

# Public Rights of Way Committee

## Agenda

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<b>Date:</b>	<b>Monday 16th September 2013</b>
<b>Time:</b>	<b>4.00 pm</b>
<b>Venue:</b>	<b>Committee Suite 1,2 &amp; 3, Westfields, Middlewich Road, Sandbach CW11 1HZ</b>

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The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the 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 - 7)

To approve the minutes of the meeting held on 18 June 2013 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.

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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, Democratic Services Officer

**Tel:** 01270 686473

**E-Mail:** [rachel.graves@cheshireeast.gov.uk](mailto: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 118: Application for the Extinguishment of part of Public Footpath No. 29 in the Parish of Sandbach** (Pages 8 - 13)

To consider the application to extinguish part of Public Footpath No.29 in the parish of Sandbach

6. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 16 (part), Parish of Betchton** (Pages 14 - 19)

To consider the application to divert part of Public Footpath No.16 in the parish of Betchton

7. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No.40 (part), Parish of Mobberley** (Pages 20 - 25)

To consider the application to diver part of Public Footpath No.40 in the parish of Mobberley

8. **Highways Act 1980 Section 25: Proposed Dedication of Public Bridleway No 83, along Graveyard Lane, between Newton Hall Lane and Moss Lane, in the Parish of Mobberley** (Pages 26 - 39)

To consider the application to modify the Definitive Map and Statement by the addition of a Bridleway along Graveyard Lane in the parish of Mobberley

9. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No.91 (part), Parish of Wilmslow** (Pages 40 - 45)

To consider the application to divert part of Public Footpath No.91 in the parish of Wilmslow

10. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No.11 (part), Parish of Basford and Extinguishment of Public Footpath No.2, Parish of Shavington cum Gresty** (Pages 46 - 51)

To consider the application to divert part of Public Footpath No.11 in the parish of Basford, and to extinguish Public Footpath No.2 in the parish of Shavington cum Gresty

11. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No. 2, Parish of Shavington cum Gresty** (Pages 52 - 57)

To consider the application to divert part of Public Footpath No.2 in the parish of Shavington cum Gresty

12. **Local Government Act 2000 Section 2: Deed of Dedication for a New Public Footpath in the Parish of Knutsford** (Pages 58 - 63)

To consider the proposal to create a new public footpath on Cheshire East Council owned land in the parish of Knutsford

13. **Technical Amendment to the Diversion of Public Footpath No. 3 in the Parish of Swettenham** (Pages 64 - 66)

To note the technical amendment to the diversion of Public Footpath No.3 in the parish of Swettenham

14. **Public Path Orders for Public Footpath No's 10 and 29 in the Parish of Wincle under the Highways Act 1980** (Pages 67 - 68)

To note the change in the legal processing of the diversion of Public Footpath No's 10 and 29 in the Parish of Wincle

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**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Public Rights of Way Committee**  
held on Tuesday, 18th June, 2013 at Committee Suite 1,2 & 3, Westfields,  
Middlewich Road, Sandbach CW11 1HZ

**PRESENT**

Councillor J Wray (Chairman)  
Councillor Rhoda Bailey (Vice-Chairman)

Councillors S Davies, L Jeuda and A Moran (sub for Cllr M Parsons)

**In attendance**

Councillor L Brown, Cabinet Support Member for Environment

**Officers**

Mike Taylor, Rights of Way Manager  
Marianne Nixon, Public Path Orders Officer  
Elaine Field, Highways Solicitor  
Rachel Graves, Democratic Services Officer

**1 APOLOGIES FOR ABSENCE**

Apologies were received from Councillors D Druce, S Jones and M Parsons.

**2 DECLARATIONS OF INTEREST**

In relation to Item 5, Councillor A Moran declared a non-pecuniary interest in relation to the Rights of Way Improvement Plan as he was the Chairman and Trustee of the Beam Heath Trust and as landowners had received financial compensation for land over which the Connect2 Crewe to Nantwich Greenway ran.

In relation to Item 7, Councillor J Wray declared a non-pecuniary interest in this application as he was the Ward Councillor for Swettenham but had not taken part in any discussions on the application.

**3 MINUTES OF PREVIOUS MEETING****RESOLVED:**

That the minutes of the meeting held on 11 March 2013 be confirmed as a correct record.

**4 PUBLIC SPEAKING TIME/OPEN SESSION**

One member of the public had registered to speak in relation to Item 7: Application for the Diversion of Public Footpath No.3 (part) in the parish of

Swettenham. The Chairman advised that he would invite them to speak when the application was being considered by the Committee.

**5 PUBLIC RIGHTS OF WAY ANNUAL REPORT 2012-13 AND WORK PROGRAMME 2013-14**

The Committee received a report which detailed the achievements of the Public Rights of Way service during 2012-13 and set out the proposed work programme for 2013-14.

The Rights of Way Manager reported on the work carried out during 2012-2013 by the Network Management and Enforcement Team and the Legal Orders Team.

It was reported that:

- 52 temporary and emergency closures of rights of way had been made
- 509 problems on the network had been logged and been resolved
- 20 public path orders had been confirmed, 20 cases were in progress, with a backlog of 28 applications
- 4 Orders had been contested and referred to the Planning Inspectorate
- 2 Definitive Map Modification Orders had been confirmed, 10 were in progress, with a backlog of 19
- No Definitive Map Anomaly investigations had been carried out and there was a backlog of over 260+

The Rights of Way Team had experienced a spending freeze in the revenue budget for the third year in succession. However access to capital funds from the Local Transport Plan had been made available to allow the Team to clear the backlog of maintenance issues.

**RESOLVED:**

That the Annual Report for 2012-13 be noted and the proposed work programme for the Public Rights of Way Team 2013-14 be approved.

**6 HIGHWAYS ACT 1980 S.119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO.1 (PART), PARISH OF STAPELEY**

The Committee considered a report which detailed an application from Mr T Moses of David Wilson Homes North West, 2<sup>nd</sup> Floor, 303 Bridgewater Place, Birchwood, Warrington WA3 6XF, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.1 in the parish of Stapeley.

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 David Wilson Homes North West. The section of the path to be diverted ran across a residential development site although it was not directly affected by any of the planned buildings works. Diverting the path through a more landscaped area would create a more pleasant walking experience for future residents and the general public, taking them through trees and grassed areas. The route would end at the start of a new road which, when legally adopted by the Council, would allow users to reach London Road, close to the point at which the current route joined it.

The Committee noted that no objections had been received during the informal consultations and considered that the route would not be substantially less convenient than the existing route. Diverting the footpath would be of benefit to the public as it provided a more pleasant walking experience. 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 were satisfied.

The Committee unanimously

**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.1 Stapeley by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/082, 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.
- 7 HIGHWAYS ACT 1980 S.119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 3 (PART), PARISH OF SWETTENHAM**

The Committee considered a report which detailed an application from Mr M Dentith (agent) Latium Management Services on behalf of Mr B Kennedy (applicant) of Swettenham Hall, Swettenham, CW12 2J2, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.3 in the parish of Swettenham.

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.

Mr C Meewezan spoke in objection to the application as he felt that the current path was a safer route than the proposed diversion. The current route exited onto a wide area which allowed walkers to stand on the highway without being exposed to traffic whilst the proposed route exited onto a bend on a narrower road where there was no footway. He suggested that better signage would solve the problem of walkers using the metalled drive to the Hall.

The report detailed that the land over which the current path and the proposed diversion ran belonged to the applicant. The section of Public Footpath No.3 Swettenham to be diverted entered the grounds of the applicant's property – Swettenham Hall, immediately adjacent to the entrance and metalled access drive to the Hall, causing some users to walk along the metalled access drive to the Hall, all of which was the private property of the applicant, instead of following the footpath.

Moving the crossing point further east of the entrance would clearly separate the footpath from the access drive. This would ensure that path users were clear that the route of the footpath was not along the access drive whilst reinstating the privacy and security required by the applicant.

Objections to the diversion had been received from Congleton Ramblers, Peak and Northern Footpaths Society and Swettenham Parish Council.

The Committee considered the objections received and concluded 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 enhancing security and privacy to their property. It was considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order were satisfied.

The Committee by majority

**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.3 Swettenham by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/083, on the grounds that it is expedient in the interests of the owner of 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 Council be responsible for the conduct of any hearing or public inquiry.
- 8 **HIGHWAYS ACT 1980 S.119: APPLICATIONS FOR THE DIVERSION OF PUBLIC FOOTPATH NO.13 (PART) AND EXTINGUISHMENTS OF PUBLIC FOOTPATHS NO.11A, 13 (PART) AND 13A/1 PARISH OF MOBBERLEY**

The Committee considered a report which detailed an application from Mr R Dingle of LPC Living Ltd (agent) on behalf of Mr T Hamon of Argonaught Holdings, Third Floor, Elizabeth House, Ruettes Brayes, St Peters Port, Guernsey (applicant), requesting the Council make an Order under sections 119 and 118 of the Highways Act 1980 to divert part of Public Footpath No.13 and to extinguish Pubic Footpath Nos.11a, 13 (part) and 13a/1 in the parish of Mobberley.

In accordance with the Highways Act 1980 it was within the Council's discretion to make an Order to divert a Public Footpath under Section 119(1) 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, and to extinguish a Public Footpath under Section 118(1) if it appeared to the Council that it is expedient that a path or way should be stopped up on the grounds that it was not needed for public use.

The land over which the current paths and the proposed diversion and extinguishment ran belonged to Argonaught Holdings Ltd. The section of Public Footpath No.13 Mobberley to be diverted was unavailable at present due to steep gradients, boundaries and over growth. Part of it ran along a river bank and was at risk of potential flooding. Diverting it to align along an existing path that followed the site boundary would resolve these issues and reinstate public right of passage.

The sections of Public Footpath Nos. 11, 13 and 13a/1 to be extinguished ran across an industrial site but were obstructed by buildings and no longer of use to the public. Historically, the proposal to extinguish them was planned at the time of the site development but the orders were never made. Therefore the proposals would rectify this situation whilst protecting the security of the site that was desired by the applicant.

The Committee noted that the Ward Member – Councillor J Macrae, had responded to the proposals. He had no objections to the proposed diversion of Public Footpath No.13 but objected to the extinguishments of Public Footpath Nos. 11a, 13 (part) and 13a/1 on the grounds that the site was currently being consulted upon in the Local Plan process and pre application discussions had taken place with the Council regarding redevelopment for mixed residential and/or employment use. He considered that the public rights of way should not be extinguished at this time and that the future routes within and around the site should be considered as part of the redevelopment plans.

The Committee considered that the proposed diversion for Public Footpath No.13 in the parish of Mobberley would be an improvement to the existing route since it was level underfoot, without barriers and had steps and a footbridge to enable descent and ascent of the steep bank that flanked the small stream. 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.

The Committee considered the objection received from Councillor Macrae and concluded that the proposed extinguishments were in the interests of the landowner to legally meet the requirements first identified when the industrial site was built. There had been no evidence of the public wishing to use the routes in question.

The Committee unanimously

**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 in the parish of Mobberley by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/084, on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2 Orders be made under Section 118 of the Highways Act 1980 to extinguish Public Footpath Nos.11a, 13 (part) and 13a/1 in the parish of Mobberley, as illustrated on Plan No.HA/085, on the grounds that they are not needed for public use.
- 3 Public Notice of the making of the Orders be given and in the event of there being no objections within the period specified, the Orders be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 4 In the event of objections to any Order be received, the Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

The meeting commenced at 2.07 pm and concluded at 3.45 pm

Councillor J Wray (Chairman)

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## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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<b>Date of Meeting:</b>	16 September 2013
<b>Report of:</b>	Rights of Way Manager
<b>Subject/Title:</b>	Highways Act 1980 S118: Application for the Extinguishment of part of Public Footpath No. 29 in the Parish of Sandbach

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#### 1.0 Report Summary

- 1.1 The report outlines the investigation to extinguish part of Public Footpath No. 29 in the Parish of Sandbach. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for an Extinguishment order to be made. The proposal has been put forward (following representations from landowners) by the Public Rights of Way Unit to resolve an anomalous situation. 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 extinguish the section of footpath concerned.

#### 2.0 Recommendation

- 2.1 An Order be made under section 118 of the Highways Act 1980 to extinguish part of Public Footpath No. 29 Sandbach as illustrated on Plan No. HA/086 on the grounds that it is not needed for public use.
- 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 118(1) of the Highways Act 1980 it is within the Council's discretion to make an Order if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use. It is considered that Public Footpath No.29 Sandbach (part) as shown on plan HA/086 is not needed for public use, as an alternative route is available via the adopted footway between Milton Way and Moston Road, as illustrated on plan no. HA/086 by a dashed black line.
- 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:

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

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 Although there are currently outstanding objections to the consultation on this proposal, the path has not been available for use for at least 14 years and, to our knowledge, there has been no evidence of the public wishing to use the route since the late 1990's, when we received an inspection report from the Congleton Ramblers Association. As discussed in paragraph 3.1, an alternative route is available and it is therefore considered that the path is not needed for public use.

#### **4.0 Wards Affected**

4.1 Sandbach Ettiley Heath and Wheelock.

#### **5.0 Local Ward Members**

5.1 Councillor Gail Wait.

#### **6.0 Policy Implications**

6.1 None.

#### **7.0 Financial Implications**

7.1 Not applicable

#### **8.0 Legal Implications**

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

## **9.0 Risk Management**

9.1 Not applicable

## **10.0 Background and Options**

- 10.1 An application has been received from Mr Frank Murry of Ipstones Developments Ltd, 54 St Edwards Street, Leek, ST13 8BZ ('the Applicant') requesting that the Council make an Order under section 118 of the Highways Act 1980 to extinguish part of Public Footpath No. 29 in the Parish of Sandbach. The application is supported by two additional landowners also affected by this section of footpath.
- 10.2 The current line of Public Footpath No. 29 Sandbach runs in a generally south easterly direction from Moston Road to Elton Road. The short section of Public Footpath Sandbach No. 29 it is proposed to extinguish has been unavailable since the mid 1990's. The majority of Public Footpath Sandbach No. 29 was diverted in July 1994 by Congleton Borough Council under the Town and Country Planning Act 1990 to accommodate the housing development built between Moston Road, Elton Road and Salt Line Way. It appears that at that time, Congleton Borough Council had intended to divert the remainder of the footpath but this legal process was not undertaken.
- 10.3 An initial consultation for a proposed diversion of the footpath following the alignment originally proposed by Congleton Borough council was carried out in April 2013. The proposed diversion ran along an existing passageway between the rear of the houses on Chesterton Grove and the applicant's property for approximately 96 metres. This section had a width of 1 metre. There was then a short section of tarmacadam path which ran for approximately 33 metres along the footway between the properties at Nos. 17 and 19 Milton Way and rejoined with the existing line of the Public Footpath Sandbach No. 29, this section had a width of 1.9 metres. There were three objections to this proposal, from the Ramblers Association; one of the landowners affected and an adjacent landowner. The Council was unable to resolve these objections and it was felt that were the Council to proceed with the proposal to divert the footpath, it was likely that this would fail.
- 10.4 In view of this and after extensive discussions with two of the landowners, it was agreed that the Council would accept and progress an application to extinguish this section of footpath as it appears that it is no longer needed for public use.
- 10.5 The majority of the footpath it is proposed to extinguish crosses an industrial development site owned by the applicant, who also has concerns that this could be potentially dangerous for any walkers using the route.
- 10.6 Part of the remainder of the path crosses the gardens of two residential properties. Were the route to be reinstated or diverted as previously proposed, the landowners at No. 17 Milton Way and one of their neighbours have serious concerns in respect of their security and privacy. In addition, the landowners have previously been forced to seek the support of the police and the Congleton

Community Action Team due to groups of youths gathering on the path adjacent to their house (at point B on the enclosed plan no. HA/068) causing a nuisance with drugs, drinking and vandalism.

- 10.7 The Ward Councillor has been consulted about the proposal. No comments have been received.
- 10.8 Sandbach Town Council has been consulted and has objected to the proposal. They urge Cheshire East Council to revert back to the original proposal to divert the footpath but with improvements to be made to the footpath to make it accessible to wheelchair users and pushchairs. This would involve providing a greater width than 1 metre on the section of the route to the rear of the applicant's property, which formed part of the proposed diversion. The landowner is not prepared to provide this. At the date of writing the report, the PROW Unit was seeking discussions with the Town Council to talk about their concerns. If discussions take place before the committee, the outcome of this meeting will be reported verbally.
- 10.9 The user groups have been consulted. The Peak and Northern Footpaths Society has objected to the proposal. They do not consider the footway between Milton Way and Moston Road to be a suitable alternative route. They do not believe that the anti-social behaviour or the fact that the path crosses an industrial site is relevant to an application to extinguish the footpath under section 118. As discussed in paragraph 3.1, with Section 118(1) of the Highways Act 1980 it is within the Council's discretion to make an Order if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use. Although the path may be used by the public if it were to be re-instated or diverted, it is not needed for public use as there is an equally convenient path nearby. For any walkers wishing to access Sandy Lane or Moston Road from Milton Way, an alternative route is available a short distance north of the existing path.
- 10.10 Congleton Ramblers Group has also objected to the proposal. They believe that the proposal fails to meet the requirements of section 118 of the Highways Act for the following reasons:
1. *They can demonstrate that they reported a temporary obstruction of this section of path in April 1993 and that a second report was made on 5<sup>th</sup> November 1998 due to the housing development.* This is correct but, to our knowledge, there have been no further requests to use the route since this date.
  2. *The public concern is not limited to user groups and this can be demonstrated by the public response to a petition.* At the date of writing this report, the only correspondence we have received in relation to this proposal is from the user groups, landowners and statutory undertakers. We have not received any correspondence from members of the public, nor a petition.
  3. *The alternative route is not acceptable as it is substantially inconvenient for users and less enjoyable.* Users travelling in a northerly direction will have a slightly longer distance to walk to access Milton Way, but, for those travelling in a



southerly direction the distance is reduced. Travelling along a quiet estate road and adopted footway could be considered less intimidating for walkers than crossing an industrial premises and two private gardens.

4. *CEC's failure to reopen the route is contrary to the council's objective of promoting walking as a sustainable form of transport.* The obstruction of this footpath has been inherited by Cheshire East Council and the current landowners, due to Congleton Borough Council's failure with the planning process in the 1990's. The removal of the path has no impact on objectives to promote walking, nor are there any ROWIP initiatives or objectives associated with the path. In addition, the path has no real connection with the rest of the network, the only use is at a very local level to get from the estate to Moston Road and, as previously mentioned, there is an alternative route available a short distance north of footpath No. 29. As the route has been unavailable for many years and, to our knowledge, there have been no other requests to use it, pursuing the extinguishment is regarded as reasonable

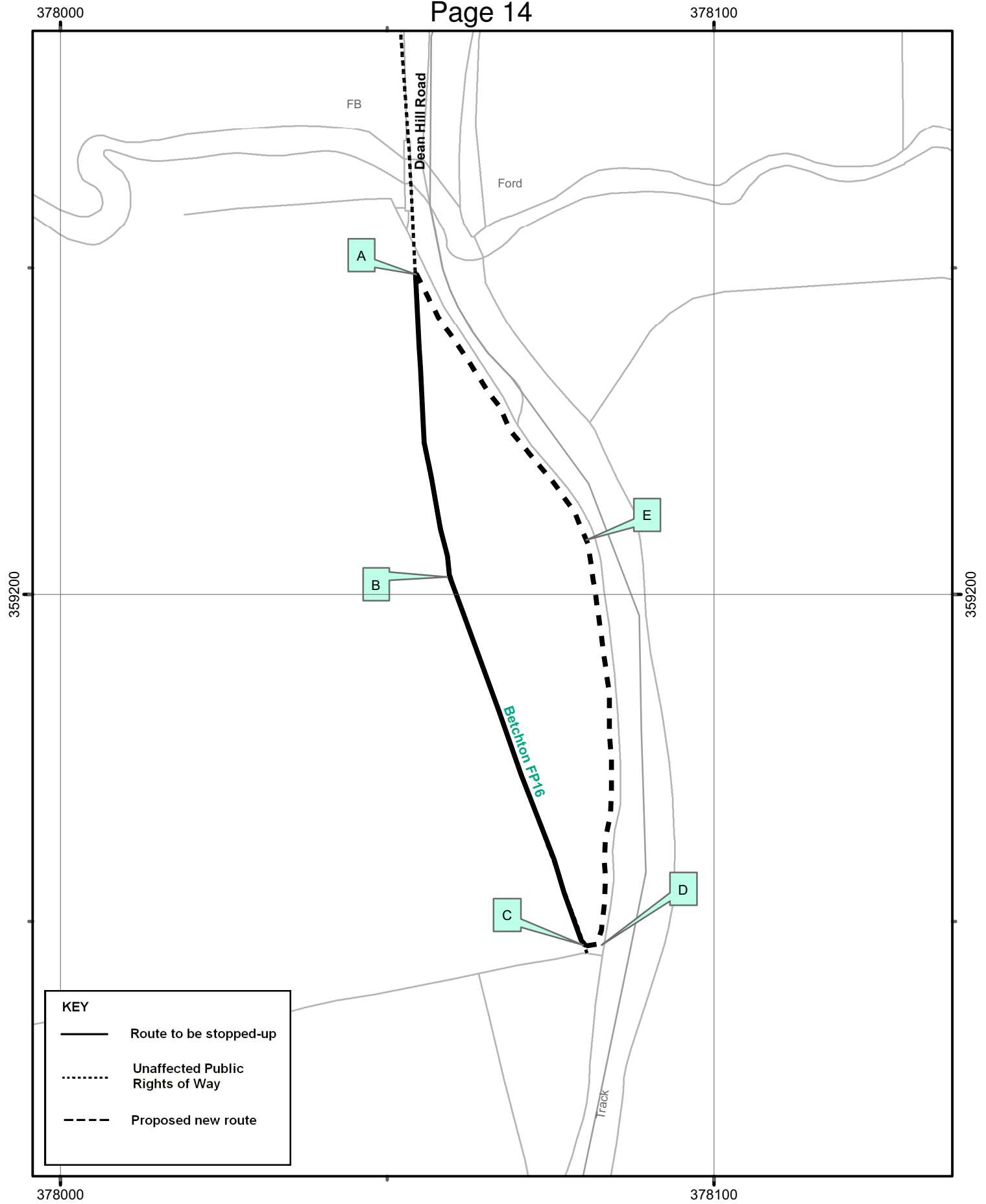
10.11 The statutory undertakers have also been consulted and have no objections to the proposed Extinguishment. If an Extinguishment order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

10.12 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.

## **11.0 Access to Information**

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

Name: Hannah Duncan  
Designation: Definitive Map Officer  
Tel No: 01270 686062  
Email: [hannah.duncan@cheshireeast.gov.uk](mailto:hannah.duncan@cheshireeast.gov.uk)  
PROW File: 262E/477



1:750

Highways Act 1980 s119  
The Cheshire East Borough Council  
(Footpath 16 (part) Parish of Betchton)  
Public Path Diversion Order 2013

Plan No.  
HA/088



## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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<b>Date of Meeting:</b>	16 <sup>th</sup> September 2013
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Highways Act 1980 s.119 Application for the Diversion of Public Footpath No. 16 (part), Parish of Betchton

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#### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.16 (part) in the Parish of Betchton. 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.16 Betchton by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/088 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

#### 3.0 Reasons for Recommendations

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 10.4 & 10.5 below.
- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering

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

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

And whether it is expedient to confirm the Order considering:

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

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

3.4 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will offer improved land and stock (horses) management capability for the landowner. It is considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.

#### **4.0 Wards Affected**

4.1 Brereton Rural

#### **5.0 Local Ward Members**

5.1 Councillor John Wray

#### **6.0 Policy Implications**

6.1 Not applicable

#### **7.0 Financial Implications**

7.1 Not applicable

#### **8.0 Legal Implications**

8.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/inquiry. It follows that the

Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources

## **9.0 Risk Management**

9.1 Not applicable

## **10.0 Background and Options**

- 10.1 An application has been received from Mr & Mrs K Beattie of Randle Rode Farm, Newcastle Road, Betchton, Sandbach, Cheshire, CW11 2TQ requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 16 in the Parish of Betchton.
- 10.2 Public Footpath No. 16, Betchton commences at its junction with Newcastle Road at O.S. grid reference SJ 7801 5948 and runs in a generally south, south easterly direction across pasture land, over a footbridge and then across further pasture land to terminate just before a field boundary at O.S. grid reference SJ 7808 5914. The section of path to be diverted is shown by a solid black line on Plan No. HA/088 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points A-E-D-C.
- 10.3 The land over which the section of the current path to be diverted and the proposed diversion run belongs to Mr & Mrs Beattie. 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. 16, Betchton to be diverted is enclosed between temporary fencing and bisects a field used for livestock, yet the area of this field to the east of the path is currently not used. Diverting the path to the eastern field edge would enable better use of the field in terms of livestock (horses) management and would also separate the livestock from the public.
- 10.5 The proposed new route (A-E-D-C on Plan No. HA/088) would run across flat land along the top of the wooded embankment that drops down to Dean Hill Road and be separated from the pasture field by its current eastern boundary fence. From point A, the new route would follow the field boundary firstly in a south easterly direction to point E and then in a southerly direction to point D before bearing westerly for several metres to terminate at point C.
- At its narrowest, the route would be 1.75 metres wide.
- 10.6 Ward Councillor was consulted about the proposal. No comments were received.
- 10.7 Betchton Parish Council has been consulted and members' comments will be reported verbally.

10.8 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

10.9 The user groups have been consulted.

The Congleton Ramblers Association submitted photographs of the proposed diversion route showing it is currently overgrown and they have registered an objection based on concerns that:

- in the event of the path being diverted out of the grazed area then the entire length of the path would require to be maintained to a reasonable standard.

The landowner's agent has agreed in principal to the implementation of a maintenance agreement. In the absence of a management agreement, it would fall to the Council to maintain it and cut back any overgrowth.

- The land to the east of the existing fence is indeed 1.7 metres wide, but only in part. The path is very much narrower in places.

The minimum width of the path will be 1.75 metres wide. Whatever the width of available flat land is at the moment, if an Order is made and confirmed, then the path will be put in on the ground at the width specified in the order and that will be 1.75m. The Council assures that it will not certify the path as 'fit for public use' unless it accurately reflects the Order specifications including path width. If the land available for the path is narrower in places at present, where this is the case, the Council will require it to be widened either by moving the fence back or some other means.

- The path has a steep drop to the east.

There is no requirement for the Council to request a fence on this land since it is private. However, the landowner has a barbed wire fence boundary (currently hidden in the undergrowth) that should prevent any path users venturing onto the slope and the nature of the slope is a woodland embankment.

- If the proposal is accepted the stiles into and out of the field become redundant, and should be removed.

It is our intention that stiles will not be required on the proposed diversion as the alignment will be outside the area with livestock.

Due to the current overgrowth on the proposed diversion route at present, members of the Congleton Ramblers Association also questioned if there would be consultation once the path was put in place. In response, it was explained that the legal process allows for consultation before a diversion

order is confirmed and before the path is put in place. Thereafter, there are no further opportunities to make comment on the diversion itself.

Given that the Congleton Ramblers Association feel unable to properly assess the footpath diversion due to the overgrowth on the path, they are sustaining their objection. It is not clear exactly which of the above comments are justifying their sustaining their objection although clarity has been requested.

Should any further comments be received from the Congleton Ramblers Association, they will be reported verbally.

The Peak and Northern Footpath Society have stated that they may well register similar objection to those of the Congleton Ramblers Association but no further comments have been received from them. Any further comments will be reported verbally.

No other comments were received.

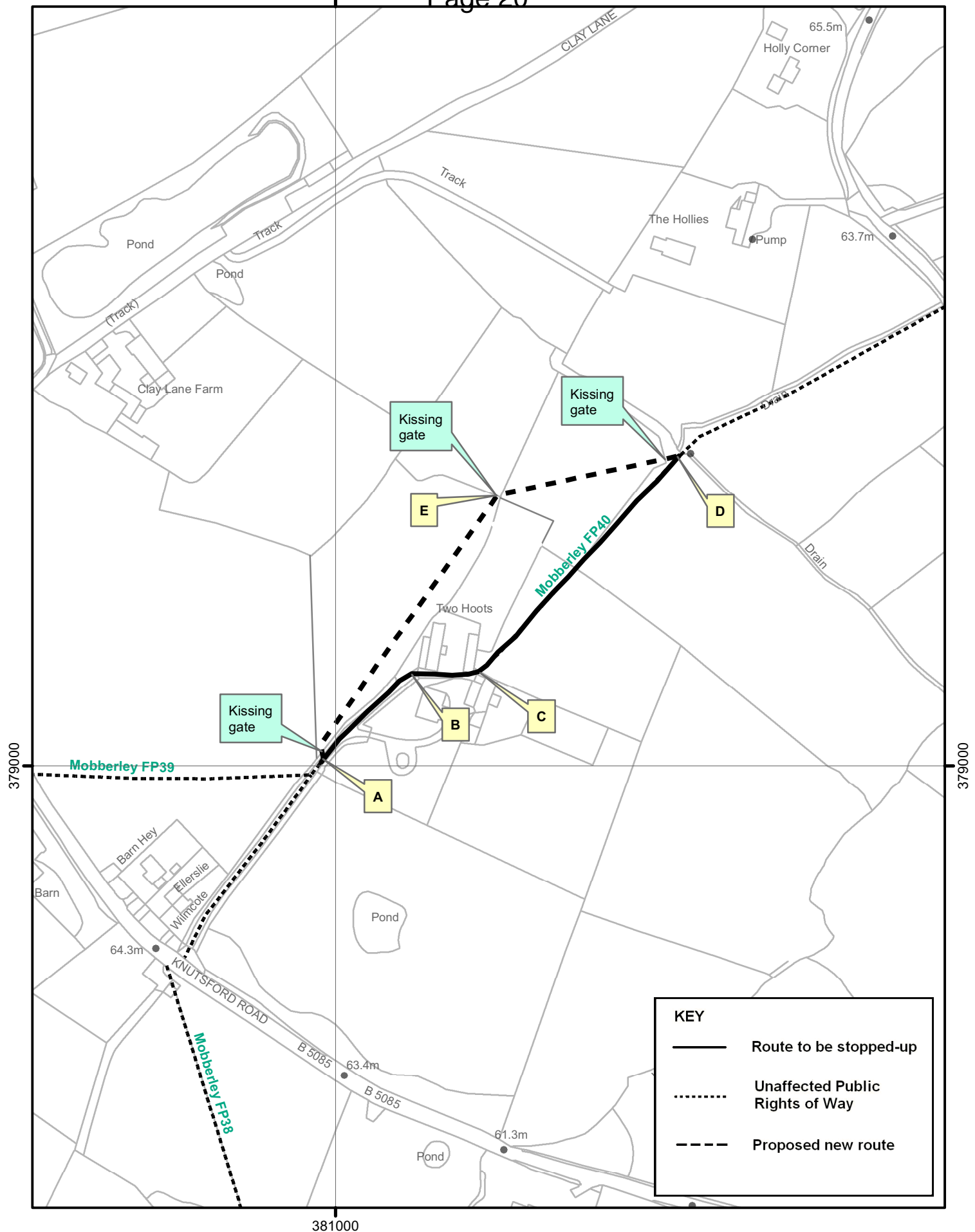
10.10 The Council's Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.

10.11 An assessment in relation to 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 would be no less convenient to use than the current 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: 023D/482



1:2,500

Highways Act 1980 s119  
The Cheshire East Borough Council  
(Footpath 40 (part) Parish of Mobberley)  
Public Path Diversion Order 2013

Plan No.  
HA/089





## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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<b>Date of Meeting:</b>	16 <sup>th</sup> September 2013
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Highways Act 1980 Section 119: Application for the Diversion of Public Footpath no. 40 (part), Parish of Mobberley

---

#### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.40 (part) in the Parish of Mobberley. 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. 40 Mobberley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/089 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

#### 3.0 Reasons for Recommendations

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 10.4 & 10.5 below.
- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering

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

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

And whether it is expedient to confirm the Order considering:

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

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

3.4 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will offer improved privacy and security to the applicants' property. 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 Mobberley

#### **5.0 Local Ward Members**

5.1 Councillor Jamie Macrae

#### **6.0 Policy Implications**

6.1 Not applicable

#### **7.0 Financial Implications**

7.1 Not applicable

#### **8.0 Legal Implications**

8.1 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/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 and Mrs L Nardo of Two Hoots Barn, Yew Tree farm, Knutsford Road, Mobberley, Knutsford, Cheshire, WA16 7BG requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 40 in the Parish of Mobberley.
- 10.2 Public Footpath No. 40, Mobberley commences at its junction with Knutsford Road at O.S. grid reference SJ 8092 7890 and runs in a generally north westerly direction along the metalled access drive to Yew Tree Farm and Two Hoots Barn. It then weaves between the property buildings of Two Hoots Barn before continuing across pasture land to terminate at its junction with Paddock Hill at O.S. grid reference SJ 8131 7923. The section of path to be diverted is shown by a solid black line on Plan No. HA/089 between points A-B-C-D. The proposed diversion is illustrated on the same plan with a black dashed line between points A-E-D.
- 10.3 The land over which the current path and the proposed diversion run belongs to Mr & Mrs Stubbs. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request, if it considers it expedient in the interests of the landowner to make an order to divert the footpath.
- 10.4 The section of Public Footpath No. 40, Mobberley to be diverted runs through the property of the applicants giving rise to concerns relating to privacy and security. Diverting the footpath out of the property would offer improved privacy and security.
- 10.5 The proposed new route (A-E-D on Plan No. HA/089) would from point A, enter into the south eastern corner of a field to the west of the access track to the applicant's property. It would then cross this field in a north, north easterly direction to exit into north east corner (point E). It would then enter a second field which it would cross in an east, north easterly direction to then exit the field onto a grass track where it would immediately terminate as it rejoined the current route (point D).

The new route would be 2 metres wide throughout, be unenclosed and have three kissing gates. Within the field entered from point A, a section of the new route would be stone surfaced past Two Hoots Barn. This would guide users along the new route whilst creating equivalent path surfacing comparable with the section of the current route that runs along the access track and through the property (points A-B-C).

Of benefit to the public, the new route would take users away from the close proximity of the property buildings and the owners whilst maintaining views of Two Hoots Barn from a different perspective. It would be a more direct and pleasurable route across pasture land and would be more convenient having three kissing gates instead of stiles.

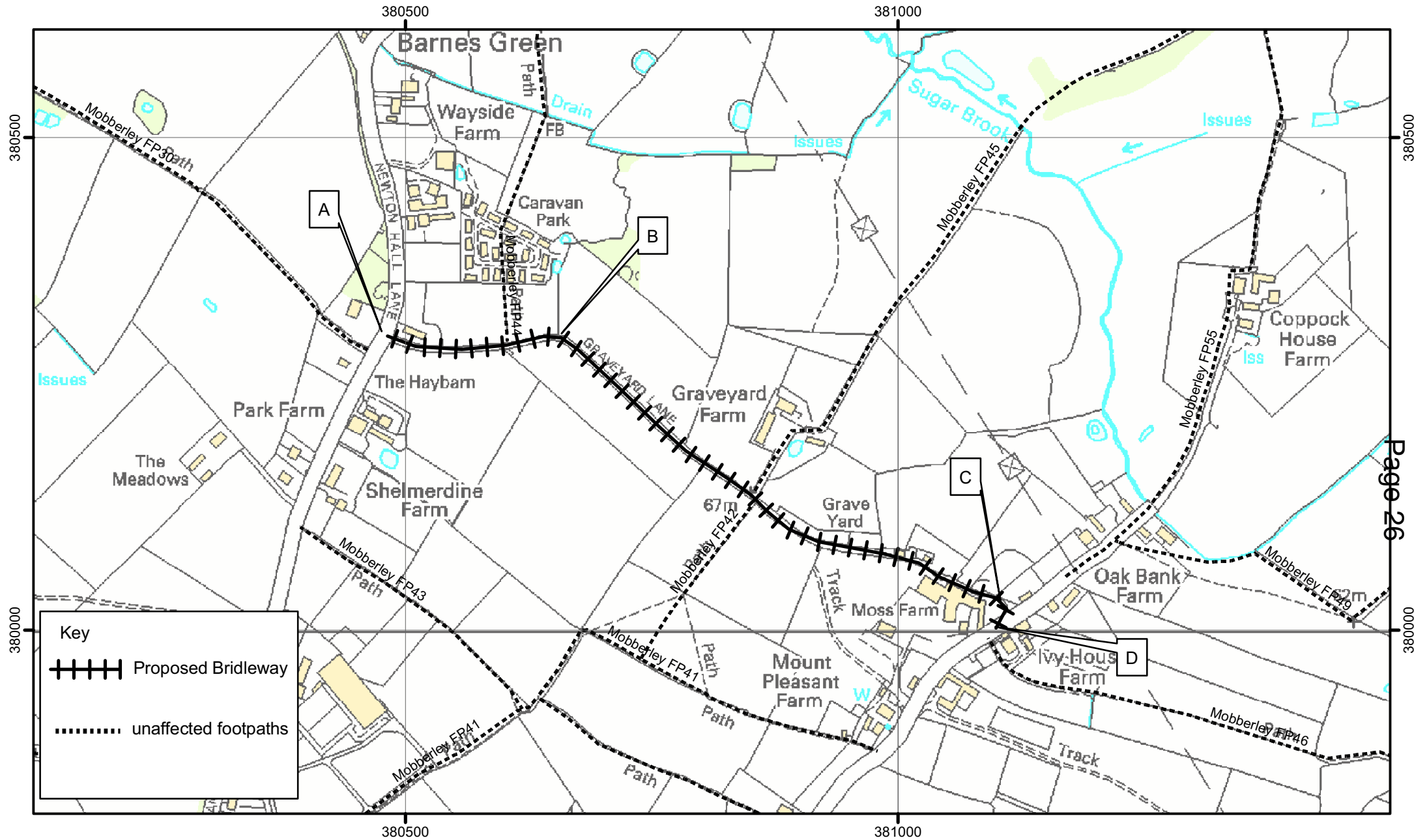
- 10.6 Ward Councillor was consulted about the proposal. No comments were received.
- 10.7 Mobberley Parish Council has been consulted and any comments received will be reported verbally.
- 10.8 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.9 The user groups have been consulted. The Peak and Northern Footpath Society registered no objection to the proposal. No other comments were received.
- 10.10 The Council's Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.
- 10.11 An assessment in relation to 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 is an improvement on the old route since it has kissing gates instead of stiles.

#### **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: 0210D/481

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Creation Agreement for Bridleway No.83 along Graveyard Lane, Mobberley

Plan No.  
HA/081

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

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<b>Date of Meeting:</b>	16 <sup>th</sup> September 2013
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Highways Act 1980 Section 25: Proposed Dedication of Public Bridleway No 83, along Graveyard Lane, between Newton Hall Lane and Moss Lane, in the Parish of Mobberley.

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#### 1.0 Report Summary

- 1.1 An application was submitted in May 2003 by the Alderley Edge, Wilmslow and District Footpaths Preservation Society ("the Society"), to modify the Definitive Map and Statement by the addition of a Bridleway along Graveyard Lane in the parish of Mobberley. The application was made under the Wildlife and Countryside Act 1981 for a Definitive Map Modification Order.
- 1.2 Agreements in principle have been reached with a number of landowners and adjacent landowners to dedicate Graveyard Lane as a Public Bridleway under section 25 of the Highways Act 1980. If the route is dedicated as a public bridleway this would negate the need for a Definitive Map Modification Order and the Society as the applicant has agreed to withdraw the application.

#### 2.0 Recommendation

- 2.1 Creation Agreements be entered into with the landowners and adjacent landowners under Section 25 of the Highways Act and under such terms as may be agreed by the Public Rights of Way Manager to create a new bridleway, to be known as Bridleway No. 83 Mobberley, as illustrated on plan no. HA/081 between points A to D; and public notice be given of these agreements.

#### 3.0 Reasons for Recommendations

- 3.1 Under section 25 of the Highways Act 1980 a local authority may enter into an agreement with any person having the capacity to dedicate a public footpath or bridleway.
- 3.2 Creation agreements have been sought because the lane has been diverted on the ground at its eastern end to a point on Moss Lane almost 20 metres north of the original alignment. By entering into agreements with the landowners rather than making a Definitive Map Modification Order, this could avoid potentially complicated legal Orders and processes and amount to a cost saving to Cheshire East Council.

- 3.3 Due to the diversion of the route and the lengthy and costly timescales involved when dealing with Definitive Map Modification Orders a dedication agreement is considered the most efficient and cost effective way to proceed with this proposal.
- 3.4 In considering this proposal regard has been given to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features and it is considered that there will be no adverse affects on these.

#### **4.0 Wards Affected**

- 4.1 Mobberley.

#### **5.0 Local Ward Members**

- 5.1 Councillor J Macrae.

#### **6.0 Policy Implications**

- 6.1 The proposal supports the following policies and initiatives of the Cheshire East Rights of Way Improvement Plan 2011-2026:
- Policy H3: Public rights of way and green infrastructure: Protect and enhance our public rights of way and green infrastructure and endeavour to create new links where beneficial for health, safety or access to green spaces. Initiative: 'Leisure routes for cyclists, horse riders and walkers'
  - Policy H2: Promotion of active travel and healthy activities: Work in partnership to promote walking, cycling and horse riding as active travel options and healthy activities. Initiative 'Public information on the public rights of way network'
- 6.2 The development of new walking, cycling and 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 There are currently no required works to be carried out on the ground by the Borough Council. Any future maintenance works required will be resourced by the Public Rights of Way team. The proposed bridleway is not a route which will require regular or extensive maintenance works.
- 7.2 No issue of compensation arises as the adjoining landowners' consent to the Bridleway creation. It should be noted that with some of these consent is on the basis of the '*Ad Medium Filum Via*' doctrine, where the owners of the land adjacent to the lane are assumed to own up to the centre line of the lane.



## **8.0 Legal Implications**

- 8.1 Under section 25 of the Highways Act 1980 a local authority may enter into an agreement with any person having the capacity to dedicate a public footpath or bridleway.
- 8.2 The path will become a public bridleway and maintainable at the public expense on the date that the Dedication Agreement is sealed.
- 8.3 Under section 25 of the Highways Act 1980 there is no statutory right for objection to the proposal.

## **9.0 Risk Management**

- 9.1 Not applicable.

## **10.0 Background and Options**

- 10.1 An application was submitted in May 2003 by the Society, to modify the Definitive Map and Statement by the addition of a Bridleway along Graveyard Lane in the parish of Mobberley. The application was made under the Wildlife and Countryside Act 1981 for a Definitive Map Modification Order.
- 10.2 Graveyard Lane as illustrated between points A and D on plan no. HA/081, is an enclosed stone track, it is signposted as a bridleway at both ends, where the lane meets the public highway and is also waymarked along its length as a bridleway. Graveyard Lane runs between Newton Hall Lane and Moss Lane (OS grid references SJ 8048 8029 to SJ 8110 8000). Documentary evidence suggests that the route may have been signposted and waymarked by Cheshire County Council in approximately 1992 or 1993. Three public footpaths join Graveyard Lane, namely Footpath no's 42, 44 and 45 in the parish of Mobberley.
- 10.3 In 2007 an Officer began investigations into the application. It was discovered that the lane had been diverted on the ground at its eastern end; because of this Creation Agreements were sought with the landowners to avoid potentially complicated legal orders. Also it was considered that if the landowners entered into Dedication Agreements it would negate the need for the Modification Order, which would amount to a cost saving for the Council.
- 10.4 Ownership of the whole of the lane was not established, therefore the Creation Agreements were taking into account the provisions of the '*Ad Medium Filum Via*' doctrine, that is that owners of land adjacent to the lane own up to the centre line of the lane. There are 8 ownership parcels involved and initial agreement was reached with all of these owners for their section or sections of the lane as a Public Bridleway.
- 10.5 In April 2007 a report was presented to the Cheshire County Council Rights of Way Committee seeking approval to enter into Creation Agreements with the landowners under section 25 of the Highways Act 1980, for the dedication of Graveyard Lane as Public Bridleway no. 83, Mobberley. The Committee

approved this recommendation, the Officer's report and minutes of the meeting are attached as Appendix 1.

- 10.6 Following the Committee's decision Agreements were drafted with each landowner and sent to them for signing. Unfortunately the Officer who was dealing with this then left the authority before the process was completed. There were also staff changes within the legal department who were assisting with this and regrettably the case was not concluded.
- 10.7 The Creation Agreements that were signed and returned have been located. It would appear that all but one landowner returned their Agreements and they were waiting to be sealed. However, the documents were not sealed and the process not completed.
- 10.8 Since 2007 the County has been divided administratively and Cheshire East Borough Council is now the surveying authority for the area. There has also been one change in landowner, at Graveyard Farm. With the passage of time and the change in Local Authority it is considered appropriate that new agreements are drafted. All of the 8 landowners have been contacted and have signed a certificate to say they agree to enter into a Creation Agreement with respect to Bridleway No. 83. The new Creation Agreements would once again take into account the provisions of the '*Ad Medium Filum Via*' doctrine as mentioned above in paragraph 10.4.
- 10.9 No physical changes are planned for Graveyard Lane, the condition of the path is considered acceptable as a Public Bridleway. Paragraphs 12 and 13 of the previous report (Appendix 1) mention vehicular rights and maintenance issues; there has been no change with regard to these issues. The Borough Council would become responsible for the surface of the route to Public Bridleway standard once the agreements are finalised. The landowners will be responsible for the adjoining hedges. The two gates mentioned in paragraph 13 (Appendix 1) will remain and will be included in the agreements. As stated above at paragraph 7.2, no issue of compensation arises as the landowners' consent to the Bridleway creation.
- 10.10 Mobberley Parish Council and the local Councillor have been consulted on the proposal. Mobberley Parish Council has no objection to the addition of the route as a Public Bridleway. No comment has been received from the local Councillor.
- 10.11 The Alderley Edge, Wilmslow and District Footpaths Preservation Society have again been contacted as the applicant of the Definitive Map Modification Order application. They remain content to withdraw their application should the Bridleway be created by Agreement.

## **11.0 Access to Information**

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

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**MEETING** : **RIGHTS OF WAY COMMITTEE**  
**DATE** : **20<sup>th</sup> April 2007**

**REPORT OF** : **COUNTY RURAL AND RECREATION OFFICER**  
**Contact Officer** : Peter Lewis, Rights of Way Officer  
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**HIGHWAYS ACT 1980: SECTION 25**  
**PROPOSED DEDICATION OF PUBLIC BRIDLEWAY NO 83, ALONG**  
**GRAVEYARD LANE, BETWEEN NEWTON HALL LANE AND MOSS LANE, IN**  
**THE PARISH OF MOBBERLEY, BOROUGH OF MACCLESFIELD**

**INTRODUCTION**

1 Agreements have been reached with a number of landowners and adjacent landowners to dedicate Graveyard Lane in Mobberley as a Public Bridleway. The route in question is shown with a dashed line on Drawing No MO/532 and runs between Newton Hall Lane and Moss Lane, between points A and B (OS Grid References SJ 8048 8029 to SJ 8110 8000).

**DESCRIPTION OF THE ROUTE**

2 Graveyard Lane is an enclosed stoned track, gated in 2 places, approximately 50 metres from point A and 160 metres from point B. It is signposted as a bridleway at both ends, where the lane meets the public highway and is also waymarked along its length as a bridleway. Documentary evidence suggests that the route may have been signposted and waymarked by the County Council in approximately 1992 or 1993. Three Public Footpaths in Mobberley join Graveyard Lane, namely Footpath Nos 42, 44 and 45. There is a homemade sign near "The Cottage" saying "Footpath and Bridlepath only".

3 It is understood that Graveyard Lane is well used by horseriders in particular and a horserider has been seen using the route on one of the visits by officers. Evidence of horse use has also been observed.

4 The route was visited recently and "No Through Road" and "No Turning" signs had been seen at point A, which were not in place when the route was first visited in 2003. These are believed to have been erected because of increased problems with Satellite Navigation systems having mistakenly recognized the lane as one that could be driven as a through route, with alleged problems having resulted from this.

**BACKGROUND**

Modification Order Application

5 An application (numbered 5/222) was submitted in May 2003 by the Alderley Edge, Wilmslow and District Footpaths Preservation Society ("the Society"), to modify the Definitive Map and Statement by the addition of a Bridleway along Graveyard

Lane. The application was coordinated by the Society's Secretary, Mrs Armstrong-Lee ("the applicant").

6 The applicant submitted 8 user evidence forms detailing use on foot and horseback, together with some documentary evidence. She pointed out that the width of the lane towards Moss Lane had been gradually reduced over the previous 30 years. She believes that the bridleway signs in position at either end of the route were erected in about 1993 and added that the gateway, wall and fence at Graveyard Cottage were erected in the summer of 2002. The applicant was concerned over the Leylandii saplings at The Cottage potentially reducing the useable width of the lane.

7 Graveyard Lane was originally subject to a claim to the Engineering Service for it to be added to the list of highways maintainable at public expense (known as the "List of Streets"), as an ancient highway (that is, public highway existing prior to the Highway Act 1835). However, counsel's opinion in the matter of another unrelated route was that the addition of a route to the List of Streets was not sufficient to determine its status and therefore all such claims should go through the evidential investigation of the Definitive Map Modification Order process. The Society was, therefore, advised to submit an application under Schedule 14 of the Wildlife and Countryside Act 1981.

8 The applicant has agreed to withdraw her Modification Order Application in the event that a Public Bridleway is successfully created by agreement and this is detailed below. The successful completion of the dedication agreements would negate the need to make a Modification Order.

#### Creation Agreements

9 Creation Agreements have been sought because the lane has been diverted on the ground at its eastern end to a point on Moss Lane almost 20 metres north of the original alignment. A legal agreement could avoid potentially complicated legal Orders and processes and amount to a cost saving to the County Council.

10 Because ownership of the whole of the lane has not been established, in order to make any owner / occupier aware that the County Council was investigating the status of this route, notices were posted on site in November / December 2003, for a period of at least 28 days. No-one came forward in response to these notices.

11 There are 8 ownership parcels involved and initial agreement has been reached with all of these owners for the dedication of their section or sections of the lane as a Public Bridleway. Creation Agreements will take into account the provisions of the '*Ad Medium Filum Via*' Doctrine (a presumption which is rebuttable), that is that owners of land adjacent to the lane own up to the centre line of the lane. The applicant has agreed to withdraw her Modification Order Application in the event that a Public Bridleway is successfully created by agreement.

12 Landowners have been made aware that pursuing Bridleway Dedication Agreements would not prevent the possibility of anyone claiming public vehicular rights over the route or former route in the future. The creation of a Public Bridleway would not affect any private right of way to property or land. As a Public Bridleway, it would be illegal for anyone to use it without lawful authority in a motorized vehicle and it is acknowledged that the landowners do not want the lane to become a through route to motor vehicles. It would be presumed that access to property or land would constitute lawful authority. Any illegal use by motorized vehicles would be a matter which should be reported to and dealt with by the Police.

13 Once the Agreements have been finalized, the Cheshire County Council will maintain the surface of the route to Public Bridleway standard. It is understood that a number of the landowners have an agreement between themselves for the maintenance of their respective private vehicular accesses and the Creation Agreements would not affect this. It will be the landowners / adjoining landowner's responsibility to prevent adjoining hedges from encroaching on the useable width of the route. It is understood that agreement over the containment of overgrowth from adjoining hedgerows can be reached, where appropriate and the County Council has incorporated a relevant clause in the agreement of the owner of the Leylandii saplings at The Cottage in this respect. Two gates will be recognized, one near Rose Cottage and one near The Cottage and these gates, if closed, will have to remain unlocked.

## **THE MAIN ISSUES AND CONSULTATIONS**

14 Creation Agreements are entered into under Section 25 of the Highways Act 1980. The authority must have regard to the needs of agriculture and forestry and it is concluded that there will be no adverse affects on these. Before making such an Agreement, the Highway Authority must consult any other local authority in the area, which in this case would be Macclesfield Borough Council and the Highway Authority may, but need not, consult Mobberley Parish Council or the public. The results of consultations are detailed below.

15 The authority is also obliged to give notice to the public in at least one local newspaper and this will be done once all of the final agreements have been completed.

16 Macclesfield Borough Council did not have any comments on the proposed creation. Mobberley Parish Council have considered this matter, but is unable to offer any evidence, although they support the Modification Order application, adding that the route was not sufficiently wide for a bridleway in places. County Councillor Wilkinson did not make any comments.

17 There have been no adverse comments from user groups or people with an interest in the lane. The majority of the adjoining landowners who have commented are in general agreement that the lane has been used freely as a bridleway in the past and believe the route already to be a bridleway. Mrs P Amies of the Border Bridleways Association says that several members of her group are riding it.

18 There appears to be other evidence that the route has been ridden and in public use for some time, including user evidence forms supplied. Mrs L Roberts of North Cheshire Riders referred to having suggested this route for inclusion in the Rights of Way Improvement Plan and referred to the lane as "an essential link for riders". She says that all of the riders in the North Cheshire Group use it frequently. One witnesses who lives on Moss Lane says that he sees up to 20 horseriders a day at weekends passing down Moss Lane, with a smaller number on weekdays, who must have come from or been heading to Graveyard Lane. One adjoining landowner says 10 to 15 horses a day use it on average and another landowner said they could find more users if necessary.

## **OTHER RELEVANT POINTS**

19 A search of the documentary evidence has been undertaken but not completed due to the landowners confirming their willingness to enter into Creation

Agreements, however, the evidence does provide some confirmation that there is a need for the route as a Public Bridleway.

### Documentary Evidence

20 The route was first shown on 1819 Greenwood's Map, although given that Graveyard Farm is believed to pre-date this and was probably only ever accessed from the lane, Graveyard Lane is possibly much older than this. The documentary evidence shows that there were gates near both ends of the route, as shown on the 1840 and 1842 Ordnance Survey Maps and the 1849 Mobberley Tithe Map (which also suggests it was in private ownership). The Ordnance Survey County Series 1:2500 Maps from c1872 to 1909 show the route gated at one or other end of the lane. The 1907-1936 Ordnance Survey Book of Reference suggests it was seen to be an Occupation Road (a term for a private road). The 1910 Finance Act Map shows the route as excluded from hereditaments. According to Planning Inspectorate Consistency Guidelines, this implies that there is a strong possibility that the route was considered a public highway of some description, although there may be other reasons to explain its exclusion. The lane is also referred to as "a traffic road" in the walking survey schedules for the footpaths joining the lane, compiled by the Parish Council in the early 1950s.

21 Therefore, at such a relatively early stage in the investigation of the Modification Order application, the only reasonable conclusion can be that there is conflicting evidence relating to public vehicular rights. The witness evidence has not been investigated.

22 More recent documentary evidence acknowledges bridleway use. A letter of 1975 from the Society reported that the lane had become in a bad condition owing mainly to horse riding, to the extent that it was unusable by walkers.

23 The likely existence of public bridleway rights has previously been acknowledged by the County Council in relation to a Public Path Diversion Order affecting the eastern end of the lane made on the 18<sup>th</sup> January 1980, detailed below. The route was referred to as Bridleway No 83, Mobberley. It is proposed to give this same number to the path once the agreements have been completed.

24 The Ordnance Survey has confirmed that Graveyard Lane was added to current Ordnance Survey maps as an ORPA (Other Route with Public Access) in September 1999, following a consultation with Cheshire County Council. A 1993 Publication on cycle rides in Cheshire describes the lane as a bridleway, well used by both cyclists and horse-riders.

25 A letter of 1998 from Barrie Quilliam of Moss Lane (later one of those who completed a user evidence form) refers to the route being a bridleway and can be used by about 60 horses a day at weekends.

### 1979 to 1981 Diversion proposal

26 There was a proposal to divert part of the lane as a Public Bridleway at its eastern end in 1979/80. It is believed that the application was made on the applicant's understanding that a public right of way existed over the lane, notwithstanding that the route was not shown to have any public status on the Definitive Map. A letter from Mobberley Parish Council of October 1979 confirms that it considered the lane to be a Public Footpath and Bridleway. A memorandum from the County Secretary and Solicitor confirms "it seems fairly certain on the evidence



available that a public right of way exists over the lane”, so the Order was made as if the route was a public right of way.

27 A Diversion Order was made (on the ground of securing “efficient use of land”) and advertised in 1981, but received a number of objections and was never progressed. The route was subsequently diverted on the ground, but on a different line to that proposed in the Order (there is evidence that the County Council negotiated terms with the landowner to improve the width and surface in doing this). There are references to previous changes to the lane on the ground, including before 1975, but from the evidence so far researched, it is not possible to build a full picture of what happened when.

28 A Mobberley Parish Council minute of the 5<sup>th</sup> November 1979 refers to a 200 signature petition for the retention of Graveyard Lane as a bridlepath having been forwarded to the County Roads Department. However, the petition has not been found. There is evidence that the County Council has subsequently trimmed the hedges along part of the lane in 1983.

## CONCLUSIONS

29 Section 25 of the Highways Act 1980 provides that a local authority may enter into a Public Path Creation Agreement with a landowner to create a bridleway over land in their area. Where such agreements are entered into, the local authority has a duty to take the necessary steps for securing the dedication of the route in accordance with the agreements.

30 It is in the interests of the public that Bridleway No 83 be dedicated, in that it provides a functional link between two highways which has been well used by walkers and horseriders, it resolves the anomaly of the three Public Footpaths which terminate on the lane and it avoids legal complications relating to the diverted route at the eastern end. It is believed that the route would also be accessible to wheelchair users. There are no works which will be needed to be carried out on the ground by the County Council. No issue of compensation arises as the Landowners consent to the Bridleway’s creation.

## RECOMMENDED:

**That approval be given to the making of the necessary public bridleway agreements in accordance with the provisions of Section 25 of the Highways Act 1980 for the dedication of Public Bridleway No 83, Mobberley as illustrated on Drawing No MO/532, subject to the path being in a condition satisfactory to the County Council prior to the agreements being concluded.**

This report has been prepared with regard to the Checklist for Members Reports and due consideration has been given to the relevant matters in its preparation.
---

Local Member	<i>Councillor S Wilkinson</i>
Background Documents	File: Application No 5/222 and Correspondence Files
Available for Inspection at	PROW Unit, Phoenix House, Clough Road, Winsford



**EXTRACT FROM THE MINUTES OF THE PUBLIC RIGHTS OF WAY  
COMMITTEE HELD ON 20 APRIL 2007**

**21 HIGHWAYS ACT 1980: SECTION 25. PROPOSED DEDICATION OF  
PUBLIC BRIDLEWAY NO.83, ALONG GRAVEYARD LANE,  
BETWEEN NEWTON HALL LANE AND MOSS LANE, IN THE  
PARISH OF MOBBERLEY, BOROUGH OF MACCLESFIELD**

Application was submitted in May 2003 by the Alderley Edge, Wilmslow and District Footpaths Preservation Society to modify the Definitive Map and Statement by the addition of a bridleway along Graveyard Lane. The applicant agreed to withdraw the Modification Order Application in the event that a public bridleway was successfully created by agreement.

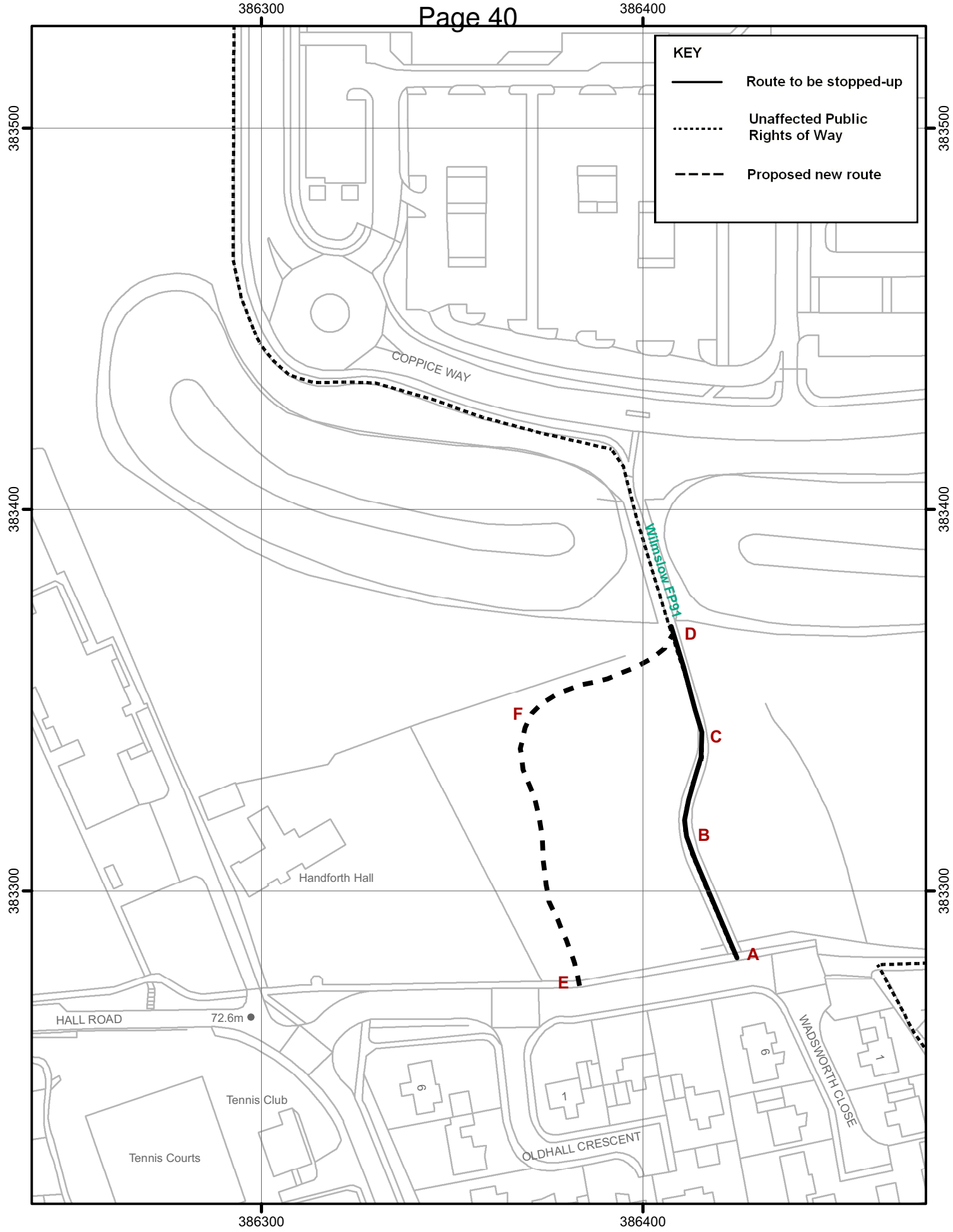
Agreement had been reached with a number of landowners and adjacent landowners in order to dedicate Graveyard Lane in Mobberley as a public bridleway.

Section 25 of the Highways Act 1980 provided that a Local Authority may enter into a Public Path Creation Agreement with a landowner to create a bridleway over land in their area. Where such agreements were entered to, the Local Authority had a duty to take the necessary steps for securing the dedication of route in accordance with the agreement.

It was in the interests of the public that bridleway no 83 be dedicated in that it provided a functional link between two highways which had been well used by walkers and horse riders. It resolved the anomaly of the three public footpaths which terminated on the Lane and it avoided legal complications relating to the diverted route at the eastern end. It was believed that the route would also be accessible to wheelchair users. There were no works which would be needed to be carried out on the ground by the County Council. No issue of compensation arose as the landowners consented to the bridleways creation.

**RESOLVED:**

That approval be given to the making of the necessary public bridleway agreements in accordance with the provisions of Section 25 of the Highways Act 1980 for the dedication of Public Bridleway No 83, Mobberley as illustrated on Drawing No MO/532, subject to the path being in a condition satisfactory to the County Council prior to the agreements being concluded.



1:1,250

Town and Country Planning Act 1990 s.257  
The Cheshire East Borough Council  
(Footpath 91 (part) Parish of Wilmslow)  
Public Path Diversion Order 2013

Plan No.  
HA/016



## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

---

<b>Date of Meeting:</b>	16 <sup>th</sup> September 2013
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No.91 (part), Parish of Wilmslow

---

#### 1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 91 in the Parish of Wilmslow. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as a response to planning approval granted to Mr P Nicosia of Greystone (UK) Ltd., 25, Heather Hills, Stockton Brook, Stoke-on-Trent, ST9 9PS for the development of a continuing care retirement community comprising of a care home and residential dwellings (Planning reference: 12/1578M). The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

#### 2.0 Recommendations

- 2.1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 91 Wilmslow, as illustrated on Plan No. T CPA/016 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

#### 3.0 Reasons for Recommendation

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

- 3.2 It is considered that it is necessary to divert part of Footpath No. 91 Wilmslow as illustrated on Plan No. TCPA/016, to allow for the development of a continuing care retirement community comprising of a care home and residential dwellings. Planning consent was granted on the 30<sup>th</sup> May 2013 by the Secretary of State following appeal: reference number 12/1578M.
- 3.3 Initial consultations have not elicited objections to the proposal and it is considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 are satisfied.
- 3.4 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.
- 3.5 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 3.4.

#### **4.0 Ward Affected**

- 4.1 Handforth

#### **5.0 Local Ward Members**

- 5.1 Councillor B Burkhill and Councillor D Mahon.

#### **6.0 Financial Implications**

- 6.1 Not applicable

#### **7.0 Legal Implications**

- 7.1 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.

#### **8.0 Risk Assessment**

- 8.1 Not applicable

#### **9.0 Background and Options**

- 9.1 An application has been received from Mr David Short (agent) of The Emerson Group on behalf of Greystone UK Limited (applicants) represented by Mr P Nicoisia of 25 Heather Hills, Stockton Brook, Stoke-on-Trent, ST9 9PS requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert part of Public Footpath No. 91 in the

Parish of Wilmslow.

- 9.2 Public Footpath No. 91 Wilmslow commences from a footpath at the southern end of Earl Road at O.S. grid reference SJ 8642 8379. It runs along the footpath in an easterly direction onto Kiln Croft Lane which it then follows in a southerly direction onto Coppice Way. It runs along Coppice Way firstly in a southerly direction and then east, south easterly direction to a footway at O.S. grid reference SJ 8639 8341. It then leaves Coppice Way to run along this footway in a south, south easterly direction to terminate on Hall Road at O.S. grid reference SJ 8642 8328. The section of path required to be diverted is shown by a solid black line on Plan No. TCPA/016 running between points A-B-C-D. The proposed diversion is illustrated with a black dashed line on the same plan, running between points E-F-D.
- 9.3 The existing alignment of the footpath would be directly affected by the development of residential dwellings that will form part of a care community with the wider development of a Care Community Village. The land is currently owned by the RK Wadsworth Will Trust and written permission to divert the path on their land as proposed has been submitted by Mr T Rickard (agent) on behalf of the trustees.
- 9.4 Planning permission was granted to the applicant on 30<sup>th</sup> May 2013 by the Secretary of State following appeal. The application is cited as Planning Permission Ref: 12/1578M. The details of the decision notice are for the development of a care home village comprising of a gated community of residential dwellings and a care home.
- 9.5 Part of the current line of Public Footpath No.91 Wilmslow would be obstructed by construction of the planned residential dwellings. Therefore, the footpath diversion is required to preserve public right of way between Coppice Way and Hall Lane by diverting it around the western perimeter of the care community.
- 9.6 Referring to Plan No. TCPA/016, the proposed route for the footpath (E-F-D) is approximately 118 metres long.

The proposed new route would start on Hall Road at point E to the west of the current start point. It would then follow a north, north westerly direction to point F and then bear in an east, north easterly direction to terminate at point D.

The new route would have a width of 3 metres, a metalled surface and fence/hedge on its eastern side that would provide security and privacy for the older residents of the care retirement community. To the west of the new route would be a landscaped amenity area.

It is intended that, should the proposed diversion succeed that the new route then be considered for upgrade to a shared cycle way.

- 9.7 The local Councillor has been consulted about the proposal. No comments have been received.

- 9.8 Handforth Parish Council has been consulted about the proposal. Members questioned the need for the diversion given that the development plans include a through road between the care home and the care community.

The care community will house elderly and vulnerable people (some with dementia) and there is a need to protect these people by gating all access points into this residential area that lies to the east of this road. The current footpath runs within this area so has to be moved out because not only will the gating prevent access to it but also, houses will be built over it. Therefore the diversion is absolutely necessary to allow the development to go ahead.

Members felt that if the diversion is to go ahead that the following parameters be given consideration:

- Low level lighting as the area is dark at night.
- Surface water drainage.

To succeed the diversion proposal has only to be at least similar to the current path. Considerations such as low level lighting cannot be taken into account at this stage and will be something that can be considered by the planning authority in consultation with the developer. The design of the path will need to accommodate surface water drainage.

Furthermore, given that the intention is to upgrade the new route to a cycleway should it be successful, request were made for:

- Physical barriers to segregate walkers from cyclists.
- Restricted access and prevention of motorcyclists and also shopping trolleys from the nearby shops (particularly M&S and TESCO).

The new route will be considered for upgrading to a shared cycle track if the diversion is successful. At present, the proposed diversion detailed in this report refers only to the diversion of the Public Footpath and a decision must be made on that alone in accordance with the legislation under section 257 of the Town and Country Planning Act. That said, the comments on the intended cycleway will be taken into account in due course as appropriate and considered for incorporation into the design of the cycle track if the public footpath diversion succeeds.

- 9.9 The statutory undertakers have also been consulted. An objection received from Electricity North West on the basis that the new route would be in the vicinity of apparatus was later withdrawn following further assurance that the footpath should not affect this apparatus and that the developer would be in full consultation with the company regarding the wider impact of the care village development on other apparatus in the area. No other comments were received.

If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

- 9.10 The user groups have been consulted. The South and East Cheshire Ramblers Association registered that members do not object to the proposed



diversion. They requested confirmation that the landscaped amenity area to the west of the new route would be open to the public (confirmed) and they questioned whether the intended cycle track will link Hall Lane to Coppice Way (confirmed).

Cycle Wilmslow registered no objection and welcomed improved access for cycling to Handforth Dean and of the concept of an upgrade of Wilmslow FP91 to allow cycling. However, they made the following comments for consideration:

- The proposed diversion is longer
- The existing path is 'straighter' with good sight lines
- Moving the path would disturb the natural environment near Handforth Hall - an upgrade of the existing path would be appropriate.
- The proposed path is 'L' shaped with two 90 degree bends -this should be made a more 'relaxed' bend to improve sight lines through the bend
- We feel the new path should be more of a 'greenway' with minimum of 1.5 metres grass (with no trees) on each side of the path. Thus the total width would be a minimum of 6 metres. This is to stop the path becoming a long alley once the fence is put up on one side of the old people's home.
- Measures should be in place to deter motorised traffic cutting through - but not so as to prevent cycles from using the path easily (inc. bike trailers etc)

No other responses have been received.

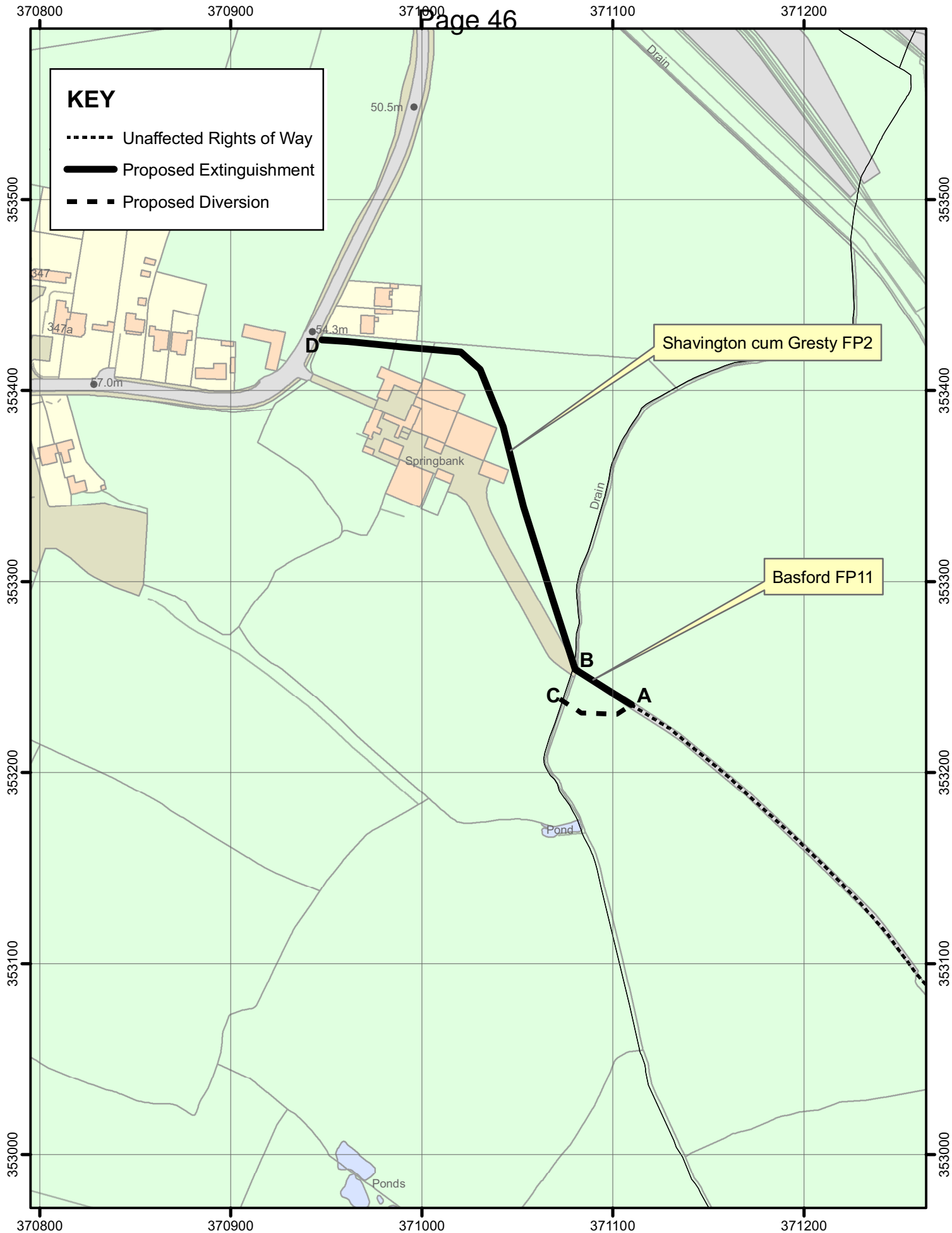
- 9.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 9.12 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current route.

## **10.00 Access to Information**

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

Officer: Marianne Nixon  
Tel No: 01270 686 077  
Email: [marianne.nixon@cheshireeast.gov.uk](mailto:marianne.nixon@cheshireeast.gov.uk)

**Background Documents:** PROW file 654D/479



1:2,500

Town and Country Planning Act 1990 S257  
Proposed Diversion of part of Public Footpath  
Basford No. 11 and Proposed Extinguishment  
of Public Footpath Shavington cum Gresty No. 2

Plan No.  
TCPA/014

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



## CHESHIRE EAST COUNCIL

### RIGHTS OF WAY COMMITTEE

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<b>Date of Meeting:</b>	16 September 2013
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Town and Country Planning Act 1990 S257: Application for the Diversion of Public Footpath No.11 (part), Parish of Basford and Extinguishment of Public Footpath No.2, Parish of Shavington cum Gresty

---

#### 1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 11 in the Parish of Basford and extinguish Public Footpath No. 2 in the Parish of Shavington cum Gresty. 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 landowners concerned, Goodman Limited, in response to planning approval granted for *'Outline Application for Warehousing and Distribution (B8), Manufacturing (B2) and Light Industrial/Office (B1) Development, Construction of Access Roads, Footpaths and Rail Infrastructure, Import of Soil Materials, Heavy Goods Vehicle and Car Parking and Landscaping/Habitat Mitigation'* and *'Outline application for residential development (up to 370 units), Offices (B1), local centre comprising food and non-food retail (A1) and restaurant/public house (A3/A4), hotel (C1), car showroom and associated works including construction of new spine road with accesses from Crewe Road and A500, creation of footpaths, drainage including formation of SUDS, foul pumping station, substation, earthworks to form landscaped bunds, provision of public open space and landscaping'*. 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 and extinguish the sections of footpaths concerned.
- 1.2 Members are required to consider the issues set out in this report and make a decision as to whether the proposed footpath diversion and extinguishment are necessary to enable development to take place in accordance with section 257 of the Town and Country Planning Act 1990 (as detailed in paragraph 3.1 below).

#### 2.0 Recommendations

- 2.1 An Order is made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 11 Basford and extinguish Public Footpath Shavington cum Gresty No. 2, as illustrated on Plan No. TCPA/0014, on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.

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

2.3 In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

### **3.0 Reasons for Recommendations**

3.1 In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as Local Planning Authority, can make an Order diverting and extinguishing public footpaths 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 applied for.

3.2 It is considered that it is necessary to divert part of Footpath No. 11 Basford and extinguish Footpath No. 2 Shavington cum Gresty as illustrated on Plan No. TCPA/014 to allow for the *'Outline Application for Warehousing and Distribution (B8), Manufacturing (B2) and Light Industrial/Office (B1) Development, Construction of Access Roads, Footpaths and Rail Infrastructure, Import of Soil Materials, Heavy Goods Vehicle and Car Parking and Landscaping/Habitat Mitigation'* and *'Outline application for residential development (up to 370 units), Offices (B1), local centre comprising food and non-food retail (A1) and restaurant/public house (A3/A4), hotel (C1), car showroom and associated works including construction of new spine road with accesses from Crewe Road and A500, creation of footpaths, drainage including formation of SUDS, foul pumping station, substation, earthworks to form landscaped bunds, provision of public open space and landscaping'*.

3.3 Informal consultations have elicited no objections to the proposal and it is considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 are satisfied.

### **4.0 Wards Affected**

4.1 Haslington and Shavington.

### **5.0 Local Ward Members**

5.1 Councillor David Marren, and Councillor John Hammond.  
Councillor David Brickhill

### **6.0 Financial Implications**

6.1.1 Not applicable

## **7.0 Legal Implications**

- 7.1 Section 257 of the Town and Country Planning Act 1990 (“TCPA”) allows the council to make and confirm orders authorising the stopping up or diversion of a footpath if they are satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission applied for. There are requirements of public notice and if objections are received to the proposed order and not withdrawn, the order must be submitted to the Secretary of State for confirmation, who must either call for a local inquiry or give the objectors an opportunity of being heard before making his decision. This would require attendant legal involvement and use of resources. It follows that the Committee decision may or may not be confirmed by the Secretary of State.
- 7.2 The procedure in making an order is detailed in Schedule 14 to the TCPA and the Town and Country Planning (Public Path Orders) Regulations 1993, which are made under the TCPA.

## **8.0 Risk Assessment**

- 8.1 Not applicable

## **9.0 Background and Options**

- 9.1 An application has been received from Goodman Limited (‘the Applicant’) requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert part of Public Footpath No. 11 in the Parish of Basford and to extinguish Public Footpath No. 2 in the Parish of Shavington cum Gresty.
- 9.2 Public Footpath No. 11 Basford commences on Weston Lane (C504) at OS grid reference SJ 7161 5221 and runs in a generally north westerly direction to its junction with Public Footpath No. 2 Shavington cum Gresty at OS grid reference SJ 7108 5324. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/014 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-C.
- 9.3 Public Footpath No. 2 Shavington cum Gresty commences on Crewe Road (B5071) at OS grid reference SJ 7094 5342 and runs in a generally south easterly direction to its junction with Public Footpath No. 11 Basford at OS grid reference SJ 7108 5324. The section of path to be extinguished is shown by a solid black line on Plan No. TCPA/014 running between points D-B.
- 9.4 The proposed diversion of Public Footpath No. 11 Basford is necessary to accommodate the storm water balancing ponds (as illustrated drawing no. 136). It leaves the new adopted highway and passes between two of the ponds before rejoining the existing line of Basford FP11. It will have a width of two metres and is approximately 41 metres in length.

- 9.5 The proposed extinguishment is necessary to accommodate the proposed local centre (food retail, restaurant/public house) and spine road. Public access will remain (as shown on the yellow line on drawing no. 136) alongside the new roads on pavements which will be adopted
- 9.6 The local Councillors have been consulted about the proposal. Councillor Marren has responded to state that he has no objections to the proposal.
- 9.7 Shavington cum Gresty Parish Council and Weston & Basford Parish Council have been consulted about the proposal. No comments have been received.
- 9.8 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.
- 9.9 The user groups have been consulted. No comments have been received.
- 9.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 9.11 An assessment in relation to Equality Act 2010 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.

**10.0 Access to Information**

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

***For further information:***

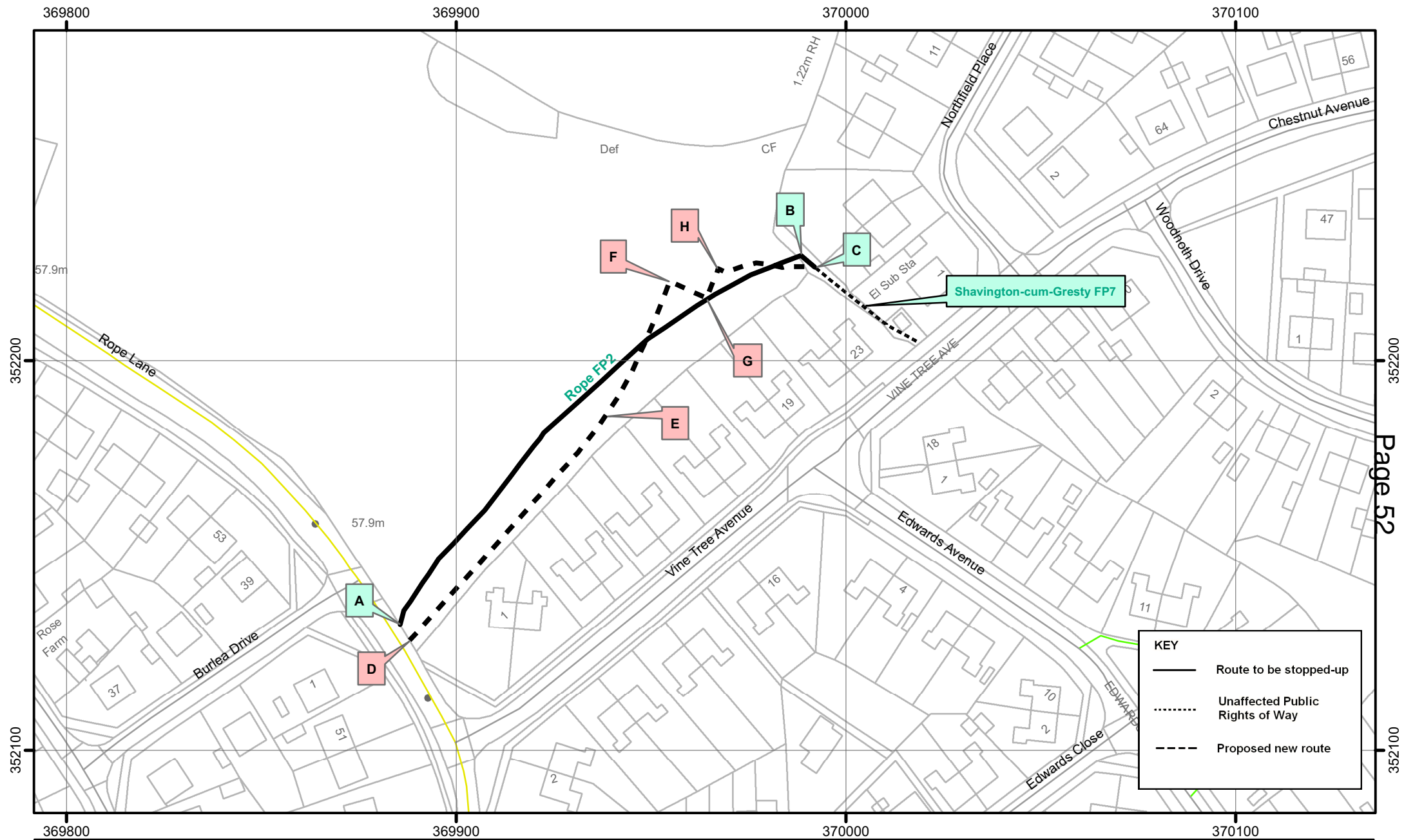
*Officer: Hannah Duncan*

*Tel No: 01270 686062*

*Email: hannah.duncan@cheshireeast.gov.uk*

***Background Documents: PROW file 042D & 264E/478***

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1:1,250

Town and Country Planning Act s.257  
The Cheshire East Borough Council  
(Footpath 2 (part) Parish of Rope)  
Public Path Diversion Order 2013

Plan No.  
TCPA/015

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and should not be used for legal purposes



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## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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<b>Date of Meeting:</b>	16 <sup>th</sup> September 2013
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No. 2, Parish of Shavington cum Gresty

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#### 1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 2 Rope in the Parish of Shavington cum Gresty. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as a response to planning approval granted following appeal, to Wainhomes North West Ltd., Cedarwood 2, Kelvin Close, Birchwood, Warrington, Cheshire, WA3 7PB for residential development (Planning references: 11/4549N). The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

#### 2.0 Recommendations

- 2.1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 2 Rope, as illustrated on Plan No. TCPA/015 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

#### 3.0 Reasons for Recommendation

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

- 3.2 It is considered that it is necessary to divert part of Footpath No. 2 Rope as illustrated on Plan No. TCPA/015, to allow for the development of 80 residential dwellings. Planning consent was granted by the Secretary of State following appeal on 28<sup>th</sup> November 2012; reference number 11/4549N.
- 3.3 Initial consultations have not elicited objections to the proposal and it is considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 are satisfied.
- 3.4 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.
- 3.5 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 3.4.

#### **4.0 Ward Affected**

- 4.1 Shavington

#### **5.0 Local Ward Members**

- 5.1 Councillor D Brickhill

#### **6.0 Financial Implications**

- 6.1 Not applicable

#### **7.0 Legal Implications**

- 7.1 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.

#### **8.0 Risk Assessment**

- 8.1 Not applicable

#### **9.0 Background and Options**

- 9.1 An application has been received from Mr Peter Barlow of Wainhomes (North West) Ltd., Cedarwood 2, Kelvin Close, Birchwood, Warrington, WA3 7PB requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert part of Public Footpath No. 2 in the Parish of Rope.

- 9.2 Public Footpath No. 2 Rope commences at its junction with Rope Lane at O.S. grid reference SJ 6988 5213 and runs in a generally north westerly direction across a pasture field and then through a kissing gate to terminate immediately afterwards at its junction with Public Footpath No. 7 Shavington cum Gresty at O.S. grid reference SJ 6998 5222. The section of path required to be diverted is shown by a solid black line on Plan No. T CPA/015 running between points A-B-C. The proposed diversion is illustrated with a black dashed line on the same plan, running between points D-E-F-G-H-C.
- 9.3 The existing alignment of the footpath would be directly affected by the residential dwellings once built. The land is not currently owned by Wainhomes although a contract is in place for the company to purchase the land from the current landowner. Furthermore, the landowner has given written consent for the diversion to proceed.
- 9.4 Planning permission was granted (following appeal) to the applicant on 28<sup>th</sup> November 2012. The application is cited as Planning Permission Ref: 11/4549N. The details of the decision notice are for the development of 80 residential dwellings.
- 9.5 Part of the current line of Public Footpath No.2 Rope would be obstructed by the residential buildings. Therefore, the footpath diversion is required to preserve public right of access from Rope Lane to Public Footpath No. 7 Shavington cum Gresty.
- 9.6 The proposed route for the footpath (D-E-F-G-H) is approximately 161 metres long (8% longer than the current route which is approximately 149 metres long). It would take users through the new development allowing them passage between Rope Lane and Public Footpath No.7 Shavington cum Gresty. The route would be 2 metres wide throughout and would be tarmaced. It would link to a new footpath fronting Rope Lane and would also pass through a park/play area at its northern end.
- 9.7 The local Ward Member has been consulted about the proposal. Comments were received from Councillor Brickhill in relation to concerns associated with difficulties caused by antisocial activities on the current path requesting that consideration be given to the path being closed/extinguished.

In response, it was explained that:

- effecting closure of the path would be difficult since once the new houses were built, the path would be incorporated into the communication structure of the development so would be needed for that purpose and it is also most likely that the change in the area from open field to developed housing would affect the current use so displacing any anti social activities.
- the only legal criterion for extinguishing the path would be that it is not needed for public use. Given the location of the path, it is most unlikely that this could be demonstrated.

- 9.8 Shavington cum Gresty Parish Council have been consulted about the proposal and comments will be reported verbally.
- 9.9 The statutory undertakers have also been consulted and have no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 9.10 The user groups have been consulted. No comments have been received.
- 9.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 9.12 An assessment in relation to 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 would be more convenient to use than the current route since it would have a tarmac surface where as the current route has a grassed surface.

#### **10.00 Access to Information**

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

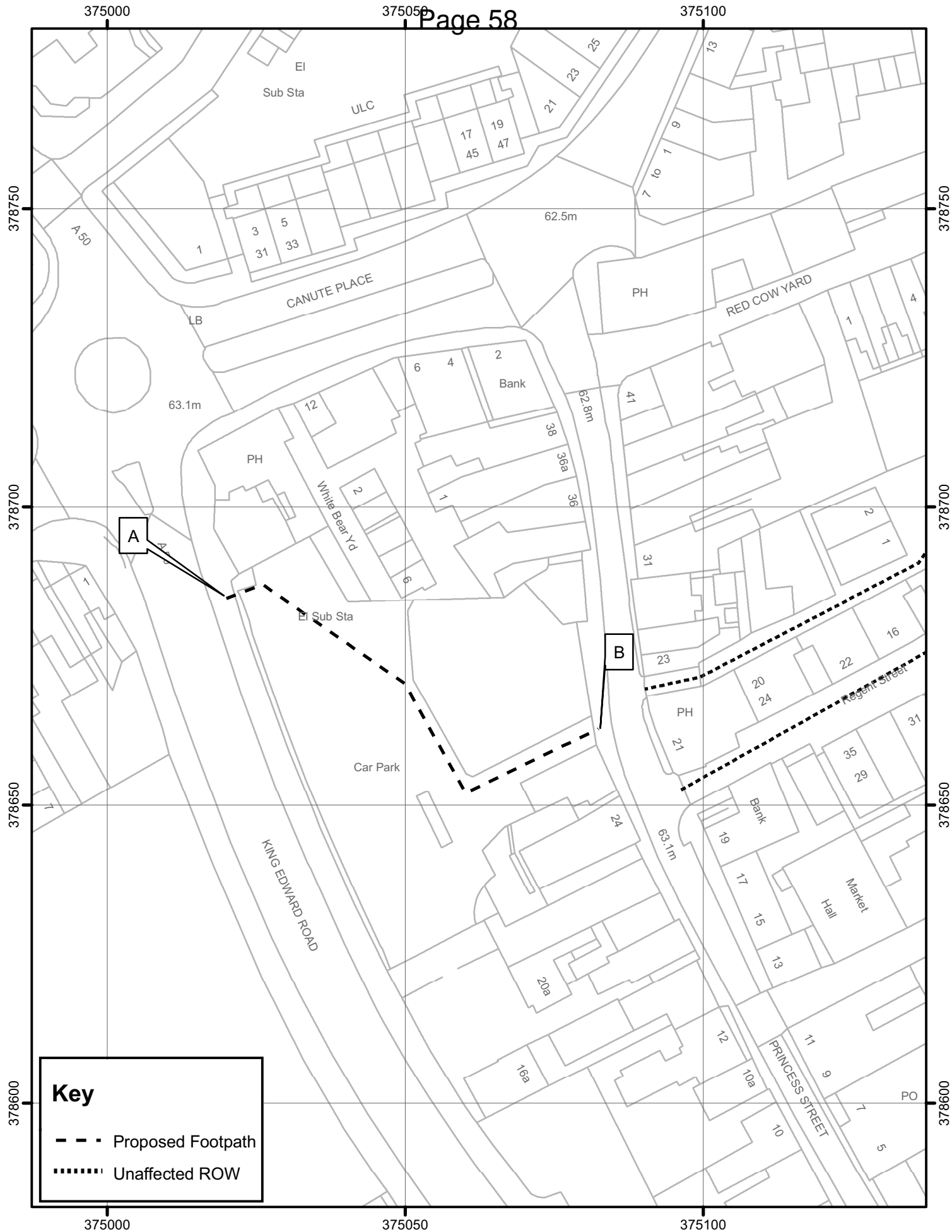
Officer: Marianne Nixon

Tel No: 01270 686 077

Email: [marianne.nixon@cheshireeast.gov.uk](mailto:marianne.nixon@cheshireeast.gov.uk)

**Background Documents:** PROW file 353D/480

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**Key**

- - - Proposed Footpath
- ..... Unaffected ROW



1:800

Princess St Car Park Knutsford

Plan No.  
LGA/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

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<b>Date of Meeting:</b>	16 <sup>th</sup> September 2013
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Local Government Act 2000 Section 2: Deed of Dedication for a New Public Footpath in the Parish of Knutsford.

---

#### 1.0 Report Summary

- 1.1 An application was received in August 2004 to add a footpath from King Edward Road to Princess Street, over the Princess Street car park in Knutsford, 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 footpath runs 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 be created under Section 2 of the Local Government Act 2000 in a Deed of Dedication, in the Parish of Knutsford, as illustrated between points A to B on Plan No. LGA/005 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 has been demonstrated by the application to add the footpath 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 be 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 Knutsford

#### **5.0 Local Ward Members**

5.1 Councillor Stewart Gardiner, Councillor Olivia Hunter and Councillor Peter Raynes.

#### **6.0 Policy Implications**

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

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

6.2 The development of new walking, cycling and 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 There are currently no required works to be carried out on the ground by the Borough Council. Any future maintenance works required will be resourced by the public rights of way team. The proposed footpath is not a route which will require regular or extensive maintenance works.

#### **8.0 Legal Implications**

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

8.2 The 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 August 2004 to add a footpath in Knutsford to the Definitive Map and Statement. The application is based on long usage of the route by local residents.

10.2 The land over which the proposed footpath runs 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 would be dedicated by Cheshire East Council as a public right of way.

10.3 The proposed footpath is approximately 80 metres in length and runs through a tarmac car park, linking King Edward Road and Princess Street in Knutsford (as shown on plan no. LGA/005).

10.4 The local Councillors have been consulted about the proposal. No comments have been received.

10.5 Knutsford 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: Highway & Transport and Assets. Assets have responded to state that they have no objection to the proposal. No comments have been received from Highway & Transport.

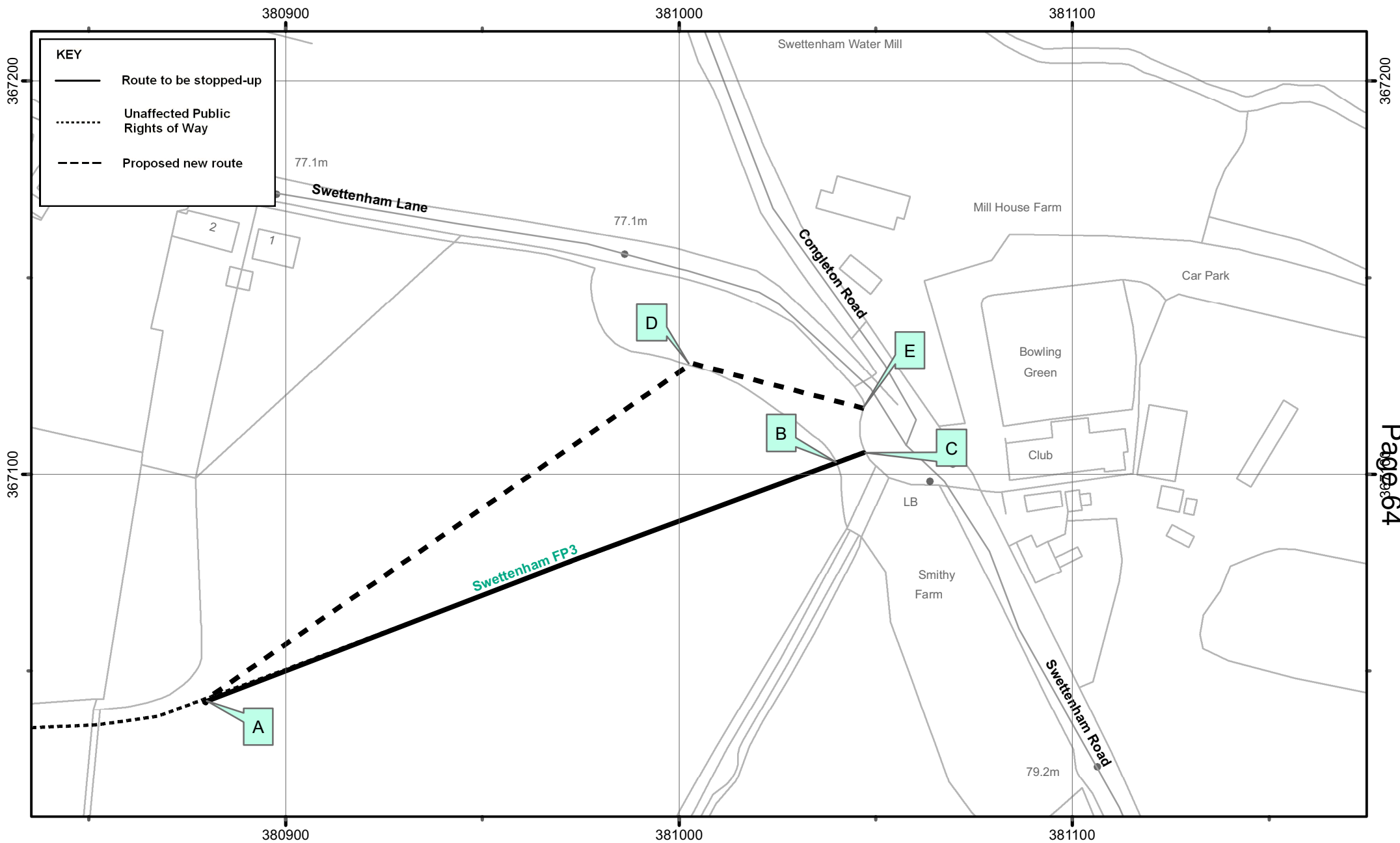
10.7 The local user groups have been consulted. No comments have been received.

## **11.0 Access to Information**

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

Name: Jennifer Tench  
Designation: Definitive Map Officer  
Tel No: 01270 686158  
Email: [jennifer.tench@cheshireeast.gov.uk](mailto:jennifer.tench@cheshireeast.gov.uk)  
PROW File: MA 5/230

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1:1,250

Highways Act 1980 s119  
The Cheshire East Borough Council  
(Footpath No 3 (part) Parish of Swettenham)  
Public Path Diversion Order 2013

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Plan No.  
HA/083A



## **CHESHIRE EAST COUNCIL**

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

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<b>Date of Meeting:</b>	16 <sup>th</sup> September 2013
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Technical Amendment to the Diversion of Public Footpath No. 3 in the Parish of Swettenham

---

#### **1.0 Report Summary**

- 1.1 This report is an informative item to brief members on a technical amendment to the diversion route of Public Footpath No.3 Parish of Swettenham. Committee members resolved to make an order to divert this footpath at the meeting held 18<sup>th</sup> June 2013 and recorded in item 7 of the minutes from that meeting.

#### **2.0 Recommendation**

- 2.1 No decision is required by Committee.

#### **3.0 Reasons for Recommendations**

- 3.1 N/A

#### **4.0 Wards Affected**

- 4.1 Brereton Rural

#### **5.0 Local Ward Members**

- 5.1 Councillor John Wray

#### **6.0 Policy Implications**

- 6.1 Not Applicable

#### **7.0 Financial Implications**

- 7.1 Not Applicable

#### **8.0 Legal Implications**

- 8.1 Not applicable

#### **9.0 Risk Management**

- 9.1 None

## **10.0 Background and Options**

- 10.1 Referring to the Rights of Way Committee Item No.7 from the meeting held on 16<sup>th</sup> June 2013, it was resolved that the Council make an Order under Section 119 of the 1980 Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Swettenham Public Footpath No. 3 in the Parish of Swettenham by creating a new section of public footpath and extinguishing the current path section, as illustrated on Plan No. HA/083, on the grounds that it was expedient in the interests of the owner of the land crossed by the paths.

- 10.2 During the initial consultation period prior to the Committee meeting, a number of statutory consultees opposed the diversion on the basis that it would bring users directly onto Swettenham Hall Lane (point E on Plan No. HA/083). This exit point was considered to be less safe than the exit point of the current route into the turning circle at the entrance of Swettenham Hall.

This concern also generated some discussion between Members at the Committee meeting.

- 10.3 Given the strength of objection and concern to this proposed exit point and following further consideration, it was agreed with the applicant that the diversion should be amended to bring users to an exit point in the turning circle.

The amended route is shown on the Plan No. HA/083A between points D-E.

Steps will be installed to enable users to traverse the steep slope at point E. It is likely that these will be made of earth and timber to merge with the current environment and will have a handrail.

- 10.4 As this technical amendment does not significantly change the walking experience that will be provided by the new route both in terms of enjoyment and convenience, it is not intended that any further consultation be undertaken before the order is made.

## **11.0 Access to Information**

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

Name: Mike Taylor

Designation: Public Rights of Way Manager

Tel No: 01270 686 115

Email: [mike.taylor@cheshireeast.gov.uk](mailto:mike.taylor@cheshireeast.gov.uk)

## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

---

<b>Date of Meeting:</b>	16 <sup>th</sup> September 2013
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Public Path Orders for Public Footpath No's 10 and 29 in the Parish of Wincle under the Highways Act 1980

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#### 1.0 Report Summary

- 1.1 This report is an informative item to brief members on a change in the legal processing of the diversion of Public Footpath No's 10 and 29 in the Parish of Wincle.

#### 2.0 Recommendation

- 2.1 No decision is required by Committee.

#### 3.0 Reasons for Recommendations

- 3.1 N/A

#### 4.0 Wards Affected

- 4.1 Sutton Ward

#### 5.0 Local Ward Members

- 5.1 Councillor Hilda Gaddum.

#### 6.0 Policy Implications

- 6.1 Not Applicable

#### 7.0 Financial Implications

- 7.1 Not Applicable

#### 8.0 Legal Implications

- 8.1 The route of a footpath cannot be diverted along an existing highway and therefore it is not possible to implement the Committee decision in strict compliance with the resolution. However, this does not prevent users from using the existing highway and consequently the proposed route can be achieved, albeit it will make use of the existing highway.

## **9.0 Risk Management**

9.1 None

## **10.0 Background and Options**

- 10.1 Referring to the Rights of Way Committee Item No.39 from the meeting held on 11<sup>th</sup> March 20013, it was resolved that the Council make an Order under Section 119 of the 1980 Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert parts of Public Footpaths No's 10 and 29 in the 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 was expedient in the interests of the owner of the land crossed by the paths.
- 10.2 Upon making the orders, it was noted that the diversion route for Public Footpath No. 10 Parish of Wincle would take the route along Minn End Lane which is an existing Highway. Legally, this is unacceptable since a public footpath cannot be diverted onto an existing highway.
- 10.3 To rectify this situation, since it was legally incorrect to divert the current route of Public Footpath No. 10, Parish of Wincle onto Minn End Lane as proposed, this section of path was extinguished under section 118 of the Highways Act 1980. Fundamentally, this is a legal administrative processing change and does not affect the changes on the ground for this path that were approved at the March committee meeting. The principle objectives of the diversion remain the same and the walking enjoyment/ experience of users remains the same.

## **11.0 Access to Information**

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

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