by the Council on the claimed route at point G1 (on drawing no. MO/001). The landowner of part of Clay Lane and adjacent fields, Joanna Hodgson, has stated that horse riders began to leave the gate open, so she put a lock on the gate preventing horse riders from using the route. This action has brought into question the right of horse riders to use the route. The gate adjacent to the kennels on Clay Lane has never been locked, as it is used for access to The Yews, it is therefore not classed as a challenge to horse riders. Therefore the relevant twenty year period to be considered for application no.1 is 1986 to 2006. For application no.2 there does not appear to have been a challenge to use on horseback therefore the period is calculated from the date of the application; therefore the twenty year period to be considered for application no.2 is 1988 to 2008.

- 11.3.5 In the case of *Godmanchester Town Council, R (on the application of) 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 user, 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.

11.4 *Consultations*

- 11.4.1 With regard to application no.1 consultation letters were sent to the Local Members; Chorley Parish Council (there is no parish council in Wilmslow); User Groups/Organisations; Utility Companies; all landowners/adjacent landowners and properties along the claimed route.
- 11.4.2 There has been no response from the Local Members or from Chorley Parish Council.
- 11.4.3 Responses were received from United Utilities, National Grid and BT all stating they have no objection to the application. A response was also received from Natural England stating they have no comment to make in relation to this application because they do not feel that the proposals are likely to significantly affect the natural environment.
- 11.4.4 Comments have been received from both the CTC Right to Ride representative and the Chairman of Cycle Wilmslow stating that they would support the application to upgrade the route to a bridleway.
- 11.4.5 A response has been received from the Peak and Northern Footpaths Society. With regard to Footpath No. 14 Chorley they state that the physical condition of the path would suggest that it is unlikely there has been any horse traffic along it. They comment on the poor surface and narrow width of the path and the fact there are mature trees down the middle of the path. With regard to Footpath No. 40 Wilmslow the response refers to a High Court injunction, this is discussed below at paragraph 11.7.12.
- 11.4.6 In a letter dated 14th October 2009 the Alderley Edge, Wilmslow and District Footpaths Preservation Society object to the application. They comment that any change in status to bridleway would be detrimental to the unique character of the area. They state they have a deep concern for the future enjoyment of local footpaths by all walkers. They note that the footpaths subject to this application are illegally used by horse riders and have been for many years; however they state this has not been without challenge and state members have on numerous occasions pointed out to horse riders that they are on a footpath, not a bridleway.
- 11.4.7 In a letter dated 22nd October 2009 The Ramblers Association East Cheshire Group have commented on the application. They state that most of the proposed route is on public footpaths along tracks that are wide enough for vehicular traffic; the exception is part of Footpath No. 14 Chorley. They state footpath 14 is unsurfaced between trees and vegetation and prone to being boggy due to the underlying peat. They state their main concern is that the surface and width of the whole route should be suitable for walkers, cyclists and horse riders. They also comment that the affected footpaths have been inspected on an annual basis since the mid 1980's; their records show the paths have been signed as footpaths both by yellow way markers and, where appropriate, by footpath finger posts. It is also stated that some

members have concerns about the possibility of conflict between different classes of users.

- 11.4.8 As stated in paragraph 11.3.2 above, issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.
- 11.4.9 With regard to application no.2 consultation letters were sent to the Local Members; User Groups/Organisations; Utility Companies; all known landowners/adjacent landowners along the claimed route. In addition notices have been placed at each end of the claimed route as the applicant was unable to identify the owner of 2 or 3 adjacent fields to the northern side of the route.
- 11.4.10 Responses to the consultation for application no.2 were received from United Utilities, National Grid and BT all stating they have no objection to the application. A response was also received from Natural England stating they have no comment to make in relation to this application because they do not feel that the proposals are likely to significantly affect the natural environment. The Peak and Northern Footpath Society has no objection to this application. The Mid Cheshire Footpath Society has responded to say they have no comment to make. There has been no response from the Local Members.
- 11.4.11 The representative for CTC Right to Ride has responded to say they fully support the application. The chairperson of Cycle Wilmslow has stated they support the expansion of safer routes for cycling, particularly those avoiding motor traffic. They state they support the application as conversion of Footpath no. 42 would create a useful link in the network as it ties in well with existing bridleways and restricted byways in the area. Emails have also been received from 10 individuals writing in support of the application.
- 11.4.12 In a letter dated 21st January 2010 the Alderley Edge, Wilmslow and District Footpaths Preservation Society object to the application. Their comments are the same as those referred to for application no.1 in paragraph 11.4.6 above.
- 11.4.13 In a letter dated 30th January 2010 The Ramblers Association East Cheshire Group have commented on the application. They state that the proposed route is on a public footpath along a track that is wide enough for vehicular traffic. They state their main concern is that the surface and width of the route should be suitable for walkers, cyclists and horse riders. They are particularly concerned that the northern end of footpath 42 is currently waterlogged; drainage and surfacing works are planned for this section of the path. They also comment that their records show the path has been signed as a footpath both by yellow way markers and, where appropriate, by footpath finger posts. It is also stated that some members have concerns about the possibility of conflict between different classes of users.

11.5 *Letters in Support of the Application*

- 11.5.1 In addition to the user evidence discussed below, a total of 23 letters have been received in support of application no.1. A list of the correspondence received can be found in **Appendix 1** with a brief description of the comments contained in each letter. The principle reason given by supporters in favour of the route being upgraded is that it provides a safe off-road route. As stated in paragraph 11.4.11 above, a total of 10 emails have been received from individuals writing in support of application no.2.

11.6 *Objections*

- 11.6.1 In addition to the objections received from landowners below, a further 6 objections to the application have also been received, these objections are in relation to application no.1. Details of these can be found at **Appendix 2**.
- 11.6.2 Mr Mellersh lives on Gore Lane, he does not own any affected land but lives close to the claimed route of application no.1. Mr Mellersh has submitted three letters with additional documents included. In the first letter dated 1st June 2008 he raises concerns for pedestrian safety particularly on the narrow section of footpath no. 14, between Freya's Folly Stables and Clay Lane. He states when he first came to live in Gore Lane in 1972 the footpath (between points C and D on Plan no. MO/001) was no more than 3 feet wide. He says it was widened 16 years ago when the Shire horse stables were established and the owner widened the footpath to allow access for his horse box. The footpath between Freya's Folly Stables and point D remains much as it has always been, although he states the passage of horses has increased dramatically. Also included is a copy of a letter to the applicant in which he again points out the narrow width of footpath no. 14 and the difficulties encountered when a horse meets pedestrians and/or their dogs. He states the potential for an accident is high. He has included photographs of the narrow section of footpath referred to and a chronology of recent challenges to horse riders dating from February 2008 to April 2008.
- 11.6.3 In the second letter dated 12th October 2009 Mr Mellersh states he strongly objects to the application; firstly from his experience of the route since 1972 he disputes the amount of use claimed by riders and states that the physical condition of the footpaths could not have allowed for the amount of use. Secondly he states that the bridleway rights claimed by riders do not subsist as there are only 4 unchallenged riders in the 20 year period prior to 2006. His third objection again relates to the conflict of use; he states that the increase in horse traffic would threaten the safe passage of the increasing number of walkers with children and dogs. Mr Mellersh then goes on to describe the condition of the footpaths in 1973 in particular the area between Freya's Folly Stables and point D (on Plan no. MO/001) is described as 'the bog' consisting of a mixture of dense oak/birch planting and soggy heath land, this stretched to the ditch to the north of footpath no. 10 (Clay Lane). Footpath no. 14 was unfenced and ill-defined. It is also described how the woods currently boarding footpath no. 10 extended to the ditch to the north of the path; this path was also narrow and muddy. A livery stable opened in

Edge View Lane in the mid 1990's and it is stated that horses were seen from that location in Gore Lane but not on footpath no. 14, probably due to the poor condition. Included with his letter Mr Mellersh has compiled a bar chart of the user evidence, this information is taken from the user evidence forms completed by persons claiming to have used the route on horseback and submitted with the application. He claims that the conditions he describes could not possibly have supported the amount of passage claimed for the year 1973 nor does it accord with his recollections. He suggests that 4 unchallenged riders over the twenty year period from 1986 to 2006 would not be sufficient to upgrade the route.

11.6.4 The third letter from Mr Mellersh dated 1st November 2009 makes comments on the statement made by Mrs Margaret Rainey. Mrs Rainey is one of the witnesses; she completed a user evidence form and was subsequently interviewed by Officers. After the interview witnesses sign a statement as a record of what was said at the interview. In his letter Mr Mellersh points out what he believes is an inconsistency between Mrs Rainey's evidence form and her statement. He also believes it is unlikely that she was not challenged at all during the period 1986-2006; when landowners Mr Morris and Mr Hall have written to say they have challenged riders (see their evidence below). In response Officers have said that all statements are taken at face value and it is suggested any further questioning of individual statements could be undertaken at a public inquiry.

11.6.5 The remaining 5 letters of objection are summarised in **Appendix 2**.

11.7 Evidence of Landowners/Occupiers

11.7.1 A total of 14 landowners/adjacent landowners have responded to the consultation regarding application no.1. Seven of the 14 have been interviewed by Officers; the remainder have submitted their comments in writing. Three of the seven landowners/adjacent landowners interviewed are in support of the application (Mr Karl Eckert, Mrs Gilks and Mr Eyres). One landowner, Mr Roy Hughes has written in support of the application, the remaining ten landowners object to the application.

11.7.2 Mr and Mrs Hodgson own part of footpath no.10 (Clay Lane) and adjacent land from which they run their business 'White Peak Alpacas'. In a letter dated 24th February 2008 they oppose the application to upgrade the route to bridleway status. They explain that when they purchased the land in 2002 footpath no.10 was "a single path of deep, mudfilled potholes, prone to flooding....overhung with Willow and Alder branches". Since then they have trimmed back trees; opened the ditches and removed silted-up pipes to drain the path; and laid stone along the whole track. They state this was done so they could access their land on the other side of the track with farm tractors and equipment, and move their alpacas to and from the same land; and at the same time make it a more pleasant walk for the many people who use it. In 2006 Cheshire County Council authorised a gate across the lane for the purpose of stock control, as Mr and Mrs Hodgson were grazing the alpacas off the sides of the track. The position of this gate is indicated by 'G1' on

drawing no. MO/001. Mr and Mrs Hodgson describe an incident where a horse rider left the gate open, they state since then they have locked the gate to prevent their animals from escaping.

- 11.7.3 Joanna Hodgson has also submitted a letter dated 13th October 2009. She states she is the oldest daughter of Mrs Eckert of 'The Yews' Clay Lane and lived at The Yews herself up to the age of 24. She describes how footpath 10 (between points D-E on drawing no. MO/001) was inaccessible in the winter months due to it being bog land and very overgrown. She states her mother has lived at The Yews for 69 years and describes in the early years how deliveries of coal were left at the top of the lane, next to Lea Farm, as the lane was unsuitable for vehicles. She states her father Josef Eckert, later placed cinders and stone on the lane to make a vehicular access for his haulage company. Now aged 59 years Mrs Hodgson explains how she regularly visited her parents; and since living next door she visits her mother daily, especially after her father died, in this time she says only an odd horse might ride past.
- 11.7.4 Mrs Hodgson states she is objecting to the upgrade of this route as footpath 10 passes through her open field which she uses for grazing; she states she has made footpath 10 accessible and maintains it to a high standard for herself and pedestrians who come and visit her animals. She claims that a bridleway would have safety implications for people visiting her Alpaca Farm which include groups of school children and cubs. Some of the groups have learning disabilities and she claims a bridleway would ruin the road surface stopping wheelchair and pushchair use of footpath 10. She also claims that an upgrade to bridleway would reduce the grazing area of her farm and affect her economically. Finally she states this track has never been a bridleway and those claiming it are admitting trespass on footpaths on private land.
- 11.7.5 Officers have also interviewed Joanna Hodgson; she states she has run her Alpaca Farm business from Cedar Lodge, Paddock Hill for the past 9 years. As a child she recalls very few horses using the lane as it used to be overgrown. She has challenged horse riders whenever she has seen them on the lane; although she could not recall any specific dates. She again describes how she locked the gate on footpath 10 preventing horse riders from using the route. She explained how the people at the kennels on Clay Lane have always stopped horse riders from using the lane. She says the gate next to the kennels went up in 1978 but they were stopping people before then.
- 11.7.6 Officers have spoken briefly to Mrs Irene Eckert (now 82 years old) of The Yews, Clay Lane; her husband Mr Joe Eckert has now passed away. She did not wish to make any comment on the application and did not wish to be interviewed. A letter dated 31st July 2009 has however been submitted from Mrs Eckert which simply states that she has lived at The Yews for 69 years and in that time the previous owners of Fiveacres, the Braka family, or the people before them, never accessed Clay Lane with either horses or vehicles from their field. She states this has only happened within the past eighteen months.

- 11.7.7 A letter dated 29th August 2009 has been received from Josef Anton Eckert; Joanna Hodgson's brother. He states he was born in 1952 and resided at The Yews up to the age of 22. He says in those 22 years the only people who used Clay Lane to his father's house were Jack Fisher, to gain access to his house, and Denver Morris, to gain access to his fields. These two people helped his father to maintain the lane to the house; and they were the only ones who had access to the lane. No vehicles ever gained access past Jack Fisher's house, as it was only a footpath.
- 11.7.8 Mr Michael Eckert (Joanna Hodgson's brother) has not submitted any evidence however, during a telephone conversation with Officers on 29th February 2008 he stated he now lives out of the area but has lived near to the claimed routes most of his life. He used to ride the lane and stated his father encouraged use of the lane and installed seats; although there were not many horse riders using it only occasional ones. He emphasised that he has no objection to the application but he does object to his sister's installation of a gate. He said his father took issue with a gate put up by Mr Morris at the Moor Lane end of the lane as it interfered with his father's private access. This led to a High Court case in 1983 and the gate was allowed to remain with conditions.
- 11.7.9 Officers have interviewed Mr Karl Eckert (also brother of Joanna Hodgson). Karl Eckert owns land adjacent to Clay Lane and Filter Bed Lane; he was born at The Yews and lived there until he was 21 years old. He visits his mother regularly and the adjacent land where he keeps horses, pigs and calves. Karl Eckert states he has always been happy for people to use the route as a bridleway. He says horses have always used this route and anyone who says otherwise is simply not telling the truth. He explained how years ago a Captain Unwin, who owned the cottages on Moor Lane, used to ride the route. His mother's sister recalls riding a horse with Captain Unwin along this route when she was a young girl. Karl Eckert explained that in 2008 he applied to the Council for a licence to hold a medieval event on his land. The Council received lots of objections from local residents and the licence was refused. He has submitted copies of over 200 objections to the medieval event, most of these objections refer to the access tracks to the site as 'bridleways and footpaths' and many state they are 'predominately used by walkers, horse riders and cyclists'.
- 11.7.10 In a letter dated 15th February 2008 Mr Morris of Lea Farm states he is opposed to the upgrading of footpath 40 to bridleway. He states "as a result of High Court action taken by myself in the 80's it is gated and subject to an injunction regarding usage". The Court Order seen by Officers does not make any reference to public use of the lane; the conditions regarding usage of the lane relate to the private access to the property known as 'The Yews' (point E on drawing no. MO/001). Mr Morris also refers to a bridleway constructed across Lindow Farm and states this makes any change to footpath 40 unnecessary. He claims to have been turning horses away and not allowing them to use the footpath as a bridleway for over 40 years.

- 11.7.11 In a further letter dated 15th September 2009 Mr Morris again registers his objection and states that he has never allowed it to be used as a bridleway. In the 1970's Mr Morris had a meeting with a Mr Porter from Cheshire County Council and he confirmed the status was designated for foot use only. So apart from permitting limited conditional access to The Yews, which is subject to a High Court injunction; that is how Mr Morris has tried to keep it. He does state he has had numerous confrontations with horse riders and cyclists claiming the right to ride over his land, but he has always turned them away.
- 11.7.12 Officers have interviewed Mr Morris; he states he has lived at Lea Farm since 1957. He claims he has always tried to challenge horse riders when he has seen them, especially since the meeting in the 1970's with Council Officers when it was confirmed to him the route was a footpath only. He explains in 1983 he was involved in a High Court case with Mr Joe Eckert regarding his access to The Yews. Mr Eckert had a lime spreading business and the Court limited the number of vehicles Mr Eckert could drive along the lane in any one day. The Court also entitled Mr Morris to keep a gate across the lane adjacent to his property. The gate has been there ever since; it is kept shut but not locked. Mr Morris has submitted a copy of the Court Order; it does not make any reference to the public's use of the lane. Mr Morris has also submitted two photographs; the first dated 1980 shows a gate post but no gate can be seen on the lane, there is a sign clearly visible on the photograph stating 'Lea Farm Private Land Designated Footpath Only'. The second photograph dated 1983 shows a metal field gate across the lane, a different sign can also be seen stating 'Lea Farm Private Land Footpath No 40'.
- 11.7.13 In a letter, received on 19th February 2008, Mr and Mrs Clayton of Studholme Kennels state they agree with Mr Morris (the property owner) in not wanting any alteration to the classification of Footpath 40. As with Mr Morris's letter referred to at 11.7.10 above, Mr and Mrs Clayton also mention the bridleway across Lindow Farm and state that this makes any change to footpath 40 unnecessary. They state they have been turning horses away and not allowing them to use the footpath as a bridleway for over 20 years. In a further letter dated 15th February 2008 Mr and Mrs Clayton confirm that they object to the application.
- 11.7.14 Mr Clayton has been interviewed by Officers; he has lived and worked at Studholme Kennels, Lea Farm since 1977 and took over the running of the kennels in 1990. He is opposed to the application and states he has never allowed Clay Lane to be used as a bridleway. He states even before the Court Order was made in the 1980's he was challenging everybody who attempted to use Clay Lane, he has stopped people coming from both directions and told them it is a footpath only. He says there have been too many incidents to say how often he has challenged people. He mentions various notices which he has put up on or near to the gate adjacent to the kennels. The notices said 'Private Land Footpath Only No Horse Riding', he says there was even one notice that had a map attached showing the area of land he owns and showing the lane as a footpath only. He states he has

never given permission for anyone to use the lane on horse back, not even his staff were allowed to use it.

- 11.7.15 Mr Ben Ferguson was also interviewed by Officers; he has worked at the kennels for the past 7 years. He has seen Mr and Mrs Clayton turning people away and was told if he saw anyone on horse back he should turn them away. He states he would see someone on horse back perhaps every couple of days in the summer then other times he may not see anyone for a few weeks or months. He said riders mostly came from the direction of The Yews, but he has also stopped people coming from the direction of Moor Lane. He also mentions putting up notices for Mr Clayton. In summer 2006 he recalled putting up about a dozen notices which were all later taken down. Mr Ferguson has also submitted a statement in which he describes an incident which occurred on 7th July 2009, where he was threatened by an intimidating man when he went to inform him he had no right of way on horse back along Clay Lane.
- 11.7.16 Mr and Mrs Clayton have also submitted a letter from Mr John Mulholland. He describes an incident on Easter 2007 when he was at Studholme Kennels fitting a new cattery block with Mr Clayton. He recalls hearing horses coming down the lane outside the kennels, Mr Clayton then went to tell them they were not allowed to ride down the lane as it was not a bridleway. He describes hearing raised voices; he believes the riders then went back up the lane. He describes how Mr Clayton told him he had on several occasions stopped riders using the lane; how some of his customers had been scared to get out of their cars and how in the past a horse had been spooked by people coming to leave or collect their dogs. He raises a safety concern due to the conflict of user if the lane were upgraded to bridleway.
- 11.7.17 Mr and Mrs Clayton have also submitted two further statements. One is from Anissa Jameson, who worked at the kennels; she states she repeatedly saw Mr Clayton and Mr Ferguson having to turn away horse riders, and she also turned them away. The second statement from Elizabeth Neild states she has kept livestock including horses on land at Lea Farm since 1980; and she has always understood Clay Lane to be a footpath only. She has never used this footpath in any other way except to gain access to Mr Morris's fields with his permission. She also states she has seen people trying to use the lane as a bridleway turned back. A further 6 people have signed a statement saying they have seen horses turned away or informed that they do not have access along the route of the proposed bridleway. In addition a copy of a petition, signed by 155 people, has been submitted to Officers stating they do not wish to have a bridleway running between Knutsford Road and Moor Lane. Finally Mr and Mrs Clayton have submitted comments on some of the individual user evidence forms; most of which state the individual has either not been seen riding on Clay Lane or has been stopped by them.
- 11.7.18 Mr K Hall of Heatherside, Gore Lane has written to object to application no.1. His property is near the crossroads of Edge View Lane and Gore Lane. In a letter dated 22nd February 2008 he opposes the application on the grounds that it is not suitable for horses; he refers to parts of the footpath being

overgrown and only 1 metre wide in places. He states the footpaths are clearly marked as such and have been for the past 40 years which he has lived at Heatherside; any horses using the footpaths must have known they were breaking the law. In a further letter dated 1st October 2009 Mr Hall states he has resided at Heatherside for 30 years, rather than the 40 years referred to in his previous letter. He claims to have repeatedly advised people on horses that they were on a footpath and not a bridleway.

- 11.7.19 Officers have interviewed Mr Hall over the telephone; he has lived at Heatherside since 1978. He claims to have always tried to stop people using the route on horse back; he could not recall any specific incidents but said horse riders have been challenged when he has seen them. He believes most of the people who have tried to use the route are associated with John Eyres and his livery and they have all been told it is a footpath only. He states there have been 'Footpath Only' signs on the route but they only last 24 hours and are taken down.
- 11.7.20 Mr and Mrs Gilks of Fiveacres, Paddock Hill own a small section of footpath no. 10 (Clay Lane) and also have property land adjacent to Clay Lane; they have no objections to the upgrading of the route. In a letter dated 25th April 2008 Mr and Mrs Gilks state it has never caused them any concern to have horses down the lane; they have never seen any travel faster than a walk or slow trot and the volume of riders is not cause for concern either. They state the lane is wide enough for vehicles and is used to access surrounding land. They also comment that the route would provide a safe alternative for equestrians from the busy Knutsford Road and would also link to other bridleways in the area.
- 11.7.21 Mrs Gilks has been interviewed by Officers and given evidence in support of the application. She claims to have used part of the route on horseback (application no.1) along Clay Lane, footpath 10 and footpath 14; and also the full length of Filter Bed Lane (application no.2). Her use dates from 2004, when she moved to Fiveacres until July 2009, on average she used the routes on horseback every other day. She was stopped from using the route any further south than Clay Lane when her neighbour Joanna Hodgson installed a gate on the route (marked 'G1' on drawing no. MO/001). She was not stopped from using the route from her property along Clay Lane towards Moor Lane, until November/December 2008 when Joanna Hodgson installed a second gate adjacent to The Yews (marked 'G2' on drawing no. MO/001). A dispute then arose between the neighbours and Mrs Hodgson began to challenge Mrs Gilks. Mrs Gilks states she has also been challenged by people at the kennels; and she is aware of them challenging horse riders coming from the direction of Moor Lane.
- 11.7.22 John Eyres lives at Prospect Place Cottages; these cottages back onto Edge View Lane and are therefore adjacent to the claimed route; he has access to his property along there. Mr Eyres has used the full length of both the claimed routes on horseback; he believes the routes to be public bridleways and has given evidence during an interview with Officers in support of the application. Mr Eyres has lived in the local area all his life, he says these

routes have been used by riders for many years; all the local riders used them to visit the smithy Arthur Burgess, it was also a route used to get to Wilmslow Riding School. He said originally all these lanes were used by horse and cart delivering bread from the bakery at Prospect House. He states he began riding between Edge View Lane and Moor Lane in 1948 when he was 12 years old. He used the routes on and off over the years until the locked gate was put up blocking the route (marked 'G1' on drawing no. MO/001). He has also used the route more recently, since the gate was removed, but has now sold his horse. On average he states he used the route twice a week. From the late 1970's or early 1980's he began to use Filter Bed Lane. He states a gate went up near to the kennels on Clay Lane and Mr Morris was known to stop horse riders, so he used Filter Bed Lane as an alternative route. He did occasionally still use Clay Lane as the gate by the kennels was never locked; he never saw Mr Morris so was never stopped. Mr Eyres claims Mr Hall of Heatherside never stopped him and he would see him ride past. He also said he used to speak to Joe Eckert at The Yews and he never had a problem with riders using the lane.

- 11.7.23 In a letter dated 11th October 2009 Mr Roy Hughes states he has occupied land at Woodmoss off Gore Lane since 1983. He states in all that time horses and cyclists have used the path that runs along one side of the land. (Footpath no. 14).

- 11.7.24 In a letter dated 8th September 2009 Mr and Mrs Pariser of Plum Tree Cottage, Gore Lane object to the application. They state they do not object to the immediate locals using Gore Lane with their own horses but they do object to it becoming part of an extended bridleway system. They state they have pointed out to several riders in the past that Gore Lane is a footpath only. It should be noted that Gore Lane is not part of the claimed route. They also make comments on the suitability of the route; particularly footpath 14 which they state is a small narrow footpath that in the winter can be impassable.

- 11.7.25 A letter dated 16th February 2008 was received from Mrs J Stain of 2 Prospect Cottages. She has no objection to Edge View Lane being upgraded to bridleway but states she would not approve of the path being upgraded to a Byway Open to all Traffic. However a later email from Mr R Stain dated 23rd September 2009, states he would prefer the route to remain as a footpath as some of the paths are too narrow for horses.

- 11.7.26 Letters dated 12th March 2008 and 18th September 2009 have been received from Mr and Mrs Hargreaves of Pear Tree Cottage, Gore Lane. They object to the application; their objection again relates to the area between Freya's Folly Stables (footpath 14) and the junction with footpath 10 (marked 'G1' on drawing no. MO/001). They state the path is used by dog walkers and people with children who would find it intimidating and possibly dangerous to meet horses with nowhere to pass; and they comment that this stretch of path is usually muddy and slippery. However, they do state that if the footpath were able to accommodate both riders and walkers, and were maintained, then they would probably have no objection to the upgrading. In a further letter

dated 12th October 2009 various questions are raised regarding the suitability of the path, the liability and the factors that are considered when determining the application; Officers have responded to their questions in a letter dated 14th October 2009.

- 11.7.27 Mr and Mrs Dahinten of 86 Knutsford Road own land that borders footpath no. 10; Mr Dahinten is a Parish Councillor but he emphasises that his comments are personal and not on behalf of Chorley Parish Council. In a letter dated 27th February 2008 they state they would not wish to see the footpath upgraded as parts of the path are narrow with a very soft surface; animals are grazed on the path to keep vegetation down; and the paths are regularly used by landowners, walkers, families with young children and elderly people. They believe the activities of legitimate users would be in danger if the status of the path changed. They state they have used these footpaths on a daily basis for approximately 30 years and when they have occasionally met horse riders on the footpath have always pointed out that the right of way is for pedestrians only.
- 11.7.28 In a further letter dated 13th October 2009 Mr and Mrs Dahinten again state that they challenged horse riders when they did occasionally see them on Clay Lane; they also comment that Mr Morris of Studholme Kennels always objected to horse riders using the route and he physically stopped them. They state the paths have always been clearly marked as footpaths. They describe the claimed route, and state that footpath 10 between The Yews and footpath 14, was a muddy track until it was stoned and drained by Mr and Mrs Hodgson. They claim the unsurfaced section of footpath 14 is unsuitable for horses as it is narrow with mature trees. Enclosed with the letter is a statement describing the claimed route. They state that the history of the track/footpath linking Clay Lane to Gore Lane and Edge View Lane illustrates that this has never been a through route other than as a footpath and occasional use for farm machinery.
- 11.7.29 Two letters have been received from the joint owners of Ivy Cottage, the derelict property next door to The Yews on Clay Lane. The owners, Mrs V Christensen and Mrs J Croxton, are sisters and currently reside in Australia, it is their intention to renovate and live in Ivy Cottage. The letters dated 16th and 17th September 2009 both object to the application and raise similar issues. They are concerned about the conflict of use between walkers and riders and suggest it would be dangerous should a horse be startled and kick out. They also suggest it would affect their privacy as riders would be in a position to see over the hedge into their garden. Further comments relate to the surface of the route and they state horse droppings would be unwelcome.
- 11.7.30 Five landowners/adjacent landowners have responded to the consultation regarding application no. 2 (Filter Bed Lane); the comments of Mr Karl Eckert have already been discussed at paragraph 11.7.9 above.
- 11.7.31 Dr Thompson of Davenport House Farm, Upcast Lane owns land adjacent to Filter Bed Lane (near to point G on drawing no. MO/001). Dr Thompson has been interviewed by Officers. He has lived here since 1992 and like other

adjacent landowners has a right of access along the lane. Dr Thompson has completed a land registry search which revealed the lane itself is unregistered. He is in favour of the lane becoming a bridleway but has concerns about unauthorised vehicles using the lane. He states he has seen people riding on Filter Bed Lane, mostly at weekends, more in the summer. He has never stopped anyone from riding on the lane. He commented that the surface of the lane has been improved since he has lived there but there have always been problems with the middle section being very wet. The gate at the start of the lane, adjacent to his property, has always been there.

11.7.32 In a letter dated 11th June 2008 Mrs G Hanna writes to object to the application. She and her sister jointly own fields adjacent to Filter Bed Lane. She states it has always been a well used footpath enjoyed by dog walkers, children and families and it would be dangerous to allow horses to use it.

11.7.33 In a letter dated 1st February 2010 Mr Morris of Lea Farm objects to any alteration being made to the classification of Footpath 42 which adjoins Footpath 40 on his land. Mr Clayton, occupier of Studholme Kennels Lea Farm, also objects to this application; in a letter dated 9th February 2010 he again mentions the high court action taken by Mr Morris (referred to in paragraph 11.7.10 above) and states he has been turning horses away for over 20 years.

11.8 Investigation of the Application

11.8.1 A detailed investigation of the evidence submitted with the application has been undertaken, together with additional research. The application was made on the basis of user evidence, from 31 witnesses (application no.1) and 23 witnesses (application no.2). 11 witnesses have been interviewed by Officers in person. In addition to the user evidence an investigation of the available historical documentation has been undertaken to establish whether the claimed routes have an earlier origin. The standard reference documents have been consulted in respect of both applications. There is no Enclosure Award for this area and there is no reference to the routes in the Quarter Sessions. Details of all the evidence taken into consideration can be found in **Appendix 3**.

11.9 Documentary Evidence

County Maps 18th-19th Century

11.9.1 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 map-makers 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.

- 11.9.2 On Bryant's Map (1831) part of Edge View Lane is shown as a lane, indicated on the key as 'Lanes and Bridleways', the remainder of the route is not shown, the area is described as 'Lindow Common'. The claimed routes are not shown on the other county maps consulted.

Chorley, Great Warford and Pownall Fee Tithe Maps and Apportionment 1841/2

- 11.9.3 Tithe Awards were prepared under the Tithe Commutation Act 1836, which commuted the payment of a tax (tithe) in kind, to a monetary payment. The purpose of the award was to record productive land on which a tax could be levied. The Tithe Map and Award were independently produced by parishes and the quality of the maps is variable. It was not the purpose of the awards to record public highways. Although depiction of both private occupation and public roads, which often formed boundaries, is incidental, they may provide good supporting evidence of the existence of a route, especially since they were implemented as part of a statutory process. Non-depiction of a route is not evidence that it did not exist; merely that it did not affect the tithe charge. Colouring of a track may or may not be significant in determining status. In the absence of a key, explanation or other corroborative evidence the colouring is of little evidential value.
- 11.9.4 On the Great Warford Tithe Map Edge View Lane is shown as far as Edge View Farm, the route then turns in a westerly direction into a field. Edge View Lane does not have a plot number and does not appear on the Tithe Apportionment. This is good evidence of the existence of the route although the status is not clear. On the Chorley Tithe Map a plot is shown between The Yews and Edge View Farm; in the apportionment the owner is listed as 'Landowners of Chorley' and the plot name is 'waste'; this indicates the plot was considered to be in the ownership of all the landowners in the parish. On the Pownall Fee Tithe Map Clay Lane is not shown; the area is described as 'Lindow Common' and the owner as 'freeholders'. The northern section of the area of Filter Bed Lane as also described as 'Lindow Common; the middle section is described as 'waste or rough moss' and the owner is listed as John Burgess. The southern section has the same owner and is given the plot name 'intake'.

Ordnance Survey Maps

- 11.9.5 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. Until about 1880 all roads, paths and ways were coloured sienna. In 1884 an instruction to surveyors was that, "All metalled public roads for wheeled traffic kept in good repair by the highway authority will in future be shaded". The practice ceased in 1912. These maps are good evidence of the physical existence of routes, but not necessarily of status. Since 1889 the Ordnance Survey has included a disclaimer on all of

its maps to the effect that the depiction of a road or way is not evidence of the existence of a right of way. It can be presumed that this caveat applies to earlier maps also. These documents must therefore be read alongside the other evidence.

Ordnance Survey Map 1" to 1 mile 1833 First Edition

- 11.9.6 The 1" to 1 mile first edition dated 1833 shows Edge View Lane as an open-ended track from its junction with Knutsford Road to Edgeview Farm (points A-B on drawing no. MO/001). As with the Tithe Map a spur is shown for a short section from Edgeview Farm in a westerly direction, but there is no continuation of the claimed route for application no. 1 any further than Edgeview Farm. The first half of Filter Bed Lane, from Upcast Lane (point G on drawing no. MO/001) is shown as a single dotted line, which could indicate a route of some description.

Ordnance Survey 6" and 25" Maps 1872 First Edition, 1899 Second Edition and 1909 Third Edition

- 11.9.7 The 6" first and second editions and the 25" second edition were not available to view at the public record office. On the 25" first edition, surveyed in 1872 and 1876, the claimed route of application no. 1 is shown for the most part. From Knutsford Road (point A on drawing no. MO/001) the route is shown as an uncoloured lane drawn between solid physical boundaries, the lane comes to an end at the area of Freya's Folly Stables. No route is shown between here and point D (drawing no. MO/001). Clay Lane is also shown as an uncoloured lane between solid boundaries, this continues to a point just to the north east of point D; the lane then comes to an end and continues as a double pecked line to point D. Application no.2 Filter Bed Lane is also shown as an uncoloured lane between solid boundaries. The 25" third edition 1909 shows the claimed routes of both applications the same as the first edition, with the addition of a double pecked line annotated 'FP' between Freya's Folly and point D. One other alteration is that Clay Lane is now shown as a lane between solid boundaries as far as point D (drawing no. MO/001). All of the claimed routes are also shown coloured yellow on this edition. The 6" third edition 1911 shows the claimed routes the same as the 25" third edition but no colour is shown on this edition.

The Macclesfield, Knutsford and Warrington Railway Plan 1865

- 11.9.8 Railway Plans had to be produced and deposited prior to a railway company obtaining an Act of Parliament authorising the construction of their intended railway. The maps covered a corridor of land defining the limits of deviation either side of the line of the intended railway, with plot numbers for the land and public and private routes, which are referred to in a book of reference. They showed the status of routes bisected by the proposed line, the accuracy of which would have been in the interest of those affected. The plans were drawn to comply with parliamentary requirements. The Bill and plans were open to consultation and debate and as such, they carry strong

evidential weight. The Book of Reference for a railway which was proposed, but not actually built, can also provide cogent evidence for the existence of public rights over a way. This is based on the fact that the application was open for public scrutiny and objection.

- 11.9.9 The Macclesfield, Knutsford and Warrington Railway Plan of 1865 shows a proposed railway bisecting Edge View Lane; the line of the railway crosses just to the south of point B (on drawing no. MO/001). The book of reference refers to the lane as '*Public Road*' and the owner is listed as '*The Highway Board of the Prestbury Diversion of the Hundred of Macclesfield, John May, clerk*'. This is considered cogent evidence of public rights. The claimed routes between points B and C and also just to the north of point C (on drawing no. MO/001) are within the limit of deviation and are given plot numbers. They are referred to in the book of reference as 'Occupation Roads', in both cases there are named owners listed in addition to The Highways Board. This is also cogent evidence that public rights existed on this section of the claimed route. The area of application no. 2, Filter Bed Lane, is not covered by the railway plan.

The Finance Act 1910

- 11.9.10 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.
- 11.9.11 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.
- 11.9.12 The working sheets are completed on Ordnance Survey 1909 third edition base maps. The claimed route from point A (on drawing no. MO/001) to the area of Freya's Folly Stables is shown excluded from hereditaments. From Freya's Folly to point D, annotated 'FP' on the base map, it is included within plot number 749 but no deduction is made for public rights of way in the 'Domesday Book'. The area between points D and E (on drawing no. MO/001) is coloured yellow and believed to be included in plot number 710; for this plot a £5 deduction has been made in the Domesday Book for 'public rights of way or user'. Clay Lane from point E to point F (on drawing no. MO/001) is shown excluded from hereditaments. The claimed route of application no.2 (Filter Bed Lane) is also shown excluded from hereditaments.
- 11.9.13 The Finance Act plans were prepared according to a statutory process and are generally regarded as good evidence of public rights; although not

necessarily status in some circumstances. Planning Inspectorate Consistency Guidelines state that exclusion from hereditaments is generally considered as an indication of public rights higher than footpath. (Section 11 Planning Inspectorate Consistency Guidelines February 2009).

National Parks and Access to the Countryside Act 1949

11.9.14 The Definitive Map and Statement is based on surveys and plans carried out in the early 1950s by each parish in Cheshire of all the ways they considered to be public at that time. The Alderley Edge and Wilmslow Footpath Preservation Society also carried out their own survey at this time. The surveys were used as the basis for the Draft Definitive Map. The alleged bridleways, apart from Footpath No. 27 and 29 (Edge View Lane), were referred to as public footpaths by Chorley Parish Council in its survey dated 1951. Footpath 27 and Edge View Lane were not included by the Parish Council but were included on the map submitted by the Footpath Preservation Society; they were therefore subsequently included on the Draft Definitive Map, along with the other footpaths. In the schedule it is stated that part of Footpath 10 (between Footpath 9 and 14) has in the past been repaired by the owner/occupier. Footpaths 14 and 15 have been repaired in part by the Parish Council. There is also a note on the schedule for Footpath 14 stating, "Suggest Bridle Path at Parish Council Meeting"; this may have been noted by an Officer at the time.

11.9.15 Wilmslow Urban District Council referred to both Footpath 40 (Clay Lane) and Footpath 42 (Filter Bed Lane) in its survey submitted to the County Council, dated 1951. In the schedule accompanying the map Footpath 40 was referred to as a 'Farm Road' and Footpath 42 as a 'Driftway'. However, the Footpath Preservation Society refers to both footpaths 40 and 42 as bridle paths. All the claimed routes were subsequently shown on the draft and provisional definitive maps as public footpaths.

11.10 Witness Evidence

11.10.1 User evidence is submitted with the application on standard user evidence forms. A sample number of users are then interviewed by Officers to corroborate their evidence. The user evidence from the witnesses is summarised in **Appendices 4, 5, 6 and 7**. There are separate charts for the user evidence forms and for the interviews for both applications. A total of 11 witnesses were interviewed in person by Officers. The user evidence of two of these, Mr John Eyres and Mrs Heidi Gilks, may to some extent be construed as being private, rather than public user "as of right". However they are both only adjacent landowners to the claimed route and would not have had a private right over the full length of the claimed route. Mrs Gilks does now own a small section of Clay Lane but this has only been since July 2009. All of the user evidence is by people on horseback; a few witnesses also mention using the routes on a bicycle.

11.10.2 For application no.1 user evidence covers a cumulative period of over 62 years from 1945 to 2007. Although most of the user evidence submitted

relates to user from the 1960's onwards until 2006 when horse riders were prevented from using the route. Some users have continued to use the route after this date; they would either just use part of the route or they continued to use the route once the obstruction had been removed. From the user evidence statements submitted with the application, the frequency of use on horseback appears to be regular over this period. The majority of the use appears to be for recreational horse riding, hacking or exercising horses. Some users stated they used the route to visit the Blacksmith in Edge View Lane and some used it as a route to get to Wilmslow Riding School. One witness states the route was used by a horse and cart delivering bread from the bakery at Prospect House on Knutsford Road.

- 11.10.3 Of the 31 user forms submitted, 13 witnesses claim use on horseback in excess of twenty years. 18 persons state less than twenty years use. Cumulatively there are 12 examples of twenty years use during the relevant period 1986 to 2006.
- 11.10.4 A total of 11 witnesses have been interviewed; six witnesses stated use of the claimed route on horseback for a period of twenty years or more. Of these, three have use for the full twenty years covering the relevant period (Julie Browning, John Eyres and Margaret Rainey). A further two witnesses use cumulatively also covers the full twenty year period (Kerry Denham and Carol Redgrave). One further witness has used the route for 19 years during this period (Janet Stephenson).
- 11.10.5 Of the 11 witnesses interviewed seven state they have been challenged at Studholme Kennels, although the remaining four (Margaret Rainey, John Eyres, Carol Redgrave and Iris Browning) have not personally been challenged they were aware or had heard of others who have been challenged there. None of the witnesses mentioned being stopped by anyone other than either Mr Morris or Mr Clayton at Studholme Kennels; apart from Heidi Gilks who had been challenged by Joanna Hodgson but not until November/December 2008. One witness specifically mentions the landowner Ken Hall of Heatherside, who claims to have stopped horse riders, she states he saw her riding through and he never stopped her.
- 11.10.6 For application no.2 (Filter Bed Lane) user evidence covers a cumulative period of over 48 years from 1960 to 2008. Although most of the user evidence submitted relates to user from the 1970's onwards until 2008 when the application was made. Once again the majority of the use appears to be for recreational horse riding, hacking or exercising horses. During the interviews some users stated they began to use Filter Bed Lane as an alternative route because they had either been challenged themselves or were aware of people being challenged at Studholme Kennels.
- 11.10.7 Of the 23 user forms submitted, 9 witnesses claim use on horseback in excess of twenty years. 14 persons state less than twenty years use. Cumulatively there are 2 periods of twenty years use during the relevant period 1988 to 2008. However, some witnesses completed their forms in 2007 and have therefore stated their use up to this date; it may be that their

use continued into 2008. There is a further 3 cumulative periods of twenty years use up to 2007. In addition there is a further witness who has used this route for 18 years.

- 11.10.8 Of the 11 witnesses interviewed; one used the route on horseback for the full twenty years covering the relevant period (Margaret Rainey). A further two witnesses use cumulatively also covers the full twenty year period (John Eyres, Heidi Gilks). A further two (Julie Browning and Carol Redgrave) combined use covers 19 years. One further witness has used the route for 17 years during this period (Janet Stephenson).
- 11.10.9 None of the witnesses state they have been challenged when riding on Filter Bed Lane, many said they used it as an alternative to going past Studholme Kennels. None of the witnesses mentioned any gates or obstructions on Filter Bed Lane. Only a few mentioned notices for either route; one said 'Horses Slow', this was at the Moor Lane end of Clay Lane; one other witness said they had seen 'Footpath Only' signs but only more recently.

11.11 *Conclusion*

- 11.11.1 It would appear that at least part of the claimed route existed on what is now 'Edge View Lane' in 1831. The section A-B (on drawing no. MO/001) of the claimed route is first depicted on Bryant's County Map of that year. The Great Warford Tithe Map of 1842 shows Edge View Lane as an untithed track as far as Edge View Farm; and the 1" to 1 mile first edition Ordnance Survey Map dated 1833 shows this same section of Edge View Lane as an open ended track.
- 11.11.2 Most of the claimed route is not depicted until the 25" first edition Ordnance Survey Map 1872. This shows a large part of the claimed route of application no.1 and all of application no.2 as a lane between solid boundaries. Although the Ordnance Survey Maps are good evidence of the physical existence of the route, they do not denote its status.
- 11.11.3 The Macclesfield, Knutsford and Warrington Railway Plan of 1865 shows a proposed railway bisecting Edge View Lane. The book of reference refers to the lane as '*Public Road*' and the owner is listed as '*The Highway Board*'. The claimed route between points B and C and also just to the north of point C (on drawing no. MO/001) is within the limit of deviation and the Highway Board is also listed as an owner. This is considered cogent evidence of public rights.
- 11.11.4 The Finance Act working sheet shows part of the claimed route of application no.1 and all of Filter Bed Lane as excluded from hereditaments. This is good supporting evidence and suggests that this part was considered to carry public rights of some description at the time. The historical evidence in relation to the existence of public rights is considered good; however evidence to help determine the status of those rights is limited. Although the Railway Plan and the Finance Act documents would support the claim that public rights higher than footpath exist along part of the route.

- 11.11.5 The witness evidence submitted shows use of the claimed route of application no.1 (route A-B-C-D-E-F on drawing no. MO/001) on horseback between 1945 and 2007. Public access on horseback appears to have been brought into question by landowner Joanna Hodgson in 2006, when a gate across the route was locked. The relevant twenty year period to be considered is 1986 to 2006. A total of 11 witnesses have been interviewed; three witnesses have use for the full twenty years covering the relevant period (Julie Browning, John Eyres and Margaret Rainey). A further two witnesses use cumulatively also covers the full twenty year period (Kerry Denham and Carol Redgrave). One further witness has used the route for 19 years during this period (Janet Stephenson). However, of the 11 witnesses interviewed seven state they have been challenged at Studholme Kennels, and the remaining four were aware of others being stopped. The photographs referred to in paragraph 11.7.12 although dated outside of the relevant period; clearly show the landowners intention not to dedicate the route as a bridleway. None of the witnesses recall being challenged by anyone else.
- 11.11.6 For application no.2 Filter Bed Lane (route G-H on drawing no. MO/001) user evidence covers a cumulative period of over 48 years from 1960 to 2008. As there is no evidence of the route being brought into question, the relevant period is calculated from the date of the application; therefore the twenty year period to be considered is 1988 to 2008. The cumulative use of the route on horseback over this period is considered sufficient to show that public bridleway rights have come into existence by prescription. None of the witnesses state they have been challenged when riding on Filter Bed Lane, many said they used it as an alternative to going past Studholme Kennels.
- 11.11.7 Under section 31(1) of the Highways Act 1980 public bridleway rights can come into existence by prescription unless there is evidence to the contrary. Due to the challenges at Studholme Kennels, for this section of the claimed route it is considered there is sufficient evidence to show that the landowner has rebutted the presumed dedication, by indicating he had no intention to dedicate the way as a bridleway. However, as no witnesses claim to have been challenged anywhere else along either of the claimed routes, the user evidence for the remainder of the route is considered sufficient to show public bridleway rights. The documentary evidence discovered is considered as supporting evidence for the existence of public bridleway rights.
- 11.11.8 The evidence in support of this application must show, on the balance of probabilities that a reasonable allegation has been made that public bridleway rights subsist along the claimed routes. It is considered that there is sufficient user evidence to support the existence of public bridleway rights along the route A-B-C-D-E-H-G on drawing no. MO/001. On the balance of probabilities, the requirements of Section 53 (3)(c)(ii) have been met and it is recommended that the Definitive Map and Statement should be modified to upgrade the route from a Public Footpath to a Public Bridleway.

12.0 Overview of Year One and Term One Issues

12.1 Not applicable.

13.0 *Access to Information*

The background papers relating to this report can be inspected by contacting the report writer:

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