

Public Rights of Way Committee

Agenda

Date:	Monday 11th March 2013
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 - 9)

To approve the minutes of the meeting held on 17 December 2012 as a correct record.

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

Member 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

Contact: Rachel Graves

Tel: 01270 686473

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

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

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

5. **Highways Act 1980 Section.119: Application for the Diversion of Public Footpath No. 7 (part) Parish of Goostrey** (Pages 10 - 15)

To consider the application to divert part of Public Footpath No.7 in the parish of Goostrey

6. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpaths No. 5 and 19 (Parts), Parish of Prestbury** (Pages 16 - 22)

To consider the application to divert parts of Public Footpaths No.5 and 19 in the parish of Prestbury

7. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpaths No.6 and 21 (Parts), Parish of Smallwood** (Pages 23 - 30)

To consider the application to diver part of Public Footpaths No.6 and 21 in the parish of Smallwood

8. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpaths No.10 and 29 (Parts), Parish of Wincle** (Pages 31 - 37)

To consider the application to divert part of Public Footpaths No.10 and 29 in the parish of Wincle

9. **Town and Country Planning Act 1990 - Sections 257 and 261: Proposed Temporary Diversion of Footpath No.29 Parish of Siddington and Footpath No.23 Parish of Lower Withington** (Pages 38 - 43)

To consider the application to divert temporarily Footpath No.29 in the parish of Siddington and Footpath No.23 in the parish of Lower Withington

10. **Town and Country Planning Act 1990 - Section 257: Proposed Public Path Stopping Up Order - Public Footpath No. 1 Basford (Part)** (Pages 44 - 50)

To consider the application on the proposed stopping up of part of Public Footpath No.1 Basford

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 17th December, 2012 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor J Wray (Chairman)

Councillors Rhoda Bailey, R Cartlidge, S Davies , L Jeuda, F Keegan (Sub for Cllr Druce) and M Parsons

In attendance

Councillor G Wait, Cabinet Support Member for Environment

Officers

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

24 APOLOGIES FOR ABSENCE

Apologies were received from Councillor D Druce.

25 DECLARATIONS OF INTEREST

There were no declarations of interest.

26 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meeting held on 24 September 2012 be approved as a correct record and signed by the Chairman.

27 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

The Committee received a report detailing an application made by Mr K Billington of Main Road, Wybunbury to modify the Definitive Map and Statement for the parish of Wybunbury by adding a currently unrecorded route as a Public Footpath.

The application for the addition of a public footpath between Public Footpaths No. 4 and 11 - between points A-B-C-D-E-F-G-H on Plan No. WCA/005 - was made in 2007. The application was supported by 31 user evidence forms.

Points C-F of the claimed route ran behind the plot of The Hollies 14 Main Road. The owner, Mrs Colbert, also owned the field to the back of the property – to the north of the claimed route. Part of the claimed route itself between points A-F was not registered with the land registry. Mrs Colbert had showed Officer the barn at the end of her garden, adjacent to which was the claimed route. It was stated that the barn had been unstable since 2007 when scaffolding was erected at the side of the barn to repair the roof. Her late husband had blocked off the route and put up signs warning of the danger and advising that the path was closed. It was this action which had prompted the application as it was discovered that the path was not recorded on the Definitive Map.

Natural England owned the land between points F-G-H and the Reserve Manager had stated that they had no objection to the path. They would also like to fence off the footpath between points F and G as this would avoid problems with dogs running after the cattle they grazed on the land.

Section 53 (2)(b) of the Wildlife and Countryside Act 1981, required 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.

One such event, accordance with section 53(3)(c)(i), was

“(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 could consist of documentary/historical evidence or user evidence or a mixture of both. All the evidence had to 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, were not relevant to the decision.

As the evidence in support was of application was user evidence, section 31(1) of the Highways 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 was without force, secrecy or permission. Section 31(2) stated 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.”

Mrs Colbert had provided copies her late husband’s diary entries. The diary entries showed dates when he closed the footpath for various reasons. The earliest date was 31 December 1990 when it was stated that the footpath was “closed all day”. It was believed the date of 1990 should be used as the date the route was ‘brought into question’ and therefore the relevant twenty year period to be considered for the user evidence was 1970 to 1990.

The report concluded that the first part of the claimed route existed in 1846 as shown on the Wybunbury Tithe Map. The entire claimed route was shown on the 1st and 2nd editions of the 25” Ordnance Survey Maps. However although this was good evidence of the physical existence of the route, these Maps did not denote the status of the route and can therefore only be regarded as supporting evidence. The Parish Walking Survey, dated 1951, described the route in the schedule and stated that it appeared to be well used. It was therefore surprising that the route was not included in the Draft Definitive Map.

The user evidence submitted showed considerable use over a period spanning 60 years. The relevant period to be considered was 1970-1990. Twelve witnesses had been interviewed and six of these claimed use of the route for the full twenty year period and a further five for part of this period.

Under section 31(1) of the Highways Act 1980 public footpath rights could come into existence by prescription unless there was evidence to the contrary. Therefore the landowner must provide evidence to that effect, which was normally evidence of a challenge or notices put up during the relevant twenty year period. Mrs Colbert had not claimed that they ever challenged anyone seen on the path by their property. None of the witnesses interviewed stated that they were challenged anywhere on the route. There was no evidence of any notices until the route was blocked in 2006/2007. There was no evidence of a challenge of any kind to the public during the relevant period.

The Committee considered the historical and user evidence outlined in the report and the Definitive Map Officer’s conclusions and concluded that there was sufficient user evidence to support the existence of footpath rights and therefore, on the balance of probabilities, the requirements of Section 53(3)(c)(i) had been met and that the Definitive Map and Statement should be modified to add the claimed route as a Public Footpath.

RESOLVED: That

- (1) An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding as a Public Footpath the route as shown between points A-B-C-D-E-F-G-H, on Plan No.WCA/005.
- (2) Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Act.
- (3) In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

28 HIGHWAYS ACT 1980 SECTION 119: PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.10 (PART) PARISH OF CHORLEY

The Committee received a report which detailed an application from Mr D Hobbs (agent) on behalf of Mr and Mrs Sarwar (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.

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 existing alignment of the footpath ran directly through the garden of Rush Cottage. This alignment had not been available to the public for many years. An alternative route had been available to the public between the boundary of the garden and the boundary of the adjacent property, Gore Lane Farm. It was 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. The Applicants 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.

The Applicants felt that to re-open the definitive line would greatly detract from the privacy and security of the property. They also felt that they had the search done in good faith and consequently Cheshire East Council, as successor authority to Macclesfield Borough Council, had undertaken to process the diversion order at no cost to the Applicant.

Chorley Parish Council had 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 and 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 Applicants were very reluctant to remove the trees as they believed it would affect their privacy and security. After a site visit with the Parish Council and Agent, a compromise was agreed that involved 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 an Order on the basis of this agreement.

The Committee noted that no other 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 be of benefit to the landowner in terms of privacy and security. 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. 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 interest 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 and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

29 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 10 (PART) PARISH OF CONGLETON

The Committee received a report which detailed an application from Ms S Shaw of Bloor Homes, 2-4 Whiteside Business Park, Station Road, Holmes Chapel, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.10 in the parish of Congleton.

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

The section of Public Footpath No.10 Congleton to be diverted ran through the gardens of two new residential dwellings on a new Bloor Homes development giving rise to concerns relating to security.

The proposed new route – A-B-C on Plan No.HA/075, would follow a current permissive path behind the gardens. The land over which the proposed diversion ran belonged to the Church of the Latter Day Saints and they had given written agreement for the diversion.

The Committee noted that no objections had been received from the informal consultations. Diverting the footpath would be of benefit to the landowner in terms of providing privacy and security to the properties. 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 an 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.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) 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.

30 LOCAL GOVERNMENT ACT 2000 SECTION 2: DEED OF DEDICATION FOR A NEW PUBLIC FOOTPATH IN THE PARISH OF POYNTON WITH WORTH

The Committee received a report which detailed a proposal to create a public footpath and two link footpaths under Section 2 of the Local Government Act 2000 in a Deed of Dedication.

A Definitive Map Modification application had been 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 was based on long usage of the routes by local residents.

The land over which the proposed footpaths ran was owned by Cheshire East Borough Council. Due to the lengthy and costly timescales involved when dealing with Definitive Map Modification applications, it was considered that the most efficient and cost effective way to proceed with this was by means of a Deed of Dedication under the Local Government Act 2000 Section 2.

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 proposed footpath was approximately 340 metres in length and ran through a small wooded area, linking Anglesey Drive and Towers Road (Poynton with Worth Footpath No.65) and ran parallel to London Road North (as shown on Plan No. LGA/002). Two short footpath links joining with London Road North and London Road North Service Road were also proposed.

Services in Cheshire East Council including Highways and Transport, Legal Services, Asset Management, Streetscape and Bereavement Services had been consulted and had responded that they had no objection to the proposal.

RESOLVED:

That 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 to this dedication.

31 LOCAL GOVERNMENT ACT 2000 - SECTION 2: DEED OF DEDICATION FOR NEW PUBLIC RIGHTS OF WAY IN THE PARISH OF HOLMES CHAPEL

The Committee received a report which detailed a proposal to create new public rights of way on Cheshire East Council owned open space in the parish of Holmes Chapel under Section 2 of the Local Government Act 2000.

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.

For a number of years Cheshire East Council, Holmes Chapel Parish Council and Cranage Parish Council had been working together on a project to improve access between the two parishes and within the public open space land known as Dane Meadow. This project had been logged during consultation for the Council's Rights of Way Improvement Plan.

The first phase of the project was currently being developed and included 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. One of the stipulations of the funding stream is that the improved paths were dedicated as public rights of way, thereby securing public access rights for perpetuity.

It was planned that the proposed public bridleway would 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. The proposed routes of the public rights of way were shown on Plan No.LGA/003.

The landowner, Cheshire East Council, was in support of the proposed dedication. At a meeting on 22 October 2012, the Cabinet Member for Prosperity and Economic Regeneration had given approval for the proposal, subject to the Council and Holmes Chapel Parish Council entering into an agreement for the maintenance of the improved surfaces of the paths.

Services within Cheshire East Council including Asset Management, Countryside Development, Parks Development and Streetscape had been consulted and were supportive of the proposal. Holmes Chapel Parish Council, Cranage Parish Council and the local Ward Members had also been consulted.

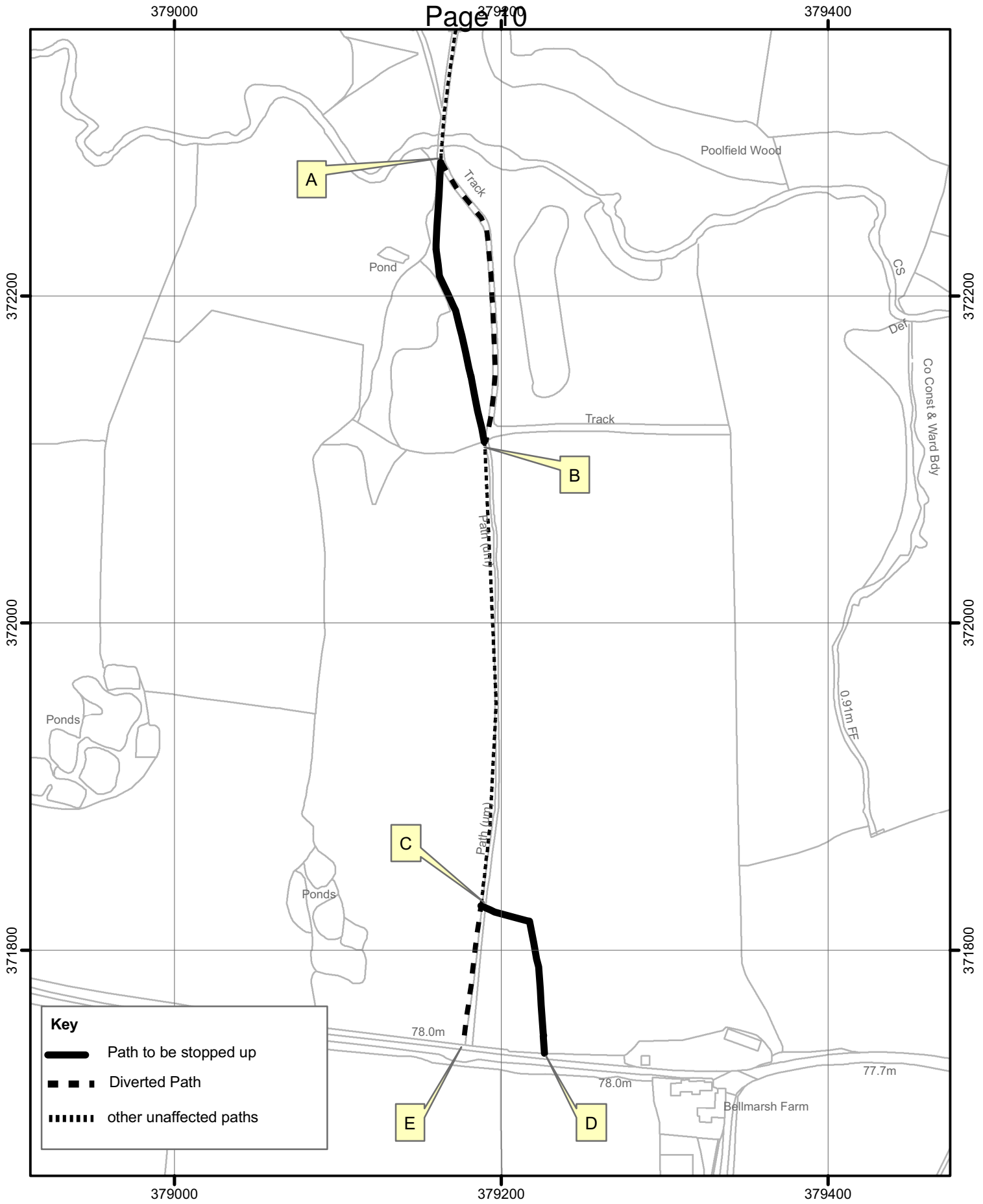
RESOLVED:

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 public notice be given of these public rights of way.

The meeting commenced at 2.00 pm and concluded at 2.40 pm

Councillor J Wray (Chairman)

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Key

- Path to be stopped up
- Diverted Path
- other unaffected paths



1:3,000

Proposed Diversion FP7 Goostrey

Plan No.
HA/077

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:	11 March 2013
Report of:	Greenspaces Manager
Subject/Title:	Highways Act 1980 Section.119: Application for the Diversion of Public Footpath No. 7 (part) Parish of Goostrey

1.0 Report Summary

- 1.1 The report outlines the investigation to divert two parts of Public Footpath No.7 in the Parish of Goostrey. 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. 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 sections 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.7 Goostrey as illustrated on Plan No. HA/077 by creating two new sections of public footpath and extinguishing two sections of 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 paragraphs 10.3 to 10.6 below.
- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering

whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:

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

And whether it is expedient to confirm the Order considering:

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

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

3.4 Following the consultation no objections have been received to this proposal. 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 farm management. 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 Dane Valley

5.0 Local Ward Members

5.1 Councillors Les Gilbert and Andrew 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'
- 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 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 S Lea of Foxwood Farm, Over Peover requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert two parts of Public Footpath No. 7 in the Parish of Goostrey.
- 10.2 Public Footpath No. 7 Goostrey commences at the Peover Eye Brook just to the north of point A on Plan No. HA.077 and runs in a generally southerly direction to join Red Lane at point D. The sections of path to be diverted are shown by solid black lines on Plan No. HA/077 running between points A-B and C-D. The proposed diversions are illustrated with black dashed lines on the same plan, running between points A-B and C-E.
- 10.3 The existing alignment of the first section (solid line A-B) follows a southerly then south-south-easterly direction to the corner of the field (point B). The length of the path to be closed is approximately 177 metres in length. The proposed new route for this section would follow an existing farm track similar in length. The new route would have a width of 3 metres and would not be enclosed; the track is part concrete and part grass surface. There would be no gates or stiles on this new section of path.
- 10.4 The landowner believes that the public already use the farm track. It is the preferred route as it is a more level gradient and partly surfaced, as opposed to the undulating existing route which follows dense vegetation to the field edge, and then cuts across the grass field in which there is a shallow hollow. It is also preferable to the landowner if the public walk on the track rather than across the grass field which is used for grazing.

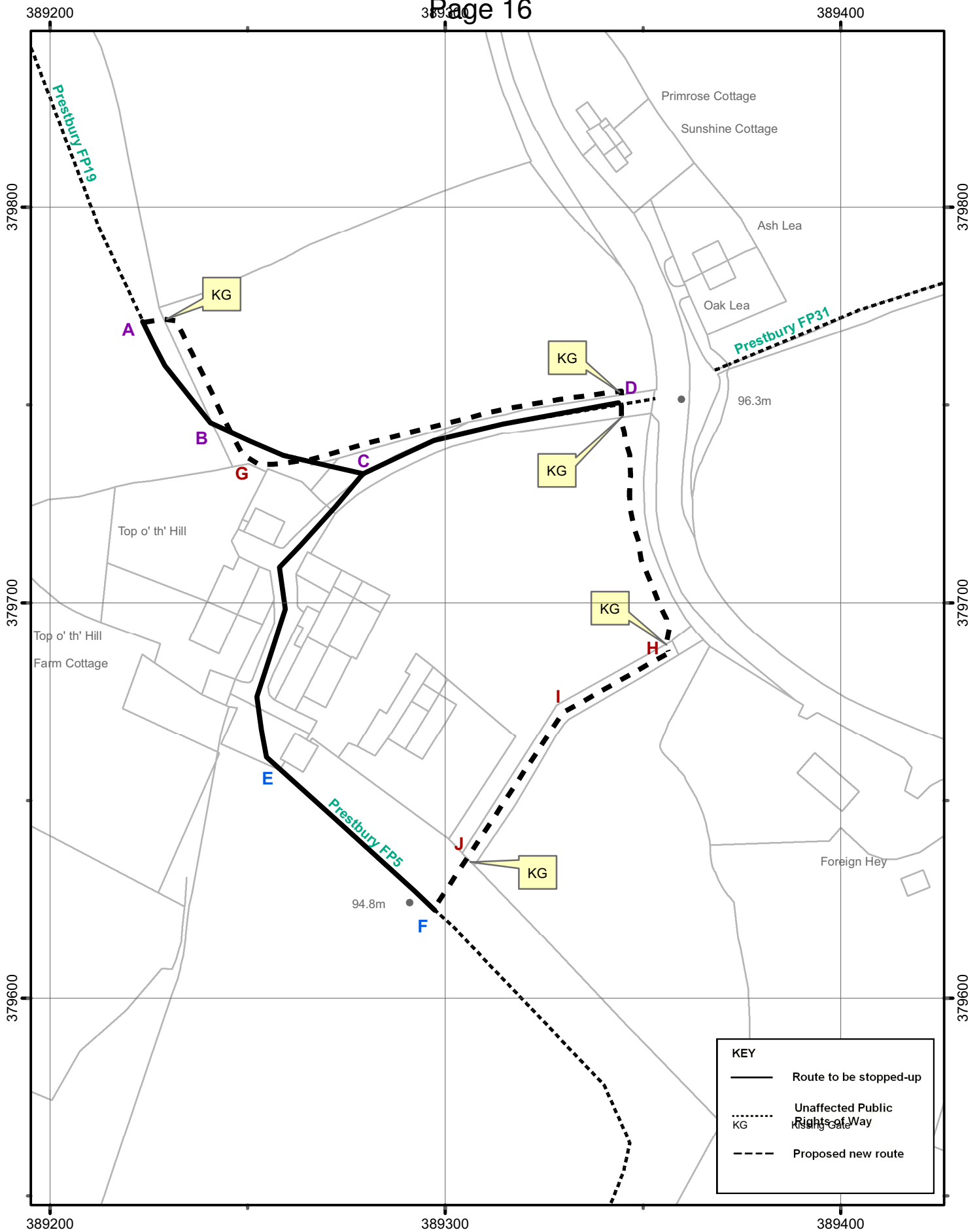
- 10.5 The second section is at the southern end of Footpath No.7. At point C (on Plan No. HA/077) the path currently changes direction and goes into the next field. There is currently a stile into the field and the path follows an easterly then southerly direction to meet Red Lane, where there is another stile (point D). The length of the path to be closed is approximately 112 metres in length.
- 10.6 The proposed new route is a continuation of the current route in the same field, so from point C the footpath would continue along the field edge to point E, a length of approximately 86 metres. The proposed new path would not be enclosed, the surface is grass and the width will be recorded as 2 metres. A new kissing gate would be required at point E; this would be opposed to the two stiles on the existing route. The existing route cuts across a field that is used for crops, in terms of farm management it is in the interest of the landowner that the path is diverted.
- 10.7 The local Councillors have been consulted. Councillor Gilbert has commented that from the information provided the proposals seem reasonable.
- 10.8 Goostrey Parish Council has commented that this seems to be a sensible diversion which does not detract in any way from enjoyment of the route and actually makes it easier and more convenient to use. They state they support the diversion provided that the proposed gate, which would form the new access from Red Lane, is kept in good working order.
- 10.9 The statutory undertakers have also been consulted and have no objections to the proposed diversions. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.10 The user groups have been consulted. The Peak and Northern Footpaths Society has stated they support this proposal. No further comments have been received.
- 10.11 Natural England has stated the path order would not affect a statutory site for nature conservation or designated landscape; they therefore have no comment to make.
- 10.12 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 diversions are an improvement on the existing routes.

11.0 Access to Information

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

Name: Jennifer Tench
Designation: Definitive Map Officer
Tel No: 01270 686158
Email: jennifer.tench@cheshireeast.gov.uk
PROW File: 132D/465

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Highways Act 1980 s119
The Cheshire East Borough Council
(Footpath No's 5 & 19 (parts) Parish of Prestbury)
Public Path Diversion Order 2012

Plan No.
HA/076



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	11 March 2013
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980 Section 119: Application for the Diversion of Public Footpaths No. 5 and 19 (Parts), Parish of Prestbury

1.0 Report Summary

The report outlines the investigation to divert part of Public Footpaths No. 5 and 19 (parts), Parish of Prestbury. 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 each footpath concerned.

- 1.1 Members are required to consider all information in the report and make a decision as to whether the proposed footpath diversion is expedient based upon the legal tests prescribed in section 119 Highways Act 1980 set out in this report.

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 parts of Public Footpaths No's 5 and 19, Parish of Prestbury by creating new sections of each public footpath, and extinguishing the current path sections as illustrated on Plan No. HA/076 on the grounds that it is expedient in the interests of the owner of the land crossed by the paths.
- 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 paths. 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 paths are 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 paths 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 rights of way.
- The effect that any new public rights 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 routes will not be 'substantially less convenient' than the existing route and diverting the footpaths will be of considerable benefit to the landowner in terms of enhancing the security and privacy of property and promoting good land management. It is considered that the proposed routes will provide a satisfactory alternative to the current routes and that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Prestbury

5.0 Local Ward Members

5.1 Councillor Paul Findlow

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 Once an Order is made it may be the subject of objections. If objections are received and not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/inquiry with objections being determined by the Secretary of State. 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 A Ellis ("agent") of Dowd Town Planning on behalf of Mr Tom O' Conner ("applicant") of Unit 10, Sandfold Lane, Levenshulme, Manchester, M19 3BJ requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No's 5 and 19 in the Parish of Prestbury.

10.2 Public Footpath No. 5 Prestbury, commences at its junction with Public Footpath No. 19 Prestbury at OS grid reference SJ 8928 7973 and runs in a generally south, south easterly direction to follow the River Bollin through pasture land to terminate at its junction with Prestbury FP15 at OS grid reference SJ 8995 7740.

Public Footpath No. 19 Prestbury, commences at its junction with Wilmslow Road at OS grid reference SJ 8895 8047 and runs in south, south easterly direction through pasture land to reach the access track of Top o' 'he Hill Farm where then runs in an easterly direction along the access road to terminate at its junction with Bonis Hall Lane at O.S. grid reference SJ 8935 7975.

10.3 Mr O'Conner owns the land over which the current paths and the proposed diversion run. 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 footpaths.

10.4 The sections of each of Public Footpath No's 5 and 19 Prestbury to be diverted run close to and between the buildings at Top o' 'he Hill Farm. It is the intention to redevelop farm buildings to provide two dwellings and to use surrounding land for agricultural purposes. Diverting the footpaths to a new route would offer greater privacy and security to the new properties and take users away from the access track on which vehicular use is likely to increase.

Furthermore, providing a route along field edges would allow for better land management and easier navigability for path users.

10.5 Referring to the attached plan, HA/076:

The new route for Prestbury FP19 would, from point A in the pasture field, pass through into an adjacent field to the east. It would then skirt the field boundary in a south, south easterly and then north, north easterly direction to exit onto the metalled access track to Top o' the Hill Farm (point D), where it would terminate.

The new route for Prestbury FP5 would, from point D, leave the metalled access track to enter a field where it would run in a southerly direction to follow the eastern field boundary to an 'old' redundant track (point H). At this point, it would bear in a west, south westerly direction to point I and then in a south, south westerly direction along the track to a field boundary (point J) which it would cross before terminating at its junction with the current route of Prestbury FP5 (point F).

The new route would have a width of 2m and would not be enclosed except between points H-I-J where it would be enclosed to a width of 2.5m. Five kissing gates would be installed along its length. The surface of the enclosed section between points H-I-J would be improved to meet the standard required by the local authority. The field section between points C-D would be surfaced.

Of benefit to the public, the new route would:

- Eliminate the need for users to pass closely between the buildings of the applicant's property.
- Take users away from the access drive on which vehicular use is likely to increase following conversion of the farm buildings into residential dwellings.
- Provide an easily navigable route through the fields.
- Have kissing gates rather than stiles.

10.6 The Ward Councillor has been consulted about the proposal. No comments were received.

10.7 Prestbury Parish Council has been consulted and did not register any 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 East Cheshire Ramblers Association requested that boggy sections of the diversion route be surfaced appropriately or raised above the waterline if necessary and they also

questioned the need for a kissing gate at point H on Plan No. HA/076. The Peak and Northern Footpath Society registered no objections. No other comments have been 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 2010 has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion will not be 'substantially less convenient' 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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PROW File: 248D/461

KEY

- Route to be stopped-up
- Unaffected Public Rights of Way
- Proposed new route

Smallwood FP6

Stile

Field gate

Pedestrian gate

Smallwood FP21

Kissing gate

Kissing gate

Spenmoss

Spen Moss Farm

Pond

FB

Track

Track

Drain

Lane End

The Bungalow

Plan No.
HA/076



1:1,250

Highways Act 1980 s119
The Cheshire East Borough Council
(Footpath No's 6 & 21 (parts) Parish of Smallwood)
Public Path Diversion Order 2013

Plan No.
HA/078



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	11 March 2013
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980 Section 119: Application for the Diversion of Public Footpaths No.6 and 21 (Parts), Parish of Smallwood

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No's 6 and 21 (parts), Parish of Smallwood. 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 each footpath concerned.
- 1.2 Members are required to consider all information in the report and make a decision as to whether the proposed footpath diversion is expedient based upon the legal tests prescribed in section 119 Highways Act 1980 set out in this report.

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 parts of Public Footpaths No's 6 and 21, Parish of Smallwood by creating new sections of each public footpath and extinguishing the current path sections as illustrated on Plan No. HA/078 on the grounds that it is expedient in the interests of the owner of the land crossed by the paths.
- 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 paths. 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 paths are 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 paths 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 rights of way.
- The effect that any new public rights 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 routes will be an improvement to the existing route and diverting the footpaths will be of considerable benefit to the landowner in terms of enhancing the security and privacy of their property. It is considered that the proposed routes will provide a satisfactory alternative to the current routes and that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Brereton Rural

5.0 Local Ward Members

5.1 Councillor John Wray

6.0 Policy Implications 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 Once an Order is made it may be the subject of objections. If objections are received and not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/inquiry with objections being determined by the Secretary of State. 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 WS Thompson, Spen Moss Farm, Spen Moss, Smallwood, Sandbach, CW11 2XB requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert parts of Public Footpath no's 6 and 21 in the Parish of Smallwood.

- 10.2 Public Footpath No. 6 Smallwood, commences at its junction with Pitcher Lane at O.S. grid reference SJ 8163 6184 and runs in a generally south easterly direction through fields to its junction with Public Footpath No. 21 Smallwood at O.S. grid reference SJ 8200 6121. It then follows a generally easterly direction across further fields, crossing lanes en route, to terminate at the Parish boundary where it becomes Public Footpath No. 6, Newbold Astbury at O.S. grid reference SJ 8235 6114.

Public Footpath No. 21, Smallwood, commences at its junction with Public Footpath No. 6 Smallwood at O.S. grid reference SJ 8200 6121 and runs in south, south, westerly and then south easterly direction through the property of Spen Moss Farm to join Spen Moss Lane. It then follows the lane in a south easterly and then southerly direction to terminate at its junction with Congleton Road at O.S. grid reference SJ 8205 6068.

- 10.3 Mr Thompson owns the land over which the current paths and the proposed diversion run except for the section of the proposed diversion that runs along a lane.

Research revealed that this lane is unregistered. If a landowner emerges claiming compensation due to loss caused by a public footpath on his/her lane, Mr Thompson has provided written agreement to compensate him or her accordingly.

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 footpaths.

- 10.4 The section of Public Footpath No. 21, Smallwood, to be diverted runs through the property of Spen Moss Farm passing by a lake, close to the applicant's

home and also through areas where they keep livestock (horses). Diverting the path to a new route would offer greater privacy and security to the property and enable better management of livestock.

The section of Public Footpath No. 6, Smallwood, to be diverted runs through fields passing through a small paddock en route. Diverting this section out of the paddock would again aid with better management of livestock.

Furthermore, the proposed diversion route would by default, provide a more direct route across fields from the lane.

10.5 Referring to the attached plan, HA/078:

The new route for Public Footpath No. 6, Smallwood would start in a pasture field at point A. It would then follow a northerly direction for a short distance to enter into a pasture field to the north (point D). It would then cross this and a further field in a north westerly direction to terminate on the current route at the northern field corner (point C).

The new route for Public Footpath No. 6, Smallwood would start at point E along the metalled lane and would run in a north easterly direction forking left at a junction (point H) to then follow the unregistered lane in a northerly direction before terminating on the current route of Smallwood FP6 (point I).

The new diversion route would have a width of 2m and be unenclosed. Two kissing gates would be installed along its length. The two new path sections would be connected by the current route of Public Footpath No.6, Smallwood (points I-A).

Of benefit to the public, the new route would:

- Eliminate the need for users to pass through the applicant's property and livestock.
- would eliminate the need for boundary crossings on Public Footpath No. 21 Smallwood and would require negotiation of two kissing gates on Public Footpath No. 6, Smallwood instead of two stiles, a field gate and a pedestrian gate,
- Provide a more direct route along a lane and across fields.

10.6 The consultation period for this diversion is still running until Friday 8th March. However, to date, responses are as follows:

10.6.1 The Ward Councillor has been consulted about the proposal. No comments have been received.

10.6.2 Smallwood Parish Council has been consulted and have not yet registered objection. Any comments received will be reported verbally.

10.6.3 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.

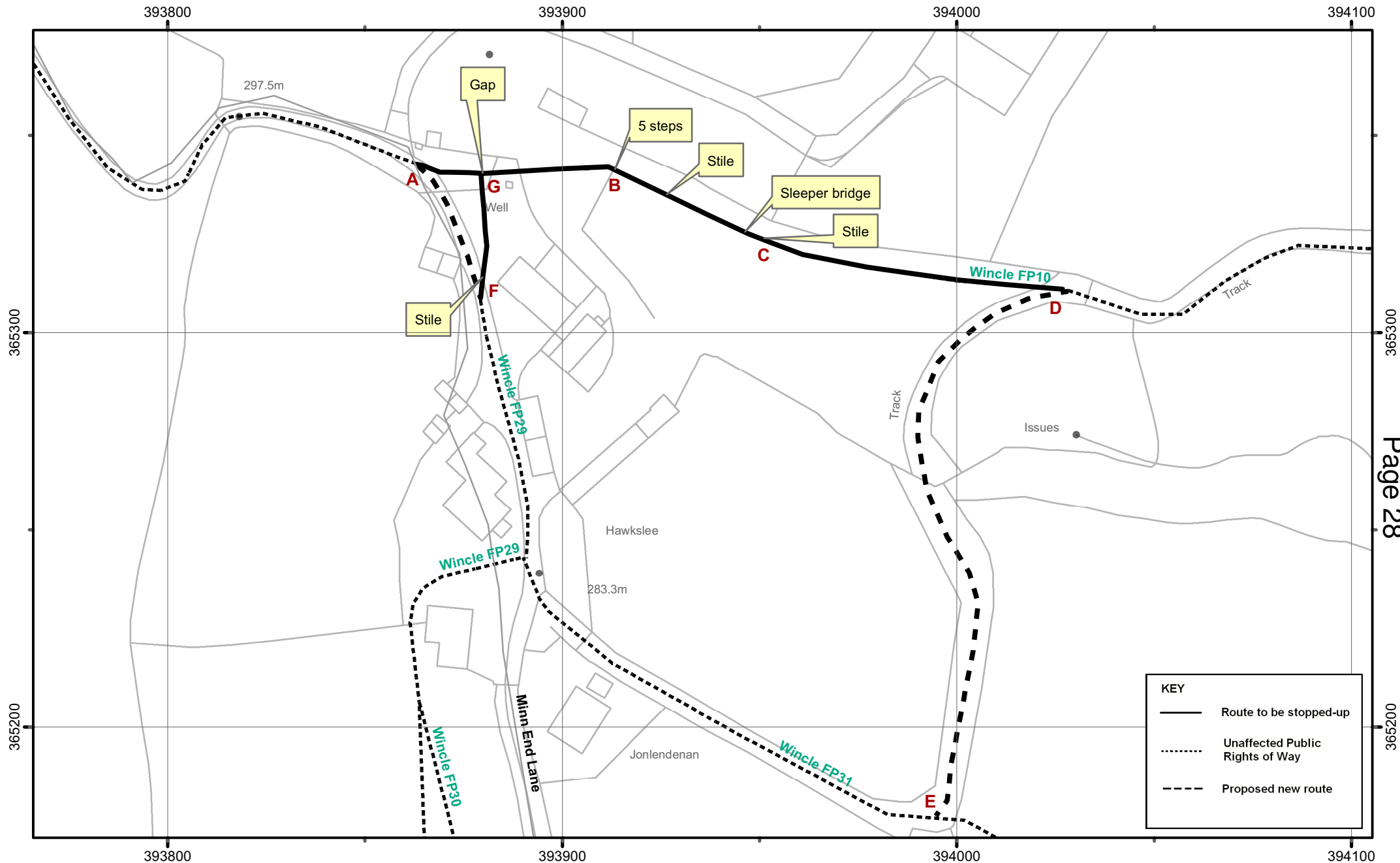
10.6.4 The user groups have been consulted. The Peak and Northern Footpath Society registered no objections. No other comments have been received.

10.7 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion route is an improvement to the existing route since it has two kissing gates as opposed to two stiles, a field gate and a pedestrian gate and has fewer boundaries to negotiate.

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
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PROW File: 269D/466



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	11 March 2013
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980 Section 119: Application for the Diversion of Public Footpaths No.10 and 29 (Parts), Parish of Wincle

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No's 10 and 21 (parts), Parish of Wincle. 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 each footpath concerned.
- 1.2 Members are required to consider all information in the report and make a decision as to whether the proposed footpath diversion is expedient based upon the legal tests prescribed in section 119 Highways Act 1980 set out in this report.

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 parts of Public Footpaths No's 10 and 29, Parish of Wincle by creating new sections of each public footpath and extinguishing the current path sections as illustrated on Plan No. HA/079 on the grounds that it is expedient in the interests of the owner of the land crossed by the paths.
- 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 paths. 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 paths are 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 paths 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 rights of way.
- The effect that any new public rights 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 routes will be an improvement to the existing route and diverting the footpaths will be of considerable benefit to the landowner (and their neighbour) in terms of enhancing the security and privacy of property. It is considered that the proposed routes will provide a satisfactory alternative to the current routes and that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Sutton

5.0 Local Ward Members

5.1 Councillor Hilda Gaddum

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 Once an Order is made it may be the subject of objections. If objections are received and not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/inquiry with objections being determined by the Secretary of State. 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 Mrs Lahelma-Barnsley, Hawkslee House, Minn End Lane, Cheshire, SK11 0NZ requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert parts of Public Footpath no's 10 and 29 in the Parish of Wincle.

10.2 Public Footpath No. 10 Wincle, commences at its junction with Public Footpaths No. 6, Bosley and No. 2 Wincle at OS grid reference SJ 9370 6545 and runs in a generally easterly direction across for approximately 2203 metres (approximately 1.36 miles) to terminate at its junction with Public Footpath No. 18, Wincle at O.S. grid reference SJ 9568 6531.

Public Footpath No. 29, Wincle, commences at its junction with Public Footpath No. 10 Wincle at O.S. grid reference SJ 9387 6533 and runs in southerly direction along Minn End Lane to its junction with Public Footpath No. 31, Wincle. Here it bears in an easterly direction to leave the lane and then follows a generally southerly and then easterly direction across fields to terminate at the parish boundary where it becomes Public Footpath No. 5, Bosley at O.S. grid reference SJ 9369 6497.

10.3 Mrs Lahelma-Barnsley owns the land over which the part of Public Footpath No. 29, Wincle proposed for diversion runs but not the land onto which it is proposed to be diverted. This is Public Highway and as such, the local authority agrees to the path being diverted onto it.

With respect to the part of Public Footpath No. 10 Wincle proposed for diversion, Mrs Lahelma-Barnsley owns part of the land over which this currently runs and her neighbours, Mr JHE Berry of Hawkslee Farm and Mr K Van Roy of Kiss Wood Farm, own the rest of this land. The proposed diversion for this footpath would run over land owned solely by Mr K Van Roy for which he has granted permission.

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 footpaths.

- 10.4 Diverting parts of Public Footpath No's 10 and 29, Wincle to form the new route would afford improved privacy and security to the residents of Hawkslee and Hawkslee Farm whilst eliminating the need for users to walk through the property gardens. Furthermore, users would be taken away from the current part of Public Footpath No. 10, Wincle that runs along the stream bed which is very slippery underfoot. This stream provides drainage for surface water on Minn End Lane and cannot be obstructed making it unavoidably wet and muddy all year round. The new route would follow a track that has a semi-surfaced section and a grassed section.

- 10.5 Referring to the attached plan, HA/079:

The new route for Public Footpath No. 10, Wincle would start on a semi-surfaced track (point D) and would follow the track in a generally southerly direction to terminate at its junction with Wincle FP31 (point E).

The new route for Public Footpath No. 29, Wincle would start on Minn End Lane at point F from which it would follow a generally north, north westerly direction along the lane to terminate upon meeting Wincle FP10 (point A).

The new diversion route would have a width of 2m and be unenclosed. The two new path sections would be connected by the current routes of Public Footpath No's 31 and 29, Wincle (points E-F).

It is appreciated that the new routes would result in a significantly longer footpath than the current routes offer but given the user benefits and the surrounding path network and terrain, it is considered that on balance, the new route would still bring a more improved walking experience for users than the current route as it would:

- be more enjoyable since it would offer more open and scenic views of the surrounding countryside.
- be more convenient as it would eliminate the need to pass through private property (gardens of the applicant and neighbour) and would pass over ground which is better underfoot than the current path section that runs along a wet, muddy stream bed. The new route would follow semi-surfaced and grassed track.
- Have no path furniture whereas the current route has three stiles, a sleeper bridge and five steps.

- 10.6 The Ward Councillor has been consulted about the proposal. No comments have been received.

- 10.7 Wincle Parish Council has been consulted and has not registered any 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 East Cheshire Group of the Ramblers Association, the Wilmslow and Alderley Edge Footpath Preservation Society and the Peak and Northern Footpath Society registered no objection.

Referring to Plan No. HA/079, The East Cheshire Group of the Ramblers Association and the Wilmslow and Alderley Edge Footpath Preservation Society requested that a boggy section on the new diversion route between points E and F be stoned and that the grassed surface along this stretch be treated as necessary in relation to rocks and steep gradients.

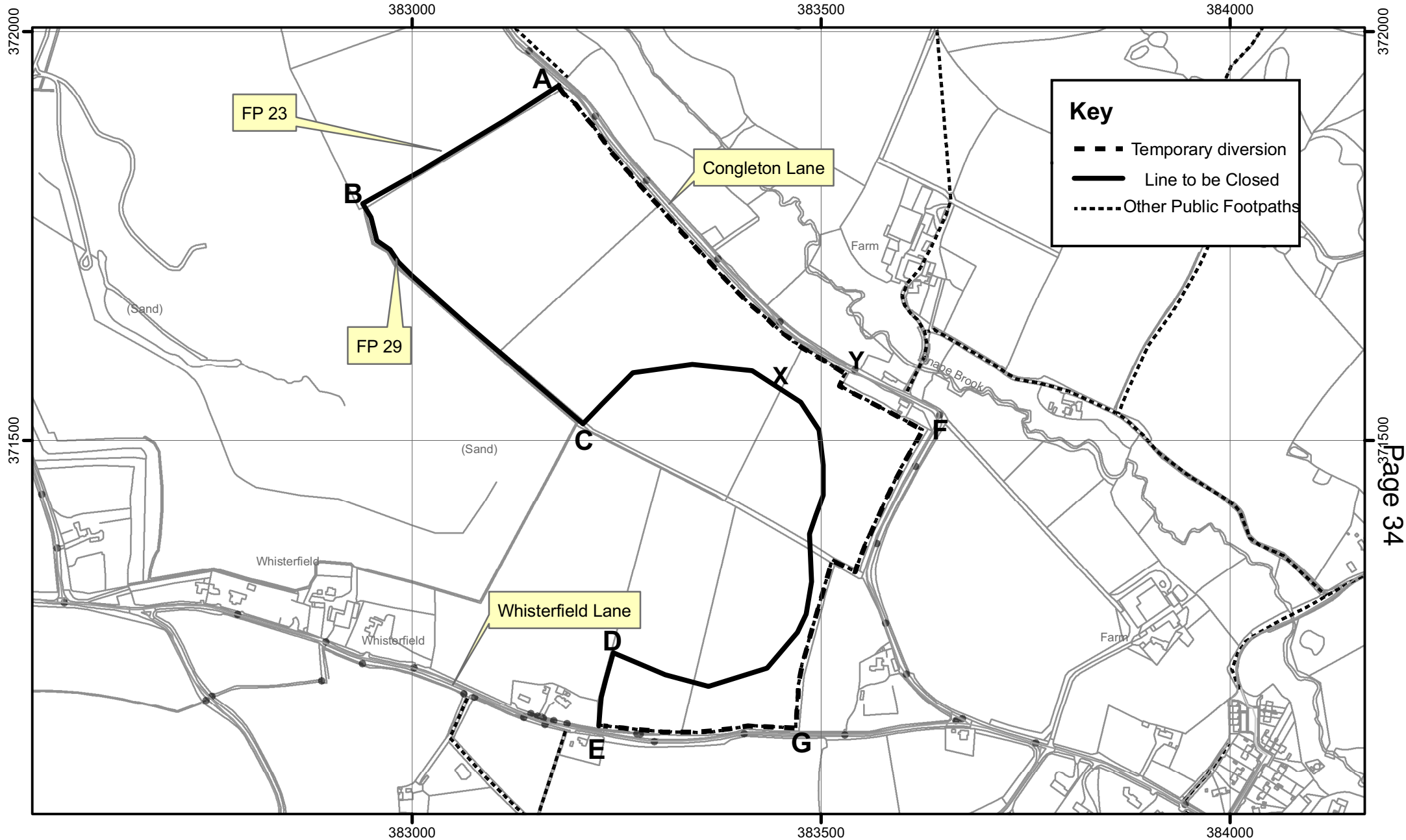
No other comments have been received.

10.10 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion route is an improvement to the existing route since it would have no path furniture whereas there are three stiles, a sleeper bridge and five steps along the current path sections.

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: 320D/464



1:6,000

Proposed Temporary Diversion of Footpaths
Lower Withington 23 & Siddington 29
TCPA s.261 & 257

Plan No.
TCPA/012

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

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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 11 March 2013
Report of: Greenspaces Manager
Subject/Title: Town and Country Planning Act – Sections 257 and 261:
Proposed Temporary Diversion of Footpath No.29 Parish of Siddington and Footpath No.23 Parish of Lower Withington

1.0 Report Summary

- 1.1 The report outlines the investigation to temporarily divert Public Footpaths Nos.23, Parish of Lower Withington and 29 in the Parish of Siddington. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a temporary diversion order to be made. The proposal has been applied for by, Sibelco UK, 'the applicant'. 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 footpaths concerned.

2.0 Recommendation

- 2.1 Subject to the grant of planning permission pursuant to application reference 10/3078W , an Order be made under Section 261 & 257 of the Town & Country Planning Act 1990 to divert Public Footpaths Nos. 29, Siddington and 23, Lower Withington as illustrated on Plan No. TCPA/012 on the grounds that the Borough Council is satisfied that it is necessary to do so for the purpose of enabling minerals to be worked and that the footpaths concerned can be restored, after the minerals have been worked, to a condition not substantially less convenient to the public. An Order will not be made until the planning permission has been issued.
- 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 257 of the Town and Country Planning Act 1990, the Borough Council, as Planning Authority, can make an Order diverting a footpath if it is satisfied that it is necessary to do so to enable development to be carried out in accordance with a planning permission that has been granted.

- 3.2 In accordance with section 261 of the Town and Country Planning Act 1990, the Borough Council, as Planning Authority, can make an order to divert a footpath if it is satisfied that it is necessary to do so for the purpose of enabling minerals to be worked. The Council must also be satisfied that the footpath concerned can be restored, after the minerals have been worked, to a condition not substantially less convenient to the public.
- 3.3 It is considered that the proposed diversion is necessary in order to enable development and that the development is for the purposes of enabling minerals to be worked by surface workings for the reasons set out in paragraph 10.4 & 10.5 below. It is considered that, following restoration of the site, the condition of the paths will not be less convenient to the public. With views of the lake and nature area it is likely that the restored paths will also have a more pleasant aspect.
- 3.4 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be determined by the Secretary of State. In considering whether to confirm an Order the Secretary of State will have regard to whether the diversion of the footpaths is required for the purpose of enabling the surface working of minerals for which planning permission has been granted.
- 3.5 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.
- 3.6 No objections to the proposal have been received

4.0 Wards Affected

- 4.1 Gawsworth

5.0 Local Ward Members

- 5.1 Councillor Lesley Smetham

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 Sibelco UK Ltd ('the Applicant') on the 25th January 2013 requesting that the Council make an Order under section 257 & 261 of the Town & Country Planning Act 1990 to temporarily divert Public Footpaths nos. 23, Lower Withington & 29, Siddington. The land is owned by The Trustees of NW Bromley Davenport 1962 Settlement (Capesthorne Estate) who have consented to the proposed Order. The land is quarried under licence by the Applicant.
- 10.2 These footpaths are currently the subject of a temporary diversion order made in 2007 and due to expire on the 11th March 2013. The definitive alignment of Footpath no 23, Lower Withington commences at its junction with Congleton Lane (UW4457) at OS grid reference SJ 8317 7194 (Point A on Plan No. TCPA/012) and runs in a generally west south westerly direction to the Siddington Parish boundary and its junction with Footpath no. 29 at OS grid reference SJ 8293 7178 (Point B). The length of this path to be closed is approximately 281 metres. Siddington Footpath no. 29 commences at the parish boundary (as stated above) and runs in a generally south easterly direction then curves to run generally easterly, then southerly then westerly and finally southerly to its junction with Whisterfield Lane at OS grid reference SJ 8323 7115 (Point E). The length of path to be closed is approximately 1310 metres. These are shown by a bold black line between points A-B-C-D-E on the attached plan TCPA/012.
- 10.3 The proposed temporary diversion is illustrated by a dashed black line on Plan No. TCPA/012 between points A-F-G-E. The total length of the proposed alternative is approximately 1324 metres in length and is entirely within the

Parish of Siddington. This route is currently available on the ground in accordance with the existing temporary diversion order dated 2007.

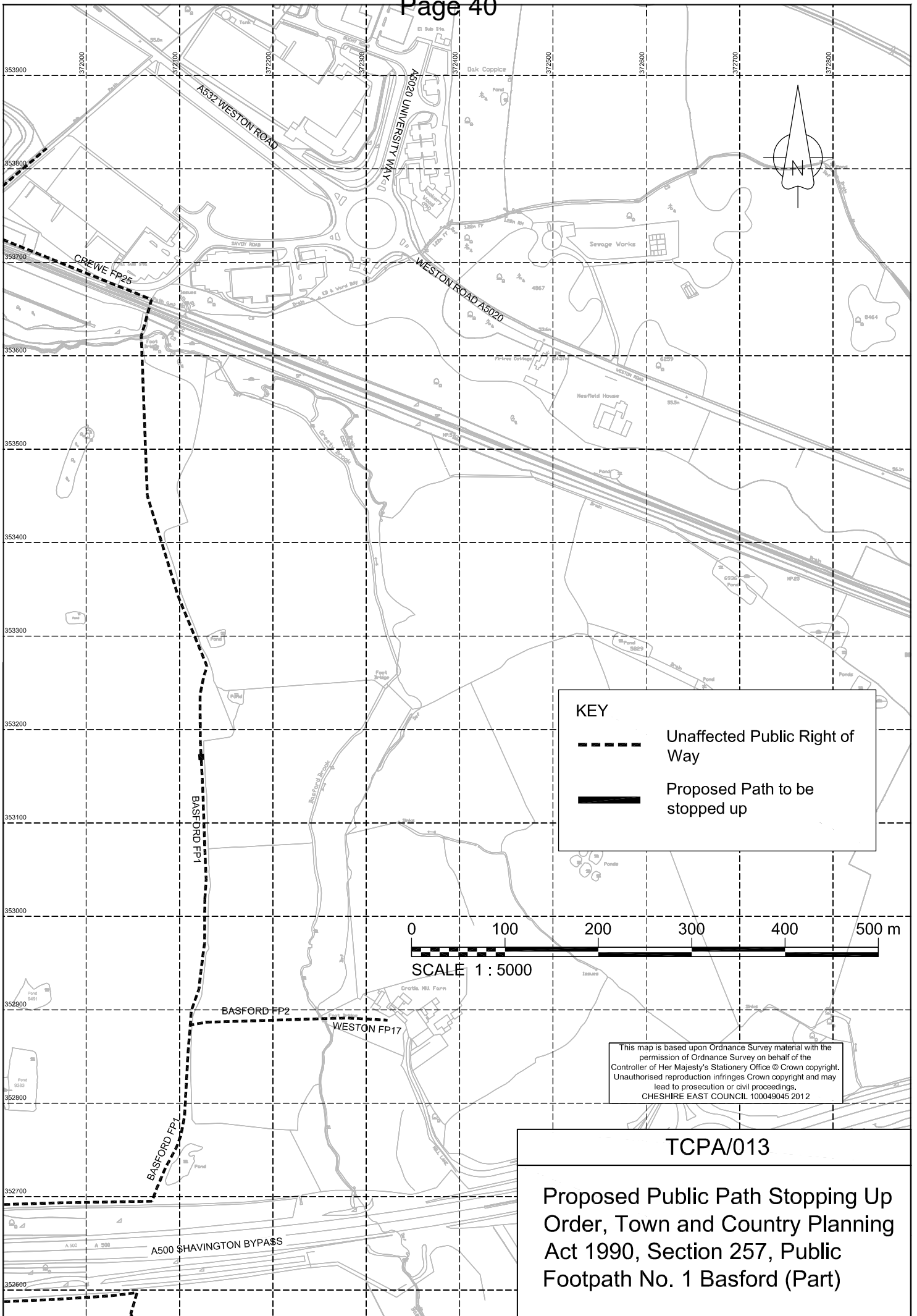
- 10.4 The definitive alignment of the footpaths runs across an area identified for sand quarrying which originally received planning permission in January 2007. It was anticipated that quarrying would cease in 2011 and final restoration of the site would be completed in January 2013. However due to the recession and economic uncertainty, this area of quarrying has not been completed in the predicted timescales and so Sibelco UK submitted a planning application (reference 10/3078W) for an extension in time for working and restoring the quarry. On 15th June 2011 the Council's Planning Committee resolved to grant permission subject to the updating of the s.106 agreement tied to the original consent in 2007. The s.106 agreement is still being negotiated and planning permission will only be issued following completion of the agreement. The proposed temporary diversion order can only be made once the planning permission has been issued. It is anticipated that the s106 will be completed, and the planning permission will be issued, within, approximately, the next few weeks. Approval to make the order is being sought now so that the order may be progressed swiftly following the grant of planning permission.
- 10.5 When the planning permission for an extension to the life of the quarrying is in place, of what are nationally important industrial sand reserves, the continued diversion of the footpaths is required in order to enable the extraction to go ahead. It is anticipated that restoration would be completed by 31st December 2018. By which time the Definitive footpaths would be available on their original alignments.
- 10.6 Following cessation of mineral extraction and restoration of the site, the paths will return to follow a route around a newly constructed lake and nature conservation area. The finally restored paths will be 2 metres wide, of a grass surface which will be maintained by the Applicant for a "management period" of 5 years, following cessation of quarrying. There will be kissing gates at two points along the restored route; these would be indicated on an order plan.
- 10.7 A permissive footpath agreement was entered into with the Capesthorne estate in 2007 during the period of the temporary diversion and following restoration, providing a link from points X to Y (shown on Plan TCPA/012). This provides a useful link onto Congleton Road and access to the footpath network to the north of the road. This permissive agreement will continue in place during and after the current extraction works.
- 10.8 Councillor Smetham and the Parish Councils of Lower Withington and Siddington have been consulted, no comments have been received.
- 10.9 The statutory undertakers have also been consulted and have no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.10 The user groups have been consulted. No comments have been received.

- 10.11 The temporary diversion is 3 metres wide throughout and has kissing gates along its length so it is considered for the purposes of the Equality Act 2010 that the proposed diversion is 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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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	11 March 2013
Report of:	Public Rights of Way Manager
Subject/Title:	Town and Country Planning Act 1990, Section 257: Proposed Public Path Stopping Up Order - Public Footpath No. 1 Basford (Part)

1.0 Report Summary

- 1.1 The report outlines the proposal to stop up part of Public Footpath No.1 in the Parish of Basford due to the construction of a spur of the Crewe Green Link Road South. This includes a discussion of related consultations carried out in respect of the planning consent and the legal tests to be considered for a stopping up order to be made. The proposal has been requested by Cheshire East Borough Council as the Highway Authority in order that the legal process runs in parallel with that of a Compulsory Purchase Order that has been made. 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 stop up the section of footpath concerned.

2.0 Recommendation

- 2.1 An Order be made under Section 257 of the Town and Country Planning Act 1990, to stop up part of Public Footpath No.1 Basford, as illustrated on Plan No. TCPA/013, on the grounds that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted.
- 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 Act.
- 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. Should this situation arise, the Council would request that the Secretary of State consider the Order in parallel with the Compulsory Purchase Order related to the scheme.

3.0 Reasons for Recommendations

- 3.1 In accordance with Section 257 of the Town and Country Planning Act 1990 it is within the Council's powers to make the Order if it appears to the Council that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted. It is considered that the proposed stopping up is necessary in order to enable development to be

carried out in accordance with planning permission granted for the reasons set out in 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. Under section 259 of the Town and Country Planning Act 1990, the Secretary of State shall not confirm any such Order unless satisfied that the matters discussed at paragraph 3.1 are satisfied.
- 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.

4.0 Wards Affected

- 4.1 Haslington.

5.0 Local Ward Members

- 5.1 Councillors John Hammond and David Marren.

6.0 Policy Implications including – Carbon Reduction - Health

- 6.1 The Cheshire East Council Local Transport Plan (LTP) 3 Strategy set out the completion of the Crewe Green Link Road (South) as one of its key objectives. Indeed the scheme is included in the LTP Implementation Plan (2011-2015) as policy B2 – ‘Enabling Development’. The scheme is protected in planning policy as Policy TRAN7 of the Crewe and Nantwich replacement Local Plan 2011. The principle of support for the Basford East development site which would be accessed by the CGLRS is also allocated under policy E.3.2 as a Regional and Strategic employment allocation in the Crewe and Nantwich Replacement Local Plan 2011. The spur roads from the central roundabout of the new link road allow for this future comprehensive development of the Basford East site.

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 or 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 A planning application (ref. 12/4115N) was submitted to the Planning Authority by Cheshire East Borough Council, as the Highway Authority, for a “Dual carriageway road, known as the Crewe Green Link Road (South) linking the A500 with the A5020 and associated works” at fields between the A5020 Weston Road and the A500, with an additional area to the south of the A500 off Weston Lane, Crewe. Phase 1 of the development encompasses a north-south spine road between the A5020 and the A500, whilst Phase 2 of the development involves a connecting east-west spur road which crosses the line of Public Footpath No. 1 in Basford.

10.2 Planning permission was subsequently granted on 18th January 2013 in which condition No. 3 of the Decision Notice states:

“Development shall not begin on phase 2 of the development (as indicated on plan reference B1772401/P/100/004 Rev 3) until details of proposals for the stopping-up of the affected section of public footpath Basford FP1 have been submitted to and approved in writing by the Local Planning Authority.

Development on phase 2 not commence until this footpath has been stopped-up in accordance with the approved details.

Reason: In the interests of the PROW and pedestrian safety and in accordance with Policies RT.9 (Footpaths and Bridleways) of the Borough of Crewe and Nantwich Replacement Local Plan 2011.”

10.2 Public Footpath No. 1 Basford commences at its junction with Public Footpath No. 25 in the Town of Crewe at OS grid reference SJ 7205 5362 and runs in a generally southerly direction for approximately 1.7km to its junction with Weston Lane (C504) at OS grid reference SJ 7216 5232. The section of path to be stopped up is shown by a solid black line on Plan No. TCPA/013. The length of the path to be stopped up is approximately 6.4 metres in length.

10.3 In order to facilitate the development of the proposed Crewe Green Link Road (South), a Compulsory Purchase Order (CPO) titled “The Cheshire East Borough Council (Crewe Green Link Road South) Compulsory Purchase Order 2013”, was made under the Highways Act 1980 and the Acquisition of Land Act 1981 on 18th January 2013. The CPO has been made to secure, compulsorily, the land and new rights required to facilitate the construction of the new road. The area of land to be acquired pursuant to the Compulsory Purchase Order includes the land where the stretch of footpath FP1 Basford is to be stopped up.

The Statement of Reasons accompanying the CPO states in paragraph 3.10:

“The western spur from the central roundabout at its terminus intersects a Public Right of Way (footpath FP1 Basford). It is proposed that the route will be unchanged, except during construction when a temporary

diversion will be required, however a stopping up order is to be progressed to cover the section inside the highway boundary which will have highway rights affecting it following construction of the spur road”.

- 10.4 It is proposed that the stopping up Order would come into effect upon the commencement of development of Phase 2 of the scheme.
- 10.5 The design of the spur road, a 30mph single carriageway, will accommodate the onward passage of pedestrians using Public Footpath No. 1 in Basford, in order that use of the footpath is not hindered. A stopping-up of the section of footpath is required, however, so that duplicate rights are not in evidence over the same land.
- 10.6 An assessment in relation to equality legislation has been carried out and it is considered that the crossing of the proposed spur road would be no less easy to use than the existing route; whilst traffic would have to be negotiated, the surface of the route across the new road would be more accessible than the existing agricultural land.
- 10.7 The landowner is the Co-operative Wholesale Society. The landowner and tenant have been informed of the proposed stopping up Order.
- 10.8 The Ward Members have not yet been directly consulted on the proposed stopping up Order. However, they were consulted on the proposed road scheme through the planning consent process (Ref. 12/4115N). The Ward Members would receive notification of the making of the proposed stopping up Order.
- 10.9 The statutory undertakers have not yet been directly consulted on the proposed stopping up Order. However, they were consulted through the planning consent process (Ref. 12/4115N). If a stopping up Order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected. The statutory undertakers would receive notification of the making of the proposed stopping up order.
- 10.10 The user groups have not yet been directly consulted on the proposed stopping up Order. However, they were able to comment on the proposed road scheme through the planning consent process (Ref. 12/4115N), with the Mid Cheshire Footpath Society, Open space Society and South Cheshire Group of the Ramblers having been directly consulted. The user groups would receive notification of the making of the proposed stopping up Order.
- 10.11 The Planning Officer has confirmed that no objections referencing the impact of the proposed road on the Public Footpath were received during the consultation on the planning consent application (Ref. 12/4115N). This said, it can be anticipated that objectors to the Compulsory Purchase Order will take the opportunity to also object to the proposed stopping up Order.
- 10.12 Objections have been lodged against the Compulsory Purchase Order and in the event they are not withdrawn, the CPO will be submitted to the Secretary

of State for determination with a public inquiry anticipated in July or August 2013. In the event of objections being received against the proposed stopping up Order, the Council would request the Secretary of State to determine the stopping up Order in parallel with the determination of the CPO.

11.0 Access to Information

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

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