

Public Rights of Way Committee

Agenda

Date:	Monday 9th December 2013
Time:	2.00 pm
Venue:	Committee Suite 1,2 & 3, Westfields, Middlewich Road, Sandbach CW11 1HZ

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

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

1. **Apologies for Absence**

To receive any 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 - 14)

To approve the minutes of the meeting held on 16 September 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.

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

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

Members of the public wishing to ask a question at the meeting should provide at least 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. **Wildlife and Countryside Act 1981 - Part III, Section 53: Application to Add a Byway Open to all Traffic, Red Lane, Disley** (Pages 15 - 44)

To consider an application to add a Byway Open to All Traffic to the Definitive Map and Statement

6. **Highways Act 1980 Section 119: Application for the Diversion of part of Public Footpath No. 4 in the Parish of Rope** (Pages 45 - 50)

To consider an application to divert part of Public Footpath No.4 in the parish of Rope

7. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 72 (part) Parish of Rainow, and Public Footpath No. 13 (part) Parish of Macclesfield Forest** (Pages 51 - 60)

To consider the application for the diversion of part of Public Footpath No.72 in the parish of Rainow and part of Public Footpath No.13 in the parish of Macclesfield Forest

8. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 73 (part), Parish of Rainow** (Pages 61 - 68)

To consider an application for the diversion of part of Public Footpath No.73 in the parish of Rainow

9. **Local Government Act 2000 Section 2: Deed of Dedication - The Carrs, Wilmslow** (Pages 69 - 76)

To consider the proposal to create a public bridleway on Cheshire East Council owned public open space in the parish of Wilmslow

10. **Changes to Rights of Way Law and Procedures, the Growth and Infrastructure Act 2013** (Pages 77 - 80)

To receive for information details of changes to Rights of Way Law and Procedures under the Growth and Infrastructure Act 2013

THERE ARE NO PART 2 ITEMS

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 16th September, 2013 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor D Druce (Chairman)
Councillor Rhoda Bailey (Vice-Chairman)

Councillors S Davies, L Jeuda, M Parsons and J Wray

In Attendance

Councillor L Brown, Cabinet Support Member for Environment

Officers

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

9 APOLOGIES FOR ABSENCE

Apologies were received from Councillor S Jones.

10 DECLARATIONS OF INTEREST

There were no declarations of interest.

11 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meeting held on 18 June 2013 be confirmed as a correct record.

12 PUBLIC SPEAKING TIME/OPEN SESSION

A member of the public had registered to speak in relation to Item 5: Application for the Extinguishment of part of Public Footpath No.29 in the parish of Sandbach, and in relation to Item 6: Application for the Diversion of Public Footpath No.16 (part) in the parish of Betchton. The Chairman advised that he would invite them to speak when these applications were being considered by the Committee.

Cllr K Edwards, Bollington Town Council, reported that Bollington Walking Festival would be taking place 19-27 October 2013 and also that Bollington had become an accredited as a 'Walkers are Welcome' town. This was a nationwide initiative to encourage towns and villages to be welcoming to walkers.

13 HIGHWAYS ACT 1980 SECTION 118: APPLICATION FOR THE EXTINGUISHMENT OF PART OF PUBLIC FOOTPATH NO. 29 IN THE PARISH OF SANDBACH

The Committee received a report which detailed an application from Mr Frank Murray of Ipstones Developments Ltd, 54 St Edwards Street, Leek (the Applicant) requesting the Council to make an Order under section 118 of the Highways Act 1980 to extinguish part of Public Footpath No. 29 in the parish of Sandbach.

In accordance with Section 118 (1) it is within the Council's discretion to make an Order if it appeared to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path.

Mr C Meewezen spoke on to this application and stated that Congleton Ramblers had reported the path as being obstructed in 1993 and 1998 but no action had been taken. He asked that consideration be given to diverting the footpath and stated that the alternative route was not a suitable alternative route.

The short section of Public Footpath Sandbach No.29 proposed to be extinguished had been unavailable since the mid 1990's. The majority of Public Footpath No.29 had been 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 appeared that at the time, Congleton Borough Council had intended to divert the remainder of the footpath but the legal process was not undertaken.

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 a short section of tarmac 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.

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 if

the Council was to proceed with the proposal to divert the footpath, it was likely that this would fail.

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 appeared that it was no longer needed for public use. There was an alternative route available via the adopted footway between Milton Way and Moston Way.

The majority of the footpath it was proposed to extinguish crossed an industrial development site owned by the Applicant, who was also concerned that this could be potentially dangerous for any walkers using the route. Part of the remainder of the path crossed the gardens of two residential properties.

Objections to the proposal to extinguish the path had been received from Sandbach Town Council, Peak and Northern Footpaths Society and Congleton Ramblers Group.

The Committee noted that although there were currently outstanding objections to the proposals, the path had not been available for use for at least 14 years and no evidence of the public wishing to use the route since the late 1990s had been received. As there was alternative route available it was concluded that the footpath was not needed for public use and that the legal test for the making and confirming of an extinguishment order were satisfied.

The Committee by majority

RESOLVED: That

- (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) 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.

14 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 16 (PART), PARISH OF BETCHTON

The Committee considered a report which detailed an application from Mr & Mrs K Beattie of Randle Rode Farm, Newcastle Road, Betchton, Sandbach (the Applicant), 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.

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

Mr C Meewezen spoke on the application as it was thought that the proposed path would be narrower than the minimum width proposed. He was also concerned about the steep drop down to the road and asked about the maintenance of the proposed diversion route as it was at present overgrown.

The Congleton Ramblers Association had registered objections as represented by Mr Meewezen, and the Peak and Northern Footpath Society supported these views although they had not registered formal objection. Betchton Parish Council had registered that they did not object to the proposal.

The land over which the section of path to be diverted, and the proposed diversion belonged to the Applicant. The section to be diverted was enclosed between temporary fencing and bisected a field used for livestock, yet the area to the eastern edge of the path was not currently used. Diverting the path to the eastern field edge would enable better use of the field in terms of livestock management and would also separate the livestock from the public.

It was confirmed that the minimum width of the path would be 1.75 metres wide and this width would be stipulated in the Order. The Council would not certify the path as 'fit for public use' unless it accurately reflected the Order specifications including path width.

The Committee discussed the objections received and concluded that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would offer improved land and stock management capability for the landowner. 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 by majority

RESOLVED: That

- (1) providing that the Applicant agrees to enter into a maintenance agreement with the Council, 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) 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.

15 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO.40 (PART), PARISH OF MOBBERLEY

The Committee considered a report which detailed an application from Mr & Mrs L Nardo (the Applicants) of Two Hoots Barn, Yew Tree Farm, Knutsford Road, Mobberley, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert Public Footpath No.40 in the parish of Mobberley.

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.

In paragraph 10.3 in the report it should have stated 'Mr & Mrs Nardo' and not 'Mr & Mrs Stubbs'.

The land over which the current path and the proposed diversion ran belonged to the Applicants. The section of Public Footpath No.40 Mobberley to be diverted ran through the property of the applicants giving rise to concerns relating to privacy and security. The new route would take users away from the close proximity of the property buildings and would be more direct and pleasurable route across pasture land, with kissing gates instead of stiles.

The Committee noted that no objections had been received during the informal consultations and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would offer improved privacy and security to the Applicant's

property. It was therefore considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order were satisfied.

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.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) 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.

16 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

The Committee considered a report which details an application 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 in the parish of Mobberley. The application was made under the Wildlife and Countryside Act 1981 for a Definitive Map Modification Order.

In 2007 investigations began into this application. It was discovered that the lane had been diverted on the ground at its eastern end. It was therefore decided that a Creation Agreement be sought with the landowners to avoid potentially complicated legal orders. Ownership of the whole lane was not established and therefore the Creation Agreements were taking into account the provisions of the '*Ad Medium Filum Via*' doctrine – that is that the owners of the land adjacent to the lane own up to the centre line of the lane.

In April 2007 the Cheshire County Council Rights of Way Committee gave 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.

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 was also staff changes within the legal department who were assisting with this and regrettably the case was not concluded. All but one landowner had returned their Agreements but the documents were not sealed and the process was not completed.

It was now considered appropriate that new Agreements be drafted with the landowners. All eight landowners have been contacted and have signed a certificate to say that they agree to enter into a Creation Agreement with respect to this route.

The Alderley Edge, Wilmslow and District Footpaths Preservation Society have agreed to withdraw their Definitive Map Modification Order application should the Bridleway be created by Agreement.

Under section 25 of the Highways Act 1980 a local authority may enter into an agreement with any person having the capacity to dedicate a public footpath or bridleway. Under section 25 of the Highways Act 1980 there was no statutory right for objection to the proposals.

The Committee unanimously

RESOLVED:

That a Creation Agreement 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 to these agreements.

17 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO.91 (PART), PARISH OF WILMSLOW

The Committee received a report which detailed an application from Mr D Short (agent) of The Emerson Group on behalf of Greystone UK Limited, requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.91 in the parish of Wilmslow.

In accordance with Section 257 of the Town and Country Planning 1990, the Borough Council, as the 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 had been granted.

Planning permission was granted to the Applicant following appeal on 30 May 2013 – Planning Permission Ref: 12/1578M, for the development of a care home village comprising of a gated community of residential dwellings and a care home.

The existing alignment of the footpath would be directly affected by the development of residential dwellings which would form part of a care community within the wider development of a Care Community Village. The footpath diversion was required to preserve the public right of way between Coppice Way and Hall Lane by diverting it around the western perimeter of the care community. The land was currently owned by the RK Wadsworth Will Trust and written permission to divert the path on their land as proposed had been submitted by Mr T Rickard on behalf of the trustees.

The Committee concluded that it was necessary to divert part of Public Footpath No.91 Wilmslow to allow the development to be carried out. It was considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

RESOLVED: That

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

18 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 GRESTD

The Committee received a report which detailed an application from Goodman Limited (the Applicant) requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.11 in the parish of Basford and to extinguish Public Footpath No.2 in the parish of Shavington cum Gresty.

In accordance with Section 257 of the Town and Country Planning 1990, the Borough Council, as the 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 had been granted.

Planning permission had been 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 proposed diversion of Public Footpath No.11 Basford was necessary to accommodate the storm water balancing ponds. The proposed diversion would leave the new adopted highway and pass between two of the ponds before rejoining the existing line of Basford FP11.

The proposed extinguishment of Public Footpath No. 2 Shavington cum Gresty was necessary to accommodate the proposed local centre (food retail, restaurant/public house) and spine road. Public access would remain along the new roads on pavements which would be adopted.

The Committee concluded that it was necessary to divert part of Public Footpath No.11 Basford and extinguish Public Footpath No.2 Shavington cum Gresty to allow the development to be carried out. It was considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

RESOLVED: That

- (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) Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order

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

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

**19 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:
APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 2,
PARISH OF SHAVINGTON CUM GRESTD**

The Committee received a report which detailed an application from Mr Peter Barlow of Wainhomes (North West) Ltd (the Applicant), requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.2 in the parish of Rope.

In accordance with Section 257 of the Town and Country Planning 1990, the Borough Council, as the 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 had been granted.

Planning permission was granted to the Applicant following appeal to the Applicant on 28 November 2012 – Planning Permission Ref: 11/4549N, for the development of 80 residential dwellings.

Part of the current line of Public Footpath No.2 Rope would be obstructed by the residential buildings. Therefore a footpath diversion was required to preserve public right of access from Rope Lane to Public Footpath No.7 Shavington cum Gresty.

The proposed new route 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.

The Committee noted that the Ward Member – Councillor D Brickhill, had responded to the proposal, raising concerns associated with difficulties caused by antisocial behaviour on the current path and requested that consideration be given to the path being closed/extinguished.

Shavington cum Gresty Parish Council had registered objection to the proposal, raising similar concerns about antisocial behaviour and also concern about the drainage ditch on the current route. They also raised questions about the planning process in relation to the path diversion.

The Committee considered the objections from Councillor Brickhill and Shavington cum Gresty Parish Council and concluded that it was necessary to divert part of Public Footpath No.2 Rope to allow the

development to be carried out. It was considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

The Committee by majority

RESOLVED: That

- (1) An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.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) Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- (3) In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

20 LOCAL GOVERNMENT ACT 2000 SECTION 2: DEED OF DEDICATION FOR A NEW PUBLIC FOOTPATH IN THE PARISH OF KNUTSFORD

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

A Definitive Map Modification application had been received in August 2004 to add a footpath from King Edward Road to Princess Street in Knutsford. The application was based on long usage of the route by local residents.

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

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

The proposed footpath would be approximately 80 metres in length and run through the tarmac car park, linking King Edward Road and Princess Street, as shown on Plan No.LGA/005.

No objections had been received from consultation with Knutsford Town Council, Cheshire East Council Highway & Transport and Assets and local user groups.

The Committee unanimously

RESOLVED:

That 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.

21 TECHNICAL AMENDMENT TO THE DIVERSION OF PUBLIC FOOTPATH NO. 3 IN THE PARISH OF SWETTENHAM

The Committee received an information report on a technical amendment to the diversion route of Public Footpath No.3 in the parish of Swettenham.

The Committee, at its meeting on 16 June 2013, had resolved that an Order should be made to divert part of Public Footpath No.3 in the parish of Swettenham. During 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. This exit point being considered less safe than the current exit point into the turning circle at the entrance of Swettenham Hall.

Given the strength of objection and concern it has been agreed with the applicant that the diversion be amended to bring users to an exit point in the turning circle. The revised exit point is on Plan No.HA/083A between points D-E.

This amendment did not significantly change the walking experience that would be provided by the new route both in terms of enjoyment and convenience, and it was not intended that any further consultation be undertaken before the Order was made.

RESOLVED:

That the report be noted.

22 PUBLIC PATH ORDERS FOR PUBLIC FOOTPATH NO'S 10 AND 29 IN THE PARISH OF WINCLE UNDER THE HIGHWAYS ACT 1980

The Committee received an information report on a change in the legal processing of the diversion of Public Footpath Nos. 10 and 29 in the parish of Wincle.

In paragraphs 10.2 and 10.3 of the report it should have said Public Footpath No. 29 in the parish of Wincle and not Public Footpath No.10.

The Committee, at its meeting on 11 March 2013, resolved that an Order be made to divert parts of Public Footpaths No.10 and 29 in the parish of Wincle. Upon making the Orders it was noted that the diversion route for Public Footpath No.29 would take the route along Minn End Lane, which was an existing Highway. Legally this was unacceptable since a public footpath cannot be diverted onto an existing highway.

To rectify this situation it was proposed that this section of Public Footpath No.29 be extinguished under section 118 of the Highways Act 1980. This is a legal administrative processing change and did not affect the changes on the ground for this path that was approved at the March committee meeting. The principle objectives of the diversion remained the same and the walking enjoyment/experience of users remained the same.

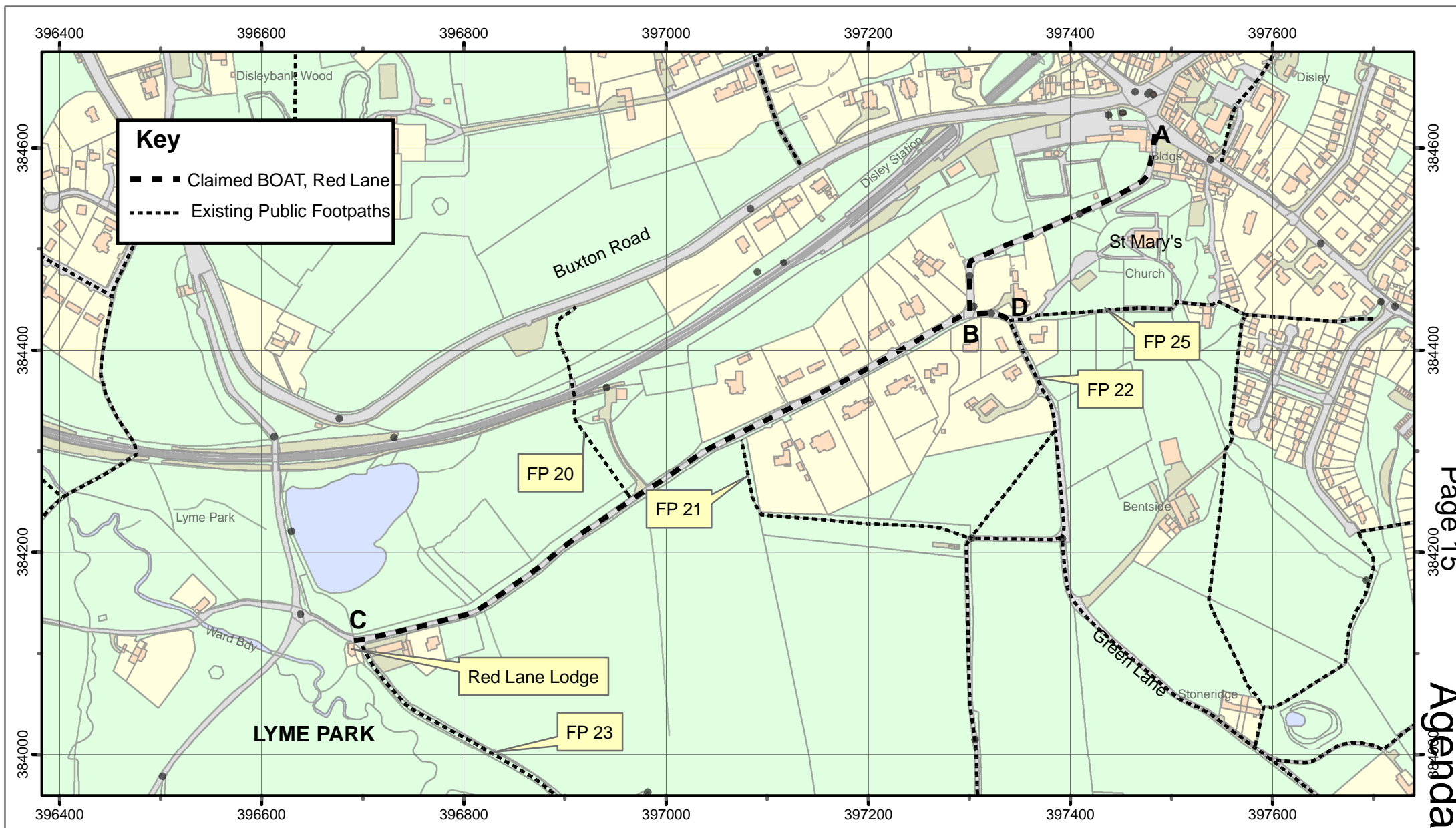
RESOLVED:

That the report be noted.

The meeting commenced at 4.00 pm and concluded at 5.55 pm

Councillor D Druce (Chairman)

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1:5,000

Claimed Addition of Byway Open to all Traffic,
Red Lane Disley and short spur to FP's 22 & 25

Plan No.
WCA/10

This is a working copy of the definitive map
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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 9th December 2013
Report of: Rights of Way Manager
Subject/Title: Wildlife and Countryside Act 1981 – Part III, Section 53.
Application to Add a Byway Open to all Traffic, Red Lane, Disley

1.0 Report Summary

- 1.1 The report outlines the investigation of an application made by Councillor F.M Flynn on behalf of Disley Parish Council, to add a Byway open to all Traffic to the Definitive Map and Statement. This includes a discussion of the consultations carried out in respect of the claim, the historical evidence, witness evidence and the legal tests for a Definitive Map Modification Order to be made. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to add a byway.

2.0 Recommendation

- 2.1 The application to modify the Definitive Map and Statement to record a byway open to all traffic between points A-B-C and B-D as shown on plan number WCA/010 be refused on the grounds that there is insufficient evidence to show the existence of Public Byway open to all Traffic rights;
- 2.2 An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding a Public Footpath along the route shown between points A-B-C on plan number WCA/010.
- 2.3 An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding a Public Footpath, along the route shown between points B-D on plan number WCA/010.
- 2.4 Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Orders be confirmed in exercise of the power conferred on the Council by the said Acts.
- 2.5 In the event of objections to the Orders being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 The evidence in support of this claim must show, on the balance of probabilities that public byway open to all traffic rights subsist along the claimed routes. It is considered that there is insufficient user and historical evidence to support the existence of public byway rights along the route A-B-C and B-D on plan no. WCA/010. It is considered that the requirements of Section 53(3)(c)(i) have not been met in relation to byway open to all traffic rights and it is recommended that the application be refused.
- 3.2 However it is considered that on the balance of probabilities, there is sufficient evidence to support the requirements of Section 53(3)(c)(i) and it is recommended that the Definitive Map and Statement should be modified to show the route A-B-C and B-D as a Public Footpaths.

4.0 Wards Affected

- 4.1 Disley

5.0 Local Ward Members

- 5.1 Councillor Harold Davenport

6.0 Policy Implications

- 6.1 Not Applicable

7.0 Financial Implications

- 7.1 Not Applicable

8.0 Legal Implications

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

9.0 Risk Management

- 9.1 None

10.0 Background and Options

10.1 Introduction

- 10.1.1 This application was registered in November 2002 and made by Cllr M Flynn c/o Disley Parish Council to modify the Definitive Map and Statement by adding a Byway open to all Traffic along the route A-B-C and B-D in the parish of Disley. The route applied for is known as 'Red Lane' and a short section of 'Green Lane'. Red Lane runs from the junction of Buxton Old Road (C413) adjacent to the Ram's Head public house (point A on plan no. WCA/010) in a southerly then south westerly direction to point B (on plan no. WCA/010) immediately to the west of the vicarage of St Mary's church then continues west south westerly to an entrance gate at the boundary of Lyme Park (point C on WCA/010). The short section of Green Lane also claimed, runs from point B (on plan no. WCA/010) in a generally south easterly direction to its junction with public footpaths no.25 and no. 22 and the Lane to St Mary's Church. The application is based on historical evidence; five evidence of use forms and a statutory declaration.
- 10.1.2 Red Lane forms an access route to a large number of properties and also to St Mary's Church. At the westerly end it enters Lyme Park via a metal gate besides a lodge. Three public footpaths join Red Lane and two public footpaths run from the end of the claimed section of Green Lane, one continuing along Green Lane in a generally southerly direction (footpath no.22).
- 10.1.3 The information supplied by the applicant suggests that there has been a route from Lyme Hall to St Mary's church and Disley village since at least the 16th century. He states that Sir Piers Legh of Lyme Hall together with eleven local landowners had the church built between 1510 and 1524. He suggests that since then the route has been a main route for carriages and later motor vehicles. The application refers to several historical documents including the Tithe Map, County Maps, Ordnance survey maps, Railway Plans and the Finance Act. Also submitted were four user evidence forms from residents of Disley claiming use of the route on foot, one on horse and by vehicle as far as the gates to Lyme Park for a period of 25, 26, 27 and 43 years. A further evidence form was submitted in 2007 claiming 20 years use on foot and 10 years in a vehicle to access properties. Also submitted was a statutory declaration from a resident of Disley for more than 80 years who recalls Red Lane being used by motor vehicles before 1930 as far as the gate with Lyme Park.
- 10.1.4 A local resident's meeting was held in June 2002 where concerns over the state and maintenance of Red Lane were discussed with representatives from Cheshire County Council's Highways Department. The Council had some documentary evidence that the PROW section had researched which they felt pointed to the possibility of the route being an ancient highway. If that was accepted then it would follow that Red Lane should be added to the List of Streets. However following advice from counsel on a separate but similar matter it was felt that the status of the route should be tested through a

Definitive Map Modification Order as adding it to the list of streets would only accept it as publicly maintainable without determining its status.

10.1.5 Following that meeting this application was made by Cllr Flynn on behalf of Disley Parish Council. Cllr Flynn is no longer involved with the application having retired as a Councillor in 2007. The application is now being pursued by Disley Parish Council. An objection was lodged with the Council when the application was made, by a resident of Red Lane referring to the private maintenance of the Lane to which he has contributed over many years.

10.1.6 An investigation into this claim was initially commenced in 2007. Consultations were undertaken with adjacent property holders and all interested parties at this time. At this time those who commented referred to their own private maintenance of the lane and the costs of repair at various times. There was also concern about visitors to Lyme Park, parking their cars along the lane and causing obstruction issues. This use with vehicles has increased over recent years. There appears to have been use by horseriders and there is a permit system in Lyme Park for riders. A number of residents and other interested parties objected to the proposal on the basis that the route for vehicles would be a dead end and serve no purpose except to increase parking problems. The case officer undertaking this investigation left Cheshire County Council in September 2007 and the file has remained largely dormant until now. Concerns about vehicles parking in the lane have arisen since that time as has the question of status.

10.2 *Description of the Claimed B.O.A.T.*

10.2.1 The claimed route commences at its junction with the Old Buxton Road (C413) (point A on plan no. WCA/010) adjacent to the Ram's Head Inn and runs in a southerly direction to a point where a Lych Gate on the southerly side of the route provides a pedestrian access to St Mary's Church; then it runs in a south westerly direction up a long slope between boundaries, then turning southerly to the west of the old vicarage and to its junction with the claimed length of Green Lane (points B-D on plan no. WCA/010); here the route turns south westerly again along level ground with a roughly metalled surface where a number of residential properties are located, this section of the route is quite wide and has grass verges either side it then runs gently downhill for a short section then levels again with fields either side to a cluster of further adjacent properties at the far end of the lane and its junction with the Lodge Gate forming one of the entrances to Lyme Park. The main gate is locked and there is a pedestrian gate to the side is usually open. The route has a sealed surface throughout which is in good repair for the first section up to the Green Lane junction and thereafter slightly less good. The first part was re-surfaced by United Utilities in 2011 following works at Bollinhurst Reservoir that required heavy and unusual vehicular traffic.

10.3 *The Main Issues*

10.3.1 Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Cheshire East Borough Council shall keep the Definitive Map and Statement

under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events.

10.3.2 The event relevant to this application is section 53(3)(c)(i), this requires modification of the map by the addition of a right of way. The relevant section is quoted below:

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

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

10.3.3 Under the Natural Environment and Rural Communities Act (NERC) 2006, restrictions have been placed on the recording of public rights of way for mechanically propelled vehicles (MPV) on the Definitive Map and Statement.

Section 67 of the NERC Act subsections (2) to (8) provides exceptions to the extinguishment of certain unrecorded rights of way for mechanically propelled vehicles. One exception is if, before the 'relevant date' (20th January 2005), an application had been made for a Definitive Map Modification Order to show a Byway Open to All Traffic. This application was made before the relevant date and consequently this exception could apply.

Further, if MPV rights are found to exist and to have been saved, in order to be recorded on the definitive map as a BOAT it is essential to establish also that the route has the character of a way mostly used in the manner in which a public footpath or bridleway is used (A principle established in the case of *Masters v SSETR* [2000])

10.3.4 The evidence can consist of documentary/ historical evidence or user evidence or a mixture of both. All the evidence must be evaluated and weighed and a conclusion reached whether, on the 'balance of probabilities' the alleged rights subsist. With regards to the addition of a right of way (section 53(3)(c)(i)) the lesser test of 'reasonably alleged to subsist' may be used. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.

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

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

This requires that the public must have used the way without interruption and as of right; that is without force, secrecy or permission. Section 31(2) states

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

10.3.6 In this case there has been no specific challenge to use, the concern over the status has arisen from the problem of maintenance and the subsequent discussions with the Highways Department. Where there is no date of challenge the date that the application was made can be taken as the date from which the 20 year period can be retrospectively calculated. Therefore in this case the relevant period would be 1982 to 2002.

10.3.8 If for some reason the statutory test fails, the issue of common law dedication can be considered; that is whether the available evidence shows that the owner of the land over which the way passes has dedicated it to the public. An implication of dedication may be shown at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. It would seem likely that Red Lane would meet these criteria having been available for public use, certainly on foot for many decades and also because it has recorded public footpaths leading onto it which must raise a strong presumption of use of the lane itself.

10.4 *Consultations*

10.4.1 Consultation letters were originally sent to all adjacent properties, landowners, user groups and statutory consultees in 2007. The responses from that time were as follows:

10.4.2 The National Trust at Lyme Park responded with a plan showing the extent of their ownership which includes the Lodge and the Gate at the westerly end of Red Lane. Despite further requests for information, no more correspondence was received.

10.4.3 Mrs Hamlyn from Stoneridge Cottage inquired about what Byway Open to all Traffic meant in terms of the public using it to access to Lyme Park. The status was explained.

10.4.4 Mr Gresty from 19 Red Lane commented that he had maintained the whole length of the lane in the past but was not going to do so anymore. He didn't think his deeds gave any clear indication about the lane. There had been a proposal for each householder to contribute £600 5 years previously to make good the surface but not everyone was in agreement.

10.4.5 Mr Blower, who was possibly a churchwarden at St Mary's church, expressed concern about any financial cost of 'adoption' on the church as 90% of its frontage is on Red Lane. The solicitor for the Diocesan Office responded that they had received the consultation but no further comments were submitted.

10.4.6 Mr Griffiths from 3A Red Lane responded to object to the proposed status of BOAT as there was no public benefit when Red Lane leads to a locked Gate at the Lyme Park boundary and the spur of Green Lane leads to the Church. He said that people drive to the far end of the Lane to park and access Lyme

Park. He also commented that people use the route regularly with horses so he suggested it may be a bridleway. In a follow up letter Mr & Mrs Griffiths commented that they would be unwilling for the proposal to go ahead as there would be no purpose to the public in designating a route that was not a through route for public vehicular traffic. It is stated that only walkers or cyclists have access into Lyme Park. They refer to the private vehicular use of the lane by residents, visitors, members of the New Mills Angling club, United Utilities accessing the reservoirs and others.

10.4.7 Mr Whitehead from no. 13 Red Lane, Barwicke Lodge, commented that he had only been in residence since May 2006 and the private lane was one of the main reasons for the purchase. He stated his objection to the proposal citing the problem with cars parking and causing problems for residents; the fact that the lane is a dead end and members of the public would only use it to park and gain entrance to Lyme Park. Solicitors acting for Mr Whitehead queried whether a BOAT could still be added to the Definitive Map following the restrictions brought into force by the NERC Act 2006. They were informed that in this case one of the exemptions is met as outlined in paragraph.

10.4.8 Mr Callaghan from no. 4 Red Lane got in contact to raise a few issues and the case officer may have visited him also. He provided a copy of part of his deeds which refer to a proposal to undertake to 'make up' part of the lane to a half width and for the length of the property boundary in accordance with Local Authority plans to thereafter take over the lane. This is set out as a possible future event and until such time the vendor and purchaser must maintain the lane. Also provided was an internal memorandum of Cheshire County Council dated 1970 referring to a resolution of the Council to make up Red Lane at the cost of the frontagers; it was anticipated that this would be in the near future. Mr Callaghan also referred to the general increase in traffic along the lane.

10.4.9 Mr Sutcliffe rang on behalf of his elderly mother at Greystones on Green Lane. He supported the application if it removed some of the maintenance burden of the upkeep of the lane. He has occasionally driven along Red Lane and through Lyme Park to the A6 when the main road in Disley has been closed although the gate at the lodge is usually locked. His mother has lived in Disley since 1947 and states that the gate into Lyme Park off Red Lane has always been available for walkers. She believes no-one has ever been challenged in their use of either Green Lane or Red Lane. Horseriders have used both routes as well although Mr Sutcliffe did not use to proceed through Lyme Park but turned around.

10.4.10 The Chairman of Disley Footpaths Society wrote in to say that since living in Disley from 1982 he has regularly walked Red Lane and Green Lane without let or hindrance.

10.4.11 Mr Boyle from Stoneridge, Green Lane commented that he had no objections but questioned the issue of maintenance.

- 10.4.12 The Estate Manager from Mitchells and Butler who own the Ram's Head Inn on the corner of Red Lane and Buxton Old Road have responded that they have no objection to the proposal.
- 10.4.13 Mrs Alty from Brantwood, Red Lane wrote in to raise some queries about how the proposal would affect the residents of the lane with regard to the public parking situation and would the local authority then be responsible for upkeep and repairs. A response outlining the responsibilities of the local authority in the event of the route being recorded as a footpath/bridleway/byway was sent.
- 10.4.14 Mr Farnsworth, a tenant of United Utilities, at Reservoir House, Green Lane rang on comment on the changed condition and use of Red Lane. In 1970 when he moved to the property the lane was unmade and there was much less traffic. He forwarded the consultation letter to the Property Manager at United Utilities for their comments.
- 10.4.15 Mike Roberts from the Cyclists Touring Club e-mailed to comment that he had cycled along Red Lane on 3 occasions in the last 7 years but he felt sure that other members of the Macclesfield Wheelers had used the route on many occasions.
- 10.4.16 Disley and New Mills Angling Club who are the lessees of Disley Dam from the Parish Council responded to object to the application. They feel that there would be further misuse of the lane in terms of parking and that would in turn affect their members ability to park. They also felt that the designation of a public right of way would result in increased poaching from the Dam and be an infringement on their lease.
- 10.4.17 United Utilities commented that they had no objection to this proposal and that they had in place a statutory declaration allowing them unfettered access to their own land and apparatus.
- 10.4.18 Mr R Purcell from 17 Red Lane, now no. 23, responded that he would be concerned by the opening up of the lane to public vehicles. There are already problems with people parking in the lane to access Lyme Park since the National Trust has started charging to park. He has experienced obstructions to his access from parked vehicles and has concerns for children playing and vehicles speeding. The potential mitigation measures of placing a Traffic Regulation Order on the lane if Byway status was confirmed were discussed.

10.5 *Investigation of the Claim*

- 10.5.1 A detailed investigation of the evidence submitted with the application has been undertaken, together with additional research. The application was made on the basis of historical evidence and user evidence from 5 witnesses plus one statutory declaration. The following documents are also referred to and commented upon in the application; the County Maps of Burdett (1777), Cary (1789), Greenwood (1819), Swire and Hutchings (1830) and Bryant (1831); the Disley Tithe Map and Apportionment (1851); the LNWR Disley

Whaley Bridge Railway (1853); the Ordnance Survey 6" 1st edition Map (1871); the Ordnance Survey 25" 2nd edition Map (1897); New Mills and Heaton Mersey Railway (1896) and the Finance Act Plan and Book of Reference (1910).

- 10.5.2 In addition to the submitted evidence a detailed investigation of the available historical documentation has been undertaken to try and establish the history and original status of the claimed route. The standard reference documents have been consulted; details of all the evidence taken into consideration can be found in **Appendix 1**.

10.6 *Documentary Evidence*

The documents referred to are considered in chronological order.

County Maps 18th-19th Century

- 10.6.1 These are small scale maps made by commercial map-makers, some of which are known to have been produced from original surveys and others are believed to be copies of earlier maps. All were essentially topographic maps portraying what the surveyors saw on the ground. They included features of interest, including roads and tracks. It is doubtful whether map-makers checked the status of routes, or had the same sense of status of routes that exist today. There are known errors on many map-makers' work and private estate roads and cul de sac paths are sometimes depicted as 'cross-roads'. The maps do not provide conclusive evidence of public status, although they may provide supporting evidence of the existence of a route.
- 10.6.2 The route is shown on *The Burdett's Map of 1777* as a cross road through to Lyme Hall. *Greenwood's Map (1819)* shows the full length of Red Lane on a similar alignment to its position on modern maps. A shaded area appears to indicate the extent of Lyme Park with the Lodge Gate shown beyond the parish boundary and on the south west side of a stream. The route is shown bounded on both sides and this is indicated as a 'cross road – through route' on the key. *Swire and Hutching's Map (1830)* shows the route throughout leading at its western end to join with a route running generally north to south. Where this southerly branch crosses the stream and the Parish boundary, it enters Lyme Park and becomes an open road. Red Lane is depicted as a cross road according to the key. On *Bryant's Map (1831)* Red Lane is coloured along the length towards the Park and the northerly branch that runs to its junction with the main road (current A6). The branch leading into Lyme Park is uncoloured and depicted differently. From the key Red Lane falls into the category of 'Good cross and driving road'.

Ordnance Survey

- 10.6.3 Ordnance Survey mapping was originally for military purposes to record all roads and tracks that could be used in times of war. This included both public and private routes. These maps are good evidence of the physical existence of routes, but not necessarily of status. Since 1889 the Ordnance Survey has

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

10.6.4 *Ordnance Survey Map 1" to 1 mile 1st Edition 1833*

Red Lane is shown on this map between solid lines throughout and continues in a like manner to the north west, curving to its junction with the road which is the current A6. The route is also open into Lyme Park.

10.6.5 The *Ordnance Survey* drawings from the 1840's, at a scale of 2 inches to a mile depict the route in a similar way to the County Maps. The route is bounded and open at the westerly end to join the north south route that runs northerly to join the A6. As the basis for the 1st edition 1 inch to a mile map the route is shown in the same way on the published map of approximately 1842.

10.6.6 *1846/7 Manchester, Buxton, Matlock & Midlands Junction Railway*

Only the first part of the route from its eastern end falls within the limit of deviation of the proposed railway. It is recorded as number 115a and described as 'private carriage road and bridleway'. The landowners are Thomas Legh and the surveyor of Highways. On the following map sheet the limit of deviation just grazes the northern edge of Red Lane and is recorded as 'Occupation road' and written alongside is 'or public highway'. The landowner is recorded as Thomas Legh and handwritten alongside is 'or Surveyor of highways'. This is rather perplexing as the same lane has been given different statuses under separate reference numbers. However this does not appear to be the railway that was built so it is not as significant as the built line. The route that joins Red Lane at its western end and runs north to south (shown as no. 603 on the Tithe Map) is affected by this proposal and is referenced no. 12 and listed as 'Road' with the owners listed as Thomas Legh and the surveyor of Highways.

10.6.7 *Disley Tithe Map and Apportionment 1849 (Map dated 1851)*

Tithe Awards were prepared under the Tithe Commutation Act 1836, which commuted the payment of a tax (tithe) in kind, to a monetary payment. The purpose of the award was to record productive land on which a tax could be levied. The Tithe Map and Award were independently produced by parishes and the quality of the maps is variable. It was not the purpose of the awards to record public highways. Although depiction of both private occupation and public roads, which often formed boundaries, is incidental, they may provide good supporting evidence of the existence of a route, especially since they were implemented as part of a statutory process. Non-depiction of a route is not evidence that it did not exist; merely that it did not affect the tithe charge. Colouring of a track may or may not be significant in determining status. In the absence of a key, explanation or other corroborative evidence the colouring cannot be deemed to be conclusive of anything.

10.6.8 The Tithe Map of Disley dated 1851, a first class map, shows the full extent of the route now known as Red Lane and with an apportionment no. of 605, as shown on plan no. WCA/010 between A-C. The route is shown between solid lines and is excluded from the parcels of land either side. Apportionment no. 605 is recorded under a list titled 'Public Roads' and is described as 'Road from Park Gate past church to Disley'. The plot is described as 'thoroughfare' and no landowner is recorded. The route continues north westerly into what is now Lyme Park and is numbered 603. This is also listed under the section 'Public Road' and is described as 'Carriage Road to the Park Gate'. There seems to be two Park Gates and this is confirmed by the 1841 O.S. map that shows a Park Gate further into the Park than the one there now. The information regarding status seems unequivocal and it seems likely that it would have been produced with the knowledge and agreement of the landowner of the Lyme Estate, Thomas Legh Esq.

Two copies of the Disley Tithe Map and Award have been viewed, one at Chester Record Office and one at The National Archives at Kew, both copies show Red Lane as described above.

10.6.9 *Tithe Map and Apportionment of Lyme Handley 1850*

This map shows routes from the western end of Red Lane continuing into Lyme Park. The continuation to the west and south is numbered as plot 51 and described as a 'thoroughfare' 'carriage road to Park Gate', the landowner is Thomas Legh. It continues as plot number 52 and is also described as 'thoroughfare' 'Park gate to Mansion' and owned by Thomas Legh. These aren't listed under the section headed Public Roads as Red Lane is on the Disley Tithe.

10.6.10 *The Stockport, Disley, Whaley Bridge Railway Plan 1853*

Railway Plans had to be produced and deposited prior to a railway company obtaining an Act of Parliament authorising the construction of their intended railway. The maps covered a corridor of land defining the limits of deviation either side of the line of the intended railway, with plot numbers for the land and public and private routes, which are referred to in a book of reference. They showed the status of routes bisected by the proposed line, the accuracy of which would have been in the interest of those affected. The plans were drawn to comply with parliamentary requirements. The Bill and plans were open to consultation and debate and as such, they carry strong evidential weight. The Book of Reference for a railway which was proposed but not actually built can also provide cogent evidence for the existence of public rights over a way. This is based on the fact that the application was open for public scrutiny and objection.

This proposal doesn't affect the route of Red Lane as it is just to the south of the limit of deviation, however it does cross the route numbered 603 on the Tithe Map and recorded as a public road. In the book of reference, this route is numbered 223 and recorded as 'Private Road'. The plots either side of this route numbered 219 and 221 record 'plantation and footpath' and 'field and

footpath' respectively. The landowner is recorded as Thomas Legh and 'Surveyor of Highways'. These footpaths are not currently recorded as definitive rights of way. This creates a confusing picture as the status of the road has changed from public to private in a matter of two years; however the footpaths leading onto this road are considered to be public. This Railway proposal is the line that was built and for which a copy of the Act of Parliament of 1854 for the making of the railway has been obtained. There is nothing further relating to the status of the Lane or adjoining routes in the Act but it does confirm that the proposed railway will be built to the line and levels set out in the Plans and sections. The construction of this Railway effectively dissected the 'throughfare' as it was described and shown in the Disley Tithe as plots nos. 605 (Red Lane) and no. 603 and altered the character and status of plot no. 603 to private road. The later O.S. maps i.e. 1872 onwards reflect this change and show the lodge that is now at the point where Red Lane enters Lyme Park.

10.6.11 *Prestbury Highways Board Map 1865*

This doesn't cover Disley but ends at the Parish boundary between Lyme Handley and Disley. A route is shown leading to the edge of the map which could be towards Red Lane but it is not possible to be sure. It is the Stockport and Hyde Highways Board that covered the Red Lane area and this record was missing from the Chester Record Office when requested.

10.6.12 *O.S. 1st Edition County Series*

The 25 inch to the mile map from approximately 1872, shows the route bounded on both sides and open throughout up to the Lodge where there is a dotted line across, possibly the lodge gates. The route has a reference number 345 unfortunately there is no reference book in the Chester Record Office. This map shows how the western end of the route has changed since the construction of the railway. The route that runs to the north from the lodge gates appears to be a new alignment and the old alignment of what was referenced 603 on the Tithe map can be seen to be partly along a route in the Park and partly along FP's 17 and 61, Disley. The middle section has been consumed by parkland.

10.6.13 *O.S. 2nd Edition County Series*

The route is shown in a similar way to the 1st edition; it has a reference number of 586 but again there is no reference book. This is dated approximately 1899

10.6.14 *Ordnance Survey Map 1" to 1 mile Revised New Series (in colour) 1903*

This map indicates the area was surveyed between 1842-1893; the map was revised between 1893-1898 and the colour edition published 1903. This map shows the route referenced as a third class metalled road.

10.6.15 *Disley Rural District Council Minutes 1895 - 1900*

There are a series of records of minutes referring to proposals to lay sewers in Red Lane and meetings with the agent for Lord Newton and the Engineers (Contractors) employed to do the work. The work appears to be undertaken on behalf of Lord Newton. However one reference refers to the 'Council's sewer' even though they are writing to Lord Newton's agent to rectify problems.

10.6.16 *Legh Estate Papers 1898-1904.*

These are from a collection of Estate Papers that were viewed in the Greater Manchester Record Office.

There is a report on the state of the sewers in Red Lane and details of a lawsuit against the contractor. This report goes into detail of the defects in the state of the pipes, manholes etc of the sewer and there is also the original specification and contract for the sewer work. The work seems to have been approved in 1898, as backed up by the Council minutes, and the defect report is dated 1904. The main point is that this work is all privately contracted and later assessed but was to be built to the specification set down by Disley Rural District Council as they were being laid to open 'an area of settled land for building purposes'. There is a proof of evidence by Mr Clarke, surveyor for the estate giving his knowledge of the works and when he visited the site and a transcript of the evidence of Henry Lomas who is suing the estate for £1437 due for the balance of an account for works done and materials supplied for the new sewer in Red Lane. This was heard in Manchester Assizes, Queens Bench Division, High Court of Justice 1899. There doesn't appear to be any details of the outcome.

10.6.17 *1904 Stockport Water Corporation*

These plans are for a proposed water conduit from Bollinhurst Reservoir to Disley. This affected part of Red Lane from the village up to the corner with Green Lane. The book of reference refers to this stretch as no. 3, 'Private Road and Public Footpath'; amongst the owners and reputed owners are Lord Newton and Disley Rural District Council.

10.6.18 *O.S. 3rd Edition County Series 25:1mile 1909*

Red Lane is shown exactly the same as in the previous O.S. County editions although there is a solid line at the lodge which is perhaps the current gates.

10.6.19 *Finance Act 1910*

The Finance Act of 1910 involved a national survey of land by the Inland Revenue so that an incremental value duty could be levied when ownership was transferred. Land was valued for each owner/occupier and this land was given a hereditament number. Landowners could claim tax relief where a highway crossed their land. Although the existence of a public right of way

may be admitted it is not usually described or a route shown on the plan. This Act was repealed in 1920.

Two sets of plans were produced: the working plans for the original valuation and the record plans once the valuation was complete. Two sets of books were produced to accompany the maps; the field books, which record what the surveyor found at each property and the so-called 'Domesday Book', which was the complete register of properties and valuations.

Red Lane is shown as bounded, open throughout and excluded from hereditaments on the valuation plan at Chester Archives. At the south west end the lane is open into the adjacent plot which is numbered 45. There were no details recorded in the valuation book at Chester so the Field Books at Kew were viewed by a researcher. Hereditament no. 45 records Public Footpaths and shows a deduction of £40. This probably refers to other footpaths that cross this hereditament. The continuation of Red Lane that was shown on the Tithe Map as plot 603 is included in plot no. 44 and is in the ownership of Lord Newton. The depiction of Red Lane as excluded is regarded as supporting evidence of the route having some form of public status. However as the road had been 'sewered' according to the Disley RDC minutes and Legh Estate Papers in the early 1900's, it may be that by 1910 some plots adjacent to Red Lane had been sold and privately developed and the adjacent frontage of the lane apportioned to that new owner.

10.6.20 *Legh Estate Papers Letters from Disley RDC to the Estate 1914-1916*

These letters dated 1914 – 1916 are asking the Estate for permission to site lampposts in Red Lane and another private road. The Estate appears to object unless there is an undertaking to remove them if they prove inconvenient to the Estate. Disley RDC then suggest that would have to be at the cost of the Estate. A Letter in 1916 shows that requests had been made by residents asking the Council to erect such lamps. The Council letters say that they have done this in other private roads where requested by the residents. The fact that permission is sought indicates the Estate have ownership of the lane.

10.6.21 *Disley RDC Minutes 1914-1917*

In 1914 the Council proposes to write to Mr Leslie, Estate Manager, asking whether he objected to the Council placing a lamp in Red Lane; this cross references with the Estate Letters above. There are further references in 1916 to the Estate wanting the lamp positions to be altered should future development require it and then insisting that the Council would have to pay for removal and re-siting. A further request to the Estate on the 10th Oct 1917 for consent to erect two additional lamps in Red Lane elicits a response from Mr Leslie, the agent for the Estate, saying that no objection was raised.

10.6.22 *Disley RDC Minutes 1917-1919*

Dated the 13th June 1917, there is a minute asking the Clerk to write to Mr Leslie (from the Estate) drawing his attention to the dangerous condition of Red Lane near the Vicarage and Caversfield and asking that something be done as it is the only access to the hospital for wounded soldiers.

From the 11th July there is a letter from Mr Leslie saying he had given instructions for the work to be done to the road as soon as possible.

10.6.23 *Disley RDC Surveyor's Report Book 1921-26*

A minute from the 15th August 1922 makes reference to a new house being built in Red Lane and the sewer connection, states 'Red lane being a private road...there being no water course or surface water drain available.'

10.6.24 *Legh Estate Papers -Proposed Station at Red Lane 1925*

There are letters to the Estate regarding the path from Red Lane to the Station from a Mr Mattinson who is trying to get the estate to agree to a private footpath linking Red Lane to the station. The estate want it to be fenced either side to prevent trespass with a gate and Private sign at the Red Lane end. The sign is to prevent the acquisition of public rights. As the writer and one other landowner, Mr Muller look to pick up the bill of approximately £20 for fencing, gate and installation of wooden steps (wood to be provided free by the Waterworks Dept.), it is decided the matter must be left in abeyance.

10.6.25 *Legh Estate Papers – Proposal to Tar Spray Red Lane 1927*

There are letters to frontagers and also between Disley RDC and the Estate Office regarding a proposal by Disley RDC to tar spray parts of Red Lane as part of the treating of certain sections of District roads with the cost being apportioned to the frontagers. There is reference to splitting the cost on a scale similar to when the road was made and also to when it was repaired in 1924. All the frontagers cannot agree as some do not have vehicles and so do not use the road. The proposal therefore does not go ahead.

10.6.26 *Disley RDC Minutes 1927 – 1937*

A minute of July 15th 1930 states that it was resolved that Trent Valley and High Peak Electricity Co. are accepted as the tender for lighting the lamps along Red Lane. This cross references to Surveyor's minutes in August 1930 (below) re: dismantling and setting out new positions for lamps.

10.6.27 *Disley RDC Surveyors Report Book 1930 -1934*

From the 12th August 1930 there is reference to marking out positions for electric lamp standards and dismantling old lamps.

10.6.28 *Stockport Water Corporation 1930*

This details a proposed pipeline from Buxton Road up and across Red Lane to a service Reservoir on the south side of the Lane. Reference no. 16 is apportioned to part of Red Lane and referred to as 'Private Road, plantation and public footpath'.

10.6.29 *Legh Estate Papers - Parking in Red Lane 1933-34*

A letter to the Solicitors for the Legh Estate (13th December 1933) refers to parked cars in Red Lane which is called a private lane and public footpath. The writer is advised that the police can't do anything against people parking in the private road but that you can take proceedings in the County Court. He refers to an action that the solicitors took in 1921 against a youth named Cooper who claimed to ride a bicycle over the said Red lane and the roads in the park and he 'was perpetually restrained'. It states that if the perpetrators of the parked cars can be shown not to have any business with any resident in Red Lane then a court injunction can be obtained against them. A court injunction would be published and become more widely known. Another letter indicates that Captain Legh requests that the persons parking should be written to. A further letter is from such a person indicating that they didn't know the road was private and won't park there again.

10.6.30 *Disley RDC Minutes 1932-39*

There are several references to the tank and fountain on Red Lane, repairs/ leaks etc and a drinking/ watering trough. A 'not drinking water' notice was affixed in March 1939.

10.6.31 *Red Lane repairs and surface drains – 1937*

These are letters from Cheshire County Council to the Estate and between a drain contractor and the Estate referring to repairs to the lane by the district surveyor and requesting payment for such works. It also refers to problems with a drain that has been cut off by the laying of the water main in the 1900's by the Stockport Water Corporation and seeking the cost or repairs to the drain from them.

10.6.32 *Footpath Map – Macclesfield – Internal Document (not dated, presumed date 1930's)*

This is a bound map the provenance of which is not entirely known. It is presumed to be an internal reference document possibly belonging to the District Council. On this map, Red Lane is shown by a dashed blue line which is referenced as 'Footpaths the repairs of which in the past have been doubtful'.

10.6.23 *Legh Estate Papers - Sale of Cheshire Estates/Farms 1946*

A Letter dated the 19th September 1946 from C.B. Sankey Esq. of Messrs Halsey, Lightly & Hemsley solicitors for Lord Newton to Charles Clark Esq., Estate Office for Lyme Park states: -‘

‘They say that Red Lane is a private road’ (referring to the tenants who wish to buy Lyme Cottage, Red Lane) ‘Shall we be right in retaining the soil of this road or should we include half the soil in the sale of Lyme Cottage?’

The reply from Charles Clark states:

‘Red Lane is a private road..... The Estate up to now has always repaired this road.’

The letter then goes on to query including half the roadway in the title as this would mean doing it for all the potential purchasers ie. Stockport Corporation (land on the south side of Red Lane) and also Disley R.D.C (adjoining land on the north side). Further up the road some land had already been sold on 999 year leases and some sold where no portion of the roadway had been included in the lease or the sale.

There are a number of sheets which appear to form Estate search information. One relates to the sale of Lyme Cottage (to a Mr Rawlinson) and states :-

‘Red Lane is a private road and the purchaser is to pay a due proportion of the costs of up keep until the road is taken over by the Local Authority’. Dated 5/7/1946

The same type of sheet for The Kennels Cottage, Red Lane states:-

‘The purchaser is to be granted a right of way to Red Lane for all purposes over the roadway coloured yellow on the plan as access to the premises’.

This is over land included in the proposed sale to Disley RDC.

The same type of sheet for Damside Field being sold to Disley RDC states:-
‘Red Lane is a private road and the purchasers are to be responsible for a proportion of the costs of repairs according to their frontage thereto’

Also included is correspondence between Mr Sankey (solicitor) and Mr Clark (the Agent) referring to Disley RDC querying the state of the road and whether there have been complaints. In one of Mr Clark’s letters he refers to the fact that Stockport Corporation before the war did a lot of carting over the road in connection with the construction of some new filter works in Lyme Park. It was arranged that the Corporation should be responsible for a proportion of the repairs after construction but the war intervened and nothing had been done since. Stockport Corporation has rights as successor to the original Stockport District Waterworks Company. In response to Disley RDC queries, the Estate respond that Red Lane is a Private Road but a public footpath.

10.6.30 *Disley RDC Minutes 1945 – 47*

There are minutes relating to the sale of Damside Field on Red Lane from Lord Newton’s estate to Disley RDC throughout 1946.

A minute dated 15th Jan 1947 refers to a complaint that was received by the Council from Mr Marshall of Bent Cottage, Red Lane about the condition of the road. The complaint had been passed to the District County Surveyor who had replied that the responsibility for the maintenance of this road rested upon the frontagers and who had requested the names and addresses of frontagers particularly between Fountain Square and the top of the brow below Mr Marshall's house. A further minute dated the 19th Nov 1947 reveals that the Council resolved to draw the attention of Cheshire C.C. to the dangerous state of Red Lane with a request to secure the repair of the road as quickly as possible.

10.6.31 Disley RDC Minutes 1947 – 1949

Dated the 3rd December 1947 there is a letter from the Clerk of Cheshire County Council stating that the complaint re: state of Red Lane would be placed before the appropriate sub-committee after which they would write again. A letter from the County Surveyor dated the 16th June 1948 stated that notices were to be served on the frontagers of Red Lane to effect temporary repairs to the road and that if the notices were not complied with, the County Council would carry out the work. This letter cross references with the Legh Estate Papers and a notice that was served on the Legh Estate for repairs.

10.6.32 Repairs at Red Lane- 1948

A notice is served on the Legh estate, care of Mr Clark (Agent) to repair a portion of Red Lane (referred to as a street) from Buxton Old Road to 'Woodburn' and to execute repairs within two months under section 19 of the Public Health Acts (Amendment) Act 1907. If this is not done the County Council will effect the repairs and recharge the frontagers proportionate to their land that abuts the street. This is dated the 7th July 1948.

In the notice it states 'repairs are required on that portion of Red lane....which is not a highway repairable by the inhabitants at large.

10.6.33 Definitive Map Process - National Parks & Access to the Countryside Act 1949

The Definitive Map and Statement is based on surveys and plans carried out in the early 1950s by each parish in Cheshire of all the ways they considered to be public at that time. The surveys were used as the basis for the Draft Definitive Map.

Red Lane was not claimed by Disley Rural District Council at the Survey stage of the Definitive Map although Footpaths nos. 20,21,23,25 &28 all lead directly from Red Lane and were claimed by the Council and are now recorded on the Definitive Map. On the survey sheets completed by the Council in the early 1950's, the records state these paths commence or end on 'Red Lane' with U/A annotated next to it. This could mean unadopted.

10.6.34 *Disley Rural District Council Minutes 1950 – 1958*

Dated the 15th April 1952 there is a minute referring to the state of Red Lane after Stockport Corporation laid a water main to the Filter House. The Surveyor is requested to inspect. A further minute from the 14th May 1952 states that an engineer for Stockport Corporation be asked to meet the Council's Officer at Red Lane to discuss the state of repair. On the 12th November 1953, a minute records that the Surveyor be authorised to repair pot holes in the surface of Red Lane along the part for which the Council are the responsible frontagers. On the 11th February 1954 a further minute records that the Surveyor be asked to make an inspection of Red Lane which had recently been repaired by the Council to ascertain damage caused by vans going to Lyme Gate cottage.

10.6.35 *Disley Parish Council Files – viewed on 30th August 2007*

In the Conveyance dated the 10th September 1947 between Lord Newton and Disley RDC of Dam Field, Red Lane; page five refers to 'contributing a fair proportion (based on half its width) of the cost of repairing and maintaining the said road according to the extent of the frontage of the said property'..

Land Registry Title CH477195

This particular title information refers to the purchase of the land on the south side of Red Lane from Stockport Corporation. Also refers to 'paying a fair and just proportion of the cost of repairing and maintaining the same (Red Lane) according to the extent of the frontage'

A letter from Alan Gresty (Lyme Cottage Kennels) to the Councillors of Disley P.C dated September 1999, states that Red Lane is a private lane.

The Parish Council also appear to have undertaken some research into the status of the road, asking Mr England of Wood's solicitors, Disley, who believes that Red Lane has always been owned by the owner of Lyme Park but feels it will be impossible to prove. He thinks that the householders will each now own to centre line.

10.7 *Witness evidence*

10.7.1 Five user evidence forms were submitted in total on standard user evidence forms, three of whom were interviewed and a further two people were also interviewed about their knowledge and use of the route. A chart illustrating the user evidence is attached as **Appendix 2**

10.7.2 In order to show that public vehicular rights have been acquired along Red Lane through usage, a twenty year period must be identified during which use of the route by vehicles has been established. This period is usually taken as the twenty years immediately prior to a challenge to that use. In this case signs have been in evidence along Red lane at various times. One of the interviewees, Mr Gresty, who lived at Limeside Cottage, 19 Red Lane, claims to have put signs up in approximately 2002 and also recalls a 'No Through

Road' sign on the wall at the Doctors Surgery. A sign stating 'No right of way for vehicles.' and other information is in place towards the Lyme Park end of the lane and according to Mr Gresty has been since approximately 1992. If this date is taken as the first date of challenge to motorised vehicle users then the period of use for these purposes must be taken as 1972 to 1992. There has been no challenge to pedestrians or other users therefore use on foot or horseback can be considered up to the date of the application, which is the period 1982 to 2002.

10.7.3 Of the five user evidence forms submitted, all five claim to have used the route with a vehicle, two of these refer to visiting friend/properties on Red Lane and two refer to attending St Mary's Church. All five have used the route to gain access to Lyme Park which must have involved parking on the lane and continuing on foot. They refer to use being as far as 'Lyme Park Gates' however there is nowhere to park at the gates but they may have turned round at this point. The length of use varies between 33 and 15 years taking the period from 1972 to 1992, therefore only one user covers the entire period. One witnesses use is entirely since 1992.

One witness claims to have ridden the route to access Lyme Park from 1984. All five have used to route on foot to access Lyme Park or to use other public footpaths that connect with the Lane. Use in this way ranges from 43 years to 20 years.

The statutory declaration submitted recalls motor vehicles using the route before 1930 by people accessing Lyme Park through the gates and also by residents accessing properties. The witness's father was the Surveyor for Disley Rural District Council for 28 years and he trained as a surveyor under his father from 1925 to 1930. The witness was 91 years old at the time of the declaration. This evidence is corroborated but also partly negated by the Legh Estate Papers at 10.6.26 above, which refer to the matter of vehicles parking in Red Lane in the early 1930's. The Estate are advising that people parking who can be shown to have no business in Red Lane can have an injunction taken out against them at the County Court. This suggests that the landowners are taking action against vehicles using the lane that do not have the right to do so and consequently demonstrates that the Estate as landowner has no intention to allow use of that nature. The witness also recalls use on foot by village residents to go to the Church and Lyme Park.

10.7.4 *Witness Interviews*

Five witnesses were interviewed, three of whom had completed the user evidence forms, referred to above. One of the interviewees has lived in the area since 1976 on a road to the north of the A6. He owned dogs at that time and the best walk was to cross the A6 take the informal path up from the railway station and along Red Lane to Lyme Park gates. He probably walked Red Lane about three times a year in those early years. He bought horses for his children in 1978/9 and started riding himself in 1984. He bought a riding pass for Lyme Park so would often ride down Red Lane to access the park; he went quite frequently early on and when interviewed in 2007 was still going

about once a week. His only use of the route in a vehicle was once or twice when he took a vintage car to a fete in Lyme Park grounds and used the gates and very occasionally when it was very wet drove and parked near the gates to walk the dogs in the Park. In more recent years he has driven to park near the end of Red Lane to walk the dogs and also to visit his son on a regular basis who then lived at no. 20 Red Lane since approximately 2002. He had also used the short stretch of Green Lane of foot and on horseback but has never driven it. During his use of both routes he has often met other users; most of the horseriders have also been exercising use of their permits to ride in Lyme Park.

10.7.5 The second witness, who was interviewed and had also submitted a user form, has lived in Disley in 1959. From that time he has been very keen on walking with children and dogs practically every day from his home on Buxton Old Road. Using a route from the east he has travelled through the churchyard and along existing footpaths to reach Red Lane and undertake a circuit. The Park Gates at the end of Red Lane were not locked at first and the witness would walk into the Park in the evening after work and go up to the cage. He wasn't happy when the gates were locked in the evening; he believes it was 5-10 years ago when the National Trust took over. He believes vandalism may have pre-empted the decision. He occasionally drove and parked at the end of Red Lane to walk into the Park or to go to take his dog to the Kennels. He has seen a lot of others parking on Red Lane to walk into Lyme Park and remembers this happening even in the 1960's, people came from nearby and further afield to do this. He has often seen horseriders on the lane and entering the Park with permits to ride. He has not been challenged nor seen notices affecting a challenge.

10.7.6 The third witness interviewed added only that they believed that Cheshire County Council had tarmacked the section of Red Lane from Buxton Old Road to the first corner in about 1995/7 and that the next section was done by the residents. There were cobbles further along the lane that she believes the occupant at a cottage near the Lyme Park end had tarmacked over.

10.7.7 Two further witnesses were interviewed both of whom lived on Red Lane in 2007. One had lived there about 15 years and occupied Limeside Cottage (now Lyme Cottage) at the Lyme Park end of the road. He referred to his knowledge of the maintenance and use of the lane and said he had co-ordinated work with various residents to have the lane surfaced on several occasions. He had tried to get the whole lane re-surfaced, tarmacked, at one time but ten out of thirty two residents didn't agree to it. He had personally cleared culverts, strimmed, pruned trees, cleared leaves to maintain the lane and put up speed bump signs. In discussion with the Parish Council, consideration was given to putting a barrier up at the Buxton Old Road end. He had experienced people parking in the lane to access Lyme Park and had a 'no parking/turning' sign put in about 15 years ago; also asked people not to park near the properties but they continue to do so further along the lane towards Disley and it can be difficult to pass. Fishermen park to use the lake and put up their own signs saying 'No Parking beyond this point' He had heard that someone who worked in the ticket hut in Lyme Park had said you can

park in Red Lane for free. He had seen horseriders using the lane but the majority go into the Park at the end and don't continue on the public footpath to the Reservoir.

10.7.8 The second interviewee who lived on Red Lane stated that there was fairly regular traffic along the lane to the fishing lake and also to park on the lane and walk into Lyme Park. He referred to frequent use of the lane by service vehicle to Cockhead reservoir and builders vans, bulldozers etc when extensions to properties are built. Winter can be a problem for residents and visitors without four wheel drive and there can be a queue of people who haven't been able to get up the hill; he was concerned about emergency vehicles getting through and since it was tarmacked horses sometimes slide on the hill if its icy. He was opposed to the road being tarmacked throughout as he thought it would increase the speed of vehicles on the corner. He has seen horses and cyclists using the lane often either going to or coming from Lyme Park.

10.7.9 In considering the user evidence, the twenty year periods identified in paragraph 10.7.2 must be taken into account. For use by vehicles this is the period 1972 to 1992 as it is believed signs had challenged vehicular use from about 1992. However there is also evidence from the Legh Estate papers from 1933 (paragraph 10.6.29) of correspondence stating that people parking in the lane who had no business there could served with an injunction from the County Court. This demonstrates the intent of the Legh Estate not to allow public vehicular use of the lane but whether that intent was made clear to the public is difficult to ascertain. Use by a vehicle is shown in blue on the user Evidence chart, Appendix 2. Three people have claimed use during the relevant period but not for the full twenty years. The use shown by the person who completed the statutory declaration is not personal use but observed use by others. The use has been for the purposes of parking and walking into Lyme Park or to visit residents or to attend the church.

10.7.10 The use on foot can be considered up to the date of the application as there has been no challenge to use i.e. the period 1982 to 2002. All bar one of the 6 witnesses cover the full period, with use being to access Lyme Park and also to access the other public footpaths that lead into the claimed route. The use has been very frequent in some instances, i.e. practically every day to 20 times per year. There has been no indication from the historic documents that pedestrian use by the public has ever been discouraged or prevented.

10.8 *Conclusion*

10.8.1 Red Lane has appeared on a number of historical documents of good provenance. The Tithe Map of 1850 lists the lane as a public road along with other connecting routes that are now wholly in Lyme Park and private. The route appears consistently on early County Maps and on many is referenced as a 'cross road'. These early records raise a reasonable presumption that the route is a through route and of a higher status than footpath.

10.8.2 The Stockport, Disley and Whalley Bridge Railway Plan of 1853 throws a whole different complexion on this early presumption by recording the route onto which Red Lane joins at its westerly end, as a private road and the owner as Thomas Legh. This same route was recorded as public on the Tithe Map. This Railway proposal is enacted by parliament and the subsequent construction of the railway alters the alignment of the adjoining road and changes the nature of the 'through route' that Red Lane might otherwise have been. It can be seen on the 1872 Ordnance Survey map how the alignment of this 'private road' has changed entirely and most of the old route is subsumed under parkland. A new lodge gate has appeared on these maps and it is reasonable to assume that this point was gated by this time also. The next Quarter Sessions record of interest is the Stockport Corporation Water Plan of 1904 which refers to the section of Red Lane affected as 'Private Road and Public Footpath'

10.8.3 The Legh Estate Papers are a valuable source of information in this case and give a much more detailed history than can usually be gained from documentary research. There is a consistent picture throughout the letters and other documents that Red Lane is considered to be a Private Road maintained by the Estate. The Disley Rural District Council minutes that correspond with the papers give the same picture. When houses began to be developed along the road in the late 1910's, early 1920's, consideration is given as to whether to apportion the road abutting the frontage to each plot or for it to remain with the Estate. Some occupants who gave evidence in 2007 indicated that the adjacent portion of the lane had been recorded in their deeds; a land registry entry for a different property indicates 'the land has the benefit of a right of way over Red Lane'.

10.8.4 The Finance Act can be considered to be good supporting evidence of the existence of a public right of way dependent upon what is recorded. Red Lane is depicted as excluded and this can be interpreted as the route having some form of public status. However the contemporary documentary evidence from the Estate papers and Council minutes contradict the idea of a status higher than footpath.

10.8.5 The omission of the route from the Parish Survey at the time the Definitive Map was being drawn up suggests that there was an assumption of it being a route of a public nature given the number of paths that were shown leading to and from it. However there is evidence from the minutes and estate papers of a complaint about the condition of the road resulting in the County Council serving notice on the Estate and frontagers in 1946, to effect repairs to the road as it was not 'publicly maintainable'. So whilst there was the assumption that Red Lane was open to the public it was also known that it was not repairable at the public expense.

10.8.6 The reputation of the route as a public footpath is quite widely documented throughout the Legh Estate Papers and in a number of other documents from the 19th Century. The number of connecting footpaths gives rise to a strong presumption of use of Red Lane as a footpath which is demonstrated in the user evidence provided. Use as a bridleway has been catalogued but is

demonstrated by only one of the users and does not really provide a strong enough basis on which to base a reasonable allegation. Use would also have been on the basis that they were continuing onwards and had paid for a permit to ride in Lyme Park as there are no other connecting bridleways.

10.8.7 The evidence in support of this application must show, on the balance of probabilities that public byway open to all traffic rights subsist or are reasonably alleged to subsist along the claimed route. In recording a right of way, the law requires that it must have fixed termini although there is no rule that it cannot be a right of way unless its termini are other rights of way. The use of the route in a vehicle has been with the aim of parking and then walking into Lyme Park, on this basis it cannot necessarily be said that the use has been up to the Park Gates but would have been to another unidentified point. It is considered that there is insufficient historical and user evidence to support the existence of byway open to all traffic rights along A-B-C and B-D (on plan no. WCA/010). However on the balance of probabilities, it is considered that the requirements of Section 53(3)(c)(i) have been met in regard to the existence of public pedestrian rights and it is recommended that these sections should be the subject of a Definitive Map Modification Order to add them as Public Footpaths to the Definitive Map and Statement.

11.0 Access to Information

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

Name: Clare Hibbert
Designation: Definitive Map Officer
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Email: clare.hibbert@cheshireeast.gov.uk

Application No. MA 5/219**Claim for a Byway Open to all Traffic, Red Lane and a short spur on Green Lane, Disley****Documentary Evidence**

Glossary of terms

PROW Unit = Public Rights of Way unit

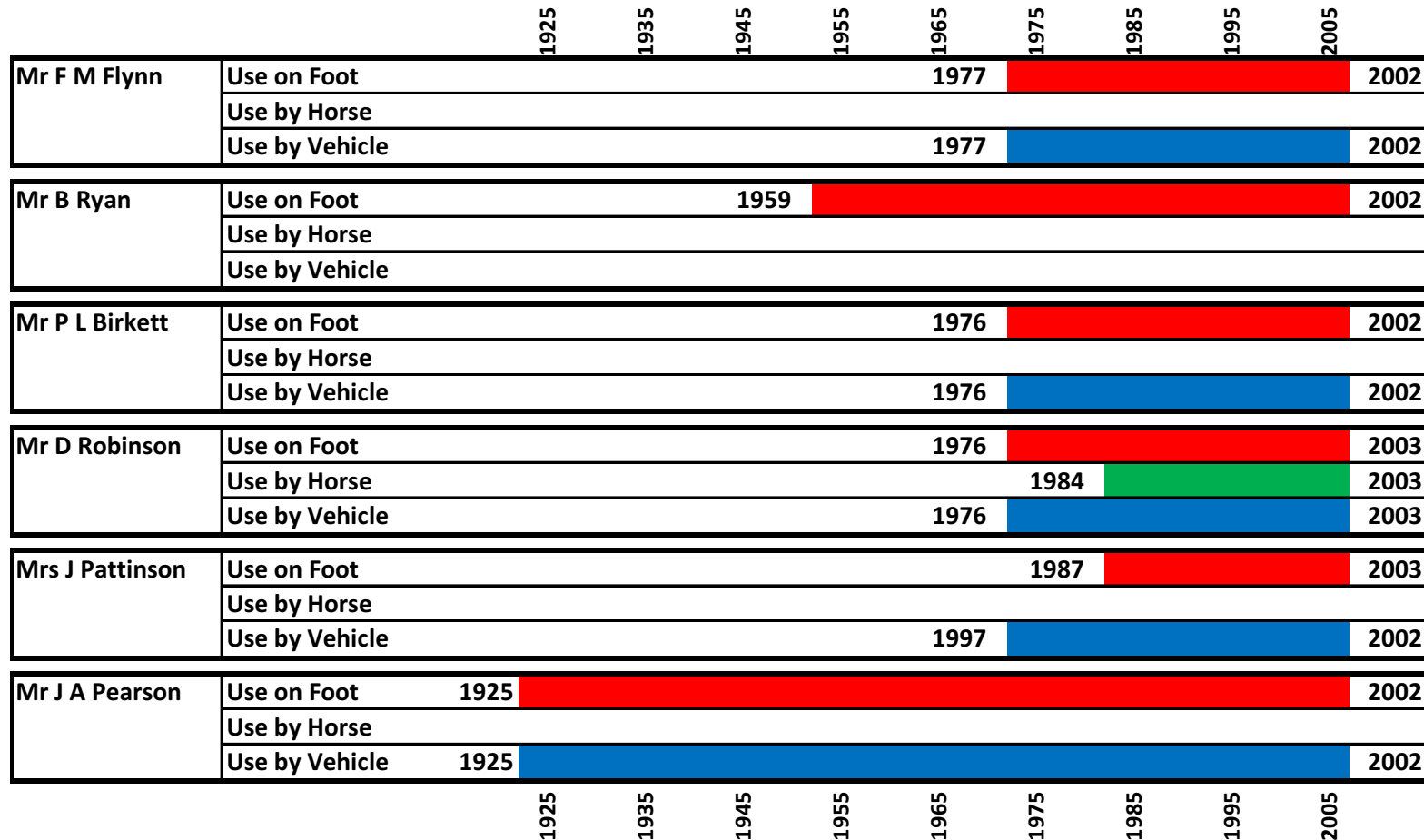
CRO = Cheshire Record Office

TNA = The National Archives, Kew

Primary Sources	Date	Site shown/mentioned	Reference Number
County Maps			
Burdett PP	1777	Yes	CRO PM 12/16
Greenwood C	1819	Yes	CRO PM 13/10
Swire and Hutchings	1830	Yes	CRO PM 13/8
Bryant A	1831	Yes	CRO M5.2
Tithe Records			
Disley Tithe Map	1851	Yes	CRO EDT/137/2
Disley Tithe Apportionment	1849	Yes	CRO EDT/137/1
Lyme Handley Tithe Map	1850	Yes	CRO EDT/252/2
Ordnance Survey Maps			
O.S. Drawings 2" to a mile	1840	Yes	CRO OSD 81B2
1":1 Mile 1 st Edition	1842	Yes	PROW Unit OS 1":1 mile 1 st Ed
25" 1 st Edition Surveyed 1872	1872	Yes	PROW Unit OS 25" 1 st Edition
25" 2 nd Edition	1899	Yes	PROW Unit OS 25" 2 nd Edition
25" 3 rd Edition	1909	Yes	PROW Unit OS 25" 3 rd Edition
Finance Act			
Working Sheet	1909	Yes	CRO NVB/20-14
Valuation Book	1910	Yes	CRO NVA 4/7
Quarter Sessions			

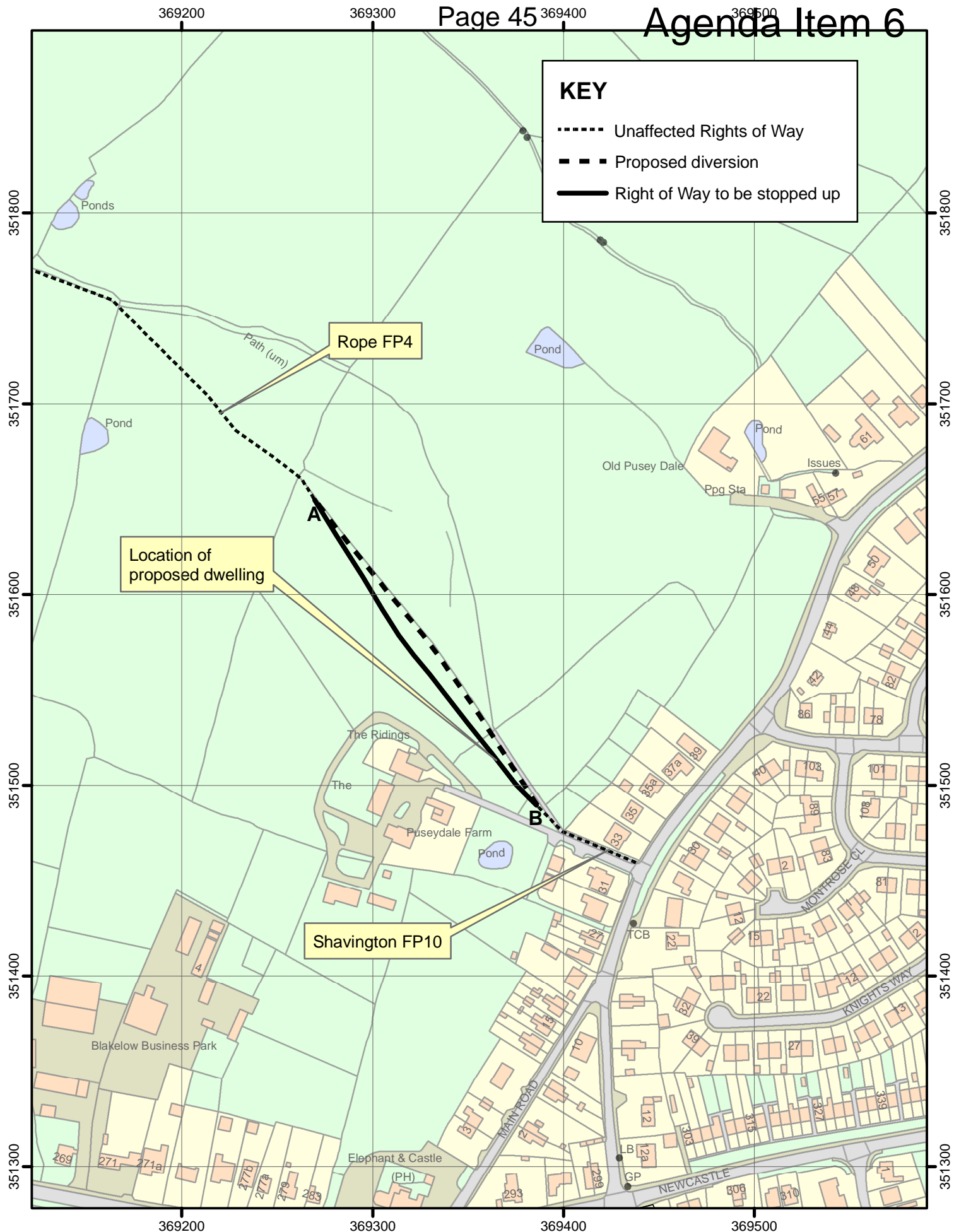
Index	1782-1967	No	CRO QAR 107-109
Manchester, Buxton, Matlock and Midlands Junction Railway	1846/7	Yes	CRO QDP 272
Stockport, Disley, Whalley, Bridge Railway Plan and Schedule	1853		CRO QDP 320
Stockport Corporation Water	1900		CRO QDP 787
Stockport Corporation Water	1903		CRO QDP 828
Legh Family Papers	1897-1950		Greater Manchester Record Office GB124.E17/134-139 and E 17/180
Prestbury Highway Board Plan	1865		CH1/2/17
Local Authority Records			
Disley Rural District Council Minutes	1894 - 1956		CRO LRD 1/1-19
Disley RDC Surveyor's Report Book	1921 - 49		CRO 19/1-6
Footpaths Map - Macclesfield	1930's	Yes	PROW Unit
Green Book	Pre 1950's	Yes	PROW Unit
Walking Surveys	1951	Yes	PROW Unit

Appendix 2 User Evidence



Witnesses		Use on Foot		Use by Horse		Use by Vehicle	
		From	To	From	To	From	To
Mr F M Flynn	Evidence Form	1977	2002			1977	2002
Mr B Ryan	Evidence Form	1959	2002				
Mr P L Birkett	Evidence Form	1976	2002			1976	2002
Mr D Robinson	Evidence Form	1976	2003	1984	2003	1976	2003
Mrs J Pattinson	Evidence Form	1987	2002			1997	2002
Mr J A Pearson	Statutory Declaration	1925	2002			1925	2002

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1:2,500

Highways Act 1980 S119
Proposed diversion of part of Public
Footpath No. 4 in the Parish of Rope

Plan No.
HA/092

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



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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	9 th December 2013
Report of:	Greenspaces Manager
Subject/Title:	Highways Act 1980 Section 119: Application for the Diversion of part of Public Footpath No. 4 in the Parish of Rope

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 4 in the Parish of Rope. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit in the interests of the landowners. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

2.0 Recommendation

- 2.1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No. 4 in the parish of Rope, by creating a new section of public footpath and extinguishing the current path (as illustrated on Plan No. HA/092) on the grounds that it is expedient in the interests of the landowners.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowners for the reasons set out in paragraph 10.6 below.
- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering

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

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

And whether it is expedient to confirm the Order considering:

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

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

3.4 Initial informal consultations have indicated that objections to an order are unlikely. The proposal would move the footpath away from the applicants' home and the proposed new dwelling thereby improving their privacy and security. Moving the footpath to the field boundary would also be of benefit in terms of farm/land management. It is therefore considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Shavington.

5.0 Local Ward Members

5.1 Councillor David Brickhill.

6.0 Policy Implications

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

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

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

7.0 Financial Implications

- 7.1 Not applicable

8.0 Legal Implications

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

9.0 Risk Management

- 9.1 Not applicable

10.0 Background and Options

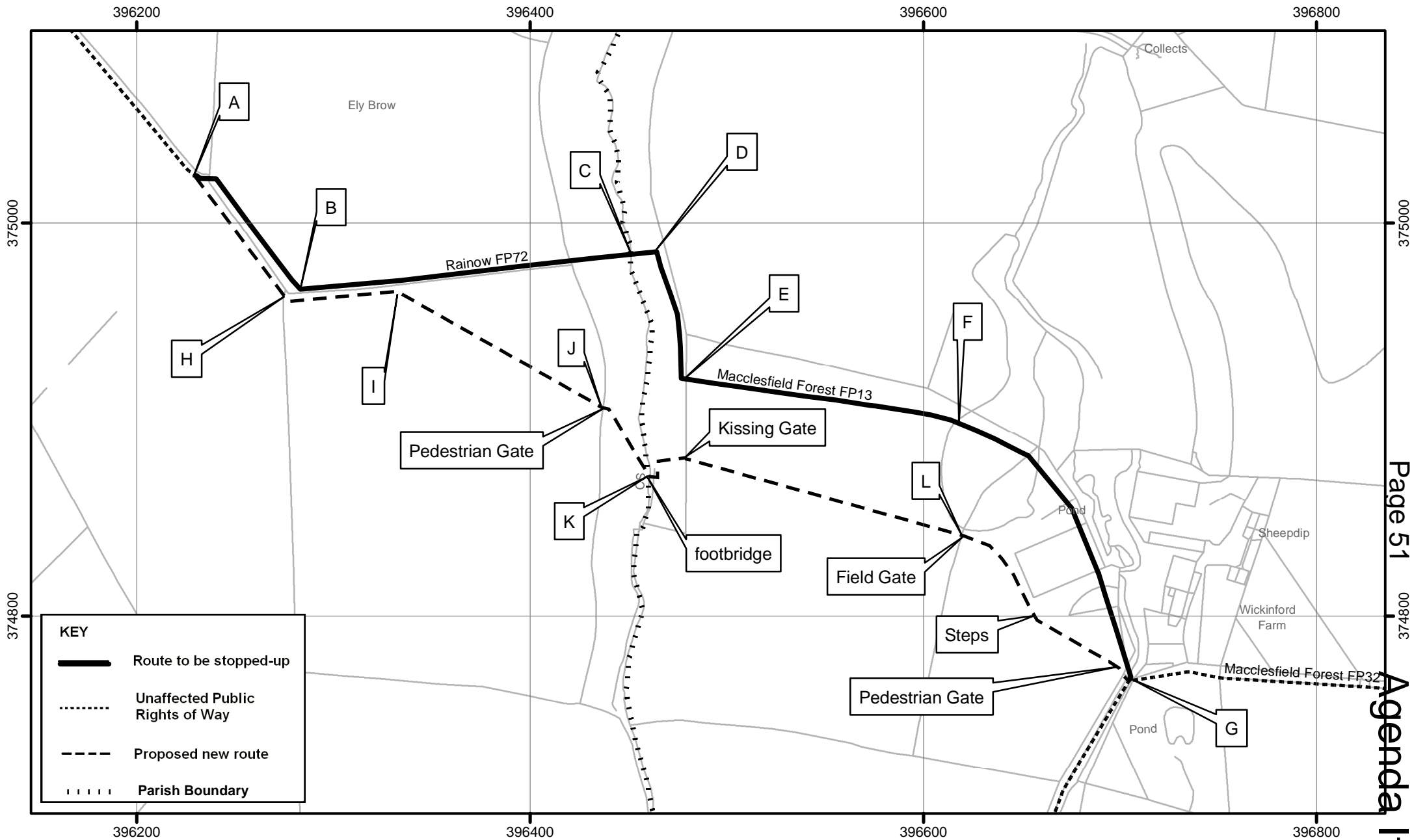
- 10.1 An application has been received from Mr and Mrs Shaw of Puseydale Farm, Shavington ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 4 in the Parish of Rope.
- 10.2 The applicant owns the land over which the current and the proposed route run. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request if it considers it expedient in the interests of the landowner to make an order diverting the footpath.
- 10.3 Public Footpath No. 4 Rope runs in a generally south easterly direction from Eastern Road at OS grid reference SJ 6870 5225 to its junction with Public Footpath Shavington cum Gresty No. 10 at OS grid reference SJ 6940 5147. Its total length is 1.2 kilometres. The section of path to be diverted is shown by a solid black line on Plan HA/092 running between points A-B. The proposed diversion is illustrated on the same plan by a black dashed line, again running between points A-B.
- 10.4 The legal definitive line of Rope FP4 is currently unavailable. It is obstructed by fences and has been for a number of years, before the current owners purchased the property. Walkers are currently using a route which runs parallel to the definitive line on land adjacent to Mr and Mrs Shaws property. This anomaly was brought to light when Mr and Mrs Shaw recently submitted a planning application for a new dwelling which, if approved, will be built on the definitive line of the public footpath (as indicated on plan no. HA/092).

- 10.5 To enable development to take place, under normal circumstances the footpath could be diverted under the Town and County Planning Act 1990 section 257. However, this legislation can only be used to divert the section of path directly affected by the development and Mr and Mrs Shaw wish to divert a longer section of the path than that which is directly affected. It is therefore proposed to divert the path under the Highways Act 1980 section 119.
- 10.6 The application, under the Highways Act, has been made in the interests of the privacy and security of the applicant. The proposal would move the footpath away from the applicants' home and the proposed new dwelling. Moving the footpath to the field boundary would also be of benefit in terms of farm/land management. Horses are kept in the paddocks to the north west of Puseydale Farm and moving the footpath to the paddock boundary will enable the landowners to separate walkers from the animals, removing the risk of conflict between members of the public and the horses. The diverted footpath would be unenclosed. It would have a width of two metres and a grass/natural earth surface.
- 10.7 The Ward Councillor has been consulted about the proposal. No comments have been received.
- 10.8 Rope Parish Council has been consulted. No comments have been received.
- 10.9 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.
- 10.10 The user groups have been consulted. The Peak and Northern Footpaths Society has responded to state that they have no objection to the proposal.
- 10.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.12 An assessment in relation to Equality Act 2010 Legislation has been carried out by the PROW Network Management & Enforcement Officer for the area and it is considered that the proposed diversion would be no less easy to use than the existing route.

11.0 Access to Information

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

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1:2,500

Highways Act 1980 s119 Proposed Diversion of
FP72 Rainow and FP13 Macclesfield Forest

Plan No.
HA/091

This is a working copy of the definitive map
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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	9 December 2013
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980 Section 119: Application for the Diversion of Public Footpath no. 72 (part) Parish of Rainow, and Public Footpath no. 13 (part) Parish of Macclesfield Forest

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.72 in the parish of Rainow and part of Public Footpath No.13 in the parish of Macclesfield Forest. 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 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 divert the sections of footpath concerned.

2.0 Recommendation

- 2.1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No.72 Rainow and part of Public Footpath No.13 Macclesfield Forest by creating a new section of public footpath and extinguishing the current paths as illustrated on Plan No. HA/091 on the grounds that it is expedient in the interests of the owner of the land crossed by the path and of the public.
- 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 both the landowner and the public for the reasons set out in paragraph 10.3 and 10.9 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, diverting the footpaths will resolve an anomaly and offer improved land and stock management capability for one of the landowners. 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 Sutton

5.0 Local Ward Members

5.1 Councillor Gaddum

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 This application has been initiated by the Borough Council as complaints have been received from members of the public that the definitive line of the footpath is not available on the ground, an alternative route is in use but this situation is confusing for users of the footpath. There are three affected landowners; the current definitive line of footpath no.72 Rainow is on land belonging to Mr Charles Pickford of Dane Bent Farm, Rainow. The proposed diversion would mean moving the footpath onto land belonging to Mr Colin Pickford of Thornsett Farm, Rainow. The two landowners are related and both are in agreement to the proposal.
- 10.2 The current definitive line and the proposed diversion of footpath no.13 Macclesfield Forest are on land belonging to Mr John Illingworth of Wickenford Farm, Macclesfield Forest.
- 10.3 It is proposed to divert these paths in the interest of the public as it is believed to be due to a drafting error during the Definitive Map process that the path available on the ground is not consistent with the route shown on the Definitive Map. At the point where the two paths meet on the parish boundary (point C on plan no. HA/091) the definitive line is not available; on the ground there is a very steep embankment and a stream with no means to cross and it would appear unlikely that this point would have been used by the path. Further south (point K) is where it is believed that historically the crossing point has always been, here the path is easier to negotiate and there is currently a stile and stepping stones to cross the stream.
- 10.4 Referring to plan no. HA/091, the current definitive line of footpath no.72 Rainow changes from the western side of the field boundary to the eastern side (point A). It then continues in a south-easterly direction along the field edge, it then turns in an easterly direction on the north side of the field boundary (point B) and continues to the parish boundary (point C). The current definitive line is shown as a bold black solid line between points A-C.
- 10.5 It is proposed to divert footpath no.72 onto the western side of the field boundary at point A, so the path will continue in a south-easterly direction in the same field. At point H the proposed path turns in an easterly direction on the southern side of the field boundary for approximately 59 metres. From point I the path turns in a

south-easterly direction and diagonally crosses the field to point J. At this point it is proposed to install a pedestrian gate into the field boundary fence. The proposed route then descends an embankment in a south south-easterly direction to point K where it meets the parish boundary. It is proposed to install an 8 metre bridge to enable pedestrians to cross the stream. At this point there is currently a stile and stepping stones.

- 10.6 It is believed that this is the route that pedestrians have been using, although they have found it difficult to use with no means of crossing the field boundary fence at point J. The landowner has informed the Council that he has suffered damage to his fence at this point. The Footpath Preservation Society Map which was produced at the same time as the parish walking survey's in the early 1950's, shows the line of this path on this proposed route.
- 10.7 The current definitive line of Footpath no.13 Macclesfield Forest begins at point C and follows an easterly direction to point D, it then turns in a generally southerly direction to point E. This section of the definitive line is not available on the ground, as stated above it follows a very steep embankment with dense vegetation. From point E the definitive line follows an east south-easterly direction to point F; this section crosses a grass field. From point F the route follows a south-easterly then south south-easterly direction to point G. This section is also partly unavailable as it crosses a very boggy overgrown area and then through a row of trees; the landowner has a manège for training horses and the definitive line appears to go through it, although the landowner has left a gap between the manège and the boundary. The remainder of the definitive line goes through a tree and foliage area and then finally a grass field edge to point G.
- 10.8 The proposed route follows the line that is currently used by walkers and is similar to the description in the walking survey schedule. From the footbridge at point K the route climbs the embankment in a generally north then easterly direction. It is proposed to replace an existing stile with a kissing gate, the route then crosses the grass field in an east south-easterly direction to point L, and the existing field gate will be replaced with a two-in-one field/pedestrian gate. From point L the route follows an east south-easterly then south south-easterly direction along a roughly stoned surface around the perimeter of the manège area. The route then follows an incline to a grass field, it is proposed to install steps at this point; the route then continues across the grass field in a south-easterly direction to an existing pedestrian gate. At point G the proposed route re-joins the remaining section of footpath no.13 and footpath no.32 Macclesfield Forest.
- 10.9 This diversion is partly in the landowners' interest as the current route appears to go through the manège area; the diversion is therefore required for stock management reasons. There appears to have been confusion over the exact line of this footpath for considerable time, in the farm yard opposite the house, there is an old finger post pointing in a westerly direction. This would indicate that at some point in the past users of the footpath continued further along the driveway to the farm (from point G on plan no. HA/091) and into the farm yard itself.

- 10.10 The Ward Councillor has been consulted about the proposal. No comments have been received.
- 10.11 Rainow Parish Council and Macclesfield Forest and Wildboardclough Parish Council have been consulted; Comments have been received from Rainow Parish Council in the email circulated to members. Discussions will be undertaken with the Parish Council to incorporate as many of their suggestions as possible to the proposed routes.
- 10.12 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.13 The user groups have been consulted. At the time of writing no comments were received.
- 10.14 The Council's Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.
- 10.15 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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Rainow Parish Council

Response to proposed diversions of footpaths 73 and 72

Summary

The Parish Council accepts that the proposed diversions of footpaths 73 and 72 (part) would not materially reduce the convenience or enjoyment of the public using these paths and that in the case of footpath 72 the proposals would provide an improvement to the current defined route. We presume that the costs associated with these diversions will be met by the landowners. Our detailed comments are given in the following two sections for each path, these can be summarised as follows:

- In both cases clear waymarking will be required where the new routes cross open fields;
- The description of footpath 73 only refers to the definitive route and does not make reference to the route currently used by walkers and which has been signed and used for many years. This current route does not pass through the farmyard and requires the use of 1 gate and 1 stile and thus in terms of convenience is similar to the proposed diversion;
- With regard to footpath 72 we are concerned that the manege appears to have been constructed in a location that obstructs the definitive line for the path. As the manege is not within Rainow Parish we are not familiar with the planning process adopted for its construction but we do not understand how permission could have been granted without the matter of the obstruction of the footpath being addressed.

The Parish Council have recently (2012) published an updated footpath map based upon that previously produced by Cheshire County Council in conjunction with the Parish Council. This has been distributed free to all households in Rainow and is sold in local outlets for a nominal sum of £1. Given the level of use of the footpaths in Rainow, footpath 73 in particular, we suggest that, if the diversions are approved, an addendum sheet be produced. This should be circulated to all Rainow households and included with future map sales to help ensure that walkers adhere to the new routes. The Parish Council would be pleased to liaise with CEC regarding the production of such an addendum and to organise its distribution.

Footpath 73

With regard to the proposed diversion of footpath 73 we have the following detailed comments:

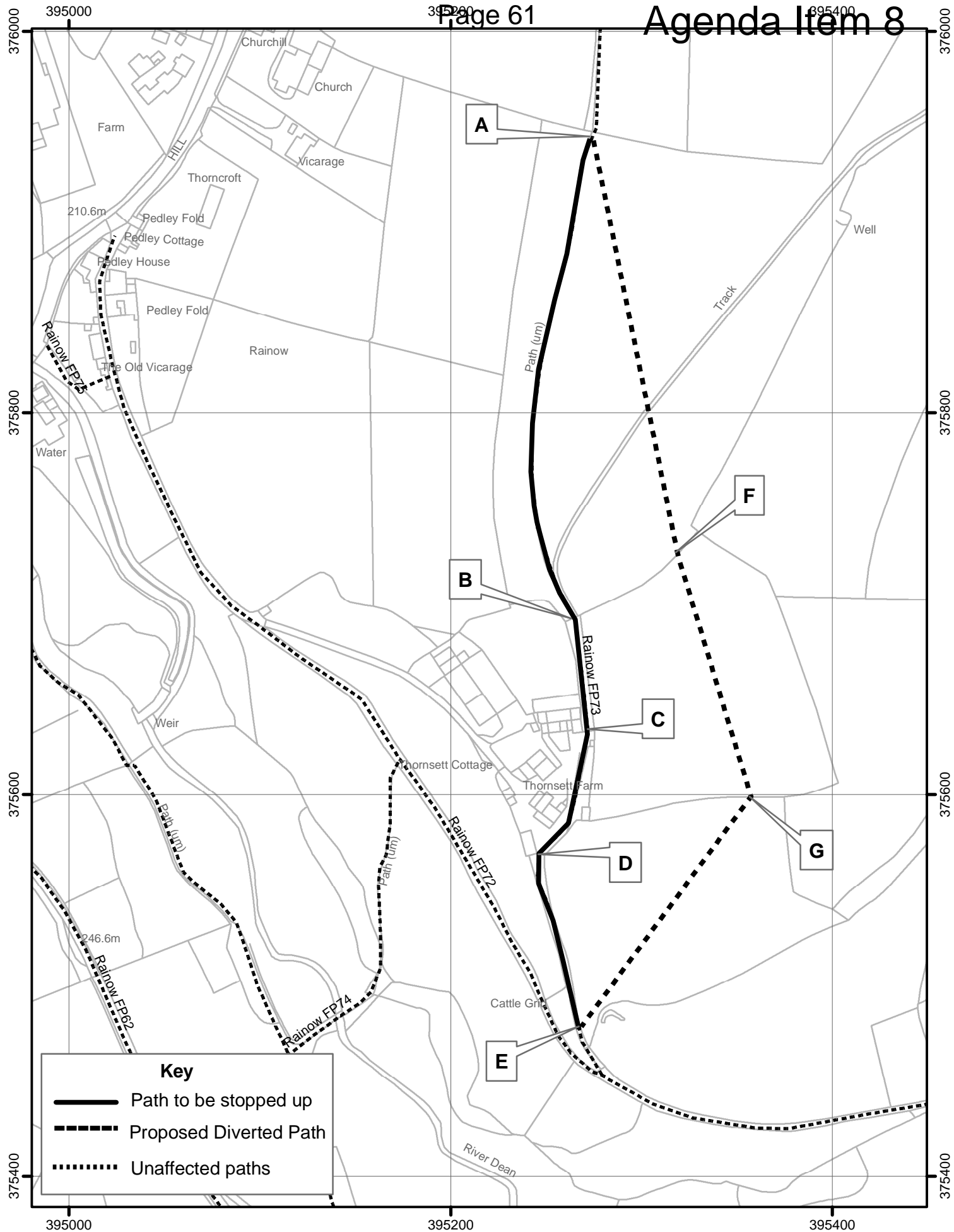
- Whilst the definitive line is described there is no description given of the route that has been signed (informally) and used by walkers for many years. This route (from north to south) enters the field to the east of the definitive line at point C (on the CEC plan) through a gate then runs southwards across the field to a stile provided in the wall forming the southern boundary of that field (the wall running west from point G towards the farmyard), thus bypassing the farmyard. The path then re-joins the track to/from the farmyard in the region of point D. This route provides a similar level of convenience to the proposed diversion, avoiding the farmyard and requiring use of 1 gate and 1 stile. The current route is more gently graded than the proposed diversion although the stile is relatively difficult to use for those who are less mobile or walking with a pet. We acknowledge that this route passes the edge of the farmyard and does not address the privacy and security points noted in the CEC letter;
- The proposed diversion will climb significantly higher than either the definitive route or that currently used by walkers. Whilst this may provide improved views there will be an ascent/descent in the region of 25m to 30m between points E and G with a steep gradient of around 1 in 7. This may affect some walkers who may choose the current path as it is relatively gently graded compared with many of the paths in Rainow; and

- The diversion will require clear signing at points A and E where the new line of route will not be clear and the proposed gates at F and G are unlikely to be visible from these points. This will be particularly important at point A where the existing route towards point B follows a clear track.

Footpath 72

With regard to the proposed diversion of footpath 72 we have the following detailed comments:

- We are concerned that the manege appears to have been constructed in a location that obstructs the definitive line for the footpath. As this location is not in Rainow Parish we are not familiar with the planning history of the manege. However, we would expect the planning application to take account of the presence of any public rights of way and that appropriate diversions should have formed part of the planning approval process for the manege;
- We agree that the proposed diversion for footpath 73 more closely follows the route that some walkers have been using and would provide an easier and more convenient route. There are particular difficulties for walkers attempting to follow the definitive line as marked on the OS and Rainow Parish Path maps. These indicate crossing the stream that forms the Parish boundary in the vicinity of point C, where there is no clear crossing point and very steep slopes either side. We note there is a relatively new kissing gate installed at the field boundary on the definitive route to the west of point C which will tend to attract walkers to this line of route; We presume this kissing gate would be removed, or relocated to point J, as part of the footpath diversion; and
- The diversion will require clear signing, particularly at point I, where the route turns away from the field boundary, and between points L and G where it passes the edge of Wickinford Farm.



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Highways Act s119 Proposed Diversion of
Public Footpath No.73 Rainow

Plan No.
HA/090

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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	9 December 2013
Report of:	Public Rights of Way Manager
Subject/Title:	Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 73 (part), Parish of Rainow

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.73 in the Parish of Rainow. 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.73 by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/090 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 10.7 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 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 Sutton

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 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 Colin Pickford of Thornsett Farm, Pedley Hill, Rainow, SK10 5UA requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 73 in the Parish of Rainow.
- 10.2 Public Footpath No. 73 Rainow commences at its junction with Church Lane (Road no. B5470) at O.S. grid reference SJ 9531 7627 and runs in a generally southerly direction across pasture land to terminate to the south of Thornsett Farm at the junction with Footpath No. 72 Rainow at O.S. grid reference SJ 9527 7545. The section of path to be diverted is shown by a solid black line on Plan No. HA/090 between points A-B-C-D-E. The proposed diversion is illustrated on the same plan with a black dashed line between points A-F-G-E.
- 10.3 The land over which the section of the current path to be diverted and the proposed diversion run belongs to Mr C Pickford. 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. 73, Rainow to be diverted commences to the north of Thornsett Farm (Point A on plan no. HA/090). The footpath follows a southerly direction along a rough track to point B, where there is a two-in-one field gate which is closed across the track when livestock are being moved. The path then descends along a surfaced path into the farm yard (point C). The path continues through the farm yard in a south south-westerly direction past several outbuildings (to point D), it then turns in a south south-easterly direction along a stoned track (to point E). It is shown as a bold black solid line between points A-E.
- 10.5 The proposed new route for this section would be to the east of the current route; it is shown as a bold dashed line between points A-F-G-E (on plan no. HA/090). From point A the proposed route follows a south south-easterly direction to point F and then continues in this direction to point G. It then turns in a south-westerly direction to re-join the remainder of footpath no.73 at point E, near to where it meets footpath no.72 Rainow.
- 10.6 The new route would have a width of 2 metres and would not be enclosed; it would be a grass surface. There would be two pedestrian gates required at points F and G. On the current route there are 5 field gates which are used to control livestock around the farm yard. Therefore in terms of accessibility the

new route is considered no less easy to use than the original. The proposed route is more elevated than the current route and offers superior views.

- 10.7 This diversion is in the landowners' interest as the current route goes through the farm yard; the diversion is therefore required for farm management reasons. The diversion would also allow the landowner to improve security around the farm and would have a benefit to his privacy.
- 10.8 The Ward Councillor was consulted about the proposal. No comments were received.
- 10.9 Rainow Parish Council has been consulted and has provided a detailed response, (circulated to members); discussions will be held with the Parish Council to accommodate the points raised wherever possible. The Parish Council have commented on a permissive footpath which runs just to the east of the definitive line between points B-D (on plan no. HA/090), just inside the field boundary. This route is currently used by walkers on a permissive basis as an alternative to the definitive line through the farmyard. The landowner believes that the definitive route may have been wrongly recorded and that the permissive route is actually the route that walkers have always used, there are two stiles built into the dry stone walls at each end of the field which would support this suggestion. However in making this application the landowner has identified the proposed route as his preference for the diversion. Although the current permissive route takes walkers out of the farmyard it does not address the landowners' privacy and security concerns, therefore he would prefer the path to be further away from the farm. In comparing the current and proposed routes for the purpose of this application, it is the definitive line through the farmyard which must be considered as the current route rather than the permissive route.
- 10.10 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.
- 10.11 The user groups have been consulted. At the time of writing no comments were received.
- 10.12 The Council's Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.
- 10.13 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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Designation: Definitive Map Officer

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Email: jennifer.tench@cheshireeast.gov.uk

PROW File: 253D/484

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Plan No.
LGA/006a

Local Government Act 2000 s2 Proposed Deed of Dedication to create a Public Bridleway in the Parish of Wilmslow



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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	9 th December 2013
Report of:	Public Rights of Way Manager
Subject/Title:	Local Government Act 2000 – Section 2 Deed of Dedication for a new Public Bridleway in the Parish of Wilmslow

1.0 Report Summary

- 1.1 This report presents a proposal to create a new public bridleway on Cheshire East Council owned public open space in the Parish of Wilmslow.

2.0 Recommendations

- 2.1 That a public bridleway over Council owned land be dedicated to the public under Section 2 of the Local Government Act 2000 in the Parish of Wilmslow, as shown on Plan No. LGA/006a, and that public notice be given of this public bridleway.

3.0 Reasons for Recommendations

- 3.1 Cheshire East Council is involved, as the owner of public open space, in a project to improve public access in the Carrs park in Wilmslow. Specifically, the project aims to create a multi-user route through the park for the public to use to walk or cycle the length of the park throughout the year and also for use as an off-road route for people travelling beyond the park. The Bollin Valley Partnership, the Friends of the Carrs and the Parks Development team are progressing the project with the Asset Management Service.
- 3.2 To construct a multi-user route through the park, externally sourced funding has been secured, a requirement of which is that the path is dedicated as a public right of way. This would have the effect of securing the public's rights of access for perpetuity.
- 3.3 Consultation undertaken for the Council's statutory Rights of Way Improvement Plan (ROWIP) identified the need for local access to the countryside, off-road pedestrian and cyclist routes and circular routes close to people's homes. These needs are met by the proposed path which would offer both leisure and active travel facilities.

4.0 Wards Affected

- 4.1 Wilmslow West and Chorley Ward.

5.0 Local Ward Members

5.1 Councillor Fitzgerald and Councillor Barton.

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

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

7.0 Financial Implications

7.1 The proposal would incur minimal immediate financial implications in the processing and advertising costs for a Deed of Dedication.

7.2 The creation of a public bridleway would enable the use of £124.6k of funding secured from Natural England's Paths for Communities Fund, one of the stipulations of which is that a new public right of way is created as a result of the project. The funding would be used to create a year-round accessible surfaced route through the park, plus signage and interpretation. £37.5k of funding has also been secured for the project through a Section 106 planning contribution and £500 has been contributed by the Friends of the Carrs group.

7.3 The surfaced path would become maintainable at the public expense on the date that the Deed of Dedication is sealed. The path is already maintainable at the public expense as it is currently used and available to the public within the open space of the site, albeit as an unsurfaced route.

7.4 Whilst the estimated future maintenance cost associated with the proposed surfaced route may be greater than the current annual maintenance spend, it may be anticipated that a surfaced route would reduce the liability of the Council in relation to trip related insurance claims. The investment proposed, using externally sourced funds, would create an asset with minimum maintenance requirements in the immediate future, and an asset available to the public for the longer term.

- 7.5 The Asset Management Service has assessed the proposal with respect to the Council's landholding. There are negligible effects to the land holding as an asset of the Council because the land is already managed as public open space.

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 would become a public right of way and maintainable at the public expense on the date that the Deed of Dedication is sealed.
- 8.3 Under Section 2 of the Local Government Act 2000, there is no statutory right for objection to the proposal.
- 8.4 The use of the powers under Section 2 of the Local Government Act 2000 fall within the general powers of this Committee which are described in the Constitution: "The Public Rights of Way Committee shall discharge all the functions of the Council in relation to all matters relating to public rights of way."

9.0 Risk Management

- 9.1 Not applicable.

10.0 Background and Options

- 10.1 For a number of years, Cheshire East Council and local user groups have been working to improve access within the public open space land known as the Carrs. The creation of a multi-user route through the park has been a long held aspiration and was registered (Ref. T9) by the local user group CycleWilmslow during consultation for the Council's Rights of Way Improvement Plan.
- 10.2 The route would create a year-round and accessible path for people visiting the park. It is planned that the proposed public bridleway would be surfaced with a bitumen spray and chip surface. The route currently is unsurfaced, uneven and suffers from flooding due to high water table levels. In addition, bank erosion by the highly mobile River Bollin is likely to result in sections of the current path being unavailable in the future. The proposed multi-user route would be located away from such areas to protect the investment being made.
- 10.3 The route would also offer an off-road link for pedestrians and cyclists from the town centre and railway station towards places of interest, such as the National Trust property at Styal, and places of employment, such as Stamford Lodge and Manchester Airport.
- 10.4 The proposal has been submitted in a bid to Natural England's Paths for Communities Fund in order to create a year-round multi-user surface through

the public open space. Funding has also been secured for the project through a Section 106 planning contribution.

- 10.5 One of the stipulations of the Paths for Communities funding stream is that the path created is dedicated as a public right of way, thereby securing public access rights for perpetuity. This also means that the path can be shown on Ordnance Survey mapping as being available to the public. .
- 10.6 The proposed route runs as indicated in Plan No. LGA/006a:
a public bridleway within Wilmslow parish from OS grid reference SJ 8447 8158 at its junction with public footpath No. 29 in the Parish of Wilmslow in a generally north-westerly direction for a distance of approximately 900 metres to its junction with restricted byway No. 3 in the Parish of Wilmslow, at OS grid reference SJ 8393 8213.
- 10.7 For a distance of approximately 240m the proposed public bridleway would run along the same alignment as public footpath No.23 in the Parish of Wilmslow. It is proposed that the status of this section of the public footpath be dedicated as public bridleway within the Deed of Dedication.
- 10.8 The landowner, Cheshire East Borough Council, is in support of the proposed dedication with Cabinet Member for Resources and Cabinet Member for Environment approval for the proposal having been granted in April 2013.
- 10.9 Colleagues in the Asset Management Service, Bollin Valley Partnership, Countryside Development, Parks Development and Streetscape teams are supportive of the proposal.
- 10.10 Wilmslow Town Council and the local Ward Members have been consulted. Councillor Fitzgerald responded to say "I am delighted that this multi use access is being provided. It has my full support." No further comments were received.
- 10.11 The Development Management department has confirmed that planning permission for the proposal is not required, as the proposed works constitutes permitted development.
- 10.12 The classification of public bridleway means that the public right of way would be available to pedestrians, horse riders and cyclists. The intention of the multi-user route within the Carrs park was that the route would be available to both pedestrians and cyclists. To secure the external funding, the public right of way must be dedicated as a public bridleway and there are some concerns that the use of the route by horse riders would create potential conflict with other users and damage the surface of the route. As can be seen in Plan No. LGA/006a, the public bridleway proposed is a cul-de-sac route which connects with existing public footpaths within the park. Cyclists would be allowed, by the Council as landowner, to use these connecting public footpaths on a permissive basis to continue their journey. Horse riders, however, would not be permitted to use these paths which connect to the town centre and residential streets. Whilst no physical barriers are proposed to restrict onward access for horseriders, it is anticipated that the attractiveness of the proposed bridleway to this category of

user be minimal. Should an issue arise in the future, the Council could investigate the use of a traffic regulation order to restrict the access of horse riders along the route.

11.0 Access to Information

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

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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 9 December 2013
Report of: Public Rights of Way Manager
Subject/Title: Changes to Rights of Way Law and Procedures - the Growth and Infrastructure Act 2013

1.0 Report Summary

- 1.1 Members will recall that a similar paper to this was brought to Committee at the June 2012 meeting. The paper discussed consultations undertaken by DEFRA about a range of issues and proposals relating to changes to Rights of Way administrative processes. Amongst them were a set of complementary proposals from the Penfold Report dealing with Public Rights of Way issues associated with planning and development. Those elements have now passed into law as part of the Growth and Infrastructure Act 2013. The remaining proposals are still going through the Parliamentary process as part of the Deregulation Bill and are likely to pass into law in 2014.

2.0 Recommendation

- 2.1 That Members note the information contained in the report.

3.0 Reasons for Recommendations

- 3.1 It is the view of officers that the proposals as set out in the Act are largely positive and will provide greater flexibility to the way we work.
- 3.2 The report has been discussed with Councillor David Topping, Environment Portfolio Holder, and his views will be relayed to the Committee verbally due to the tight time constraints involved.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

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 Not applicable

10.0 Background

10.1 The Penfold Report dealt with making changes to the planning process and the areas of that process impacting on Public Rights of Way.

10.2 Currently the legal work to process diversions or stopping up orders for paths that are being affected by development can only start after planning consent has been granted. This creates uncertainty for developers and it also slows the development process timescale.

11.0 The Legislative Changes

11.1 Amendments have been made to the Town and Country Planning Act 1990 to allow competent authorities to make stopping up and diversion orders if they are satisfied that –

- A planning application has been made; and;
- If the application were granted it would be necessary to stop up or divert the path in order to enable the development to go ahead.

11.2 Additionally any order so made cannot be confirmed unless the Secretary of State or the Order Making Authority are satisfied that –

- Planning permission has been granted; and;
- It is necessary to stop up or divert the path in order to enable the development to go ahead.

11.3 Consequentially Order Making Authorities will be able to contribute to speeding up the planning process by making orders for stopping up and diverting public rights of way prior to planning consent being granted.

11.4 Members may recall that this Committee has previously resolved to make orders to divert paths under the provisions of Town and Country Planning Act 1990 s257 prior to the granting of planning permission, but with the proviso that the order will only be made on the confirmation of the granting of planning permission. The legislative changes now made by the Growth and Infrastructure Act 2013 provide statutory authority for that approach.

12.0 Access to Information

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

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