

Public Rights of Way Committee

Agenda

Date:	Monday 24th September 2012
Time:	2.00 pm
Venue:	Committee Suite 1,2 & 3, Westfields, Middlewich Road, Sandbach CW11 1HZ

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

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

1. **Apologies for Absence**

2. **Declarations of Interest**

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

3. **Minutes of Previous meeting** (Pages 1 - 10)

To approve the minutes of the meeting held on 11 June 2012 as a correct record

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

Members of the public may speak on a particular application after the Chairman has introduced the report provided notice has been given in writing to Democratic Services by 12 noon, one 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.

For any apologies or requests for further information, or to give notice of a question to be asked by a member of the public

Contact: Rachel Graves

Tel: 01270 686473

E-Mail: rachel.graves@cheshireeast.gov.uk

Also in accordance with Procedure Rule No.35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the Committee. Individual members of the public may speak for up to 5 minutes but the Chairman 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 are not required to give notice of the intention to speak, however, as a matter of courtesy, a period of 24 hours notice is encouraged.

Members of the public wishing to ask a question should provide at least 3 working days notice in writing, and should include the question with that notice. This will enable an informed answer to be given.

5. **Charging Policy for Public Path Orders, Temporary and Emergency Closures and Rights of Way Searches** (Pages 11 - 13)

To consider a report seeking approval of the fees and charges to be levied by the Legal Orders Team for Public Path Orders, Temporary Closures and other work from 1 October 2012 onwards

6. **Wildlife and Countryside Act 1981 Part III Section 53: Application to Upgrade Public Footpath No.9 Higher Hurdsfield to Bridleway. Highways Act 1980 - Section 118: Stopping Up of Part of Public Footpath No.9 Higher Hurdsfield** (Pages 14 - 65)

To consider the application to upgrade Public Footpath No. 9 Higher Hurdsfield to Bridleway status

7. **Wildlife & Countryside Act 1981 - Part III, Section 53: Investigation into the Alignment of Public Footpath No. 12, Parish of Hough.** (Pages 66 - 77)

To consider a report on the investigation into the alignment of Public Footpath No.12 in the parish of Hough

8. **Local Government Act 2000 - Section 2: Deed of Dedication for New Public Footpaths in the Parish of Goostrey** (Pages 78 - 81)

To consider the proposal to create two public footpaths in the parish of Goostrey

9. **Local Government Act 2000 - Section 2 and Highways Act 1980 Sections 25 and 26: Deed of Dedication for a New Public Bridleway in the Parish of Aston by Budworth, Dedication of a New Public Bridleway in the Parish of Aston by Budworth and Creation of a New Public Bridleway in the Parish of Pickmere** (Pages 82 - 89)

To consider the proposal to enter into a creation agreement to create new bridleways in the parishes of Aston by Budworth and Pickmere

10. **Highways Act 1980 Section 119: Application for the Diversion of part of Public Footpath No. 28 in the Parish of Sandbach** (Pages 90 - 95)

To consider the application to divert part of Public Footpath No.28 in the parish of Sandbach

11. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 13 (part), Parish of Warmingham** (Pages 96 - 101)

To consider the application to divert part of Public Footpath No.13 in the parish of Warmingham

12. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 19 (part), Parish of Bunbury** (Pages 102 - 107)

To consider the application to divert part of Public Footpath No.19 in the parish of Bunbury

13. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No. 9 (part), Parish of Ridley** (Pages 108 - 113)

To consider the application to divert part of Public Footpath No.9 in the parish of Ridley

14. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No. 5 (part), Parish of Odd Rode** (Pages 114 - 118)

To consider the application to divert part of Public Footpath No.5 in the parish of Odd Rode

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 11th June, 2012 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor J Wray (Chairman)

Councillors Rhoda Bailey, S Davies, L Jeuda and M Parsons

Officers

Mike Taylor, Rights of Way Manager
Hannah Duncan, Definitive Map Officer
Marianne Nixon, Public Path Orders Officer
Elaine Woods, Highways Solicitor
Rachel Graves, Democratic Services Officer

1 APOLOGIES FOR ABSENCE

Apologies were received from Councillors R Cartlidge and D Druce.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meeting held on 12 March 2012 be approved as a correct record and signed by the Chairman.

4 PUBLIC RIGHTS OF WAY ANNUAL REPORT 2011-2012 AND WORK PROGRAMME 2012-2013

The Committee received a report which detailed the achievements of the Public Rights of Way service during 2011-2012 and set out the proposed work programme for 2012-2013.

The Rights of Way Manager reported on the work carried out during 2011-2012 by the Network Management and Enforcement Team and the Legal Orders Team.

It was reported that:

- 39 temporary and emergency closures of rights of way had been made
- 529 problems on the network had been logged, with 375 being resolved and 154 unresolved

- 19 public path orders had been confirmed, 19 cases were in the progress, with a backlog of 25 applications
- 4 Orders had been contested and referred to the Planning Inspectorate
- 4 Definitive Map Modification Orders had been confirmed, 10 were in progress, with a backlog of 22
- 2 Definitive Map Anomaly investigations had been completed, with a backlog of over 260

The budget for Public Rights of Way had been reduced and the reactive way that maintenance must work had resulted in funds being completely committed well before the end of the financial year. As a consequence work other than planned pre-allocated commitments had been cut back. A moratorium on all non-essential spending had been imposed in October 2011 until the end of the financial year for the second year in succession. The consequences were that a black log of work was released at the commencement of the new financial year compounding the problem of under funding and speeding the time at which the budget became expired.

RESOLVED:

That the Annual Report for 2011-12 be noted and the proposed work programme for the Public Rights of Way Team 2012-13 be approved.

5 DEFRA CONSULTATION, "IMPROVEMENTS TO THE POLICY AND LEGAL FRAMEWORK FOR PUBLIC RIGHTS OF WAY".

The Committee received a report on the DEFRA consultation "Improvements to the Policy and Legal Framework for Public Rights of Way".

The proposals in the consultation document would affect three areas of rights of way work – Definitive Map Modification Orders and the Definitive Map, Public Path Orders, and the relationship between planning consents affecting rights of way and any necessary consequential public path orders to allow development to proceed.

The principle proposals dealt with measures to bring the Definitive Map up to date and effectively 'close it' to the addition of new routes based on historical evidence. To achieve this, the Countryside and Rights of Way Act 2000 introduced a cut-off date, whereby after 25 years all rights of way already in existence in 1949 and not recorded on the definitive map and statement by 2026 would be extinguished, subject to the exceptions already provided by the Act.

It had become apparent that completion of the definitive map and statement by 2026 would not be a viable proposition unless a streamlined approach to recording of public rights of way was adopted. In order to develop such an approach Natural England had established an independently chaired Stakeholder Working Group to develop a

consensus amongst stakeholders, representing landowners, rights of way users and local authorities, about the best way forward.

The Stakeholder Working Group had published a report “Stepping Forward” in March 2010 which contained a package of 32 proposals designed to improve various processes associated with identifying and recording historical rights of way. The Defra consultation document set out how the Government intended to implement these proposals.

RESOLVED:

That the response to the Consultation, as set out in the “Details and Comments” column in the report, be approved.

6 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PART OF PUBLIC FOOTPATH NO. 14 IN THE PARISH OF SANDBACH

The Committee received a report which detailed a proposal to request the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.14 in the parish of Sandbach.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council’s discretion to make an Order if it appeared 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.

The current definitive line of the footpath had been diverted in October 1963 under the Town and Country Planning Act 1962 as part of “The Stopping up of Highways (County of Chester) (No.10) Order 1963”. Due to an error in the Order, the eastern end of the diverted footpath did not meet the public highway. It stopped as it reached a private access track, and there was therefore no legal public access through to Church Lane, Sandbach.

The proposed route had been used as a permissive path for a number of years. It ran along an existing track south west of the present route to join with Church Lane. To re-instate the footpath onto the current legal line, two gates or stiles would be required, whilst the proposed diversion required only one kissing gate.

The proposed diversion would be in the interests of the public as it would resolve the issue of the footpath not meeting the public highway, thereby providing public access through to Church Lane. It was also in the interests of the landowner at Heath Farm as it would move the footpath out of a paddock and allow them greater freedom in utilising the land, as well as increasing privacy and security at the farm by moving the footpath away from their buildings.

The two landowners, Mrs Smith of Heath Farm, Church Lane, Sandbach who owned the land over which the current route ran and Mr Davenport of Top O The Town Farm, Heatley Lane, Broomhall, who owned the land over which the proposed route would run, had both provided written consent and support for the proposal.

The Committee noted that no objections had been received from the informal consultations and considered that the proposed route would not be substantially less convenient than the existing route. The diversion would resolve the long standing legal anomaly with the eastern end of the footpath not meeting a public highway. Diverting the footpath would provide a legal, usable route on the ground for the public thereby clarifying the situation for path users and the landowner at Heath Farm. It was therefore considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order were satisfied.

RESOLVED: That

- (1) An 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. 14 in the parish of Sandbach by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/064, on the grounds that it is expedient in the interests of the public and of the landowner at Heath Farm.
- (2) Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- (3) In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct for any hearing or public inquiry.

7 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 18 (PART), PARISH OF HIGH LEGH

The Committee received a report which detailed an application from Mrs MF Pallett, Stores Farm Barn, Swineyard Lane, High Legh (the Applicant) requesting the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.18 in the parish of High Legh.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order if it appeared 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.

The section of Public Footpath No.18 High Legh to be diverted ran through the property of the landowner giving rise to concerns relating to security and safety.

It was noted that the North and Mid Cheshire Ramblers Association had expressed concern that a stable and ménage, for which planning permission had been applied for, if built, may cause damage to the surface of the alternative route and affect enjoyability. Following consideration of the response from the local authority, this concern was allayed since if the diversion was considered at a later date under the Town and Country Planning Act 1990 the diversion route options would be less attractive to users. The current proposal would take users across a pasture field to the southern field boundary and then along that boundary between trees to the north of which is the proposed location for the ménage. Therefore, the ménage and stables would not affect the current proposal other than to force the need for a fenced section between points D-B as shown on Plan No.HA/071.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would be of considerable benefit to the landowner in terms of enhancing security and privacy of the property. It was therefore considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order were satisfied.

RESOLVED: That

- (1) An 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.18 High Legh by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No. HA/071, on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- (2) Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- (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.

8 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 60 (PART), PARISH OF WILMSLOW

The Committee received a report which detailed an application from Mr R Fowler (the Agent) of MBW Developments on behalf of Mr RN Scott (the

Applicant) of Moat Hall Farm, Chelford Road, Marthall, Nr Knutsford requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.60 in the parish of Wilmslow.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order if it appeared 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 paths.

The land over which the current path and the proposed diversion runs belonged to Mr R Fowler of MBW Developments and the intention was that ownership would transfer to the buyer, Mr Scott on whose behalf Mr Fowler was acting upon. The section of Public Footpath No.60 Wilmslow to be diverted skirted around the north western edge of a small lake. A private dwelling would be built on the land over which the path ran giving rise to concerns relating to security and safety. Planning permission for this development had been granted – Planning Reference: 10/1798M.

The proposed new route would skirt the small lake and would run in a southerly direction and then in a westerly direction as per Plan No. HA/070. The new route would have a recorded width of 2 metres and would be unenclosed although it would be bounded by a hedge part of the route.

It was noted that Wilmslow Parish Council had registered an objection to the proposal but this was withdrawn following reconsideration after discussion with the local authority.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would be of considerable benefit to the landowner in terms of offering enhanced security and privacy once the land over which the path ran was sold for the development of a private dwelling. It was therefore considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order were satisfied.

RESOLVED: That

- (1) An 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.60 Wilmslow by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No. HA/070 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- (2) Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order

be confirmed in the exercise of the powers conferred on the Council by the said Acts.

- (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.

9 HIGHWAYS ACT 1980 - SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 63 (PART), PARISH OF DISLEY

The Committee received a report which detailed an application from Mr R Maclean (the Agent) of Mattin Maclean Ltd on behalf of Disley Golf Club Ltd, Stanley Hall Lane, Disley requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.63 in the parish of Disley.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order if it appeared to the Council to be expedient to do so in the interests of the public or of the lessee or occupier of the land crossed by the paths.

Disley Golf Club owned the land over which the current path and the proposed diversion ran. The section of Public Footpath No.63 Disley to be diverted ran through unused grounds of Stanley Hall Farm and it was the intention to landscape this land into gardens as part of wider developments to the farm property. This gave rise to privacy and security concerns.

It was noted that the Cheshire East Ramblers and Disley Footpath Society had requested that consideration be given to surfacing of the diversion route between points C-D (shown on Plan No.HA/69) along with installation of steps at point D to ease the short descent from the tarmac road.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the route would be of considerable benefit to the landowner in terms of enhancing the security and privacy of the property. It was considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order were satisfied.

RESOLVED: That

- (1) An 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.63 Disley by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan

No.HA/069, on the grounds that it is expedient in the interests of the owner of the land crossed by the path.

- (2) Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- (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.

**10 TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 257:
APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO.1
(PART) PARISH OF HANKELOW**

The Committee received a report which detailed an application from Mr Andrew Jones (the Agent) of CAS Estates on behalf of Mr Ian Glennister (the Applicant) of Lanyon Bowdler Solicitors, 39-41 Church Street, Oswestry requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to divert Public Footpath No.1 in the parish of Hankelow.

In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as the Planning Authority, can make an Order stopping up or diverting a footpath or part of a footpath if it was satisfied that it was necessary to do so to enable development to be carried out in accordance with a planning permission that had been granted.

Planning permission had been submitted for proposed barn conversions (Planning Permission Ref: 11/3818N) at Manor Farm, Hall Lane, Hankelow. The existing alignment of the footpath would be directly affected by the proposed construction of a garage block which would be developed in the interest of the Applicant who owned the land over which ran this section of the footpath. The construction of the garage block would obstruct the line of the footpath and therefore a path diversion was required to provide public access around the garage. The length of footpath proposed to be diverted was approximately 30 metres.

The Committee noted that no objections had been received from the informal consultations and concluded that it was necessary to divert part of Public Footpath No.1 Hankelow to allow development to be carried out. It was considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

RESOLVED: That

- (1) an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.1 Hankelow,

as illustrated on Plan No.TCPA/009, on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place on the condition that planning consent is given.

- (2) Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- (3) In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

The meeting commenced at 2.00 pm and concluded at 3.28 pm

Councillor J Wray (Chairman)

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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 24 September 2012
Report of: Greenspaces Manager
Subject/Title: Charging Policy for Public Path Orders, Temporary and Emergency Closures and Rights of Way Searches

1.0 Purpose of Report

- 1.1 To seek approval from Members of the Rights of Way Committee for the fees and charges levied by the Legal Orders Team for Public Path Orders, Temporary Closures and other work from 1st October 2012 onwards.

2.0 Recommendations

- 2.1 That, subject to any departmental review of charging policy, or the implementation of statutory regulations relating to local authority charges, the charges outlined in Paragraph 8.1 to 8.13 below be approved.
- 2.2 That any increases in the charges outlined in Paragraph 8.1 to 8.13 below relating solely to inflation be implemented by Officers without the need for Committee approval.

3.0 Reasons for Recommendation

- 3.1 To enable the Legal Orders Team and Public Paths Orders officer to continue levying charges for these areas of work at levels that enable the full cost of the administrative processes to be recovered.
- 3.2 The Portfolio Holder for Environment, Councillor Rod Menlove, is supportive of the proposals.

4.0 Wards Affected

- 4.1 All Wards.

5.0 Local Ward Members

- 5.1 All Ward Members.

6.0 Financial Implications

- 6.1 Future charges levied by the Legal Orders Team for processing Public Path Orders and Temporary Closures shall be conducted according to the figures outlined in the report.

6.0 Legal Implications

6.1 None arising.

7.0 Risk Assessment

5.1 None arising.

8.0 Background and Options

- 8.1 Charges are made to landowners and occupiers making applications for Public Path Orders to divert and extinguish paths and also for implementing temporary & emergency closures of public rights of way. These charges are made in accordance with "The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993" as amended by "The Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996" and DEFRA Rights of Way Circular 1/2009. Charges are also made for written responses for public rights of way searches.
- 8.2 A review of the charges and staff costs last took place in July 2008 to reflect full cost recovery. At the Public Rights of Way Committee meeting held on 1st June 2009 those charges were approved for Cheshire East Council. There is no profit element to these charges and none may be levied. Because the fees from applicants pay the salary of the officer dealing with these processes it is vital that costs are monitored to ensure that they reflect the true cost of the administrative process. A further review has been undertaken and the new proposed costs are set out below with the current costs in italics. The hourly rate has been calculated at the penultimate spinal column point for grade 8 plus an additional 20% to cover overheads.
- 8.3 **Public Path Diversion Orders:** For new applications the charge from 1st October for a public path diversion application resulting in a confirmed order will be £1575.00 (*it is currently £1134.68*) plus the actual advertising costs. Two advertisements are required for i) making and ii) confirming the order.
- 8.4 In circumstances where the Council has contributed to a situation which gives rise to the necessity for an Order, the administrative costs of the diversion/extinguishment may be waived by the Council, with the advertising costs being met by the applicant.
- 8.5 Where the Council initiates a diversion/extinguishment in the interests of the public and/or in the interests of public safety, the Council bears the full costs involved.
- 8.6 Section 5.37 of DEFRA guidance 01/09 sets out that it is not reasonable for a Local Authority to charge an applicant for pursuing an opposed Order and all costs relating to referral to the Secretary of State are excluded from the power to charge.
- 8.7 **Emergency and Temporary Closures:** Emergency and Temporary Closure Order charges have previously been based on those levied by the Highways Engineering Services. For emergency and 21 day closures the process is

straight forward involving the production of a notice and site visits to erect notices on site. The present charge to an applicant for an emergency 5 day or 21 day closure (not requiring press advertisement) is £165.03 and a further £82.51 to extend the closure for a further 21 days. It is not intended to increase these fees other than the 21 day extension fee which should be the same as the original fee (£165.03) as the work required is similar to the initial order.

- 8.8 A temporary closure for 6 months is currently charged at £415.13 plus advertising costs. However a 6 month temporary closure is a much more complex process, similar to some extent to a conventional PPO, involving the production of orders, order plans and advertising. These will be charged at £630.00 which is 40% of a full PPO and reflects the amount of work involved, plus the cost of two advertisements.
- 8.9 A 6 month extension to a 5 or 21 day closure is charged at £250.00 plus the cost of one advertisement. This will be increased to 50%, or £315.00 of the cost of a 6 month temporary closure to accurately reflect the work involved.
- 8.10 To extend a 6 month closure by 6+ months requires an application to the Secretary of State. This is currently charged at £311.60 plus the cost of one advertisement. This charge will remain the same.
- 8.11 Where the Council initiates a temporary/emergency closure in the interests of the public and/ or in the interests of public safety, the Council bears the full administration and advertising costs involved.
- 8.12 **Gating Orders:** Applications for Gating Orders ("Alleygating") may be made to the Public Rights of Way office in respect of paths which are recorded in the Definitive Map & Statement. Charges are made at the same rate as public path diversion orders; £1575.00.
- 8.13 **Property Searches:** Since 2008, a flat rate charge consistent with that levied by the Highways Engineering Service has been made for Rights of Way search requests which require a written response from solicitors, developers and other commercial interests. The charge for searches will be £68.00 (*it is currently £61.50*). They are not subject to VAT.

9.0 Access to Information

For further information:

Officer: Mike Taylor,
Tel No: 01270 696115
Email: mike.taylor@cheshireeast.gov.uk

Background Documents: None

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374500

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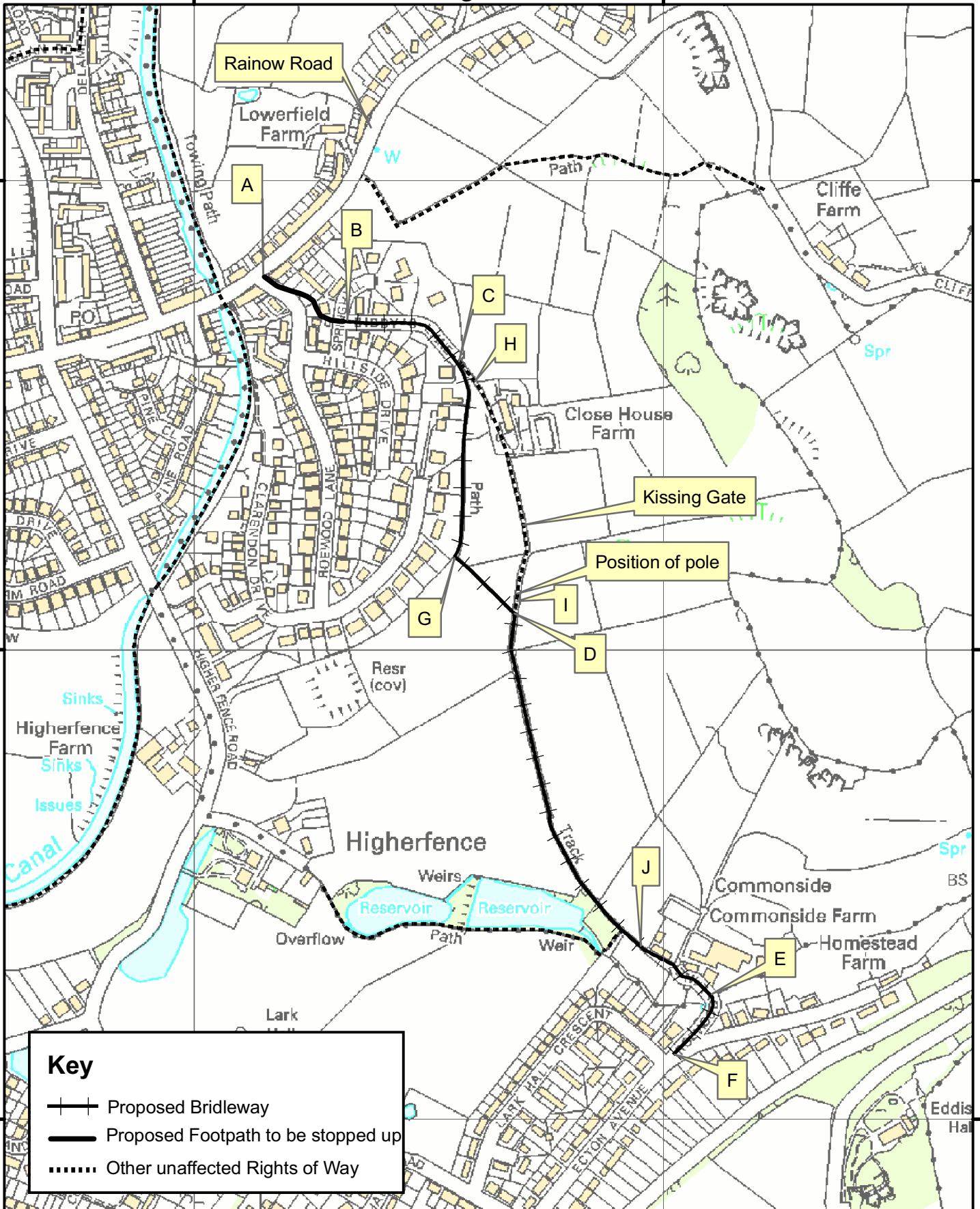
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Upgrade of Footpath No.9 (part) to bridleway and
Addition of a bridleway, Parish of Higher Hurdfield

Plan No.
WCA/004

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



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	24 September 2012
Report of:	Greenspaces Manager
Subject/Title:	Wildlife and Countryside Act 1981 – Part III, Section 53: Application to Upgrade Public Footpath No.9 Higher Hurdsfield to Bridleway Highways Act 1980 – Section 118: Stopping Up of Part of Public Footpath No.9 Higher Hurdsfield

1.0 Report Summary

- 1.1 The report outlines the investigation of an application made by Mr R Spoors of Roewood Lane, Macclesfield, to upgrade Public Footpath No. 9 Higher Hurdsfield to Bridleway status. 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 footpath.
- 1.2 The report also outlines the proposal to extinguish part of Public Footpath No. 9 Higher Hurdsfield. This includes a discussion of consultations carried out in respect of the proposal and the legal tests for an extinguishment Order to be made. The report makes a recommendation based on that information, for decision by Members as to whether an Order should be made to extinguish the route described.

2.0 Recommendation

- 2.1 The application to modify the Definitive Map and Statement to record public bridleway rights between points C-H-I-D as shown on plan number WCA/004 be refused on the grounds that there is insufficient evidence to show the existence of Public Bridleway rights;
- 2.2 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 B and C; and D-J-E on plan number WCA/004;.
- 2.3 An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding as a Public Bridleway, the route as shown between points C-G-D; and E-F on plan number WCA/004;

- 2.4 An Order be made under Section 118 of the Highways Act 1980 to stop up part of Public Footpath no. 9, as shown between points A-B on plan number WCA/004 on the grounds that it is not needed for public use;
- 2.5 Public notice of the making of the Orders be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Orders be confirmed in exercise of the power conferred on the Council by the said Acts.
- 2.6 In the event of objections to the Orders 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 claim must show, on the balance of probabilities that public bridleway rights subsist along the claimed route. It is considered that there is sufficient user and historical evidence to support the existence of public bridleway rights along the route B-C-G-D-J-E-F on plan no. WCA/004. On the balance of probabilities, the requirements of Section 53(3)(c)(i) and Section 53(3)(c)(ii) have been met and it is recommended that the Definitive Map and Statement should be modified to show the route as a Public Bridleway. The Order would be made under both Sections of the Act as part of the route is currently a Public Footpath and would be upgraded to Public Bridleway status; and part of the route, which is not currently recorded, would be added as a Public Bridleway.
- 3.2 For the remainder of Public Footpath No. 9 Higher Hurdsfield, as shown between points C-H-I-D on plan no. WCA/004, it is considered that there is insufficient evidence, both user and historical, to show the existence of Public Bridleway rights. For this section only the requirements of Section 53(3)(c)(ii) have not been met and it is recommended that the application be refused. Therefore this section would remain as Public Footpath No. 9 Higher Hurdsfield.
- 3.3 For the part of Footpath No.9 as shown between points A and B on plan no. WCA/004 it is proposed to extinguish this section. In accordance with Section 118(1) of the Highways Act 1980 it is within the Council's discretion to make an Order if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use. This section of Footpath No.9 has not been available for the public to use since the flats at Hillside Court were built in the early 1970's. It is considered that this section of the footpath is not needed for public use as there is suitable access to point B via the adopted highway.

4.0 Wards Affected

- 4.1 Bollington and Macclesfield East

5.0 Local Ward Members

5.1 Councillor P Hayes, Councillor B Livesley and Councillor D Neilson.

6.0 Policy Implications

6.1 Not Applicable

7.0 Financial Implications

7.1 Not Applicable

8.0 Legal Implications (Authorised by the Borough Solicitor)

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

8.2 The legal implications are contained within the report.

9.0 Risk Management

9.1 None

10.0 Background and Options

10.1 *Introduction*

10.1.1 This application was submitted in July 2003 by Mr R Spoors of Roewood Lane, Macclesfield to modify the Definitive Map and Statement by upgrading Public Footpath No.9 in the parish of Higher Hurdsfield to a Public Bridleway. The route applied for is the current definitive line of Footpath No.9; this runs from the junction of Rainow Road (B5470) and Roewood Lane at the northern end (point A on plan no. WCA/004), along Bibby's Lane and past Close House Farm, to Commonsides Farm at the southern end (point E), which is also known as Roewood Lane. The definitive route currently falls short of the nearest adopted highway, which is Ecton Avenue (point F). Plan No. WCA/004 shows the route applied for between points A-B-C-H-I-D-J-E (OS Grid References SJ 9307 7439 to SJ 9355 7363). The application is based on user evidence and historical evidence; 11 user evidence forms and a number of historical documents were submitted with the application.

10.1.2 It has been discovered that a previous application was made to upgrade this route to a bridleway in 1972. Mr Maddock was Bridlepaths Officer for East Cheshire Combined Training Group from 1967/8. He made an application under the Countryside Act 1968 but due to new legislation (Wildlife and

Countryside Act 1981) and non compliance with new procedures he was informed by Cheshire County Council on 27th January 1986 that the claim would not be processed. Correspondence refers to the application as 'Application No. 17/2'; in 1986 he was asked for further evidence and to resubmit his application under the new legislation. It would appear that he requested the forms from Cheshire County Council to do this but did not submit them.

- 10.1.3 The route of Footpath No. 9 at the northern end between points A and B was physically obstructed during the construction of the Hillside Court flats on Roewood Lane. The flats were built by Macclesfield Rural District Council in 1973 and unfortunately legal orders stopping up the affected part of the footpath were never published. It is therefore assumed that since the development of this area, users of the right of way have used the adopted highway to access the start of the path at point B on plan no. WCA/004.
- 10.1.4 There is also an anomaly at the southern end of the route. The Definitive Map shows Footpath No.9 Higher Hurdsfield as ending at the parish boundary with Macclesfield, this is at point E on plan no. WCA/004, adjacent to Commonsides Farm. However, the section of Roewood Lane between points E and F is an unadopted highway therefore the route should continue to point F where it meets Ecton Avenue. It would appear that Officers at the time of the drafting of the Definitive Map recognised that the route should continue into Macclesfield Parish to meet the adopted highway, but for reasons unknown this was omitted from the Definitive Map.
- 10.1.5 Members should be aware that there is another path adjacent to Footpath No.9. This alternative route is shown between points C-G-D on plan no. WCA/004, this was initially installed in 1953 by the previous owners of Close House Farm; Mr Parker (now deceased). The purpose of this alternative path was to avoid having people walk the definitive line which runs to the front of Close House Farm. The alternative route took people well away from the farm as Mr Parker had a herd of cows and was concerned about foot and mouth disease.
- 10.1.6 Mr Parker owned Close House Farm between 1953 and 1967. In 1967 Dr and Mrs Broadbent moved to the property with their family. Dr Broadbent has since passed away but Mrs Broadbent, her son Chris Broadbent and his family now reside at the property. In 1975 Dr Broadbent applied to have part of Footpath No.9 diverted away from the farm and onto the alternative route (between points C-G-D on plan no. WCA/004); however he withdrew the application when objections were received to the consultation. By 1988/9 it was considered that the majority of people were now using the alternative route so another application was made. An Order was made to divert the route in 1991; this led to a Public Inquiry being held in 1994. The decision was made not to confirm the Order; however Cheshire County Council and the applicant then challenged the decision in the High Court and the decision was quashed. The County Council were invited to re-submit the Order and objections for determination. A second Public Inquiry was then held in 1997 again the Order was not confirmed; the Inspector considered that the

proposed diversion would have a negative impact on the public enjoyment of footpath No.9 as a whole. Therefore the legal definitive line of footpath No.9 remains on its original route which passes directly to the front of Close House Farm.

- 10.1.7 In 1989/90 a permissive horse track was installed by Mrs Broadbent (this runs parallel to the footpath diversion in the adjacent field between points H-I on plan no. WCA/004). Prior to that horse riders had been using the route of the alternative footpath (C-G-D on plan no. WCA/004). In response to the consultation for the footpath diversion in 1989, the Ramblers' Association commented that the proposed diverted route was being used extensively by horse riders and made the use of the path and the surface less attractive for walkers. Therefore the horse track was installed parallel to the footpath diversion in the adjacent field. Mr Broadbent has commented that it was only established to support the (unsuccessful) footpath diversion application in case riders insisted on using and damaged the route they hoped to divert to.

10.2 *Description of the Claimed Bridleway*

- 10.2.1 The claimed route commences on the junction of Rainow Road (B5470) and Roewood Lane Point A on Plan no. WCA/004 and runs in a south-easterly direction. The route is however obstructed between points A and B by the front garden of Roewood House and the Hillside Court flats. Users of the path now have to follow the road around the flats by following Roewood Lane, Hillside Drive and Springhill to arrive at Point B. From Point B the path continues in a easterly direction and up a steep incline along an unadopted lane known as 'Bibby's Lane' which serves as the access to Close House Farm and three further properties (Merriehill, Bearda Hill and Tyfelyn). The residents of these properties have paid for Bibby's Lane to have a tarmac surface. At the entrance to Merriehill the lane turns in a south-easterly direction and continues a steep incline. At Point C there is a gate and this marks the entrance and driveway up to Close House Farm; adjacent to the gate is the start of the alternative path, which is currently signed with a 'permissive path' waymarker. A few metres further on there is a gap in the hedge which is the entrance to the permissive horse track at Point H. The claimed route continues along the driveway and passes directly to the front of Close House Farm. After passing the property there is a field gate with stile to the side, the route continues in a southerly direction, from this point the path changes to a grass surface and is bound by dry stone walls on either side. The route continues in a southerly direction passing through a kissing gate, it then meets the permissive horse track at Point I and the alternative footpath at Point D. The path then continues between the dry stone walls in a south-south-easterly direction to Point J where it changes to a tarmac surface and passes to the front of Nursery Cottage and Commonsides Farm. The unadopted lane known as 'Roewood Lane' then goes from Commonsides Farm (just to the south-east of Point J) in a south-easterly then south-westerly direction to Point F, where it meets Ecton Avenue.

10.3 *The Main Issues*

10.3.1 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.

10.3.2 There are two events that are relevant to this application section 53(3)(c)(i) and section 53(3)(c)(ii), the first requires modification of the map by the addition of a right of way and the second requires modification of the map by the upgrading of a right of way. The two sections are quoted below.

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

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates...;

(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 alleged rights subsist. With regards to the addition of a right of way (section 53(3)(c)(i)) the lesser test of ‘reasonably alleged to subsist’ may be used. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.

10.3.3 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”.

10.3.4 In this case there are a number of dates which could be used as the date the way is ‘brought into question’. Mr Broadbent of Close House Farm states a pole was put across the definitive line of the path in the late 1960’s (the approximate position is marked on plan no. WCA/004). He has provided a photograph of a pole but he believes the photograph was taken in the late

1980's. One witness Mrs Anne Morton recalls a pole but she said she just used to jump over it. In 1987 a Mr Burch wrote to the Council stating the original route was "barred in the vicinity of the farm", he does not state the type of obstruction but he also comments that the diverted route is being used as a bridleway. In 1988 there are notes of a meeting between Cheshire County Council Officers and the Ramblers' Association; the Council confirms the right of way is still immediately adjacent to Close House Farm and it was not obstructed to walkers. Comment is also made that "The problem had been caused by horse riding on the path and also on the permissive diversion". It is not stated what "the problem" was but it is thought that by stating the route was not obstructed to walkers, this could imply that it was obstructed to horse riders. Also in 1988 a letter from Mr Spoors' states "the right of way is frequently blocked by a wooden bar at the junction with the alternative track". Therefore it would appear that from the late 1980's the definitive line of footpath No.9 became obstructed to horse riders and they had no alternative but to use the footpath diversion, although most were already using the alternative route. It is believed the date of 1987 should be used as the date the original definitive route (the application route) was 'brought into question'; therefore the relevant twenty year period to be considered for the user evidence is 1967 to 1987.

10.3.5 In this case there is some evidence of use on horseback prior to 1967; it has been stated that the evidence of use either side of the 20 year period being relied upon buttresses the use made during the 20 year period and can reinforce the conclusion that there was sufficient use during the core period as confirmed by *Rowley v. Secretary of State for Transport, Local Government and the Regions* (2002).

10.3.6 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.

- 10.3.7 There is user evidence for the section C-G-D as shown on plan no. WCA/004, therefore although this was not included as part of the application, it must be considered. This section of path is not currently recorded on the Definitive Map, therefore section 53(3)(c)(i) of the Act applies (as quoted above at paragraph 10.3.2). In 1995 Mrs Broadbent submitted a Statutory Declaration under section 31(6) of the Highways Act 1980 to state that no additional ways (other than Footpath no.9) had been dedicated as highways. This is sufficient to negate the presumed dedication of this route from this date; therefore when considering the user evidence for this section the relevant twenty year period to be considered for this section is 1975-1995.
- 10.3.8 If for some reason the statutory test fails, the issue of common law dedication can be considered; that is whether the available evidence shows that the owner of the land over which the way passes has dedicated it to the public. An implication of dedication may be shown at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. As stated above this route was installed by the previous owner in 1953 and it is clear from his statement that he installed it for use by the public and regarded it as a right of way. Use of the route was then accepted by the public and it is clear that such use included horse riders from references in the Parish Council minutes from the 1950's and 1970's; the comments of Mr Maddock in his Survey Report from 1972; the letter from Mr Burch dated 1987; the comments of County Officers in 1988; the comments of the Ramblers' Association in 1989; and the user evidence of this route on horseback which dates from 1967. All of this evidence is discussed below.
- 10.3.9 In relation to the section E-F on plan no. WCA/004, this is also not currently recorded on the Definitive Map, and therefore section 53(3)(c)(i) of the Act also applies here. However public use of this section has not been 'brought into question' by any act and there is no evidence of any challenge to use, therefore when considering the user evidence for this section the relevant twenty year period to be considered is 1992-2012.
- 10.3.10 In relation to the section A-B on plan no. WCA/004, as stated in paragraph 3.3 above it is proposed to stop up this section. The relevant legislation is Section 118 of the Highways Act 1980 which states it is within the Council's discretion to make an Order if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use. It is considered that this section of Public Footpath No.9 is not needed for public use, as alternative access is available between the same points, via the adopted road network of the housing estate.
- 10.3.11 If objections are made and not withdrawn to an Order made under section 118, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 10.3.10 above, have regard to:

- The extent (if any) to which it appears to him...that the path or way would, apart from the order, be likely to be used by the public, and
- The effect which the extinguishment of the right of way would have as respects land served by the path or way, and
- The material provision of any rights of way improvement plan prepared by any local highway authority which includes land over which the order would extinguish a public right of way.

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 above.

10.4 *Consultations*

- 10.4.1 Consultation letters were sent to the Ward Members; Higher Hurdsfield Parish Council; User Groups/Organisations and the landowners.
- 10.4.2 Since being informed of the recommendation to the Committee the applicant, Mr Spoors, has responded with a letter dated 7th August 2012 and additional notes; and a further letter dated 27th August 2012, he has requested these are made available to the Committee, they are both therefore attached at **Appendix 1**.
- 10.4.3 The local member Councillor Peter Hayes commented that he has no objections or comments either way; however he does say that if usage has increased by horse riders then there is merit in making the amendment. No further comments from the local members have been received.
- 10.4.4 The clerk of Higher Hurdsfield Parish Council has written to say that the matter was discussed at their Parish meeting and after discussions with various members of the Parish they can find no evidence that the path has been used as a bridleway. In addition Parish Councillor Robert Buckingham has emailed a number of comments from the Parish Councillors, mainly in relation to the section C-G-D on plan no. WCA/004. One person comments that they have walked this route regularly over the past 3 years and have only seen horse riders once. Other comments relate to the drainage, one person states if the route does become a bridleway the drainage will need improving. Another person who states they have seen no evidence of horse traffic also believes the route is not suitable for bridleway status because it is too narrow. One other comment is in relation to the southern end of the route, it is stated that there is a family run garage where people drop off cars and this could be a potential safety hazard. Officers did respond to inform Mr Buckingham that issues such as safety and suitability are not relevant to the decision of the Committee.
- 10.4.5 The Ramblers Association have raised points regarding the alignment of the path at the northern end, the anomaly at the southern end, and the permissive path around Close House Farm, which Officers were already aware of. (See paragraphs 10.1.3 and 10.1.4). They comment that most of the surface is

hardened and would support use by both riders and walkers; however there is one section just north of the permissive route where it is heavily grassed and the surface is more difficult to establish. They also comment that the current width is substantially less than 2.5 metres in places, particularly nearer Close House Farm due to the growth of vegetation. Finally they state that provided the current width of the path could be increased to allow pedestrians and horses to pass safely and the surface established as hardened throughout, they would not object. Officers have responded to this point on the width of the route. If a Modification Order is made, the width cited is the historical width. In the absence of any historical information then where the route is between physical boundaries the width is presumed to be the whole area between the boundaries. Where there are no boundaries the width will be that which has been habitually used by the public. If an Order is made and confirmed then the vegetation would be cut back to allow for the width cited in the Order.

- 10.4.6 The Ramblers Association have since made further comments since being notified of the proposed recommendation to the Committee. In a letter dated 21st August 2012 it is stated they support the proposed upgrading of Footpath No.9 along the whole definitive line of the existing footpath (B-C-H-I-D-J-E-F on plan no.WCA/004). It is stated the route C-G-D is currently unsuitable for riders and work will be required to establish a bridleway particularly at the southern end where it is steeper than the definitive line. Comments are made in relation to the definitive line between points C-H-I-D which it is proposed will remain as a public footpath. It is stated this section is not correctly waymarked when approaching from the south; and there are misleading signs only pointing to the concessionary path rather than the definitive route. It is stated this section has not been properly maintained by Cheshire East Council or the landowner due to the growth of vegetation on the path. Comment is made that this section has superior views and is less steep than the concessionary path; finally it is stated that as the outcome of the previous public inquires was to retain the current line of the path, the Ramblers Association would object strongly to any diversion of this route in the future regardless of whether or not the new section of bridleway is created.
- 10.4.7 The Peak and Northern Footpath Society have stated they have no objection to the upgrading of the route.
- 10.4.8 Mike Roberts representing CTC forwarded comments from one of his members Peter McGuckian; he states that he knows the track well and has ridden mountain bikes on it many times. He comments that it is perfectly suited for bikes and horse riders and he has seen many horse riders using it; he would support any application to upgrade the route in fact he always thought it was a bridleway.
- 10.4.9 Natural England has commented to say, this path order would not affect a statutory site for nature conservation (Site of Special Scientific Interest - SSSI, Special Area for Conservation – SAC; Special Protection Area – SPA or a Ramsar site).

- 10.4.10 Mr S Bailey of Higher Fence Farm owns land adjacent to the path. He owns the large field to the west of the route including the two reservoirs; he has been interviewed by Officers. Mr Bailey has lived at this address all his life apart from a 5/6 year break when he got married; his mother lived at the farm for 90 years. He states that he has always regarded the route of Footpath No.9 as more than a footpath, he remembers horses using it when he was young. His sisters always used it on horseback with friends, they used it regularly to exercise the horses; one sister has since moved abroad and the other has now passed away. His daughter, Natalie has always used the route on horseback; she began riding aged five when she went to Blakelow Riding School, she is now 21 years old and still lives at the farm and still uses the route. Mr Bailey also produced a map dated 6th December 1943; it shows the water reservoirs and pipe lines to Hurdsfield Mills, it was given to Mr Bailey by the last bailiffs for the factory. The full length of Footpath No.9 is shown slightly coloured and is referred to as 'Needham's Lane'.
- 10.4.11 Officers have also met with Mr C Broadbent of Close House Farm; Mr Broadbent is also representing his mother Mrs J Broadbent of the same address. Part of Footpath No.9 runs very close to their property, the section just to the south of point H on plan no. WCA/004 passes directly to the front of the property crossing tarmac and gravel before continuing in a southerly direction along the grass track. Mr Broadbent explained that the previous owner Mr Parker (now deceased) installed, what he refers to as the 'unofficial diversion', shortly after moving there in 1953. The diversion referred to is between points C-G-D on plan no. WCA/004. Mr Parker had a herd of dairy cows and was concerned about foot and mouth disease, so the diversion was put in place to avoid contamination. Mr Broadbent has submitted a statement from Mr Parker that is dated 1997. This unofficial diversion is still in place today and is signed with waymarkers as a permissive route. Mr Broadbent stated that virtually all people use this route but if a walker is seen on the definitive line they are asked if they would be prepared to use the alternative route instead, and the vast majority do so.
- 10.4.12 Mr Broadbent stated that the definitive line of the footpath was initially blocked by a pole; he said this would have been in the late 1960's soon after they moved to Close House Farm. The approximate position of the pole is shown on plan no. WCA/004. Mr Broadbent believes the pole would have prevented use of the route on horseback; although walkers would still have been able to get around the pole. He has submitted a photograph of a pole; however he has dated the photograph as being from the late 1980's. Mr Broadbent explained that after the installation of a new water main in 1992 a stile was installed on the definitive route. This stile remained in place until 2007 when it was replaced by a kissing gate. The approximate position is shown on plan no. WCA/004. Mr Broadbent believes that prior to 1992 only one or two riders were seen on the definitive line going past the property and any seen were challenged. They had a couple of friends with horses who may have used the route when visiting. He states that riders may well have used the unofficial diversion. In 1990 Mrs Broadbent installed the horse track, which runs parallel to the unofficial footpath in the adjacent field. There are signs at either end of the track stating 'Horses'. Mr Broadbent said that this was installed to

encourage the odd horse that used the diverted footpath (which is quite narrow) to use the track instead, so that horses and walkers did not meet.

- 10.4.13 Mr Broadbent has also submitted a detailed signed statement including comments and rebuttals of the applicants evidence, and the user evidence forms submitted. The statement dated August 2011 is signed by the following people, Mrs J Broadbent, Dr P Broadbent, Christopher Broadbent, Pamela Broadbent and Sarah Broadbent. Mr Broadbent's comments in relation to the documentary and user evidence are detailed below in paragraphs 10.6 and 10.7 respectively. In the statement Mr Broadbent refers to the Definitive Map process and the Parish Council Walking Survey, this is discussed in more detail below at paragraph 10.6.27, however it should be pointed out here that Mr Broadbent refers to this as a crucial piece of evidence as the local people carrying out the survey recorded a kissing gate on Footpath No.9. Mr Broadbent claims this is completely inconsistent with there being any public equestrian or vehicular access. He has submitted a copy of the walking survey schedule and plan highlighting the reference to a kissing gate.
- 10.4.14 Mr Broadbent states that Close House Farm was one of the properties offered for sale at an auction of the Hurdsfield Estate in 1933; he has submitted a copy of the details for Close House Farm (Lot 62). He states there is no mention at all of any public right of way or thoroughfare and the access lanes are described as accommodation roads. The details for Roewood House Farm (Lot 61) describe, "A Right of Way for all purposes, as at present enjoyed, over the roadway passing through this lot, is reserved in favour of Lot 62". Mr Broadbent states this would be unnecessary if the roadway referred to had been a public right of way. Mr Broadbent has submitted the relevant part of the conveyance of Close House Farm in 1933 granting the right of way.
- 10.4.15 Mr Broadbent has also submitted a letter from Macclesfield Rural District Council dated 19th October 1970 in which the Council refer to Bibby's Lane as 'the private occupation road'. However it must be highlighted that this letter is in relation to surfacing requirements for the Roewood Lane Development and the Council is merely pointing out that they would not surface a private road.
- 10.4.16 Also submitted is a letter from Mr Broadbent to Cheshire County Council dated 16th August 1990. As referred to in paragraph 10.1.7 above Mr Broadbent states the horse track has been a permissive route for horse riders since 1989 and he refers to it as a new facility for riders. He states "it was emphatically never the case that the horse track was installed as an unofficial diversion of any known or suspected rights for horse riders". The correspondence confirms this as it explains the difficulties with the suggestion that the horse track be dedicated as a bridleway, i.e. that the remainder of the route is only a footpath. The correspondence also refers to the horse track as a new facility for horse riders.
- 10.4.17 Since being informed of the recommendation to the Committee Mr Broadbent has sent a response. In a letter dated 21st August 2012 Mr Broadbent states, without prejudice to his position in any future proceedings that may develop in

this matter, he confirms that it would not be his intention to object to an Order to add a bridleway between points C-G-D on plan no. WCA/004.

- 10.4.18 Mr and Mrs Heathcote of Commonside Farm have replied to the consultation. In a letter dated 21st July 2011 they firstly point out that the address on the electoral register of their property is Roewood Lane, Higher Hurdsfield. However they choose to use Ecton Avenue as their address, as there is often confusion with the other Roewood Lane at the northern end of the route, off Rainow Road. They state that they have always had a vehicular right of access along the bridleway through to Hurdsfield at all times, should they ever need to use it. They explain that the actual right of way for vehicles was blocked and the path diverted and made into a footpath only. Adjacent to this narrow path, part of a field was then separated for use by horses. They state that the bridleway runs through the middle of their property and is used regularly by horses, bicycles, dog walkers and families. They also point out that the Council should maintain this bridleway more efficiently from the point at which it starts on Ecton Avenue to the end of Roewood Lane; and they explain that on a number of occasions this section has been flooded blocking all access to Commonside Farm and Nursery Cottage.
- 10.4.19 Officers have met with Mr and Mrs Armstrong who also own Commonside Farm. Mr Armstrong had completed a user evidence form; both Mr and Mrs Armstrong have signed statements in relation to their use of the route as a bridleway. Although it is accepted that as owners of land adjacent to the route the nature of their use may not be classed as use 'by the public', especially if they have a private right of access over the route as claimed by Mr and Mrs Heathcote. Mr Armstrong states his family have owned Commonside Farm since the mid 1950's. He owns all of the fields on the eastern side of the route from the field boundary just to the north of point I to Commonside Farm at point E (on plan no. WCA/004). He also owns the field on the western side to the south of point G.
- 10.4.20 Mr Armstrong states that in 1986 he started a livery business at Commonside Farm where he keeps his own and other people's horses. It was from then on he started to use this route on horseback; prior to that he had used it on foot and on his tractor. Mr Armstrong has used the route at least weekly for recreational riding; sometimes he would do organised rides with between three and five other riders. In 1986 when he began to use the route on horseback he would use the route that went past Close House Farm, he also used this route on his tractor. He states when the horse track was installed (1989) he began to use that rather than the route past the house. He still uses the horse track now which is wider, but he has to use the narrow diverted path to access one of his fields. He recalls a pole across the original route, he believes it was put up when the diverted route was put in; he states there was also a gate near to Close House Farm which was usually closed but not locked. He recalls speaking to Mrs Broadbent who told him to use the diverted route, he asked her permission to use the route past the house but this was refused. Mr Armstrong believes this may be because of his livery business she was worried about more horses coming through. Finally he states as a landowner

he has no problem with horses, he sees them using the route several times a week usually more in the evenings and at weekends.

- 10.4.21 Mrs Armstrong states that she first used this route on horseback in around 1975 when she was riding out from Rainow; she used it perhaps once a week or fortnight usually as part of a circular ride. She states back then Mrs Broadbent actually told her to ride past her house. At some point she stopped using the route past the house and began to use the alternative bridleway (horse track). Mrs Armstrong could not recall exactly when this was but she said she met her husband in 1987 and she does not remember going past the house with him. Mrs Armstrong states she never spoke to Mrs Broadbent but she knew through her husband that she did not want people riding past the house, so she just continued to use the alternative route until about 1996. She states she does not recall any obstruction when she used the route past the house.
- 10.4.22 Officers have met and taken a statement from Mrs Higgins of Tyfelyn, Bibby's Lane; her property is at the end of Bibby's Lane adjacent to point C on plan no. WCA/004. Mrs Higgins and her husband (now deceased) owned the site of their property and began building it in 1972, but it was not until 1974 that they moved in. Mrs Higgins states at that time Dr and Mrs Broadbent were already living at Close House Farm. Mrs Higgins was surprised about this application as she thought it was already a bridleway. She had seen signs saying 'Horses' at each end of the horse track, which runs parallel to the narrow footpath diversion; she assumed because of the signs that Mrs Broadbent had diverted the bridleway away from the house. She said these signs appeared after the inquiry into the diversion in the late 1990's, the signs have now disappeared she was not sure when they were removed. Mrs Higgins is aware that Mrs Broadbent does not like people using the route past Close House Farm; she says the only people who use this route are those from the Ramblers Association. She states she has never seen horses use this route but she would only have seen them if she was in her kitchen or garden.
- 10.4.23 When Mrs Higgins first moved here she rarely walked that way; she was working in Style and she used to take the dog with her and go for a walk around the woods there. Mrs Higgins could not recall when the narrow diverted route was put in, although she said after the inquiry in the late 1990's improvements were made to the path and stone chippings were put down. It was at this time that she did begin to use this route for dog walking. She states when walking this path she has seen horse riders using the horse track next to the path, she claims they have never used the narrow footpath as it is not suitable for horses. However very recently, in the last couple of weeks, she has seen horses on the narrow path but she was not sure why this was. Mrs Higgins states the number of horses using the route does vary, some weeks there are more than others and there are definitely more at weekends and during school holidays. Mrs Higgins has a number of concerns, particularly if the route C-G-D becomes a bridleway; she states that if horses continue to use the narrow footpath this is a safety hazard as the horses come out onto Bibby's Lane right next to the entrance to her property. She says she

could easily pull out on them with her car without realising they are there. Mrs Higgins also has concerns regarding the surface, the width of the route, privacy and security issues and concerns about motorbikes using the route; all of which are not relevant to the committee's decision.

- 10.4.24 Officers have interviewed Judy Mossdrop in relation to her use of Footpath No.9 on horseback. Since being informed of the recommendation to the Committee she has submitted further comments. She considers that the bridleway should run past Close House Farm on what she describes as the historical bridle path. She states the way has been barred at point D-I for some 30 years. She states the permitted path and horse track is inferior to the historic route; riders and walkers have been restricted in their enjoyment due to the old route being barred. She states Close House Farm does not appear to be a working farm so therefore there is no practical reason for the restriction and diversion.
- 10.4.25 Officers have met with Mr and Mrs Walton of Roewood House, Roewood Lane. The definitive line of Footpath No.9 affects their property but is currently unavailable and has been for many years. It cuts across the front garden and then goes to the side of the property, through the boundary fence and into Hillside Court, where it is further obstructed by the building, vegetation and a fence. Mr and Mrs Walton have lived at Roewood House for nine years and were aware of the footpath when they bought the property. The previous owners told them the footpath had not been used and they had never encountered anyone attempting to walk it. This has been the same since Mr and Mrs Walton have lived at Roewood House. It appears from the Definitive Map and Statement that the path originally ran between the house and the farm outbuildings, since that time the area has been developed and the path became obstructed. With regard to the upgrading of the remainder of the footpath Mr and Mrs Walton state that they use the path from Bibby's Lane for walking on a regular basis. They do not use the definitive line past the house but choose to use the alternative route provided by the landowner. They state they have seen evidence of use by horses but have only come across one once, they say mountain bikers' use it too but it is mostly walkers. They expressed some concern about the width of the route should it become a bridleway.
- 10.4.26 In addition to the above, separate consultation letters were sent with regards to the proposed extinguishment of part of Footpath No.9. (A-B on plan no. WCA/004).
- 10.4.27 The Ramblers Association have written to say they would not object to the proposal as this would deal with a long-standing anomaly and similar access is provided by the pavement.
- 10.4.28 The Peak and Northern Footpaths Society have no objection to the proposed extinguishment.
- 10.4.29 Two of the utility companies, National Grid and Electricity North West have responded and raised concerns as they both have apparatus in the vicinity.

However no works are required on the ground in this case so the apparatus would not be affected. With regard to access to the apparatus, provision is made in an extinguishment order to protect the rights of statutory undertakers.

10.5 *Investigation of the Claim*

10.5.1 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 11 witnesses. The following documents are also referred to in the application; the Hurdsfield Tithe Map and Apportionments; the Ordnance Survey 25" 1st edition Map 1871; the Finance Act Plan and Book of Reference; the Ordnance Survey 6" 2nd edition Map 1911 and the Mining Map for Throstlenest Pit.

10.5.2 In addition to the user evidence an investigation of the available historical documentation has been undertaken to establish whether the claimed route has an earlier origin. The standard reference documents have been consulted; details of all the evidence taken into consideration can be found in **Appendix 2**.

10.6 *Documentary Evidence*

Inclosure Award

10.6.1 The purpose of inclosure was to replace the communal system of open field cultivation and common grazing with a system of land divided into individual plots and fields, redistributed amongst the existing owners. There were three methods of inclosing land: informal inclosure, inclosure by agreement (but often confirmed by a court of law, and inclosure by Private or General Act of Parliament. None of these belong to a strict period in time. By the end of the 18th century all processes were in use. Non-parliamentary enclosure was nationally the dominant form. Parliamentary inclosure was effectively halted in 1876. Inclosure Awards are usually in two parts, the handwritten award and the accompanying plan. The Commissioners responsible for producing the document were empowered to stop up, divert and create public highways and private roads through and to enclosed land. They vary greatly in quality, scale and detail.

10.6.2 In this case there is no inclosure award for Higher Hurdsfield which covers the majority of the route. There is however one for Macclesfield dated 1804 and the very southern end of the route (E-F on plan no. WCA/004) is shown on this plan. The award refers to both the road now known as Ecton Avenue and the spur of Roewood Lane (E-F) as 'Private Occupation Roads'. Ecton Avenue is now an adopted highway. The General Inclosure Act of 1801 did not give authority for the creation of public footpaths or, it would seem, bridleways. Although the term "highway" could possibly include a bridleway it is generally accepted that it would not refer to a footpath. Therefore although E-F is referred to as a private occupation road it maybe that a public footpath or bridleway already existed or came into being later.

County Maps 18th-19th Century

- 10.6.3 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.
- 10.6.4 Greenwood's Map (1819) shows the spur of Roewood Lane at the southern end of the route as far as the parish boundary (E-F on plan no. WCA/004) but the rest of the route in Hurdsfield is not shown. Swire and Hutching's Map (1830) shows the route from the northern end only as far as Close House Farm. On Bryant's Map (1831) both the northern end as far as Close House Farm and the southern spur of Roewood Lane (E-F on plan no. WCA/004) are shown by a double pecked line, indicated on the key as 'Lanes and Bridleways'.

Hurdsfield and Macclesfield Tithe Maps and Apportionment 1849/1840

- 10.6.5 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. 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.
- 10.6.6 The Tithe Map of Macclesfield dated 1840 shows the very southern end of the route between points E-F on plan no. WCA/004. The route is shown as double solid lines and is excluded from the parcels of land either side. This section of the route does not have an apportionment number but it does appear to be shaded the same as the other known public highways. The Tithe Map and Award of Hurdsfield dated 1849 shows part of the route in question as a double solid line. From the southern end, the route is shown from Commonsides Farm as far as the field boundary to the north-west of point J (on plan no. WCA/004). There is then a small gap where the route is not shown. The route is then shown again (as double solid lines) from roughly where the work 'Track' begins to the north-west of point J and it continues in a northerly direction to the field boundary to the north of point I (on plan no. WCA/004).

This part of the route does not appear to be shaded. This section is given an apportionment number 105a which is described as “Lane” and the land use is described as “Thoroughfare”. The award names an owner and occupier but no rent charge is apportioned; this implies that this section of lane was in private ownership but was not productive. However since it is now recorded as a public footpath, it was presumably dedicated as a public right of way since the date of the tithe. Further north of here no features are shown on the map, no field boundaries or buildings; there is a large blank space as far as Rainow Road and from Cliff Lane down to the canal, presumably this whole area was not subject to a tithe charge. Two copies of the Hurdsfield Tithe Map and Award have been viewed, one at Chester Record Office and one at The National Archives, both copies show the route as described above.

- 10.6.7 The applicant comments that no conclusion should be drawn from the fact that only the southern parts of the route are shown. He states it is quite common for there to be gaps on Tithe Maps and this only indicates that no tithe was due or it was paid elsewhere. For the Apportionment the applicant states number 105a is recorded as ‘Lane’ and no tithe is due, he claims this indicates that 105a was accepted as a Public Highway in 1849.
- 10.6.8 Mr Broadbent comments that the Tithe Map does not offer any particular evidence of public use; he states the description of ‘Lane’ does not carry any implication of public use at all. He states it probably was a lane, being a private access to Close House Farm. He also comments that it is not clear why a Public Highway would be recorded as having an occupier.

Ordnance Survey Maps

- 10.6.9 Ordnance Survey mapping was originally for military purposes to record all roads and tracks that could be used in times of war. This included both public and private routes. These maps are good evidence of the physical existence of routes, but not necessarily of status. Since 1889 the Ordnance Survey has included a disclaimer on all of its maps to the effect that the depiction of a road or way is not evidence of the existence of a right of way. It can be presumed that this caveat applies to earlier maps also. These documents must therefore be read alongside the other evidence.

Ordnance Survey Map 1” to 1 mile 1st Edition 1833

- 10.6.10 This shows the full length of the definitive line of Footpath No.9. The northern and southern ends of the route are shown as double solid lines; the middle section is shown as double dashed lines.

Ordnance Survey Map 1” to 1 mile Revised New Series (in colour) 1897-1904

- 10.6.11 This map indicates the area was surveyed between 1842-1893, the map revised between 1893-1898 and the colour edition published between 1897-1904. The full length of the definitive line of Footpath No.9 is shown as double solid lines. The route is not shown in colour but the key on the map indicates that the route is a third class metalled road which is fenced.

Ordnance Survey Map 6" to 1 mile, 1st, 2nd and 3rd Editions

- 10.6.12 The full length of the definitive line of Footpath No.9 is shown the same on all three editions. The route is shown as double solid lines throughout and there is a line across the route to the north of Close House Farm, which would indicate a gate or barrier of some kind. This would appear to be the same location as the current gate (point C on plan no. WCA/004). Roewood House, Close House and Commonsides are named on all three editions. The applicant comments that this map shows the route as a substantial public highway with solid lines along both sides. Mr Broadbent comments that it is accepted that there were lanes running north and south from Close House Farm but the fact that they are shown with solid lines is not evidence that this shows a 'Public Highway'.

Ordnance Survey Map 25" to 1 mile, 1st, 2nd and 3rd Editions

- 10.6.13 The full length of the definitive line of Footpath No.9 is shown on the first edition dated 1871 with double solid lines and is coloured throughout, this would appear to be the same as other routes in the area which are now known as public highways. However the interpretation of a coloured way on Ordnance Survey Maps is not straightforward. In her article "*Coloured Roads on Ordnance Survey First Edition 1:2500 Plans and One-Inch Maps 1897-1935, and the Rights of Way Disclaimer*"¹ Yolande Hodson refers to the comments of Winterbotham (DGOS 1930-35) who stated that the colouring of roads represented a metalled surface. However it is evident that not all metalled roads were coloured; nor can it be assumed that every coloured way was necessarily metalled. She also refers to the Ordnance Survey's response in the 1950's to a solicitors query about the use of colour as a possible indication of public status, they claimed that the colouring was of no significance and was for the sake of the artistic appearance of the plan. Further she comments that in the period from at least the late 1870's to 1884 it is evident that artistry was not the sole purpose of the colouring of roads and she describes examples of colour having been applied to identify public first and second class metalled roads and to distinguish them from public third and fourth class roads and private metalled roads. She states that "from April 1884, the use of colour on selected roads cannot be taken as a reliable indication of public status..." this is because an instruction was directed that all 'Carriage Drives properly metalled, and kept in repair, will in future be coloured...' Therefore although this instruction came after the date of this map, it seems that the colouring of the route in this case is ambiguous and may or may not relate to its status. The route is given a number on this map '252'; but no book of reference was available at the Record Office. As with the 6" map referred to above there is a line across the route at point C on plan no. WCA/004 to indicate a barrier, however just because a route is shown as gated this does not always mean it is private. The properties Roewood House, Close House and Commonsides are all named on this map. The second and third editions show the route in the same way but without the colouring, no

¹ The Cartographic Journal Vol.42 No.2 pp. 85-110 September 2005

colour was used on these maps. The only change is the addition of a line across the route just to the south of Close House Farm. The second edition map dated 1896-8 has been attached at **Appendix 3** to show what the area was like before the development at the northern end of the route.

- 10.6.14 The applicant has commented that on this map the route is clearly shown from end to end i.e. Ecton Avenue to Hurdsfield Road. He states it is shown with solid lines on both sides of a substantial public highway throughout the entire length. He also notes the existence of Throstlenest Pit and the Dye Works as well as extensive agriculture, all of which he states were likely to have given rise to various types of usage by the local community.
- 10.6.15 Mr Broadbent states that there is no evidence to support the applicant's assertion that the use of solid lines indicates public usage of the route. He states a 19th century plan of the Throstlenest Dye Works (which appears to be this same Ordnance Survey Map) shows there is at most a footpath (beside the pools) to the route, and no vehicular access at all. He also states it should not be forgotten that the land was until 1922 held under the copyhold title of the Manor and Forest of Macclesfield and was part of the Hurdsfield Estate. Further he states there is no evidence that any activity, whether agricultural or commercial, would give rise to public rights over this land.

Lancashire Derbyshire & East Coast Railway 1891

- 10.6.16 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.
- 10.6.17 This Plan dated 1891 shows a proposed railway bisecting the route, the line of the railway crosses just to the north-west of point J on Plan no. WCA/004 and then continues on the eastern side of the route, running almost parallel to the route as far as Close House Farm. The proposed line of the railway then veers off in a north-easterly direction. The full length of the route of Footpath No.9 is shown on the Railway Plan apart from the very northern section between point A and half way between points B and C (on plan no. WCA/004), this section is outside of the limit of deviation. The Book of Reference refers to the route as 'Occupation Road' the owner is named as P. Brocklehurst but no occupier is listed. It should be noted that Ecton Avenue at the southern end of the route is given a number on the Railway Plan and also referred to in the

Book of Reference as an 'Occupation Road', although this is now an adopted highway.

The Finance Act 1910

- 10.6.18 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.
- 10.6.19 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.
- 10.6.20 The working sheets are completed on Ordnance Survey 1909 third edition base maps. There are two copies of the working sheet for this area held at Chester Record Office. The first copy is not coloured but indicates some plots with a red outline. The northern end of the route between points A-C is excluded from hereditament number 133, which is an outlined plot to the north and south of the route between these points. The only other plot outlined on this plan for the area is number 131, this covers the area around Commonsides Farm, the field opposite the farm and all of the fields to the eastern side of the route from Commonsides as far as the field boundary to the north of point I (on plan no. WCA/004). The route is not included within this hereditament. The area around Close House Farm and the remainder of the western side of the route is not included within a plot.
- 10.6.21 The second working copy viewed shows the outlined plots as different colours, which is how they are often depicted on the Finance Act Working Plans. The plan has however been annotated since, possibly by Macclesfield Rural District Council or whoever held the plan prior to it being kept at the Record Office. It is therefore difficult to say with any certainty what changes have been made to this plan since the plots were originally drawn. It would appear that the northern section of the route is once again excluded from plot number 133 which relates to Roewood House. There is then a green outline for the plot around Close House Farm and the route would appear to be included within this hereditament between point C and the field boundary just to the north of point I (on plan no. WCA/004). For the remainder of the route from this point south to point F, the route is excluded from the hereditaments either side.
- 10.6.22 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 April 2010).

- 10.6.23 Unfortunately the Finance Act Record Plan has not survived for this area, however, the Field Books for the three plots mentioned above were available. Plot 131 for Commonsides has no reference to rights of way and no deductions were made. Plot 132 for Close House has the word 'footpath' written on the first page of the field book under the heading 'Fixed Charges, Easements, Common Rights and Restrictions', however no deductions are made for Public Rights or Way or Easements. Similarly Plot 133 for Roewood House again states 'footpath' on the first page under the same heading. On the third page there is a sketch of the house, washhouse and piggeries; it then states 'Across Road' and then has a sketch of the Old Cottage and some further outbuildings. This would appear to be referring to the route of Footpath No.9 through the plot as a 'road'. No deduction is made for Public Rights of Way or Easements; however this section of the route does appear to be excluded from the plot on the Working Plan. The Domesday Book shows that no deductions were made for all three plots. The fact that the word 'footpath' was written on two of these field books but no deductions were made is unusual. It may be that the owners acknowledged that a footpath ran over the land but did not want to admit that it was a public right of way by claiming a deduction in value; or it maybe that it was considered a private path, although no deductions were made under easements. For the northern and southern ends of the route, where it is excluded from the hereditaments this could indicate a status higher than that of public footpath. However because the route is included within the plot of Close House Farm around the middle section and the references to 'footpath' in the Field Books this evidence is ambiguous.
- 10.6.24 When referring to the Finance Act Plan and Book the applicant states that "No.9 was not subject to tax as it is excluded from the land assessed and given a number 42, confirming it as a Public Highway". As we have seen above the full length of the route is not excluded from the plots, the number 42 is from the Ordnance Survey Map which was used as a base for the Finance Act Working Plan, it does not relate to the plot numbers. This does not confirm the route as a Public Highway.
- 10.6.25 Mr Broadbent has commented that if the land is not subject to tax this would indicate that no public money had ever been applied to its upkeep, which would be expected for any public right of way.

Hurdsfield Parish Council Minutes 1894-1981

- 10.6.26 The Parish Council make various references to the route, the earliest from 1956; and also the diversion around Close House Farm, from 1959. Quotes from the minutes are included in **Appendix 2**. It is clear from these early minutes (1956 & 1957) that the Parish Council regarded the route as a bridleway. Although the outcome of their query to Macclesfield Rural District Council regarding the status of the route is not referenced, from the next mention of the route in 1959, it is referred to as a footpath. It is clear from the minutes that horse riders have used the diversion around Close House Farm

C-G-D (on plan no. WCA/004) from at least 1973. Dr Broadbent (Mr Broadbent's father) of Close House Farm was a member of the Parish Council at this time. In September 1976, when Dr Broadbent was present at the meeting, it was resolved that a sign be erected at each end of the diversion with a direction sign for horses through the farm and pedestrians around the diversion. There is no other evidence to suggest these signs were actually erected. It was at this time that Dr Broadbent submitted an application to divert the route; therefore it is thought these comments may have been made to possibly help to support his application, as there had been previous concerns about walkers encountering horses on the diverted path.

National Parks and Access to the Countryside Act 1949

10.6.27 The Definitive Map and Statement is based on surveys and plans carried out in the early 1950s by each parish in Cheshire of all the ways they considered to be public at that time. The surveys were used as the basis for the Draft Definitive Map. Path no.9 was recorded as a footpath by Hurdsfield Parish on their survey. The route is described as commencing at Roewood Lane and terminating at Commonsides at the Macclesfield Borough Boundary, it states the route continues as a 'CRF' (Cart Road used as a Footpath) and 'FP'. The schedule describes two stone stiles; the first one is referred to as a Kissing Gate. On the map two field gates are marked, one to the north of Close House Farm (at point C on plan no. WCA/004) and one just to the south of the farm. The kissing gate is marked on the field boundary just to the north of point I (plan no. WCA/004) and the other stile is just south of point D. The survey was carried out between May and September 1951. A Mr Dancaister is named as one of the two local people who carried out the survey, this may be the same Mr Dancaister mentioned in the parish minutes in 1956 who agreed to inspect maps. Also on the Hurdsfield map the southern end of the route which goes into Macclesfield parish (E-F on plan no. WCA/004) is annotated with an arrow and 'U/C Rd?' this may have been added by an officer at the time.

10.6.28 The Parish Survey for Macclesfield failed to include the continuation of Footpath No.9 from the parish boundary on Roewood Lane to Ecton Avenue (E-F on plan no. WCA/004) and it was therefore subsequently omitted from the Definitive Map. However on the Parish Survey map for Macclesfield this section of the route is highlighted and annotated with the word 'Add', so it would seem officers at the time noted this omission.

Rights of Way Officer's Field Notebooks 1954/6

10.6.29 These are the original handwritten notes of officers. They are presumably from site visits when checking routes or following up queries in the period leading up to the Draft Definitive Map being published. There is an entry dated August 1954 which refers to the southern end of the route, it describes it as a 'stone track' and then states 'continue with u/c road junction in Macc MB'. Again this indicates officers were aware that the route needed to join the road junction. There is another entry dated August 1956 which queries the status of the route. It states "Is this a BR or FP? What does schedule state?"

Abbotts letter read 'Bridle for private'. Further it notes to check the railway and canal plans which might give some indication as to status. Clearly this officer was not sure of the status of the route and believed further research was needed. Mr Abbotts was the Clerk for Macclesfield Rural District Council, from these notes it would seem he believed that it was only used as a bridleway in a private capacity.

Mr Maddock's Files 1960/70's

- 10.6.30 As stated above at paragraph 10.1.2 Mr Maddock was Bridlepaths Officer for East Cheshire Combined Training Group from 1967/8. As well as completing a user evidence form and being interviewed by officers he has also submitted files of correspondence and survey records from the 1960s/70's. Mr Maddock applied to upgrade Footpath No.9 to bridleway under the previous legislation in 1972. However when the Wildlife and Countryside Act 1981 was enacted applicants were required to resubmit their application to comply with the new legislation. Mr Maddock was asked to do this in 1986 and although he requested the forms to do this it would appear that the application was not submitted. As part of his role as Bridlepaths Officer Mr Maddock surveyed many routes in Macclesfield and surrounding areas. In his survey report for Footpath No.9 dated 1st April 1972 Mr Maddock states *"This path classified only as a footpath and only a few years ago was diverted to avoid going through the farm yard at Close House. The path has been ridden by all the local riders as far as I can establish for at least thirty years"*. So it is apparent that Mr Maddock believed the route to be a bridleway but he also believed that the route had been diverted.
- 10.6.31 Mr Maddock has been interviewed by officers. He stated that between 1964 and 1966 he would have been riding a minimum of once a week and at least once a month after that. From 1964 he used the route that goes right next to Close House Farm. Then in around 1967 when Dr and Mrs Broadbent moved there he was asked to use the diverted route. He then continued to use the diverted route between one and four times a month between 1967 and 1989 when he moved house. He stated that no one ever stopped him from using this route on horseback; it was a well established and well used route for local riders.

Public Rights of Way Correspondence Files 1970/80's

- 10.6.32 A number of items referring to Footpath No.9 have been discovered dating from 1976 to 1989, these are summarised in **Appendix 2**. Some of the correspondence refers to horse riding on the path and on the diverted path. For example in a letter from The Ramblers Association in 1977 it is stated that the alternative path is used by horses and reference is made to the Parish Council Meeting in 1976 when Dr Broadbent suggested horses could continue to use the route by his house. There are also a number of letters complaining that the route is obstructed, the earliest is a letter from Mr Burch in 1987 and he also comments that the diversion is being used as a bridleway.

Public Footpath Diversion Order Public Inquiry Decision Papers 1995 and 1997

- 10.6.33 As stated above at paragraph 10.1.6 an Order was made to divert part of Footpath No.9 in 1991. The Order states it was proposed to divert the route by extinguishing the section C-H-I-D (on plan no. WCA/004) and creating a new path between points C-G-D. The Order was objected to and subsequently a public inquiry was held on 27th September 1994. The Planning Inspectorate issued a decision paper on 25th January 1995; the Order was not confirmed. In the decision paper under 'The Case for Cheshire County Council' it is stated that *"although only a public footpath exists along the route between Bibby's Lane, Close House Farm and Commonsides Farm, it is a route which is frequently used by horses"*. Mr Spoors, the applicant in this case, gave evidence as an objector at the inquiry. He stated that the footpath is part of an 'ancient trackway' and he highlighted the amenity value of walking between the dry stone walls, it was stated that the proposed diversion would deprive the walker of this enjoyment for a significant part. In his conclusion the Inspector agrees that the diversion is in the interests of the landowner, he also states he does not consider the proposed diversion to be substantially less convenient for walkers; and he says the overall enjoyment would not be significantly affected. The reason given for not confirming the Order was that the diversion would be substantially less convenient for the householders who back onto the proposed diversion, as members of the public at large. Following this the Council and the applicant challenged the decision in the High Court, arguing that the Inspector had misinterpreted the definition of "the public" referred to in section 119 of the Highways Act 1980 as including the householders rather than the general walking public. The decision was quashed by Order of the Court and the County Council was invited to re-submit the Order and objections for determination.
- 10.6.34 A second public inquiry was held on 27th February 1997 and the Inspector's decision was issued on 3rd April 1997, again the Order was not confirmed. Mr Spoors again gave evidence at this inquiry, again stating that the public's overall enjoyment of the route would be affected by this diversion. He also stated that in recent years the public had been encouraged to use the permissive path, due to the inaccurate signposting and the metal bar placed across the definitive right of way. In summary the Inspector decided not to confirm the Order because he considered that the proposed diversion would have a significant negative impact on the public enjoyment of footpath No.9 as a whole.
- 10.6.35 This information on these previous public inquiries is interesting but it must be remembered that they were in relation to an application to divert the Public Footpath, under section 119 of the Highways Act 1980. The Inspectors were not concerned with the status of the route, they were looking at whether or not the proposed diversion met the legal tests required to divert the footpath rights. This application for a Definitive Map Modification Order is quite different and the legal tests are set out above from paragraph 10.3. As can be seen from the recommendation of this report the Public Footpath rights would remain along the route C-H-I-D (on plan no. WCA/004) past Close House

Farm, so walkers could continue to enjoy this route and indeed the remainder of the route.

10.7 *Witness evidence*

- 10.7.1 User evidence was submitted with the application on standard user evidence forms, a chart illustrating the user evidence is attached as **Appendix 4**. Eleven user evidence forms were submitted all claiming use of the route on horseback, officers have interviewed six of the eleven plus one additional person. The remaining five witnesses have not replied to correspondence. The evidence of two of the witnesses interviewed, Mr and Mrs Armstrong, may be construed as being private, rather than public user "as of right". As owners of Commonsides Farm and land immediately adjacent to the route it is believed they would have a private right of use. Mrs Armstrong did state she used the definitive line of the route, past Close House Farm, on horseback from 1975 until about 1987. This was before she met her husband but may have been with the permission of Mrs Broadbent.
- 10.7.2 As stated above at paragraph 10.3.4 when considering the user evidence for the application route (the definitive line of footpath No.9 past Close House Farm, between points C-H-I-D on plan no. WCA004) the relevant twenty year period is 1967 to 1987. This is because of the various references to this section of the path being obstructed and therefore preventing use on horseback from 1987. Of the seven witnesses interviewed four claim use of this section on horseback. Mr Armstrong, as stated above may have a private right, but only claims he used this route between 1987 and 1989. Mrs Armstrong claims 12 years use between 1975 and 1987 but may have used it with permission. Mrs Morton claims she used this route weekly from 1960 to 1967 but she states she was friends with Viv Parker, the daughter of the previous owner of Close House Farm, so her use may have been with permission also. Finally Mr Maddock claims he used this route weekly between 1964 and 1967. So of those witnesses interviewed only Mrs Armstrong has use within the relevant twenty year period. Of the remaining five persons who were not interviewed, from the information provided on their forms, it would seem that Vivien Johnson (daughter of the previous owner of Close House Farm) is the only other person to have used this route. She claims use between 1956 and 1967, outside of the relevant period, but her use would not be classed as "as of right" for this period when her father owned Close House Farm.
- 10.7.3 For the rest of the claimed route and the additional section between points C-G-D the relevant period to be considered is 1975-1995. As stated in paragraph 10.3.7 above, in 1995 Mrs Broadbent submitted a statutory declaration claiming that no rights of way exist on her land (apart from footpath No.9). This action brings the use of the route as a bridleway into question, so the twenty year period is taken back from this point. Of the seven witnesses interviewed four claim use of this route on horseback during the relevant period. The longest period of use being Anne Morton who used it from 1967 until 2002. One witness claimed use of this route on foot for a 28 year period from 1983. In addition four of those interviewed claimed use of the horse

track, which runs parallel to this route between 1989 (when it was installed) to 1996. All of the witnesses interviewed claim they have never been stopped or challenged when using this route. Also none of the witnesses have mentioned any signs on the route, although there are permissive waymarkers on this route now it is not clear when they were installed. Of the five witnesses that were not interviewed, four claim use of this route on horseback during the relevant period, the fifth claims use after 1995. Two of these five witnesses state on their forms that they were stopped or challenged by Mrs Broadbent. One states she was told it was a footpath; however as they have not been interviewed there is no further details about when or where these challenges occurred. One further witness states she was stopped by a Mr Henson (senior), however she states this was in February 1997 which is outside of the relevant period.

10.7.4 At the southern end, section E-F on plan no. WCA/004, the route has not been 'brought into question'. It would appear that no one has ever been stopped or challenged on this section and the route has not been obstructed at all. It was realised that this section was omitted from the definitive map when investigations began into this application. Therefore the relevant period to be considered is 1992-2012. Three of the witnesses interviewed have used this section at some point during this period. In addition Mr and Mrs Armstrong claim use, but as stated above they will have a private right of access to their farm. Of those not interviewed three witnesses claim use at some point during this period. It is noted that all of the witnesses will have used this section during their use as it is the only access from the southern end of the route to Ecton Avenue.

10.7.5 Mr Broadbent in his submission comments that between moving to Close House Farm in 1967 and 1992, when the stile was installed, Mrs Broadbent is adamant that only one or two riders made any attempt to ride the route past the house, and any seen were challenged and turned back. She does accept that some riders used the diverted footpath but as this is not completely visible from the house it was often not possible to intercept people riding that path. Mr Broadbent has made comment on each of the user evidence forms, in summary he states they were either using the diverted route and therefore not the claimed route; or in the case of Mrs Johnson using the route with permission. He also notes that some of the witnesses accept that they were challenged.

10.8 *Conclusion*

10.8.1 It would appear that at least part of the claimed route, Footpath No.9, existed in 1830. The first time the full length of the route is shown is the 1" to 1 mile 1st edition Ordnance Survey Map dated 1833. The entire claimed route is also shown on the 1st, 2nd and 3rd editions of the 6" and 25" Ordnance Survey Maps. However although this is good evidence of the physical existence of the route, the Ordnance Survey maps do not denote the status of the route and can therefore only be regarded as supporting evidence.

- 10.8.2 The Hurdsfield Tithe Map dated 1849 only shows part of the route and an owner is named which suggests it was in private ownership at that time. The southern spur of Roewood Lane is shown coloured and not given an apportionment number, which may suggest it was public. The Lancashire Derbyshire and East Coast Railway Plan of 1891 shows almost all of the claimed route, however, the book of reference names an owner and refers to it as an occupation road.
- 10.8.3 The Finance Act documents are ambiguous, part of the route is excluded from hereditaments, which is suggestive of public rights higher than public footpath status. However for the middle part of the route, which is included within the plot for Close House Farm, the Field Book shows no deductions made for public rights of way. The field books for Close House and Roewood House state 'footpath' on the first page which may refer to a public or private path; but no deductions are made for any public rights in either book.
- 10.8.4 At the time of the Parish Survey in 1951 it would seem there were field gates a kissing gate and a stile on the route, as these are recorded on the map and in the accompanying schedule. This may have influenced the decision of the parish to record the route as a public footpath. Although in 1956/7 the Parish Council queries the status of the route and claim it has always been a 'bridle road'. From 1959 onwards the route is always referred to in the minutes as a 'public footpath'. In 1977 twelve people from the Parish Council had a meeting to inspect the footpath map and it was agreed that the paths are as shown on the Definitive Map.
- 10.8.5 The historical evidence in relation to the existence of the route is considered good; however as evidence to help determine the status it is limited. Although the Finance Act Working Plan would support the claim that public rights higher than footpath exist along part of the route. The user evidence for the claimed route past Close House Farm is not considered sufficient to meet the legal tests set out in paragraph 10.3.2 above. Only one person claims use on horseback during part of the relevant period, 1967-1987 and she may well have used it with permission during this time. The applicant states that horse riders would have used the definitive line if not for the obstruction (he states from 1962) and overgrown state of the path. However from the Council's correspondence files and the photograph of the pole it would seem that the definitive line was obstructed to horse riders from the late 1980's, no evidence indicating an earlier obstruction has come to light. Therefore in order to prove bridleway rights it must be shown that the route was used as such during the relevant twenty year period. There is insufficient evidence of use during and prior to this period. The users, in particular Mrs Morton and Mr Maddock who had claimed use of the definitive line prior to 1967, then chose to use the alternative route and this was before any obstructions.
- 10.8.6 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. Mrs Broadbent has claimed she has challenged any horse riders seen on the path by her house. None of the witnesses interviewed state they were challenged by her but they were almost all for the majority of the time using

the alternative path. Some of the witnesses not interviewed may have been challenged but it is not known when or where these challenges took place. None of the witnesses claim to have been challenged on the alternative path and Mrs Broadbent has admitted that horse riders have used this path. The user evidence for the diverted path (C-G-D on plan no. WCA/004) and the remainder of the claimed route is considered sufficient to show bridleway rights. It is believed that the landowner has not negated the presumed dedication of this route.

- 10.8.7 The evidence in support of this application must show, on the balance of probabilities that public bridleway rights subsist along the claimed route. It is considered that there is insufficient historical and user evidence to support the existence of bridleway rights along the route C-H-I-D (on plan no. WCA/004). On the balance of probabilities, the requirements of Section 53(3)(c)(ii) have not been met and it is recommended that this section should remain as a Public Footpath on the Definitive Map and Statement.
- 10.8.8 For the sections B-C and D-J-E (on plan no. WCA/004) again it must be shown on the balance of probabilities that public bridleway rights subsist. For these sections it is considered there is sufficient user evidence to support the existence of bridleway rights. 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 these sections from a Public Footpath to a Public Bridleway.
- 10.8.9 For the sections C-G-D and E-F (on plan no. WCA/004) it must be shown on the balance of probabilities that a reasonable allegation has been made that public bridleway rights subsist. Again it is considered that there is sufficient user evidence to support the existence of bridleway rights. The requirements of Section 53(3)(c)(i) have been met and it is recommended that the Definitive Map and Statement should be modified to add these sections as a Public Bridleway.
- 10.8.10 In relation to the section A-B on plan no. WCA/004 the relevant legislation is Section 118 of the Highways Act 1980 which states it is within the Council's discretion to make an Order if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use. It is considered that this section of Public Footpath No.9 is not needed for public use, as alternative access is available. It is therefore recommended that this section is extinguished.

11.0 Access to Information

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

Name: Jennifer Tench

Designation: Definitive Map Officer

Tel No: 01270 686158

Email: jennifer.tench@cheshireeast.gov.uk

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Public Rights of Way, CEC,
Municipal Buildings,
Crewe,
CW1 2BJ

78, Roewood Lane,
Macclesfield,
Cheshire,
SK10 2PQ.
7th August 2012

Your Ref: PROW/JLT/5/223

Dear Sirs,

Higher Hurdsfield No. 9 – Application for Modification Order

I acknowledge receipt of your letter dated 3rd August 2012 and I must admit to being more than a little mystified by its content. Quite some years ago I made an application for a Modification Order in relation to Higher Hurdsfield No. 9 specifically for the entirety of the route as defined on the Definitive Map; I did this in the full knowledge of the existence of Permissive Diversions around Close House Farm. Since I submitted my application I have had no substantive contact and no consultation on either the background to my application or on any results that may have come to light during any investigations carried out. Your letter refers to 'evidence has been discovered' but I have not even had the courtesy of being told what it is and yet you expect me to comment on the proposed revision to my application. This seems to me to be wholly unreasonable behaviour!

I have commented in more detail, in so far as I can, in the enclosed notes but you can take this letter as my formal notification that if an order is made in the proposed form 'I object'. My objection is to the proposed creation of a Bridleway section in place of a Permissive Diversion i.e. C,G to D on your map. If there is enough evidence for upgrade to Bridleway from F to D and from C to B then clearly Higher Hurdsfield No. 9 is a Bridleway in its entirety. The section D,I,H to C has not been able to be used for many years because it has been obstructed at various times by various means. Since the basis of my application was on user evidence alone I can only surmise that since some of the user evidence was from people that had been forced to use the Permissive Diversion because of the obstructions or closures that this is being used as the basis for creating a Bridleway section from the Permissive Diversion. However, I do know that some of them did ride the Definitive Route before the obstructions were put in place so both of these circumstances can only reinforce the case for an upgrade to Bridleway for the Definitive Route of No. 9 in its entirety.

Given the history of applications for Diversion Orders, Public Inquiries and obstructions to the part of No. 9 around Close House Farm, I am sure this will have formed part of your investigation and that you will be fully acquainted with the findings of the Public Inquiry reports from the Planning Inspectorate. Just in case you are not, I have mentioned some pertinent detail from those reports in my enclosed notes but I would recommend that the two Public Inquiry reports are taken fully into account before making any Order.

For the avoidance of doubt, I object to the proposed order and I confirm that I will sustain that objection to another Public Inquiry, if needed. My one exception to that is that I am happy to confirm that I have no objection to the removal of rights over A to B. Finally, I have previously informed Cheshire East Council that the delays to, and the process adopted for considering, my application could form the basis for a separate application for 'maladministration' against the Council. I confirm that I continue to reserve that right and given the current position that looks ever more likely.

Yours faithfully,

Approved electronically

Roy Spoors
[enclos.]

Higher Hurdsfield No.9 – Application for Modification Order
Notes to Application

- 1.0 Higher Hurdsfield No. 9 was incorrectly designated as a footpath on the Definitive Map when it was created.
- 2.0 The footpath rights over the section C,H,I to D have been subjected to, at least, two applications for Diversion Orders (Highways Act) onto the Permissive Diversion D,G to C. If they had succeeded then the rights over D,I,H to C would have been extinguished.
- 3.0 The last two applications for a Diversion Order for the section D,I,H to C have gone to Public Inquiry. On both occasions the Planning Inspectorate refused to confirm the orders on the grounds of 'enjoyment of the path as a whole'. The clear agreement, following extensive argument, was that No. 9 has a value in its entirety and that those people who have rights over No. 9 should be free to exercise those rights; at the time of the Public Enquiry, and still today, those rights are as a Footpath.
- 4.0 These two decisions by the Planning Inspectorate clearly established that the existing definitive line D,I,H to C had significant value in its entirety. It was accepted that this route had an important link to local history via agricultural, mining and canal useage but that more importantly it gives extensive views over Macclesfield to the west that the Permissive Diversion D,G to C cannot offer.
- 5.0 Some years ago one edition of the OS map for the area incorrectly showed the Permissive Diversion as the line of Footpath No. 9. It was never established how this incorrect information was provided but there have been attempts to use this incorrect version as evidence. The Planning Inspectorate took the approach of accepting that the Definitive Map was exactly that.
- 6.0 Just before each of the Public Inquiries Cheshire County Council decided that maintenance of No. 9 would be advisable. They found unuseable stiles across the line of the path, cleared dense vegetation and installed waymarkers that showed both the definitive line of No. 9 and also identified the Permissive Diversion. Immediately after the last Public Inquiry the Definitive Footpath waymarkers were removed and the Permissive Diversion ones left in place.
- 7.0 The statutory obligation to keep No. 9 clear over its entirety, so that walkers could exercise their rights over it, was ignored by Cheshire County Council and Cheshire East Council has simply continued with this policy of non maintenance. The continual claim therefore that people prefer to use the Permissive Diversion was dismissed by the Planning Inspectorate.
- 8.0 It is a matter of record that Higher Hurdsfield No. 9 in its entirety (certainly as defined from F,D,I,H to B) was the definitive line and therefore the route over which rights existed. It therefore follows that if No.9 was incorrectly designated as a Footpath rather than a Bridleway then the same assessment of rights must apply to horseriders as they do to walkers. Unless it is claimed that horseriders are different, or are less important with less stringent rights.
- 9.0 Simple logic would therefore seem to indicate that if a Modification Order is to be made to upgrade No. 9 to a Bridleway then it must be for the existing definitive line, as defined on the Definitive Map, or not made at all.
- 10.0 If the order as currently set out is confirmed then it would leave open the option for the footpath rights over the current definitive line through Close House Farm to be removed on the grounds that 'there is a suitable and equally convenient alternative'. This might be the Council's intended consequence but if it is not then it would be an unfortunate 'unintended consequence' that would run counter to the decisions already taken at two Public Inquiries by the Planning Inspectorate.
- 11.0 The simplest and most secure decision for the future that the Council can take is to either make, or not make, depending upon the user evidence submitted the Modification Order that I made in my application. The Permissive Diversion has existed in various forms over many years and no doubt will continue to exist regardless; it would be a serious dereliction to give it any formal status.

Roy Spoors
7th August 2012.

Public Rights of Way, CEC,
Municipal Buildings,
Crewe,
CW1 2BJ

78, Roewood Lane,
Macclesfield,
Cheshire,
SK10 2PQ.
27th August 2012

Your Ref: PROW/JLT/5/223

Dear Sirs,

Higher Hurdsfield No. 9 – Application for Modification Order

Further to my letter of 7th August 2012 and the subsequent telephone call from Ms. Tench to me, I can confirm that I have received no correspondence in reply though it was indicated that I should expect some. Since 28th August 2012 is the closing date for written submissions I thought it best to re-confirm a couple of points :-

1. My application for a Modification Order was made on 18th July 2003 and receipt of that application together with eleven user evidence forms and a written submission was acknowledged by Cheshire C.C. on 18th August 2003. I therefore have to assume that all of this is on file and that you are aware of the weight of documentary evidence that confirms the status of No. 9 as a Public Highway of considerable local importance and that its use by people, horse riders and horse and cart was continuous from, at least the Tithe Map of 1849 up until it was blocked to horse riders during the early 1960s. This evidence establishes the importance and continuity of the line of No. 9 as currently delineated on the Definitive Map and the 'enjoyment of the route as a whole' was tested and confirmed at Public Inquiry by the decision of the Planning Inspectorate in 1997.
2. The user evidence forms were provided to confirm that horse riders had continued to try and use the historic line and they had used what they could, when they could, despite the obstruction to horse riders from 1962. They were not provided to try and prove 20 years of continuous use, as the documentary evidence had already rendered that unnecessary though without the obstructions they would have done that as well.
3. For the Public Inquiry in 1997 I provided detailed documentary evidence, which was the same as that provided in my written submission as part of my application on 18th July 2003. This consisted of Tithe Map and Apportionment Reference 1849; Ordnance Survey Map, 1st Edition 1871; Finance Act Map and Book 1909; Ordnance Survey Map 1911; Ward Boundary Map 1939.
4. The Inspector in his report on the 1997 Public Inquiry also commented on the diversity and strength of the objectors to diverting No. 9 onto the Permissive Diversion. Particularly pertinent are his conclusions on pages 11 and 12 of that report.

In your letter to me dated 26th April 2012 you told me that 'full and thorough investigations **must** be carried out' and you quoted Wight CC ex parte O'Keefe [1989] at me. I therefore concluded that you were aware of all of the evidence available and, if so, I must conclude that you have not given it due weight in your deliberations. I would ask that you do so before an order is made which will run counter to the totality of the evidence, my application and the decisions of two, Public Inquiries.

Yours faithfully,

Approved electronically

Roy Spoors

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DMMO DOCUMENTARY RESEARCH CHECKLIST

District Macclesfield	Parish Higher Hurdsfield Sheet 37/5 SJ 93 73 NE	Route FP 9
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Document	Date	Reference	Notes
County Maps			
Burdett PP	1777	CRO PM12/16	Not shown
Cary J	1787	CRO PM3/5	Not shown
Smith C	1801	CRO PM13/1	Not shown
Greenwood C	1819	CRO PM13/10	Little spur of Roewood Lane shown at southern end of route.
Cary J	1823	CRO PM4/15	Not shown
Swire and Hutching	1830	CRO PM13/8	Northern end of route shown as far as Close House farm, rest of route not shown. Ecton Ave at southern end shown.
Bryant A	1831	CRO Searchroom M.5.2	Spur of Roewood Lane shown at southern end and northern end shown as far as Close House Farm as 'Lanes and Bridleways'.
Inclosure Award	1804	CRO QDE/2/10 Macclesfield No enclosure for Higher Hurdsfield	For the most part the route is outside of the area covered. Southern end Roewood Lane spur shown as part of the road annotated 'F'. Ecton Ave annotated 'E'. Both E and F referred to as 'Private Occupation Roads' in the Award.
Tithe Records			
Apportionment		CRO EDT/214/1 Township: Hurdsfield	Plot 105a – Plot name: 'Lane'; Land use: 'thoroughfare'; Owner: William Smythe; Occupier: James Brown
Apportionment		TNA IR 29	Plot 105a – Plot name: 'Lane'. Occupier: James Brown
Map	1849	CRO EDT/214/2 Township: Hurdsfield Parish: Prestbury	Southern and Middle part of route shown numbered 105a.

	1840	CRO EDT/254/2 Township: Macclesfield	Southern end of route – short spur of Roewood Lane shown as far as boundary, shown excluded from parcels of land either side, coloured the same as other public highways, no number given.
Hurdsfield Tithe Map		TNA IR 30/5/214	Southern and middle part shown numbered 105a.
Ordinance Survey			
1" First Edn	1830-40	PROW Unit	Full length shown
Revised New Series (in colour)	1842-1893	PROW Unit	Full length shown Surveyed 1842-1893 Revised 1893-1898 Colour Ed published 1897-1904
6" First Edn	1872-5	PROW Unit 37NW	Shown as solid line track for the full length Line across route shown to the north of Close House Farm Roewood House, Close House Farm and Commonsides all named Surveyed 1870-2 Published 1881
6" 2 nd Ed	c. 1899		As above
6" 3 rd Ed	c. 1911		As above
25" County Series 1 st Edition	c. 1871	CRO (map index available) Sheet 37, 5	Full length shown coloured as are other public roads. Line across route to the north of Close House Lane numbered 252 but no book of ref available.
25" 2 nd Edition	c. 1896-8		As above but no colour on this edition, addition of a line across the route to the south of Close House
25" 3 rd Edition	c. 1909		As second edition
Book of Reference		CRO/BML	Not available
Boundary Remark Books		TNA OS26/1069	No evidence

Boundary Sketch Maps		TNA OS27/546	the southern end of the route where it crossed the Hurdsfield/Macclesfield boundary was shown, but no details written on the map, so no evidence.
Object Name Books		TNA OS35/820	This refers to names on OS Sheet 6" scale 37NW - since there were no names for the route written on this map, there was no information in the book. Roewood House, Commonside, Close House and Higherfence Farm were all named but described as houses - no information with respect to the route.
<i>Finance Act 1910</i>			
Working Sheets		CRO NVB/37/5 2 copies	<p>1st copy – no colour just red outline. 1st part of northern end of route is excluded. Area to North and south of Roewood House – Plot 133 Area to East of the route inc Commonside Fm – Plot 131 Southern end of route excluded from plots either side as far as the reservoirs.</p> <p>2nd Copy – plots are different colours outlines only. First section of northern end is excluded. Then section around Close House is included in plot 132. Then the rest of the route is excluded. At the southern end there are braces linking the plots either side of the route, but the route is excluded. Commonside Farm – plot 131.</p>

Domesday Book		CRO NVA/4/9	<p>Plot 131 Commonside, Occupier Jasper Adamson, Owner Edward Brocklehurst – no deductions made.</p> <p>Plot 132 Close House, Occupier Joseph Bibby, Owner W.B. Brocklehurst – no deductions made.</p> <p>Plot 133 Roewood, Occupier Edwin Slater, Owner W.B. Brocklehurst – no deductions made.</p>
Record Plan		TNA IR/	Not available
Field Books		TNA IR58/20202 Hurdsfield Assessment 101-200	<p>Plot 131 Commonside – No reference to ROW</p> <p>Plot 132 Close House – has 'Footpath' written on first page under Fixed Charges etc but no deductions made and no other PROW info.</p> <p>Plot 133 Roewood – also has 'Footpath' written on first page under Fixed Charges etc, but no deductions made. There is a sketch of the buildings and 'Across Road' is written between them.</p>

Estate Papers: eg Maps, Leases, Conveyances, Sales Particulars

D7157/1 – Plan of Borough of Macclesfield 1838

James Cawley - Surveyor

Southern end spur of Roewood Lane shown up to parish boundary.

Rest of the route is outside of the area

D5278 – Maps of Hurdsfield Property of John Brocklehurst 1778-1807

2 maps – neither covered the area

Historical background (eg local histories, walking guides etc)

Bagshaw's Directory 1850 – Roe Wood Colliery mentioned, produces a moderate quantity of good coal.

Kelly's Directory 1892 – Joseph Bibby, farmer Close House Farm

- William Brown, farmer Commonside
- James Needham, farmer

Kelly's Directory 1914 – Joseph Bibby, farmer Close House Farm

- Jasper Adamson, farmer Commonside
- Frazer Robinson, farmer Lowood Farm

Kelly's Directory 1939 – Thomas Bibby, farmer Close House Farm

- Frazer Robinson, farmer Roewood Farm

Records of Surveyors of Highways/Highways Boards

1555 -1862 – Responsibility of the Parish, Township – Hurdsfield
Local Justice of the Peace oversaw this – Quarter Sessions

1862 – 1894 – Prestbury Highways District

CH 1/2/17 – Plan of the Highway District of the Prestbury Division 1865

Route part shown as an 'uncoloured road'. District Roads are coloured, all other roads are shown uncoloured. Southern half including the spur is shown uncoloured.

LRM 2738/19/1 – Prestbury Ledger 1882-1892

John Frederick May – Clerk to the Highway Board
Records of payment to the treasurer and contribution to the District fund.

LRM 2738/19/2 – Prestbury Ledger 1892-1895

As above.

LRM 2738/19/20 – Treasurer's Accounts

No help.

CCLe 5/1/100 – Statement showing names of Highway Boards 1895

Prestbury – Thomas Carswell, Surveyor
Hurdsfield 1 mile of highway repairable by the Highway Board.

1872- 1894 – Macclesfield Rural Sanitary Authority

LRM 2472/1/1-2 - Minutes

Not yet checked.

1888 – Local Government Act established County Councils.

1889 – Local Government Act passed responsibility for main roads to County Councils, Highway Boards continued responsibility for other roads.

1894 – Local Government Act passed all powers, duties, liabilities of existing Highways Boards to new Rural District Councils.

1894 – 1929 – Macclesfield Rural District Council

LRM 2472/16/1-7 – Highways Committee Minutes 1896-1930

No help.

1929 – Power for all roads transferred to Cheshire County Council.

CH 3/1/2 – Schedule of Classified roads 1935-1956

Class 1 and Class 2 roads schedules and amendments – no help.

CH 3/1/3 – Register of Mileage of County Roads 1937

No help.

CH 3/8124/6/2 – Register of adopted roads 1950's- 1974

Roewood Lane (part), Hillside Drive mentioned.

U/C road numbers 4/362, 4/363.

Minute Books/Files of County & District Councils and their Committees

Macclesfield BC Highway Committee Minutes

LDM/7711/22, April 1974 – Jul 1975 – not made available

LDM/7711/23, Sept 1975 – April 1981

30/12/1976 – pg 29 Minute no.15(F)

County Council proposing to divert FP9 Higher Hurdsfield to the west of the present route to secure the more efficient use of the land, and had requested the observations of the Borough Council.

Resolved – That no objections be made to the proposed diversion of FP9 Higher Hurdsfield.

LDM/7711/24-26, May 1981 – April 1991 – Nothing mentioned

Parish Records

PC62/1-2 Hurdsfield Parish Council Minutes 1894-1981

26/03/1956 – pg 97

Roewood Lane – Closing Notice

“Protest was made at the notice displayed that this was a private road and that people were being turned back. This road had always been a bridle road. Mr Dancaster agreed to inspect maps then further action could be taken.”

25/03/1957 -

Roewood Lane – Public Footpath and Bridle Road

“after discussion it was resolved the clerk write to Mr Abbott [Clerk of Macclesfield RDC] asking if the County Representative would submit his report as the council werethat this road should be devised as a bridle road as well as a public footpath.”

05/06/1959 – pg 2

Diversion of Footpath, Close House Farm

There was some concern about the notice Mr Parker had erected, advising pedestrians to use an alternative path, Mr Broadhurst said Mr Abbott informed him that Mr Parker had no authority to divert the footpath and he would advise people to use the old path and not the new. Mr Abbott is taking the matter up with Mr Parker.

05/04/1973 – pg 153

Public Footpath from Roewood Lane to Ecton Avenue

“A long discussion took place on the use of this footpath by horse riders and in particular the diversion around Close House Farm where this footpath was narrow and muddy and caused concern to people encountering horses on this stretch. The clerk pointed out that it was left entirely to the owner of the land to allow horses along a public footpath.”

27/07/1976

Public Footpath

Mr Lewis expressed his concern at the state of the footpath across Close House Farm caused by horses. It was resolved to postpone any discussion on this until the next meeting when Dr Broadbent would be present.

23/09/1976

Public Footpath – Close House Farm

Concern was expressed at horse riders using the diverted footpath around Close House Farm and it was resolved that a sign be erected at each end of the diversion with a direction sign for horses through the farm and pedestrians around the diversion.

21/10/1976

Footpath Diversion Close House Farm

The clerk read a letter from Cheshire County Council asking for the councils' observations on the proposed diversion.

Resolved that the Parish Council have no objections to this.

24/03/1977 – pg 161

Mr Spedding chairman, Dr Broadbent present. Nothing in minutes regarding footpath no.9.

24/11/1977

Parish Council Meeting for Review of Footpaths

There were twelve persons present and the footpath map was inspected and comments invited. It was agreed that the paths are as shown on the definitive map but it was suggested that the paths be properly marked.

<i>Deposited Plans of Public Utilities:</i>			
Railway Plans	1891	CRO QDP/668	<p>Lancashire Derbyshire & East Coast Railway 1891</p> <p>Driveway, Close House and rest of route is shown, numbered 10; just very northern section is out of limit of deviation.</p> <p>Book of ref: Hurdsfield 10 – Occupation Road, owner P. Brocklehurst, no occupier listed.</p> <p>Ecton Ave given number Macclesfield154, also referred to as Occupation Road.</p>
Canal Plans	1826	CRO QDP/68	<p>Macclesfield Canal and Book of Reference</p> <p>Just very northern section shown, junction with Turnpike Road, not given a reference number.</p>
<p><i>Road Maps, Atlases and Guides (eg Bartholomew, Michelin)</i></p> <p>Bartholomew Map sheet 12 Published 1923 half inch to the mile – viewed online, route shown</p>			
<i>Rights of Way Act 1932</i>			
Deposited Plans and Statements/Stat Decs	1932	CRO CCH2/1/94	Stat Dec 21/02/1995 10/11/2005
<i>Local Authority Records</i>			
Original Parish Surveys	Early 1950s	<p>PROW Unit Hurdsfield</p> <p>Macclesfield</p>	<p>No.9 commences at: Roewood Lane</p> <p>Terminates at: Commonsides-Macclesfield Borough Boundary continuing as CRF and FP.</p> <p>KG stone in reasonable order</p> <p>Stile (stone) in reasonable order</p> <p>Southern spur from Ecton Ave to Parish Boundary highlighted and annotated 'Add' with an arrow pointing to it.</p>

ROW Field Notebooks	1950s	PROW Unit	<p>Book 4 pg 114 – Hurdsfield – Roewood Lane, “Check for Tithe map... Is this a BR or FP? What does schedule state? Abbotts letter read Bridle for private also check ...and canal plans etc ...which might give some indication as to status.”</p> <p>Book 3 pg 132 – 09/08/1954 - No.9 cindered road 12’ (16’) for about 100 yds, then tarmac 8’ (10’) to Close House. Going west 8’ (10’) stoney track show connection with Macc No.7 (check from 25” OS) and continue with u/c road, road junction in Macc MB.</p>
Rights of Way Parish Files			<ul style="list-style-type: none"> • Newspaper articles Macclesfield Advertiser 28/10/1976 and County Express 04/11/1976 – both refer to proposed notices that the Parish Council intended to erect at each end of the footpath diversion around Close House Farm. “Mr Spedding pointed out the notice was to direct horse riders through the farm path and so prevent pedestrians using the diversion being confronted by horses on the narrow footpath.” Also See PC Minute 23/09/1976. • 14/02/1977 – Letter from RA in response to consultation on the proposed diversion. They state proposal is the same as one advertised on 17/10/1974 by Macclesfield Borough Council. On 31/01/1975 the Highway Committee resolved no further action be taken to divert the path, no doubt because of strong local opposition. RA make a number of observations on the proposal; they state the alternative route was installed by the previous owners of Close House Farm and there was a notice at the northern end stating “Public Footpath” with an arrow pointing to the alternative route, the notice disappeared at the time the Order was advertised in 1974. RA also state alternative is also used by horse riders – with the owner’s consent; and at the Parish Council meeting (21/10/1976) Dr Broadbent suggested that horses could continue to use the route by his house whilst pedestrians should use the alternative.

		<ul style="list-style-type: none"> • 09/03/1977- Letter from County Secretary and Solicitor in response to the points made by RA states that “both the existing and proposed lengths of path are used by equestrians” • 15/09/1987 – Letter from Mr Burch states the original route “barred in the vicinity of the farm” (does not state type of obstruction) and the diversion is being used as a bridleway. • 12/04/1988 – Notes of meeting between CCC officers and Ramblers Association – CCC confirmed ROW still immediately adjacent to Close House Farm and it was not obstructed to walkers. The problem had been caused by horse riding on the path and also on the permissive diversion. • 26/01/1988 – Letter from Mr Spoors states “The right of way is frequently blocked by a wooden bar at the junction with the alternative track.” • 23/05/1988 – CCC response to Mr Burch states that in February 1974 CC received application via old Macclesfield Rural District Council to divert FP9 onto the line of unofficial path to south south-west of Close House Farm, objections were received in 1976 and the Order was not made. Several years ago BHS made application to upgrade under Countryside Act 1968 but due to new legislation and non compliance with new procedures they were informed on 27/01/1986 that the claim would not be processed. To reduce the misunderstanding as to the legal route new signs were ordered. Also states when FP9 was inspected could find no obstruction which prevented its use as a footpath. • 09/06/1989 – Letter from Bill Shercliff – “The right of way by the farm is rather grown over and there is a low pole to step over.” <p>Also further correspondence relating to the obstruction by development at northern end of route.</p>
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OTHER DOCUMENTS RESEARCHED/CHECKED

LOX 13/7628/41 – Alderley Edge and Wilmslow FP Preservation Society, documents relating to FP's in Higher Hurdsfield.

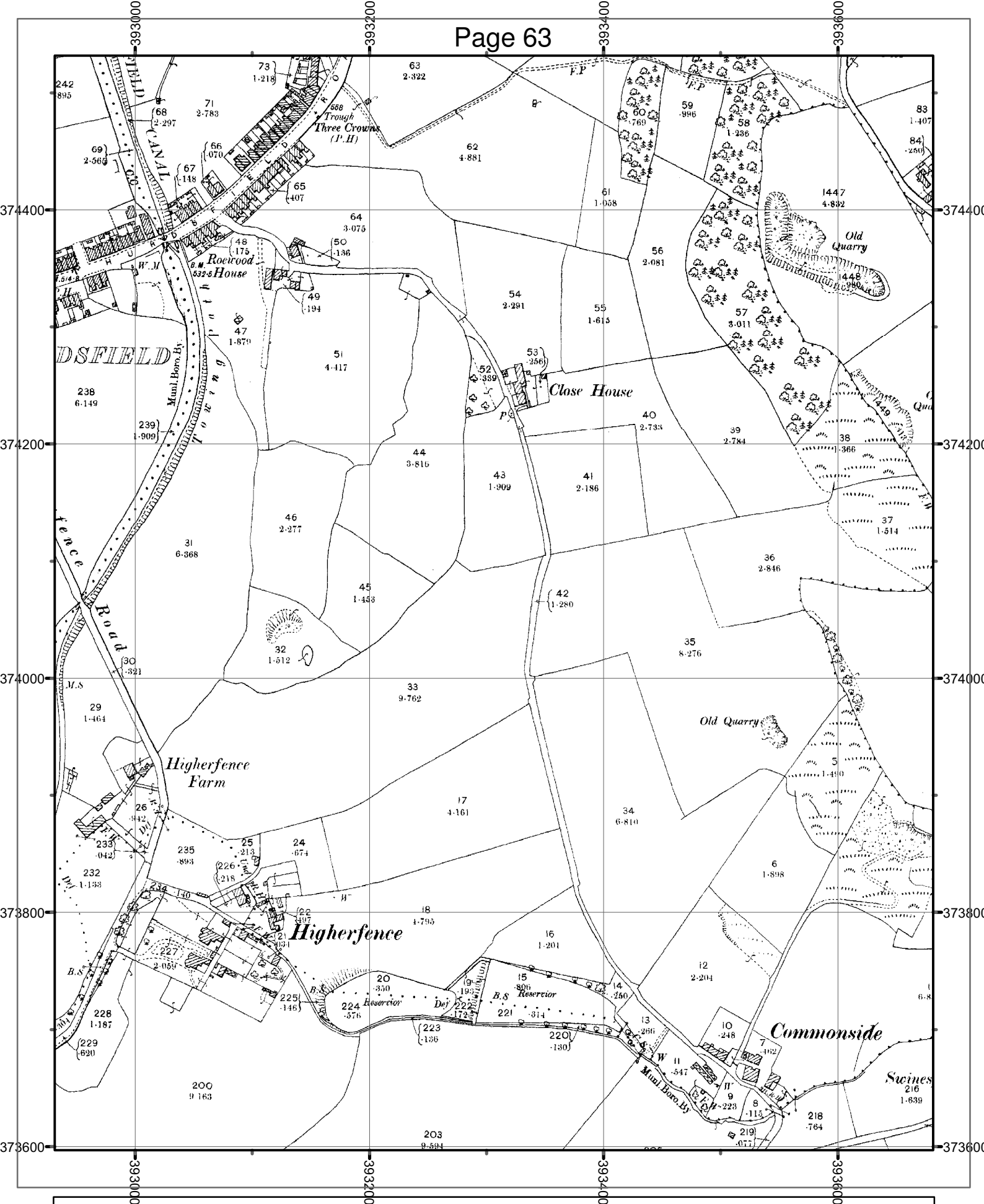
No help in determining status. Documents relating to Public Inquiry. Statement of Mrs Broadbent.

QDP/292 – Macclesfield Corporation Water Works 1848

Does not cover area.

QDP/572 – Macclesfield Corporation Plan of Gas works 1881

Does not cover area



1:4,000

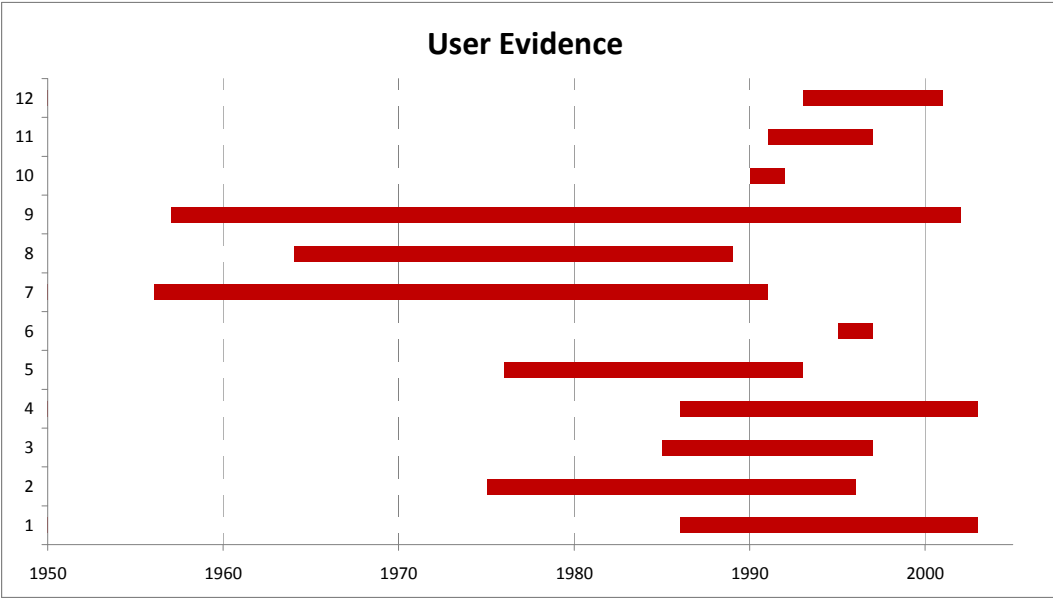
Higher Hurdsfield FP 9
2nd Edition 25"

Plan No.

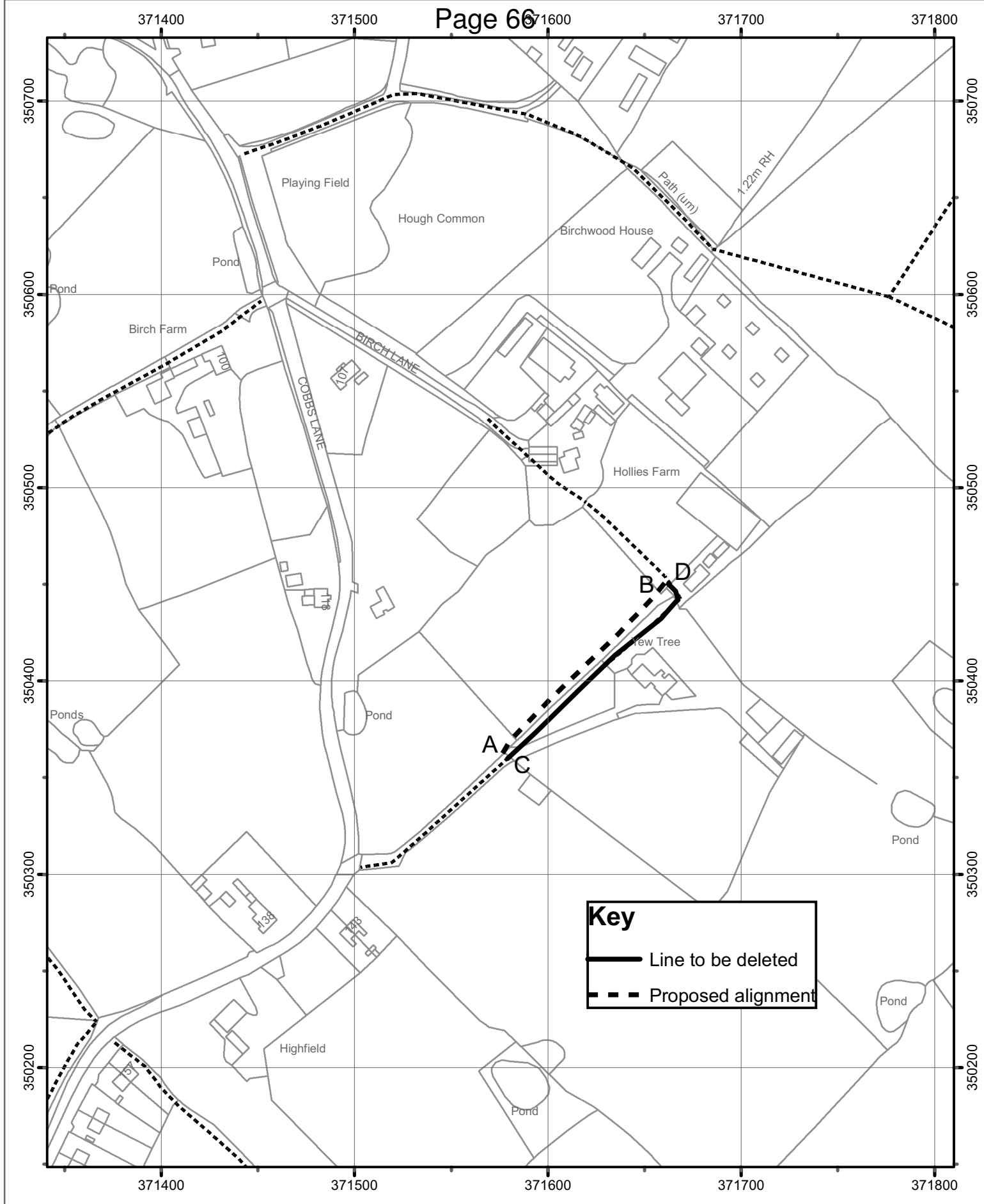
This is a working copy of the definitive map
and should not be used for legal purposes



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1	R S Armstrong	1986	2003		
2	Mrs Armstrong	1975	1996		
3	Rachel Booth	1985	1997		
4	Denys Brough	1986	2003		
5	Nicki Eagles	1976	1980	1988	1993
6	Aysha Hawley	1995	1997		
7	Vivien Johnson	1956	1968	1984	1991
8	Raymond Maddock	1964	1989		
9	Anne Morton	1957	2002		
10	Judy Mosscrop	1990	1992		
11	Carol Topham	1991	1997		
12	Susan Waugh	1993	2001		



1:2,500

Hough FP 12 - Alignment Investigation

Plan No.
WCA/006

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



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 24 September 2012
Report of: Greenspaces Manager
Subject/Title: Wildlife & Countryside Act 1981 – Part III, Section 53:
Investigation into the Alignment of Public Footpath No.12,
Parish of Hough.

1.0 Report Summary

- 1.1 The report outlines the investigation of the alignment of a definitive footpath, known as footpath no.12 in the Parish of Hough. As part of an enforcement procedure; the landowners of a field where part of the footpath runs have questioned whether the footpath actually runs on their land as there are discrepancies between the Definitive Map and the early stages of the Definitive Map process. This report includes a discussion of the consultations carried out; the historical evidence and background documents to the production of the Definitive Map. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to alter the Definitive Map to reflect the correct position of the footpath.

2.0 Recommendation

- 2.1 An Order be made under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by showing Public Footpath no. 12 on the route indicated between points A-B on drawing number WCA/006 and not on the alignment C-D.
- 2.2 Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Act.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 Section 53 of the Wildlife & Countryside Act 1981 places a duty on the Borough Council to keep the Definitive Map and Statement under continuous review and to make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of an event. The event in this case is set out in section 53 (3)(c)(iii) which is:-

‘the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that there is no public right of way over land shown in the map and statement as a highway of any description, **or** any other particulars contained in the map and statement require modification.’

In this case the particulars contained in the Map require modification. The requirements of section 53(4)(a) &(b) shall also be taken into account whereby;-

‘The modifications which may be made by an order.....shall include the addition to the statement of particulars as to –

- a) the position and width of any public path.....which is to be shown on the map; and
- b) any limitation or conditions affecting the public right of way thereover.

On the balance of probabilities, the requirements of Section 53 (3)(c)(iii) have been met and it is recommended that the Definitive Map and Statement should be modified to show the route A-B as public footpath no. 12, Hough and delete the line C-D.

4.0 Wards Affected

- 4.1 Wybunbury

5.0 Local Ward Members

- 5.1 Councillor J Clowes

6.0 Policy Implications

- 6.1 Not Applicable

7.0 Financial Implications

- 7.1 Not Applicable

8.0 Legal Implications (Authorised by the Borough Solicitor)

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

- 8.2 The legal implications are contained within the report.

9.0 Risk Management

9.1 None

10.0 Background and Options

10.1 *Introduction*

- 10.1.1 The contention over the existence and exact route of this footpath has been simmering for many years. There are letters on the Parish files within the department indicating that path users have experienced problems using this footpath since the mid 1980's. There are letters on the file from 1993 and 1994 which indicate that the then owners of Hollies Farm, Mr & Mrs Bradley, claimed they were not made aware of the existence of the footpath when they purchased the property, in 1985, and as Cheshire County Council were seeking to enforce the re-opening of the path; this had put them in dispute with Crewe and Nantwich Borough Council who had responded to the search.
- 10.1.2 Further correspondence indicated that local members of the Parish Council had been walking the path at approximately the time when these landowners had first moved there (about 1985), when they were approached by the landowners, who stated that the previous owner had signed an affidavit that the path had not been used for 20 years. This indicates that the owners were aware of the existence of the path.
- 10.1.3 In 1986 planning permission that had been refused by Crewe and Nantwich Borough Council was granted on appeal for Quarantine Kennels at Hollies Farm. The existence of the footpath must not have been disclosed by this process as the kennels were constructed over the footpath, obstructing the route. It was at this point that it came to light that the original path recorded on the Definitive Map was anomalous as there was a gap between the end of the adopted highway and the commencement of the footpath adjacent to Hollies Farm, thus making enforcement to remove the obstruction complicated.
- 10.1.4 In 1994 research was undertaken into this anomaly and a modification order was made and confirmed which recorded an additional length of path (numbered 12A) linking footpath 12 to Birch Lane adjacent to the Hollies Farm. In 1995, the landowners inquired about diverting footpath 12. A consultation was undertaken and the responses from the user groups were negative as they felt a diversion shouldn't be a response to the need for enforcement. A works order was issued for the path to be re-opened by the installation of 3 stiles, signage and waymarking.
- 10.1.5 Further problems were reported in 1996 and 1997 referring to loose dogs on the path and the route not being clearly marked as an existing waymark was on the wrong side of the hedge. Further waymarking work was issued and on inspection the path was useable.

10.1.6 In 1999 there was another complaint about a locked gate and a fence obstructing the footpath. The path was inspected by the maintenance officer and found to be available. The officer then had a discussion with the owners, Mr & Mrs Wight (who are the current landowners) about the possibility of applying for a diversion. A further meeting was held with the Public Path orders officer and at this meeting the discrepancy between the route shown on the Definitive Map and the route that had been made available on the ground was discussed. This refers to the part of the path that runs along the access drive to Yew Tree Farm then crosses the boundary into the adjacent field (owned by Mr & Mrs Wight). The Definitive Map shows the path continuing on the Yew Tree Farm side of the boundary and not entering that particular field at all. This matter was looked at by the Public Path Orders Officer with reference to the internal documents that formed the process of compiling the Definitive Map in the 1950's. She wrote back to Mr & Mrs Wight to say that the preliminary documents record the path in their field and that the Definitive Map is in error.

10.1.7 No application to divert the footpath was forthcoming and problems were reported on the path in successive years mostly relating to route finding problems and the need for waymarking. The maintenance and enforcement officer has been to visit the site on many occasions and has come into conflict with the landowners who believe that the path doesn't run in their field but should be on the southern, Yew Tree Farm, side of the boundary. The latest attempt to enforce the line of the footpath earlier this year has led to this investigation to determine the true line of the path.

10.2 Description of the Disputed Footpath

10.2.1 Hough Footpath no. 12A runs from its junction with Birch Lane just to the north west of Hollies Farm for a distance of approximately 40 metres to its junction with Footpath 12. It then runs in a south easterly direction towards the corner of a field. From this point the alignment is disputed. The walking survey records the path crossing into the field but describes a barbed wire obstruction. It then describes the path continuing on the 'right hand side of the hedge for 150 yards to barbed wire and thorn hedge obstructing path, impassable – no detour'. At this point the path joins FP 13 (as initially recorded on the walking survey). The Definitive Statement records Footpath 12 as:-

'Commencing at a point approximately 40 metres south-east of the southerly end of the unclassified county road UY 1379 known as Birch lane and running in a south easterly then south westerly direction north of Yew Tree Farm for a total distance of approximately 282 metres terminating on the County Road C 505 known as Cobbs Lane.'

10.3 The Main Issues

10.3.1 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

10.3.2 One such event is 53 (3)(c)(iii) which is:-

‘the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that there is no public right of way over land shown in the map and statement as a highway of any description, **or** any other particulars contained in the map and statement require modification.’

10.3.3 The relevant evidence in this case are the records that were produced by the local Parish Council and the County Council in the process leading up to the production of the Definitive Map. The first stage of this process was for each Parish to survey and record the routes that they believed to be public in their areas. Local user groups also undertook the same process. The maps and descriptions produced are known internally as the ‘walking surveys’. These surveys were then sent to the County Surveyor’s department where they were collated and some re-checked on the ground. Any alterations were made with the agreement of the parishes and recorded on the Draft Map.

10.3.4 The walking surveys record the footpath leaving the track leading to Yew Tree Farm and entering the adjacent field. Barbed wire obstructions are recorded being at the entry and exit to this field. The Draft Map shows the path in this same position. The provisional Map, which is the next stage in this process, shows the path slightly slewed to the south and partly on the southern side of the boundary and partly running along it. The error, or rather inaccuracy, in drafting at this stage probably led to the continuation of the error on the Definitive Map, which compounds the movement of the path in a southerly direction into Yew Tree farm land.

10.4 *Consultations*

10.4.1 Consultation letters were sent to the Ward Member; Hough and Chorlton Parish Council, the landowners at the Hollies and the neighbouring landowner at Yew Tree Farm.

10.4.2 There has been no response from the local member. The Parish Council have contacted this department to say that their own records from the early 1950’s aren’t easily available but they had spoken with a local resident, Mr W Newton, who lived at the Hollies in the 1950’s. Mr Newton was amenable to being contacted and was able to confirm that he had lived at the Hollies from 1946 to 1968. He recalled that the path ran past the Hollies along a cart track but that it didn’t continue into the farmyard at Yew Tree Farm but turned 90 degrees into the adjacent field and continued along the hedge to join the access to Yew Tree farm after the next boundary. Mr Newton also recalled that the path past the Hollies was not much used as there used to be another path that ran to the northwest to join FP 7 in Chorlton and access to more footpaths. This path was not claimed when the Definitive Map was compiled. Mr Newton still lives in close proximity to this Footpath.

10.4.3 Mr E. Mayne-Flower, the landowner at Yew Tree Farm, has contacted this department to express his concern about the suggestion of the path running on the south side of the boundary. He has lived at his property for 15 years and the path has always been on the north side. He has spoken with his next door neighbour who confirms that the path has always run as it currently is on the ground. He also refers to an aerial photograph in his possession from 1967 which doesn't show any sign of a path on the Yew Tree Farm side but does show a gate/stile on the north side of the boundary.

10.4.4 Mr & Mrs Wight, the landowners at The Hollies, have been contacted as they had indicated in a meeting with Rights of Way staff that they had evidence to show that the path ran outside their boundary. However despite a second letter being sent, they have not come forward with any information to substantiate this claim.

10.5 *Investigation of the Claim*

10.5.1 In addition to the documents that form the Definitive Map process, other documents, mostly maps, have been considered to see if they throw any light on where the path should be recorded. These are listed in **Appendix 1**.

10.6 *Documentary Evidence*

County Maps 18th-19th Century

10.6.1 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.

10.6.2 On Bryant's Map (1831) the route of Birch Lane and FP 12A & 12 are depicted by a lane running to what appears to be Yew Tree Farm. Nothing further is shown running westerly

Tithe Maps & Awards

10.6.3 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 cannot be deemed to be conclusive of anything.

- 10.6.4 The Tithe Map and Award of Hough dated 1839 shows a route leading out of Hough Heath to Yew Tree Farm and must have been the only access to this property at that time. Again there is no route leading westerly to Cobb's Lane.

Ordnance Survey Maps

- 10.6.5 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 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.

- 10.6.6 *Ordnance Survey Map 1" to 1 mile 1842 'Old Series'*

This shows the route ending at Yew Tree Farm in a similar manner to the Tithe Map.

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

The First Edition 25inch map from 1872 shows a double dashed line from Cobb's lane in a north easterly direction to Yew Tree Farm with a second double dashed line branching from the first into the adjacent field and running along the north side of the boundary to its easterly corner, where it meets a track that runs between the Hollies and Yew Tree Farm.

- 10.6.9 The second edition 25 inch map from about 1899 shows a single pecked line in the same position as on the 1st edition i.e. to the north of the boundary between Yew Tree farm and the Hollies. This is replicated on the 3rd Edition map of 1909. These pecked lines indicate a physical feature on the ground and are considered to depict a trodden line.

- 10.6.10 *The Finance Act 1910*

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

10.6.11 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.

10.6.12 The working plans were based on O.S. third edition 1909 maps. This shows the Hollies and fields around it as being in one plot number. There are no deductions in the Domesday Book for public rights of way however this isn't unusual as often the information collated in the field books (these records are held at the National Archives in Kew) wasn't transferred to the Domesday Book before the scheme was abandoned.

10.6.13 *Internal Pre Definitive Map Records*

Under the 1949 National Parks and Access to the Countryside Act, each surveying authority was under a duty to compile a Definitive Map of public rights of way in their area. The process began with the Parish Councils and local user groups drawing up a map of the Parish with paths marked on that they believed to be rights of way. Each path also had a written statement describing the route and noting details.

10.6.14 These 'walking surveys' are often used in definitive map work to help confirm details about a route and where it runs and what furniture may be recorded along it.

Footpath 12 was surveyed on the 25th February 1951 and commences at 'Hough Coppice' (road no.UC/5/5) and ends at Road no. C 505. The survey describes two field gates and two barbed wire obstructions. The barbed wire is at the points where the path runs in the field to the north of Yewtree Farm. Whilst at the time of the survey the path was obstructed, this is clearly the route that is considered to be the public path.

10.6.15 A second footpath numbered 13 was recorded at this stage. It ran from Cobb's Lane and ended at Yewtree Farm. This path was recorded as:

'Field Gate at Cobb's lane runs north east for 150 yards where it meets path no. 12 on left hand side of Field Gate 2. At this point path turns east and terminates after 50 yards at Yewtree Farm'

This further demonstrates that footpath no. 12 diverged from Yewtree Farm drive into the adjacent field.

10.6.16 The Draft Map was the next stage of the Definitive Map process and was drawn up by the County Council in 1956 following consideration of the submitted walking survey maps and investigation of some of the routes by council officers. The Draft Map depicts Footpath no.12 running from its junction with the unclassified road UC/5/5 (Birch Lane) past the Hollies then turning through 90 degrees to run along the north side of the boundary with

Yewtree Farm, joining the access drive to the Farm after the length of the field and continuing to its junction with Cobb's Lane. Due to the scale of the map (1:10,560) the field boundary is largely obscured by the pen line.

10.6.17 It can be seen at this stage that Footpath no. 13 no longer exists but part of it, the section along the access drive, has been conjoined with Footpath 12. The Draft map was advertised and put on deposit at local Council Offices for anyone to view and register comments or objections to. There are no recorded objections to Footpath 12.

10.6.18 At the next stage of the Map process, the Provisional Map published in 1969, the depiction of Footpath 12 has shifted slightly to the south although there is no catalogued reason for this to have happened. Looking at other paths in the area on this map sheet, there are other slight movements in the positions of the footpaths. These have to be attributed to the drawing process being slightly adrift of true. There was a further opportunity for landowners to object to the recording of rights of way at this stage; Objections being heard through a formal process at the Quarter Sessions. There is no record of objections being made to this footpath.

10.6.19 The Definitive Map for Nantwich area was finally published in 1973. The whole process had taken a lot longer than had been first envisaged. The footpath is shown shifted a little bit further to the south and this is why the discrepancy arises.

The only remedy to the Definitive Map is available through the Wildlife and Countryside Act 1981 in the form of a Definitive Map Modification Order.

10.7 *Conclusion*

10.7.1 The processes outlined above show how the original intention of the surveys recorded by the Parish Council had evolved and become slightly distorted purely by the map drafting process. There is no administrative history to the alignment changes shown.

10.7.2 There is support for the map process provided by a local resident with personal knowledge of the Hollies and the area around during the period when the Definitive Map was being initially drawn up.

10.7.3 The evidence to support this map change must show, on the balance of probabilities that a reasonable allegation has been made that shows that there is no public right of way over land shown in the map and statement as a highway of any description, **or** any other particulars contained in the map and statement require modification.' It is considered that there is sufficient evidence to prove the existence of a public footpath along the route A-B on drawing no WCA/006 and to prove that no public right of way exists on the line C-D. Therefore in line with the requirements of Section 53 (3)(c)(iii), it is recommended that the Definitive Map and Statement should be modified accordingly.

11.0 Access to Information

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

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Designation: Definitive Map Officer

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Email: clare.hibbert@cheshireeast.gov.uk

Documentary Evidence

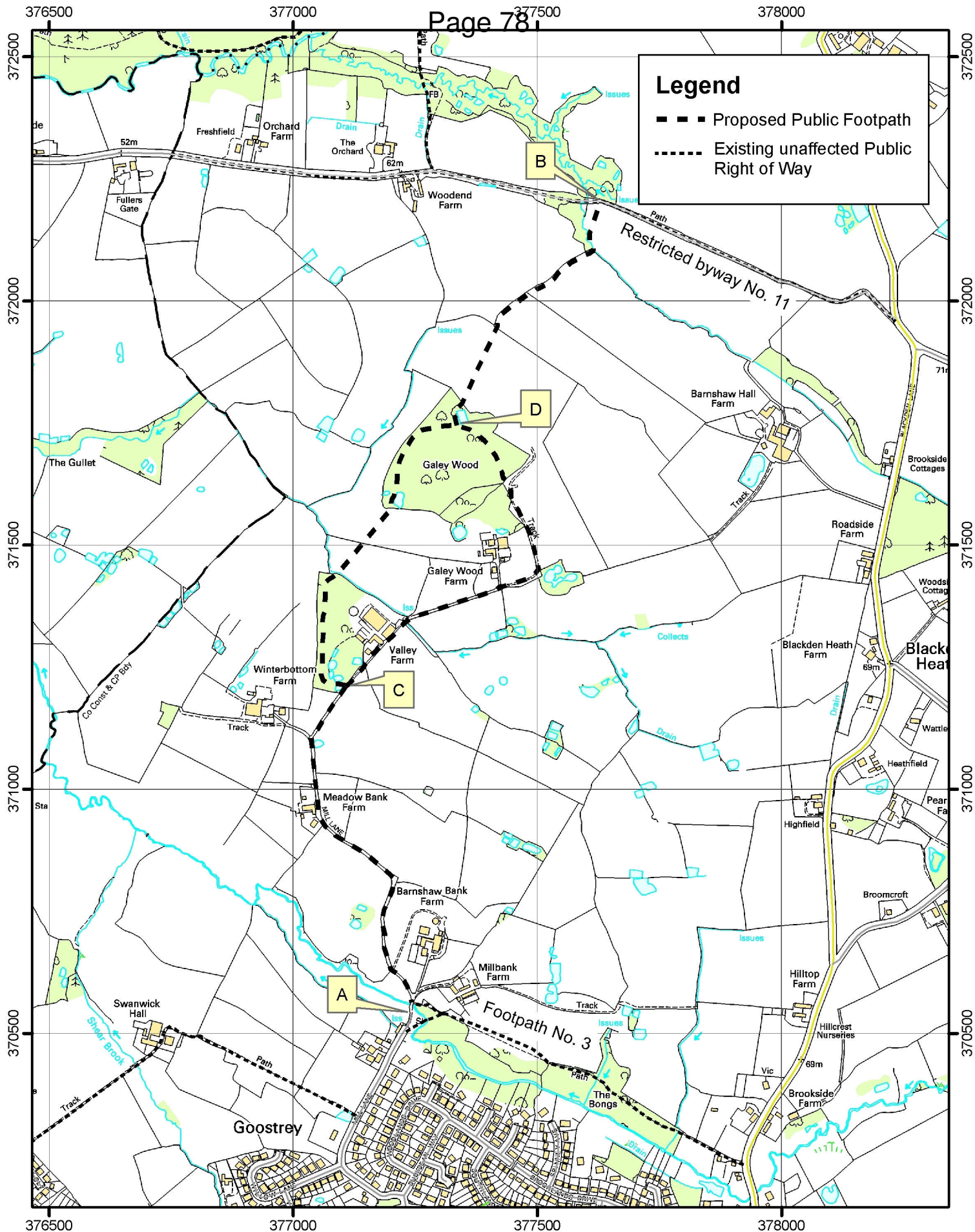
Glossary of terms

PROW Unit = Public Rights of Way unit

CRO = Cheshire Record Office

TNA = The National Archives, Kew

Primary Sources	Date	Site shown/ mentioned	Reference Number
County Maps			
Burdett PP	1777	No	CRO PM12/16
Greenwood C	1819	No	CRO PM13/10
Bryant A	1831	No	CRO M5.2
Tithe Records			
Hough Tithe Map	1839	Part	CRO EDT/210/2
Hough Tithe Apportionment	1839	Part	CRO EDT/210/1
Ordnance Survey Maps			
1":1 Mile 1 st Edition	1840	Part	PROW Unit OS 1":1 mile 1 st Ed
25" 1 st Edition Surveyed 1872	1872	Yes	CRO OS 25" 1 st Ed Sheet L /14
25" 2 nd Edition	1899	Yes	PROW Unit OS 25" 2 nd Ed Sheet
25" 3 rd Edition	1909	Yes	PROW Unit OS 25" 3 rd Ed
Finance Act			
Working Sheet Domesday Book	1909 1909	No No	CRO NVB/62/4 CRO NVA/2/16
Quarter Sessions			
Index	1782- 1967	No	CRO QAR 107-109
Nantwich RDC Minutes	1949 - 1955	No	LRN 1/37-1/41
Local Authority Records Green Book	1930's	No	PROW Unit



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Local Government Act 2000 s2: proposed Deed of Dedication of public footpaths in the Parish of Goostrey

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Plan No.
LGA/001



CHESHIRE EAST COUNCIL

PUBLIC RIGHTS OF WAY COMMITTEE

Date of Meeting:	24 September 2012
Report of:	Greenspaces Manager
Subject/Title:	Local Government Act 2000 – Section 2 Deed of Dedication for New Public Footpaths in the Parish of Goostrey

1.0 Report Summary

- 1.1 Discussions have been in progress in Goostrey for a number of years to establish a public rights of way connection between Goostrey village and the existing network. It is proposed that the Council create two public footpaths with the agreement of the landowner, Cheshire Farms Service, a Cheshire Shared Service operating on behalf of Cheshire East Council and Cheshire West and Chester Council.

2.0 Recommendations

- 2.1 That public footpaths be created under Section 2 of the Local Government Act 2000 in the Parish of Goostrey, as illustrated on Plan No. LGA/001, and that public notice be given of these public footpaths.

3.0 Reasons for Recommendations

- 3.1 The landowner has agreed to the creation of a new public footpath and the designation of a currently permissive footpath as a public footpath. There is local public support for the creation of the routes in order to connect the village of Goostrey with the wider public rights of way network.
- 3.2 Consultation undertaken for the Council's statutory Rights of Way Improvement Plan (ROWIP) identified the need for access to the countryside and circular routes close to people's homes. These needs are met by the proposed paths.

4.0 Wards Affected

- 4.1 Dane Valley Ward.

5.0 Local Ward Members

- 5.1 Councillor L Gilbert and Councillor A Kolker.

6.0 Policy Implications including - Climate Change, Health

- 6.1 The proposal supports the following policies and initiatives of the Cheshire East Rights of Way Improvement Plan 2011-2026:

- Policy H3: Public rights of way and green infrastructure: Protect and enhance our public rights of way and green infrastructure and endeavour to create new links where beneficial for health, safety or access to green spaces. Initiative: 'Leisure routes for cyclists, horse riders and walkers'.

- Policy H2: Promotion of active travel and healthy activities: Work in partnership to promote walking, cycling and horse riding as active travel options and healthy activities. Initiative 'Public information on the public rights of way network'.

- 6.2 The development of new walking routes for local residents and visitors alike is aligned with the health and wellbeing objectives and priorities of the Council as stated in the Business Plan 2012/2015, in particular Priority 5 Ensure a Sustainable Future and Priority 7 Drive out the causes of poor health, as well as the Council's commitment to the Change4Life initiative.

7.0 Financial Implications

- 7.1 The furniture required to create the proposed new path would be paid for from the ROWIP capital allocation from the Local Transport Plan, with a contribution from the Goostrey Footpaths Group. Thereafter, any maintenance works will be resourced between the public rights of way team and landowner as standard.

8.0 Legal Implications

- 8.1 Under Section 2 of the Local Government Act 2000, a local authority has the power to do anything to improve the economic, social or environmental wellbeing of their area. In accordance with this power, the Council may enter into a Deed of Dedication to create a public right of way.
- 8.2 The paths will become public footpaths maintainable at the public expense on the date that the Deed of Dedication is sealed.
- 8.3 Under Section 2 of the Local Government Act 2000, there is no statutory right for objection to the proposal. However, any decision of the Council may be challenged by way of judicial review.
- 8.4 The use of the powers under Section 2 of the Local Government Act 2000 fall within the general powers of this Committee which are described in the Constitution: "The Public Rights of Way Committee shall discharge all the functions of the Council in relation to all matters relating to public rights of way."

9.0 Risk Management

- 9.1 Not applicable.

10.0 Background and Options

- 10.1 The Goostrey Footpaths Group have, for a number of years, sought the establishment of a footpath connection from the existing permissive path in

Galey Wood, to the north of the village, to Restricted Byway No. 11 known as Appleton's Lane. The aspiration was registered during public consultation for the ROWIP with reference W64.

- 10.2 The proposed routes run as shown in Plan No. LGA/001:
- a) a public footpath from OS grid reference SJ 7724 7056 at the junction of Mill Lane (UW2491) and Footpath No. 3 in the Parish of Goostrey at point A on Plan No. LGA/001, running in a generally northerly direction along Mill Lane to Galey Wood and then in a north-easterly direction for a total distance of approximately 2100 metres to its junction with restricted byway No. 11 in the Parish of Goostrey, at OS grid reference SJ 7763 7220 at point B on Plan No. LGA/001; and,
 - b) a public footpath from OS grid reference SJ 7710 7121 at its junction with the above proposed public footpath at point C on Plan LGA/001 in a north-easterly direction for a distance of approximately 475 metres to OS grid reference SJ 7750 7145 and then in a north-westerly direction for a distance of approximately 365 metres to OS grid reference SJ 7733 7175 at its junction again with the above proposed public footpath at point D on Plan No. LGA/001.
- 10.3 The proposal secures public pedestrian access along the northern extent of Mill Lane, which currently is a private road with no public rights. The proposal secures public access along the length of the existing permissive footpath. The proposal also secures public pedestrian access between the above two routes and Restricted Byway No. 11 known as Appleton's Lane and thereby to the wider public rights of way network.
- 10.4 The Portfolio Holder for Cheshire Farms Service has been briefed on the proposal by the County Land Agent and the proposed dedication of the path is considered to be consistent with the management objectives of the estate.
- 10.5 Goostrey Parish Council and the local Members have been consulted. Councillor Gilbert responded in support of the proposal. No further responses have been received.

11.0 Access to Information

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

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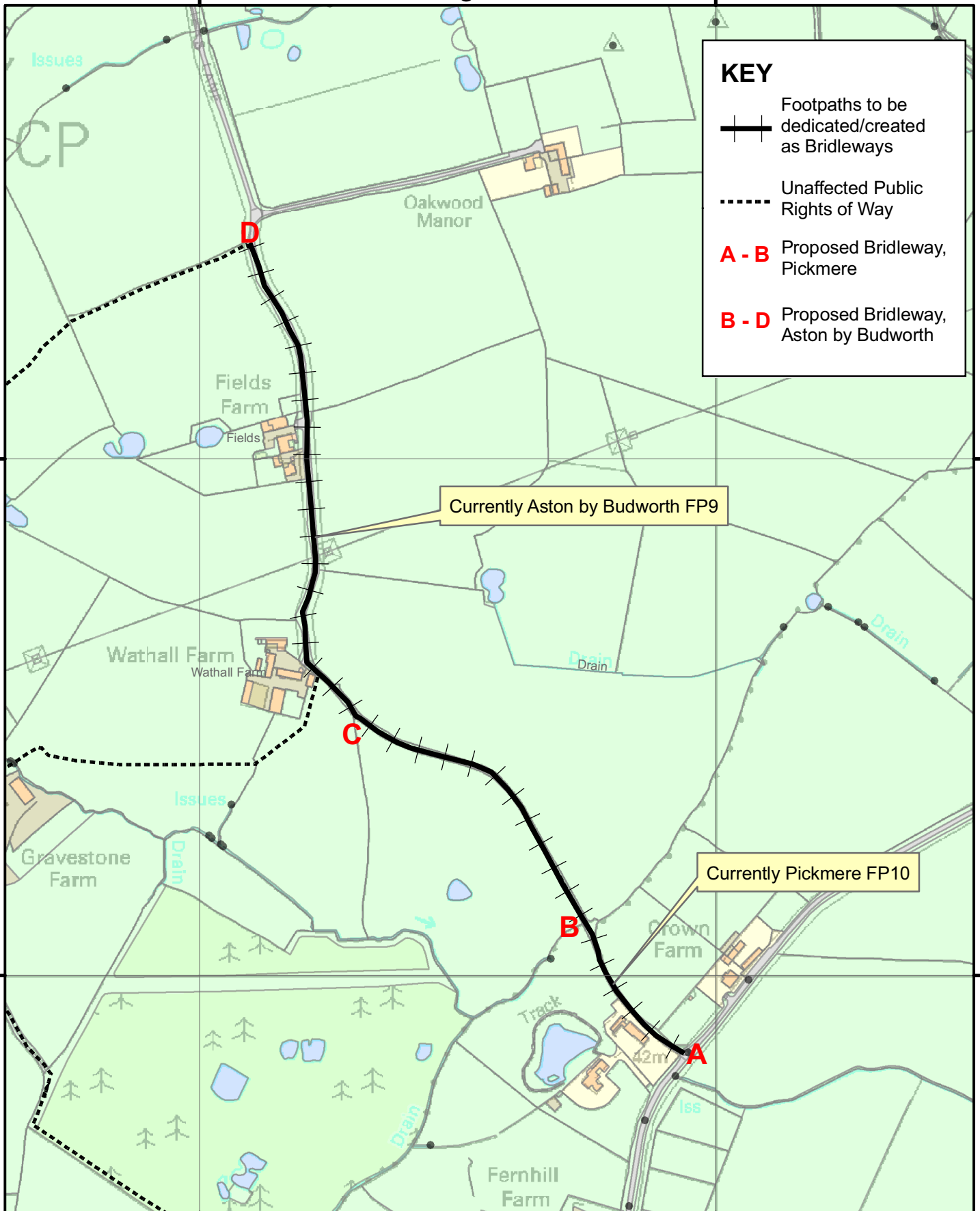
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Proposal to create a Public Bridleway in Pickmere and to dedicate a Public Bridleway in Aston by Budworth

Plan No.
HA/067

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



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	24 September 2012
Report of:	Public Rights of Way Manager
Subject/Title:	Local Government Act 2000 Section 2 and Highways Act 1980 Sections 25 and 26: Deed of Dedication for a New Public Bridleway in the Parish of Aston by Budworth, Dedication of a New Public Bridleway in the Parish of Aston by Budworth and Creation of a New Public Bridleway in the Parish of Pickmere.

1.0 Report Summary

- 1.1 An application was received in September 2008 to upgrade Public Footpaths Pickmere No. 10 and Aston by Budworth No. 9 to Public Bridleways (by Definitive Map Modification Order). It will be a number of years before the application is allocated to an officer and in view of this it is proposed to proceed with a bridleway creation agreement and a creation order.
- 1.2 The landowner at Walthall Farm who owns the section of the route between points C and D on plan no. HA/067 (Public Footpath Aston by Budworth No. 9) has agreed to dedicate this section of the route as a bridleway under section 25 of the Highways Act.
- 1.3 The remainder of Public Footpath Aston by Budworth No. 9 (between B and C on plan no. HA/067) runs on council owned land and this can also be dedicated as a public bridleway in a Deed of Dedication under the Local Government Act 2000 (LGA 2000) section 2.
- 1.4 The land over which the southern section of the route, Public Footpath Pickmere No. 10 runs, (between points A and B on plan no. HA/067) is unregistered and it is proposed to make a Creation Order for this section of the route, using the provisions of section 26 of the Highways Act 1980.

2.0 Recommendations

- 2.1 A Creation Agreement be entered into with the landowner under Section 25 of the Highways Act 1980 and under such terms as may be agreed by the Public Rights of Way Manager to create a new public bridleway as illustrated on Plan No. HA/067 between points C to D, and that public notice be given of this agreement.
- 2.2 A public bridleway be created under Section 2 of the Local Government Act 2000 in a Deed of Dedication, in the Parish of Aston by Budworth, as illustrated between points B to C on Plan No. HA/067, and that public notice be given of this dedication

- 2.3 An Order be made under Section 26 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to create a Public Bridleway in the Parish of Pickmere as illustrated between points A and B on Plan No. HA/067 on the grounds that there is a need for a public bridleway over the land to which this order relates, and that it is expedient that the way should be created.
- 2.4 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.5 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 and the payment of compensation.

3.0 Reasons for Recommendations

- 3.1 Under section 25 of the Highways Act 1980 a local authority may enter into an agreement with any person having the capacity to dedicate a public footpath or bridleway.
- 3.2 Section 2 of the Local Government Act 200 provides local authorities with a power to take any steps which they consider are likely to promote or improve the economic, social or environmental well-being of their local community.
- 3.3 In accordance with Section 26 (1) of the Highways Act 1980 where it appears to a local authority that there is a need for a footpath or bridleway over land in their area and they are satisfied, having regard to:
- The extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area, and
 - The effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation.
- 3.4 If it is expedient that the path or way should be created, the authority may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order, create a footpath or bridleway over the land.
- 3.5 It is considered expedient to create/dedicate the bridleways as shown on plan no. HA/067 between points A to D. The requirement for a horse route has been demonstrated by the application to upgrade the path. Upgrading the footpaths to public bridleways will provide a valuable safe and convenient route for horse riders and create a link and a circular route from Frog Lane to Budworth Road. Currently horse riders have no recorded rights to use the

route. The proposal will give clarity to users and allow them to proceed with ease and certainty and avoid the need to risk a trespass against the landowners. Due to the lengthy and costly timescales involved when dealing with Definitive Map Modification Orders, a dedication agreement, deed of dedication and a creation order were considered the most efficient and cost effective way to proceed with this proposal.

- 3.6 In considering these proposals, regard has been given to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features and it is considered that there will be no adverse effects on the basis that the proposed scheme will be upgrading an existing footpath.

4.0 Wards Affected

- 4.1 High Legh.

5.0 Local Ward Members

- 5.1 Councillor S Wilkinson.

6.0 Policy Implications

- 6.1 The proposal supports the following policies and initiatives of the Cheshire East Rights of Way Improvement Plan 2011-2026:

- Policy H3: Public rights of way and green infrastructure: Protect and enhance our public rights of way and green infrastructure and endeavour to create new links where beneficial for health, safety or access to green spaces. Initiative: 'Leisure routes for cyclists, horse riders and walkers'
- Policy H2: Promotion of active travel and healthy activities: Work in partnership to promote walking, cycling and horse riding as active travel options and healthy activities. Initiative 'Public information on the public rights of way network'

- 6.2 The development of new walking, cycling and horseriding routes for local residents and visitors alike is aligned with the Council's objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Council's commitment to the Change4Life initiative.

7.0 Financial Implications

- 7.1 The only works required on the route are the replacement of the signs from footpath, to bridleway. These will cost approximately £120. Thereafter, any maintenance works required will be resourced by the public rights of way team. The proposed bridleways are not routes which will require regular or extensive maintenance works.

- 7.2 An agreement under section 25 of the Highways Act 1980 may be on such terms as may be agreed with the landowner and this may include financial payments. However, at present it is not anticipated that there will be any such payments in relation to this agreement on the basis that there is an existing footpath in situ and that there is unlikely to be any loss incurred by the landowner.
- 7.3 In progressing a public path creation order under section 26 of the 1980 Act there is a statutory procedure which must be followed which requires various notices to be published in a local paper, site notices to be erected and notices to be served on specified persons/bodies. The cost of making the order (if unopposed) is likely to be in the region of £700.
- 7.4 Anyone who suffers from depreciation in value of their land, or who suffers damage by being disturbed in their enjoyment of land as a result of the coming into operation of a public path creation order, under section 28 of the 1980 Act may claim compensation for their loss. Any such claims must be made within 6 months of the order coming into operation. (Again, on the basis that this is merely an update of an existing footpath no claims are anticipated.)

8.0 Legal Implications

- 8.1 Under section 25 of the Highways Act 1980 a local authority may enter into an agreement with any person having the capacity to dedicate a public footpath or bridleway.
- 8.2 The path will become a public bridleway and maintainable at the public expense on the date that the Dedication Agreement is sealed.
- 8.3 Under Section 25 of the Highways Act 1980, there is no statutory right for objection to the proposal.
- 8.4 Under Section 2 of the Local Government Act 2000, a local authority has the power to enter into a Deed of Dedication to create a public right of way.
- 8.5 The path will become a public bridleway and maintainable at the public expense on the date that the Deed of Dedication is sealed.
- 8.6 Under Section 2 of the Local Government Act 2000, there is no statutory right for objection to the proposal.
- 8.7 The use of the powers under Section 2 of the Local Government Act 2000 fall within the general powers of this Committee which are described in the Constitution: "The Public Rights of Way Committee shall discharge all the functions of the Council in relation to all matters relating to public rights of way."
- 8.8 Under section 26 of the Highways Act 1980, 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/an inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

9.0 Risk Management

9.1 Not applicable.

10.0 Background and Options

- 10.1 An application was received in September 2008 to upgrade Public Footpaths Pickmere No. 10 and Aston by Budworth No. 9 to Public Bridleways. The claim is based on long usage of the footpaths by horse riders and the application is currently at No. 13 on the Definitive Map Modification Order applications waiting list. It will be a number of years before the application is allocated to an officer and in view of this it is proposed to proceed with a Creation Agreement, a Deed of Dedication and a Creation Order. This opportunity has arisen due to a recent change in ownership at Walthall Farm.
- 10.2 Public Footpath No. 10 Pickmere commences on Frog Lane at OS grid reference SJ 6897 7792 and runs in a generally north westerly direction for approximately 160 metres to its junction with Public Footpath Aston by Budworth No. 9 at OS grid reference SJ 6887 7805. The section of the route to be created as a bridleway is shown on Plan HA/067 running between points A-B.
- 10.3 Public Footpath No. 9 Aston by Budworth commences at its junction with Public Footpath No. 10 Pickmere at OS grid reference SJ 6887 7805 and runs in a generally north westerly and then generally northerly direction for approximately 808 metres to OS grid reference SJ 6854 7870. The section of the route to be dedicated as a bridleway is shown on Plan HA/067 running between points B-D.
- 10.4 Walthall Farm was previously a County Farm which was sold in November 2010. A condition was placed in the sale particulars to the farm that the buyers must enter into a Creation Agreement under the Highways Act 1980 section 25 to dedicate the section of Public Footpath Aston by Budworth No. 9 which runs on their land (between points C and D plan no. HA/067) as a bridleway.
- 10.5 The remainder of Public Footpath Aston by Budworth No. 9 (between points B and C on plan no. HA/067) runs on council owned land and this can be dedicated as a public bridleway in a Deed of Dedication under the Local Government Act 2000 (LGA 2000) section 2.
- 10.6 However, the land over which the southern section of the route, Public Footpath Pickmere No. 10 runs, (between points A-B on plan no. HA/067) is unregistered. Attempts have been made to discover the landowner for this section of the route; notices were erected on site for 28 days and both adjacent landowners have been contacted, but no landowner has been forthcoming. It

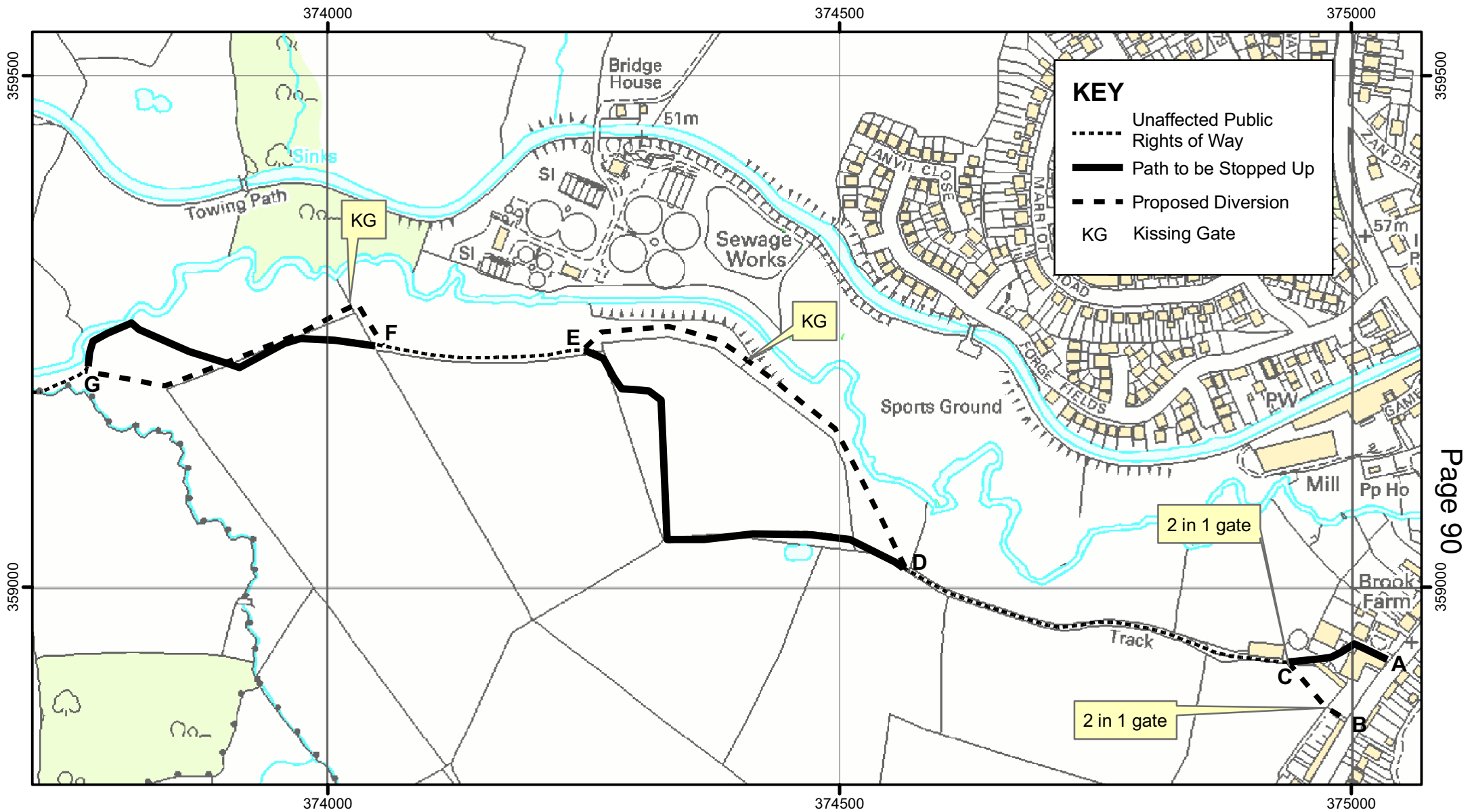
is therefore proposed to make a Creation Order for this section of the route using the provisions of section 26 of the Highways Act 1980. This section of the route is approximately 161 metres, the length of the proposed bridleway in its entirety is 969 metres. There are provisions within section 28 of the Highways Act 1980 for compensation to be paid when a creation order is made. However in the absence of a landowner the risk of compensation is negligible. Furthermore the minimal changes to the path as a consequence of a change from footpath to bridleway any compensation if it were payable would be insignificant.

- 10.7 Under section 26 of the Highways Act 1980 the Council must consider that there is a need for the bridleway. The requirement for a horse route has been demonstrated by the application to upgrade the path and the use demonstrated in that application. The proposal will give clarity to users and allow them to proceed with ease and certainty and add a useful route for cyclists and horseriders to the local network.
- 10.8 Although the majority of the route can be dedicated as a public bridleway by a creation agreement and under the LGA 2000, uncertainty over the ownership of the small section of the land at the southern end of the route means that a public path creation order is the best way to achieve completion of the route.
- 10.9 The local Councillor has been consulted about the proposal. Councillor Wilkinson is fully supportive of the proposal.
- 10.10 Pickmere Parish Council and Aston by Budworth Parish Council have been consulted. Aston by Budworth Parish Council has responded to state that they have no objection to the proposal.
- 10.11 Cheshire Farms Service have been consulted and have confirmed that the proposal is consistent with the estate management objectives and actions implemented in the disposal of Walthall Farm and that the Council, as owner of the land between sections B-C on plan no. HA/067, has no objection to the proposal.
- 10.12 The statutory undertakers have also been consulted and have no objections to the proposal. If a dedication agreement, deed of dedication and a creation order are made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.13 The user groups have been consulted. No comments have been received.
- 10.14 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.

11.0 Access to Information

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

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Email: hannah.duncan@cheshireeast.gov.uk



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Highways Act 1980 S119

Proposed diversion of part of Public Footpath
No. 28 in the Parish of Sandbach

Plan No.
HA/068 amended

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



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	24 September 2012
Report of:	Rights of Way Manager
Subject/Title:	Highways Act 1980 Section 119 Application for the Diversion of part of Public Footpath No. 28 in the Parish of Sandbach

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 28 in the Parish of Sandbach. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit in the interests of the public and of the landowners. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

2.0 Recommendation

- 2.1 An 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. 28 in the parish of Sandbach by creating a new section of public footpath and extinguishing the current path (as illustrated on Plan No. HA/068 amended) on the grounds that it is expedient in the interests of the public and of the landowners.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the public and of the landowners for the reasons set out in paragraph 10.6 below.

3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:

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

And whether it is expedient to confirm the Order considering:

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

3.3 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.2 above.

3.4 Initial informal consultations have indicated that objections to an order are unlikely. The diversions will provide a more accessible route for walkers, twelve stiles and gates exist or are required on the existing lines of the footpath whereas the proposed routes require four. In addition, enhanced views of the surrounding countryside will also provide a benefit to users. Moving the footpath out of the farmyard will improve the security and privacy for the landowner at Brook Farm (between points B and C on plan no. HA/068 amended) and moving the footpaths out of the fields (between points D and E and between points F and G on plan no. HA/068 amended) will allow both landowners greater freedom in utilising the land. It is therefore considered that the proposed routes will be a satisfactory alternative to the current ones and that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Sandbach Ettiley Heath and Wheelock.

5.0 Local Ward Members

5.1 Councillor Gail Wait.

6.0 Policy Implications

- 6.1 The proposal supports the following policies and initiatives of the Cheshire East Rights of Way Improvement Plan 2011-2026:
- Policy H3: Public rights of way and green infrastructure: Protect and enhance our public rights of way and green infrastructure and endeavour to create new links where beneficial for health, safety or access to green spaces. Initiative: 'Leisure routes for cyclists, horse riders and walkers'
 - Policy H2: Promotion of active travel and healthy activities: Work in partnership to promote walking, cycling and horse riding as active travel options and healthy activities. Initiative 'Public information on the public rights of way network'
- 6.2 The development of new walking, cycling and horseriding routes for local residents and visitors alike is aligned with the Council's objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Council's commitment to the Change4Life initiative.

7.0 Financial Implications

- 7.1 Not applicable

8.0 Legal Implications

- 8.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/an inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

9.0 Risk Management

- 9.1 Not applicable

10.0 Background and Options

- 10.1 An application has been received from Mr Ian Witter of Brook Farm, Wheelock, Sandbach, Cheshire, CW11 3RZ ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 28 in the Parish of Sandbach.
- 10.2 The applicant owns the land up to the field boundary at point F on plan no. HA/068 amended. Mr D Witter owns the land over which the section of the footpath and the proposed diversion runs between points F and G on plan no. HA/068 amended and has provided written consent and support for the proposal. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request if it considers it expedient in the interests of the landowner or landowners to make an order diverting the footpath.

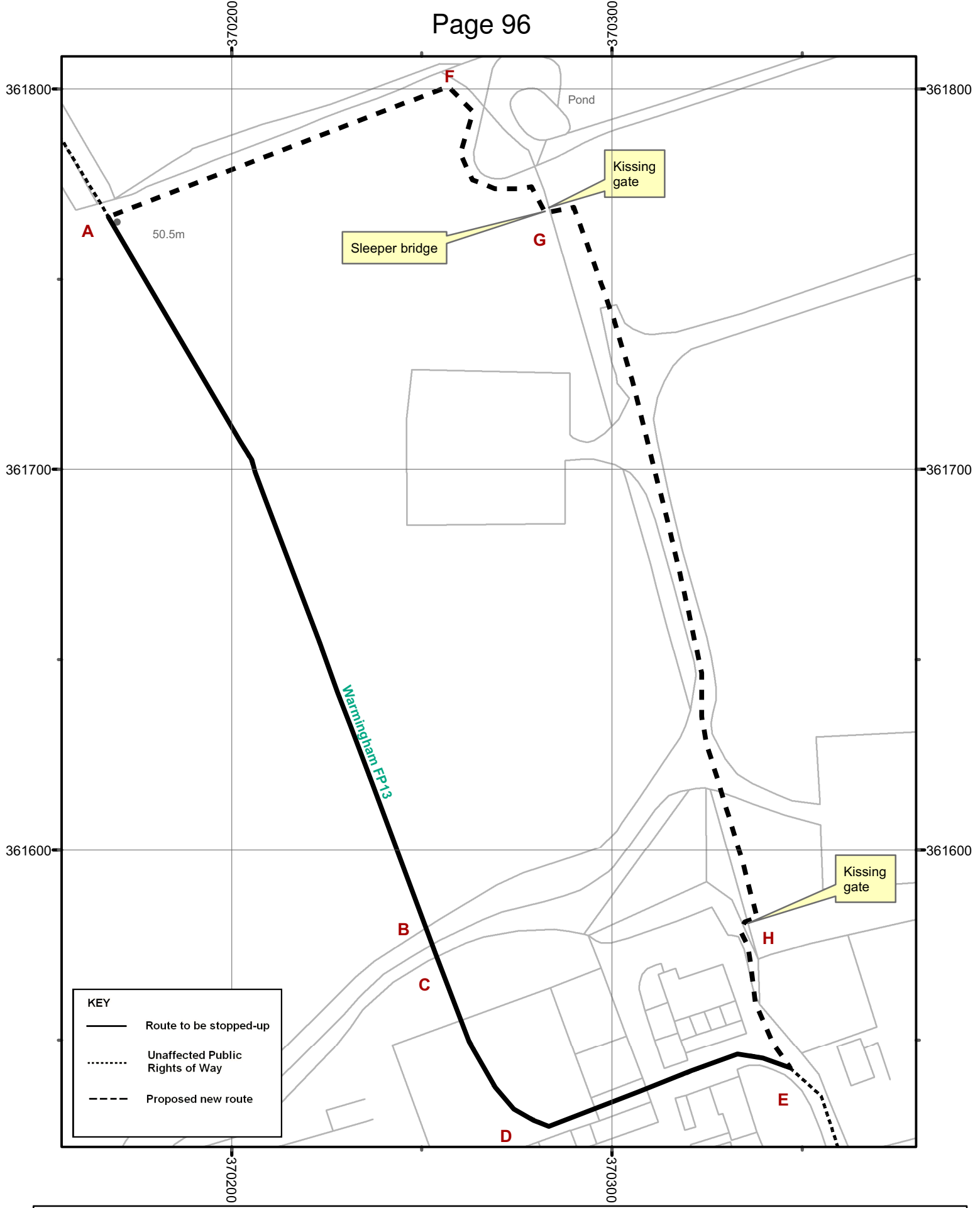
- 10.3 The current line of Public Footpath No. 28 Sandbach runs in a westerly direction from Crewe Road (C389) at OS grid reference SJ 7503 5893, through the yard at Brook Farm and then across agricultural land which is mainly arable, to its junction with Public Footpath Moston No. 11 at the parish boundary, at OS grid reference SJ 7371 5919. Its total length is 1.551 kilometres. The sections of path to be diverted are shown by solid black lines on Plan HA/068 amended running between points A-C, points D-E and points F-G. The proposed diversions are illustrated on the same plan between points B-C, points D-E and points F-G.
- 10.4 An initial consultation for the proposed diversion was sent out as illustrated on plan no. HA/068. The proposed diversion through the yard at Brook Farm was the same as on the second consultation (as shown on plan no. HA/068 amended) but the section of the diversion moving the footpaths out of the fields was initially proposed to run slightly further north and on lower ground (as shown on plan no. HA/068). The Ramblers Association had concerns that this section of the proposed route may be unsuitable for walkers during the winter months. The proposal was then amended and a second consultation sent out which moves this section of the path onto higher ground (between points D-E and points F-G on plan no. HA/068 amended).
- 10.5 Part of the definitive line of the footpath has been unavailable for a number of years and an unofficial diversion has been in place. This is fully furnished with stiles and signs etc . Whilst the origins of the unofficial route are not recorded it is thought that this was put in place by Cheshire County Council in order to provide a usable route on the ground for the public after unsuccessful negotiations with the previous landowner at that time.
- 10.6 It is proposed to divert three sections of the footpath. The first is the section which runs through the yard at Brook Farm (points A-C on plan no. HA/068 amended). Diverting the footpath out of the yard would be of benefit to the landowner in terms of farm management, as well as removing any risk of accidents between members of the public and the farm machinery. It will also allow the applicant to improve the privacy and security of his property.
- 10.7 The proposed diversion leaves Crewe Road approximately 71 metres south of the entrance into Brook Farm. It then crosses a field to the south of the farm for approximately 85 metres to rejoin with the existing line of the footpath (points B to C on plan no. HA/068 amended). It provides the public with open views of the surrounding countryside. In addition, it is proposed to install two '2 in 1' gates (a field gate with an integral pedestrian gate) for this section of the diversion. Walkers currently negotiate five gates on the existing line of the footpath through the farmyard, accessibility will therefore be improved.
- 10.8 The second and third sections of the footpath that it is proposed to divert are the parts of the footpath that cross fields which are currently used for crops (points D to E and points F to G on plan no. HA/068 amended). These are the sections of the route that are mentioned above and have been unavailable on the ground for a number of years.

- 10.9 The proposed diversions run across land to the north of the fields following the field boundaries, on permanent pasture grassland along a pleasant, scenic valley above the river Wheelock (also points D to E and points F to G on plan no. HA/068 amended). Moving the legal line of the footpath out of the fields will allow the landowner greater freedom in utilising the land. It will also provide a more easily accessible route for users as only two gates would be required on this section of the proposed diversion, whereas seven are required on the existing legal line at these locations.
- 10.10 The Ward Councillor has been consulted about the proposal. No comments have been received.
- 10.11 Sandbach Town Council has been consulted. No comments have been received.
- 10.12 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.13 The user groups have been consulted. Congleton Ramblers Group have responded to state that they have no objection to the route as shown on plan no. HA/068 amended.
- 10.14 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.15 An assessment in relation to Equality Act 2010 Legislation has been carried out by the PROW Network Management & Enforcement Officer for the area and it is considered that the proposed diversion would be no less easy to use than the existing route.

11.0 Access to Information

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

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Designation: Definitive Map Officer
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PROW File: 262D/450



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 24 September 2012
Report of: Greenspaces Manager
Subject/Title: Highways Act 1980 Section.119:
Application for the Diversion of Public Footpath No.13 (part),
Parish of Warmingham

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.13 (part) in the Parish of Warmingham. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as an application has been made by the landowner concerned. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

2.0 Recommendation

- 2.1 An 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.13 Warmingham by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/074 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 10.4 & 10.5 below.

3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:

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

And whether it is expedient to confirm the Order considering:

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

3.3 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.2 above.

3.4 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will enable:

- better land and stock management,
- safer control of operational machinery and vehicles in a busy farmyard
- improved privacy and security to property in the farmyard
- resolution of a current obstruction issue caused by a building in the farmyard

It is considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Brereton Rural

5.0 Local Ward Members

5.1 Councillor John Wray

6.0 Policy Implications

6.1 Not applicable

7.0 Financial Implications

7.1 Not applicable

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

9.0 Risk Management

9.1 Not applicable

10.0 Background and Options

10.1 An application has been received from Mr D Cough of Axis (agent) on behalf of Mr H Torrence of TATA Chemicals Europe Ltd., PO Box 4, Mond House, Winnington Lane, Northwich, Cheshire, CW8 4DT requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 13 in the Parish of Warmingham.

10.2 Public Footpath No. 13, Warmingham, commences at its junction with Warmingham Road at OS grid reference SJ 7086 6111 and runs in a generally west, north westerly direction along an unclassified road to a junction where it then follows the access track to Hill Top Farm in a generally north westerly direction. Upon reaching the farm yard, it passes through the farm in a “dog leg” first in a westerly and then northerly direction to exit into pasture field. It then continues in a generally northerly direction crossing this field to exit onto a track which it then follows for approximately 332 metres. At this point, the path bears in a generally westerly direction across a field to terminate at its junction with Public Footpath No.7, Warmingham at O.S. grid reference SJ 6987 6219. The section of path to be diverted is shown by a solid black line on Plan No. HA/074. The proposed diversion is illustrated on the same plan with a black dashed line between points A-F-G-H-E.

10.3 The land over which the current path and the proposed diversion run belongs to TATA Chemicals Europe Ltd. Under section 119 of the Highways Act 1980 the Council may accede to an applicant’s request, if it considers it expedient in the interests of the landowner to make an order to divert the footpath.

10.4 The section of Public Footpath No. 13, Warmingham to be diverted runs through a farmyard where it is obstructed by a building and it then runs across a pasture field that is significantly uneven underfoot due to heavy usage by cattle. Diverting the path would resolve the obstruction issue and take users away from the farmyard along a route that would be better underfoot and more convenient.

- 10.5 The proposed new route (A-F-G-H-E on Plan No. HA/074) would start immediately after the stile in the pasture field to the north of Hill Top Farm (point A) and would follow the northern field boundary in a north, north easterly direction to the north eastern field corner (point F). A pond is located in the field corner and the new route would skirt it in a south, south easterly direction and then easterly direction to cross a sleeper bridge over a ditch to reach a kissing gate in the eastern field boundary (point G) leading into a second pasture field. It would then continue in a south, south easterly direction for approximately 190 metres to follow the western field boundary first across pasture land and then along a gravelled farm track. Approximately 35 metres after leaving the farm track, at the south western field corner (point H), the route would pass through a kissing gate onto the farm access road along which it would continue in a south, south westerly direction to meet the current route at (point E).

The new route would have a width of 2m and would not be enclosed and two kissing gates and a sleeper bridge would be installed.

Of benefit to the public, the new route would be more enjoyable for users by reducing the need to pass through a yard busy with large livestock and plant/vehicular machinery private garden and more convenient since it would not be obstructed and have a more even surface.

- 10.6 The Ward Councillor was consulted about the proposal. No comments were received.
- 10.7 Warmingham Parish Council has been consulted and any comments will be reported verbally.
- 10.8 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.9 The user groups have been consulted. The Mid-Cheshire Footpath Society and Peak and Northern Footpath Society registered that they have no objection to the proposal. No other comments were received.
- 10.10 The Council's Nature Conservation Officer has been consulted and raised no objection to the proposals.
- 10.11 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion is an improvement on the old route because it has kissing gates instead of stiles and is not obstructed.

11.0 Access to Information

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

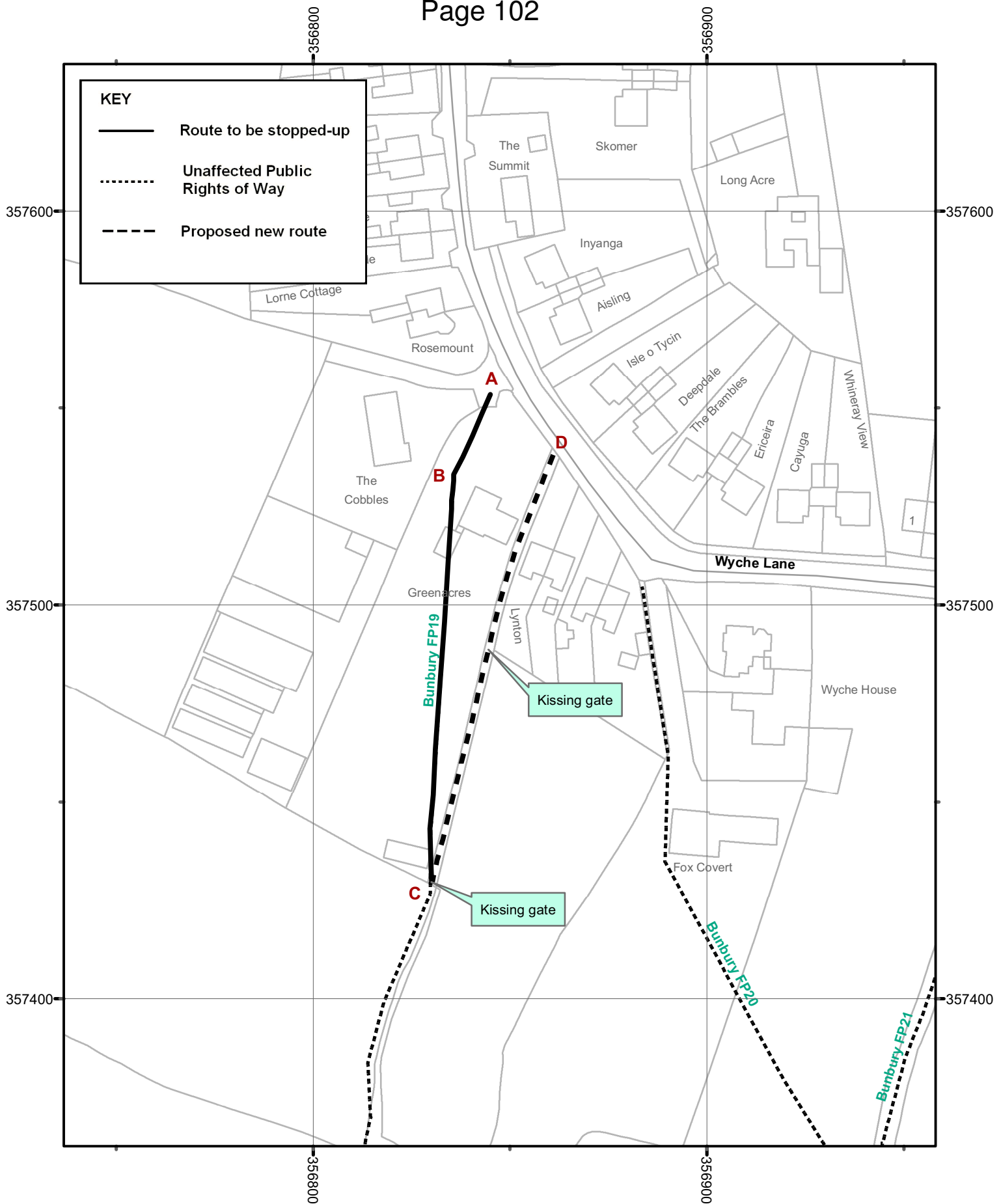
Name: Marianne Nixon

Designation: Public Path Orders Officer

Tel No: 01606 271843

Email: marianne.nixon@cheshireeast.gov.uk

PROW File: 306D/458



Highways Act 1980 s119
The Cheshire East Borough Council
(Footpath 19 (part) Parish of Bunbury)
Public Path Diversion Order 2012

Plan No.
HA/073



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 24th September 2012
Report of: Greenspaces Manager
Subject/Title: Highways Act 1980 Section 119:
Application for the Diversion of Public Footpath No.19 (part),
Parish of Bunbury

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.19 (part) in the Parish of Bunbury. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as an application has been made by the landowner concerned. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

2.0 Recommendation

- 2.1 An 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.19 Bunbury by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/073 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 10.4 & 10.5 below.

3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:

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

And whether it is expedient to confirm the Order considering:

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

3.3 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.2 above.

3.4 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will offer improved privacy and security to the applicants' property whilst resolving an outstanding obstruction issue. It is considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Bunbury

5.0 Local Ward Members

5.1 Councillor Michael Jones

6.0 Policy Implications

6.1 Not applicable

7.0 Financial Implications

7.1 Not applicable

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

9.0 Risk Management

- 9.1 Not applicable

10.0 Background and Options

- 10.1 An application has been received from Mr & Mrs Stubbs of Greenacres, Wyche Lane, Bunbury, CW6 9PS requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 19 in the Parish of Bunbury.
- 10.2 Public Footpath No. 19, Bunbury commences at its junction with Wyche Lane at O.S. grid reference SJ 7588 6141 and runs in a generally southerly direction through the grounds of 'Greenacres' and then across pasture land to its junction with Public Footpath No. 17 Bunbury. From there, it continues across pasture land in a south, south westerly direction to terminate at the parish boundary where it meets Public Footpath No. 36 Spurstow at O.S. grid reference SJ 5673 5720. The section of path to be diverted is shown by a solid black line on Plan No. HA/073. The proposed diversion is illustrated on the same plan with a black dashed line between points D-C.
- 10.3 The land over which the current path and the proposed diversion run belongs to Mr & Mrs Stubbs. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request, if it considers it expedient in the interests of the landowner to make an order to divert the footpath.
- 10.4 The section of Public Footpath No. 19, Bunbury to be diverted runs through the property of the applicants giving rise to concerns relating to privacy and security. Furthermore, current path alignment through the property is obstructed by a building. Diverting the footpath out of the property would offer improved privacy and security whilst resolving the alignment issue.
- 10.5 The proposed new route (D-C on Plan No. HA/073) would follow a current permissive path that runs between 'Greenacres' and 'Lynton'. Starting at point D along Wyche Road to the east of 'Greenacres', the new route would follow a generally south, south westerly direction along a path enclosed by the hedged boundaries of 'Greenacres' and neighbouring property, 'Lynton'. Once past the grounds of 'Lynton', the path would pass through a kissing gate to continue in the same direction between the hedged boundary of 'Greenacres' and a fenced field boundary. It would terminate immediately before a second kissing gate at point C.

The new route would have a width of 1.7 metres and would be enclosed.

Of benefit to the public, the new route would be more enjoyable for users by reducing the need to pass through a private garden and more convenient since it would not be obstructed.

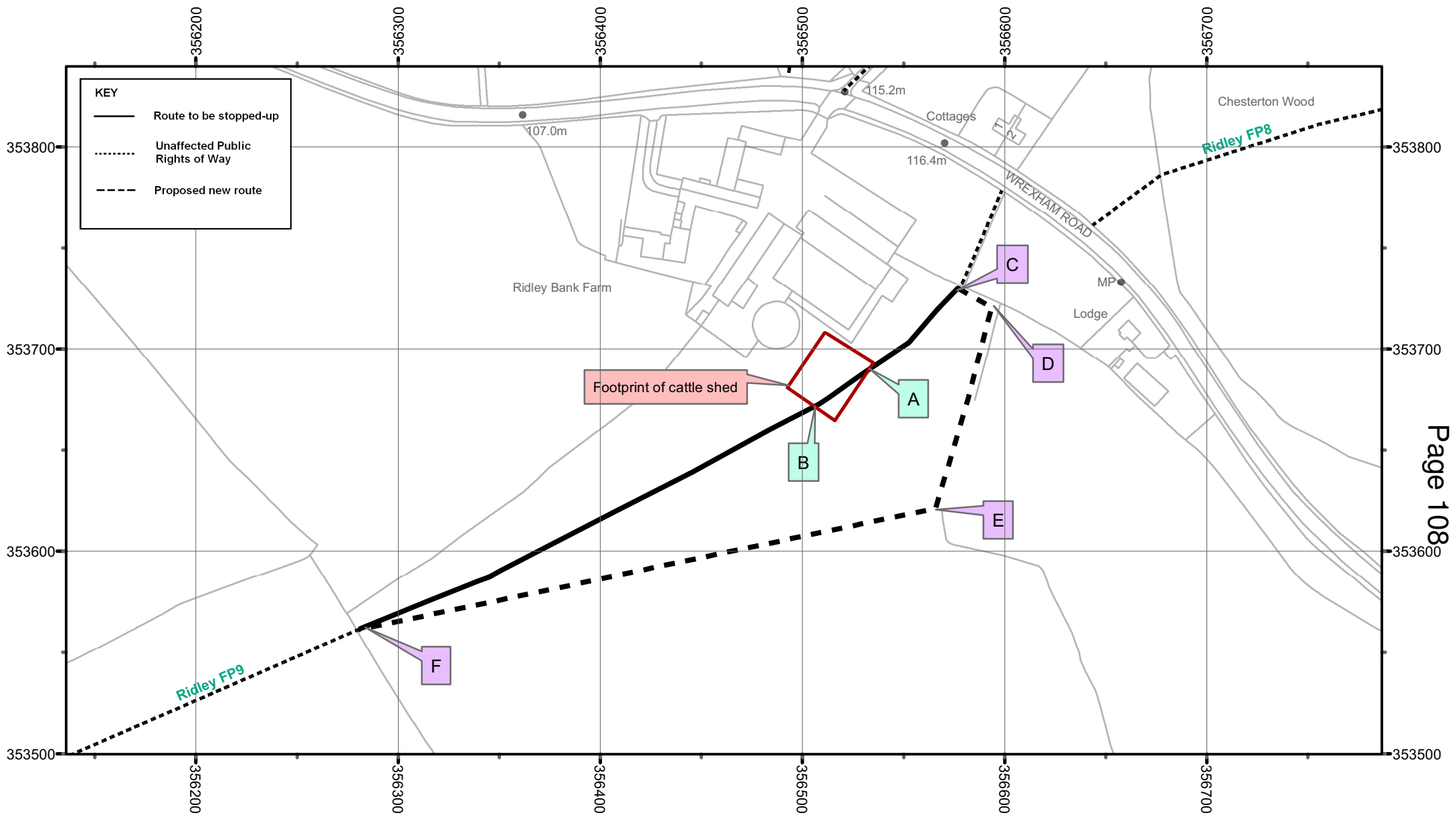
- 10.6 Ward Councillor was consulted about the proposal. No comments were received.
- 10.7 Bunbury Parish Council has been consulted and members did not register any objection to the proposal.
- 10.8 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.9 The user groups have been consulted. The Peak and Northern Footpath Society registered no objection to the proposal. No other comments were received.
- 10.10 The Council's Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.
- 10.11 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion is an improvement on the old route because it has kissing gates instead of a stile and is not obstructed.

11.0 Access to Information

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

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PROW File: 055D/456

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Town and Country Planning Act 1990 s257
The Cheshire East Borough Council
(Footpath 9 (Part) Parish of Ridley)
Public Path Diversion Order 2012

Plan No.
TCPA/010



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 24th September 2012
Report of: Greenspaces Manager
Subject/Title: Town and Country Planning Act 1990 Section 257:
Application for the Diversion of Public Footpath No. 9 (part),
Parish of Ridley

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 9 in the Parish of Ridley. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as a response to planning approval granted to Mr Robert Latham of Ridley Bank Farm, Wrexham Road, Ridley, Tarporley, CW6 9RZ for the construction of a cattle shed (Planning reference: 12/1235N). The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

2.0 Recommendations

- 2.1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 9 Ridley, as illustrated on Plan No. TCPA/011 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendation

- 3.1 In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as 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 in accordance with a planning permission that has been granted.

3.2 It is considered that it is necessary to divert part of Footpath No. 9 Ridley as illustrated on Plan No. TCPA/011, to allow for the erection of a cattle shed. Planning consent was granted on the 8th May 2012 by Cheshire East Council; reference number 12/1235N.

3.3 Consultations have not elicited objections to the proposal and it is considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 are satisfied.

4.0 Ward Affected

4.1 Wrenbury

5.0 Local Ward Members

5.1 Councillor S Davies

6.0 Financial Implications

6.1 Not applicable

7.0 Legal Implications

7.1 Objections received to the proposed order, if not withdrawn, could lead to a public inquiry or hearing with attendant legal involvement and use of resources.

8.0 Risk Assessment

8.1 Not applicable

9.0 Background and Options

6.1 An application has been received from Mr Robert Latham of Ridley Bank Farm, Wrexham Road, Ridley, Tarporley, CW6 9RZ requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert part of Public Footpath No. 9 in the Parish of Ridley.

6.2 Public Footpath No. 9 Ridley commences at its junction with Wrexham Road at O.S. grid reference SJ 5659 5377 and runs in a generally south westerly direction through a pasture field and then continuing through further fields in a generally west, south westerly direction to terminate at its junction with Public Footpath No. 16, Cholmondeley at O.S. grid reference SJ 5593 5341. The section of path required to be diverted is shown by a solid black line on Plan No. TCPA/011 running between points A-B although the section of path proposed for diversion is much longer and runs between points C-A-B-F. The proposed diversion is illustrated with a black dashed line on the same plan, running between points C-D-E-F.

- 6.3 The existing alignment of the footpath would be directly affected by the construction of the planned cattle shed. The land is entirely owned by Mr Robert Latham.
- 6.4 Planning permission was granted to the applicant on 8th may 2012. The application is cited as Planning Permission Ref: 12/1235N. The details of the decision notice are for the erection of a cattle shed at Ridley Bank Farm.
- 6.5 Part of the current line of Public Footpath No.9 Ridley would be obstructed by the planned cattle shed. Therefore, the footpath diversion is required to provide a public access around the cow shed.

The length of footpath proposed for diversion (points C-A-B-F) is approximately 345 metres of which approximately 38 metres would be obstructed (points A-B). Although longer than other possible routes, it is felt that this route would provide walkers with an easily navigable path and would take them away from the cattle shed and surrounding land that is likely to receive heavier use by cattle making it more uneven underfoot. Consequently, although this route is longer than would normally be proposed for a diversion under the legislation of the Town and Country Planning Act 1990 s.257, it is considered to offer potential benefits for walkers and to be a sensible alternative.

- 6.6 The proposed route for the footpath (C-D-E-F) is approximately 407 metres long and would take users away from the cattle shed whilst allowing them to follow a distinct boundary hedge in an easterly and then southerly direction (points C-D-E) before crossing the pasture field in a direct line following a west, south westerly direction to meet the current footpath in the south west field corner (point F).

The route would be 2 metres wide throughout.

- 6.7 The local Councillor has been consulted about the proposal. No comments have been received.
- 6.8 Bulkeley and Ridley Parish Council have been consulted about the proposal and no comments have been received.
- 6.9 The statutory undertakers have also been consulted and have no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 6.10 The user groups have been consulted. The Peak and Northern Footpath Society registered no objection to the proposal and requested signage at point E. No other responses have been received.
- 6.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 6.12 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer

for the area and it is considered that the proposed diversion would be no less convenient to use than the current route.

10.00 Access to Information

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

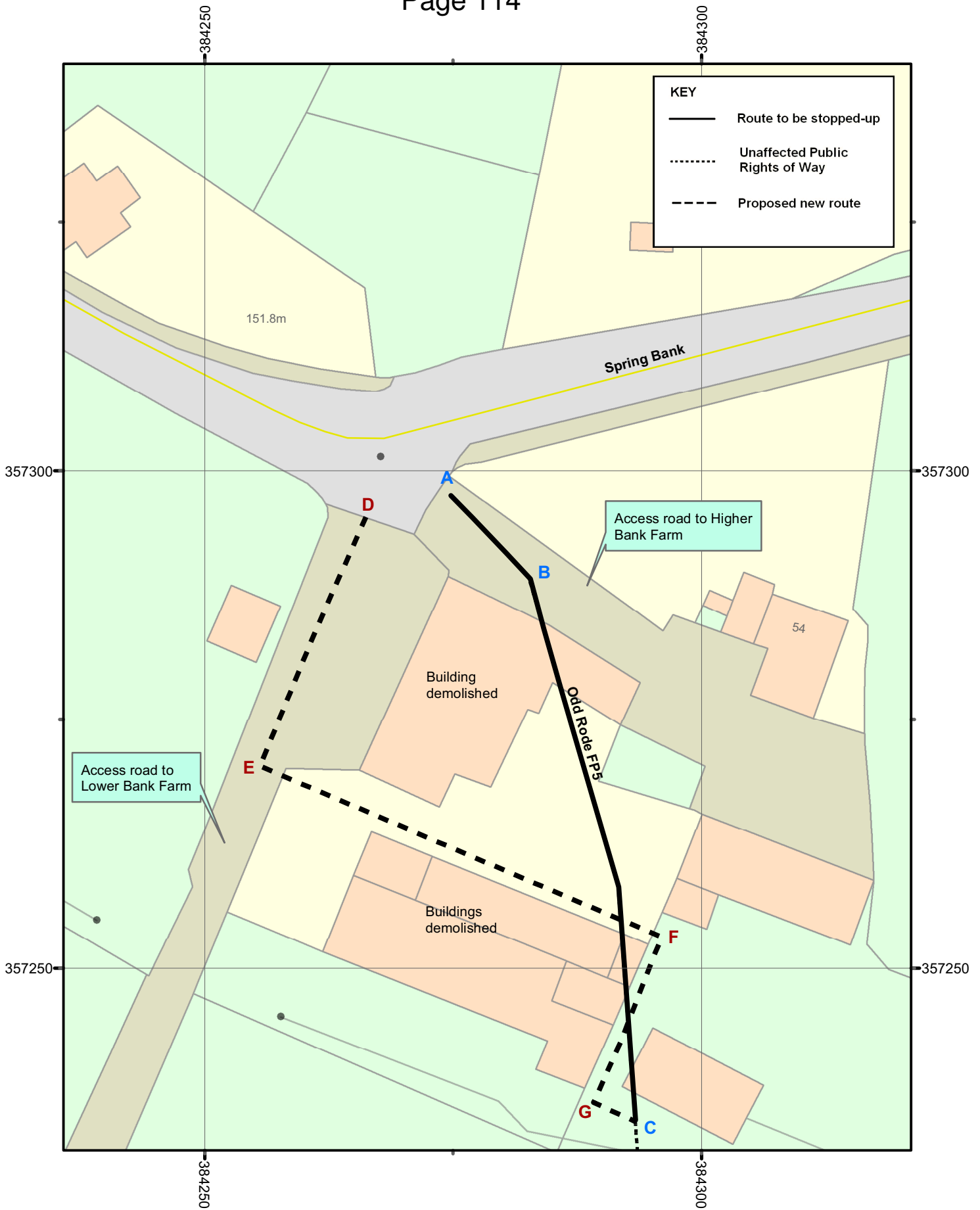
Officer: Marianne Nixon

Tel No: 01270 686 077

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Background Documents: PROW file 254D/454

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Town and Country Planning Act 1990 s257
The Cheshire East Borough Council
(Footpath 5 (part) Parish of Odd Rode)
Public Path Diversion Order 2012

Plan No.
TCPA/010



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 24th September 2012
Report of: Greenspaces Manager
Subject/Title: Town and Country Planning Act 1990 Section 257:
Application for the Diversion of Public Footpath No. 5 (part),
Parish of Odd Rode

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 5 in the Parish of Odd Rode. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as a response to planning approval granted to Mr Geoffrey Harvey for the construction of a detached residential dwelling at Higher Bank Farm, 54, Scholar Bank, Scholar Green, ST7 3LB (Planning reference: 11/4517C). Furthermore, the report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

2.0 Recommendations

- 2.1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 5 Odd Rode, as illustrated on Plan No. TCPA/010 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendation

- 3.1 In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as 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 in accordance with a planning permission that has been granted.

3.2 It is considered that it is necessary to divert part of Footpath No. 5 Odd Rode as illustrated on Plan No. TCPA/010, to allow for the construction of a new detached residential dwelling. Planning consent was granted on the 12th February 2012 by Cheshire East Council; reference number 11/4517C.

3.3 Consultations have not elicited objections to the proposal and it is considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 are satisfied.

4.0 Ward Affected

4.1 Odd Rode

5.0 Local Ward Members

5.1 Councillor Rhoda Bailey

6.0 Financial Implications

6.1 Not applicable

7.1 Legal Implications

7.1 Objections received to the proposed order, if not withdrawn, could lead to a public inquiry or hearing with attendant legal involvement and use of resources.

8.0 Risk Assessment

8.1 Not applicable

9.0 Background and Options

9.1 An application has been received from Mr Geoffrey Harvey of 14, Salop Place, Kidsgrove, Stoke-on-Trent, ST7 4BZ requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert part of Public Footpath No. 5 in the Parish of Odd Rode.

9.2 Public Footpath No. 5 Odd Rode commences on at its junction with Spring Bank (class C road) at O.S. grid reference SJ 8427 5729 and runs in a generally south, south easterly direction through the grounds of Higher Bank Farm to its junction with Public Footpath No. 12, Odd Rode. It then follows a generally south, south westerly direction across farmland to terminate at its junction with Public Footpath No. 23, Odd Rode at O.S. grid reference SJ 8405 5675. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/010 running between points A-B-C. The proposed diversion is illustrated with a black dashed line on the same plan, running between points D-E-F-G-C.

- 9.3 The existing alignment of the footpath would be directly affected by the construction of the new detached residential dwelling. The land is entirely owned by Mr Geoffrey Harvey.
- 9.4 Planning permission was granted to the applicant on 2nd February 2012. The application is cited as Planning Permission Ref: 11/4517C. The details of the decision notice are for the development of a detached dwelling at Higher Bank Farm.
- 9.5 Part of the current line of Public Footpath No.5 Odd Rode is unavailable at several points due to demolition remains and an obstructing building. Furthermore, planned development of the residential dwelling would result in the path being further obstructed. Therefore, the footpath diversion is required to resolve these issues by providing a public access between the building to be developed and around the building that obstructs the current alignment. The length of footpath proposed to be diverted is approximately 68 metres.
- 9.6 The proposed route for the footpath is approximately 93 metres long and would start at the junction of the current route with the road, 'Spring Bank' (point D), from where it would follow a south, south westerly direction along the macadam access road that leads to Lower Bank Farm. After approximately 27 metres (point E), it would bear in an east, south easterly direction to pass between the two planned dwellings to point F before bearing in a south, south westerly and then easterly direction to circumvent the south west corner of a building to terminate at point C.
- The new route would have a width of 2 metres and would not be enclosed except where it would pass between the new dwellings (points E-F) which would have a width of 2.5 metres.
- 9.7 The local Councillors have been consulted about the proposal. No comments have been received.
- 9.8 Odd Rode Parish Council have been consulted about the proposal and comments received will be reported verbally.
- 9.9 The statutory undertakers have also been consulted and have no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 9.10 The user groups have been consulted. The Congleton group Ramblers Association and the Peak and Northern Footpath Society registered no objection to the proposal. No other responses have been received.
- 9.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 9.12 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area

and it is considered that the proposed diversion would be no less convenient to use than the current route were it available for use.

10.00 Access to Information

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

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Background Documents: PROW file 231D/460