

Public Rights of Way Committee

Agenda

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| Date: | Tuesday 18th March 2014 |
| 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**

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 - 12)

To approve the minutes of the meeting held on 9 December 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. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath no's 12 (part) and 12A, Parish of Hough** (Pages 13 - 20)

To consider the application to divert part of Public Footpath No.12 and Public Footpath No.12A in the parish of Hough

6. **Cycle Tracks Act 1984 Proposed Cycle Tracks Order: Crewe Footpaths Nos. 3 (part) and 36** (Pages 21 - 32)

To consider a proposal to change the legal status of lengths of Public Footpath No. 3 (part) and No.36 Crewe to cycle tracks

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 9th December, 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, S Jones and J Wray

In Attendance

Councillor L Brown, Cabinet Support Member for Environment

Officers

Mike Taylor, Rights of Way Officer
Genni Butler, Countryside Access Development Officer
Hannah Duncan, Definitive Map Officer
Clare Hibbert, Definitive Map Officer
Jennifer Tench, Definitive Map Officer
Rachel Goddard, Solicitor
Rachel Graves, Democratic Services Officer

23 APOLOGIES FOR ABSENCE

Apologies were received from Councillor M Parsons.

24 DECLARATIONS OF INTEREST

There were no declarations of interest.

25 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meeting held on 16 September 2013 be confirmed as a correct record and signed by the Chairman.

26 PUBLIC SPEAKING TIME/OPEN SESSION

Three members of the public had registered to speak in relation to Items 7, 8 and 10. The Chairman advised that he would invite them to speak when these applications were being considered by the Committee.

**27 WILDLIFE AND COUNTRYSIDE ACT 1981 - PART III, SECTION 53:
APPLICATION TO ADD A BYWAY OPEN TO ALL TRAFFIC, RED
LANE, DISLEY**

Note: Councillor L Jeuda arrived at the meeting during consideration of this item but did not take part in the discussion or vote on the matter.

The Committee received a report which detailed an investigation into an application to add a Byway Open to all Traffic, known as Red Lane, in the parish of Disley to the Definitive Map and Statement.

Under section 53 of the Wildlife and Countryside Act 1981, the Borough Council had a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Section 53(c) allowed for an authority to act on the discovery of evidence that suggested that the Definitive Map needed 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.

The application had been registered in November 2002 by Disley Parish Council. Red Lane formed an access route to a large number of properties and also to St Mary's Church. Three public footpaths joined Red Lane and two public footpaths ran from the end of the claimed section of Green Lane. The application suggested that there had been a route from Lyme Hall to St Mary's Church and Disley village since at least the 16th century. The application also referred to historical documents including Tithe Map, County Maps, Ordnance survey maps, Railway Plans and the Finance Act. Four user evidence forms were also submitted claiming use of the route on foot, 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.

An objection to the claim 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 they had contributed over many years.

An investigation into the claim was initially commenced in 2007. Consultation was undertaken with adjacent property holders and all interested parties at that time, which resulted in comments referring to the private maintenance of the lane and the cost of repairs at various times. There was also concern about visitors to Lyme Park parking their cars along Red Lane and causing obstruction issues. Others objected as the route for vehicles would be a dead end and serve no purpose except to increase parking problems. The case officer undertaking the investigation left Cheshire County Council in September 2007 and the file had remained largely dormant until now.

A detailed investigation of the evidence submitted with the application had been undertaken, together with additional research. The application had

been made based on historical evidence and user evidence from five witnesses and one statutory declaration. In addition to the submitted evidence, a detailed investigation of the available historical documentation had been undertaken to try and establish the history and original status of the claimed route.

Red Lane had appeared on a number of historical documents of good provenance. The Tithe Map of 1850 listed the lane as a public road along with other connecting routes that were not wholly in Lyme Park and private. The route had appeared consistently on early County Maps and on many was referenced as a 'cross road'. These early records raised a reasonable presumption that the route was a through route and of higher status than footpath.

However, the Stockport, Disley and Whalley Bridge Railway Plan of 1853 recorded the route onto which Red Lane joined as its westerly end as private road and the owner as Thomas Legh. The railway proposal was enacted by parliament and the subsequent construction of railway altered the alignment of the adjoining road and changed the nature of the 'through road' that Red Lane might otherwise have been. The 1872 Ordnance Survey map showed how the alignment of the road had changed and most of the old route was subsumed under parkland. The Stockport Corporation Water Plan of 1904 referred to Red Lane as 'Private Road and Public Footpath'.

The Legh Estate papers had shown a consistent picture through letters and other documents that Red Lane was considered to be a Private Road maintained by the Estate. The Disley Rural District Council minutes and papers gave the same picture. There was evidence from 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'.

In order to show public vehicular rights had been acquired along Red Lane through usage, a twenty year period must be identified during which use of the route by vehicles had been established. In this case signs have been in evidence along Red Lane at various times. Mr Gresty, of 19 Red Lane, claimed to have put signs 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 was in place towards the Lyme Park end of the lane and according to Mr Gresty had been since approximately 1992. If this date is taken as the first date of challenge to motorised vehicle users then the period for these purposes must be taken at 1972 to 1992. There had been no challenge to pedestrians or other users therefore use on foot or horseback could be considered up to the date of the application, which is the period 1982 to 2002.

Three people had claimed to use the lane during the relevant period but not for the full twenty year period and had been for the purpose of parking and walking to Lyme Park or to visit residents or to attend the Church.

In the Legh Estate papers from 1933 there was correspondence stating that people parking in the lane who had no business there could be served with an injunction from the County Court. This demonstrated 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 was difficult to ascertain.

The user evidence showed that all but one of the six witnesses had used Red Lane on foot during the period 1982 to 2002, with use being to access Lyme Park and also to access the other public footpaths that led into the claimed route. The use had been very frequent in some instances i.e. every day to 20 times per year. There was no indication from the historic documents that pedestrian use by the public had ever been discouraged or prevented.

The route as a public footpath was quite widely documented throughout the Legh Estate Papers and in a number of other documents from the 19th century. The number of connecting footpaths gave rise to a strong presumption of use of Red Lane as a footpath was demonstrated in the user evidence provided. Use of a bridleway had been catalogued but was demonstrated by only one of the users and did not provide a strong enough basis on which to base a reasonable allegation. The report concluded that for Red Lane there was insufficient historical and user evidence to support the existence of a byway open to all traffic.

The Committee considered the evidence presented by the officer and detailed in the report and considered that there was insufficient evidence historical and user evidence to support the existence of a byway open to all traffic along A-B-C and B-D on plan number WCA/010. However, the Committee considered that on the balance of probabilities the requirements of Section 53(3)(c)(i) had been met in regard to the existence of public pedestrian rights and therefore recommended that these sections should be subject to a Definitive Map Modification Order to add them as Public Footpaths to the Definitive Map and Statement.

The Committee **RESOLVED:** That

- (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 sufficient evidence to show the existence of Public Byway Open to All Traffic rights.
- (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.
- (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.

- (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.
- (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.

28 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PART OF PUBLIC FOOTPATH NO. 4 IN THE PARISH OF ROPE

The Committee considered a report which detailed an application 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

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

The legal definitive line of Rope Footpath No.4 was currently unavailable. It had been obstructed by fences for a number of years, before the current owners purchased the property. Walkers were currently using a route which ran parallel to the definitive line on land adjacent to Mr and Mrs Shaw's property. This anomaly was brought to light when the Applicants submitted a planning application for a new dwelling which, if approved, would be built on the definitive line of the public footpath (as indicated on plan no. HA/092).

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. Mr and Mrs Shaw wished to divert a longer section of the path than that which was directly affected. It was therefore proposed to divert the path under the Highways Act 1980 section 119.

The application, under the Highways Act, had 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 were kept in the paddocks to the north west of Puseydale Farm and moving the footpath to the paddock boundary would 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.

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 and also benefit land management. 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. 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 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.

29 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

The Committee considered a report which detailed a proposal initiated by the Public Rights of Way Unit recommending that the Council make an Order under section 119 of the Highways Act 1980 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.

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 Colin Pickford addressed the Committee and spoke in support of the application.

Complaints had been received from members of the public that the definitive line of the footpath was not available on the ground. An alternative route was in use but this situation was confusing for users of the footpath. It was believed that due to a drafting error during the Definitive Map process the path available on the ground was not consistent with the route shown on the Definitive Map. At the point where Public Footpath No.72 Rainow and Public Footpath No.13 Macclesfield Forest met on the parish boundary (point C on Plan No.HA/091), the definitive line was not available on the ground. There was a very steep embankment and a stream with no means to cross. Further south (point K on Plan No.HA/091) is where it was believed that historically the crossing point had always been as here the path was easier to negotiate and there was currently a stile and stepping stones to cross the stream.

Three landowners were affected by the proposed diversion. The current definitive line of Public Footpath No.72 Rainow ran on land belong to Mr Charles Pickford of Dane Bent Farm, Rainow. The proposed diversion would move the footpath onto land belonging to Mr Colin Pickford of Thornsett Farm, Rainow. Both landowners were in agreement with the proposals. The current definitive line and the proposed diversion of Public Footpath No.13 Macclesfield Forest ran on land belonging to Mr John Illingworth of Wickenford Farm, Macclesfield Forest.

The proposed diversion of Public Footpath No.73 Rainow would divert the path to cross the parish boundary at Point K, where it was proposed to install an 8 metre bridge to enable users to cross the stream.

The proposed diversion of Public Footpath No.13 Macclesfield Forest would follow the line that was currently used by walkers and was similar in description to the Parish Walking Survey of the 1950s. This diversion was partly in the landowner's interest as the current route appeared to go through a manège area and therefore the diversion was for stock management reasons.

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 footpaths would resolve the anomaly and offer improved land and stock management capability for one of the landowners. 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.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 or the land crossed by the path and of the public.

- 2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

30 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 73 (PART), PARISH OF RAINOW

The Committee considered a report which detailed an application from Mr Colin Pickford of Thornsett Farm, Pedley Hill, Rainow (the Applicant), 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.

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 Neil Collie, East Cheshire Ramblers, spoke on the application and was concerned that the proposed diversion involved a steep climb for some 30m, which was contrary to the general direction of the existing path which followed the contours and was therefore significantly less convenient than the existing definitive line through the farmyard.

Mr Colin Pickford, Applicant, spoke in support of the application as the diversion would allow for better farm management and improve safety and security around the farm.

The land over which the section of current path to be diverted and the proposed diversion ran belonged to the Applicant. The current route ran through the farm yard and the diversion was required for farm management reasons. The diversion would allow the landowner to improve security around the farm and would have a benefit to his privacy.

The proposed new route would have width of 2 metres, would not be enclosed and would have a grass surface. Two pedestrian gates would be required instead of the five field gates on the current route, which were used to control livestock around the farm yard.

The Committee considered the report and the comments received on the application from Rainow Parish Council, Cheshire East Ramblers and Alderley Edge Wilmslow and District Footpath Preservation Society 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 for the applicant and increase safety for path users. 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.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 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.

**31 LOCAL GOVERNMENT ACT 2000 SECTION 2: DEED OF DEDICATION
- THE CARRS, WILMSLOW**

The Committee received a report which detailed a proposal to create a new public bridleway under Section 2 of the Local Government Act 2000 in a deed of dedication.

For a number of years Cheshire East Borough Council and local user groups had been working to improve access within the public open space known as The Carrs. The creation of a multi-user route through the park had been registered by the local user groups during consultation for the Council's Rights of Way Improvement Plan.

The current path was unsurfaced, uneven and suffered from flooding due to high water table levels. In addition, bank erosion by the River Bollin was likely to result in sections of the current path being unavailable in future. The proposed multi-user route would be located away from such areas to protect the investment being made. The proposed path would create a year-round and accessible path for people visiting the park. It

was planned that the path would be surfaced with a bitumen and chip surface.

The route would offer an off-road link for pedestrians and cyclists from Wilmslow 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.

The proposal had 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. One of the stipulations of the Paths for Communities funding stream was that the path created was dedicated as a public right of way, thereby securing public access for perpetuity. Funding had also been secured for the project through a Section 106 planning contribution.

The classification of public bridleway meant that the public right of way would be available to pedestrians, horseriders and cyclists. There was some concern that the use of the route by horse riders would create potential conflict with other users and damage the surface of the route. The proposed route was a cul-de-sac route connecting with existing public footpaths within the park. Cyclists would be allowed to use these connecting footpaths on a permissive basis by the Council as the landowner. However, horseriders would not be permitted to use them. Whilst no physical barrier was proposed to restrict onward access for horseriders, it was anticipated that the attractiveness of the proposed bridleways to this category of user would be minimal. Should the issue arise in the future, the Council could investigate the use of a traffic regulation order to restrict the access of horseriders along the route.

The Committee unanimously

RESOLVED:

That a public bridleway over Cheshire East Borough 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.

32 CHANGES TO RIGHTS OF WAY LAW AND PROCEDURES, THE GROWTH AND INFRASTRUCTURE ACT 2013

The Committee received an information report on the changes to Rights of Way Law and Procedures under the Growth and Infrastructure Act 2013.

Mr C Meewezen spoke on the changes enabling local authorities to make orders under section 257 of the Town and Country Planning Act 1990.

Amendments had been made to the Town and Country Planning Act 1990 to allow competent authorities to make stopping up and diversions orders

if they were satisfied that a planning application had been made and if the application was granted it would be necessary to stop up or divert the path in order to enable the development to go ahead.

Additionally any order so made could not be confirmed unless the Secretary of State or the Order Making Authority were satisfied that planning permission had been granted and that it was necessary to stop or divert the path in order to enable the development to go ahead.

RESOLVED:

That the report be noted.

The meeting commenced at 2.03 pm and concluded at 3.08 pm

Councillor D Druce (Chairman)

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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

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| Date of Meeting: | 18 th March 2014 |
| Report of: | Public Rights of Way Manager |
| Subject/Title: | Highways Act 1980 s.119 Application for the Diversion of Public Footpath no's 12 (part) and 12A, Parish of Hough |

1.0 Report Summary

- 1.1 The report outlines the investigation to divert Public Footpath No.12A and part of Public Footpath No.12 in the Parish of Hough. 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 sections of the footpaths 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's 12A and 12 Hough by creating new sections of each public footpath and extinguishing the current path sections as illustrated on Plan No. HA/093 on the grounds that it is expedient in the interests of the owner of the land crossed by the paths.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

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

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

- Whether the paths are substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:

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

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

3.4 The proposed route will be an improvement to the existing route since it would have less path furniture to negotiate than the current route. 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 Wybunbury

5.0 Local Ward Members

5.1 Councillor Janet Clowes

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 E Wight of the Hollies Farm Kennels & Cattery, Birch Lane (off Cobbs Lane), Hough, nr Crewe, CW2 5RH requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert Public Footpath no. 12A and part of Public Footpath no. 12 in the Parish of Hough.

- 10.2 Public FP No. 12A, Hough, commences at Birch Lane at O.S. grid reference SJ 7156 5053 and runs in a generally south easterly direction through the rounds of Hollies Farm Kennels & Cattery to terminate at its junction with Public Footpath No. 12 at O.S. grid reference SJ 7161 5049. The section of the path to be diverted is shown by a solid black line on Plan No. HA/093 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points A-E-F-G-H.

Public Footpath No 12, Hough commences at its junction with Public Footpath 12A, Hough at O.S. grid reference SJ 7161 5049 and runs in a generally south easterly direction through a pasture field. Immediately after exiting this field, the path bears in a south westerly direction firstly across pasture fields and then along the access drive of Yew Tree Farm to terminate at its junction with Cobbs Lane at O.S. grid reference SJ 7150 5030. The section of the path to be diverted is shown by a solid black line on Plan No. HA/093 between points B-C-D. The proposed diversion is illustrated on the same plan with a black dashed line between points H-I-D.

- 10.3 The land over which the sections of the current paths to be diverted and the proposed diversion run belongs to Mr Wight. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request, if it considers it expedient in the interests of the landowner to make an order to divert the footpaths.
- 10.4 Public Footpath No 12A, Hough, to be diverted, passes close to the business buildings and the house of the applicant's property and then across their garden to terminate at a field gate where it joins Hough FP12. Diverting this path away from the applicant's kennel/cattery business and home would enable better management of livestock (dogs) within their business whilst affording improved privacy to their home and greater security for both.

The consequence of diverting Public Footpath No.12A Hough would be that Public footpath No 12 Hough to which it connects would become a cul de sac path. Therefore, by default, to keep the paths connected and so preserve the right to walk between Cobbs Lane and Birch Lane, this path must be moved too. Again, diverting it to the proposed alignment would provide better stock and land management for the applicant.

- 10.5 Referring to Plan No. HA/093, the proposed new route (A-E-F-G-H-I-D) that would be formed from the new section of Public Footpath No's 12A (A-E-F-G-H) and part of 12 (H-I-D) in the parish of Hough. From point A, the new route would run along the tarmac surfaced Birch Lane into a pasture field (point E). It would follow the north and west boundaries of the first field (points E-F-G) skirting a wet area in the south west corner (points G-H) before reaching a kissing gate (at point H) leading to a second field. It would then follow the north and west boundaries of the second field (points H-I-D) to terminate just before the kissing gate in the south west corner where it would rejoin the current alignment of Public Footpath No. 12, Hough (point D).

The route would be 2 metres wide throughout and apart from the tarmac road section along Birch Lane, would have a grassed surface.

Of benefit to users, the new route would offer the following improvements:

- More easily navigable and enjoyable as it would not require users to weave between property buildings.
- Less intimidating to use. The applicant's business deals with dogs. Taking users out of the area where these animals are located would reduce interaction between the two.
- More convenient to use since it would have less path furniture to negotiate than the current route (two kissing gates rather than the two kissing gates and two field gates).

- 10.6 The local Ward Councillor was consulted about the proposal. No comments were received.
- 10.7 Hough and Chorlton Parish Council has been consulted and members comments will be reported verbally.
- 10.8 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.9 The user groups have been consulted. No comments were received.
- 10.10 The Council's Nature Conservation Officer has been consulted and raised no objection to the proposals.

- 10.11 An assessment in relation to 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 an improvement to the current route since it has less footpath furniture to negotiate than the current route ((two kissing gates rather than two kissing gates and two field gates).

11.0 Access to Information

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

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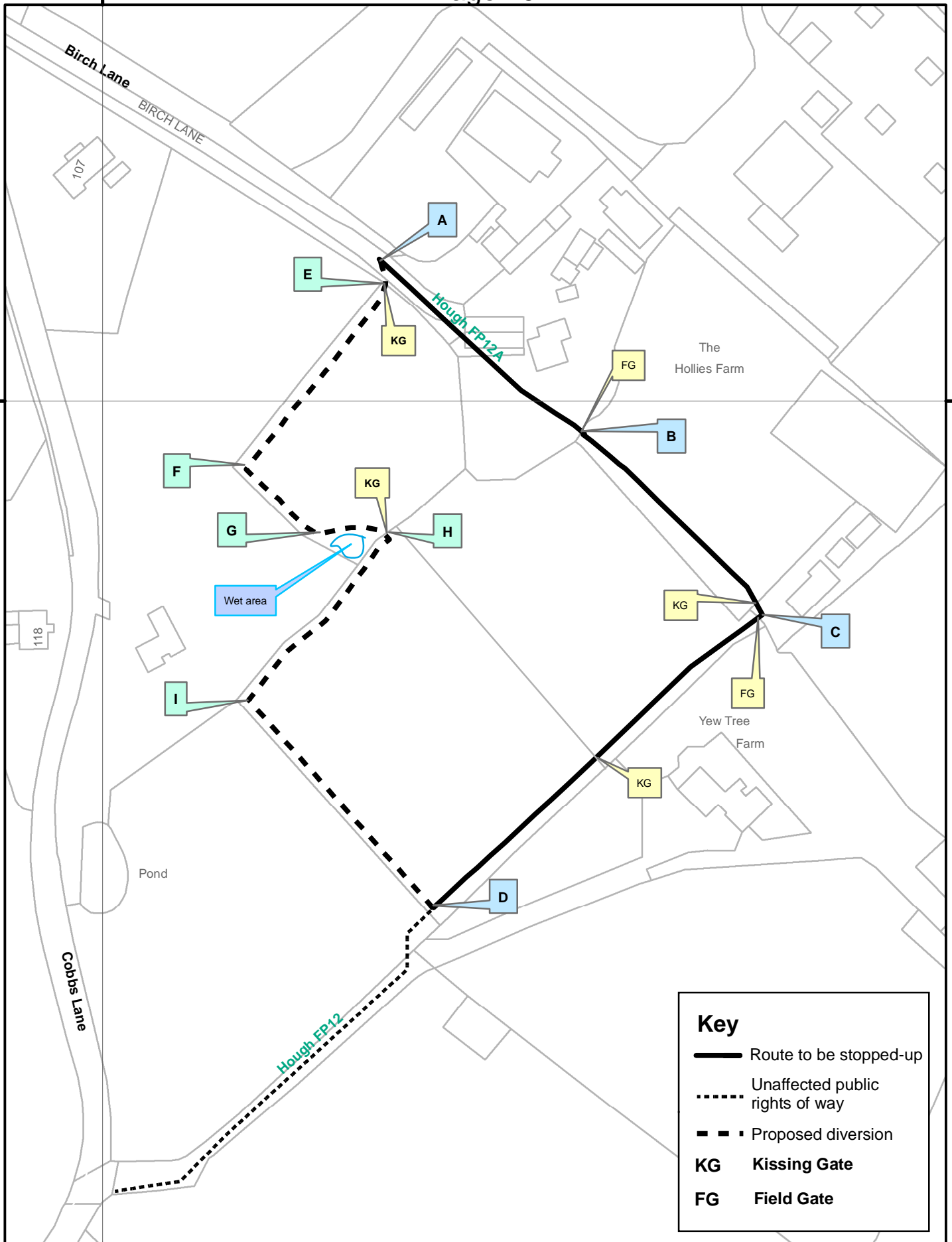
Designation: Public Path Orders Officer

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PROW File: 161D/489

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Key

- Route to be stopped-up
- Unaffected public rights of way
- - - Proposed diversion
- KG** Kissing Gate
- FG** Field Gate



1:1,250

Highways Act 1980 s119
The Cheshire East Borough Council
(Footpath 12A and 12 (part) Parish of Hough)
Public Path Diversion Order 2014

Plan No.
HA/093



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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

| | |
|-------------------------|--|
| Date of Meeting: | 18March 2014 |
| Report of: | Public Rights of Way Manager |
| Subject/Title: | Cycle Tracks Act 1984 Proposed Cycle Tracks Order: Crewe Footpaths Nos. 3 (part) and 36 |

1.0 Report Summary

- 1.1 The report describes a proposal to change the legal status of lengths of public footpath in Crewe to cycle track, so that the route can be used by, and promoted to, cyclists.

2.0 Recommendations

- 2.1 That an Order be made under Section 3 of the Cycle Tracks Act 1984 to convert to cycle track those lengths of public footpath between points A-B-D, as illustrated on Plan No. LGA/001.
- 2.2 That Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
- 2.3 That, in the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 Under Section 3 of the Cycle Tracks Act 1984, a local highway authority has the power to make a Cycle Tracks Order to convert a public footpath into a cycle track.
- 3.2 Crewe Local Area Partnership Highways sub-group and the sustainable transport charity Sustrans have put forward the proposal to convert lengths of public footpath for use by cyclists.
- 3.3 The proposal would enable cyclists to use the route as a traffic-free cycle track to travel to and from the town centre, as some already do, and would permit the promotion of the route to such users through signage and mapping.

4.0 Wards Affected

- 4.1 Crewe East Ward.

5.0 Local Ward Members

- 5.1 Councillors M Martin, D Newton and C Thorley.

6.0 Policy Implications

- 6.1 The proposal supports the following policies and initiatives of the Cheshire East Local Transport Plan and 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'
- Policy C8: Work with stakeholders to improve facilities for cycling so that it is attractive for shorter journeys.

- 6.2 The proposal would be supportive of the aims of the Local Sustainable Transport Fund project through which improvements and the promotion of 'Smarter Ways to Travel' are being delivered under the All Change for Crewe strategy.

- 6.3 The development of 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 An estimated £12k investment would enable the surface of the route to be brought up to standard for cycling and for destination signage to be installed. It is intended that an allocation would be made from the Local Transport Plan Walking and Cycling capital budget 2014-15 for this purpose. A developer contribution is also being pursued via a section 106 agreement.
- 7.2 Following an Order, the cycle track would appear on the List of Streets, thus being maintainable at the public expense, the same as at present under the status of public rights of way.

- 7.3 No additional maintenance costs over and above those already incurred on the route are anticipated as a result of the proposal.
- 7.4 Under Section 3 of the Cycle Tracks Act 1984, the landowner (or other party with an interest in the land) is entitled to claim compensation for any reduction in the value their interest in the land affected by a Cycle Track Order.
- 7.5 Part of the land is in the ownership of Cheshire East Council. The Asset Management Service have assessed the impact of the proposal on the land held by the Council as nil, as the land is already set out, used and recorded as a public footpath, and as such there would be no diminution in value of the interest of the Council. A Portfolio Holder decision was taken on 29th July 2013 in support of the proposal.
- 7.6 Part of the land is in the ownership of Network Rail. Network Rail has given permission for the proposed conversion, provided that future surface improvements and maintenance are undertaken at the cost of the Council. Further, the Asset Management Service of the Council has assessed the case and concluded that there is expected to be no diminution in value of the interest of Network Rail in the land in question, and therefore no or negligible compensation would be payable in the event of a claim.

8.0 Legal Implications

- 8.1 Under Section 3 of the Cycle Tracks Act 1984, a local highway authority has the power to make a Cycle Tracks Order to convert a public footpath into a cycle track.
- 8.2 There is a statutory right for objection to be made to a Cycle Tracks Order. If objections are not withdrawn, the matter would have to be referred to the Secretary of State for determination. If there are no objections the Council can confirm the Order.

9.0 Risk Management

- 9.1 The risks of this proposal are outlined in the sections of this report relating to financial and legal implications.

10.0 Background and Options

- 10.1 There are two lengths of public footpaths in Crewe, running between Hungerford Road, Coleridge Way and Sydney Road, as shown between points A-B-C-D on the Plan No. CTA/001. At present, cyclists do not have a right to use these public footpaths, yet the routes would offer connections between the town centre and communities at the edge of the town and in the villages beyond, and are in fact already used for that purpose. For this reason, the suggestion of upgrading these routes has been put forward so that they can be promoted as forming part of the cycle

network. The aspiration has been longstanding and was most recently put forward by the Crewe Local Area Partnership Highways sub-group and the sustainable transport charity Sustrans and registered under the Rights of Way Improvement Plan (Ref. T37).

- 10.2 An informal consultation was undertaken on this basis, the results of which are detailed below.
- 10.3 Following a Safety Assessment undertaken by Cheshire East Highways, it is recommended that the proposal to convert to cycle track be applied only to the route which runs between Hungerford Road and Sydney Road (between points A-B-D on the Plan No. CTA/001), which offers the straighter and wider route. The spur leading from this route to Coleridge Way (between points B-C) is considered to have insufficient width to promote as a shared use pedestrian/cyclist path.
- 10.4 Therefore, the lengths of public footpaths proposed to be designated as cycle tracks are as follows, and as shown on Plan No. LGA/001:-
 - a) that length of public footpath No. 3 situated in Crewe which extends from Manchester Bridge on Hungerford Road (UY3059) OS grid reference SJ 7126 5570 (point A on the Plan No. LGA/001) in a northwesterly direction for a distance of approximately 224m to public footpath No. 36 in Crewe at OS grid reference SJ 7133 5591 (point B on the Plan No. LGA/001); and,
 - b) that length of public footpath No. 36 which runs from the above described public footpath No. 3 in Crewe at OS grid reference SJ 7133 5591 (point B on the Plan No. LGA/001) in a northwesterly direction for a distance of approximately 760m to Sydney Road (C528) at OS grid reference SJ 7165 5662 (point C on the Plan No. LGA/001).
- 10.5 The route is generally wide and straight with clear sight lines and no segregation would be proposed between pedestrians and cyclists. The route offers a tarmac surface of approximately 2m width, with grass verges either side for most of its length. At the northern end of this path there are bollards before the road and at the southern end it would be proposed to install a similar arrangement.
- 10.6 It would be proposed that blue cycle signage be installed and that the Ordnance Survey be requested to show the route as a traffic-free cycle route on their mapping. The route would also be shown on future revisions of the Crewe cycle map.

Safety Assessment

- 10.7 A Safety Assessment has been undertaken by Cheshire East Highways. The report contained the following statements (in italics) relating to the route it is proposed to convert, between points A-B-D on the Plan No.

CTA/001. The statements are followed by the comments of the Traffic and Road Safety Team:

- a) *It was noted that both footpaths varied in width between 2.5 and 3.5m as a result of vertical features, such as overgrowing vegetation and / or property fences. One of the main design considerations is the space needed for a cyclist in which to feel safe and comfortable. This is particularly important when passing vertical features such as fences, bushes etc. Therefore, any proposals should, where there is no segregation between pedestrians and cyclists, allow for as a minimum, a 3.0 metre footpath / cycle track width. However, a reduced width could be considered appropriate in areas with few cyclists or pedestrians. In all cases where a cycle track or footway is bounded by a vertical feature such as a wall, railings or kerb, an additional width allowance should be made (minimum 0.5m, as the very edge of the path cannot be used). Trees and bushes should be either cut back or removed to allow the minimum footpath / cycle track widths to be achieved.*

- It is proposed that vegetation at the sides of the proposed route be cut back to provide as much width as possible. No further action required.

- b) *The general condition of the footpath at various locations along both proposed routes is poor, uneven and worn which would benefit from being re-surfaced. The type and quality of surface affects the comfort and attractiveness of a route and the whole life costs of the scheme. An initially high capital cost for a good quality specification may minimise maintenance and repair costs over the long term.*

- It is proposed that particular areas of the surface of the route (between points B and D on the Plan No. CTA/001) be resurfaced, where identified to be a possible safety issue.

- c) *It is not known whether tactile paving is to be installed on either of the footpaths / cycle tracks. Tactile paving surfaces can be used to convey important information to visually impaired pedestrians about their environment. On cycle routes, they are applied where tracks meet footways / footpaths and at intervals along some shared use routes. Designers should ensure appropriate tactile paving is installed on both cycle paths.*

- Tactile paving will be installed as per the guidance in Local Transport Note 2/08 - the corduroy surface is used to warn visually impaired pedestrians of the presence of specific hazards. In the cycling context, it should only be used as a warning that a footway or footpath is about to join a shared route on the cyclists' side.

- d) *Due to the locations of the proposed cycle tracks, it is considered these tracks may not be well used outside peak commuting times after dark, therefore it is not expected that the routes would be lit except where there were road safety concerns, and at crossings. Therefore, the design must ensure that a street lighting assessment is undertaken where the route joins Coleridge Way, Sydney Road and the A532 and if required, appropriate street lighting installed.*

- Street lighting already is in place where the route joins Sydney Road and Hungerford Road and this will be assessed to ensure adequacy.

- e) *Consideration should be given to installing cyclist warning signs at locations where the cycle track joins the highway to warn motorists of cyclists crossing the highway. Good inter-visibility between vehicles on the main road and cyclists on the track is essential to enable drivers to judge the speed and positioning of cyclists.*

- It is proposed that signage be installed to warn cyclists, motorists and pedestrians of the shared use route.

- f) *It was noted that there were no dropped kerbs opposite the footpath when exiting onto Sydney Road. Appropriate footway / cycle way provision should be installed during detail design. Where cycle routes cross roads with speed limits above 30 mph or where vehicle flows are high, it can be difficult to find an adequate gap in the traffic to cross the carriageway in one movement. A central refuge allows crossing to be undertaken in two easier movements, but the arrangement needs to be carefully designed to avoid the refuge creating pinch points that can disadvantage cyclists using the carriageway. In addition, consideration should be given to providing an Advance Stop Line (ASL) on the westbound approach to the traffic signals on Sydney Road and new cycle facilities installed to allow cyclists to exit Sydney Road at the traffic signals and enter the proposed cycle track. This will require the vegetation to be removed / cut back on the north east corner of the proposed footpath and a suitable surface, markings and signing installed.*

- Cyclists are not encouraged to use the footway on Sydney Road and therefore dropped kerbs are not required. ASLs and a feeder lane on Sydney Road will be assessed in detail and installed if reasonably practicable.

- g) *It is not known what road markings / signs are to be installed as part of the proposed measures, particularly at crossing locations. The simplest form of cycle crossing is where a track meets the road at a dropped kerb. Where it is clear to cyclists approaching the crossing that they are about to meet a road, consideration should be given to adding markings (and possibly signs) indicating the presence of junctions and that it is a shared route. Signing and cycleway markings*

should be reviewed and where appropriate, specified as part of the detail design process.

- Signage and markings to be installed as per current National Guidelines.

Informal consultations

- 10.8 The land is partly owned by Cheshire East Borough Council. The Asset Management Service have assessed the impact of the proposal on the land held by the Council as nil, as it appears there will be no diminution in value of the interest of the Council. A Portfolio Holder decision was taken on 29th July 2013 in support of the proposal.
- 10.9 The land is partly owned by Network Rail. Network Rail has given permission for the proposed conversion, provided that future surface improvements and maintenance are undertaken at the cost of the Council.
- 10.10 Notices have been placed on site and consultations have been undertaken with statutory consultees and local groups including:-
- | | |
|--|-----------------------|
| Adjacent residents | Cheshire Constabulary |
| Crewe Town Council | Ward Members |
| Local Area Partnership | Statutory undertakers |
| The Ramblers | Sustrans |
| Crewe Active Travel | Living Streets |
| Cheshire East Local Access Forum | |
| Local disabled groups: Senior Voice, IRIS Vision Resource Centre, Disability Resource Exchange | |
| National disabled groups: Joint Committee on Mobility for the Disabled, RNIB, Action for Blind People, Joint Committee on Mobility of Blind and Partially Sighted People | |
| Cheshire East Highways, Parks Development, Streetscape | |
- 10.11 Responses received in support of the proposal are as follows:
- a) Councillor Thorley responded to say “you have my full support for A, B, C and D”.
 - b) *“I am writing to say how pleased I am with the 3 and 36 footpath proposals. As a teacher at Hungerford Primary I think this will encourage more children to cycle to school, especially with the cut through to Coleridge Way. I would not recommend that any child cycles along Earle St in its current state so a way round that will be invaluable. A recent study of 20,000 pupils in Denmark proved that children who cycle to school do much better in academic tests than those who get driven.”* (Local primary school teacher)
 - c) *“I welcome [the] proposed cycle lanes and look forward to [their]*

development. I believe the proposals are a suitable step to take.”
(Unknown location)

- d) *“It seems like a sensible idea to make the pathways along the railway track from Earle St/Hungerford Rd to Sydney Bridge/Coleridge Way legally available to cyclists. However I do wish they would fit and use bells to warn walkers to their coming. I walk to work along the path and am frequently buzzed by cyclists. One or two do use bells but they are in the minority. I also sometimes cycle into town and the poor provision of cycle paths getting around the town is an obvious reason for cyclists using footpaths. I tried to get to Morrisons from Sydney and ended up walking my bike part of the way as it was safer than trying to use the road. It's great [that] new road[s] have cycle paths but I appreciate the high number of rail bridges around the town mean they couldn't easily be widened to allow for combined foot and cycle paths. However that is where there is a need for creative solutions.”* (Unknown location)

10.12 Others responded with negative views of the proposal:

- a) *“I write to you to object to the proposal to upgrade public footpaths Nos.3 and 36 to cycle paths. These footpaths are used twice a day during the school term by pupils attending various local schools including Hungerford Road Primary School and Nursery School. Also the paths are too narrow to allow pedestrians to avoid speeding cyclists (and many do travel at high speed). The path between points B and C is particularly narrow with hardly enough space for pedestrians to pass. You point out in your consultation document that cyclists already use this route illegally. This is true and many of them ride aggressively and with no consideration for other users. Why are the Police not prosecuting these offenders? I appreciate that the decision has probably already been made as in the present climate it seems cyclists get every consideration and pedestrians barely exist, but I hope my objections will be taken into account.”* (Adjacent resident)

- b) *“I oppose completely the proposed Cycle Track Order...The path shown as B-C is definitely not wide enough to be used by both cyclists and pedestrians, which...narrows to 1.5m at its eastern end.*

I do not believe that it is possible to convert only 'part' of the path for example A-B-D as cyclists would assume that the path B-C would be for their use as well, even with signage.

Suggesting that there would be no segregation, if approved, between cyclists and pedestrians is extremely dangerous, given the speed that the cyclists travel on these footpaths.” (Adjacent resident)

- c) *"The footpath running from the railway line to Coleridge Way has drainage issues and in the winter can often be under at least 6 inches of water, run off from the school playing fields and Bennett Close housing estate. This will be hazardous to cyclists and needs to be considered as the drainage will need to be rectified.*

Towards Coleridge Way the path is extremely narrow and I would suggest less than the 1.5m ... stated ... Signage for cyclists needs to be clear that they must give way to pedestrians as I have seen many a near miss on school children and cyclists often weave around pushchairs etc.

Lighting, is there any plan to add any lighting?" (Adjacent resident)

Cheshire East Highways commented to say that the route is not now, and will not be on the list for gritting, and there are no proposals to light any of the sections of the routes.

- d) A local Crewe resident who is registered blind rang to explain his concerns and those of his wife, who is also registered blind, regarding the proposal: the couple walk regularly down the footpaths and exercise their guide dogs on the route. They have experienced discourteous behaviour from cyclists in other shared use cycle tracks in the town, including being sworn at, pushed out of the way and hit by a cyclist. They are concerned that this behaviour would be demonstrated on the routes on which the conversion to cycle track is proposed, particularly at night when cyclists travel without lights and when vision for partially sighted people is most limited. The resident stated that he would expect to be injured or his guide dog be injured should the proposal be taken forward. The residents are also concerned that cyclists would, having ridden along the proposed route, continue their journey on footways (pavements) on which it is an offence to cycle. The resident added that other dog walkers had commented to him that they would have nowhere in the vicinity to exercise their dogs should the proposal be taken forward. (Local resident)

10.13 The comments received which express objection to the proposals outlined in the consultation documents relate mainly, though not exclusively, to the section of path between points B-C on the Plan No. CTA/001. These concerns echo the points raised in the Safety Assessment and give further support to the recommendation that the proposal to convert to cycle track should not be applied to the spur leading from the railway line to Coleridge Way (between points B-C on the Plan No. CTA/001). It is considered that the width and sightlines available on the route between Hungerford Road and Sydney Road (points A-B-D on the Plan No. CTA/001) be adequate for the path to be used as a shared use 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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