

# Public Rights of Way Committee

## Agenda

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**Date:** Monday 15th September 2014  
**Time:** 2.00 pm  
**Venue:** Committee Suite 1,2 & 3, Westfields, Middlewich Road,  
Sandbach CW11 1HZ

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The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the 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 - 13)

To approve the minutes of the meeting held on 16 June 2014 as a correct record

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

Member of the public may speak on a particular application after the Chairman has introduced the report, provided that notice has been given in writing to Democratic Services by 12 noon one clear working day before the meeting. A total of 6 minutes is allocated for each application, with 3 minutes for objectors and 3 minutes for supporters. If more than one person wishes to speak as an objector or supporter, the time will be allocated accordingly or those wishing to speak may agree that one of their number shall speak for all.

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

**Contact:** Rachel Graves

**Tel:** 01270 686473

**E-Mail:** [rachel.graves@cheshireeast.gov.uk](mailto:rachel.graves@cheshireeast.gov.uk)

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

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

5. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No. 11, Parish of Shavington cum Gresty and Public Footpath No. 21 (part), Parish of Wybunbury** (Pages 14 - 23)

To consider the application to divert Public Footpath No.11, in the parish of Shavington cum Gresty and Public Footpath No 21 (part), in the parish of Wybunbury

6. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No.11 (part), Parish of Knutsford** (Pages 24 - 28)

To consider the application to divert part of Public Footpath No.11, in the parish of Knutsford

7. **Village Green Application: Land Adjacent To Chelford Road And Black Firs Lane, Somerford** (Pages 29 - 38)

To decide on how to proceed with a village green application in respect of land along the verge of Black Firs Lane and Chelford Road, Somerford

**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Public Rights of Way Committee**  
held on Monday, 16th June, 2014 at Committee Suite 1,2 & 3, Westfields,  
Middlewich Road, Sandbach CW11 1HZ

**PRESENT**

Councillor M Hardy (Chairman)  
Councillor Rhoda Bailey (Vice-Chairman)

Councillors A Barratt, S Davies, M Parsons and J Wray

**In attendance**

Councillor L Brown, Deputy Portfolio Holder Service Commissioning

**Officer**

Mike Taylor, Rights of Way Manager  
Clare Hibbert, Definitive Map Officer  
Jennifer Tench, Definitive Map Officer  
Elaine Field, Highways Solicitor  
Rachel Graves, Democratic Services Officer

**1 APOLOGIES FOR ABSENCE**

Apologies were received from Councillor Ken Edwards.

**2 DECLARATIONS OF INTEREST**

There were no declarations of interest.

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

That the minutes of the meeting held on 18 March 2014 be confirmed as a correct record and signed by the Chairman.

**4 PUBLIC SPEAKING TIME/OPEN SESSION**

No members of the public present wished to speak.

**5 PUBLIC RIGHTS OF WAY ANNUAL REPORT 2013-2014 AND WORK PROGRAMME 2014-2015**

The Committee received a report which detailed the achievements of the Public Rights of Way service during 2013-14 and set out the proposed work programme for 2014-15.

The Rights of Way Manager reported on the work carried out during 2013-14 by the Network Management and Enforcement Team and the Legal Orders Team.

It was reported that:

- 46 temporary and emergency closures of rights of way had been made
- 611 problems on the network had been logged in 2013-14
- 10 public path orders had been confirmed, 18 cases were in progress, with a backlog of 28 applications
- 4 orders had been contested and referred to the Planning Inspectorate
- 2 Definitive Map Modification Orders had been confirmed, 10 were in progress, with a backlog of 18
- No Definitive Map Anomaly investigations had been carried out and there was a backlog of 260+

The budget for Rights of Way services had remained as set during 2013-14 allowing the Team to both plan spending and clear some of the previous backlog. The outcome of the BVPI 178 Ease of Use survey was 83%.

**RESOLVED:**

That the Annual Report for 2013-14 be noted and the proposed work programme for the Public Rights of Way Team for 2014-15 be approved.

**6 WILDLIFE AND COUNTRYSIDE ACT 1981 - PART III, SECTION 53: APPLICATION TO UPGRADE PUBLIC FOOTPATHS NOS.6 & 7(P) ARCLID AND NO.16 SMALLWOOD TO BRIDLEWAYS.**

The Committee received a report which detailed an investigation into an application to amend the Definitive Map and Statement by upgrading Public Footpath Nos. 6 and 7 Arclid and No.16 Smallwood to bridleways.

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 (3)(c) allowed the authority to act on the discovery of evidence that suggests that the Definitive Map and Statement 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.

The application had been made in January 2005 by Mrs P Amies, on behalf of the Border Bridleways Association, to modify the Definitive Map and Statement by upgrading three footpaths to bridleways in the parishes of Arclid and Smallwood. The route applied for was currently recorded as Public Footpath No.7 (part) Arclid between points A-B-C-D-F on Plan No.WCA/007; Public Footpath No.6 Arclid between D-E and Public Footpath No.16 Smallwood between points F-G. A considerable amount of historical evidence had been supplied with the application including

extracts from County Maps, Tithe Maps, Ordnance Survey Maps, the Finance Act, the 1950's Parish Survey and several Road and motoring maps. Also submitted were six user evidence forms from individuals who claimed use of the route or part of it on horseback, one also claimed cycle use and another vehicular use. The periods of use varied between 9 years and 57 years and were stated to be frequently, weekly or monthly. The earliest use was from 1918 and it extended until 1997. Three of the forms were completed in 1997, two in 2000 and one in 2004. One of the witnesses had since died, one stated that they no longer wanted to be involved and three did not return contact after they were written to.

Objections to the application had been received from the land owners DM Beresford & Partners Ltd and lessee Archibald Bathgate Group Ltd, who had planning permission to undertake sand extraction between point B to points E and F. There were proposals to divert the paths affected as part of the restoration scheme. The land between points F and G were owned by Mr Bracegirdle, who had also lodged an objection to the application.

A detailed investigation of the evidence submitted with the application had been undertaken, together with additional research. The application was made on the basis of historical evidence and user evidence from 6 witnesses.

The Tithe Maps for Arclid and Betchton showed a consistent alignment corresponding with Footpath Nos.6 and 7 Arclid, with the route shown coloured and bounded on both maps. The route was recorded as 'road' on the Arclid map. The route on the Smallwood Tithe map was not the exact alignment of Footpath No.16 and was not separately described but included in surrounding hereditaments. The claimed route appeared in a similar way on three of the County Maps and on Bryant's map Footpath Nos.6 and 7 were annotated Bridle Road. The route easterly was not clearly depicted. These early records raised a reasonable presumption that at least part of the route was a through route and of a higher status than footpath.

The 1840's 1<sup>st</sup> Edition Ordnance Survey was consistent with the Tithe and County maps clearly depicting a bounded lane along the line of the Footpath Nos.6 and 7, with the continuation easterly not shown across the first field. The County series OS Map from 1872 showed a pecked double line for the easterly extension of the route of what is now Footpath No.16. The alignment of the Arclid section was mostly shown as a bounded lane and described as a road in the book of reference.

Evidence from sales catalogues from neighbouring properties in the early 1900's provided evidence of the believed status of the route. It was annotated road along the section of Footpath No.7 and the continuation towards Footpath No.16 Smallwood was annotated as footpath on one of the sales plans.

The Finance Act plans were prepared to a statutory process and were generally regarded as good evidence of public rights. The claimed route was shown on the plans and included in the surrounding hereditaments and the field books recorded exemptions for footpaths.

The minutes of Congleton Rural District Council suggested that the route between Dean Hill and Arclid was considered to be road. The detail of the minute related to Hood Lane and it was not known to what condition the road was repaired; it was accepted that it was at least a bridleway and was publicly repairable.

The Bartholomew's Road Map 1937 edition was supported by the Cyclist's Touring Club, so generally believed to show routes open to cyclists. The Map showed a continuous route from point A to point E (on Plan No.WCA/007) and continuing down Hood Lane. This was depicted as 'Other Road.' There was no route shown easterly into Smallwood to the A50.

There was additional evidence of a presumption of the use of the route as a bridleway in the original survey reports which led to the compilation of the Definitive Map. These were written by local people with knowledge of the local area and indicate that the path was capable of being used by horseriders even if it was recorded as footpath at the Draft stage of the Definitive Map process.

Of the six users evidence forms submitted, all six claimed to have ridden the route with a horse, one had also cycled and another used the route with a vehicle. Different routes had been used by the witnesses; two had used the whole claimed route, three had used a route incorporating A-B-C-D to E and a sixth one had used the route from Hood Lane and then E-D-F-G. The use of the route varied from 9 years to 57 years. Three of the user's period of use fell within 1973 to 1993, the twenty year period identified for this application. Frequency varied between 2/3 times per week to monthly. Only one witness was interviewed, whose knowledge of the route and the local area was quite extensive.

The evidence collected was very detailed and specific to the claimed route but did not cover the period 1973 to 1993. The use that did cover some of this period i.e. from the early 1980's to 1997 did not refer to the whole route but incorporated the sections between A-B-C-D-E – Footpath Nos.6 and 7 Arclid. Use of the section covering Footpath No.16 Smallwood was from an earlier time period, concentrated around the 1940's and 1950's.

The report concluded that there was on the balance of probabilities evidence to support the allegation that a bridleway subsisted along the route A-B-C-D-E (Plan No.WCA/007) . However it was considered that there was insufficient historical and user evidence to support the existence of bridleway rights along D-F-G.

The Committee considered the historical and user evidence outlined in the report and the Definitive Map Officer's conclusions and considered that

there was insufficient evidence to support the existence of bridleway rights along route D-F-G. The Committee considered that the requirements of Section 53(3)(c)(ii) had been met for route A-B-C-D-E and that the Definitive Map and Statement be modified to upgrade Public Footpath Nos.7 (part) and 6 Arclid to bridleway.

The Committee by majority **RESOLVED:** That

- (1) the application to modify the Definitive Map and Statement to record a bridleway between points D-F-G, as shown on Plan No.WCA/007, be refused on the grounds that there is insufficient evidence to show the existence of Public Bridleway rights;
- (2) An Order be made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by upgrading Public Footpath Nos.7 (part) and 6 Arclid to bridleway along the route shown between points A-B-C-D-E on Plan No.WCA/007.
- (3) Public Notice of the making of the Order be given and, in the event of there being no objections within the specified period, and any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Acts.
- (4) In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

**7 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 53 (PART), PARISH OF ALDERLEY EDGE**

The Committee considered a report which detailed an application from Mr and Mrs P Gouge (the Applicant) of Bracken Hill, Mottram Road, Alderley Edge, Cheshire, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.53 in the parish of Alderley Edge.

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

The land over which the current path and the proposed diversion ran was owned by the Applicant. The section of the path to be diverted took users up a steep and narrow access drive, which leads to the Applicant's property and grounds. Users left the drive just before entering the grounds as the path passed through a gap to follow the property boundary. The use of the drive and the closeness of the woodland path to the property had given rise to concerns about privacy and security. Furthermore, there

were safety concerns about the users and vehicles on the narrow access drive.

The Applicant had planning permission to develop a natural garden within the field (area bounded by points A-B-C-F-E-D-A on Plan HA/094) and it was the intention in future to apply for change of use of this land to allow a more landscaped private garden. Therefore the proposed diversion had been aligned to skirt the boundary of this development area (points D-E-F-C) so that users would not be required to pass through it from point D to point C.

It was proposed that the new route would be enclosed to a width of 2.5 metres and a stoned surface provided within this width. A pedestrian gate would be installed at point D to protect users at the junction with Mottram Road.

The Committee noted that following discussions and negotiations between the landowner and user group representatives during the information consultations, no objections had been received to the proposals before the Committee and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would eliminate the need for users to negotiate vehicles on the steep narrow access drive and would allow users to pass through the property without the need to pass through private grounds and the curtilage of the proposed garden thus allowing greater privacy and security for the Applicant. 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.53 Alderley Edge by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/094, on the grounds that it is expedient in the interests of the owners 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.



**8 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NOS. 4 AND 5 (PARTS), PARISH OF SMALLWOOD**

The Committee considered a report which detailed an application from Mrs J Darlington (the Applicant) of The Diary, Bears Head Farm, Newcastle Road, Smallwood, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath Nos.4 and 5 in the parish of Smallwood.

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

The Applicant owned the land over which the current paths and the proposed diversion ran. The sections of each of Public Footpath Nos.4 and 5 Smallwood to be diverted were currently unavailable for public use but if made available, the Applicant would benefit from their diversion to a new route to enable better management of land and livestock. Diverting the footpaths to a new route would also offer greater privacy and security to the Applicant's property.

The new route would be enclosed between fences, have a grass track and be 2.5 metres in width. There would be kissing gates at three points along the route.

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 be more convenient for users since it would have kissing gates instead of a solid electric gate and would run in a more direct route through the Applicant's property which would reduce interaction between users, the Applicant and their livestock. The diversion would be in the interests of the landowner as it would enable the Applicant to better manage their land and livestock. It was therefore considered that the proposed routes would be a satisfactory alternative to the current route 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 parts of Public Footpath Nos.4 and 5 Parish of Smallwood by creating new sections of each public footpath, and extinguishing the current path sections, as illustrated on Plan No.HA/096, on the grounds that it is expedient in the interests of the owners of the land crossed by the paths.

- (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.

**9 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 9 (PART), PARISH OF MINSHULL VERNON**

The Committee received a report which detailed an application from Mr R Windsor (agent) of Windsor & Company Chartered Surveyors, on behalf of the Reverend P Goggins of St Peter's Church, Bradfield Green, Minshull Vernon, Crewe, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.9 in the parish of Minshull Vernon.

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

The land over which the current path and proposed diversion ran belonged to St Peter's Church, Bradfield Green, Minshull Vernon. The section of footpath to be diverted ran along the access drive of The Old Vicarage. Diverting the path would improve management of the property by taking users along a fenced path aligned approximately 6 metres to the south of the current footpath so reducing interaction with vehicles using the drive. It would also offer improvement to the privacy and security to the property.

The new route would have surfaces of semi-surfaced track and grass and would be enclosed to a width of 2 metres except between points C-D-B where it would be enclosed to a width of 2.5 metres. This fenced section would be entered via a gap at point C. The length of the new route would be approximately 61 metres.

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

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.9 Minshull Vernon by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/097, 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.

**10 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 4 (PART), PARISH OF MARTHALL**

The Committee received a report which detailed an application from Mr P Jenkins (agent) on behalf of Mr Lilley of Amplepaint Ltd, Pinfold Stables, Pinfold Lane, Marthall, Knutsford (the Applicant), requesting 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 Marthall.

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

The land over which the current path and the proposed diversion ran belonged to the Applicant. The section of Public Footpath No.4 Marthall to be diverted ran through pastureland which was used for horses. Diverting the path would enable the Applicant to better manage the land, livestock and operations within the grounds of his stables business whilst providing users with a more convenient route.

The proposed new route would be 2 metres wide and unenclosed except for the sections between points H-I and J-K when it would be enclosed by fencing to a width of 2.5 metres. The surface of the new route would be grass and semi surfaced track.

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 enable better land and livestock management for the landowner and provide a more convenient route for users as it would have

one pedestrian gate rather than five stiles to negotiate. 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 Marthall by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/095, 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 events 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.

**11 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 9 (PART), PARISH OF WETTENHALL**

The Committee received a report which detailed an application from Mr S Starkey (agent) of Rostons Ltd on behalf of Mr R Brooks, J Brooks & Partners, Village Farm, Winsford Road, Wettenhall, requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.9 in the parish of Wettenhall.

In accordance with Section 257 of the Town and Country Planning Act 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 to the Applicant on 30 April 2014 – Planning Permission Reference No.14/1259N, for the installation of a silage clamp.

The Environment Agency had ordered J Brooks & Partners to construct a new silage clamp to comply with Nitrate Vulnerable Zone Regulations and Silage Slurry and Agricultural Fuel Oil Regulations.

The only practical location where expansion of the farm could take place to accommodate the clamp was adjacent to the existing silage clamps.

However, placement at this point would directly affect the alignment of Public Footpath No.9 Wettenhall. Part of the path would be obstructed by the south eastern corner of the footprint of the planned silage clamp. The Regulations stated that there must be a clearance zone around the silage clamp. To enable better management of both land and farm operations in relation to the use of the silage clamp, it was proposed that the current route of the path be diverted to cross the same field in a parallel alignment further south.

The Committee concluded that it was necessary to divert part of Public Footpath No.9 Wettenhall to allow for the installation of a silage clamp. 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.9 Wettenhall, as illustrated on Plan No.TCPA/019, 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.

**12 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:  
APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 3  
(PART) PARISH OF ALSAGER**

The Committee received a report which detailed an application from Seddon Homes 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.3 in the parish of Alsager.

In accordance with Section 257 of the Town and Country Planning Act 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 to the Applicant – Planning Permission Ref:12/1670C, for the erection of 30 Dwellings (including 9 Affordable Dwellings), Vehicular Access and Associated Landscaping.

The existing alignment of the footpath would be obstructed by a number of properties and their gardens when the development was built. The proposed diversion, as illustrated on Plan No.TCPA/018, ran along the northern boundary of the site in a westerly direction from Hassall Road. This section of the path would have a width of 2.5 metres where it was enclosed and 2 metres where unenclosed. It would have a stone surface with timber edging. A chicane barrier would be installed where the path met Hassall Road.

The proposed route then turned to run in a south westerly direction in the adjacent field to the development to rejoin the existing line of the Public Footpath No.3 Alsager. The adjacent landowner, Mr Heler, had provided written support and consent for the diversion. A kissing gate would be installed at the field boundary to improve accessibility for walkers, who were currently required to navigate a stile on the existing line of the footpath.

The Committee concluded that it was necessary to divert part of Public Footpath No.3 Alsager 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

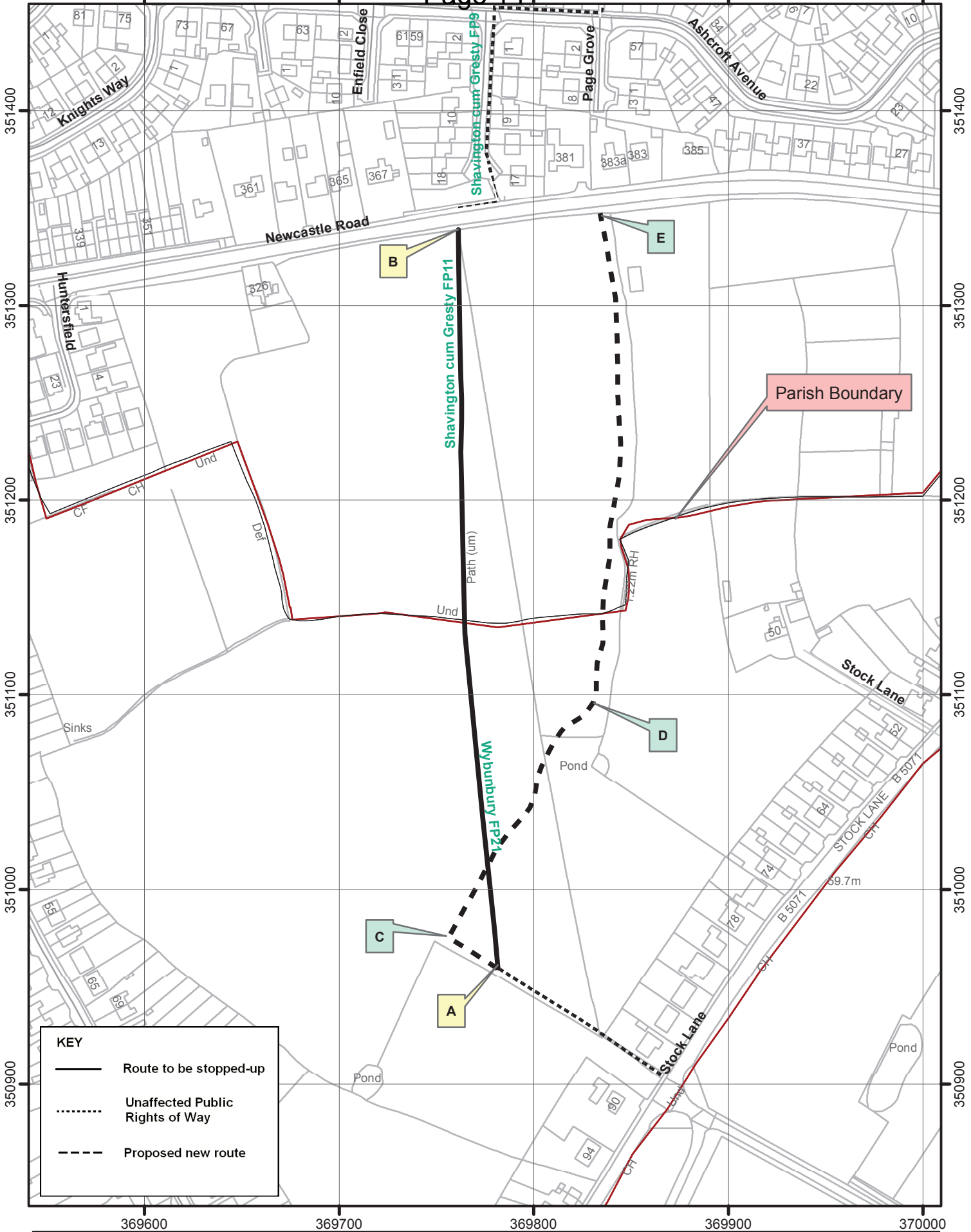
**RESOLVED:** That

- (1) An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.3 Alsager, as illustrated on Plan No.TCPA/018, on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- (2) Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- (3) In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

The meeting commenced at 2.00 pm and concluded at 3.25 pm

Councillor M Hardy (Chairman)

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



Highways Act 1980 s119  
 The Cheshire East Borough Council  
 (Public Footpath No. 11 Parish of Shavington cum Gresty and Public Footpath No. 21 (Part) Parish of Wynbunbury)  
 Public Path Diversion Order 2014

Plan No.  
 TCPA/020





## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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<b>Date of Meeting:</b>	15 <sup>th</sup> September 2014
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath no. 11, Parish of Shavington cum Gresty and Public Footpath no. 21 (part), Parish of Wybunbury

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#### 1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath no. 11 in the Parish of Shavington cum Gresty and Public Footpath no. 21 (part) in the Parish of Wybunbury. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as a response to outline planning approval granted to Mactaggard and Mickel Homes Ltd. for the construction of a residential development on land south of Newcastle Road, Shavington and Wybunbury (Planning reference: 12/3114N). 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 Recommendations

- 2.1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 11, Parish of Shavington cum Gresty and Public Footpath no. 21 (part), Parish of Wybunbury, as illustrated on Plan No. TCPA/020, on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

#### 3.0 Reasons for Recommendation

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

3.2 It is considered that it is necessary to divert Footpath no. 11, Parish of Shavington cum Gresty and part of Public Footpath no. 21, Parish of Wybunbury, as illustrated on Plan No. TCPA/020, to allow for residential development. Planning consent was granted on the 23<sup>rd</sup> January 2014 by Cheshire East Council; reference number 12/3114N.

3.3 Although consultations have elicited some objections to the proposal, it is considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 are satisfied.

#### **4.0 Wards Affected**

4.1 Shavington  
Wrenbury

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

5.1 Councillor D Brickhill  
Councillor J Clowes

#### **6.0 Financial Implications**

6.1 Not applicable

#### **7.0 Legal Implications**

7.1 Objections received to the proposed order, if not withdrawn, could lead to a public inquiry or hearing with attendant legal involvement and use of resources.

#### **8.0 Risk Assessment**

8.1 Not applicable

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

6.1 An application has been received from Ms. Miranda Steadman (agent) of Colliers International on behalf of Mactaggart & Mickel, 1 Atlantic Quay, 1 Robertson Street, Glasgow, G2 8JB requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert Public Footpath no. 11, Parish of Shavington cum Gresty and part of Public Footpath no. 21, Parish of Wybunbury.

6.2 Public Footpath No. 11, Parish of Shavington cum Gresty commences at its junction with Public Footpath No. 21, Parish of Wybunbury at O.S. grid reference SJ 6976 5122 and follows a generally northerly direction for approximately 112 meters to terminate at its junction with Newcastle Road at O.S. grid reference SJ 6976 5133.

Public Footpath no. 21, Parish of Wybunbury commences at its junction with Stock Lane at O.S. grid reference SJ 6986 5090 and runs in a

generally north westerly direction passing through a grassland field between houses before exiting onto arable farmland. After approximately 170 meters, it bears in a generally northerly direction for approximately 370 metres to terminate at its junction with Public Footpath No. 11, Parish of Shavington cum Gresty at O.S. grid reference SJ 6976 5122

The section of path required to be diverted is shown by a solid black line on Plan No. TCPA/020 running between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-C-D-E.

- 6.3 The existing alignment of the footpaths would be directly affected by the construction of the residential development. The land is owned by Graham Ward Farms Ltd, Netherset Hey Farm, Netherset Lane, Madeley, Crewe, Cheshire, CW3 9PE and written consent has been given to permit the diversion on this land by Mr Graham Ward.
- 6.4 Planning permission was granted to the applicant on 23<sup>rd</sup> January 2014. The application is cited as Planning Permission Ref: 12/3114N. The details of the decision notice are for a residential development on land south of Newcastle Road at Shavington and Wybunbury.
- 6.5 The current line of Public Footpath No. 11, Parish of Shavington cum Gresty and part of the current line of Public Footpath no. 21, Parish of Wybunbury would be obstructed by the planned residential development. Therefore, the footpath diversion is required to preserve public right of way between Stock Lane and Newcastle Road.

Referring to Plan No. TCPA/020, the public right of way formed by Public Footpath No. 11, Shavington cum Gresty and part of Public Footpath No. 21, Parish of Wybunbury, follows a generally northerly direction from point A across arable fields to terminate at its junction with Newcastle Road at point B.

The proposed new route would start at point A and be aligned through a landscaped corridor that would run through the development between residential homes (see plan entitled 'Proposed diversion of Shavington cum Gresty FP11 and Wybunbury FP21 overlaid with Developer's Plan').

- 6.6 The proposed new route for the footpath (A-C-D-E) is approximately 430 meters long, 50 metres longer than the current route. From point A, it would follow a generally west, north westerly direction to point C and then a generally north easterly direction to point D before bearing in a northerly direction to its junction with Newcastle Road at point E.

The start point for the new route would be the same as that for the current route but the end point would be approximately 74 metres east (point E) from the point at which the current route joins Newcastle Road (point B). It is not considered that this would significantly affect users connecting to Public Footpath No. 9, Parish of Shavington cum Gresty on the opposite side of Newcastle Road.

The new route would have a width of 2 metres throughout and have a hard surface suitable for use by all user types. Users would be protected from vehicles upon approach to Newcastle Road by a form of path furniture such as a gate or barriers. Furthermore, a tarmac area at the roadside would provide a safe visible place from which to assess traffic before crossing the road.

6.7 The local Councillors have been consulted about the proposal.

Councillor Brickhill registered an objection based on the following concerns that the new route would:

- Run behind the back of houses, the footpath would be hidden from view especially at night) providing a perfect location for drug sales and drug taking.
- Become foul from dog faeces
- Provide a place for youths to gather and disturb the residents of the nearby houses.
- It is longer than the previous route
- It emerges onto Newcastle Rd 50 metres away from the continuation of the footpath on the other side of the road

He felt that there was no reason why the diversion should be any more than from points A to C and then follow the new road along its previous course to Newcastle Rd and come out opposite the footpath on the other side of Newcastle road (shown on the plan entitled 'Proposed diversion of Shavington cum Gresty FP11 and Wybunbury FP21 overlaid with Developer's Plan'). He felt that this would also provide a pedestrian access from the new estate to Newcastle Road and to the older village of Shavington

Whilst acknowledging the preferred option to route the path predominantly along the estate roads, the Council has a presumption against this practice as it affects a net loss to the network of countryside paths.

Whilst the path would no longer run across open fields it would be located in an open landscaped area, providing a more pleasant and rural experience compared to walking along estate roads and both the developers and the council would put detailed planning measures in place to mitigate against the speculative problems relating to drug use/sales, dog fouling and residential disturbance. Furthermore, a measure of natural surveillance to mitigate against anti-social behaviour will be present since the majority of houses face onto the proposed path (as shown on plan No. TCPA/020 overlaid with the developer's plan), and the path would run through an open landscaped conservation area.

Whilst the proposed diversion is longer than the current route, it is only marginally so (50 metres) and does not add significantly to journey times. Furthermore a footway is to be installed on the south side of Newcastle Road which will provide a safe connection to the current termination point of the footpath and a pedestrian crossing is going to be installed to allow both

path users and residents of the new development to cross the road to the older village of Shavington.

After consideration of the comments from the Council, Councillor Brickhill sustained his objection to the diversion proposal.

Councillor Clowes did not object to the proposal but expressed concerns about its relationship with the various Planning Applications now underway that stem from the approved outline plan:

- Councillor Clowes explained that the diversion is dependent on the approval of application 14/3039N. This in turn is dependent on the approval of applications 14/1160N AND 14/1161N. This is correct and the diversion will only be undertaken if all relevant planning applications are granted to enable the development to go ahead. Without these permissions, the development will not go ahead and there is no need to move the existing path.

For clarity, it was explained that the only legal test that must be met for a diversion to be progressed under Section 257 of the Town and Country Planning Act is that diversion is required to enable lawful development to go ahead. Any objections or challenges to this legal test must prove that the development can go ahead without unlawfully and permanently obstructing existing public footpaths. In this case, the planning application shows that if permitted (approved), this development will obstruct parts of two public footpaths and the developer must seek to move it elsewhere to preserve public right of passage. This will be conditional within the planning permission.

- In pragmatic terms, Councillor Clowes then stated that the proposed diversion route is probably the best option in terms of its adherence to the planned public open space areas through the proposed park, green ecology corridor and proximity to the play area. In this context she does not believe that there are any material reasons upon which she can oppose this proposal. However, she felt it to be important that certain conditions be attached to the application for the diversion proposal. Further to this, she felt that the diversion must be definitively associated with planning application 14/3039N only and if application 14/3039N is not approved, the diversion proposal must be abandoned.

The legal processes for planning applications and diversion applications that will enable planned developments are completely separate and completely independent of each other. This means that comments made on one cannot be applied to the other and vice versa. Consequently, the conditions (below) mentioned by Councillor Clowes cannot be attached to the diversion application. They are planning conditions. This said, for the planned development to go ahead, these conditions must be met and until they are met, development cannot go ahead and by default, diversion will not be required (and vice versa).

- If application 14/3039N is approved, she would ask that the Public Path Orders Officer works collaboratively with the Planning Officer to ensure that the Public Open Space (POS) design associated with this diversion

is not altered. If the applicants for the diversion (McTaggart & Mickel) or Persimmon Homes (14/3039N applicant) seek to alter the POS design, then this diversion must be reviewed and a fresh consultation organised.

With regard to these concerns raised about the issue of public open space; this would have to remain a matter for the officer dealing with the POS. It would be inappropriate for Public Rights of Way Officers to be involved with the nature of the land over which the proposed path passes under the provisions of the Town and Country Planning Act 1990 so long as the surface of the proposed path and width are adequate. However, these officers can and will work with the planners and developers to achieve the best fit possible for the diversion in relation to the path alignment and POS but under the legislation that this proposal is being undertaken, any perceived shortcomings in that POS area cannot be considered in relation to the diversion.

- If applications 14/1160N and/or 14/1161N are refused, this Diversion Application becomes null and void.

(These applications refer to conditions 48-51 and condition 30 respectively of the approved outline application 12/3114N to which 14/3039N is the first reserved matters application).

This is correct since the developer must meet these conditions in order to be able to undertake the development and the path can only be moved once the development can be undertaken.

- The final comment was to make clear that it is important to note that if the original application 12/3114N with its conditions is eventually adhered to, the PROW diversion will need to take a somewhat different route.

- 6.8 Shavington cum Gresty and Wybunbury Parish Councils have been consulted about the proposal. No comments have been received from Shavington cum Gresty Parish Council. However, Wybunbury Parish Council registered their support of comments made by Councillor Clowes (detailed in section 6.7) and registered strong objection to the proposal. They added a further comment that even if planning approval is granted, the current paths must still be diverted before any building is undertaken on the existing alignments so that public right of passage is always available.

Discussions are still underway with this Parish Council and the outcome of any further communications will be reported verbally.

- 6.9 The statutory undertakers have also been consulted. One objection was received from National Grid and discussions are underway to resolve this since if a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected. No other comments were received. The outcome of the discussions with National Grid will be reported verbally.
- 6.10 The user groups have been consulted. No objections were registered although the Peak and Northern Footpath Society registered a conditional

acceptance stating once it was confirmed that access between points C-D-E as shown on Plan No. TCPA/020 would be non-vehicular.

- 6.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 6.12 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current route and in some respects provide a better walking surface for the less able as it will have a tarmacadam surface.

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

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

Officer: Marianne Nixon

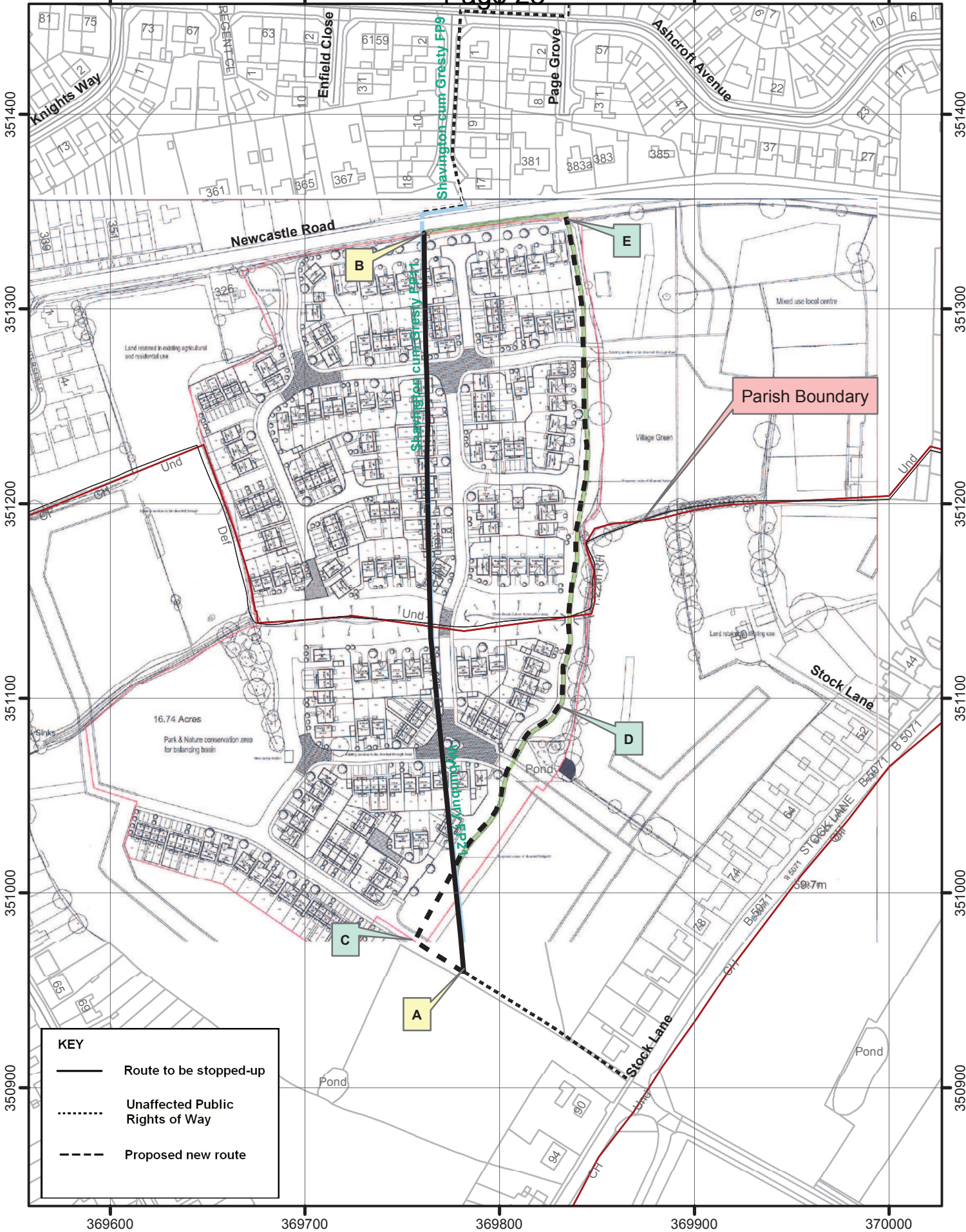
Tel No: 01270 686 077

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

**Background Documents:** PROW file 264D+333D/494

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






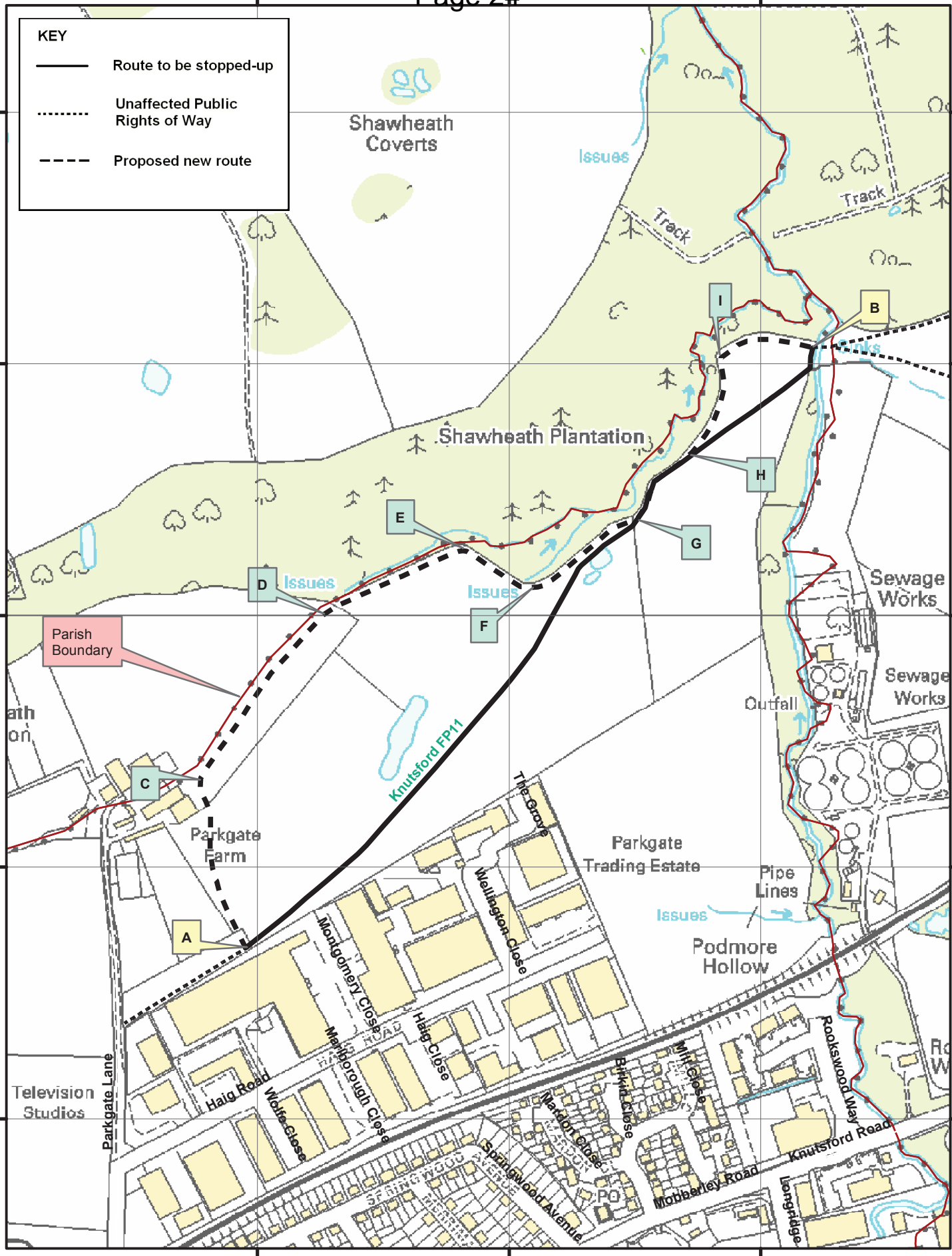
Proposed Diversion of Shavington cum Gresty FP11 and Wynbunbury FP21 overlaid with developer's plan

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



**KEY**

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



1:5,000

Town and Country Planning Act 1990 s257  
 The Cheshire East Borough Council  
 (Footpath No. 11 (part) Parish of Knutsford)  
 Public Path Diversion Order 2014

Plan No.  
 T CPA/021



## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

---

**Date of Meeting:** 15<sup>th</sup> September 2014  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Town and Country Planning Act 1990 Section 257:  
Application for the Diversion of Public Footpath no. 11 (part),  
Parish of Knutsford

---

#### 1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 11 in the Parish of Knutsford. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as a response to planning application that is currently under consideration by the Council's Planning Department. The application has been submitted by Mr Henry Brooks of The Tatton Estate, Peover Estate Office, Nr Knutsford, Cheshire, WA16 9HW for erection of a high quality residential development with associated woodland buffer, ecological mitigation and enhancements, and open spaces (Planning reference: 13/2935M). The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

#### 2.0 Recommendations

- 2.1 On condition that approval is granted for Planning Application 13/2935M, an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 11 Knutsford, as illustrated on Plan No. TCPA/021 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

#### 3.0 Reasons for Recommendation

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



3.2 It is considered that it is necessary to divert part of Footpath No. 11 Knutsford as illustrated on Plan No. TCPA/021, to allow for the erection of a residential development with associated woodland buffer, ecological mitigation and enhancements, and open spaces. Planning consent is yet to be granted by Cheshire East Council; reference number 13/2935M. The target decision date at present is 11<sup>th</sup> October 2014.

3.3 Consultations have not elicited objections to the proposal and it is considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 are satisfied.

#### **4.0 Ward Affected**

4.1 Knutsford

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

5.1 Councillor O Hunter, Councillor S Gardiner and Councillor P Raynes

#### **6.0 Financial Implications**

6.1 Not applicable

#### **7.0 Legal Implications**

7.1 Objections received to the proposed order, if not withdrawn, could lead to a public inquiry or hearing with attendant legal involvement and use of resources.

#### **8.0 Risk Assessment**

8.1 Not applicable

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

6.1 An application has been received from Mr Steve Bowers (agent) of CBOTransport Ltd. on behalf of Mr Henry Brooks (applicant) of The Tatton Estate, Peover Estate Office, Nr Knutsford, Cheshire, WA16 9HW, requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert part of Public Footpath No. 11 in the Parish of Knutsford.

6.2 Public Footpath No. 11 Knutsford commences at O.S. grid reference SJ 7623 7966 and runs in a generally north easterly direction to terminate at O.S. grid reference SJ 7680 8026. It passes over pastureland through a series of temporary paddocks grazed by horses to then enter further pastureland. Within this, it skirts two small lakes before terminating immediately as the path descends to a footbridge that leads to a stile enabling passage into a neighbouring field. The section of path required to be diverted is shown by a solid black line on Plan No. TCPA/021 running

between points A-B. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-C-D-E-F-G-H-I-B.

- 6.3 The existing alignment of the footpath would be directly affected by the construction of the planned residential development. The land is entirely owned by same owners as The Tatton Estate.
- 6.4 Planning permission has not yet been granted although a target decision date of 11<sup>th</sup> October 2014 has been set. The application is cited as Planning Permission Ref: 13/2935M. The details of the decision notice are for the erection of a high quality residential development with associated woodland buffer, ecological mitigation and enhancements, and open spaces.
- 6.5 Part of the current line of Public Footpath No.11 Knutsford would be obstructed by the buildings of the planned residential development. Therefore, it is necessary to realign the path via diversion to preserve right of passage for the public between points A and B (as shown on Plan No. TCPA/021).
- 6.6 Referring to Plan No. TCPA/021, the proposed new route would follow a north, north westerly direction to meet the Parish boundary (point C). It would then follow the Parish boundary in a north easterly direction to a point where it joins the boundary fencing of Tatton Park (point D), before running along the Tatton Park fence line in a generally north easterly, then east, north easterly, then south easterly and then north easterly directions (points E-F-G) to rejoin the current route at point G for approximately 87 metres after which it would leave (point H) to continue following the fence line in generally northerly and then easterly directions (H-I-B) to terminate upon rejoining the current route at point B. The proposed new route is shown on the plan by a dashed bold black line

The new route would have a width of 2.5 metres with a 1.2 metre wide timber lined surface (type to be confirmed) running along its centre. It would run through a landscaped area and would have grass to either side.

The proposed diversion would be in the interests of the landowner (the developer) to enable development to lawfully go ahead.

- 6.7 The local Councillors have been consulted about the proposal. Councillor Hunter registered that there was no reason to refuse the proposal, Councillor Gardiner registered that he had no objection and Councillor Raynes accepted the proposal on the basis that the diversion would extend the length of the current path but probably be a more interesting leisure route as it would run along the boundary of mature woodland. It was also confirmed to Councillor Raynes that the path would be a hard surface and should any path furniture be required, to comply with the Equality Act 2010, only pedestrian gates or kissing gates would be installed.

As the diversion route is close to the Parish of Mobberley, the ward councillor for this Parish, Councillor Macrae was consulted and did not register any comments.

- 6.8 Knutsford Town Council and Mobberley Town Council have been consulted about the proposal and no comments have been received.
- 6.9 The statutory undertakers have also been consulted and have no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 6.10 The user groups have been consulted. The CTC representative questioned the possibility that the 2.5 meter proposed route may be suitable as a cycle route, if upgraded so enabling it to be joined to either Broadoak Lane or the B5085, which offers an alternative back road into Mobberley village. In response, the Council explained that only part of the footpath is being diverted. The remainder of the path crosses pasture land and belongs to another landowner and there is no intention to seek an upgrade to the route.

No other comments have been received.

- 6.11 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 6.12 An assessment in relation to Disability Discrimination Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current route. The nature of the proposed surface treatment would make the diverted section of the path easier to use for less able members of the public than the current path.

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

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

Officer: Marianne Nixon

Tel No: 01270 686 077

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

**Background Documents:** PROW file 173D/495

## CHESHIRE EAST COUNCIL

### RIGHTS OF WAY COMMITTEE

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**Date of Meeting:** 15<sup>th</sup> September 2014  
**Report of:** Head of Legal Services  
**Subject/Title:** Village Green Application: Land Adjacent To Chelford Road And Black Firs Lane, Somerford

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#### 1.0 Purpose of Report

- 1.1 This report seeks a decision on how to proceed with a village green application in respect of land along the verge of Black Firs Lane and Chelford Road, Somerford (“the Application Land”).

#### 2.0 Recommendations

- 2.1 That the Head of Legal Services offer the applicant and the objectors fourteen days to make representations on the potential trigger event which may affect part of the land subject to the village green application.
- 2.2 Following expiration of the fourteen day period referred to in Recommendation 2.1 the Head of Legal Services be authorised to appoint an independent expert to consider the application on the basis of written representations and provide a report.
- 2.3 That the Head of Legal Services be given delegated authority to determine if a non-statutory public inquiry should take place upon the recommendation of the independent expert, after consulting the Chairman of this Committee.

#### 3.0 Reasons for Recommendations

- 3.1 An application has been received in respect of land along the verge of Black Firs Lane and Chelford Road, Somerford (“the Application Land”) and given the issues involved in this particular application it would assist the Committee in deciding upon the application to receive the report of an independent expert. Although the ownership of the Application Land is unknown, the land is within the Council’s adopted highway boundary. The Council, as highway authority, have objected to the application. It should also be noted that the area of land enclosed by the Application Land is subject to a recently granted planning permission and the developer of that land has submitted an objection to the application to register the Application Land as a village green.

- 3.2 Furthermore, part of the Application land may be subject to a trigger event which, if applicable, would mean that those areas affected by the trigger event cannot be registered as a village green.

#### **4.0 Wards Affected**

- 4.1 Congleton West

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

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

#### **6.0 Financial Implications**

- 6.1 There will be costs incurred by the Council in appointing an independent person to consider written representations. It is envisaged that any such costs will be charged to Legal Services initially with a corresponding recharge to the relevant service during 2014/15.

#### **7.0 Legal Implications**

- 7.1 The Council is the registration authority for the purposes of village green applications and the keeping of the register of village greens.
- 7.2 In recent years there has been much case law and legislation surrounding village greens and both case law and legislation continue to evolve. New legislation was introduced by the Growth and Infrastructure Act 2013 which changed the criteria for registration of new village greens and applies to applications received after 25<sup>th</sup> April 2013. The new legislation excludes the right to apply for village green status where a prescribed event, known as a “trigger event”, has occurred within the planning system in relation to that land. The right to apply remains excluded until and if a corresponding “terminating event” occurs in respect of the land. Where a trigger event relates to only part of the land, the application in respect of the portion of land not subject to the exclusion should proceed as usual. This application was received on 3<sup>rd</sup> May 2013 and will therefore be subject to the new legislation.
- 7.3 Village greens can be registered either as a result of an application by a third person or by a voluntary registration by the landowner.
- 7.4 It is commonly understood that the Council may hold a public inquiry as a result of an application being received and it is often referred to as ‘non-statutory’ because the legislation in respect of village greens does not specifically provide for inquiries to be held. The Local Government Act 1972, however, does enable local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions. In appropriate cases, consideration of written



representations only by an independent person would facilitate the determining of the village green application. The holding of an inquiry is at the discretion of the Committee.

- 7.5 The burden of proof that the application meets the statutory tests is upon the applicant, on the balance of probabilities.
- 7.6 In deciding upon applications, the Committee should consider the advice given to it by its officers and by any independent person appointed and decide the application in the light of all of evidence submitted and the advice received, and acting in accordance with the principles of natural justice and good administration.
- 7.7 If registered as a village green, land will be subject to the statutory protection of section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 2006. Section 12 protects greens from injury or damage and interruption to their use or enjoyment as a place for exercise and recreation. Section 29 makes encroachment or inclosure of a green, and interference with or occupation of the soil, unlawful unless it is with the aim of improving the enjoyment of the green.
- 7.8 There is no right of appeal within the Council against the Committee's decision. The route for any challenges would be via judicial review.

## **8.0 Risk Assessment**

- 8.1 If the Council chose to determine the application without independent input, as it is also the highway authority, it may increase the risk of challenge.

## **9.0 Background and Options**

- 9.1 The Council is the registration authority for village greens and responsibility for this function was delegated to the Rights of Way Committee under Part 3 of the Council's Constitution. The terms of reference allow the Committee "to discharge the authority's functions in respect of Commons and Village Greens".
- 9.2 The application was submitted on 3<sup>rd</sup> May 2013 by Mr Nicholas Bell and the land is shown on Appendix A attached. The evidence in support of the application contains several witness statements stating various uses and several photographs.
- 9.3 The Council, as highway authority, has written in objecting to the application making certain legal arguments.
- 9.4 Richborough Estates Limited have recently obtained planning permission for the residential development of the land bound by the Application Land and have written in objecting to the application. The planning application was submitted after the date of the village green

application. They have also obtained a counsel opinion which recommends that the application should be dealt with by an independent person on the basis of written representation.

- 9.5 The applicant has been given the opportunity to comment on the objection and a response is due by the close of business on Friday 5<sup>th</sup> September 2014.
- 9.6 It has recently been brought to officers' attention that part of the Application Land may be affected by a trigger event as a result of the Council's consultation on the Development Strategy and Emerging Policy Principles document in January and February 2013. The corresponding terminating event has not yet occurred on the land.
- 9.7 The Council, as registration authority, will enable the applicant and the objectors an opportunity to make representations on this potential trigger event before the application is considered by an independent person. Fourteen days is considered a reasonable length of time for any such representations to be made. If any part of the Application Land is affected by a trigger event then that land cannot be considered for registration as a new village green.
- 9.8 Richborough Estates have requested that the application be considered by an independent person on the basis that the Council is also the highway authority and as such will have an interest in the land. It is not automatically necessary for the Committee to appoint an independent person to consider the matter whenever the land is in the ownership of the Council. Members should be aware that in any such application where the Council is also the owner or highway authority, separate roles are maintained within the Council between the legal and administrative departments. However, it is considered appropriate in this case to appoint an independent person and for the matter to be considered on written representations.
- 9.9 A non-statutory public inquiry is not being recommended in this report because it is considered that given the nature of the objections from both the Council (as highway authority) and Richborough Estates, which are of a legal nature rather than fact, this application could be considered on written evidence. It may be possible that the independent person, having received the documentation, recommends an inquiry is held instead. In the event of such a request, delegated authority is sought so that the Head of Legal Services can determine whether this is appropriate, after consulting the Chairman of this Committee.

**10.0 Access to Information**

10.1 The background papers relating to this report are listed below and can be inspected by contacting the report writer:

Village green application and supporting evidence

Objections to the application

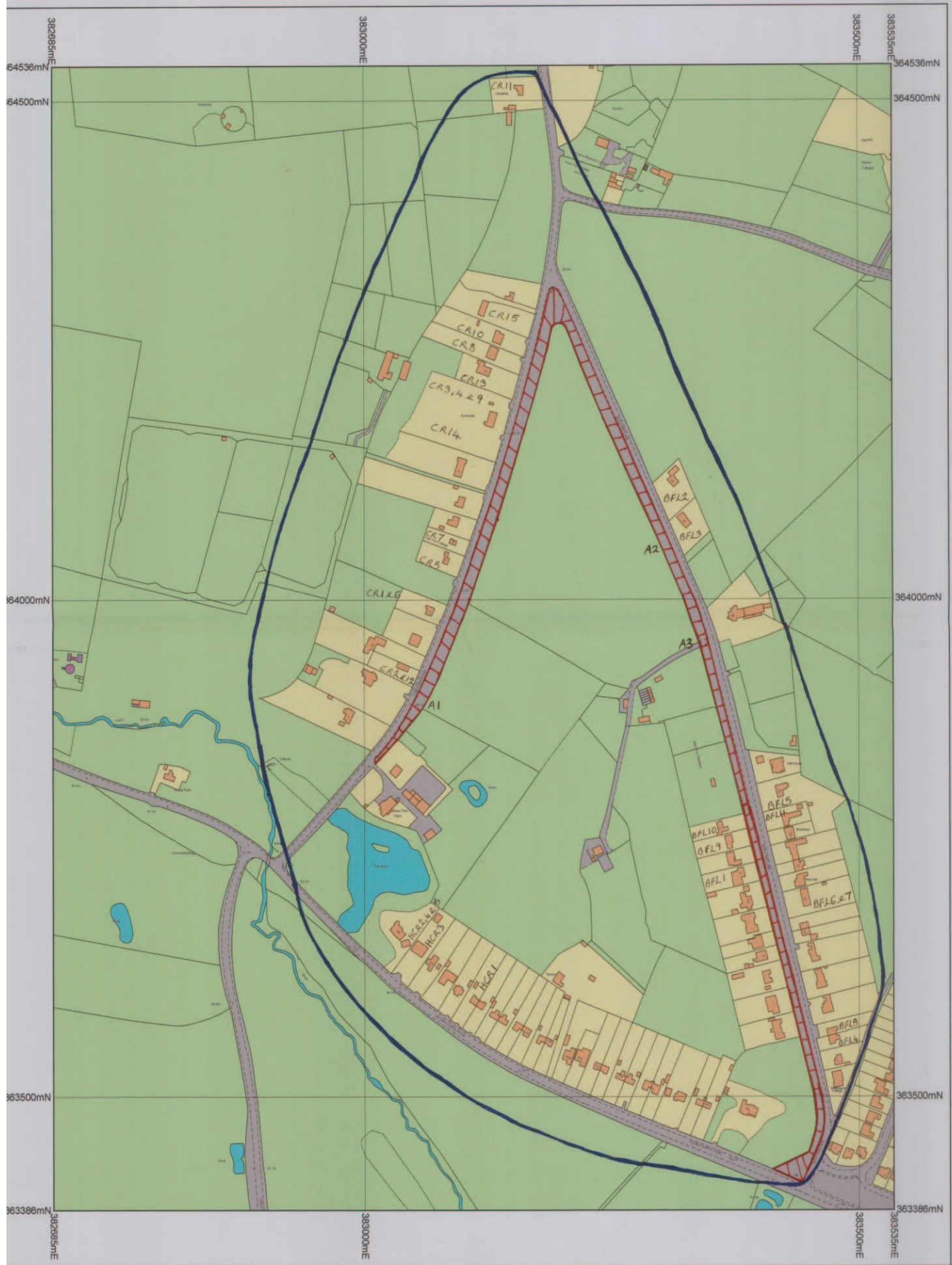
***For further information:***

*Officer: Elaine Field*

*Tel No: 01270 685698*

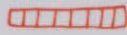
*Email: Elaine.field@cheshireeast.gov.uk*

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Centre Coordinates: 383115, 363981  
Production Date: 29 Apr 2015 09:37

NGBI/1 (EXHIBIT)  : AREA OF LAND IN RESPECT OF WHICH APPLICATION TO REGISTER IS MADE  
*Nicholas Bell*  
NICHOLAS BELL  
*Solicitor*

0 100 m  
Scale: 1:2500



 : NEIGHBOURHOOD IN RESPECT OF WHICH APPLICATION IS MADE 10

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Ordnance Survey 100045045



**CONGLETON**

**Legend**

- Housing
- Employment and Housing

**Possible  
Alternative  
Routes**

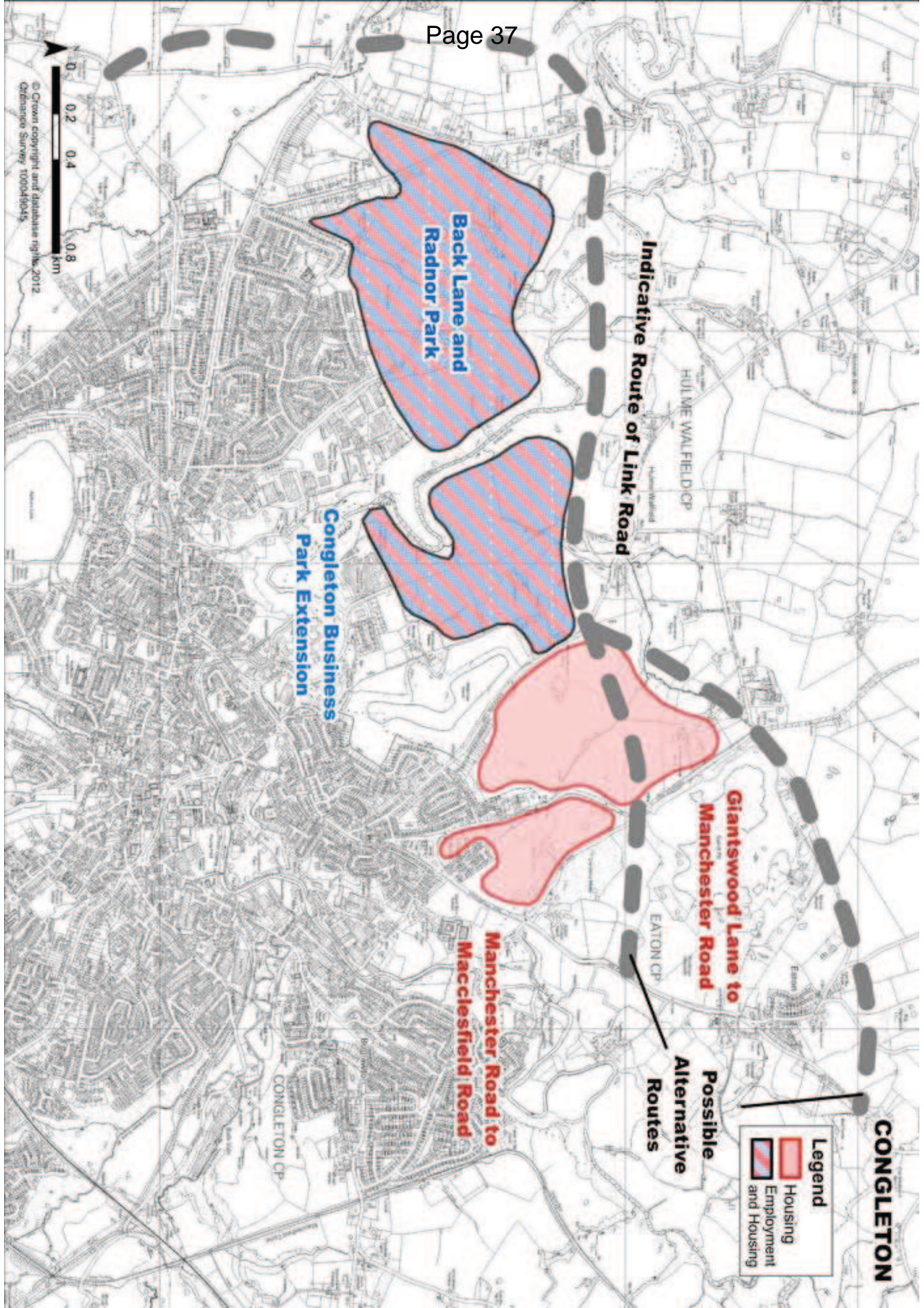
**Indicative Route of Link Road**

**Giantswood Lane to  
Manchester Road**

**Manchester Road to  
Macclesfield Road**

**Congleton Business  
Park Extension**

**Back Lane and  
Radnor Park**





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