

Public Rights of Way Committee

Agenda

Date:	Monday 17th December 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 and non-pecuniary interests in any item on the agenda.

3. **Minutes of Previous meeting** (Pages 1 - 19)

To approve the minutes of the meeting held on 24 September 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 that 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

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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 at the meeting should provide at least 3 clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

5. **Wildlife and Countryside Act 1981 Part III Section 53 - Application No. CN/7/26: Application for the Addition of a Public Footpath Between Public Footpath No. 4 and Public Footpath No. 11, Parish of Wybunbury** (Pages 20 - 37)

To consider the application for the addition of a public footpath between Public Footpaths No.4 and 11 in the parish of Wybunbury

6. **Highways Act 1980 Section 119: Proposed Diversion of Public Footpath No.10 (part) Parish of Chorley** (Pages 38 - 43)

To consider the application to divert part of Public Footpath No.10 in the parish of Chorley

7. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 10 (part) Parish of Congleton** (Pages 44 - 49)

To consider the application to divert part of Public Footpath No.10 in the parish of Congleton

8. **Local Government Act 2000 Section 2: Deed of Dedication for a New Public Footpath in the Parish of Poynton with Worth** (Pages 50 - 55)

To consider the proposal to create a public footpath and two link footpaths in the parish of Poynton with Worth

9. **Local Government Act 2000 - Section 2: Deed of Dedication for New Public Rights of Way in the Parish of Holmes Chapel** (Pages 56 - 62)

To consider the proposal to create new public rights of way on Cheshire East Council owned public open space in the Parish of Holmes Chapel

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 24th September, 2012 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor J Wray (Chairman)
Councillor D Druce (Vice-Chairman)

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

In attendance

Councillor A Thwaite, Cabinet Support Member for Environment

Officers

Mike Taylor, Rights of Way Manager
Genni Butler, Countryside Access Development Officer
Jennifer Tench, Definitive Map Officer
Clare Hibbert, Definitive Map Officer
Marianne Nixon, Public Path Orders Officer
Elaine Woods, Highways Solicitor
Rachel Graves, Democratic Services Officer

11 DECLARATIONS OF INTEREST

There were no declarations of interest.

12 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meeting held on 11 June 2012 be approved as a correct record and signed by the Chairman.

13 PUBLIC SPEAKING TIME/OPEN SESSION

One member of the public had registered to speak in relation to Item 6: Application to Upgrade Public Footpath No.9 Higher Hurdsfield to Bridleway. The Chairman advised that he would invite them to speak when the application was being considered by the Committee.

14 CHARGING POLICY FOR PUBLIC PATH ORDERS, TEMPORARY AND EMERGENCY CLOSURES AND RIGHTS OF WAY SEARCHES

The Committee considered a report that detailed the fees and charges levied by the Legal Order Team for Public Path Orders, Temporary Closures and other work from 1 October 2012 onwards.

Members were informed that charges were made in accordance with the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 as amended by the Local Authority (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 and DEFRA Rights of Way Circular 1/2009. Charges were also made for written responses for public rights of way searches.

The report detailed the current and proposed charges in respect of the following services:

- Public Path Diversion Orders
- Emergency and Temporary Closures
- Gating Orders
- Property Searches

The fees from applicants paid the salary of the officer dealing with the applications and costs were monitored to ensure that they reflected the true cost of the administrative process. The hourly rate had been calculated at the penultimate spinal column point for grade 8 plus an additional 20% to cover overheads. There was no profit element to the charges and none may be levied.

RESOLVED: That

- (1) subject to any departmental review of charging policy or the implementation of statutory regulations relating to local authority charges, the following charges apply from 1 October 2012:
 - a. Public Path Diversion Orders resulting in a confirmed order will be £1575.00 plus the actual advertising costs
 - b. Emergency and Temporary Closure:
 - a. for an emergency 5 day or 21 day closure (not requiring press advertisement) the charge will be £165.03. To extend the closure for a further 21 days will cost £165.03.
 - b. a 6 month temporary closure will be £630.00 plus two advertisements
 - c. for referring an extension to a temporary closure to the Secretary of State the charge will be £311.60 plus the cost of one advertisement
 - c. Gating Orders: the charge will be the same of public path diversion orders - £575.00
 - d. Property Searches: the charge for searches will be £68.00.
- (2) any increase in charges relating solely to inflation be implemented by Officers without the need for Committee approval.

**15 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**

The Committee received a report detailing an application made by Mr R Spoors of Roewood Lane, Macclesfield to modify the Definitive Map and Statement by upgrading Public Footpath No.9 Higher Hurdsfield to a Public Bridleway.

Mr Spoors addressed the Committee as the applicant and also on behalf of the British Horse Society and two local residents – Judith Mossdrop and Mike Blamey. He spoke in opposition to the proposed Order and asked the Committee to approve an Order to upgrade Public Footpath No.9 to Public Bridleway along the definitive route and not the alternative route suggested.

The application to upgrade Public Footpath No.9 Higher Hurdsfield to a Public Bridleway was submitted in July 2003 – between points A-B-C-H-I-D-J-E on Plan No.WCA/004. The application was supported by 11 user evidence forms and a number of historical documents.

Section 53(2)(b) of the Wildlife and Countryside Act 1981, requires that the Council 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.

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 addition of a right of way and the second required modification of the map by the upgrading of a right of way: -

- “(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 particular description ought to be there shown as a highway of a different description.”

Where evidence in support of an application was user evidence, section 31(1) of the Highway Act 1980 applied:-

“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 required 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 “20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question.”

All 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 of the environment are not relevant to the decision.

There were a number of dates which could be used as the date the route was ‘brought into question’. Mr Broadbent of Close House Farm stated that in the late 1960s a pole was put across the definitive line of the public footpath. The Council had a letter from a Mr Burch from 1987 stating that the route was “barred in the vicinity of the farm”, which also states that the diverted route was being used as a bridleway. In notes of a meeting between Cheshire County Council and the Ramblers’ Association, the Council confirmed the right of way was still immediately adjacent to Close House Farm and it was not obstructed to walkers. It also stated that “the problem had been caused by horse riding on the path and also on the permissive diversion”. It is thought that by stating the route was not obstructed to walkers that this could imply it was obstructed to horse riders. A letter from Mr Spoors in 1988 stated “the right of way is frequently blocked by a wooden bar at the junction with the alternative tract.” It would appear that from the late 1980s 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. Therefore the date of 1987 should be used as the date the original definitive route (the application route) was ‘brought into question’ – the relevant twenty year period to be considered for the user evidence was 1967 to 1987.

An alternative route, between points C-G-D on Plan No.WCA/004, had initially been installed in 1953, by the previous owner (now deceased) of Close House Farm. The purpose of this alternative path was to avoid having people walking the definitive line which ran in front of Close House Farm as the owner had a herd of cows and was concerned about foot and mouth disease. Although not included as part of the application, the user evidence submitted showed that this route had been used by horse riders and therefore must be considered. This section of the path was not currently recorded on the Definitive Map, therefore section 53(3)(c)(i) applied. In 1995 Mrs Broadbent had 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 highway. 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 was 1975 – 1995.

The route of Public Footpath No.9 at the northern end between points A and B on Plan No.WCA/004 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. Since the development users of the right of way have used the adopted highway to access the start of the footpath at point B.

There was also an anomaly at the southern end of the route. The Definitive Map showed the footpath ending at the parish boundary with Macclesfield – point E on Plan No.WCA/004. The section of Roewood Lane, between points E and F was an unadopted highway therefore the route should continue to point F where it met Ecton Avenue.

The report concluded the historical evidence supported the existence of the route but did not help determine the status of the route. Although the Finance Act Working Plan did support the claim that public rights higher than footpath existed along part of the route.

The user evidence for the claimed route past Close House Farm (points C-H-I-D) was not considered sufficient to meet the legal test as only one person had claimed use on horseback during the relevant period 1967-1987 and they may well have used it with permission during this time. The applicant had stated that horse riders would have used the definitive line if not for the obstruction and overgrown state of the path. However from the Council's correspondence files and photographs of the pole it would seem that the definitive line was obstructed to horse riders from the late 1980s and no evidence indicating an earlier obstruction has come to light. In order to show bridleway rights it must be shown that the route was used as such during the relevant twenty year period. The users who claimed to use the definitive line prior to 1967 then chose to use the alternative route and this was before any obstruction.

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 had claimed she 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 (C-G-D). None of the witnesses claim to have been challenged on the alternative path and Mrs Broadbent has admitted that horse riders used this path. The user evidence for the alternative path and the remainder of the claimed route was considered sufficient to show bridleway rights. It was believed that the landowner had not negated the presumed dedication of this route.

It was concluded that there was insufficient historical and user evidence to support the existence of bridleway rights along the route C-H-I-D and on the balance of probabilities the requirements of section 53(3)(c)(ii) had not been met and it was recommended that this section remain as Public Footpath on the Definitive Map and Statement.

For sections B-C and D-J-E of the route it was considered that there was sufficient user evidence to support the existence of bridleway rights and on the balance of probabilities the requirements of section 53(3)(c)(ii) had been met. It was therefore recommended that the Definitive Map and Statement be modified to upgrade these sections from a Public Footpath to a Public Bridleway.

For sections C-G-D and E-F of the route it was considered that there was sufficient evidence to support the existence of bridleway rights and that on the balance of probabilities the requirements of section 53(3)(c)(i) had been met. It was recommended that the Definitive Map and Statement be modified to add these sections as a Public Bridleway.

The report concluded that section A-B was not needed for public use as an alternative access was available and recommended that this section be extinguished under section 118 of the Highways Act 1980.

The Committee considered the comments made by Mr Spoors, the historical and user evidence outlined in the report and the Definitive Map Officer's conclusions and by majority:

RESOLVED: That

- (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 No.WCA/004, be refused on the grounds that there is insufficient evidence to show the existence of Public Bridleway rights.
- (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 shown between points B-C and D-J-E, as shown on Plan No.WCA/004.
- (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 shown between points C-G-D and E-F, as shown on Plan No.WCA/004.
- (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 No.WCA/004, on the grounds that it is not needed for public use.
- (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 powers conferred on the Council by the said Acts.

- (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.

16 WILDLIFE & COUNTRYSIDE ACT 1981 - PART III, SECTION 53: INVESTIGATION INTO THE ALIGNMENT OF PUBLIC FOOTPATH N O. 12, PARISH OF HOUGH.

The Committee received a report which detailed an investigation into the alignment of Public Footpath No.12 in the parish of Hough.

Section 53 of the Wildlife and Countryside Act 1981 placed a duty on the Borough Council to keep the Definitive Map and Statement under continuous review. Section 53(3)(c) allowed for an authority to act on the discovery of evidence that suggested that the Definitive Map needed to be amended.

An investigation had been carried out into the alignment of Public Footpath No.12 in the parish of Hough as a result of a query by the landowner of a field where part of the footpath ran. As part of an enforcement procedure the landowner had questioned whether the footpath actually ran on their land as there were discrepancies between the Definitive Map and the early stages of the Definitive Map process.

The contention over the existence and exact route of the footpath had been simmering for many years, with path users experiencing problems since the mid 1980s. In 1986 planning permission, which 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, which made enforcement to remove the obstruction complicated.

In 1994 research was undertaken into this anomaly and a modification order was made and confirmed which recorded an additional length of path - number 12A, linking footpath 12 to Birch Lane adjacent to Hollies Farm. In 1995 the landowner had inquired about diverting Footpath No.12. However negative comments were received from consultation undertaken and works order was issued to re-open the path by the installation of three stiles, signage and waymarking.

Further problems were reported in 1996 and 1997 about the route not being clearly marked as the existing waymarking was on the wrong side of the hedge. Further waymarking work was issued and on inspection the path was usable. In 1999 there was another complaint about a locked gate and a fence obstructing the footpath. When inspected by the maintenance officer the path was found to be available. At a meeting with

the Public Path Officer the discrepancies between the route shown on the Definitive Map and available on the ground were discussed. They referred to part of the path that ran along the access drive to Yew Tree Farm and then crosses the boundary into the adjacent field. The Definitive Map showed the path continuing on the Yew Tree Farm side of the boundary and not entering that particular field at all. This matter was looked into by the Public Path Officer with reference to internal documents that formed the process of compiling the Definitive map in the 1950s and they wrote to say that the preliminary documents recorded the path in their field and that the Definitive Map was in error.

In successive years problems have been reported mostly relating to route finding and the need for waymarking. The Maintenance and Enforcement Officer had been to visit the site on many occasions and had come into conflict with the landowners who believed that the path did not run in their field but on the southern, Yew Tree Farm side of the boundary. The latest attempt to enforce the line of the footpath earlier this year had led to the investigation to determine the true line of the path.

Section 53(2)(b) of the Wildlife and Countryside Act 1981 required the Council to keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events. One such event is 53(3)(iii) which was:

“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.”

The relevant evidence in this case was the records produced by the Parish Council and the County Council in the process leading up to the production of the Definitive Map. The first stage of the process was for each parish to survey and record the routes which they believed to be public in their areas. Local user groups also undertook the same process. The maps and descriptions produced were 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.

The walking survey records 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 was the next stage in the process, shows the path slightly slewed to the south and partly to 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.

A local resident, who lived at the Hollies in the 1950s, was interviewed and recalled that the path ran past the Hollies along a cart track but that it did not 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.

The report concluded that the evidence showed that the original intention of the surveys recorded by the Parish Council had evolved and become slightly distorted purely by the map drafting process. There was no administrative history to the alignment changes. This was supported by evidence from a local resident with personal knowledge of the Hollies and the area during the period when the Definitive Map was initially being drawn up.

It was considered that on the balance of probabilities there was sufficient evidence to prove the existence of a public footpath along the route A-B on Plan No.WCA/006 and to prove that no public right of way existed on the line C-D. It was therefore recommended that in line with the requirements of section 53(3)(c)(iii) the Definitive Map and Statement be modified accordingly.

The Committee considered the evidence presented in the report and the concluded that on the balance of probabilities the requirements of section 53(3)(c)(iii) had been met and 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.

RESOLVED: That

- (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) 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 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.

17 LOCAL GOVERNMENT ACT 2000 - SECTION 2: DEED OF DEDICATION FOR NEW PUBLIC FOOTPATHS IN THE PARISH OF GOOSTREY

The Committee received a report which detailed a proposal to create two public footpaths to establish a public right of way connection between Goostrey Village and the existing rights of way network.

Under Section 2 of the Local Government Act 2000, a local authority had the power to do anything to improve the economic, social or environmental wellbeing for their area. In accordance with this power, the Council may enter into a Deed of Dedication to create a public right of way.

The Goostrey Footpaths Group had for a number of years sought to establish footpath connections from the existing permissive path in Galey Wood, to the north of the village, to Restricted Byway No.11 known as Appleton's Lane. This aspiration was registered during public consultation for the Cheshire East Rights of Way Improvement Plan – reference W64.

Agreement had been reached with the landowner – Cheshire Farms Service, to create a new public footpath and the designation of a currently permissive footpath as a public footpath. The proposed route was detailed on Plan No.LGA/001.

RESOLVED:

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.

18 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

The Committee considered a report which detailed a proposal to upgrade Public Footpath No.10 Pickmere and Public Footpath No.9 Aston by Budworth to Public Bridleway by a Creation Agreement, Deed of Dedication and a Creation Order.

Under Section 2 of the Local Government Act 2000, a local authority had the power to do anything to improve the economic, social or environmental wellbeing for their area. In accordance with this power, the Council may enter into a Deed of Dedication to create a public right of way.

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.

Under section 26(1) of the Highways Act 1980 where it appeared to a local authority that there was 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

If it was 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.

An application had been received in September 2008 to upgrade Public Footpaths No.10 Pickmere and No.9 Aston by Budworth to Public Bridleway. The claim was based on long usage of the footpaths by horse riders. The application was currently number 13 on the Definitive Map Modification Order applications waiting list and it would be a number of years before the application was allocated to an officer to investigate. In view of this it was proposed to proceed with a Creation Agreement, a Deed of Dedication and a Creation Order.

The opportunity to create a Public Bridleway had arisen due to a recent change in the ownership of Walthall Farm. Public Footpath No.9 Aston by Budworth ran over the land of this farm. Walthall Farm had previously been a County Farm, which was sold in November 2010. A condition was placed in the sale particulars that the buyer must enter into a Creation Agreement under section 25 of the Highways Act 1980 to dedicate the section of Public Footpath No.9 Aston by Budworth which ran on their land as a bridleway.

The remainder of Public Footpath No.9 Aston by Budworth ran on Council owned land and this could be dedicated as a public bridleway in a Deed of Dedication under section 2 of the Local Government Act 2000.

However, the land over which the southern section of the proposed route – Public Footpath No.10 Pickmere ran was unregistered. Attempts had been made to discover the landowner for this section of the route; notices were erected on site for 28 days and both adjacent landowners were contacted but no landowner had been forthcoming. It was therefore proposed to make a Creation Order for this section of the route using the provisions of section 26 of the Highways Act 1980.

The Committee noted that no objections had been received from the informal consultation. The need for a bridleway had been demonstrated by the application to upgrade the path. Upgrading the footpaths to public bridleway would provide a safe and convenient route for horse riders and create a link and a circular route. The proposal would give clarity to users

and allow them to proceed with ease and certainty and avoid the need to trespass against the landowners.

RESOLVED: That

- (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) 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.
- (3) An Order be made under Section 26 of the Highways Act 1980, as amended by 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.
- (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.
- (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.

19 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PART OF PUBLIC FOOTPATH NO. 28 IN THE PARISH OF SANDBACH

The Committee received a report which detailed an application from Mr Ian Whitter of Brook Farm, Wheelock, Sandbach, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.28 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 applicant owned the land up to the field boundary at point F on Plan No.HA/068 amended. Mr D Witter owned the land over which the section of the footpath and the proposed diversion ran between point F and G on

Plan No.HA/068 amended and had provided written consent and support for the proposal.

Part of the definitive line of Public Footpath No.28 Sandbach had been unavailable for a number of years and an unofficial diversion had been in place. Whilst the unofficial route was not recorded it was thought that it was put in place by Cheshire County Council in order to provide a useable route on the ground for the public after unsuccessful negotiations with the previous landowner at that time.

It was proposed to divert three sections of the footpath. The first section to be diverted ran through the yard at Brook Farm. 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 farm machinery. It would also allow the applicant to improve the privacy and security of their property.

The second and third sections to be diverted ran across fields which were currently used for crops and had been unavailable on the ground for a number of years. The proposed diversion would run across land to the north of the fields following the field boundary and be on permanent grassland. Moving the legal line out of the fields would allow the landowner greater freedom in utilising the land and would also provide a more easily accessible route for users as only two gates would be required on this section, whereas seven were required on the existing legal line.

The Ramblers Association had raised concerns about this section of proposed diversion as it was initially proposed to move the paths slightly further north and onto lower ground. They were concerned that the route would be unsuitable for walkers during the winter months. As a result the proposal was amended to move the proposed path onto higher ground - points D-E and points F-G on Plan No.HA/068 amended.

The Committee noted that no objections had been received from the second informal consultations and considered that the proposed route would not be substantially less convenient than the existing route. The diversion would provide a more accessible route for walkers as less path furniture would be required. In addition enhanced views of the surrounding countryside would also provide a benefit to users. Moving the footpath out of the farmyard would provide improved privacy and security for the landowner at Brook Farm. Moving the footpaths out of the fields would allow both landowners greater freedom in utilising the land. It was therefore considered that the proposed routes would be a satisfactory alternative to the current ones 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.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 landowner.

- (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.

20 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 13 (PART), PARISH OF WARMINGHAM

The Committee received a report which detailed an application 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, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.13 in the parish of Warmingham.

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 land over which the current path and the proposed diversion ran belonged to TATA Chemicals Europe Ltd. The section of Public Footpath No.13 Warmingham to be diverted ran through a farmyard where it was obstructed by a building and then it ran across a pasture field which was 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 which would be better underfoot and more convenient. The new route would be 2m wide, not be enclosed and would have two kissing gates and a sleeper bridge would be installed. The new route would be more enjoyable for users as it would reduce the need to pass through a yard busy with large livestock and plant/vehicular machinery. Be more convenient since it would not be obstructed and would have a more even surface.

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. Diverting the footpath would enable better land and stock management; safer control of operational machinery and vehicles in a busy farmyard; improve the

privacy and security of property in the farmyard and resolve the issue of the current obstruction by a building in the farmyard. 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.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 to do so 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.

21 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 19 (PART), PARISH OF BUNBURY

The Committee received a report which detailed an application from Mr & Mrs Stubbs of Greenacres, Wyche Lane, Bunbury, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.19 in the parish of Bunbury.

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 the owner, lessee or occupier of the land crossed by the path.

The land over which the current path and the proposed diversion ran belonged to Mr & Mrs Stubbs. The section of Public Footpath No19 Bunbury to be diverted ran through the property of the applicants giving rise to concerns relating to privacy and security. Furthermore the current path alignment through the property was obstructed by a building. Diverting the footpath out of the property would offer improved privacy and security whilst resolving the alignment issue.

The proposed new route (D-C on Plan No.HA/073) would follow a current permissive path that ran between the two properties 'Greenacres' and 'Lynton'. The new route had a width of 1.7 metres and was enclosed. 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.

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. Diverting the footpath would offer improved privacy and security to the applicants' property and resolve the outstanding obstruction issue. 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.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) 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.

22 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATHNO. 9 (PART), PARISH OF RIDLEY

The Committee received a report which detailed an application from Mr Robert Latham, Ridley Bank Farm, Wrexham Road, Tarporley, requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.9 in the parish of Ridley.

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 granted to the applicant in May 21012 (Planning Permission Ref: 12/1235N) for the erection of a cattle shed at

Ridley Bank Farm and the existing alignment of Public Footpath No.9 Ridley would be affected by the construction of the cattle shed.

The proposed route was approximately 407 metres long and would take users away from the cattle shed whilst allowing them to follow a distinct boundary hedge before crossing a pasture field to meet the current footpath in the south west field corner – as shown on Plan No.TCPA/011.

The Committee noted that no objections has been received from the informal consultations and concluded that it was necessary to divert part of Public Footpath No.9 Ridley to allow the 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.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) 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.

23 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 5 (PART), PARISH OF ODD RODE

The Committee received a report which detailed an application from Mr Geoffrey Harvey of 14 Salop Place, Kidsgrove, Stoke on Trent, requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.5 in the parish of Odd Rode.

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 granted to the applicant in February 21012 (Planning Permission Ref: 11/4517C) for the development of a detached

dwelling at Higher Bank Farm, 54 Scholar Bank, Scholar Green. The existing alignment of Public Footpath No.5 Odd Rode would be affected by the construction of the new dwelling.

Part of the current line of the footpath at Higher Bank Farm was unavailable at several points due to demolition remains and an obstructing building. The planned development would result in the path being further obstructed. Therefore the footpath diversion was required to resolve these issues by providing a public access between the building for which planning consent had been granted and a further building that was intended in the future. The length of the footpath to be diverted was approximately 68 metres.

The Committee noted that no objections has been received from the informal consultations and concluded that it was necessary to divert part of Public Footpath No.5 Odd Rode to allow the 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.

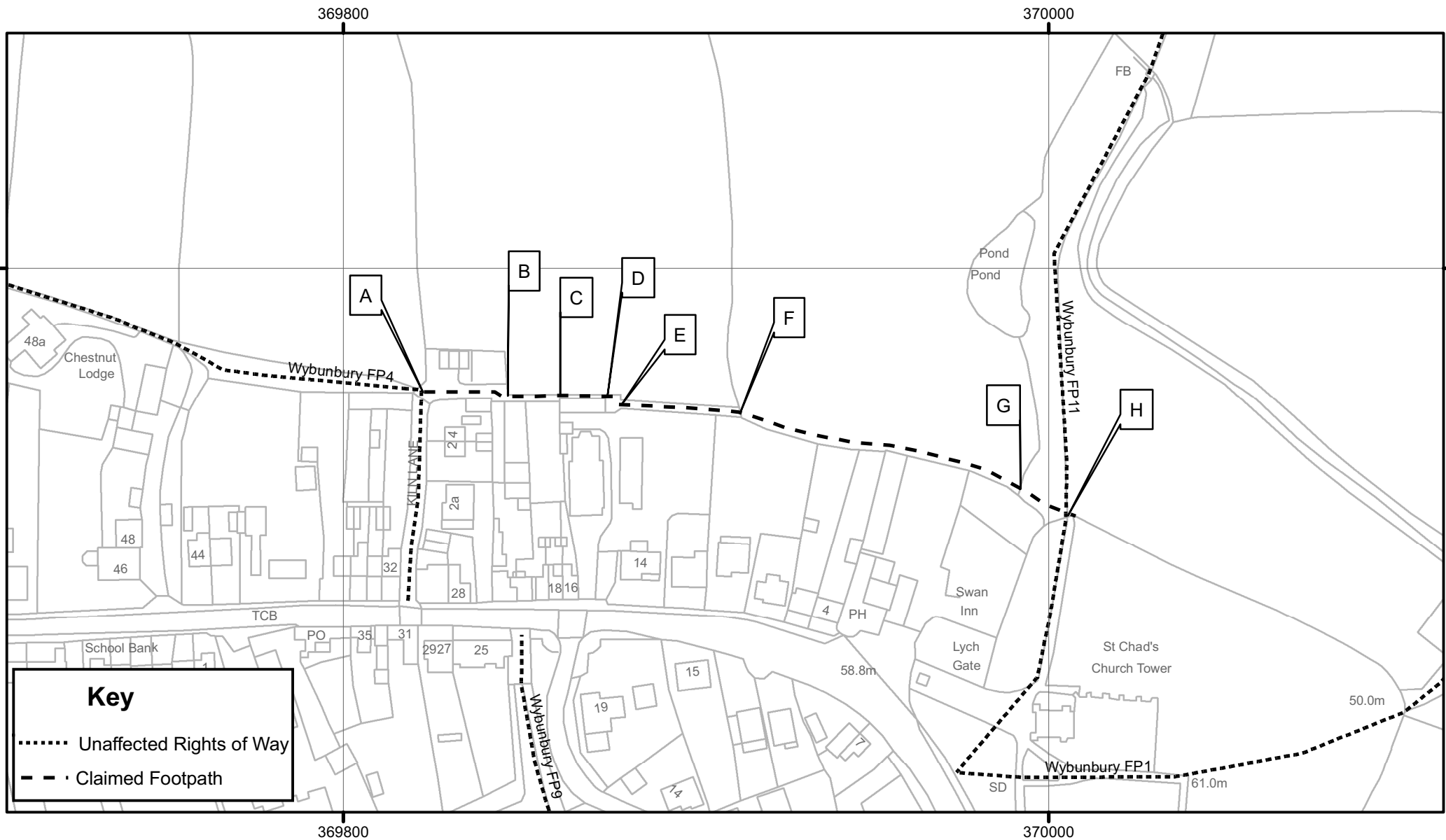
RESOLVED: That

- (1) An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.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) 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 4.10 pm

Councillor J Wray (Chairman)

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1:1,500

Claimed Public Footpath between FP4 and FP11 Wybunbury

Plan No.
WCA/005

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: 17 December 2012
Report of: Greenspaces Manager
Subject/Title: WILDLIFE AND COUNTRYSIDE ACT 1981 –
PART III, SECTION 53. Application No. CN/7/26:
Application for the Addition of a Public Footpath Between
Public Footpath No. 4 and Public Footpath No. 11, Parish of
Wybunbury

1.0 Report Summary

- 1.1 The report outlines the investigation of an application made by Mr K Billington of Main Road, Wybunbury for the addition of a public footpath to the Definitive Map and Statement. 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 add the route as a public footpath.

2.0 Recommendation

- 2.1 An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding as a Public Footpath, the route as shown between points A-B-C-D-E-F-G-H on plan number WCA/005;
- 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 The evidence in support of this claim must show, on the balance of probabilities that public footpath rights subsist or are reasonably alleged to subsist along the claimed route. It is considered that there is sufficient user evidence to support the existence of public footpath rights along the route A-B-C-D-E-F-G-H on plan no. WCA/005. On the balance of probabilities, 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 show the route as a Public Footpath.

4.0 Wards Affected

4.1 Wybunbury.

5.0 Local Ward Members

5.1 Councillor Janet Clowes

**6.0 Policy Implications including - Carbon Reduction
- Health**

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 May 2007 by Mr K Billington to modify the Definitive Map and Statement for the parish of Wybunbury by adding a currently unrecorded route as a Public Footpath. The route applied for runs from public footpath no.4 in the parish of Wybunbury at the junction with Kiln Lane (point A on plan no. WCA/005), and runs in an easterly direction to join public footpath no.11 Wybunbury. Plan No. WCA/005 shows the route applied for between points A-B-C-D-E-F-G-H (OS Grid References SJ 6982 4996 to SJ 7000 4993). The application is based on user evidence; a total of 31 user evidence forms were submitted with the application.

10.2 Description of the Claimed Footpath

10.2.1 The claimed route commences at the northern end of the unadopted road known as 'Kiln Lane' which is also public footpath no.4 Wybunbury (point A on

plan no. WCA/005). It runs in an easterly direction to the front of garages. At point B the route runs between two wooden posts to the side of a field gate. The route narrows and runs to the back of properties which have frontages on Main Road. The narrow path runs between a fence which marks the property boundary and a post and wire fence on the field side. At point C on plan no. WCA/005 the path is currently blocked by a wooden pallet and between points C and D there is scaffolding to the side of a derelict barn. The claimed path runs along this narrow strip between the side of the barn and the post and wire fence. Between points E and F on plan no. WCA/005 the path previously ran between two hedges. The southern hedge between the path and the garden of no.14 Main Road has now been removed. There is a fence on the northern boundary and part of the hedge remains. At point F on plan no. WCA/005 there is a wooden stile. The path then enters land owned by Natural England; it follows the grass field edge to point G. There is currently a barbed wire fence at point G; witnesses have stated that originally there was no boundary at this point. The path then continues to join public footpath no. 11 Wybunbury at point H on plan no. WCA/005.

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 (section 53(3)(c)(i)) requires modification of the map by the addition of a right of way.

“(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...;

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 or are reasonably alleged to subsist. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.

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 either the date the route was blocked, or the date on which the application was made could be used as the date the way is ‘brought into question’. However during the course of the investigation Mrs Colbert, the owner of The Hollies (no.14 Main Road), has provided copies of her late husband’s diary entries. The diary entries show dates when he closed the footpath for various reasons. The earliest date is 31st December 1990 when it is stated the footpath was “closed all day”. It is believed the date of 1990 should be used as the date the route was ‘brought into question’; therefore the relevant twenty year period to be considered for the user evidence is 1970 to 1990.
- 10.3.5 In this case there is evidence of use on foot prior to 1970 and subsequent to 1990; 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 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. It would appear from the user evidence that this route has been in place and used by the public for many years. The previous owner of The Hollies was Mr Stanley Robinson he was born there in 1926 and lived there until he sold it to Mr and Mrs Colbert in 1986. He has been interviewed by Officers and it is clear from his statement that he regarded it as a right of way, and use of the route was accepted by the public. The remaining land between points F and H on plan no. WCA/005 was previously owned by The Church Commissioners, therefore it maybe more difficult to prove common law dedication for this section, although for as long as any witness can remember there has always been a stile at point F.

10.4 *Consultations*

10.4.1 Consultation letters were sent to the Ward Member; Wybunbury Parish Council; User Groups/Organisations and the landowners.

10.4.2 The local member Councillor Janet Clowes makes the following comments:

“This historic PROW around the Wybunbury Moss is a much-loved and valued village resource, and the loss of access on a short part of the path several years ago has given rise to a groundswell of public concern from local residents who have been campaigning throughout this period to have the path reinstated.

The path provides a circular route around the Moss and intersects with other well-established definitive PROW giving access to the wider local countryside. Local residents (including four generations of one local family, and a previous owner of part of the land involved) all testify to a regular historic and contemporary use of the path, and historic documentary evidence confirms this.

The circular path is primarily level with only moderate gradients for walkers at the Moss Lane end thus making it an attractive and accessible path for older residents as well as younger, fitter users. It also provides an accessible route for residents from the Stock Lane and Dig Lane area to the West of the Village to all village facilities (Post Office, Church, Public Houses, and School) enabling pedestrians to avoid sections of the highway where there are either no footpaths, or very narrow paths through the oldest part of the village (by Kiln Lane and the Post Office).

The restoration of this section will reinstate the integrity of the path and enable residents to enjoy once again, the valued amenity of this route.”

10.4.3 There has been no response from Wybunbury Parish Council.

10.4.4 Scottish Power responded to the consultation and confirmed they have no objection to the application.

- 10.4.5 The only user group to respond to the consultation was The Mid Cheshire Footpath Society, their representative Bernard Cook stated that members say this path had been used regularly by groups of at least 10 people until it was blocked off. He stated there had always been a stile at point F (on plan no. WCA/005).
- 10.4.6 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) or designated landscape. Natural England have also been consulted as landowners, they own the land between points F-G-H on plan no. WCA/005. Officers have been in contact with Rupert Randall, Reserve Manager for Wybunbury Moss; he has no objection to the path and states he is happy to link it up to the 'Tower Path' (FP11 Wybunbury). He has stated Natural England would like to fence off the footpath between points F and G on plan no. WCA/005, this would avoid problems with dogs running after the cattle that they graze on the field.
- 10.4.7 Officers met with Mrs Colbert of The Hollies 14 Main Road on 17th July 2012. She moved to the property with her late husband in 1987. Mrs Colbert owns the plot of no.14 which includes the house, converted dairy barn and the derelict barn at the rear of the garden; she also owns the field to the back of her property (to the north of the claimed route). The claimed route itself between points A and F on plan no. WCA/005 is not registered with the land registry. Mrs Colbert showed Officers some of her husband's diaries where he had noted days when he had closed the footpath. Mrs Colbert showed Officers the barn at the end of her garden, adjacent to which is the claimed route. She stated that the barn has been in an unstable state since 2007 when scaffolding was erected to the side of the barn to repair the roof. Mr Colbert then blocked off the route and put up signs warning of the danger and advising that the path was closed. It was this action that prompted this application as it was discovered that the path was not recorded on the Definitive Map.
- 10.4.8 Mrs Colbert has also submitted written comments on the application dated 26th September 2012. She states that descendants of the Wainwright family who built The Hollies have said that the path was an access route to the rear of the property and the orchard. Originally land belonging to The Hollies extended east to include the plot which is now house number 10. She states that the building to the rear of number 14 was originally 'the dairy' and that there would not have been numerous people walking through this area. She also comments that in the adjacent field (between points F and G on plan no. WCA/005) the land is steep, was a dumping ground for rubbish and was affected by seepage from the inadequate drainage system from The Swan. She states people were not likely to use it as a short-cut to church on a Sunday. Mrs Colbert also states that over the last 20 years the path was closed on a number of occasions at different times of year and for different lengths of time.

- 10.4.9 Further to her comment regarding the various closures of the path, on 3rd November 2012 Mrs Colbert submitted copies of her husband's diary entries, there are four references to the footpath. On the 31st December 1990 it states "Repaired barbed wire closed footpath all day". On the 12/13th January 1996 it states "Hedges- closed footpath". On the 7th August 2000 it states "New gates fitted at Hollies. Blocked footpath". On the 14/15th January 2006 it states "Tiles fell off roof of barn closed footpath".
- 10.4.10 Mr Rick Carter of 10 Main Road, Wybunbury has made comments on the application in relation to safety issues. He has lived at this address for about two and a half years. He has said there is a gate at the bottom of his garden which opens onto the proposed footpath, he believes this would be a safety issue and if this became a public footpath he would not be happy to let his child play in the garden. He has also made reference to a pond on land belonging to Natural England, he believes it is a hazard and needs fencing off. He also states no one has walked the claimed route, he believes people have walked a different route diagonally across Mrs Colbert's field which is nearer to the moss. Members are reminded that issues such as safety are not relevant to the decision in this case.
- 10.4.11 Officers have interviewed Mr Peter Allcock of 24 Main Road in relation to his use of the claimed path. Mr Allcock's garden borders the claimed route at point B on plan no. WCA/005; he also owns the square piece of land next to the garages. Mr Allcock has lived in the village since the early 1950's and he has regarded the route as public and personally used it on foot since that time.

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 31 witnesses. 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 (where available) have been consulted; details of all the evidence taken into consideration can be found 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 The following County maps were consulted; Burdett's Map (1777); Greenwood's Map (1819); Swire and Hutching's Map (1830) and Bryant's Map (1831). None of these maps show the claimed route but they are at a small scale which would be difficult to show the route.

Wybunbury Tithe Map and Apportionment 1846

- 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 Wybunbury Tithe Map shows Kiln Lane (Public Footpath no.4) and the garage area the same as the other public highways. It is not given a plot number and does not appear in the apportionment, which would indicate public status. The remainder of the route is not indicated on the map; however it may have existed at the time but did not affect the tithe charge.

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.

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

- 10.6.6 The 6" 1st edition shows Kiln Lane as a route between solid boundaries and in the same way it depicts a continuation of the route as far as point C on plan no. WCA/005. After this point it is difficult to see because of the annotations used on the map, but the rest of the route does not appear to be shown. The 6" 2nd edition shows this first section of the claimed route in the same way but then it clearly shows a continuation from point C through to point H as a single dashed line. By the third edition the dashed line has been removed and the route is shown the same as the first edition.

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

- 10.6.7 The 25" 1st edition shows the route more clearly, Kiln Lane and the claimed route between points A and B (on plan no. WCA/005) are shown between solid boundaries. The remainder of the route between points B and H is shown as a double dashed line, it does not appear to 'dog-leg' as shown between points D and E on plan no. WCA/005, but instead continues in a straight line. The dashed line is braced to be included within plots 266 and 289, both of which are described as 'Arable &c' in the book of reference which accompanies the 25" first edition.
- 10.6.8 The 25" 2nd edition shows the claimed route as it is shown on plan no. WCA/005, between solid boundaries from point A to F. There is also a single dashed line shown between point E and F, but this line is to the north side of the boundary, within the field. Between point F and H the claimed route is shown as a double dashed line.
- 10.6.9 The 25" 3rd edition again shows the route between solid boundaries from point A to F. However on this edition there are no dashed lines as on the second edition map, so the route appears to end at point F on plan no. WCA/005.

National Parks and Access to the Countryside Act 1949

- 10.6.10 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. The Wybunbury Parish Survey was completed by G. Holroyd and H. Farr in May 1951. The claimed footpath appears to be described in the schedule as commencing at 'North west side of church' and terminates at 'Wybunbury Road adjacent to Annions Lane'. It is described as part of a longer route including what became footpath no.4. Under the general description and condition of the path it is stated, "Between S1 and S4 path runs at the rear of village houses with fields on the other side. Between these points path appears to be used quite a lot...". This appears to be referring to the claimed route, is not known why this part of the route was then omitted from the draft definitive map. There is a note on the schedule which appears to have been made by an Officer at the time which states, "Check point of commencement".

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 2**. A total of thirty-one user evidence forms were submitted all claiming use of the route on foot. Officers have interviewed twelve of the witnesses, a separate chart showing their use is attached as **Appendix 3**.
- 10.7.2 Use of the route ranges from 1944 until the route was blocked in 2006/7. Mr Webster originally indicated on his user evidence form use from the year he was born 1936, Mr Webster was interviewed by Officers therefore his use on

Appendix 3 is shown from 1946 when Mr Webster was 10 years old. The frequency of use varies between daily, weekly and occasionally. The majority of the use appears to be for recreation/pleasure, exercise or as a dog walk; some witnesses mention that they used it as part of a circular walk around Wybunbury Moss.

- 10.7.3 From the information on the user evidence forms 21 witnesses state use of the claimed route on foot in excess of 20 years; 6 state use for less than 20 years and 4 have not completed the duration of their use. As stated above in paragraph 10.3.4 the relevant twenty year period to be considered is 1970-1990. A total of 14 witnesses have stated use of the claimed route for the full twenty year period; 6 witnesses have used the route for part of this period. There is also evidence of use before and after this period.
- 10.7.4 Twelve of the 31 witnesses have been interviewed by Officers and have signed statements. Six of the twelve persons interviewed claim use of the route on foot for the full twenty year period, 1970-1990. Five witnesses have stated use for part of this period. One witness states use before and after this period. All of the witnesses described the route in the same way, going past the barn and then between two hedges to the stile at point F on plan no. WCA/005; then along the field edge to join with the other footpath. None of the witnesses interviewed have been stopped or challenged when walking this path. Some have stated on occasions they spoke to Mr or Mrs Colbert and neither stopped them from walking past. There is no evidence of any notices on the route other than when Mr Colbert closed the path in 2006/7; some witnesses mentioned a notice advising that the path was closed. All of the witnesses also said they did not have permission to use the route, they just assumed it was a public path.
- 10.7.5 Officers have interviewed Mr Stanley Robinson the former owner of The Hollies 14 Main Road. Mr Robinson was born at The Hollies in 1926 and lived and worked there until he sold it to Mr and Mrs Colbert in 1986. He has stated that during his time there he would see lots of people using the footpath, neither he nor his father ever stopped anyone from using it, in fact they encouraged people to use the path rather than cut across the field. He stated that there has always been a stile on the route as long as he can remember.
- 10.8 *Conclusion*
- 10.8.1 It would appear that at least the first part of the claimed route existed in 1846 as shown on the Wybunbury Tithe Map. The entire claimed route is shown on the 1st and 2nd editions of the 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. The Parish Walking Survey dated 1951 describes the route in the schedule and stated that it appeared to be well used; it is therefore surprising that the route was not included in the Draft Definitive Map.

- 10.8.2 The user evidence submitted shows considerable use over a period spanning 60 years. The relevant period to be considered is 1970-1990. Twelve witnesses have been interviewed and six of these claim use of the route for the full twenty year period and a further five for part of this period.
- 10.8.3 Under section 31(1) of the Highways Act 1980 public footpath rights can come into existence by prescription unless there is evidence to the contrary. Therefore the landowner must provide evidence to that effect, which is normally evidence of a challenge or notices put up during the relevant twenty year period. Mrs Colbert has not claimed she or her husband ever challenged anyone seen on the path by their property. None of the witnesses interviewed state they were challenged anywhere on the route. There is no evidence of any notices until the route was blocked in 2006/7. There is no evidence of a challenge of any kind to the public during the relevant period.
- 10.8.4 The evidence in support of this application must show, on the balance of probabilities that public footpath rights subsist or are reasonably alleged to subsist along the claimed route. It is considered that there is sufficient user evidence to support the existence of footpath rights. On the balance of probabilities, 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 the claimed route as a Public Footpath.

11.0 Access to Information

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

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DMMO DOCUMENTARY RESEARCH CHECKLIST

District Crewe & Nantwich	Parish Wybunbury	Route between FP4 & FP11 Wybunbury
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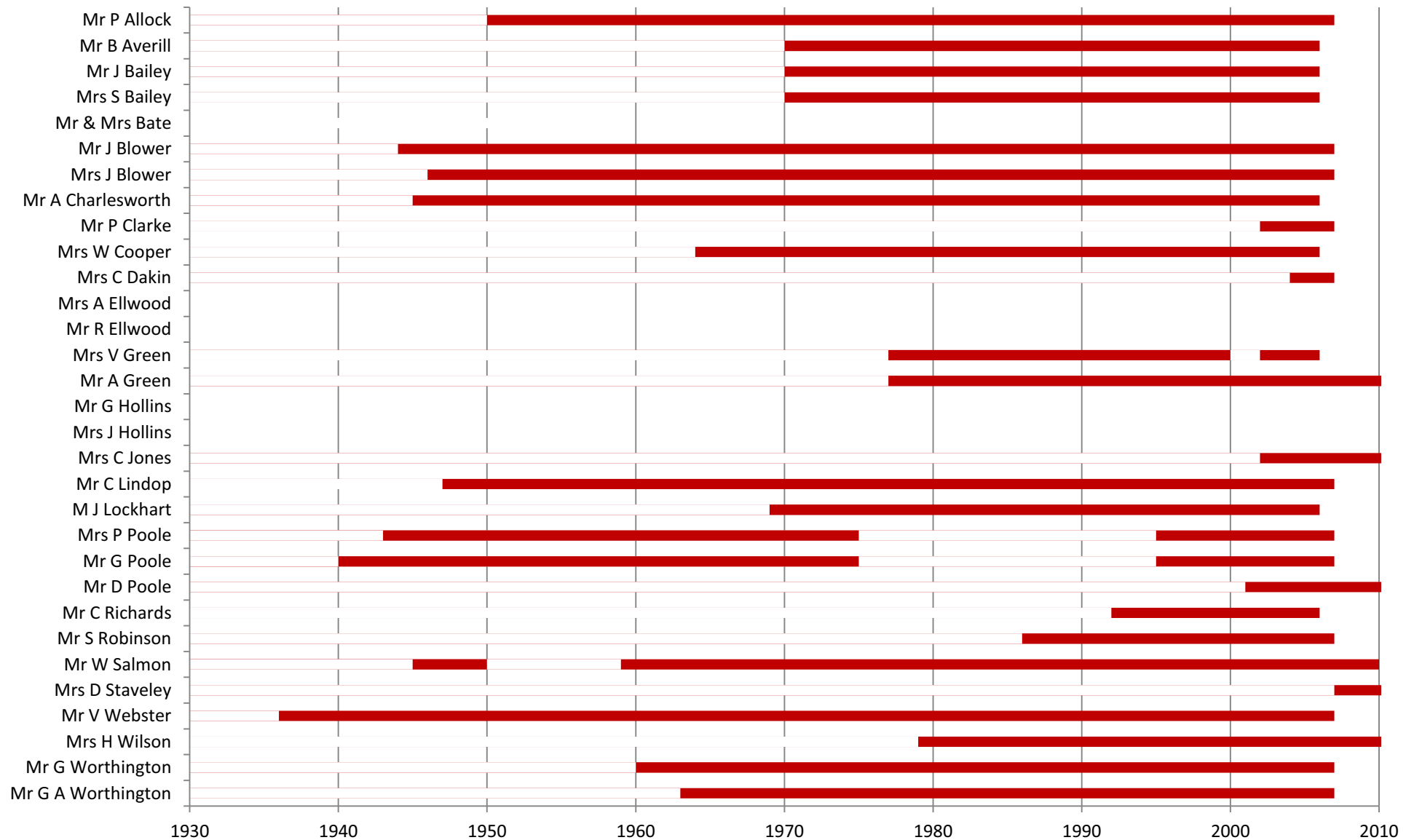
Document	Date	Reference	Notes
<i>County Maps</i>			
Burdett PP	1777	CRO PM12/16	Not shown
Greenwood C	1819	CRO PM13/10	Not shown
Swire and Hutching	1830	CRO PM13/8	Not shown
Bryant A	1831	CRO Searchroom M.5.2	Not shown
<i>Tithe Records</i>			
Apportionment		CRO EDT/446/1 Township: Wybunbury	Not shown
Map	1846	CRO EDT/446/2 Township: Wybunbury	Part shown
<i>Ordnance Survey</i>			
1" First Edn	1830-40	PROW Unit	Not shown
6" First Edn	1872-5	PROW Unit	Part shown
6" 2 nd Ed	c. 1899		Fully shown
6" 3 rd Ed	c. 1911		Part shown
25" County Series 1 st Edition	c. 1871	CRO (map index available) Sheet LX11 3 62 3	Fully shown
25" 2 nd Edition	c. 1896-8		Fully shown
25" 3 rd Edition	c. 1909		Part shown
Book of Reference		CRO/BML	266 & 289 – 'Arable &c'

Appendix 1

Quarter Sessions			
Index	1782-1906	CRO QAR 107	Not mentioned
Index	1907-1955	CRO QAR 108	Not mentioned
Deposited Plans of Public Utilities:			
Railway Plans		CRO QDP/206	'Field & Footpath' Claimed route is outside of limit of deviation
		CRO QDP/194	Out of area
		CRO QDP/261	Claimed route is outside of limit of deviation
		CRO QDP/309	Out of area
		CRO QDP/417	Out of area
		CRO QDP/433	Out of area
		CRO/QDP/520	Out of area
		CRO/QDP/533	Out of area
		CRO/QDP/939	Out of area
Local Authority Records			
Original Parish Surveys	1951	PROW Unit Wybunbury	described in schedule
OTHER DOCUMENTS RESEARCHED/CHECKED			
'Take a wander around Wybunbury' - Cheshire Life August 2008 p168-171			
Finance Act 1910			
Working Sheets		CRO NVB/62/3 2 copies	Both copies – the claimed route does not fall within any marked hereditaments
Parish Records			
Wybunbury Parish Council Minutes			
Not available			

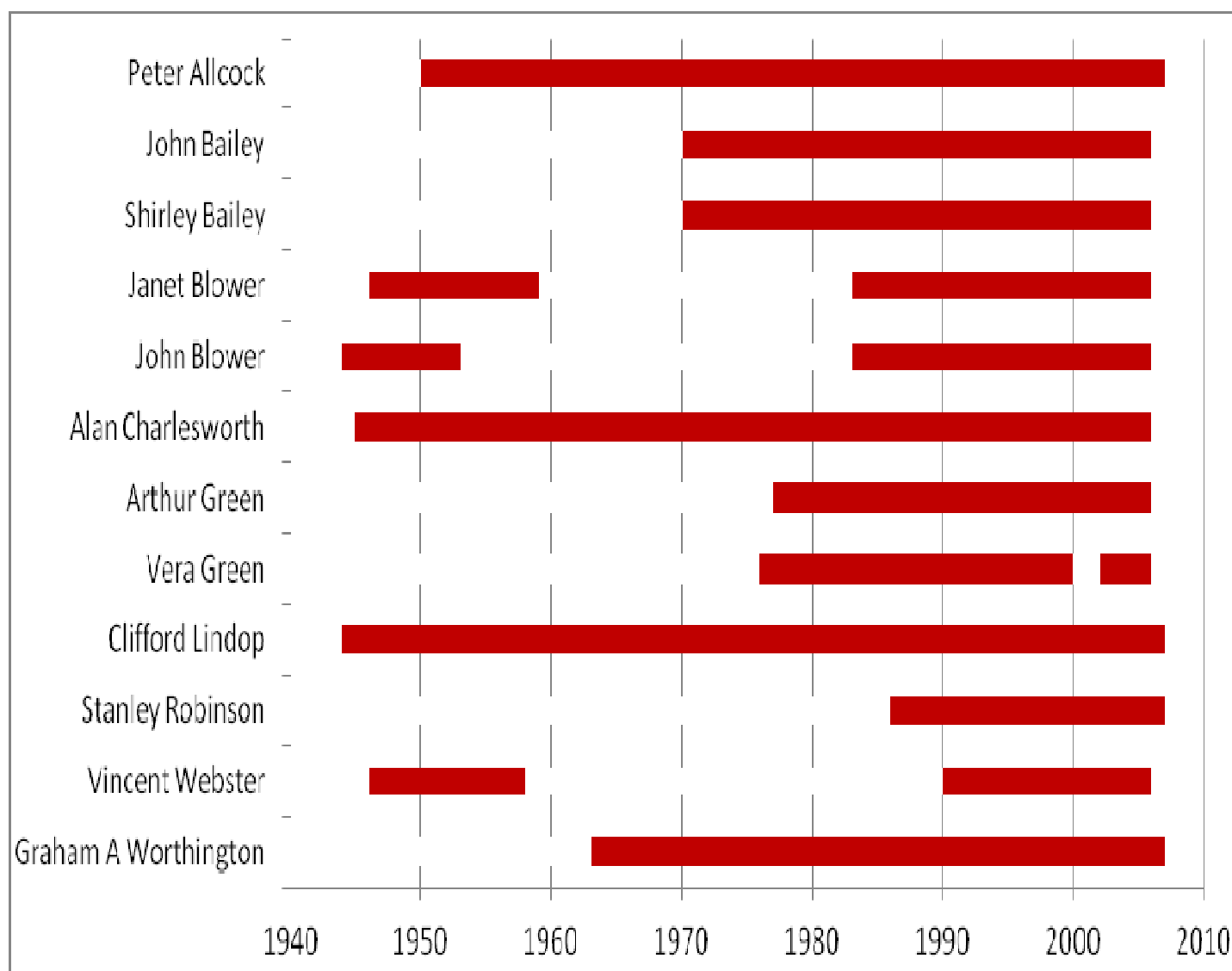
User Evidence Chart - Evidence Forms

Appendix 2



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Appendix 3



Lives adjacent to route and owns land next to garages, used 4-5x per week for pleasure.

Both unsure of exact start date, lived at current address since 1963 so possible use during 1960's, occasional use for pleasure until blocked.

Both used route as children then moved from area, returned to village in 1983 used daily for dog walking until blocked.

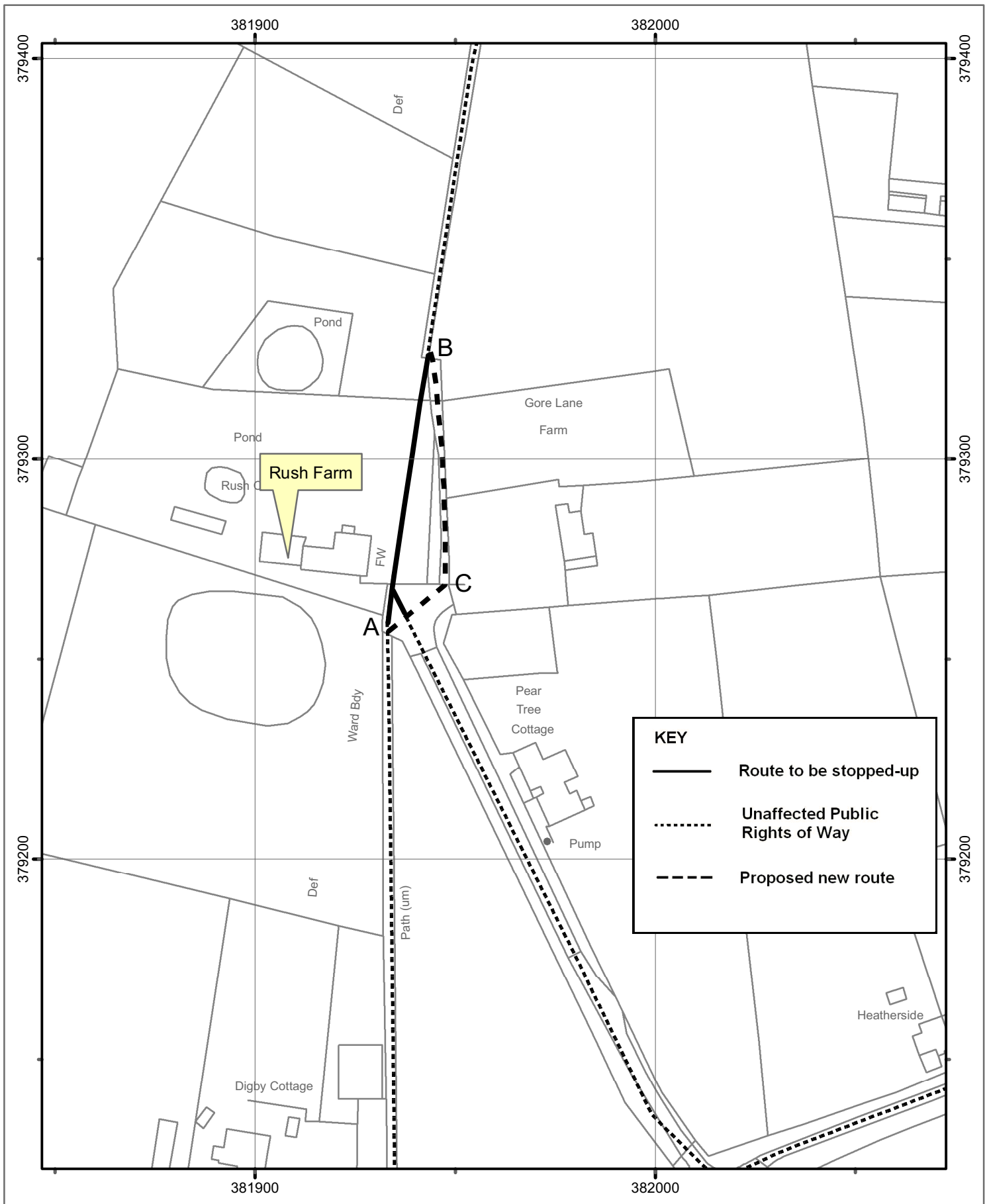
Lived in village all his life, used as child 2-3x per week. As an adult once a week/fortnight, pleasure.

Used monthly, then more often once retired. Mrs Green has break in use when ill. 76-89 daily; 89-00 4-5x per week; 02-06 2-3x per week. Both used for dog walking/pleasure.

Lived in village all his life, used as part of circular dog walk most days for past 60 years. Former owner of The Hollies regarded it as public footpath; used since moving most days dog walk.

Used as a child until '58 then moved, returned to village in early 90's used 2x per month for pleasure

Moved to village when he was 4yrs old, used most days for dog walking, used to get to woods for shooting, sledging down church bank



1:1,250

**Proposed Diversion of Public Footpath
No. 10 (part), Parish of Chorley**

**Plan No.
HA/057**

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



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Cheshire East Council. 100049045 2011.

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 17 December 2012
Report of: Greenspaces Manager
Subject/Title: HIGHWAYS ACT 1980 s.119
Proposed Diversion of Public Footpath No.10 (part)
Parish of Chorley

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.10 in the Parish of Chorley. 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 applied for by the landowners following the discovery that the definitive path ran through the garden of the property and not adjacent to it as was revealed on the local search. 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 & Countryside Act 1981, to divert part of Public Footpath No.10 Chorley as illustrated on Plan No. HA/057 by creating a new section of public footpath and extinguishing the current path 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 and not resolved, 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 An objection was received from Chorley Parish Council to the proposal with regard to a leylandii hedge that borders the proposed route; however this has now been overcome by the landowners agreeing to remove part of the hedge along the narrowest section and take the width to an existing fence set behind the trees, allowing a greater width for the public. The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will be of benefit to the landowner, particularly in terms of privacy and security. It is therefore 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 Wilmslow West and Chorley

5.0 Local Ward Members

5.1 Councillors Wesley Fitzgerald and Gary Barton

6.0 Policy Implications including – Carbon Reduction - 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, cycling and horse riding routes for local residents and visitors alike is aligned with the health and wellbeing objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Health and Wellbeing Service commitment to the Change4Life initiative.

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 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 D Hobbs ('the Agent') on behalf of Mr & Mrs Sarwar ('the Applicant and Landowner') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 10 in the Parish of Chorley.
- 10.2 Public Footpath No. 10 Chorley commences at the Knutsford Road (B5085) at OS grid reference SJ 8198 7873 and runs in a generally northerly and north easterly direction to its junction with Bridleway no. 30 Chorley at OS grid reference SJ 8208 7961. The section of path to be diverted is shown by a solid black line on Plan No. HA/057 running between points A-B. The length of the path to be closed is approximately 68 metres in length. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-C-B.
- 10.3 The existing alignment of the footpath runs directly through the garden of Rush Cottage. This alignment has not been available to the public for many years. An alternative route has been available to the public between the boundary of the garden and the boundary of the adjacent property, Gore Lane Farm. It is this second route that was revealed as the definitive line of the

footpath on a search undertaken with Macclesfield Borough Council when the property was bought. Mr & Mrs Sarwar had been of the belief that this was the correct route until it came to the attention of the Network Management and Enforcement Officer that the definitive line was unavailable.

- 10.4 Mr & Mrs Sarwar feel that to re-open the definitive line would greatly detract from the privacy and security of the property. They also feel that they had the search done in good faith and consequently Cheshire East Council, as successor authority to Macclesfield Borough Council, have undertaken to process this diversion order at no cost to the applicant.
- 10.5 The proposed route for the footpath is approximately 75 metres long and would move the footpath to the route that commences to the south of the property and then runs outside the easterly boundary of the garden and rejoins the original line of the footpath to the north east of the garden boundary at an existing stile. The path runs between boundary hedges and has an earth surface. A stile at the southern end of the route will be removed to leave a gap.
- 10.6 The local Councillors were consulted at the time the original consultation was undertaken in March 2011, however since then the ward boundaries and Councillors have changed. Consequently, Councillor Fitzgerald and Councillor Baron have recently been consulted.
- 10.7 Chorley Parish Council originally objected to the proposal on the grounds that the proposed route was too narrow and bounded on one side by high leylandii trees which encroached onto the path. They considered that the trees needed to be removed to make the proposal acceptable. Lengthy negotiations ensued with the agent and the landowner and several site visits were held however the landowners were very reluctant to remove the trees as they believed it would affect their privacy and security. Eventually a site meeting was held with representatives from the Parish Council to put forward a compromise agreed with the Agent. This involves the removal of a section of the trees at the narrowest point of the path for a length of approximately 22 metres therefore allowing additional width and removing the problem of future encroachment. The Parish Council agreed to withdraw any objection to a forthcoming order on the basis of this agreement.
- 10.8 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.
- 10.9 The user groups have been consulted. The Rambler's Association also expressed concern about the encroachment of the trees but said they wouldn't object to the proposal.
- 10.10 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 easy to use than the existing route.

11.0 Access to Information

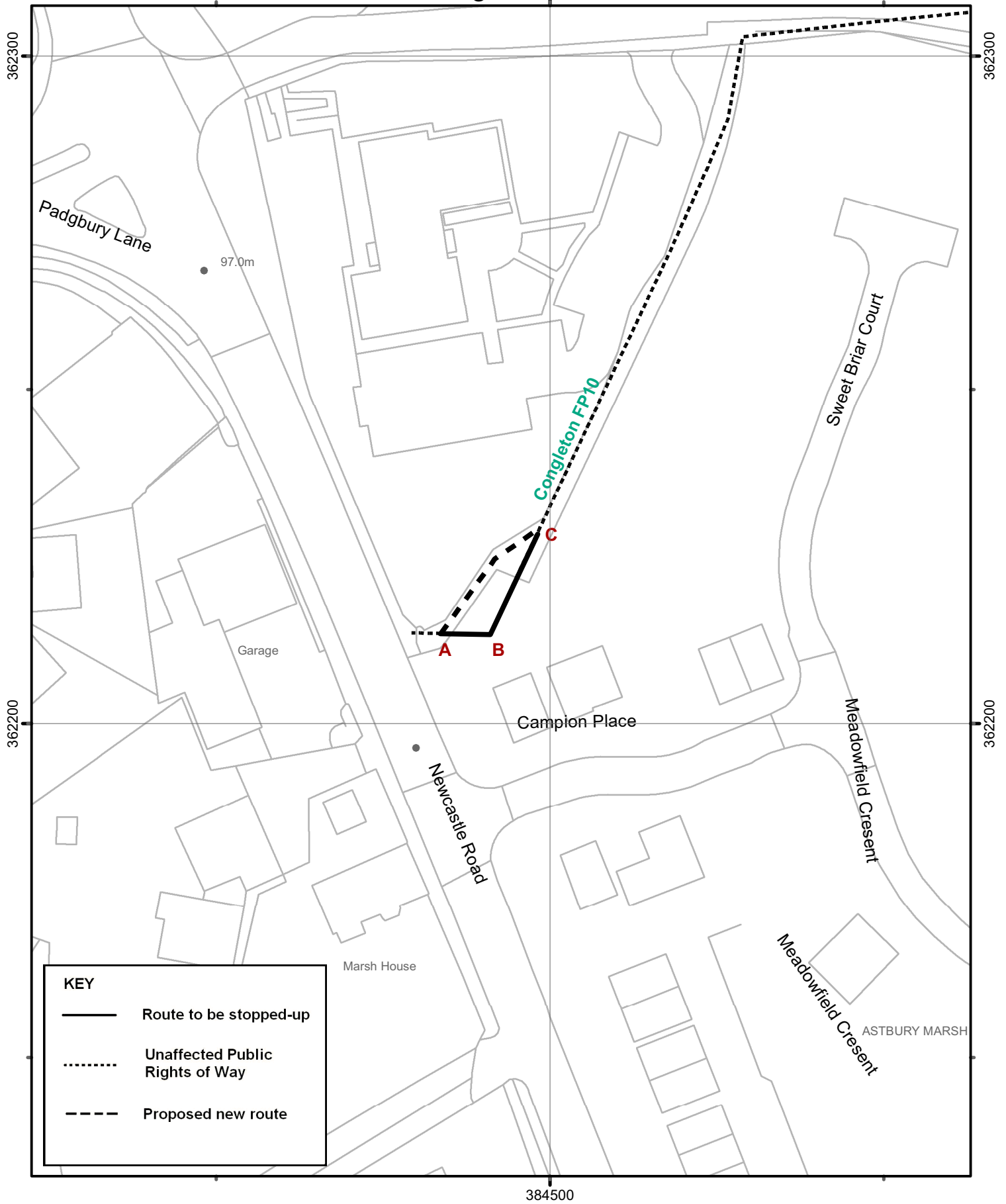
The background papers relating to this report can be inspected by contacting the report writer:

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Designation: Definitive Map Officer

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Highways Act 1980 s119
The Cheshire East Borough Council
(Footpath 10 (part) Parish of Congleton)
Public Path Diversion Order 2012

Plan No.
HA/075



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 17th December 2012
Report of: Public Rights of Way Manager
Subject/Title: Highways Act 1980 s.119
Application for the Diversion of Public Footpath No. 10
(part), Parish of Congleton

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.10 in the Parish of Congleton. 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.10 Congleton by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/075 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 an improvement to the existing route and diverting the footpath will be of considerable benefit to the landowner in terms of providing privacy and security to property. 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 Congleton West

5.0 Local Ward Members

5.1 Councillor Gordon Baxendale, Councillor Roland Domleo and Councillor David Topping.

6.0 Policy Implications including - Climate change - Health

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 Ms S Shaw of Bloor Homes, 2-4 Whiteside Business Park, Station Road, Holmes Chapel, Cheshire, CW4 8AA, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 10 in the Parish of Congleton.
- 10.2 Congleton FP10 consists of two separate footpath sections that are not linked. The section of Public Footpath No. 10, Congleton that would be affected by this diversion commences at its junction with Newcastle Road OS grid reference SJ 8447 6221 and runs in a generally easterly direction for approximately 4 metres and then runs in a generally north, north easterly direction for approximately 97 metres to an unclassified road along which it then runs in a generally easterly direction for approximately 18 metres to terminate at OS grid reference 8447 6221 near Astbury Mere lake. The section of path to be diverted is shown by a solid black line on Plan No. HA/075 between points A-C. The proposed diversion is illustrated on the same plan with a black dashed line between points A-B-C.
- 10.3 The land over which the current path and the proposed diversion run belongs to Bloor Homes. The land over which the proposed diversion runs belongs to the Church of the Latter Day Saints. 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. 10, Congleton to be diverted runs through the gardens of two new residential dwellings on a new Bloor Homes development giving rise to concerns relating to security.
- 10.5 The proposed new route (A-B-C) would follow a current permissive path. Referring to Plan No. HA/075, the new route would start from point A and run in a generally north easterly direction along a semi-surfaced track to terminate after approximately 21 metres at point C. The new route would have a recorded width of 2.5m and would be enclosed.
- 10.6 Ward Councillors have been consulted about the proposal. No comments were received.

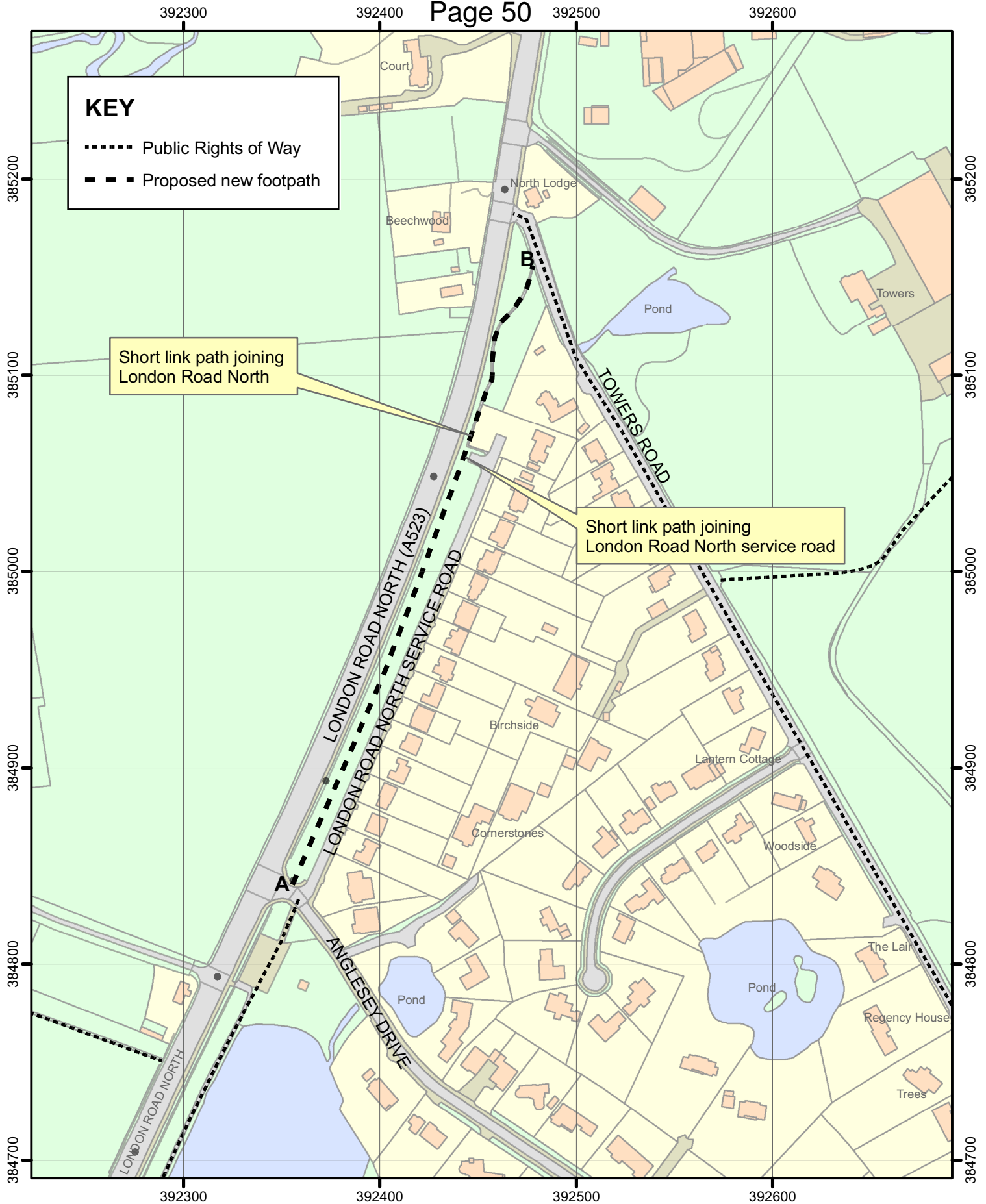
- 10.7 Congleton Town Council members have been consulted and have raised no objection.
- 10.8 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.9 The user groups have been consulted. The Peak and Northern Footpath Society registered no objection. No other comments were received.
- 10.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.11 An assessment in relation to the Equality Act Legislation 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion is an improvement on the old 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: Public Path Orders Officer
Tel No: 01270 686 077
Email: marianne.nixon@cheshireeast.gov.uk
PROW File: 090D/463

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LOCAL GOVERNMENT ACT 2000 S2
Proposed new Public Footpath in the
Parish of Poynton with worth

Plan No.
LGA/002

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: 17 December 2012
Report of: Public Rights of Way Manager
Subject/Title: Local Government Act 2000 Section 2
Deed of Dedication for a New Public Footpath in the Parish of Poynton with Worth.

1.0 Report Summary

- 1.1 An application was received in October 2002 to add a footpath and two short link footpaths in Poynton with Worth to the Definitive Map and Statement. The application is based on long usage of the routes by local residents.
- 1.2 The land over which the proposed footpaths run is owned by Cheshire East Borough Council. Due to the lengthy and costly timescales involved when dealing with Definitive Map Modification applications, it is considered that the most efficient and cost effective way to proceed with this is by means of a Deed of Dedication under the Local Government Act 2000 Section 2.

2.0 Recommendations

- 2.1 A public footpath and two link footpaths be created under Section 2 of the Local Government Act 2000 in a Deed of Dedication, in the Parish of Poynton with Worth, as illustrated between points A to B on Plan No. LGA/002, and that public notice be given of this dedication

3.0 Reasons for Recommendations

- 3.1 Section 2 of the Local Government Act 2000 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.
- 3.2 The requirement for the footpath and the two link footpaths has been demonstrated by the application to add the footpaths to the Definitive Map and Statement. Due to the lengthy and costly timescales involved when dealing with Definitive Map Modification Orders, a deed of dedication is considered the most efficient and cost effective way to proceed with this proposal.
- 3.3 In considering these proposals, regard has to be 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

no adverse effects on the basis that the proposed scheme will be adding a footpath to the Definitive Map which is already in use by the public.

4.0 Wards Affected

- 4.1 Poynton East and Pott Shrigley.

5.0 Local Ward Members

- 5.1 Councillor Howard Murray and Councillor Jos Saunders.

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, cycling and horse riding 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 Some minor clearance works are required on the proposed footpath which will cost approximately £200. Thereafter, any maintenance works required will be resourced by the public rights of way team. The proposed footpaths are not routes which will require regular or extensive maintenance works.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 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 path will become a public footpath and 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.

- 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

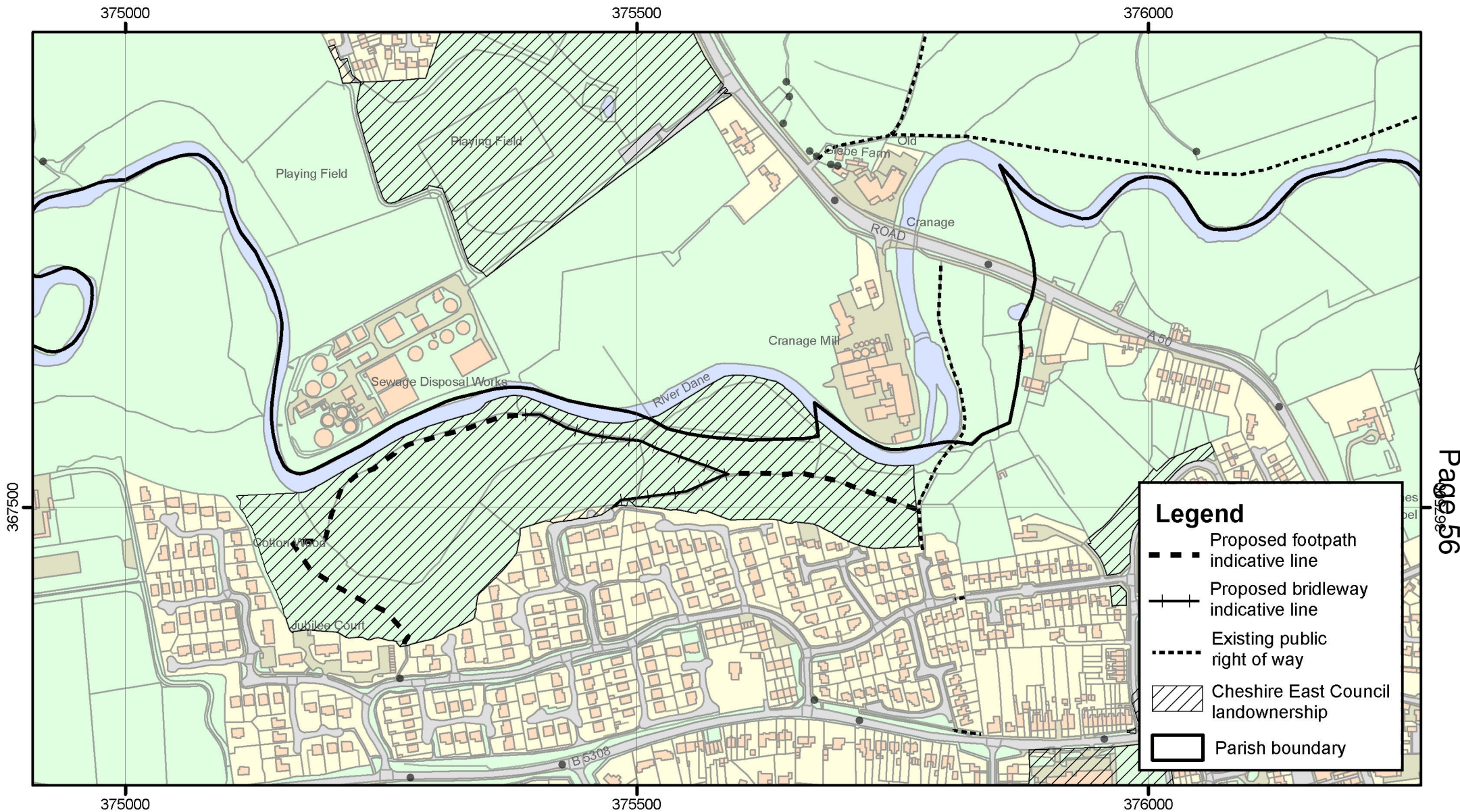
- 10.1 A Definitive Map Modification application was received in October 2002 to add a footpath and two short link footpaths in Poynton with Worth to the Definitive Map and Statement. The application is based on long usage of the routes by local residents.
- 10.2 The land over which the proposed footpaths run is owned by Cheshire East Borough Council. Due to the lengthy and costly timescales involved when dealing with Definitive Map Modification applications, it is considered that the most efficient and cost effective way to proceed with this is by means of a Deed of Dedication under the Local Government Act 2000 Section 2. This means that the footpath and the two link footpaths would be dedicated by Cheshire East Council as public rights of way.
- 10.3 The proposed footpath is approximately 340 metres in length and runs through a small wooded area, linking Anglesey Drive and Towers Road (Poynton-with-Worth FP65), it runs parallel to London Road North (as shown on plan no. LGA/002). There are also two short footpath links joining with London Road North and London Road North Service Road (also indicated on plan no. LGA/002).
- 10.4 The local Councillors have been consulted about the proposal. No comments have been received.
- 10.5 Poynton Town Council has been consulted about the proposal. At the time of writing the report no comments had been received.
- 10.6 The following services in Cheshire East Council have been consulted regarding the proposal: Highways and Transport; Legal Services; Assets; Streetscape and Bereavement Services. Each service has responded to state that they have no objection to the proposal.
- 10.7 The user groups have been consulted. No comments 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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PROW File: 247C/462

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Proposed Local Government Act 2000 s2 Deed of Dedication to create
Public Rights of Way in the Parish of Holmes Chapel

Plan No.
LGA/003

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:	17 December 2012
Report of:	Public Rights of Way Manager
Subject/Title:	Local Government Act 2000 – Section 2 Deed of Dedication for New Public Rights of Way in the Parish of Holmes Chapel

1.0 Report Summary

- 1.1 This report presents a proposal to create new public rights of way on Cheshire East Council owned public open space in the Parish of Holmes Chapel.

2.0 Recommendations

- 2.1 That, subject to the entering into of a maintenance agreement with Holmes Chapel Parish Council, rights of way over Council owned land be dedicated to the public under Section 2 of the Local Government Act 2000 in the Parish of Holmes Chapel, the indicative lines of which are shown on Plan No. LGA/003, and that public notice be given of these public rights of way.

3.0 Reasons for Recommendations

- 3.1 Cheshire East Council is involved, as the owner of public open space, in a project to improve public access in the Dane Meadow area between Holmes Chapel and Cranage, alongside the River Dane. A Dane Valley Programme Board, comprising representatives from Holmes Chapel Parish Council, Holmes Chapel Partnership and Cheshire East Council are progressing the project.
- 3.2 The first phase of this project is being developed presently within which it is proposed to improve paths within Dane Meadow using externally sourced funding, a requirement of which is that the paths are dedicated as public rights of way. This will have the effect of securing the public's rights of access for perpetuity.
- 3.3 Consultation undertaken for the Council's statutory Rights of Way Improvement Plan (ROWIP) identified the need for local access to the countryside, safe off-road pedestrian and cyclist routes and circular routes close to people's homes. These needs are met by the proposed paths which will offer leisure and active travel facilities.

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 - Carbon Reduction, 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'; and,
 - 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, and the Council's commitment to the Change4Life initiative.

7.0 Financial Implications

- 7.1 The proposal would incur minimal immediate financial implications in the processing and advertising costs for a Deed of Dedication.
- 7.2 The proposal to create public rights of way would enable the Programme Board to access funding via Natural England's Paths for Communities Fund, one of the stipulations of which is that a new public right of way is created as a result of the project. The Programme Board have submitted an application following initial screening. The funding would be used to improve the surface of the paths, access furniture and interpretation around the Dane Meadow site.
- 7.3 The paths would become maintainable at the public expense on the date that the Deed of Dedication is sealed. The paths are already maintainable at the public expense as they are currently available to the public within the open space management regime, although the proposal will involve a greater maintenance liability than at present due to the improved surfaces of the routes.
- 7.4 The Programme Board has demonstrated a commitment to future maintenance and Holmes Chapel Parish Council are prepared to enter into a maintenance agreement with Cheshire East Council to cover the future long-term maintenance of the improved path surfaces.

- 7.5 The Asset Management Service has assessed the proposal with respect to the Council's landholding. The conclusion reached was that there are no negligible effects to the land as an asset of the Council because the land has no development potential due to the fact that the land is identified as an area of biological importance in the existing Congleton Local Plan and also has a steep and wooded topography.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 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 rights of way and 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.
- 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 For a number of years, Cheshire East Council, Holmes Chapel Parish Council and Cranage Parish Council have been working on a project to improve access between the two parishes and within the public open space land known as Dane Meadow. This project was logged during consultation for the Council's ROWIP (Ref. T25).
- 10.2 The first phase of this project is currently being developed and includes a bid to Natural England's Paths for Communities Fund in order to improve the surfaces of, and access furniture on, the paths within the public open space. The funding bid also seeks finance for signposting and interpretation boards.
- 10.3 One of the stipulations of the funding stream is that the improved paths are dedicated as public rights of way, thereby securing public access rights for perpetuity. This also means that the paths can be shown on Ordnance Survey mapping as being available to the public. A plan of the indicative lines of the proposed public rights of way, Plan No. LGA/003, is appended.

- 10.4 It is planned that the proposed public bridleway will be surfaced in order to enable maintenance vehicles and disabled users to access the level part of Dane Meadow adjacent to the river. The proposed footpath on the east of the site would be improved to a bound gravel surface, whilst those on the west would remain as grass paths or woodland paths as at present.
- 10.5 A second phase of the project will be to seek to create an off-road route for pedestrians and cyclists linking the two villages via a bridge over the River Dane. The proposed public bridleway shown in Plan No. LGA/003 reflects this aspiration as bridleways may be used by walkers, cyclists and horse riders.
- 10.6 The proposed routes run as indicated in Plan No. LGA/003:
- a) a public footpath within Holmes Chapel parish from OS grid reference SJ 7577 6750 at its junction of Footpath No. 3 in the Parish of Holmes Chapel in a generally westerly direction for a distance of approximately 190m to its junction with the proposed public bridleway at OS grid reference SJ 7558 6753;
 - b) a public bridleway within Holmes Chapel parish from its junction with Daresbury Close (UY1951) at OS grid reference SJ 7547 6750 in a generally north-easterly direction for approximately 110m and then in a generally north-westerly direction for approximately 215m to its junction with the proposed public footpath at OS grid reference SJ 7538 6759; and,
 - c) a public footpath within Holmes Chapel parish from OS grid reference SJ 7538 6759 at its junction with the proposed public bridleway, in a generally south-westerly direction for a distance of approximately 240m to OS grid reference SJ 7519 6747, and then in a generally westerly direction for approximately 25m to OS grid reference SJ 7516 6746 and then in a generally south-easterly direction for approximately 150m to its junction with 'Footway Bramhall Drive' (FY1045) at OS grid reference SJ 7527 6736.
- 10.7 The landowner, Cheshire East Borough Council is in support of the proposed dedication; Cabinet Member for Prosperity and Economic Regeneration approval for the proposal to be put before this Committee was given on 22nd October 2012, subject to the Council and Holmes Chapel Parish Council entering into an agreement for the maintenance of the improved surfaces of the paths.
- 10.8 Colleagues in the Asset Management Service, Countryside Development, Parks Development and Streetscape have been consulted and are supportive of the proposal.
- 10.9 Holmes Chapel Parish Council, Cranage Parish Council and the local Ward Members have been consulted. Councillor Gilbert responded to say "I fully support the project and am happy with the proposed rights of way subject to any comments you may receive from the Parish Council, Holmes Chapel Partnership or the Project Programme Board."

- 10.10 If the Programme Board's application to the Paths for Communities fund is unsuccessful, the Programme Board would be unlikely to seek to continue the proposal to establish these paths as public rights of way as the improvements proposed could not be undertaken.

11.0 Access to Information

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

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