

Public Rights of Way Committee

Agenda

Date:	Monday 15th June 2015
Time:	2.00 pm
Venue:	Committee Suite 1,2 & 3, Westfields, Middlewich Road, Sandbach CW11 1HZ

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

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

1. **Apologies for Absence**

To receive any apologies for absence

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

3. **Minutes of Previous meeting** (Pages 1 - 12)

To approve the minutes of the meeting held on 16 March 2015

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

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

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

Contact: Rachel Graves

Tel: 01270 686473

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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 body in question. 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. **Terms of Reference and Membership** (Pages 13 - 14)

To note the Committee's Terms of Reference and membership as appointed at Council on 27 May 2015

Councillor Martin Hardy (Chairman)
Councillor Dorothy Flude (Vice Chairman)
Councillor Rhoda Bailey
Councillor Stan Davies
Councillor Martin Deakin
Councillor Toni Fox
Councillor John Wray

6. **Public Rights of Way Annual Report 2014-2015 and Work Programme 2015-2016** (Pages 15 - 51)

To consider report on the achievements of the Council in terms of its public rights of way functions during the year 2014-15 and the proposed work programme for the year 2015-16

7. **Wildlife and Countryside Act 1981 - Part III, Section 53. Application No. CN/7/22: Application for the Addition of a Public Footpath Between Public Footpath Audlem No. 28 and Cheshire Street, Audlem** (Pages 52 - 67)

To consider the application for the addition of a Public Footpath between Public Footpath Audlem No. 28 and Cheshire Street, Audlem

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

To consider the application to divert part of Public Footpath No.8 in the parish of Crewe

9. **Town and Country Planning Act 1990 Section 257:Application for the Diversion of Public Footpath no. 3 (part), Parish of Bollington** (Pages 74 - 84)

To consider the application to divert part of Public Footpath No. 3 in the parish of Bollington

10. **Village Green Application - Land at Pickmere Informal Recreation Open Space, Jacobs Way, Pickmere, Knutsford** (Pages 85 - 126)

To consider the report of the Independent Expert

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 16th March, 2015 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, L Jeuda, M Parsons and J Wray

Officers

Mike Taylor, Public Rights of Way Manager
Marianne Nixon, Public Path Orders Officer
Mark Jones, Legal Team Leader
Peter Jones, Lawyer
Rachel Graves, Democratic Services Officer

30 APOLOGIES FOR ABSENCE

Apologies were received from Councillor K Edwards.

31 DECLARATIONS OF INTEREST

Item 7: Village Green Application Land Adjacent to Chelford Road and Black Firs Lane, Somerford - Councillor J Wray declared that he had previously expressed an opinion in relation to this application and would leave the room during consideration of this item.

Item 7: Village Green Application Land Adjacent to Chelford Road and Black Firs Lane, Somerford - In the interest of openness Cllr Rhoda Bailey declared that she knew the applicant's father.

32 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meeting held on 8 December 2014 be confirmed as a correct record and signed by the Chairman.

33 PUBLIC SPEAKING TIME/OPEN SESSION

No members of the public present wishing to speak.

34 HIGHWAYS ACT 1980 S.119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 13 (PART), PARISH OF OVER ALDERLEY

The Committee considered a report which detailed an application from Mr and Mrs K Oakes of Haymans House, Hocker Lane, Over Alderley requesting the Council make an Order to divert part of Public Footpath No.13 in the parish of Over Alderley.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order to divert a public footpath 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 section of the current path to be diverted and the proposed diversion ran belonged to Mr and Mrs Oakes. The first part of Public Footpath No.13 Over Alderley to be diverted ran along the drive to the property of the applicants, which was a semi-surfaced track (points A – B on Plan No. HA/099). The proposed new route for this section was to the left of the current route, alongside the access track on the field side. This part of the diversion was in the landowner's interest as would allow them to improve their privacy and security.

The proposed new route was currently used by the public as a footpath, and according to the public rights of way records this section of Public Footpath No.13 had been maintained in an offline position by the previous authority, Cheshire County Council. Discussions had been held with the landowners in 2007/08, when they were informed that the correct alignment, according to the Definitive Map, was along the access track. They had concerns in relation to privacy and security if the route was realigned and as long as they could remember the route had always been in the field, along the field edge. They therefore agreed to apply for a diversion order. It had only recently come to light that even though works were carried out by Cheshire County Council to install new path furniture, the legal order diverting the route had not been made. The new route would have a width of 2 metres, except for one point where it was restricted to 1.3 metres between the fence and a tree. The route would not be enclosed and the three kissing gates would remain in situ.

The second part of Public Footpath No.13 to be diverted was around a quarry area (points C-D-E on Plan No.HA/099) It was proposed to divert this section in the interests of the public, as the definitive line of the footpath was within the boundaries of the quarry and at some point had been quarried away. To make this route available would be a danger to the public, due to the proximity of the path to the quarry. The proposed diversion was currently used by walkers and was 2 metres wide with a grassed surface.

The Committee noted that no objections had been received during the informal consultations and considered that the proposed routes would not be substantially less convenient than the existing routes. Diverting the two

parts of the footpath would provide improved privacy and security for the landowner and be safer for the public by keeping them away from the quarry area. It was therefore considered that the proposed routes would be a satisfactory alternative to the current routes 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.13 by creating a new section of public footpath and extinguishing the current paths, as illustrated on Plan No.HA/099 on the grounds that it is expedient in the interests of the public and 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.

35 HIGHWAYS ACT 1980 S.119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 21 (PART), PARISH OF LOWER WITHINGTON

The Committee considered a report which detailed an application from Mr Anthony Cotter (agent) of Midas Investment Management Ltd, Basement Office, 21 Brompton Square, London, SW3 2AD on behalf of Mr Mark Sheppard whose family owned Mallerstang, Congleton Lane, Chelford, Cheshire requesting the Council to make an Order to divert part of Public Footpath No.21 in the parish of Lower Withington.

In accordance with Section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order to divert a public footpath 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's family. Virtually the entire length of Public Footpath No.21 was to be diverted - points A-B-C on Plan NO. HA/100, with the exception of a stretch running over the pedestrian footbridge and on to the Parish Boundary. This section of the path ran through arable fields in close proximity to the applicant's property and diverting it would provide improved privacy and security for the applicant by taking users further away from their property.

The proposed new route would follow a generally south, south easterly direction from the bridge over the stream towards Mill Lane (points C-D-E-F-G on Plan No.HA/100). The new route would follow a woodland path skirting a pond en route and then ascending to a more grassed surface along the edge of a field. It would follow this for a short section before descending to cross an 8m timber footbridge over a boggy area past a second pond. It would then ascend once more to reach the boundary fence between the woodland and adjacent field to the west and would run along this fence line within the woodland. On reaching 5 'earth and timber' steps, it would descend to Mill Lane where it would terminate.

Although not currently certified as meeting Council standards, the new proposed route had been installed on the ground by the applicant and was currently private, although by permission could be used by the public. The landowner had agreed to provide a sum of money to provide for the future increased maintenance liability of the path due to the increased length and structures present.

It was recognised that this new route was much longer than the current path section to be diverted. However looking at the wider path network, the new route would provide users with an alternative to having to use Congleton Lane to reach Lower Withington Bridleway No.8 and Lower Withington Public Footpath No.22 and would be of a similar distance.

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 routes. Diverting the path would provide a 'barrier free' route and would be more enjoyable as it passed thorough natural woodland which was more scenic than the current route through fields. It would also provide a link to the wider path network. The diversion would afford improved privacy and security for the applicant. It was therefore considered that the proposed routes would be a satisfactory alternative to the current routes 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.21 Lower Withington by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No. HA/100, on the grounds 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.

36 VILLAGE GREEN APPLICATION - LAND ADJACENT TO CHELFORD ROAD AND BLACK FIRS LANE, SOMERFORD

Having declared that he had previously expressed an opinion in relation to this application, Cllr John Wray left the room before consideration of the report.

The Committee considered the report of the Independent Person on the application to register land adjacent to Chelford Road and Black Firs Lane in Somerford as a new village green under section 15 of the Commons Act 2006.

The Public Rights of Way Committee at its meeting on 15 September 2014 had considered the application and resolved:

That the Head of Legal Services offer the applicant and the objectors twenty eight days to make representations on the potential trigger event which may affect part of the land subject to the village green application.

Following expiration of the twenty eight day period, 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.

The Head of Legal Services be given delegated authority to determine if non-statutory public inquiry should take place upon the recommendation of the independent expert, after consulting the Chairman of the Public Rights of Way Committee.

An email had been sent to the applicant and objectors on 17 September 2014 asking for their comments on the trigger event by 16 October 2014. Further information in relation to the trigger event was sent to the applicant and objectors on 10 October 2014. Comments were subsequently received from Richborough Estates, Somerford Parish Residents Action Group, the Applicant and the Cheshire East Council as Highways Authority.

On 27 November 2014, James Marwick, Barrister of Trinity Chambers, Newcastle upon Tyne was provided with all necessary documentation and instructed to consider the Application. It was the view that the Application could be dealt with by way of written representations and without the need

for a non-statutory public inquiry to sit as an independent person to consider it and thereafter to prepare a report to go to the Public Rights of Way Committee recommending whether the Application should be approved or not.

In accordance with instructions, Mr Marwick produced a report dated 12 February 2015, in which he concluded that

- a. a 'trigger event' had occurred excluding the part of the land which falls within the area of land identified in the Development Strategy document from registration. This had the consequence of severing the parts of the land which were registrable in two; namely the remaining part of the claimed land on Black Firs Land and the Chelford Road section.
- b. rejecting the Applicant's argument to the contrary; there was strong evidence that the Land in its entirety was highway maintainable at public expense so as to justify proceeding on the basis that on balance, it was Highway Land.
- c. having considered all the evidence relied upon in support of the application, practically all the user evidence relied on by the Applicant could be regarded as having been enjoyed pursuant to the public's highway rights and therefore must be discounted as qualifying user as any use by right rather than as of right was to be discounted from consideration.
- d. the evidential position was not rectifiable at a public inquiry for the reason set out in his report and he was satisfied that his conclusion was one properly reached without the need for a public inquiry.

The Head of Legal Services was satisfied that the Independent Person's conclusion that the evidential position was not rectifiable at a public inquiry, and determined on 6 March 2015, in accordance with the delegated authority, that it was not necessary to hold a public inquiry.

Mr Marwick's report was circulated to the parties on 25 February 2015 advising that the application would be considered at the meeting of the Public Rights of Way Committee on 16 March 2015 and the parties were invited to make any representations in relation to the report by 4 pm on 4 March 2015.

Richborough Estates had responded on 26 February 2015 advising that the report was considered to be the most thorough and detailed - it had analysed all issues relating to the application, reached a reasoned conclusion and as a result, the recommendations therein were agreed.

The Applicant, Mr Bell responded on 2 March 2015 stating that he would like to address the Committee in relation to the application but would not be able to attend on 16 March due to being on holiday. He requested that

the application be considered at the next meeting of the Committee so as to afford him an opportunity to attend and make submissions.

The Independent Person's view was that there was no obligation to postpone the Committee meeting as the applicant had been afforded the opportunity to make representations in writing based upon the report, which was the central item to be considered by the Committee, and every opportunity to make relevant submissions had been afforded during preparation of the report. Mr Marwick also pointed out that the Committee had a discretion whether or not to receive written representations made after the 4 March as part of their decision making process.

The Chairman drew the Committee's attention to an email sent to them that morning by Mr Bell, which had attached a letter along with representations drafted by Vivian Chapman QC and a tab 5 Plan. Copies of the documents were provided for Members at the meeting.

In his letter Mr Bell strongly objected to the content of the Independent Person's report and raised the following points:

- failure to instruct an independent expert as Mr Marwick was already acting as the Council's legal adviser to relation to the application before he was instructed as the Independent Person
- conflict of interest as Cheshire East Council as the Council was the Highway's Authority and also the Registration Authority
- financial conflict as the Council would receive S106 money from a housing development which could be affected by the outcome of the application
- conflicting expert opinions of the Independent Person and the QC instructed by Somerford Parish Council
- unresolved factual dispute of whether the land in question is part of the public highway which ought to be dealt with at a public inquiry

Mr Bell asked that the Committee decline to accept the Independent Person's report, determine that a public inquiry was necessary, refer the application for determination by a neighbouring authority or instruct another independent person to determine the application. He also requested that the application be adjourned to allow his attendance to make oral representations.

Members of the Committee considered the report of the Independent Person and the documents submitted by Mr Bell and during the discussions asked questions about the impartiality of the Independent Person; the conflicting expert opinions; the unresolved issue of highways land: who were the owners of land and sub soil: the trigger event; the lateness of representations; the size of area involved; the clash of Council interests; and the appointment of another independent person.

It was moved and seconded that the application be deferred to allow the Applicant to attend a meeting and address the Committee and on the vote it was declared lost.

The Committee then consider the recommendation of the report and by majority

RESOLVED:

That the report of the Independent Person – Mr James Marwick, be accepted and that the application to register the land adjacent to Chelford Road and Black Firs Lane, Somerford as a village green be rejected for the reasons as stated in the Independent Person's report.

37 VILLAGE GREEN APPLICATION: RELATING TO LAND TO THE NORTH OF CRESSWELLSHAW ROAD, ALSAGER WHICH IS COMMONLY REFERRED TO AS "WOOD PARK

The Committee received a report seeking a decision on how to proceed with a village green application in respect of land to the north of Cresswellshawe Road, Alsager – commonly referred to a Wood Park.

The Council was the registration authority for village greens and the responsibility for the function was delegated to the Public Rights of Way Committee under the Council's Constitution.

An application had been submitted on 18 September 2012 by Andrew Barnard of 15 Cresswellshawe Road, Alsager. The application was supported by 22 supporting witness statements. The notice of application was advertised on 28 February 2013 after which a consultation exercise was carried out with an end date of 31 May 2013, which was extended at the request of Cheshire East Council as landowner to 12 July 2013. A response was received from Alsager Town Council expressing support otherwise there were no further comments either in support or against the application. However on 15 July 2013 the Council as landowner confirmed that it supported the application.

For various reasons the village green application was not progressed for a number of months. As a result of this delay, in November 2014 it was decided that the applicant and landowner would be written to in order to ask whether they would like to submit any comments in relation to the application before it moved to the next stage. The deadline for submission of comments was 15 December 2014. The Council as landowner objected on the basis that the application was not in accordance with the requirements of Section 15 Commons Act 2006 in that it had not been made by the inhabitants of a locality or neighbourhood and that the applicant's use of the land was not as of right but by right as Open Space by virtue of Section 10 of the Open Spaces Act 1906.

Regulation 6(2)(b) of the Regulations provide that the registration authority *may* consider any statement that it receives on or after the expiration of the consultation period and before the authority disposes of the application. Should the registration authority intend to take any such statements into consideration, the applicant must be given an opportunity to consider the statement and to deal with any of the issues raised.

The applicant was written to on 16 December 2014 inviting them to submit any comments on the Council landowner's objections by 16 January 2015. The applicant expressed his individual concerns around the fact that the registration authority would be asked to exercise its discretion to receive the Council's objection after the expiration of the consultation period and that they struggled to understand how any application by a member of the public would stand the tests of 'neighbourhood' and 'as of right'. It was also advised that they would consult with the supporters of the application. Nothing further had been received from the applicant.

As the Council was both the registration authority and the landowner, it was recommended that the Head of Legal be authorised to appoint an independent person to consider the application on the basis of written evidence. It may be possible that the independent person, having received the evidence, recommends that a non-statutory public inquiry is held. In the event of such a request it was recommended that delegated authority be given to the Head of Legal Services, in consultation with the Chairman of the Public Rights of Way Committee, to determine if a non-statutory public inquiry should take place.

The Committee unanimously

RESOLVED: That

- 1 the Head of Legal be authorised to appoint an independent person to consider the application on the basis of written evidence and provide a report.
- 2 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 with the Chairman of the Public Rights of Way Committee.

38 VILLAGE GREEN APPLICATION: RELATING TO LAND AT BANKY FIELDS, CONGLETON CW12 4BW

The Committee considered a report seeking a decision on how to proceed with a village green application in respect of land at Banky Field, Congleton.

The Council was the registration authority for village greens and the responsibility for the function was delegated to the Public Rights of Way Committee under the Council's Constitution.

An application had been submitted on 8 March 2013 by Mr Gordon Mellor. The Application Land was shown on the Appendix to the Report. The application was supported by 13 supporting statements from local residents.

A consultation exercise was carried out between 12 September 2013 and 6 December 2013. No comments were received either in support or against the application. For various reasons the village green application was not progressed for a number of months. As a result of this delay, in November 2014 it was decided that the applicant and all known landowners would be written to in order to ask whether they would like to submit any comments in relation to the application before it moved to the next stage. Following this, an objection was received from Cheshire East Council as landowner and a letter in support of the application from Mr and Mrs Bird.

The Council objected on the basis that the application was not in accordance with the requirements of Section 15 Commons Act 2006 in that it had not been made by the inhabitants of a locality or neighbourhood and that the applicant's use of the land was not as of right but by right, as Open Space by virtue of Section 10 of the Open Spaces Act 1906 and or as licensees of the garages on the application land.

Regulation 6(2)(b) of the Regulations provide that the registration authority *may* consider any statement that it receives on or after the expiration of the consultation period and before the authority disposes of the application. Should the registration authority intend to take any such statements into consideration, the applicant must be given an opportunity to consider the statement and to deal with any of the issues raised.

The applicant was written to on 6 December 2014 inviting them to submit any comments in relation to the statements by 16 January 2015. The applicant responded that they objected to the fact that the registration authority would be asked to exercise its discretion to receive the Council's objection after the expiration of the consultation period and had raised the matter with their MP, Fiona Bruce and local ward members. As a result of a request from Fiona Bruce, the period for responses to the objection was extended until 30 January 2015. The applicant responded on 26 January 2015 arguing that the Council's objection contains misrepresentations and lacks logic in its conclusion.

As the Council was both the registration authority and the landowner, it was recommended that the Head of Legal be authorised to appoint an independent person to consider the application on the basis of written evidence. It may be possible that the independent person, having received the evidence, recommends that a non-statutory public inquiry is

held. In the event of such a request it was recommended that delegated authority be given to the Head of Legal Services, in consultation with the Chairman of the Public Rights of Way Committee, to determine if a non-statutory public inquiry should take place.

The Committee unanimously

RESOLVED: That

- 1 the Head of Legal be authorised to appoint an independent person to consider the application on the basis of written evidence and provide a report.
- 2 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 with the Chairman of the Public Rights of Way Committee.

39 PUBLIC INQUIRY TO DETERMINE DEFINITIVE MAP MODIFICATION ORDER: ADDITION OF PUBLIC FOOTPATH NO 15, PARISH OF WYBUNBURY MODIFICATION ORDER 2013

The Committee received an information report on the outcome of a public hearing to determine a Definitive Map Modification Order.

The Public Rights of Way Committee at its meeting on 17 December 2012 approved an Order for the addition of Public Footpath No.15 in the parish of Wybunbury to the Definitive Map and Statement as it was considered that there user evidence was sufficient to support the existence of a public footpath.

A Modification Order was made on 21 February 2013 and advertised on 4 April 2013. Nine formal objections were received to the Order, one of which was later withdrawn. The objections were not challenging the duration or frequency of use by the public but were mostly concerned over the recorded width of one section of the footpath. Some objectors also referred to an additional path which went diagonally across the field owned by Natural England (from point F on the Order plan in a north-easterly direction) and these objectors claimed the Order route should follow this line rather than along the field edge.

As the remaining eight objections were not withdrawn consequently a file of the relevant information was submitted to the Planning Inspectorate in March 2014. A public inquiry was held on 4 March 2015 at Wybunbury Village Hall. Of the eight objectors only Mrs B Colbert and her son Mr P Colbert were present, representing themselves. Cheshire East Council was represented by Miss Ruth Stockley of Counsel (Kings Chambers, Manchester). The appointed inspector was Mr Alan Beckett.

It was the Council's approach that the evidence was sufficient to justify making an Order to record the claimed route as a public footpath. The basis of the evidence in support of the Order was that of user evidence. It was the Council's case that under Section 31 of the Highways Act 1980, the way had been used on foot for a full period of 20 years without force, secrecy or permission and without sufficient evidence to indicate that there had been no intention to dedicate during that period.

Mrs Colbert had disputed the width of the path for the section between the edge of the barn and point F on Plan No. WCA/005A and contended that for this section the width of the path should be recorded as being between 1.3 metres and the maximum width suggested by evidence. It was also submitted that where the path dog-legged around the eastern end of the barn the path would not have been 2.3 metres as a field gate had stood in the centre of the end of the barn to control the movement of livestock.

The hearing was closed and concluded on 4 November 2014 following an accompanied site visit. The Inspector issued a decision letter on 26 November 2014 in which he confirmed the Order, with one modification. This was to record a stile at SJ 6991 4995 and this had been inserted into Part II of the Schedule under the heading 'Limitations or Conditions of Use.' The Inspector's overall conclusion was that the evidence was sufficient to show that, on the balance of probabilities, a public footpath subsisted over the Order route.

RESOLVED:

That the report be noted.

The meeting commenced at 2.00 pm and concluded at 3.15 pm

Councillor M Hardy (Chairman)

PUBLIC RIGHTS OF WAY COMMITTEE

1. The Council will appoint a Public Rights of Way Committee which will be a politically balanced body of 7 Councillors.
2. The Public Rights of Way Committee shall discharge all the functions of the Council in relation to all matters relating to public rights of way.¹ Specifically, it shall discharge those functions set out in Part I (1) of Schedule 1 to the Local Authorities (Functions and responsibilities) (England) Regulations 2000 (SI2000/2853) (and any subsequent amendments thereto) that are not specifically delegated to officers namely²:-
 - 2.1 To authorise the creation of footpaths, bridleways and restricted byways by agreement (s25) and by order (S26)
 - 2.2 To authorise the making of applications to Magistrates' Court for the stopping up of public rights of way (S116)
 - 2.3 To determine applications and authorise the making of all public path extinguishment orders (S118, S118ZA, S118A, S118B & S118C; S294 of the Housing Act 1981; S257 & 258 Town and Country Planning Act 1990; S32 of the Acquisition of Land Act 1981)
 - 2.4 To determine applications and authorise the making of all public path diversion orders (S119, S119ZA, S119A, S119B, S119C, S119D & S135A; S257 Town and Country Planning Act 1990)
 - 2.5 To determine that an applicant for a special diversion order shall enter into an agreement in respect of costs (S119C)
 - 2.6 To decline to determine certain applications (S121C)
 - 2.7 To keep the Definitive Map and Statement under review. (S53 Wildlife and Countryside Act 1981) Including the determination of applications for modification orders whether by direction of the Secretary of State or otherwise.
 - 2.8 To include modifications in other orders. (S53A Wildlife and Countryside Act 1981)
 - 2.9 Power to designate footpaths as cycle tracks. (S3 Cycle Tracks Act 1984)

¹ Being all highways as defined by the Highways Act 1980 and permissive ways that are not within the remit of the Head of Environmental Services. These include Footpaths, Bridleways, Restricted Byways and Byways Open to All Traffic and are often known collectively as "public paths". This effectively amounts to all highways and paths other than metalled or surfaced "all purpose" public carriageway highways (roads) and most urban paths.

² Correct as at 16.1.09. Note: Section numbers in brackets refer to the Highways Act 1980 unless otherwise stated.

- 2.10 Power to enter into agreements with respect to means of access. (S35 Countryside and Rights of Way Act 2000)
 - 2.11 Power to provide access in absence of agreement. (S37 Countryside and Rights of Way Act 2000)
 - 2.12 To determine applications for the making, variation or revocation of Gating Orders relating to public paths. (Part 8A)
- 3 To discharge the authority's functions in respect of Commons and Village Greens.
- 4 To be apprised of, approve, and comment on a range of policies, programmes and practices relating to rights of way, Commons and Village Greens and countryside matters including but not limited to:-
 - 4.1 Annual Report and Work Programme
 - 4.2 Progress reports on implementation of the Rights of Way improvement Plan (part of the Annual Progress Review for the Local Transport Plan)
 - 4.3 Statements of Priorities
 - 4.5 Enforcement Protocols
 - 4.6 Charging Policy for Public Path Order applications (Annual)
 - 4.7 Proposals for changes to legislation
 - 4.8 Commencement of legislation
 - 4.9 Significant case law
 - 4.10 Corporate policies affecting PROW

CHESHIRE EAST COUNCIL

REPORT TO: RIGHTS OF WAY COMMITTEE

Date of meeting:	15 th June 2015
Report of:	Public Rights of Way Manager
Title:	Public Rights of Way Annual Report 2014-2015 and Work Programme 2015-2016

1.0 Report Summary

- 1.1 This report records the achievements of the Council in terms of its public rights of way functions during the year 2014-2015 and sets out the proposed work programme for the year 2015-16. Details are set out in Appendices 1, 2, 3 and 4.

2.0 Recommendations

- 2.1 That Members note the Annual Report for 2014-2015 and approve the proposed Work Programme for the Public Rights of Way Team 2015-2016.

3.0 Reasons for Recommendations

- 3.1 As set out in the background and options section of the report (section 10).

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All Members

6.0 Policy Implications

- 6.1 The development of the Rights of Way Improvement Plan (ROWIP) (see Appendix 3) is aligned with the health and wellbeing objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Council's commitment to the Change4Life initiative.
- 6.2 In addition, ROWIP, as an integrated part of the Local Transport Plan, is set within the context of indicators concerning sustainable transport, air quality and CO₂ emissions.

7.0 Financial Implications

- 7.1 None arising.

8.0 Legal Implications

8.1 None arising

9.0 Risk Management

9.1 There has been one claim against the Council in 2014/15, for surface defects. The case has not been concluded and we are of the view that the path was of an acceptable level of maintenance and the claim unjustified.

10.0 Background

10.1 The work programme for the Public Rights of Way Team is usually approved by the Rights of Way Committee at the first committee meeting of the financial year, in the form of a series of targets. Targets are set in the context of the Countryside Agency's (now Natural England) National Targets for public rights of way, which have as their aim that the rights of way network in England and Wales should be:

- Legally Defined
- Properly Maintained
- Well publicised

10.2 In addition to those targets, and reflecting the range of new work imposed by the Countryside and Rights of Way (CROW) Act 2000, targets in relation to three other areas are also set:

- Implementation of the Rights of Way Improvement Plan
- Implementation of the CROW Act 2000: New Duties and Powers
- Countryside Access Development and Initiatives

10.3 Each area is examined individually, below but with the specific successes of 2014/15 together with targets for 2015/16 contained within the relevant appendices.

11.0 Network Management – Maintenance and Enforcement

11.1 The Network Management and Enforcement Team consists of three full-time officers who deal with the protection and maintenance of the network. They operate on an area basis, with each officer responsible for approximately 630 kilometres of the network. Within their area, they are responsible for maintenance and enforcement to remove obstructions and keep the path network available for use.

11.2 An outline report and target work programme for the Maintenance and Enforcement Team is attached at Appendix 1. The component tasks represent the "Milestones" identified in the former Countryside Agency's National Targets.

11.3 661 path problems have been logged throughout the year 2014/2015 which is an increase on the 611 problems that were logged throughout the year 2013/2014 and 509 in the previous year. The charts below illustrate the

numbers and types of problems reported. In Fig 2 the numbers and distribution of different types of issues are very similar to 2013/2014. Fig 3 shows that the number of priority 1 (public safety) issues has remained reassuringly low, 2, compared to the previous year's 3.

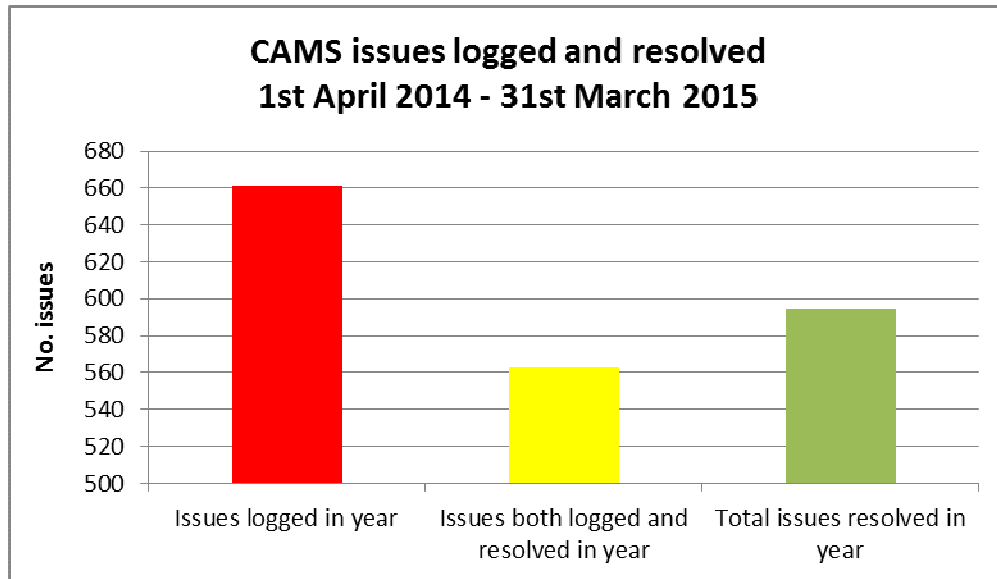


Fig 1.

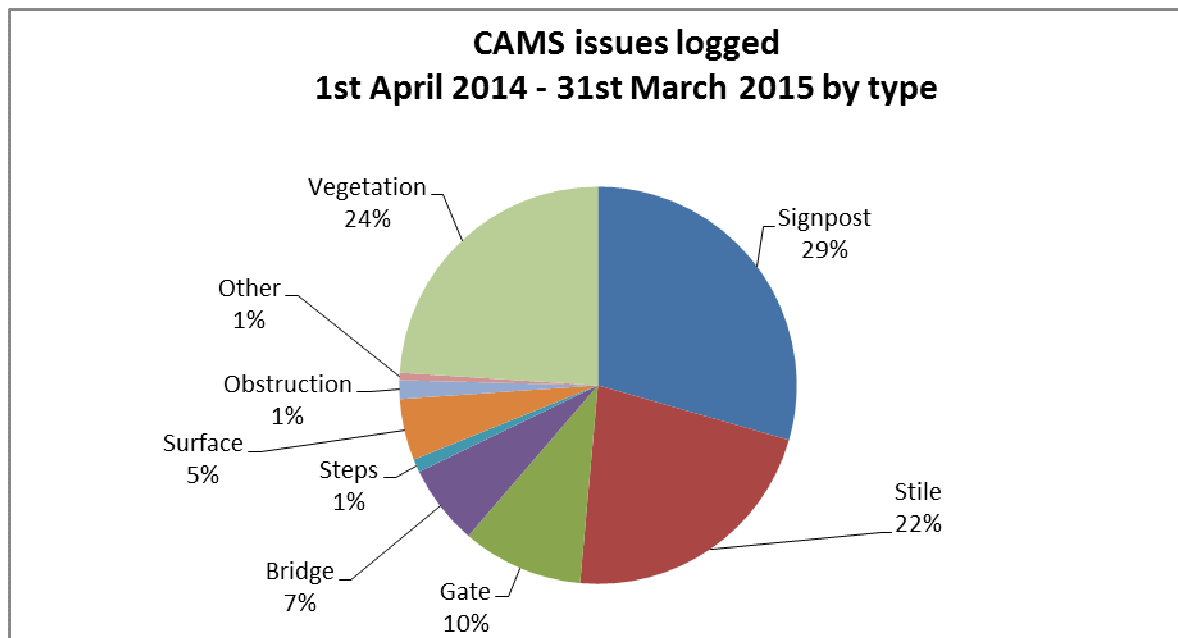


Fig 2.

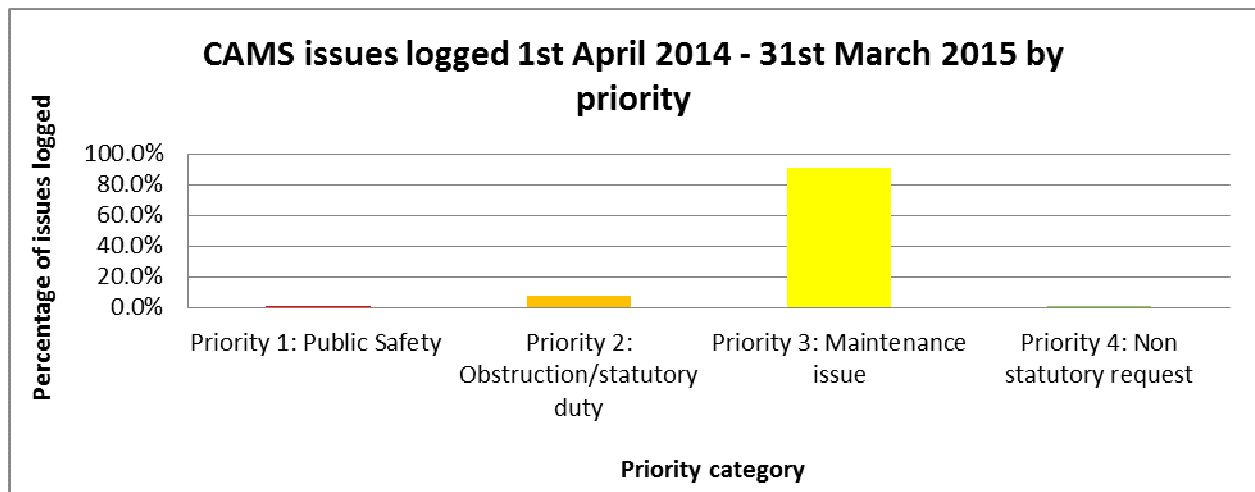


Fig. 3

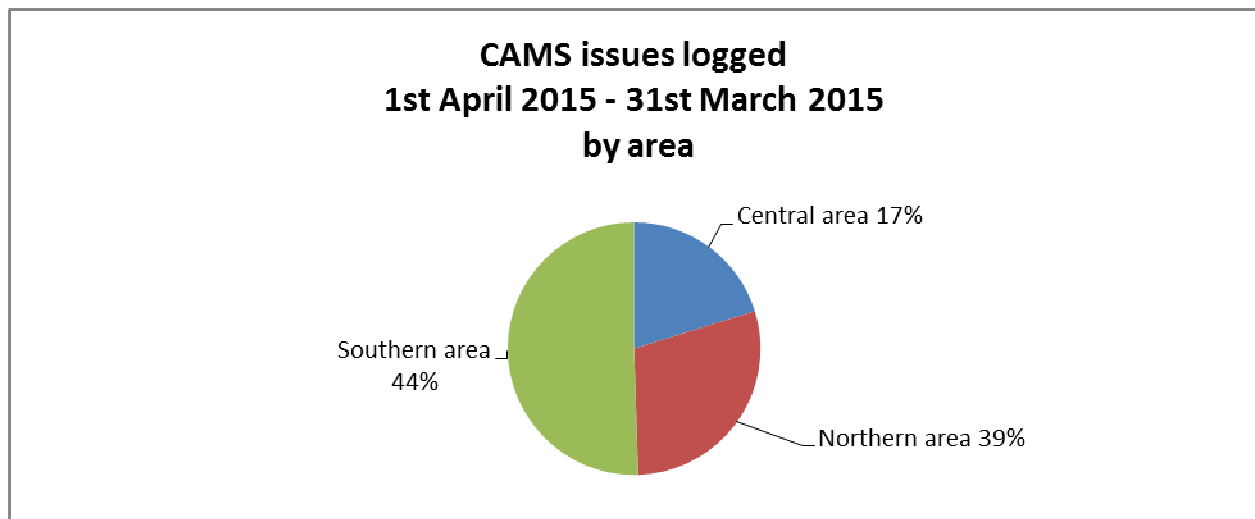


Fig 4.

12.0 Path Inspection

- 12.1 A path inspection scheme exists in the form of the former National Best Value Performance Indicator 178: percentage of paths deemed 'easy to use'. Although councils are no longer required to report on BVPI178 in Cheshire it has been collected as a local indicator for the Local Transport Plan. The survey is carried out on a randomly generated basis of 5% of the network. The team duly carried out the BVPI 178 inspection this year: the percentage pass rate was 77%, which compares with a pass rate of 83% in 2013, 80% for 2012, 84% for 2011, 85% in 2010 and 84% for 2009. The reason for this is unclear at the moment. It may be a statistical error due to the sample size or may indicate an actual issue. This will need to be monitored in order to establish whether this is a temporary spike or whether it may represent the beginning of a trend that will need to be considered in relation to the resources applied..

13.0 Rights of Way Improvement Plan - Access Development

- 13.1 There is one full-time member of staff dedicated to the implementation of ROWIP and access development projects. Work has continued this year in delivering access projects from the existing ROWIP: Appendix 3 contains an outline report and work programme.
- 13.2 The Countryside Access Development Officer is responsible for the administration of the Cheshire East Local Access Forum. The post holder also facilitates the Rights of Way Consultative Group, attends multiple groups and forums on behalf of PROW/Countryside, comments on planning applications, seeking planning gains, and responds to general enquiries and requests for information.

14.0 Legal Orders Team

- 14.1 The legal orders team comprises four officers (3 x full-time, 1 x part-time) who operate on a caseload basis and deal with public path orders, (diversions and extinguishments), definitive map modification orders, (changes to the definitive map) emergency and temporary closures, land searches, planning applications and day to day enquiries. One post deals exclusively with Public Path Orders based on public applications. This post, created in 2010 is funded by the fees from those applicants and nets nil on the budget.
- 14.2 The year has seen the previous increase in planning applications that the team have been consulted on continuing at a high level and increasing from 215 to 237 and 142 land search requests were processed following developers and solicitors enquiries. The need to respond to these and the consequent work generated liaising with developers and colleagues in the Planning Department has had a significant knock on effect on other areas of work, reducing the amount of time available for core Definitive Map Modification Orders investigations.
- 14.3 This has been compounded by a member of staff taking 12 months maternity leave. Whilst maternity cover has been authorised by Recruitment Watch it will only be implemented for 6 months due to budget constraints. As a consequence this has further impacted on the team's ability to deal with Definitive Map Modification Orders.
- 14.4 During the year discussions have been held with Legal Services towards extending the team's areas of responsibility to include the Council's duties with regard to the Commons and Town and Village Green Register and Village Green applications. Investigations are underway to explore the potential of extending the team's fee income to resource this additional work.

15.0 Policy development

- 15.1 The policies currently in place reflect the following activity.
- Maintenance and Enforcement Protocol
 - Statement of Priorities for Definitive Map Modification Orders

- Charging Policy for Public Path Orders, Searches & Temporary Closures and HA 80 S31 declarations.
- Policy for Structures on Public Rights of Way
- Standard Response Times for Different Categories of Problem on the Network

16.0 Local Access Forum and ROW Consultative Group

- 16.1 The primary purpose of the Forum is to provide advice to Cheshire East Borough Council, and other bodies, such as Government departments, Natural England, the Forestry Commission, Historic England Sport England and Town and Parish Councils, on how to make the countryside more accessible and enjoyable for open air recreation, in ways which address social, economic and environmental interests. The Forum consists of volunteer members.
- 16.2 The Forum has commented upon a number of road schemes and planning applications, where these impact upon access and Public Rights of Way. Working groups have been active in pursuing the forum's stated priorities of improving safety on rural lanes and promoting access for all, while the Forum's publicity officer has continued to work to raise the Forum's profile locally.
- 16.3 The Cheshire East Local Access Forum is complemented by the Cheshire East Rights of Way Consultative Group which meets twice yearly.
- 16.4 The Consultative Group operates to achieve the following purposes:-
- to enable interest groups (users, landowners and others) to engage in constructive debate and discussion about issues of law, policy, principle and work programming with members and officers of the Cheshire East Council;
 - to encourage understanding of each others' concerns; and,
 - to participate in the consultation process and ongoing monitoring associated with the Rights of Way Improvement Plan.
- 16.3 The Consultative Group meetings are extended to allow user group representatives to meet Network Management officers on a one to one basis in order to discuss work priorities and individual case issues. This allows user groups and the council to agree prioritisation of issues and works.

17.0 Budget

- 17.1 The annual budget for the years 2014/15 and 2015/16 are set out below. During this year, as in the previous year the budgets have remained as set throughout the year allowing the team to both plan spending and clear some of the previous backlog that had arisen between 2010 and 2013.

	2014/15	2015/16
Total PROW revenue budget	£386,000	£394,000
Network maintenance budget	£42k revenue + £100k capital	£48k revenue + £100k capital
Maintenance budget per PROW km	£73.0/km	£76.0/km
Other funding	<ul style="list-style-type: none"> •£300k LTP ROWIP/ Cycling capital budget •£5k bridges capital spent 	<ul style="list-style-type: none"> •£300k LTP ROWIP/ Cycling capital budget

18.0 Conclusion

- 18.1 As with previous years the team has delivered to a high standard throughout the year and it is to be hoped that the current budget stability continues into the years ahead which allows the current hard work to continue and be reflected in the condition of the network. It is to be hoped that additional resources are secured to both to accommodate the additional duties associated with the Commons Register and Village Green applications as well as allowing the team to increase the amount of work associated with investigating Schedule 14 applications to modify the Definitive Map.

19.0 Access to Information

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

Name: Mike Taylor
 Designation: Public Rights of Way Manager
 Tel No: 01270 686115
 Email: mike.taylor@cheshireeast.gov.uk

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APPENDIX 1

SECTION 3: NATIONAL TARGET 2: "PROPERLY MAINTAINED"

Component Task		Source			Achievements April 2014 to March 2015	Targets 2015/16
No	Measure of Success					
3.1	All footpaths, bridleways and byways correctly signposted where they leave a metalled road.	C/side Act 68 NERC Act 06			<ul style="list-style-type: none"> 231 signs erected across the borough. 	<ul style="list-style-type: none"> Installation of additional signs and replacement signs following loss and damage to ensure the requirements of Countryside act 1968 s 27 are fulfilled.
3.2	All PROW clear of obstructions, misleading notices, other hindrances or impediments to use.	HA 80 s130			<ul style="list-style-type: none"> Enforcement actions saw 6 notices served for cropping and 4 for general obstruction. Additionally 25 "seven day" warnings were issued in relation to cropping offences. Officers have not been required to remove obstructions because offenders have responded successfully in all cases. 	<ul style="list-style-type: none"> Carry out necessary enforcement work in line with adopted protocols to ensure that the duty set out in Highways act 1980 is fulfilled.
3.3	Bridges, stiles, gates etc are in place where required; all are safe and convenient to use.	HA 80 s41 and s146			<ul style="list-style-type: none"> In Cheshire East 231 stiles, 108 gates comprising 81 kissing gates, 11 bridleway gates and 16 pedestrian gates have been installed. Additionally 51 bridges of varying lengths have been installed. 	<ul style="list-style-type: none"> Renew and repair structures to ensure that they adequately allow the public to access all public paths in Cheshire East. Assist owners and occupiers to repair and replace stiles and gates on public rights of way. Replace structures with less limiting barriers wherever possible in line with ROWIP policies, DDA and Equality Act 2010.
3.4	Surface of every PROW is in proper	HA 80 s41			<ul style="list-style-type: none"> A routine maintenance programme is in operation and 	<ul style="list-style-type: none"> The routine maintenance programme will be extended as new paths

Component Task		Source			Achievements April 2014 to March 2015	Targets 2015/16
No	Measure of Success					
	repair, reasonably safe and suitable for the expected use.				Paths comprising 125 km were subject to routine strimming/ tractor flailing at least once during the growing season with many cut more frequently to a maximum of 3 cuts per annum.	<p>requiring routine maintenance are encountered (e.g. paths created through ROWIP).</p> <ul style="list-style-type: none"> Officers will continue to work with colleagues in other departments and other partners in order to facilitate additional funding for special projects in relation to rights of way wherever possible.
3.5	All PROW inspected regularly by or on behalf of the authority.	HA 80 s58			<ul style="list-style-type: none"> Bridges are inspected every two years, but paths in general are not inspected due to a lack of resources. This could result in a lack of a legal defence to claim(s) for personal injury. All maintenance officers hold bi-annual meetings with the relevant representative of the walking and equestrian user groups to agree priorities for work. 	<ul style="list-style-type: none"> The maintenance officers will continue to hold bi-annual meetings with the relevant representatives of the walking, equestrian and other user groups to agree work priorities and to discuss the results of the survey work carried out by these groups. Volunteer survey scheme to be extended dependant on availability of volunteers.
3.6	The authority is able to protect and assert the public's rights and meet other statutory duties (e.g. to ensure compliance with the Rights of Way Act 1990).	HA 80 s130			<ul style="list-style-type: none"> All cropping obstructions were responded to within 4 weeks of reporting. 	<ul style="list-style-type: none"> Continue to adhere to the response times set out in the current standard.
3.7	Waymarks or signposts are provided at necessary locations and are adequate to	C/side Act 1968 s27			<ul style="list-style-type: none"> Waymarking is undertaken by staff and contractors as appropriate. Additionally waymarkers are provided to 	<ul style="list-style-type: none"> Waymarking and signposting will be undertaken as appropriate.

Component Task		Source			Achievements April 2014 to March 2015	Targets 2015/16
No	Measure of Success					
	assist users. Waymarking scheme/initiative in place.				partners such as Mid-Cheshire Footpaths Society and the Ramblers' Association to enable them to replace missing and damaged waymarkers.	

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Appendix 2

Legal Orders Team

SECTION 2: NATIONAL TARGET 1: “LEGALLY DEFINED”

Component Task		Source	Achievements 2014/15	Targets 2015/16
No	Measure of Success			
2.3	No backlog of legal events requiring orders to be made	WCA 81 S53(2) (a) & 53(3) (a)	<ul style="list-style-type: none"> Legal Event Modification Order made for all legal events in 2014/15 	<ul style="list-style-type: none"> Legal Event Modification Order to be made for all legal events in 2015/16 Schedule 5 Para 2 of CROW Act 2000, commenced April 2008, obviates need for separate legal event order where Definitive Map change cited. However, national debate about the technical aspects of this provision and advice to LAs is to continue making separate LEMOs for time being.
2.4	No backlog of applications to modify the Definitive Map	WCA 81 Sch 14	<ul style="list-style-type: none"> 1 Schedule 14 applications determined and a further 7 applications under active investigation during the year (see below). 23 applications remain in backlog (see below). The oldest of these dates to 2004. 	<ul style="list-style-type: none"> Target is to determine 6 cases.
2.6	No backlog of decided applications/other cases awaiting definitive map modification orders	CoAg	<ul style="list-style-type: none"> 4 orders determined 3 DMMO order confirmed 1 DMMO order confirmed with modifications 0 appeals against refusal, awaiting decision 0 appeals against non-determination within 12mths 	<ul style="list-style-type: none"> Continue to make orders as soon as reasonably practicable. Contested DMMOs to be submitted to PINs. Directed applications/orders to be processed as required.



Component Task		Source	Achievements 2014/15	Targets 2015/16
No	Measure of Success			
2.7	The authority has considered the need to consolidate the Map and take any necessary action	WCA 81 S56	<ul style="list-style-type: none"> Preparation of digital map for consolidation complete. Work to consolidate statements begun. 	<ul style="list-style-type: none"> On hold due to lack of staff.
2.9	No other matter affecting the Definitive Map outstanding	CoAg	<ul style="list-style-type: none"> Electronic list of map anomalies was completed in 2008. 2 anomalies corrected during 2014/15. 	<ul style="list-style-type: none"> No progress can be made with rectifying anomalies without additional staff resources (in addition to PPO income generation post).

Summary of work from April 2014 to March 2015, backlog of work outstanding and forecasts for 2015/16



Area of work	Work completed/in progress April 2014 – March 2015	Backlog	Projected work 2015/2016
Planning application consultations	238	n/a	
Rights of Way searches	142	n/a	
Highways Act s31 deposits	1	n/a	
Temporary & Emergency Closures	52 (high proportion being 6 month closures and Secretary of State extensions)	n/a	
Gating Orders	0	n/a	0
Public Path Orders HA80	17 cases in progress	43 applications on waiting list	7 Orders to confirmation stage.
Local Government Act 2000 Dedications	3 Deed of Dedications completed	0 Deed of Dedication in progress	
Public Path Orders TCPA90	5 Orders confirmed, 5 cases in progress	n/a	10 cases likely to be dealt with.
Contested Orders referred to PINs	HA80 = 0 WCA81 = 0 TCPA90 = 0	Contested WCA81 case to be referred to PINs	
Definitive Map Modification Order Applications – schedule 14 applications	4 Orders confirmed, 7 in progress	23	2 Cases to be targeted.
Definitive Map “List B” issues	2		2 cases targeted
Definitive Map Anomalies (investigation/legal orders required)	2 completed	400+	2 without additional staff resources or additional budget to commission

			consultants
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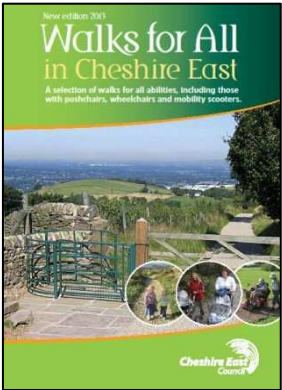
RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2014-2015

Policy Ref.	ROWIP Ref.	Achievements 2014-2015	Ongoing targets 2015-2016
H2 H3 H7 H8	T9 T25	<p>Paths for Communities Fund projects</p> <p>The Carrs bridleway in Wilmslow:</p> <ul style="list-style-type: none"> ○ completion of signage to clarify usage, destinations and distances on routes in the area. ○ river bank stabilisation works completed to help protect new bridleway from erosion. <p>Dane Meadow new footpaths and bridleway in Holmes Chapel:</p> <ul style="list-style-type: none"> ○ completion of improvement works on public footpath which provides access to the Dane Meadow and Cranage village. <div style="display: flex; justify-content: space-around; align-items: center;">   </div> <div style="display: flex; justify-content: space-around; align-items: center;"> <p>Before</p> <p>After</p> </div>	<p>Projects completed.</p> <p>Additional signage to be installed.</p>
H2 H3 S7	T117	<p>Middlewood Way Station access</p> <ul style="list-style-type: none"> • Accessibility improvements for pedestrian access to Middlewood Station to encourage use of public transport option. • Including path surfacing works, lighting and ramp to avoid steps. • Project scoping and design undertaken. 	<ul style="list-style-type: none"> • Project delivery.

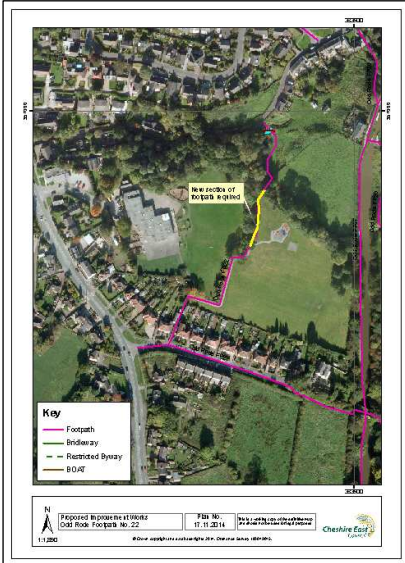
RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2014-2015

Policy Ref.	ROWIP Ref.	Achievements 2014-2015	Ongoing targets 2015-2016
H2 H3	X6	Public Health Transformation Fund Bid submitted for development of local promoted walk in area of Crewe where activity levels are lowest. Bid includes proposals for access improvements and promotion via led walks and training of volunteer walks leaders to maintain local ongoing interest. Partnerships with South Cheshire Clinical Commissioning Group and GP practices, Local Area Partnership and AgeUK Cheshire, to encourage walkers who will benefit most.	<ul style="list-style-type: none"> Delivery of project.
H2 H3 S7 S8	W65 W91 T25 W84	Assistance to Local User Groups / Parish & Town Councils <ul style="list-style-type: none"> Advice and assistance to local user groups in their planning of access improvements and external funding bids, including: <ul style="list-style-type: none"> Goostrey Footpaths Group proposal for dedication of new PROW. Bollington Initiative Trust proposal for dedication of new PROW. Cranage and Holmes Chapel Parish Councils assessed demand for proposed off-road bridleway between communities. Canal and River Trust delivered access improvements between towpath and PROW on canal bridge at Church Minshull, in partnership with Parish Council. <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">  <p>Before</p> </div> <div style="text-align: center;">  <p>After</p> </div> </div>	<ul style="list-style-type: none"> Ongoing, as arising.

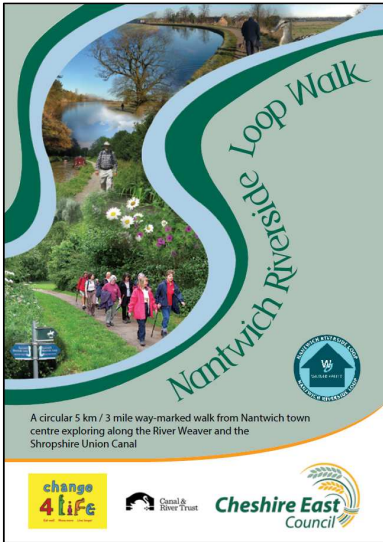
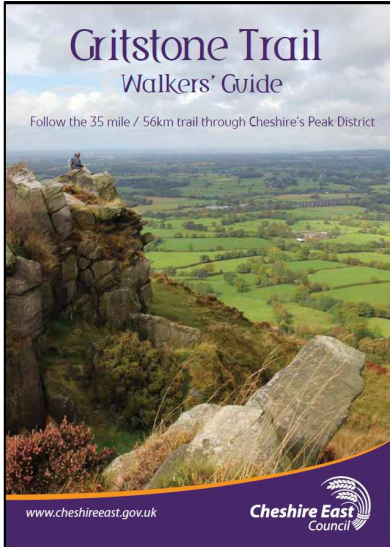
RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2014-2015

Policy Ref.	ROWIP Ref.	Achievements 2014-2015	Ongoing targets 2015-2016
H2 H3 S7	T69	Congleton Footpath No. 23 <ul style="list-style-type: none"> Congleton Partnership submitted successful bid to Cheshire East Partnerships for funding. Route is Congleton Footpath No. 23, forming continuation of Dane Walkway and Dane Valley Way. Scheme to be delivered by Cheshire East Highways. To improve accessibility as far as practical and to improve aesthetics of route to encourage use. 	 <p>Project delivery.</p>
S7 S8	n/a	Local Sustainable Transport Fund <p>Continued delivery of active travel infrastructure and promotional schemes focusing on smarter travel within Crewe, including:</p> <ul style="list-style-type: none"> destination signposting. creation of off-road cycle tracks. cycle parking and toucan crossings. development of Smarter Travel map in printed and online formats. 	 <p>Project completed.</p>
H2, H3	X7	More Walks for All Leaflet development <ul style="list-style-type: none"> In partnership with Cheshire East Local Access Forum. Development of leaflet suggesting 9 easy access walks in the borough to supplement existing popular Walks for All leaflet. Most routes accessible by public transport. Volunteers suggested suitable routes, undertook initial site surveys, took photos and wrote up information for leaflet. Agreement from landowner partners obtained, content drafted and leaflet design and print commissioned. 	 <ul style="list-style-type: none"> Publish leaflet. Publicity.

RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2014-2015

Policy Ref.	ROWIP Ref.	Achievements 2014-2015	Ongoing targets 2015-2016
H2 H3 S7 S8	Various W90 X10	<p>Planning Applications, Pre-Applications and Local Plan</p> <p>Planning applications and pre-applications commented upon from the perspective of active travel and leisure walking, cycling and horseriding, putting forward ROWIP aspirations.</p> <p>Developer contributions secured through section 106 agreements and unilateral undertakings.</p> <p>Input from Public Rights of Way and Countryside into emerging Cheshire East Local Plan.</p> <p>Odd Rode Footpath No. 22 section 106: project to improve footpath access between houses, medical centre and playing field, being scheduled for Easter 2015, in partnership with Scholar Green School and Odd Rode Parish Council.</p> <p>Towpath improvements in Elworth, Sandbach: preparation for delivery of surfacing project to create circular walk and ride options for residents of new housing development, in partnership with Canal and River Trust.</p>	Ongoing, as arising.
		 <p>Odd Rode Footpath No. 22</p>	
H2 H3 S8	T37	<p>Crewe Footpath Cycle Track Order</p> <p>Development of ROWIP suggestion from Local Area Partnership and Sustrans.</p> <p>Proposal to convert status of footpaths Nos. 3 (part) and 36 to cycle track on route used by both pedestrians and cyclists.</p> <p>Route runs from residential areas of Crewe and village beyond towards town centre.</p> <p>Project in partnership with Cheshire East Highways.</p> <p>Legal Order made and advertised: objections received.</p>	Referral of Order and objections to Department for Transport for determination.



RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2014-2015

Policy Ref.	ROWIP Ref.	Achievements 2014-2015	Ongoing targets 2015-2016
H2 H3 S7 S8	X15	<p>Publicity to promote walking, cycling and horse riding</p> <ul style="list-style-type: none"> Nantwich Riverside Loop: revision and reprint of promoted walk leaflet. Gritstone Trail: revision and reprint of promoted walk leaflet. <p>Articles submitted for partnership newsletters, including NFU. Newsletters and social media feeds made for all news items.</p> <div style="display: flex; justify-content: space-around; align-items: center;">   </div> <p>Revised leaflet front covers: Nantwich Riverside Loop and Gritstone Trail</p>	Work ongoing to coincide with national and local events and projects.
H2 H3 S7 S8	n/a	<p>Mapping</p> <p>Assistance with mapping provided to Cheshire East departments, including the Countryside Ranger Service for grant applications and management plans. Assistance with mapping for third sector groups producing walks leaflets. Compliance with INSPIRE EU Directive ensured.</p>	Ongoing, as requested.

RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2014-2015

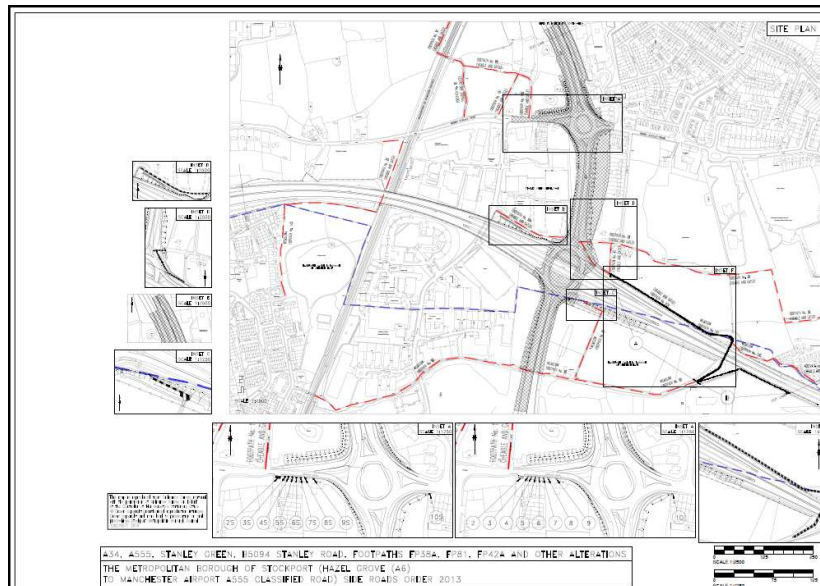
Policy Ref.	ROWIP Ref.	Achievements 2014-2015	Ongoing targets 2015-2016
H2 H3 S7	T118	<p>High Legh route to school Contribution to project led by Parish Plan team. Creation of a path away from roads, through an area of greenspace. To act as a safer route to encourage walking to village school.</p> <div>   </div> <p>Before After</p>	Project completed.
H2 H3 S8	X14	<p>Local Transport Plan Cycling Schemes</p> <ul style="list-style-type: none"> Contributions to LTP active travel cycling schemes. Cycling Seminars held to improve communication between Council and local cycling user groups. Cycling Champion appointed. Development of Cycling Strategy initiated. Revision of cycling webpages undertaken. 	<ul style="list-style-type: none"> Work ongoing.

RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2014-2015

Policy Ref.	ROWIP Ref.	Achievements 2014-2015	Ongoing targets 2015-2016
H2 H3 S7 S8	n/a	<p>Cheshire East Local Access Forum</p>  <p>Secretariat duties for Forum, a voluntary body which advises the Council on matters relating to countryside access. Priority areas of work progressed in safety on rural lanes, publicity of the Forum and accessibility of the countryside. Frequent newspaper publicity secured and national LAF newsletter article published. Forum negotiated changes to A556 new road scheme designs. Forum responded to numerous consultations, including:</p> <ul style="list-style-type: none"> ○ Canal and River Trust sharing towpaths. ○ Cheshire East Local Plan. ○ Cheshire East Parks Strategy. ○ Department for Transport Cycling Delivery Plan. ○ Natural England Dog Walking Advice. <p>Rural Road safety meeting held with Parish and Town Councils.</p>  <p>Rural road safety meeting discussion</p>	Work ongoing.


RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2014-2015

Policy Ref.	ROWIP Ref.	Achievements 2014-2015	Ongoing targets 2015-2016
S7 S8	Various	<p>A556, SEMMMS, Congleton Link Road, Poynton Relief Road and Crewe Green Link Road Schemes</p> <p>Continued input of ROWIP aspirations into options and designs to maximise opportunities for improving routes for active travel and leisure walking, cycling and horse riding.</p> <p>Influencing road scheme designs and Side Road Orders to achieve best possible outcomes for non-motorised users.</p> <p>Extinguishment Order made for section of Footpath affected Crewe Green Link Road (Order not to be confirmed due to change to road scheme).</p>	Work ongoing.



A556 Start of works leaflet (left) and SEMMMS Side Road Order plan (right)

RIGHTS OF WAY IMPROVEMENT PLAN ANNUAL REPORT 2014-2015

Policy Ref.	ROWIP Ref.	Achievements 2014-2015	Ongoing targets 2015-2016
H2, H3	X15	<p>Discover Cheshire Website www.discovercheshire.co.uk Website promoting walking, cycling and horse riding routes. Also highlights nearby visitor economy facilities in the countryside, such as refreshment stops and accommodation. Partners include Visitor Economy team, Marketing Cheshire, Cheshire West and Chester Council and the Mersey Forest. Redeveloped website now mobile compatible and combined with other websites to act as the 'one-stop shop' for visitors to Cheshire. Amends and updates to walking, cycling and horse riding routes made, as arising.</p>  <p>Screen image from website</p>	<ul style="list-style-type: none"> Ongoing as arising.

Screen image of draft CAMS webportal

Cheshire East Local Access Forum Annual Report 2014 - 2015





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Background to the Forum

The Cheshire East Local Access Forum (CELAF) is a statutory body established under section 94 of the Countryside and Rights of Way (CROW) Act 2000, to provide advice on access to the countryside.

The primary purpose of the Forum is to provide advice to Cheshire East Borough Council, and other bodies, such as Government departments, Natural England, the Forestry Commission, English Heritage, Sport England and Town and Parish Councils, on how to make the countryside more accessible and enjoyable for open air recreation, in ways which address social, economic and environmental interests.

The Forum consists of volunteer members.

Front cover photos

The photographs on the front cover are reproduced with permission, and with thanks to the photographers and those in the photos:

- hand-cyclist near Church Lawton;
- walker near Haslington;
- horse and carriage driver in Great Warford; and,
- cyclists on the Biddulph Valley Way, near Congleton.



Chair's introduction

The Forum has enjoyed a successful and active second year, building on the foundation laid in 2013/14.

We have commented upon a number of road schemes and planning applications, detailed later in the report, where these impact upon access and Public Rights of Way. Working groups have been active in pursuing our stated priorities of improving safety on rural lanes, and promoting access for all, while our energetic publicity officer has continued to work to raise the Forum's profile locally.

It is pleasing that members have worked so hard and consistently, and once again we owe an immense debt to the Cheshire East staff who have so ably and willingly supported us. Two members of the Forum resigned in the current year, to pursue other interests, and we are embarking upon a recruitment process to replace them and increase our numbers – to better represent the interests of users of the countryside, and to share the common workload.

In December 2014 we conducted a short internal review, to assess our work at the half-way point of our first term. We concluded that, after a hesitant start, we had made progress in those areas on which we have chosen to work, but need to do more to engage with other relevant organisations and interests. This has given us some form of direction for our work in the coming year; I am confident we will continue to develop.

Bob Anderson

Chair, Cheshire East Local Access Forum

Priorities of the Forum

The Cheshire East Local Access Forum held its first meeting in April 2013. During the initial meetings of the Forum, members discussed the various topics of countryside access involved within the Forum's remit. The main priorities for the work of the Forum continue to be:

1. **Publicity** – to strengthen the Forum's identity and public awareness of the Forum and its work.

Against this aim, the Forum has again secured publicity on a number of topics through local newspapers including the Knutsford Guardian, Nantwich Chronicle, Macclesfield Express and Crewe Chronicle. Articles have also appeared in publications of Cheshire East Partnerships, Natural England, and the NFU.

In addition to the written word, Forum members spread news of the work of the Forum through wider opportunities, including:-

- talks to Macclesfield Accessibility Group, South Cheshire Ramblers and East Cheshire Ramblers;
- attendance at a Definitive Map Modification Order public inquiry; and,
- attendance on behalf of the Forum at a training day for Natural England Access officers.



Articles featured in Knutsford Guardian 23rd March 2014, Nantwich Chronicle 26th March 2014, Knutsford Guardian 21st January 2015 and Cheshire East Partnerships Newsletter, January 2015

2. **Safety on rural lanes** – the development of a campaign focussing on the improvement of safety for walkers, cyclists, horse riders and carriage drivers on rural lanes.

The Forum has won the support of several parish councils for its campaign to improve safety for vulnerable users on rural roads. The Forum organised a meeting in Mobberley for parish councillors from the areas through which Laureen's Ride and the Cheshire Cycleway pass.

It was the first event of its kind organised by the Forum. Three Forum members - Linda Rose, John Handley and Carole Bentley - gave presentations on the dangers faced by horse riders, cyclists and walkers, respectively, in areas where they are forced to use country roads which generally have a 60mph speed limit. The meeting also heard from Kevin Skillings of Cheshire East Highways about the road safety challenges faced by the authority.



Rural road safety meeting discussion

The impetus for the meeting came from Linda Rose, who is a horse rider and carriage driver. She said: "The number of accidents on rural roads is alarming so, with the help of parish and town councillors, the Forum wants to identify 'danger hotspots' and to come up with practical and attainable ideas for improvements. The response of so many of the parish councillors at the meeting was heartening and I do hope we can make some headway with this very difficult topic. We will be following up the meeting later in the year and looking into the possibility of organising similar events in other parts of Cheshire East."

Among the various issues raised by councillors in the general discussion were driver attitudes and training, speed limit consistency, reduced road maintenance and verge obstruction enforcement.

The meeting was attended by representatives from the parish councils of Chorley; Rainow; Hulme Walfield and Somerford Booths; High Legh; Great Warford; Twemlow; Cranage; Over Alderley and Birtles; Nether Alderley and by Cheshire Association of Local Councils (ChALC).

3. **Lost ways** – focussing attention on and assisting progress with research into possible Public Rights of Way that are not currently recorded on the legal record, the Definitive Map and Statement. It was decided to put this priority on hold due to forthcoming legislative changes.

4. **Access for All** – improving access to the countryside for people from hard to reach groups.

The Forum has assisted in the production of a new edition of the Cheshire East Walks for All leaflet which gives full details on a number of accessible walks in the countryside. Members submitted numerous suggestions for suitable new walk locations and assisted in the collation the accessibility information required. The Forum was kindly assisted in this task by Kath Cuthbert and Pete Cuthbert who run the www.cyclingotherwise.co.uk website.

The information has been collated into a standard format and checked by the volunteers of the Forum. The new leaflet, *More Walks for All*, is in design and is proposed to be published in spring 2015.



Extracts from the Walks for All leaflet and people on accessible routes in the new leaflet

The work of the Forum

During the year, the agendas of the meetings were packed with items, some generated by members themselves and some as a result of external requests for the collective expertise of the Forum to provide comment on a particular initiative. The following gives a flavour of the items on which the Forum has worked:

- The Forum succeeded in improving facilities for non-motorised users within the **A556 Knutsford to Bowdon Improvement Scheme** through negotiation with the Highways Agency. In particular, the Forum secured headroom in an underpass sufficient for equestrians so that the route can be used by walkers, cyclists and horse riders to navigate under the new road.



Highways Agency A556 Knutsford to Bowdon public consultation document:
Aerial View with Route

- The preferred option for the proposed **Congleton Relief Road** was presented to the Forum by the engineering team. The Forum took the opportunity to re-stress the importance of the rural lane network for non-motorised users, including the key link in the National Cycle Network. The engineers from the scheme's design team took comments from the Forum on how the Public Rights of Way in the area would be affected by the proposed road. Concern was expressed in particular about one Public Footpath that was proposed to be stopped up, with the Forum explaining the case for a footbridge or underpass.
- In another road scheme, the Forum was consulted on proposals for the management of Public Rights of Way during the widening of the **A500/M6 Pinch Point Road Scheme**.
- A representative from Cheshire East Highways explained the **highway maintenance regimes** employed on the roads of the borough, including inspections and repairs. Forum Members were particularly interested in the maintenance and protection of verges as a haven for non-motorised users of the road network.

- The Chair and Vice Chair attended meetings of the **North West region's LAF Chairs**, reporting on the activities of the Cheshire East Forum and sharing evidence, news and best practice around the region. The Forum **urged Natural England** to reverse the decision to withdraw funding the regional LAF co-ordinator roles.
- A representative from **Natural England** attended the Forum to explain the role of Natural England in relation to LAFs.
- A Forum member attended a training day led by the **Black Environmental Network** on access to the countryside by hard to reach communities.
- The Forum monitored closely the **restructuring of the Council** involving the Public Rights of Way team and the Countryside Ranger Service, and the resourcing of those teams.
- The Forum undertook a '**half-term**' **evaluation** of progress against its own aims at the half way point in the Members' 3 year appointment.
- The Forum received updates on **long term closures** of Public Rights of Way in the borough and progress in the resolution of the issues necessitating the closures.
- The progress of the **Deregulation Bill** through Parliament was described to the Forum as this legislation contains changes to Public Rights of Way legal processes.
- **The Forum submitted consultation responses on:**
 - the draft **Sharing Towpaths** policy being developed by the Canal and River Trust;
 - the draft **Dog Walking Advice** being developed by Natural England and Natural Resources Wales;
 - the draft **Cycling Delivery Plan** being developed by the Department for Transport;
 - the draft **Parks Strategy** being developed by Cheshire East Council;
 - a number of **planning applications** which were likely to detrimentally affect or had potential to add to access to the countryside for walkers, cyclists, horse riders and carriage drivers;
 - the draft **Alderley Park Development Framework** being developed by Cheshire East Council; and,
 - the Cheshire East Highways consultation on **Local Community Road Safety**.
- The Forum continued to **monitor the delivery of Rights of Way Improvement Plan** (ROWIP) projects and the annual reports of the Public Rights of Way team at Cheshire East Council.

Forum membership

Membership of the Forum runs for a period of 3 years. The members currently appointed to the Forum, and their areas of interest, are shown below:

Name	Areas of interest	Geographic area
Bob Anderson Chair	Accessibility for all, wildlife, walking	Nantwich
Councillor Rhoda Bailey	Ward Member, Public Rights of Way Committee Member	Scholar Green
Carole Bentley	Walking, information and publicity	Willaston
Chris Driver	Wildlife, conservation, planning	Acton
Pat Featherstone Vice-chair	Walking, volunteering, health improvement	Disley
Andy Gildon*	Involving local communities, running and walking	Chelford
John Handley	Land management, landscape interpretation	Wilmslow
Gillian Herdman*	Walking, leisure cycling, working members of the public	Hassall Green
Dale Langham	Walking and cycling as sustainable transport	Wilmslow
Linda Rose	Carriage driving, horse riding	Great Warford
Ivor Williams	Visitor and rural economy, land management	Rainow

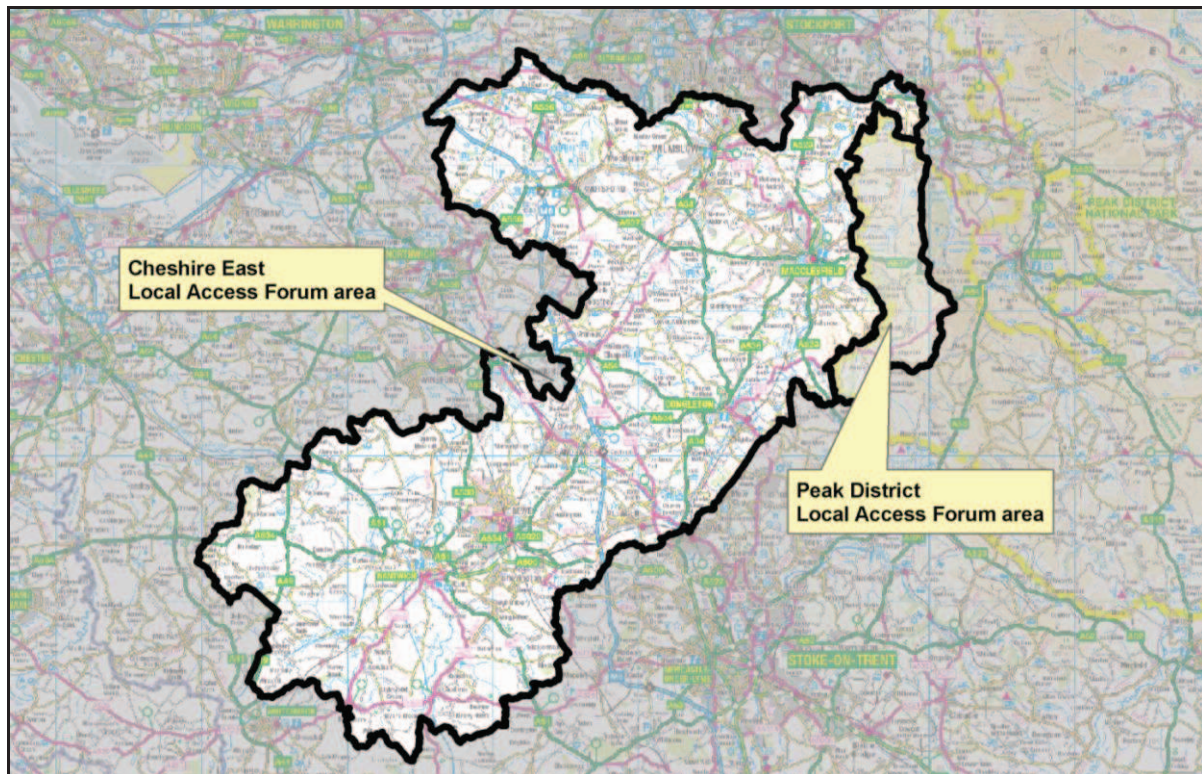
*stepped down during year

We will be recruiting new members to the Forum during 2015. So, if you are interested in joining the Forum and contributing to its work, please get in touch – see the contact details on the following page.



The Cheshire East Local Access Forum area

The Forum covers all of Cheshire East except for that part of the borough inside the Peak District National Park, as the National Park has its own Local Access Forum.



Contact Cheshire East Local Access Forum

Post: c/o Public Rights of Way,
Cheshire East Council,
2nd Floor, Old Building,
Municipal Buildings,
Earle Street,
Crewe,
Cheshire, CW1 2BJ

Web: www.cheshireeast.gov.uk/laf

Email: laf@cheshireeast.gov.uk

Tel: 01270 686029

Web: On the website you can view meeting agendas and minutes, along with previous annual reports.

Meetings: The Forum meets quarterly, alternating between Crewe and Macclesfield. The meetings of the Forum are open to the public.

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KEY

..... Unaffected Public Rights of Way

--- Claimed route

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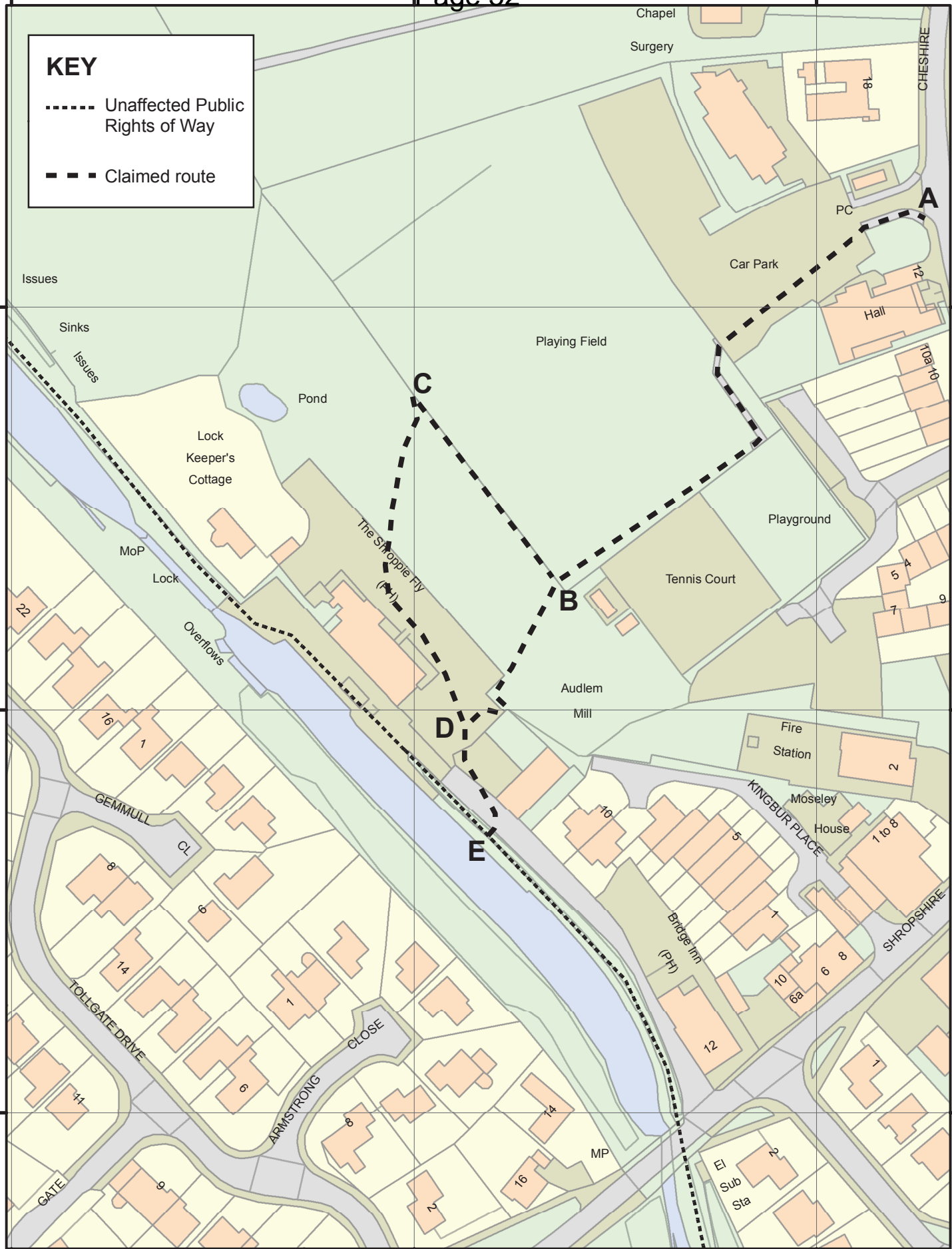
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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 15th June 2015
Report of: Public Rights of Way Manager
Subject/Title: WILDLIFE AND COUNTRYSIDE ACT 1981 –
PART III, SECTION 53. Application No. CN/7/22:
Application for the Addition of a Public Footpath Between
Public Footpath Audlem No. 28 and Cheshire Street,
Audlem

1.0 Report Summary

- 1.1 The report outlines the investigation of an application made by Audlem Parish Council for the addition of a public footpath to the Definitive Map and Statement. This includes a discussion of the consultations carried out in respect of the claim, the historical evidence, witness evidence and the legal tests for a Definitive Map Modification Order to be made. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to add the route as a public footpath.

2.0 Recommendation

- 2.1 The application to modify the Definitive Map and Statement to record a footpath between points B-C-D as shown on plan number WCA/008 be refused on the grounds that there is insufficient evidence to show the existence of Public Footpath rights;
- 2.2 An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding as a Public Footpath, the route as shown between points A-B-D-E on plan number WCA/008;
- 2.3 Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Act.
- 2.4 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.

3.0 Reasons for Recommendations

- 3.1 The evidence in support of this claim must show, on the balance of probabilities that public footpath rights subsist or are reasonably alleged to

subsist along the claimed route. It is considered that there is insufficient user evidence to support the existence of public footpath rights along the route B-C-D on plan no. WCA/008 and therefore the requirements of Section 53(3)(c)(i) have not been met in relation to these footpath rights and it is recommended that this part of the application be refused

It is considered that there **is** sufficient user evidence to support the existence of public footpath rights along the route A-B-D-E on plan no. WCA/008. On the balance of probabilities, the requirements of Section 53 (3)(c)(i) have been met and it is recommended that the Definitive Map and Statement should be modified to show the route as a Public Footpath.

4.0 Wards Affected

4.1 Audlem.

5.0 Local Ward Members

5.1 Councillor Rachel Bailey.

6.0 Policy Implications

6.1 Not Applicable

7.0 Financial Implications

7.1 Not Applicable

8.0 Legal Implications

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

8.2 The legal implications are contained within the report.

9.0 Risk Management

9.1 None

10.0 Background and Options

10.1 *Introduction*

10.1.1 This application was submitted in April 2005 by Audlem Parish Council to modify the Definitive Map and Statement for the parish of Audlem by adding a

currently unrecorded route as a Public Footpath. The route applied for runs from public footpath no. 28 in the parish of Audlem, on the towpath to the south east of the Shroppie Fly Public house (point E on plan no. WCA/008), and runs in a generally north easterly direction to join Cheshire Street, Audlem (A529) (point A on Plan no. WCA/008). An additional loop was also claimed, from point D running north westerly through the pub car park then northerly up a grassy slope to point C, then turning south easterly along the top of a bank through a wooded area back to point B. Plan No. WCA/008 shows the whole of the route applied for between points A-B-C-D-E. The application is based on user evidence; a total of 10 user evidence forms were submitted with the application.

10.2 Description of the Claimed Footpath

- 10.2.1 The claimed route commences on Public Footpath Audlem No. 28, on the towpath to the south east of The Shroppie Fly public house. It runs up six brick steps from the towpath, a short distance along the access drive to the Shroppie Fly and then along the eastern boundary of The Shroppie Fly car park and up eight breeze block constructed steps. From here, it climbs six timber edged earth steps in a generally north easterly direction and through a small wooded area until it reaches the playing field. It then runs across the south eastern edge of the playing field to join a surfaced path along the eastern corner, then on entering the car park it continues in a east north easterly direction across the car park to join with a short length of pavement until it reaches Cheshire Street.

10.3 The Main Issues

- 10.3.1 Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Cheshire East Borough Council shall keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events.
- 10.3.2 The event relevant to this application is section 53(3)(c)(i), this requires modification of the map by the addition of a right of way. The relevant section is quoted below:

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

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

The evidence can consist of documentary/ historical evidence or user evidence or a mixture of both. All the evidence must be evaluated and weighed and a conclusion reached whether, on the 'balance of probabilities' the alleged rights subsist or are reasonably alleged to subsist. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.

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

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

This requires that the public must have used the way without interruption and as of right; that is without force, secrecy or permission. Section 31(2) states that “the 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question”.

- 10.3.4 Where there has been no challenge, the Natural Environment and Rural Communities Act 2006 states that the date on which a Definitive Map Modification Order (DMMO) application is received by the Surveying Authority is to be taken as ‘bringing into question’ the public right of use. The date of 2005 should therefore be used as the date the route was ‘brought into question’; the relevant twenty year period to be considered for the user evidence is 1985 to 2005.

- 10.3.5 In this case there is evidence of use on foot prior to 1985 and subsequent to 2005; it has been stated that the evidence of use either side of the 20 year period being relied upon buttresses the use made during the 20 year period and can reinforce the conclusion that there was sufficient use during the core period as confirmed by *Rowley v. Secretary of State for Transport, Local Government and the Regions* (2002).

- 10.3.6 In the case of *Godmanchester Town Council, R (on the application of) v Secretary of State for the Environment, Food and Rural Affairs* (2007), the House of Lords considered the proviso in section 31(1) of the Highways Act 1980:

“...unless there is sufficient evidence that there was no intention during that period to dedicate it”.

The proviso means that presumed dedication of a way can be rebutted if there is sufficient evidence that there was no intention to dedicate the way, during the relevant twenty year period. What is regarded as ‘sufficient evidence’ will vary from case to case. The Lords addressed the issue of whether the “intention” in section 31(1) had to be communicated to those using the way, at the time of user, or whether an intention held by the landowner but not revealed to anybody could constitute “sufficient evidence”. The Lords also considered whether use of the phrase “during that period” in the proviso, meant during the whole of that period. The House of Lords held that a landowner had to communicate his intention to the public in some way to satisfy the requirement of the proviso. It was also held that the lack of intention to dedicate means “at some point during that period”, it does not

have to be continuously demonstrated throughout the whole twenty year period.

- 10.3.7 If for some reason the statutory test fails, the issue of common law dedication can be considered; that is whether the available evidence shows that the owner of the land over which the way passes has dedicated it to the public. An implication of dedication may be shown at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. It would appear from the user evidence that this route has been in place and used by the public for many years. Mr Derek McKelvey was interviewed by Officers and recalled a meeting between the owner of The Shroppie Fly and County Council Officers 30 years ago (which he attended as he was formerly a member of Audlem Parish Council) where the owner of The Shroppie Fly agreed to build and finance the breeze block steps leading from the car park. Another witness interviewed, Mr Bill Consterdine, recalled that at the time that these steps were built, British Waterways (as they were at that time) raised no objection to the licensee putting the steps in and may even have contributed towards them. The steps leading from the concrete steps to the playing field were constructed by the Parish Council around 10 years ago and were improved approximately 3 years ago when extra fencing, wooden rails, were installed for safety. The majority of witnesses interviewed recall the concrete steps existing since the early 1970's and have used the route since this date.

10.4 *Consultations*

- 10.4.1 Consultation letters were sent to the Ward Member; Audlem Parish Council; User Groups/Organisations and the landowners.
- 10.4.2 There has been no response from the Ward Member.
- 10.4.3 There has been no response from the user groups/organisations.
- 10.4.4 National Grid responded to the consultation and confirmed they have no objection to the application.

10.4.5 *Landowners*

Cheshire East Council's Parks Management (now part of ANSA) has been consulted. Parks Management has concerns that if an Order is made and confirmed, as events are held on the playing field occasionally, these could potentially obstruct the footpath. They are also concerned that a public footpath could cause operational difficulties between walkers and those playing formal sports on the playing field.

The route which has been applied for is based on user evidence. Although the field is marked out as a football pitch this does not preclude the public's ability to claim a public right of way, there are numerous public rights of way crossing playing fields/football pitches in Cheshire East and the status of a route can only be determined through examination of the relevant evidence. The DMMO

application process looks at unrecorded existing public rights, it does not dedicate new public rights, and health and safety issues cannot be taken into account.

10.4.6 Cheshire East Council's Insurance Team has also been consulted. They stated that there was no issue from an insurance point of view but suggested that, if the application is successful, suitable warning signs for drivers using the car park to watch out for pedestrians and vice versa would be appropriate.

10.4.7 The Canal and River Trust have been consulted, no comments have been received.

10.4.8 No comments have been received from the three remaining landowners; Mr Leonard Ernest Baker, Mr and Mrs P Silvester and Punch Partnership Ltd.

10.5 *Investigation of the Claim*

10.5.1 A detailed investigation of the evidence submitted with the application has been undertaken, together with additional research. The application was made on the basis of user evidence from 10 witnesses. In addition to the user evidence an investigation of the available historical documentation has been undertaken to establish whether the claimed route has an earlier origin. The standard reference documents (where available) have been consulted; details of all the evidence taken into consideration can be found in **Appendix 1**.

10.6 *Documentary Evidence*

County Maps 18th-19th Century

10.6.1 These are small scale maps made by commercial map-makers, some of which are known to have been produced from original surveys and others are believed to be copies of earlier maps. All were essentially topographic maps portraying what the surveyors saw on the ground. They included features of interest, including roads and tracks. It is doubtful whether map-makers checked the status of routes, or had the same sense of status of routes that exist today. There are known errors on many map-makers' work and private estate roads and cul de sac paths are sometimes depicted as 'cross-roads'. The maps do not provide conclusive evidence of public status, although they may provide supporting evidence of the existence of a route.

10.6.2 There is no evidence of a route on any of these maps.

Audlem Tithe Map and Apportionment 1846

10.6.3 Tithe Awards were prepared under the Tithe Commutation Act 1836, which commuted the payment of a tax (tithe) in kind, to a monetary payment. The purpose of the award was to record productive land on which a tax could be levied. The Tithe Map and Award were independently produced by parishes and the quality of the maps is variable. It was not the purpose of the awards to record public highways. Although depiction of both private occupation and

public roads, which often formed boundaries, is incidental, they may provide good supporting evidence of the existence of a route, especially since they were implemented as part of a statutory process. Non-depiction of a route is not evidence that it did not exist; merely that it did not affect the tithe charge. Colouring of a track may or may not be significant in determining status. In the absence of a key, explanation or other corroborative evidence the colouring cannot be deemed to be conclusive of anything.

- 10.6.4 The route is not indicated on the Audlem Tithe Map; it may have existed at the time but did not affect the tithe charge.

Ordnance Survey Maps

- 10.6.5 Ordnance Survey mapping was originally for military purposes to record all roads and tracks that could be used in times of war. This included both public and private routes. These maps are good evidence of the physical existence of routes, but not necessarily of status. Since 1889 the Ordnance Survey has included a disclaimer on all of its maps to the effect that the depiction of a road or way is not evidence of the existence of a right of way. It can be presumed that this caveat applies to earlier maps also. These documents must therefore be read alongside the other evidence.

Ordnance Survey Map 6" to 1 mile, 1st, 2nd and 3rd Editions

- 10.6.6 The route is not indicated on these maps.

Ordnance Survey Map 25" to 1 mile, 1st, 2nd and 3rd Editions

- 10.6.7 The route is not indicated on these maps.

National Parks and Access to the Countryside Act 1949

- 10.6.10 The Definitive Map and Statement is based on surveys and plans carried out in the early 1950s by each parish in Cheshire of all the ways they considered to be public at that time. The surveys were used as the basis for the Draft Definitive Map. The Audlem Parish Survey was completed by A. Fielden and W. Timmis in February 1952. The claimed footpath is not recorded in this survey.

10.7 *Witness evidence*

- 10.7.1 User evidence was submitted with the application on standard user evidence forms, a chart illustrating the user evidence is attached as **Appendix 2**. A total of ten user evidence forms were submitted all claiming use of the route on foot. Officers have interviewed seven of the witnesses, a separate chart showing their use is attached as **Appendix 3**.

- 10.7.2 Use of the route ranges from 1969 until the application was submitted in April 2005. The frequency of use varies between daily, weekly and occasionally. The route is used as a link to access the Shroppie Fly public house, canal and

the village shops on Cheshire Street. It is also used recreationally and for leisure purposes, as a dog walk.

- 10.7.3 From the information on the user evidence forms, 8 witnesses state use of the claimed route on foot in excess of 20 years and 2 state use for less than 20 years. As stated above in paragraph 10.3.4 the relevant twenty year period to be considered is 1985 - 2005. A total of 8 witnesses have stated use of the claimed route for the full twenty year period; 2 witnesses have used the route for part of this period. There is also evidence of use before and after this period.
- 10.7.4 Of the seven witnesses interviewed only two claimed use of the loop, B-C-D, and this was only occasional use. Consequently this evidence is not sufficient to show rights have been acquired.
- 10.7.4 Seven of the ten witnesses have been interviewed by Officers and have signed statements. Five of the seven persons interviewed claim use of the route on foot for the full twenty year period, 1985 - 2005. Two witnesses have stated use for part of this period. All of the witnesses are consistent in describing the route they used; from Cheshire Street, across the playing field (at the tennis court side, behind the goal posts) and down the steps at The Shroppie Fly to the towpath. None of the witnesses interviewed have been stopped or challenged when walking this path. There is also no evidence of any signs or notices on the route. All of the witnesses said they did not have permission to use the route, they just assumed it was a public path.
- 10.8 *Conclusion*
- 10.8.1 The user evidence submitted shows use over a period spanning approximately 36 years. The relevant period to be considered is 1985 - 2005. Seven witnesses have been interviewed and five of these claim use of the route for the full twenty year period and a further two for part of this period.
- 10.8.2 Under section 31(1) of the Highways Act 1980 public footpath rights can come into existence by prescription unless there is evidence to the contrary. Therefore the landowner must provide evidence to that effect, which is normally evidence of a challenge or notices put up during the relevant twenty year period. None of the witnesses interviewed state they were challenged anywhere on the route. There is no evidence of any notices or evidence of a challenge of any kind to the public during the relevant period.
- 10.8.3 The evidence in support of this application must show, on the balance of probabilities that public footpath rights subsist or are reasonably alleged to subsist along the claimed route. It is considered that there is sufficient user evidence to support the existence of footpath rights along the route A-B-D-E but insufficient use for the route B-C-D. On the balance of probabilities, the requirements of Section 53(3)(c)(i) have been met in the first instance and it is recommended that the Definitive Map and Statement should be modified to add the claimed route as a Public Footpath.

11.0 Access to Information

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

Name: Hannah Duncan

Designation: Definitive Map Officer

Tel No: 01270 686062

Email: hannah.duncan@cheshireeast.gov.uk

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Appendix 1

DMMO DOCUMENTARY RESEARCH CHECKLIST

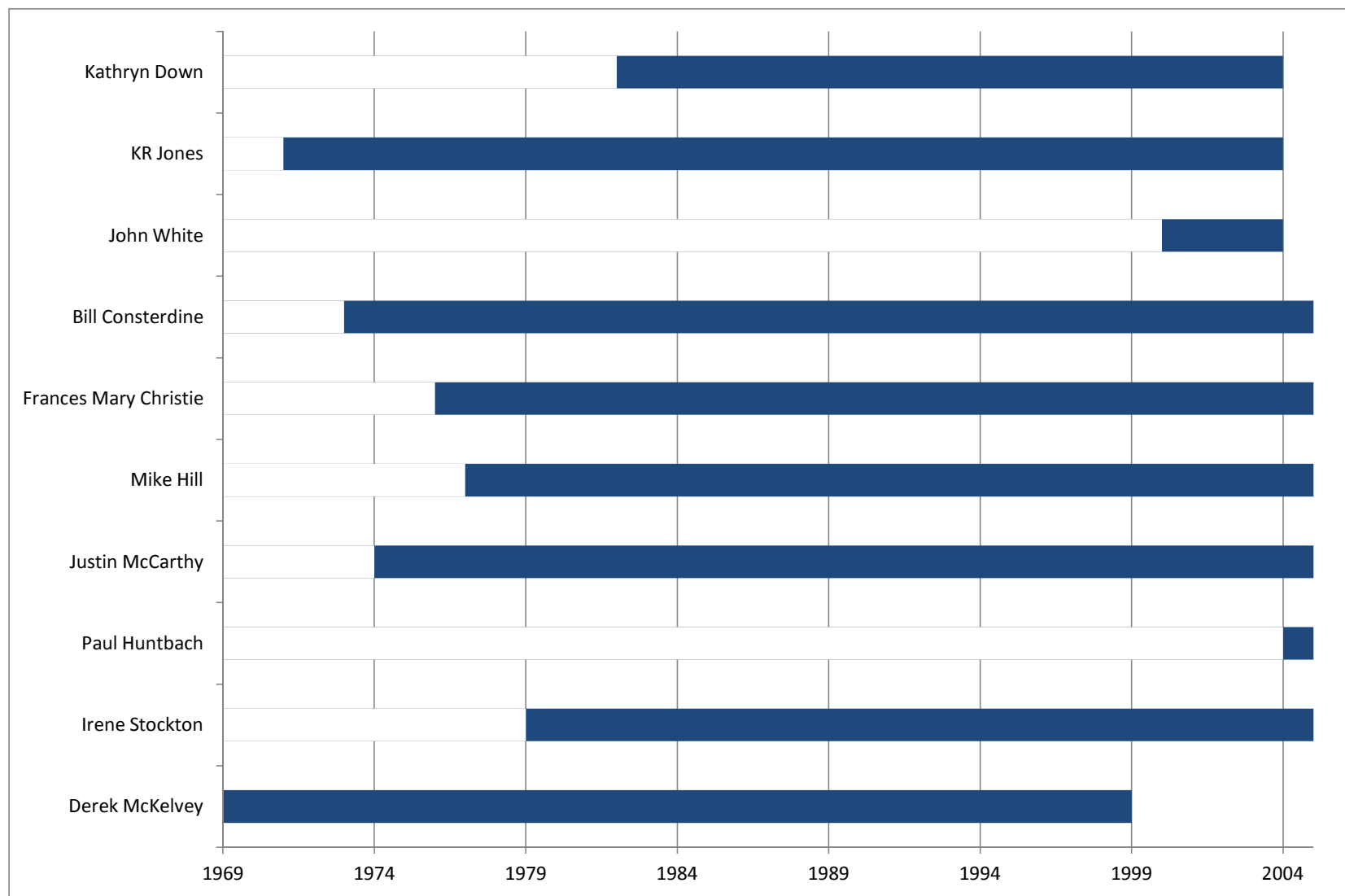
District Crewe & Nantwich	Parish Audlem	Route between FP28 Audlem and Cheshire Street, Audlem
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Document	Date	Reference	Notes
<i>County Maps</i>			
Burdett PP	1777	CRO PM12/16	Not shown
Greenwood C	1819	CRO PM13/10	Not shown
Swire and Hutching	1830	CRO PM13/8	Not shown
Bryant A	1831	CRO Searchroom M.5.2	Not shown
<i>Tithe Records</i>			
Apportionment		CRO EDT/28/1	Not shown
Map	1846	CRO EDT/28/2	Not shown
<i>Ordnance Survey</i>			
1" First Edn	1830-40	PROW Unit	Not shown
6" First Edn	1872-5	PROW Unit	Not shown
6" 2 nd Ed	c. 1899		Not shown
6" 3 rd Ed	c. 1911		Not shown
25" County Series 1 st Edition	c. 1871		
25" 2 nd Edition	c. 1896-8		
25" 3 rd Edition	c. 1909		
Book of Reference		CRO/BML	

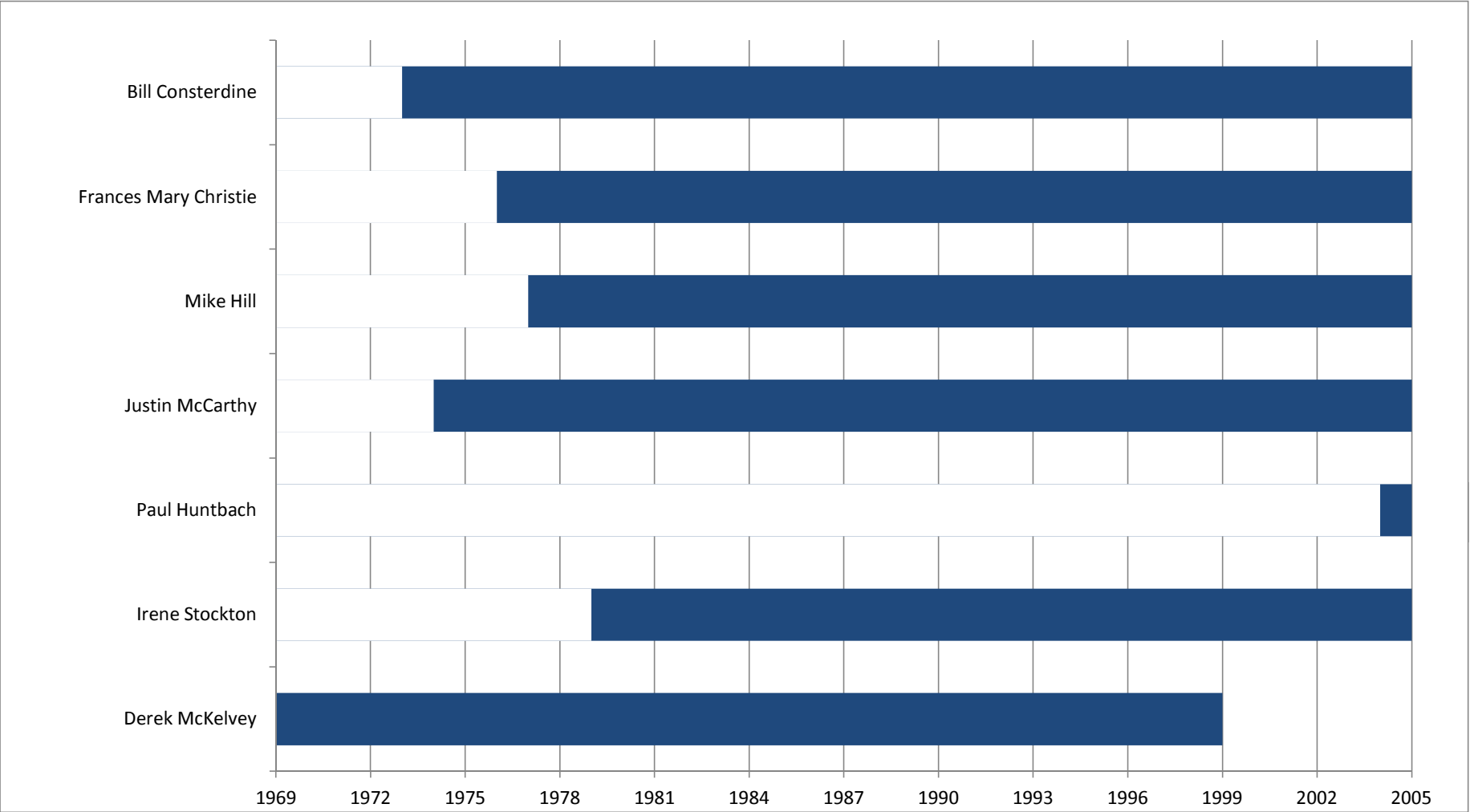
Appendix 1

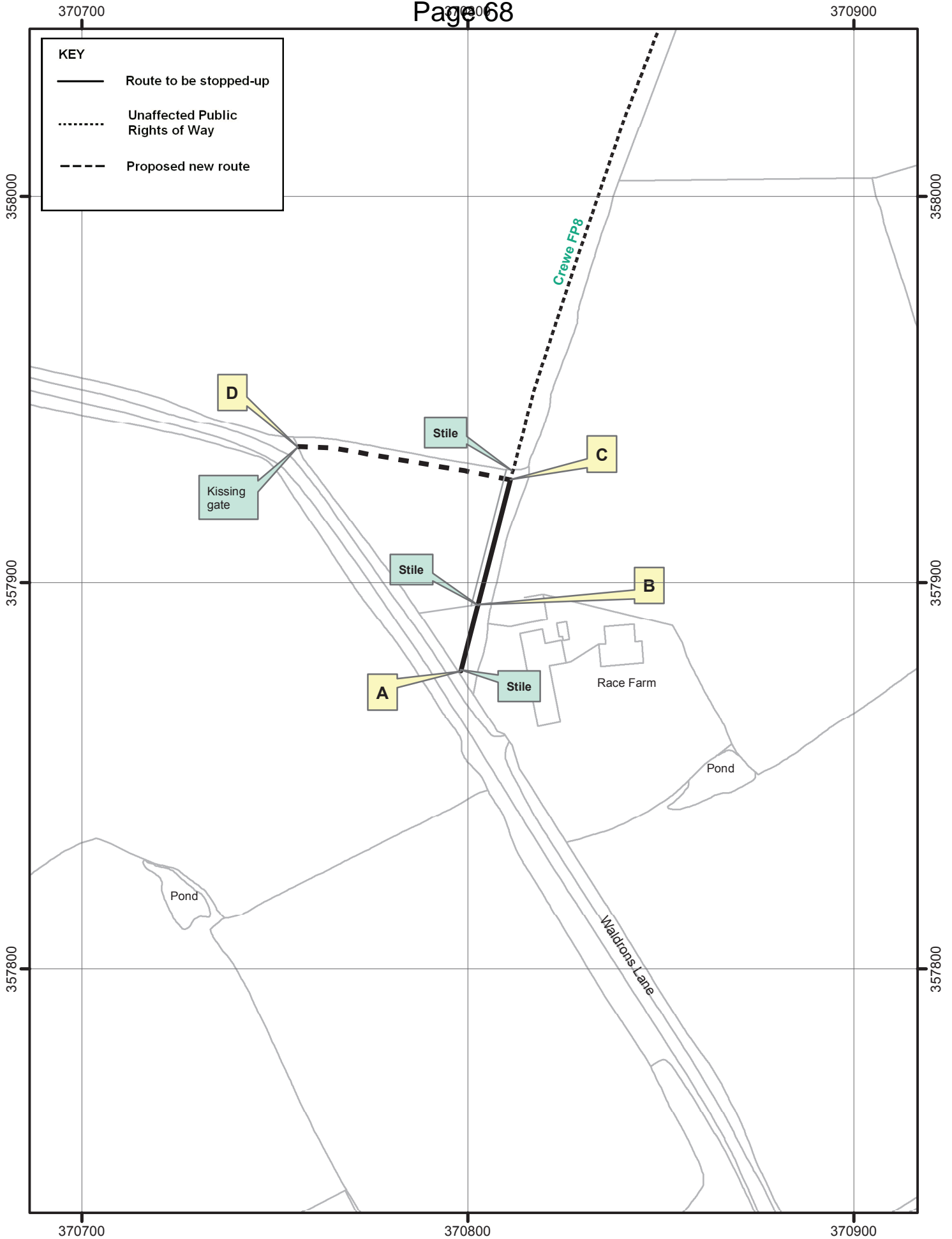
Quarter Sessions			
Index	1782-1906	CRO QAR 107	
Index	1907-1955	CRO QAR 108	
Deposited Plans of Public Utilities:			
Shropshire Union Railway and Canal – Calveley - Wolverhampton		CRO QDP 222	Not shown
Local Authority Records			
Original Parish Surveys	1951	PROW Unit Audlem	Not mentioned
OTHER DOCUMENTS RESEARCHED/CHECKED			
Finance Act 1910			
Working Sheets		CRO NVB/2/10	Not shown
Parish Records			

CRO – County Record Office
PROW – Public Rights of Way Unit



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Highways Act 1980 s119
The Cheshire East Borough Council
(Footpath No.8 (part) Parish of Crewe)
Public Path Diversion Order 2015

Plan No.
HA/101



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 15th June 2015
Report of: Public Rights of Way Manager
Subject/Title: Highways Act 1980 s.119
Application for the Diversion of Public Footpath No. 8 (part),
Parish of Crewe

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.8 in the Parish of Crewe. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as an application has been made by the landowner concerned. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

2.0 Recommendation

- 2.1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No.8 Crewe by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/101 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

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

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

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

And whether it is expedient to confirm the Order considering:

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

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

3.4 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will be of considerable benefit to the landowner in terms of offering enhanced security and privacy to his property. It is considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Crewe East Ward

5.0 Local Ward Members

5.1 Councillor D Newton
Councillor S Brookfield
Councillor C Chapman

Please note that Councillor M Martin, Councillor C Thorley and Councillor D Newton were consulted on the proposal detailed within this report since the informal consultation was undertaken prior to the recent elections.

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 S Wheeler of Race Farm, Waldrons Lane, Coppenhall, Crewe, Cheshire, CW1 4PT requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 8 in the Parish of Crewe.

10.2 Public Footpath No. 8, Crewe, commences at its junction with Waldron's Lane at OS grid reference SJ 7079 5787 and runs in a generally north, north easterly direction across four pasture fields to terminate at its junction with Groby Road at OS grid reference SJ 7101 5830. The section of path to be diverted is shown by a solid black line on Plan No. HA/083 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points D-C.

10.3 The land over which the current path and the proposed diversion run belongs to Mr S Wheeler. Under section 119 of the Highways Act 1980 the Council may accede to an applicant's request, if it considers it expedient in the interests of the landowner to make an order to divert the footpath.

10.4 The section of Public Footpath No. 8, Crewe to be diverted enters a field (point A) and runs along the eastern boundary close to the applicant's property (points A-B) before entering a fenced section leading to an exit stile at the north eastern field corner (point C). Diverting this section of footpath to run along the northern field boundary would afford the applicant improved security and privacy by taking path users further away from his property buildings and adjacent land.

10.5 The new route would start at its junction with Waldrons Road from where it would enter into a fenced section of path via a kissing gate (point D). It would run along this fenced section in a generally east, south easterly direction along the northern field boundary to join the current footpath immediately before the stile at the north eastern field corner (point C).

The fenced section would have a width of 2.5 metres and have a grass surface.

A drain would be installed at the beginning of the new route from Waldrons Road (point D) to resolve current drainage issues and this would be covered and the path surface levelled.

This diversion would be made in the interests of the landowner.

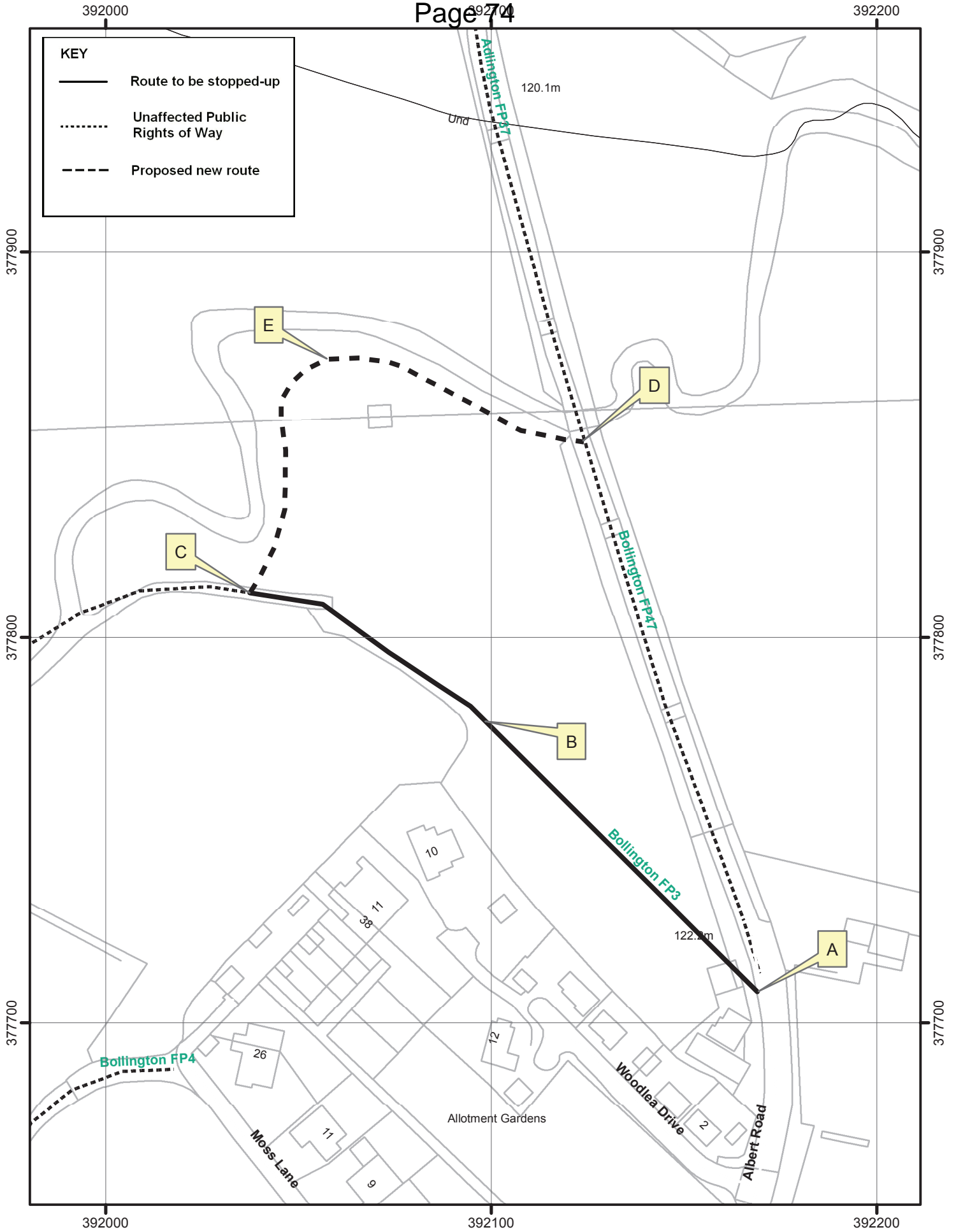
- 10.6 Ward Councillors have been consulted about the proposal. No comments were received.
- 10.7 Crewe Town Council has been consulted. No comments were received.
- 10.8 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.9 The user groups have been consulted. The members of the Peak and Northern Footpath Society registered that they have no objection to the proposal although their footpath inspector noted the need for regular maintenance of the footpath. No other comments have been received.
- 10.10 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 10.11 An assessment in relation to the Equality Act Legislation 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion is not substantially less convenient than the old route.

11.0 Access to Information

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

Name: Marianne Nixon
Designation: Public Path Orders Officer
Tel No: 01270 686 077
Email: marianne.nixon@cheshireeast.gov.uk
PROW File: 344D/503

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Town and Country Planning Act 1990 s257
The Cheshire East Borough Council
(Footpath 3 (part) Parish of Bollington)
Public Path Diversion Order 2015

Plan No.
TCPA/023



CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 15th June 2015
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. 3 (part),
Parish of Bollington

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 3 in the Parish of Bollington. 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 a planning application that is currently under consideration by the Council's Planning Department. The application has been submitted by Rowlinson Constructions Ltd, London House, London Road, Poynton, Stockport, SK12 1YP for the development of 33 new residential dwellings including 8 apartments, improvements to land levels, amenity, infrastructure and landscaping to suit (Planning reference: 14/3844M). 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 14/3844M, an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part or parts of Public Footpath No. 3 Bollington, as illustrated on Plan No's T CPA/023 and T CPA/023A respectively 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. 3 Bollington as illustrated on Plan No. TCPA/023 to allow for the development of 33 new residential dwellings. Planning consent is yet to be granted by Cheshire East Council; reference number 14/3844M.
- 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 Bollington

5.0 Local Ward Members

- 5.1 Councillor A Stott
Councillor J Weston

Please note that Councillor P Hayes and Councillor B Livesley were consulted on the proposal detailed within this report since the informal consultation was undertaken prior to the recent elections.

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 Dominic Shaw (agent) of the Bower Mattin Partnership on behalf of Rowlinson Constructions Ltd, London House, London Road, Poynton, Stockport, SK12 1YP 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. 3 in the Parish of Bollington.

Further to this, for reasons of public interest, Cheshire East Council proposes that the diversion of a further two parts of Bollington FP3 be

included within this Order providing the proposals are unopposed following informal consultation (currently ongoing).

- 6.2 Public Footpath No. 3 Bollington commences at its junction with Albert Road at O.S. grid reference SJ 9216 7770 and runs in generally north westerly, then westerly, then west, south westerly and then south, south westerly to cross pastureland in an arc shape before terminating at O.S. grid reference SJ 9182 7764 at its junction with Public Footpath No's 1 and 2 Parish of Bollington.

The section of path required to be diverted by Rowlinson Construction Ltd is shown by solid black line on Plan No. TCPA/023 running between points A-B-C. The proposed diversion is illustrated with a black dashed line on the same plan, running between points D-E-C.

The sections of path required to be diverted by Cheshire East Council are shown by solid purple lines on Plan No. TCPA/023A running between points C-F and G-H. The proposed diversion routes are illustrated with purple dashed lines on the same plan, running between the same points.

- 6.3 The existing alignment of the footpath section proposed for diversion by Rowlinson Constructions Ltd, would be directly affected by the residential development as shown on the plan entitled 'Proposed diversion of Bollington FP3 (part) overlaid with developer's plan'.

The land over which the current route runs and over which the proposed route would run is entirely owned by Rowlinson Construction Ltd.

The existing alignment of the footpath sections proposed for diversion by Cheshire East Council, are currently obstructed by the River Dean which has over the years, changed course.

The land over which these path sections run and over which the proposed routes would run, are owned by Mr GA Waller who has given his written agreement to allow the paths to be diverted as described.

Furthermore, Rowlinson Constructions Ltd. have agreed to allow these proposals to be progressed with their diversion proposal providing that their application is not affected nor any additional costs incurred to them.

- 6.4 Planning permission has yet to be granted to Rowlinson Construction for the residential development. The application is cited as Planning Permission Ref: 14/3844M. The details of the application are for the development of 33 new residential dwellings including 8 apartments, improvements to land levels, amenity, infra-structure and landscaping to suit.
- 6.5 With regard to the residential development sought by Rowlinsons Construction Ltd, part of the current line of Public Footpath No.3 Bollington would be obstructed by buildings within the residential development. Therefore, the footpath diversion is required to preserve public access around the residential development.

The length of footpath proposed for diversion (points A-B-C) is approximately 170 metres.

With regard to the diversion of the two parts of Bollington FP3 proposed by Cheshire East Council, the current sections are inaccessible owing to the impact of the changing course of the River Dean that has resulted in two sections of the path running through the river. Therefore, diverting these sections to run along the river bank will restore a useable route for the public.

- 6.6 The proposed route for the footpath around the residential development (D-E-C) is shorter than the current route by approximately 31 metres and would take users along a route that would skirt the north and west of the residential development following the meandering River Dean to meet the current route.

Referring to Plan No. TCPA/023, the proposed new route would start at a point further along the road to the north of point A (point D) immediately before the road bridging the River Dean, where it would form a junction with Public Footpath No. 47 Bollington. From there, it would follow a generally west, north westerly direction to then curve (point E) to a generally southerly direction which it would follow to join the current route of Bollington FP3 (point B) where it would terminate. The proposed new route is shown on the plan by a dashed bold black line.

The new route would have a width of 2 metres, follow a raised bank around the development and have a grass surface.

The raised bank would be installed by the developer as a requirement to combat the risk of flooding of the River Dean. However, it should be noted that the river bank opposite that on which the development is to be built is lower than the bank on which the development will stand and over which the footpath would run so this would naturally reduce flood risks to the footpath.

Of benefit to users, a rural aspect would be retained with scenic views to the north of the river and beyond.

The connectivity to the northern network would be improved whilst other footpaths to the south would mean that no connectivity would be lost to the southern network.

This diversion would be made in the interests of the landowner.

- 6.7 The proposed routes for the sections of footpath that currently align through the River Dean, would take users along the southern river bank between points C-F and G-H as shown by dashed purple lines on the plan (TCPA/023A).

The proposed routes would be 2m wide throughout and would have a grass surface and follow alignments that are currently used by the public on an informal basis.

- 6.8 To date, informal consultation has been undertaken only on the proposal put forward by Rowlinson Constructions Ltd.
- 6.9 The local Councillors have been consulted about the proposal put forward by Rowlinsons Construction Ltd. No comments have been received.
- 6.10 Bollington Parish Council have been consulted about the proposal and no comments have been received.
- 6.11 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.
- 6.12 The user groups have been consulted. Members of The Peak and Northern Footpath Society registered no objection to the proposal. No other responses have been received.
- 6.13 The Council's Nature Conservation Officer has been consulted and has raised no objection to the proposals.
- 6.14 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.
- 6.15 With respect of the two sections of Bollington FP3 proposed for diversion by Cheshire East Council, informal consultation is ongoing. Should any irresolvable objections be received, these additional proposed diversions would be abandoned in favour of the diversion required by Rowlinsons Construction Ltd.

10.00 Access to Information

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

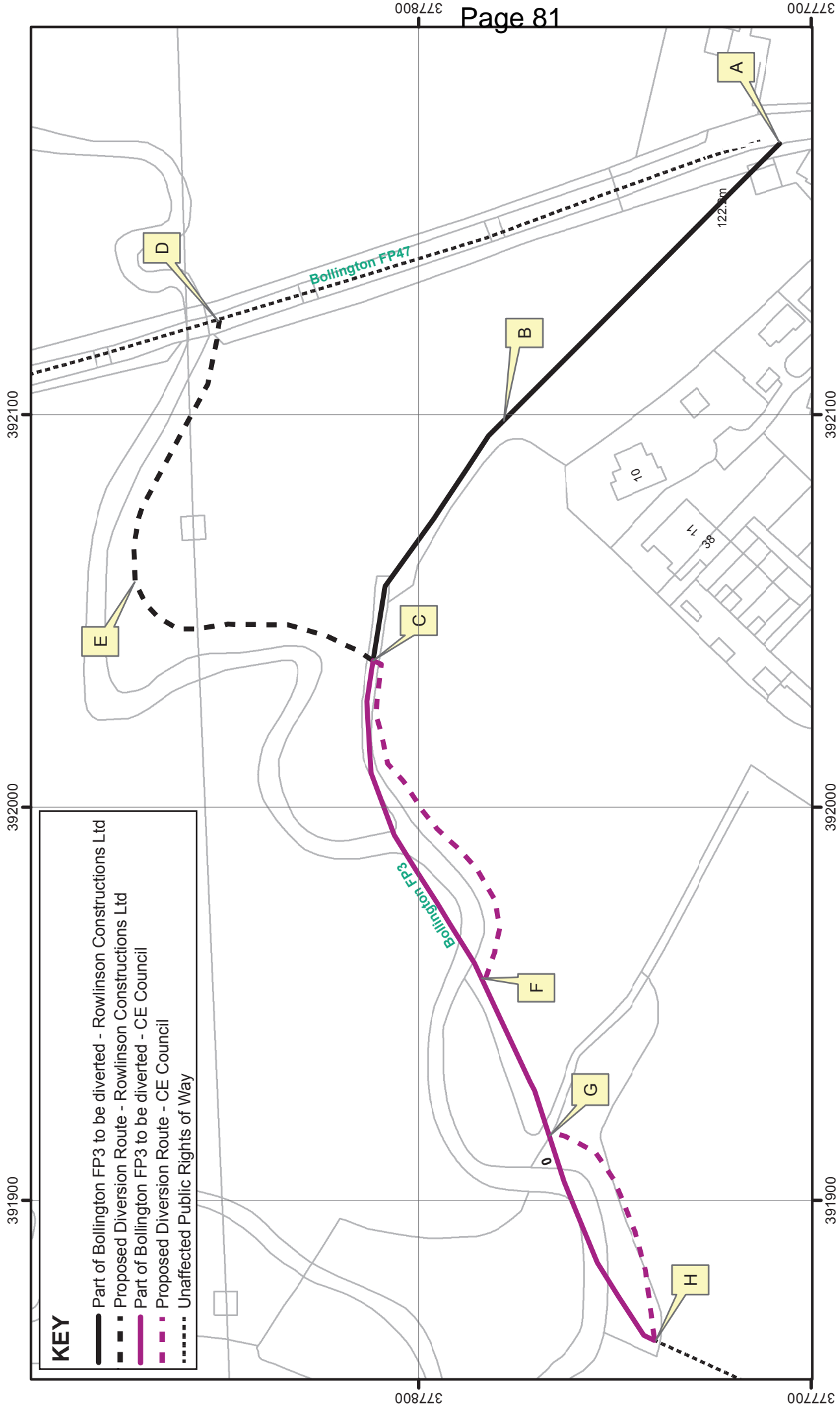
Officer: Marianne Nixon

Tel No: 01270 686 077

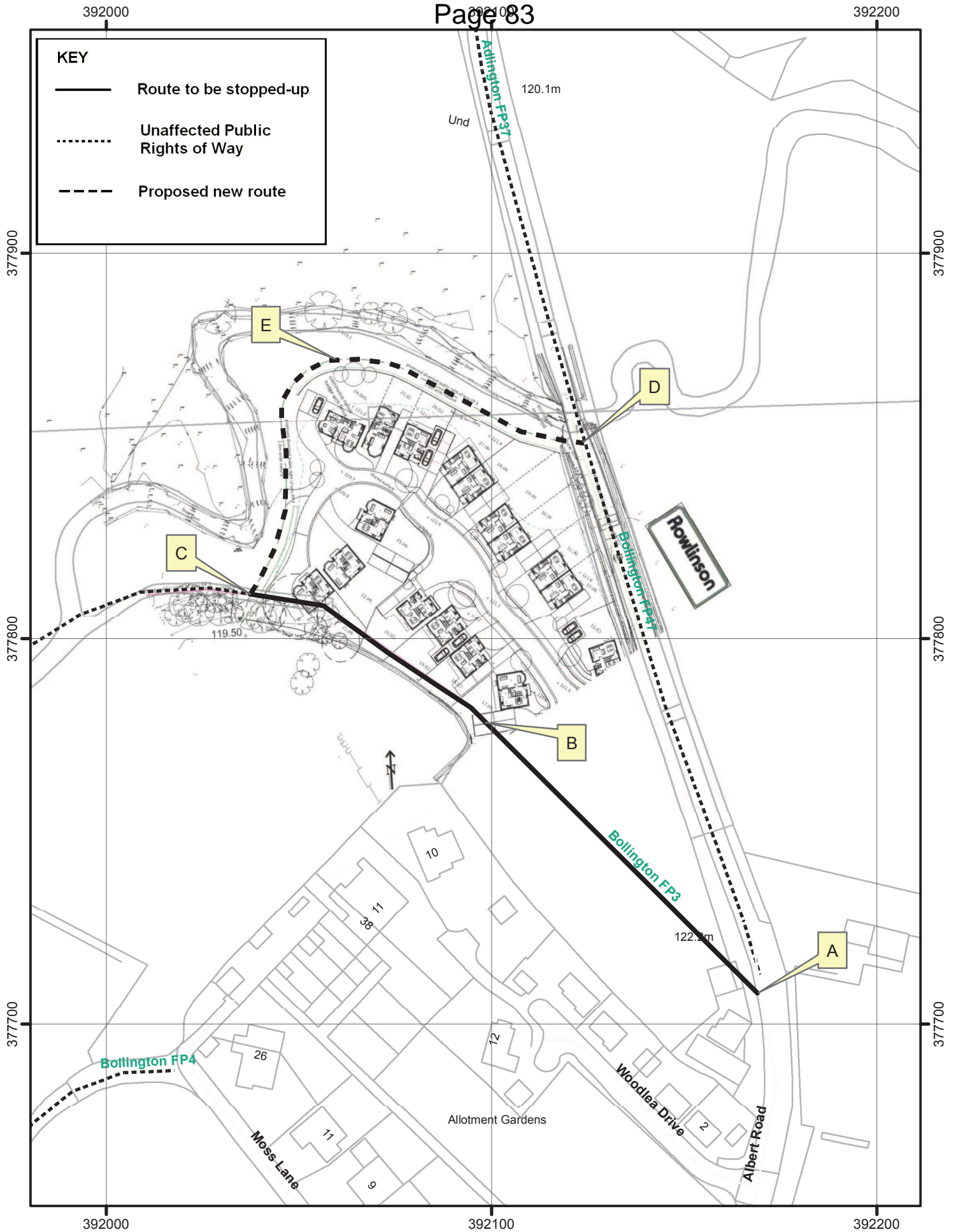
Email: marianne.nixon@cheshireeast.gov.uk

Background Documents: PROW file 028D/504

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Proposed diversion of Bollington FP3 (part)
overlaid with developer's plan

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



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CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of meeting:	15 th June 2015
Report of:	Head of Legal
Title:	Village Green Application – Land at Pickmere Informal Recreation Open Space, Jacobs Way, Pickmere, Knutsford

1.0 Report Summary

- 1.1 This report deals with an application by Mrs Catherine Plowden to register land at at Pickmere Informal Recreation Open Space (IROS), Jacobs Way, Pickmere, Knutsford (“the Application Land”) as a new village green under section 15 of the Commons Act 2006.

2.0 Recommendation

- 2.1 That at its meeting on the 15th June 2015, the Committee receives and accepts the written report of Mr Marwick (attached as appendix C) and that the application be rejected.

3.0 Reasons for Recommendation

- 3.1 The written report of Mr Marwick recommends that the application be rejected. The use of the land must be ‘as of right’ in order for an application to succeed. The law in that regard has recently been clarified in the Supreme Court in the case of *R. (Barkas) v North Yorkshire County Council* [2014] UKSC 31. Mr Marwick has considered the written evidence of user put forward in support of the application and concluded that the user is ‘by right’, not ‘as of right’, and therefore fails the statutory test.

4.0 Wards Affected

- 4.1 High Legh.

5.0 Local Ward Members

- 5.1 Councillor Olivia Hunter

(Previous Ward Member was Councillor Steve Wilkinson)

6.0 Financial Implications

- 6.1 There would be a cost in the event of an application for judicial review however the Council is the registration authority and therefore has a statutory duty to decide applications.

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 25th April 2013. This application was received on 5th February 2013 and therefore will not 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 Committee adopted a procedure for determining village green applications on 7 December 2009. Option 4 of that procedure is relevant in this case as it accepts that an application validly made may be referred to an independent person either to consider the application on the basis of written representations or to hold a non statutory public inquiry and to provide a report to the committee. Factors relevant in deciding whether to appoint an independent person are listed in the adopted procedure and include complexity of evidence, where evidence is finely balances and where the land is owned by the Council.
- 7.5 At the Committee meeting on the 8th December 2014 the Committee resolved to authorise the Head of Legal Services to appoint an independent expert to consider the application on the basis of written evidence and provide a report. The Committee also resolved to delegate authority to the Head of Legal Services to determine if a non-statutory public inquiry should take place upon the recommendation of the independent expert, after consulting with the Chairman of the Right of Way Committee.
- 7.6 The Head of Legal Services did appoint an independent person (Mr Marwick of Counsel) to consider the application and to provide a

report. That report was provided on the 15th March and the Head of Legal Services has determined not to convene a non-statutory public inquiry.

- 7.7 The application falls to be determined by this Committee on the basis of this report and the written report of Mr Marwick which appears as Appendix C to this report.
- 7.8 The burden of proof that the application meets the statutory tests is upon the applicant, on the balance of probabilities.
- 7.7 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.
- 7.8 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.
- 7.9 There is no right of appeal within the Council against the Committee's decision. The route for any challenges would be via judicial review.
- 7.2 Although Counsel's written report is recommended for acceptance by the Committee, the Committee is not bound to follow it.

8.0 Risk Assessment

- 8.1 It is important that decisions are taken in a way that demonstrates fairness and complies with the rules of natural justice. To that end the Committee adopted a procedure for determining village green applications on 7 December 2009 and it has followed the adopted procedure in the case of this application

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 Under section 15(2) of the 2006 Act the test for registration of land as a town or village green is that:-

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in

lawful sports and pastimes on the land for a period of at least 20 years; and

(b) they continue to do so at the time of the application

- 9.3 The application was submitted on 5th February 2013 by Mrs Catherine Plowden 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.
- 9.4 The application is based on the use of the land for pastimes and sports such as dog walking, children play areas, bird watching, picnics, football, cricket, flying kites, sledging and general recreation.
- 9.5 Following the statutory consultation process, the Council received a further 18 letters in support of the application, one letter of objection from a local resident and an objection from Pickmere Parish Council (as landowner).
- 9.6 The landowner's objection is based on a number of factual and legal submissions, including:
- The use of the land is no use "as of right"
 - The length of use and the ability to use the land
- 9.7 The applicant has disputed the factual and legal grounds on which the objections are based.
- 9.8 At its meeting on 8th December 2014, the Committee resolved as follows:
- a. *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.*
 - b. *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.*
- 9.9 On the 11th March the Head of Legal Services instructed Mr James Marwick of Counsel
- a. *to consider the Application and provide the Head of Legal with a written preliminary review as to whether the matter can be dealt with by way of written representations in the first instance.*
 - b. *If, after considering the Application, counsel is of the view that the Application can be dealt with by way of written representations, to sit as an independent expert to consider the Application on the basis of written representations and prepare a report, to go the Council's Public Rights of Way Committee, recommending whether the Application should be approved or not;*

c. after considering the Application, counsel is of the view that the Application needs to be dealt with by way of a non statutory public inquiry, he is to advise the Head of Legal Services in a telephone conference as to the reasons why an inquiry is necessary and, subject to further confirmation from the Head of Legal, to sit as an inspector for the non-statutory inquiry for the purpose of considering the evidence and to prepare a report and recommendation to go the Council's Public Rights of Way Committee on whether the Application should be approved or not.

9.10 Mr Marwick settled his preliminary advice on the 24th March 2015 a copy of which is attached at appendix B. The advice given was that the legal question of whether the user of the land was 'by right' or 'as of right' was likely to be determinative of the application. Mr Marwick advised that the application could be dealt with by way of written representations and invited the parties to submit further evidence representations and replies on the question of whether use was 'as of right'.

9.11 Further evidence, responses and replies were made in April and were passed to Mr Marwick for consideration.

9.12 Mr Marwick then settled his written report on the 15th May 2015, a copy of which is attached at appendix C.

9.13 Mr Marwick sets out his analysis in detail in his report, and concludes that:

'43.1 User of the Land has not been "as of right" but permissive for a large balance of the requisite 20 year period.

43.2 I recommend that the Application be rejected for the reasons I have given and for the reasons for rejection to be recorded as those stated in this report.'

9.14 Mr Marwick's report was circulated to the parties on the 3rd June 2015 and the parties have been invited to submit any further representations by the 10th June 2015. Any representations received will be provided to the committee by way of update.

9.15 The full range options open to the committee are to refuse the application, to allow the application, or to decide to hold a non-statutory inquiry. For the reasons set out in the report to the committee on the occasion of the committee meeting of the 8th December 2014, the Council has followed best practice in appointing independent counsel to advise whether to deal with the application by way of written representations or to hold a non-statutory public inquiry. Mr Marwick advised that the matter could be dealt with by way of written evidence and representations, and having considered the written evidence and representations has provided written advice on the determination of the application.

10.0 Access to Information

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

For further information:

Officer: Benedict King

Tel No: 01270 685814

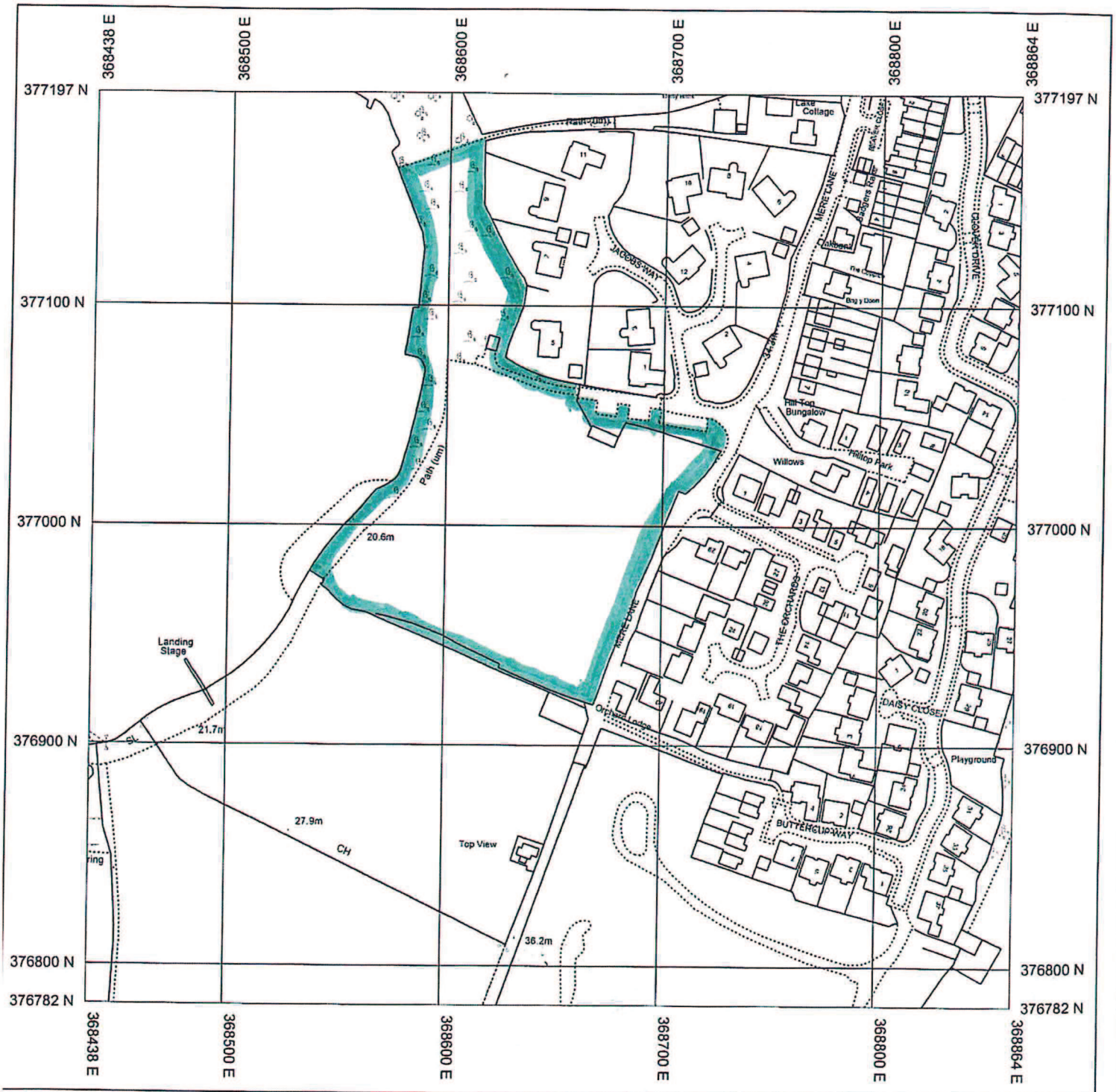
Email: benedict.king@cheshireeast.gov.uk

Mapping
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Location Map



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evidence of a right of way.

The representation of features as lines is no evidence
of a property boundary.



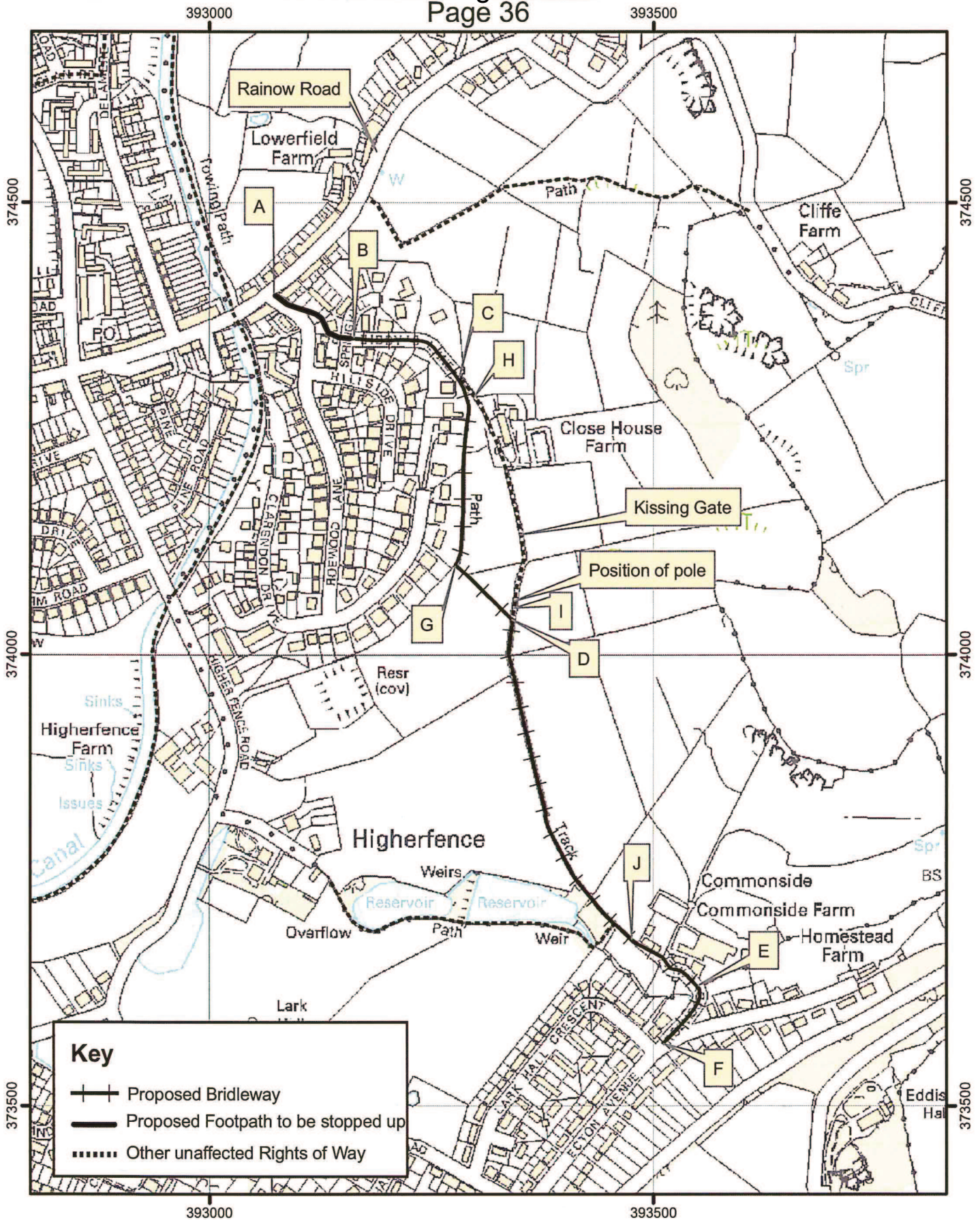
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Upgrade of Footpath No.9 (part) to bridleway and
Addition of a bridleway, Parish of Higher Hurdfield

Plan No.
WCA/004

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and should not be used for legal purposes



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**IN THE MATTER OF AN APPLICATION TO REGISTER LAND AT
PICKMERE AS A TOWN OR VILLAGE GREEN**

AND IN THE MATTER OF THE COMMONS ACT 2006

PRELIMINARY ADVICE

1. I am instructed by East Cheshire Borough Council (in its capacity as the relevant registration authority under the Commons Act 2006) in respect of an application dated 4th February 2013 (the **Application**) to register land at Pickmere (the **Land**) as a town or village green.
2. I am asked to act as an independent inspector in relation to the Application. I am a self-employed barrister in private practice who specialises in, among others, the law relating to village greens and open spaces. I am aware that this advice will be disclosed to the relevant parties to the Application and that, so far as I am aware, no party presently has legal representation. I have settled this advice with both these factors in mind.
3. I have been provided with a copy of all relevant evidence and correspondence filed both in support of and against the Application. Nothing contained in this preliminary advice should be taken to be a determination of any factual or legal issue in respect of the Application. Further, the summary of matters I set out below is intended as a brief and non-exhaustive overview of the issues.

The Application and Objections

4. The Application was made by Mrs. Catherine Plowden on behalf of the Pickmere Friends of the IROS group. There are a substantial number of statements and correspondence in support of the Application. The Application is made under section 15(2) of the Commons Act 2006. That section provides the following test for registration of land as a town or village green:-

“(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and

(b) they continue to do so at the time of the application.”

5. It is well established that the burden of proof is upon the Applicant to prove each of the constituent parts of the above statutory test on the balance of probabilities.
6. The Applicant’s case, in broad terms, is that the Land is well-established recreational land which has been used by the local community for well in excess of 20 years as of right. Additional arguments are cited as regards the impact upon the local community if the Land is not preserved as a village green.
7. The Application has been objected to by, among others, Pickmere Parish Council, who I understand is the owner of the Land and has been so since the execution of a deed of agreement dated 10th March 1997 in pursuance of section 106 of the Town and Country Planning Act 1990.

8. As well as raising a number of other objections, Pickmere Parish Council argues in light of the said agreement, and the circumstances generally by which it became custodian of the Land and has managed it, that any use of the Land has not been “as of right” because any user has been permitted by it.
9. The Applicant has been afforded the opportunity to respond to the objections and has done so in detailed further representations.

My Instructions

10. In the first instance, I am asked to consider whether it is appropriate for the matter to be dealt with by way of a non statutory public inquiry or whether the matter can be dealt with by way of a written report prepared by myself after consideration of the written representations and evidence filed and served by the relevant parties. I have been asked to provide East Cheshire Borough Council with a written advice as to whether I consider the matter is suitable for a written disposal or whether a non statutory public inquiry should take place.
11. There is no statutory duty or obligation placed upon a registration authority to determine a town or village green application by way of a public inquiry. A non statutory public inquiry will typically take place if there are material questions of fact which need to be determined in order for the town or village green application to itself be determined. An obvious case would be where there is a substantial dispute as the extent and nature of the use of the material land over the course of the relevant 20 year period upon which the determination of the application will itself turn.

12. In such cases, it would generally be sensible to hold an inquiry as the ultimate decision to register or not register is susceptible to challenge by judicial review on all the usual grounds.
13. If, however, there are narrow or no factual issues, or alternatively questions of law which may determine the application (notwithstanding any factual issues), a registration authority may choose to instruct a planning inspector or independent specialist to provide written advice and recommendations as to the merits of the application.

My Conclusions

14. As I have set out above, Pickmere Parish Council maintains that any user of the land has not been “as of right” but in fact permitted user by virtue of the arrangements in place by which it holds the Land.
15. Recent case law has confirmed that in certain cases where land is held on trust, or laid out otherwise by statute for recreational purposes, the land is used by the local community “by right” and not “as of right”: **R. (Barkas) v North Yorkshire County Council [2014] UKSC 31.**
16. There is an argument in this case that the use by the local community of the Land since 1997 has been “by right” and not “as of right” in that the right to use the Land has been extended to them by virtue of the Land being held for that purpose by Pickmere Parish Council pursuant to the said agreement.

17. Similarly, and closely overlapping with the above, there is the argument that any user of the land has been by permission which is the way the position is phrased by Pickmere Parish Council.
18. In either event, if user of the Land has not been “as of right”, this would likely on balance be determinative of the Application.
19. It is therefore my view that it is a proper, reasonable and fair approach for East Cheshire Borough Council to obtain in the first instance written advice and recommendations as regards the merits of the Application without proceeding with a non statutory public inquiry.
20. This is because the question of whether user has been “as of right” is potentially determinative of the Application. In coming to this conclusion, I express no view as regards the merits or otherwise of the Application. My full written advice and recommendations will be detailed in my written report in due course.
21. My recommendation is therefore that the matter can proceed by consideration of the Application on the basis of written representations and material evidence with a written report to be prepared thereafter for consideration by East Cheshire Borough Council. I add that taking such a course of action does not preclude a non-statutory public inquiry from later taking place if issues arise which make it prudent for such an inquiry to take place or I conclude in my written report that an inquiry is necessary.

22. My written report will consider whether there are any issues of law which, even when taking the Applicant's case at its highest, allow for the summary determination of the Application.
23. The written report will therefore not be an exhaustive examination of when and how often the local community has used the Land but rather primarily a consideration of whether such user has been "as of right".
24. I would ask that the parties be invited to file and serve any further written evidence and written representations which they consider are relevant to my consideration of the Application, and in particular the question of whether user of the Land has been "by right", "by permission" or "as of right". Although the opportunity has already been afforded to the parties to make representations, on the basis of my flagging of the "by right" issue they should be entitled to make further representations as see fit.
25. Of particular relevance may be any further documentation which evidences the basis upon which the Land is held by Pickmere Parish Council, albeit the key documentation appears to have been filed previously.
26. I should be grateful if my instructing solicitor could also collate any relevant documentation in this respect.

Directions

27. I would ask that the following direction be notified to the parties:-

27.1 Any further evidence and written representations relied upon by any party be filed and exchanged by Monday 13th April 2015.

27.2 Any response to the same to be filed and exchanged by Monday 20th April 2015.

27.3 Any request for an extension to any of the above deadlines should be made in writing with reasons why an extension is sought as soon as it reasonably becomes clear that the deadline cannot be met.

28. Upon completion of the above directions, I will prepare my written report and recommendations. The parties should be warned that the failure to produce any further evidence and representations in accordance with the above timetable may lead to the same not being taken into account.

29. Please do not hesitate to contact me with any queries.

James Marwick
Trinity Chambers
24th March 2015

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**IN THE MATTER OF AN APPLICATION TO REGISTER LAND AT
PICKMERE AS A TOWN OR VILLAGE GREEN**

AND IN THE MATTER OF THE COMMONS ACT 2006

WRITTEN REPORT

1. I am instructed by Cheshire East Borough Council (in its capacity as the relevant registration authority under the Commons Act 2006) (the **Registration Authority**) in respect of an application dated 4th February 2013 (the **Application**) to register land at Pickmere (the **Land**) as a town or village green.
2. I settled a preliminary advice dated 24th March 2015 which concluded that the Application could in the first instance be considered by way of a written report prepared after the filing of further representations and evidence rather than following a public inquiry. This was because I considered there were issues which were potentially determinative of the matter on the papers. I am instructed by the Registration Authority that the parties were afforded the opportunity to make further representations and I have been provided with copies of the same. As set out in my preliminary advice, I am now instructed to prepare a written report in respect of the Application.
3. In settling this written report, I have been provided with copies of the Application and all the material (including correspondence and statements) provided in support of it; the objections duly made to it; and further correspondence, submissions and evidence from all concerned with the Application, including such further representations as I invited in my preliminary advice. I have had regard to all of that material in compiling my report and recommendations.

4. I identify for all concerned at the outset (recognising that no interested party is legally represented) that the purpose of this report is the consideration of certain legal arguments which may be determinative of the Application and in particular the question of whether user has been "as of right". Matters of future development of the Land are not issues which fall to be considered as part of my determination as to whether the Land should be registered as a town or village green.

The Application

5. The Application is dated 4th February 2013 (date-stamped by the Registration Authority on 5th February 2013) contained within Form 44 and completed with an appropriate statutory declaration by Mrs. Catherine Plowden, who is named as the applicant in the Application but who acts on behalf of a local community group, the Pickmere Friends of the IROS group, members of which have counter-signed the Application (per the appended signatory list at Appendix B). For ease of reference, I shall refer to Mrs. Plowden and the Pickmere Friends of the IROS as the **Applicant**.
6. The relevant land identified for registration is named as the Pickmere Informal Recreational Space, as identified in outline in green on an Ordnance Survey plan (scale 1:2500) forwarded by the Applicant to the Registration Authority under cover of correspondence dated 15th February 2013. A summary of the background was appended to the Application at appendix B. Appendix B of the Application asserts that the land is informal recreational open space which has been used by the local community for in excess of 80 years as of right for lawful sports and pastimes and which since 1997 has been expressly held on trust by Pickmere Parish Council as informal recreational open space for the benefit of the local community.

7. A number of evidence questionnaires were filed in support of the Application which are set out in pro formas provided by the Open Spaces Society which speak to user of the Land for lawful sports and pastimes as of right.¹ There were also a number of photographs (both more recent and historic) evidencing user of the Land.
8. The locality or neighbourhood within a locality for the purposes of the Application is identified as Pickmere and at appendix D, an area encompassing Pickmere and an area beyond it is outlined in red as showing the same.

Objections of the Land-owner

9. The Land is owned by Pickmere Parish Council.² By objections dated 7th November 2013, it resisted the registration of the Land as a town or village green. Its primary objections can be summarised as follows:-

- 9.1 The Land was primarily used as a business site from 1927 to 1997 as evidenced by relevant land registry documents. Such land registry documentation also evidences the presence of domestic dwellings and commercial premises on the Land which would have prevented any accessibility to those parts of the Land at certain material times.
- 9.2 The Land was transferred to the ownership of Pickmere Parish Council in 1997 pursuant to a section 106 agreement for the purposes of its management and maintenance as an informal recreational open space and any user since that time has not been "as of right" but permissive in nature. The Objections particularise how it is said that user has been permissive and exhibits to the same relevant supporting documentation.

¹ Nine such statements were enclosed with the Application.

² There is a challenge made to this by the Applicant in its latest objections but an ultimate recognition that the documentary evidence shows that Pickmere is the owner of the land. In my analysis whether Pickmere Parish Council was owner or custodian of the land would not impact upon my conclusions.

Consultation

10. I have been provided with copies of further correspondence in support of the Application which were filed during the Registration Authority's consultation period. Whilst some of the correspondence asserts support for the registration of the Land without reference to evidence of user, in broad terms, the further correspondence speaks to user of the Land as informal recreational open space by local residents.
11. A Mrs. Judy Tarrant objected to the Application in correspondence dated 25th October 2013. Suffice it to say, that Mrs. Tarrant challenged certain matters relied upon in the Application but her objections do not otherwise assist me in considering the legal issues which are central to this written report.

The Land

12. The Land was acquired by Pickmere Parish Council from Turnfuture Limited in accordance with a section 106 agreement³ dated 10th March 1997.
13. The salient parts of the section 106 agreement were as follows:-
 - 13.1 Turnfuture Limited undertook to lay out the Land as an informal recreational open space in accordance with a master plan to be submitted to Macclesfield Borough Council for approval: paragraph 2 of schedule 2.
 - 13.2 Turnfuture Limited would pay the sum of £7,500 to Pickmere Parish Council upon the completion of the informal recreational open space for its future maintenance, it being anticipated that by that time Pickmere Parish Council would be the owner of the Land.
 - 13.3 Pickmere Parish Council undertook to permit that it would during daylight hours permit unrestricted access on foot to the

³ An agreement made under section 106 of the Town and County Planning Act 1990 is a mechanism used to ensure that a development is acceptable in planning terms.

IROS from designated points as shown on the master plan:
paragraph 2 of schedule 3.

14. In further representations forwarded to the Registration Authority, the Applicant states, inter alia, that

"The community of Pickmere were represented at the final negotiations for transfer of the land from Wainhomes by Pickmere Parish Council. Macclesfield Borough Council then designated the land as IROS. The then parish council simply considered itself to be custodians of the land, to be managed per pro the community."

15. It is common ground that the Land has been maintained as recreational open space by Pickmere Parish Council and it has been used by members of the local community for recreation. It is also common ground that some control has been exerted over access to the Land by way of the locking of certain gates.⁴

Statutory Framework: The Commons Act 2006 (the **2006 Act**)

16. The Application is made under section 15(2) of the 2006 Act. That section provides the following test for registration of land as a town or village green⁵:-

*"(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
and*

⁴ I note that the Applicant in its response to the objections (dated 10th September 2014) avers that only certain gates are locked and access is not prevented on foot. It is not for me to determine the extent of such control as part of this exercise but merely to note that there is some control exercised over access to the Land by Pickmere Parish Council.

⁵ The Growth and Infrastructure Act 2013 (partly in force as from 25th April 2013) introduced a number of further significant measures to the law on registering new town and village greens under the 2006 Act, which require consideration in addition to the provisions of section 15(2) above, but which are not engaged in the circumstances of this Application. Section 15C of the 2006 Act took effect on 25th April 2013 and excludes the right to apply for the registration of land in England as a town or village green where a trigger event has occurred in relation to the land. The right to apply for registration of the land as a green remains excluded unless and until a terminating event occurs in relation to the land. Trigger and terminating events are set out in Schedule 1A to the 2006 Act.

(b) they continue to do so at the time of the application."

17. The burden of proving that the Land has become a town or village green lies with the Applicant. The standard of proof is the balance of probabilities. All the elements required to establish that land has become a town or village green must be properly and strictly proved by an applicant on the balance of probabilities, per the guidance given by Lord Bingham in **R v. Sunderland City Council ex parte Beresford [2004] 1 AC 889**.
18. There are a number of issues which would properly need to be determined at a public inquiry. These include whether any part of the Land was occupied by buildings during the relevant 20 year period as *prima facie* shown on the Land Registry Documents, whether the Applicant has identified a locality or neighbourhood within a locality within the meaning of section 15(2)⁶ and whether there has been sufficiency of user by a significant number of local inhabitants⁷ for the relevant 20 year period.
19. The issue I identified as potentially determinative of the Application is whether user of the Land has been "as of right" and I now go on to address this issue and the relevant law in respect of the same. If user of the Land has not been "as of right" for the relevant 20 year period then the Application would fall to be rejected.

⁶ A neighbourhood need not be a recognised administrative unit (unlike a locality), however, a neighbourhood cannot be an area simply delineated on a map. It must have a sufficient degree of cohesiveness: *R. (on the application of Cheltenham Builders Ltd) v South Gloucestershire DC* [2003] EWHC 2803 (Admin); [2003] 4 P.L.R. 95. The question of whether there is such cohesiveness typically falls to be established at an inquiry. Whereas under the customary law, a right to indulge in activities could only attach to a single defined area, under the 2006 Act, "neighbourhood" can mean two or more neighbourhoods: *Leeds Group Plc v Leeds City Council* [2010] EWCA Civ 1438; [2011] Ch. 363.

⁷ Given it is common ground that the Land has been used as informal recreational open space, the question of sufficiency of user may be a matter readily established at a public inquiry in respect of the period of 1997 onwards. However, there would need to be established continuous use in the years from 1993 to 1997 onwards. These are matter properly for an inquiry.

Qualifying User

20. The Applicant must prove, inter alia, on the balance of probabilities that there has been sufficient qualifying user (i.e. use as of right for lawful sports and pastimes) during the 20 year period (being the 20 years immediately prior to the date of the Application) to allow the Land to be registered.
21. User "as of right" means not by force, nor stealth, nor the licence of the owner. The most authoritative discussion of the term was that of Lord Hoffmann in **R v Oxfordshire County Council, Ex p Sunningwell Parish Council [2000] 1 AC 335** (at para 351A):-

"The unifying element in these three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect the owner to resist the exercise of the right- in the first case, because rights should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user, but for a limited period."

22. The term was further considered by the Supreme Court in **R. (Barkas) v North Yorkshire County Council [2014] UKSC 31**. Per Lord Neuberger (at para 14):-

"...it is, I think, helpful to explain that the legal meaning of the expression "as of right" is, somewhat counterintuitively, almost the converse of "of right" or "by right". Thus, if a person uses privately owned land "of right" or "by right", the use will have been permitted by the landowner – hence the use is rightful. However, if the use of such land is "as of right", it is without the permission of the landowner, and therefore is not "of right" or "by right", but is actually carried on as if it were by right – hence "as of right". The significance of the little word "as" is therefore crucial, and renders the expression "as of right" effectively the antithesis of "of right" or "by right"."

23. In **Barkas** the Supreme Court was considering whether user of land allocated for public recreation under the Housing Act 1985 by a local authority was use "by right" or "as of right". In finding that such user was "by right", Lord Neuberger contrasted the position with that of land in private ownership (at para 24):-

"I agree with Lord Carnwath that, where the owner of the land is a local, or other public, authority which has lawfully allocated the land for public use (whether for a limited period or an indefinite period), it is impossible to see how, at least in the absence of unusual additional facts, it could be appropriate to infer that members of the public have been using the land "as of right", simply because the authority has not objected to their using the land. It seems very unlikely that, in such a case, the legislature could have intended that such land would become a village green after the public had used it for twenty years. It would not merely be understandable why the local authority had not objected to the public use: it would be positively inconsistent with their allocation decision if they had done so. The position is very different from that of a private owner, with no legal duty and no statutory power to allocate land for public use, with no ability to allocate land as a village green, and who would be expected to protect his or her legal rights."

24. In the context of user by permission, Lord Neuberger endorsed the commentary in Gale on Easements (19th Edition) as correct (para 17):-

"The law draws a distinction between acquiescence by the owner on the one hand and licence or permission from the owner on the other hand. In some circumstances, the distinction may not matter but in the law of prescription, the distinction is fundamental. This is because user which is acquiesced in by the owner is 'as of right'; acquiescence is the foundation of prescription. However, user which is with the licence or permission of the owner is not 'as of right.' Permission involves some positive act or acts on the part of the owner, whereas passive toleration is all that is required for acquiescence."

25. Lord Neuberger further held (at para 27):-

"It was suggested by Mr Edwards QC in his argument for Ms Barkas that, even if members of the public were not trespassers, they were nonetheless not licensees or otherwise lawfully present when they were on the Field. I have considerable difficulty with that submission. As against the owner (or more accurately, the person entitled to possession) of land, third parties on the land either have the right to be there and to do what they are doing, or they do not. If they have a right in some shape or form (whether in private or public law), then they are permitted to be there, and if they have no right to be there, then they are trespassers. I cannot see how someone could have the right to be on the land and yet be a trespasser (save, I suppose, where a person comes on the land for a lawful purpose and then carries out some unlawful use). In other words a "tolerated trespasser" is still a trespasser."

26. In the context of where land had been laid out by as private land-owner for use as open space recreational space, Lord Neuberger held (at para 37):-

*"...I do not agree with Lord Scott's view in para 47 [in Beresford] that public use of a site, on which the owner has erected a sign permitting use as a village green, would be "as of right". It would amount to a temporary permissive use so long as the permission subsists, as the public use would be "by right"."*⁸

27. Lord Carnwath in his concurring judgment agreed that the dedication of land as a village green would have a decidedly different effect to that of dedication as a public right of way (citing with approval part of the otherwise much-criticised speech of Lord Scott in **Beresford**) (at para 60):-

"Public rights of way are created by dedication, express or implied or deemed. Town or village greens on the other hand must owe their existence to one or other of the three origins specified in section 22(1) of

⁸ At paragraph 49 of his judgment, Lord Neuberger held that Beresford v Sunderland City Council [2003] UKHL 60 was wrongly decided

the 1965 Act... Dedication by the landowner is not a means by which a town or village green, as defined, can be created. So acts of an apparently dedicatory character are likely to have a quite different effect in relation to an alleged public right of way than in relation to an alleged town or village green." (para 40)

28. Both Lord Neuberger and Lord Carnwath endorsed the following general proposition (at para 16 and 65 respectively):-

"...that, if a right is to be obtained by prescription, the persons claiming that right "must by their conduct bring home to the landowner that a right is being asserted against him, so that the landowner has to choose between warning the trespassers off, or eventually finding that they have established the asserted right against him."

29. In **R. v Hereford and Worcester CC, Ex p. Ind Coope [1994] CLY 380**, there existed an express licence between the landowner and the local authority making the land available as recreational open space. In those circumstances, user by the public was not "as of right" notwithstanding that it had not been communicated to the wider public that there existed a licence by which the land was laid out as recreational open space. Brooke J held:-

"...if there is an express licence for the use of the land, then the land is used pursuant to that right. There can be no question of a right being established, adverse to the landowner, apart from the rights he may be granting under the licence."

30. Support for this proposition is also found in the case law relating to rights of way. In **R. v Secretary of State for the Environment, Ex p. Billson [1999] QB 374**, no right of way could arise because the use was one which was expressly permitted by a deed. Again, the existence of the deed had not been communicated to the users. The basis of such decisions is that it is the grant of permission which renders the use *precario*.

31. However, the Supreme Court in **R. (Newhaven) v East Sussex County Council and another [2015] UKSC 7** in considering the question of whether byelaws needed to be brought to the public's attention to make use "by right", were of the view that the normal rule for a private land-owner was that a licence be communicated to the inhabitants of the locality before it could be said that usage was "by right", save where it was appropriate to infer a consent or licence from the surrounding circumstances, even where there is no communication of a consent: per para 68, with **Billson** considered and disapproved in certain respects. The Supreme Court, drawing an analogy, with **Barkas** went on to find that as the byelaws in question imposed a statutory right to use the land in question there was no need for it to be communicated to the users of it.
32. More generally, I consider that **Billson** and **Ind Coope** are consistent with paragraph 27 of Lord Neuberger's judgment in **Barkas** where he held that if a person had a right to be present on land (whether under private or public law rights) then such use under that right amounted to permissive user.

Analysis

33. In the present case, there existed an express written agreement between, among others, Pickmere Parish Council and the relevant local authority, Macclesfield Borough Council (and their successors in title), that public use of the Land was to be permitted for recreation: per the section 106 agreement. The execution and validity of the agreement has not been challenged by the Applicant (indeed the Applicant has positively confirmed the circumstances of the land transfer in or about 1997) and I otherwise have no reason to doubt the veracity of the documentation provided on behalf of Pickmere Parish Council.

34. It follows that at all material times since the laying out of the Land as informal recreational open space a right to use the land as recreational open space has existed pursuant to the express licence by which the Land came to be owned and maintained by Pickmere Parish Council under the section 106 agreement.
35. **Barkas** now represents settled law as regards whether user has been permissive for the purposes of registration as a town or village green and it requires some positive act by the land-owner (or custodian of the land in question) beyond mere acquiescence in accordance with the commentary in *Gale on Easements* (12th Edition).⁹ Undoubtedly, on balance, the existence of the licence is a relevant act. However, pursuant to **Newhaven**, the normal rule is that such permission must be communicated to the local inhabitants but that this can be a matter of inference in all the circumstances with emphasis on the land-owner's objectively assessed intention. It is also clear that the general rule may also be departed from per **Newhaven** and that a different approach may be necessitated when elements of public law are relevant. Certainly, the general rule in **Newhaven** will not likely avail the land-owner who makes his own written agreement to provide a licence and then locks it in a private drawer. However, we are very much in different circumstances in the present case with an express agreement reached between third parties and a statutory authority to grant a licence.
36. Whilst **Newhaven** is authority that the existence of any licence is a matter which must as a normal rule be communicated by a private land-owner to the users of the proposed village green,¹⁰ this is an unusual case in that the permission is contained on an agreement made pursuant to statute (the Town and Country Planning Act 1990) with the intention of protecting certain land within a local authority

⁹ Per paragraph 17 as set out above.

¹⁰ The extent of any positive communication to the wider community of the existence of the agreement would properly be a matter of determination at a public inquiry. However, prima facie, the Applicant's position is that the community appears to have had an active role in the laying out of the Land as recreational open space under the section 106 agreement and that Pickmere Parish Council has engaged with the local community in terms of its maintenance of the Land.

area from development. It is therefore more closely analogous in many ways to the grant of a statutory right to use the Land than to an agreement made directly with users of the Land.

37. I am of the view that on balance it would represent an appropriate case to depart from the normal rule given the quasi public/private nature of a section 106 agreement and therefore not require any communication to users of the Land to be effective in accordance with the decision in **Newhaven** as regards byelaws. In this respect, I note that the decision in **Billson** insofar as the land-owner's deed gave a statutory right to use the land was approved by the Supreme Court in **Newhaven**. I also attach weight to the judgment in **Newhaven** insofar as it made clear that there would be circumstances in which there was no need to communicate permission. Lastly, I also bear in mind the authority of **Ind Coope** which is on all fours with the present case in material respects but which has not been judicially considered further after **Newhaven**.

38. However, even if I were wrong in this respect (and it would be a relatively novel point for determination by the Court) in any event, I consider on balance that such are the circumstances by which the Land has been laid out as recreational open space, that it is likely that the overt acts of Pickmere Parish Council in maintaining the land as informal recreational space, acting as the known custodian of the same (taking the Applicant's case at its highest) and exerting a measure of control over access to the Land would amount to sufficient positive acts as to confer an implied permission to the local community to use the land. In coming to this conclusion I bear in mind that Pickmere Parish Council is not a local authority with the power to lay out land under statute as informal recreational space in the manner referred to in the above authorities (in contrast to, for example, a County, Borough or District Council or Unitary Authority) and therefore the laying out of land as informal recreational space would more clearly represent to

such users that they were being granted a permission to use the land rather than user "as of right". Thus, on this secondary ground I consider that user of the land is not "as of right" on balance.¹¹

39. In circumstances, where Pickmere Parish Council had entered into an agreement to permit the user of land as recreational open space and had subsequently done so, the conduct of those using the land would not bring home to it that they were doing so "as of right" as they had a permission to use the land and therefore it was "by right".¹²
40. For the reasons I have given in the foregoing paragraphs, in my view, user of the Land has not been "as of right" at material times since the laying out of the land as informal recreational open space (a fact I infer occurred within a matter of months of the execution of the section 106 agreement) has been "by right". Whilst there is some ambiguity as regards the need of communication of any licence to local inhabitants in the established case law, I am fortified in my conclusion by the likely existence of an implied permission in all the circumstances.
41. On balance, I conclude that user has been permissive and that the local community have had the right to use the land pursuant to the section 106 agreement.
42. I add for the Applicant's benefit that it was apparent that Pickmere Parish Council's custodianship of the Land (and the nature of the section 106 agreement) was well known to the local community and that they engaged in the process. I would envisage that the Application may only have become weaker after a public inquiry, although of course I can make no formal findings in this respect at this stage.

¹¹ Albeit Beresford has been held to be wrongly decided, I consider that the circumstances in which the Land has been laid out in the present case are sufficiently distinct from the limited acts of the local authority in that case that I can properly reach a conclusion that there was an implied permission in the present case, bearing in mind that this is privately owned land.

¹² Sunnywell makes clear that the subjective understanding of the users of the land is not of relevance.

Conclusion and Recommendations

43. I have concluded as follows:-

43.1 User of the Land has not been "as of right" but permissive for a large balance of the requisite 20 year period.

43.2 I recommend that the Application be rejected for the reasons I have given and for the reasons for rejection to be recorded as those stated in this report.

44. If there are any queries with this report, please do not hesitate to contact me.

James Marwick

Trinity Chambers

j.marwick@trinitychambers.co.uk

15th May 2015

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Appendix A

List of all signatories

Margaret Jackson
Peter Jackson
Mitzie Davies
David Davies
Colin Tait
Catherine Plowden
Linda Ashbrook
Ray Ashbrook
Derek James
Angela James

Appendix B

Question 7. Justification for Application to Register the land as a Village Green

Grounds of Application and Evidence under the Act 2006 Section 15 (1)

We apply to register the land in Pickmere at the lakeside now known as the Informal Recreation and Open Space (IROS) as a village green because we believe the land meets the criteria, namely that a significant number of inhabitants indulged and do indulge in lawful sports and pastimes and have done so for in excess of 20 years 'As of Right'.

History

In Victorian times the land was owned by several small companies. It was sold to the Spencer family for use as boating and pleasure activities.

In 1927 the land was sold to Mrs Cheetham who owned it until 1990, when she retired. The land was then sold to a company named Turn Future who unsuccessfully applied for planning permission for seven years until 1997. Turn Future did encouraged water sports on the lake including jet skiing and, sadly, as a direct result the wildfowl and protected bird species disappeared. The public were unhappy with the activities on the land so the land was not greatly used from 1990 to 1997.

Following an accident involving a breeding swan the water sports were banned by the local authority and subsequently, in 1997 Turn Future were declared bankrupt and went into receivership. The land reverted back to the Co-op Bank.

During the years between Victorian times and 1997 the land was always free to use by the community of Pickmere, without permissions.

In 1997 the Co-op Bank approached the then Parish Council to consult with the community for agreement for planning permission for a Development Company to build 12 properties on the right hand side of the land. The agreement was that the development would be accepted if, in return, the left hand side of the land was retained as recreational space for the community.

Accordingly, the land was gifted to the community, held in trust by the Parish Council, and was designated as Informal Recreation Open Space (IROS) by Macclesfield Borough Council.

The then parish council obtained grant funding from the national lottery and made considerable improvements to the land including disabled access, health and safety measures and tree planting to enhance the land. A small pavilion that had been established to house toilets and a small kitchen for the builders was given with the land to the community of Pickmere and was improved to provide similar facilities for the public in line with most rural open spaces and country parks.

Gradually, the wildlife, swans and we believe some protected bird species, returned to their original habitat. These birds regularly walk up the few metres from the edge of the lake onto the grass of the IROS, often with their babies. They rest there in the sunshine and accept food to the delight of all the children, (and adults, if the truth be known). This is a magical place and the jewel in our crown.

The pictorial presentation demonstrates that the land has been used by the residents of Pickmere, (and visitors), since the oldest villager can remember. It has been used for lawful sports and pastimes 'As of Right' by the community of Pickmere for more than eighty years. There have never been restrictions of use imposed. The land has never had permanent occupation.

The community of Pickmere use the IROS for many recreations including:

Dog walking	daily
Children playing	daily
Children feeding the wildfowl	daily
Bird watching	daily
Family Picnics	seasonal/frequently
Walking	daily
Friendly football games	sometimes
Friendly cricket games	seasonal/sometimes
Teas at the lake	seasonal/weekly
Listening to the brass band	seasonal/sometimes
Friendly meetings	sometimes
Kite flying	frequently
Peaceful contemplation	daily
Children sledging	seasonal/frequently

Royal Events

Community events e.g. family fun days

The IROS is also used by hikers and trekkers

The IROS has a Public Footpath running directly through it.

It is home for flora and aqua fauna

Mr Joe Robinson is our local historian and has written and had printed several books on Pickmere, including the lake and the IROS. He is happy to provide any further information for you if you would like. He is now unable to walk to the IROS but he continues to travel four times a day, every day, in his motorised scooter to walk his dog, chat to the locals and his friends, feed the wildfowl and just enjoy what he considers to be part of his heritage.

The following paragraph is a direct lift from the Pickmere Press, (local news letter) printed in September 2000.

"The Parish Council is also committed to conservation measures at the lakeside and has been highly commended by English Nature for the improvements it has already achieved. It has always been envisaged that this area will remain as natural as possible and as low maintenance as possible. We are working closely with the Cheshire Wildlife Trust and Cheshire County Council Environmental Department. A subcommittee of 50% Parish Councillors and 50% Pickmere Lake Conservation Society has been elected to manage this Informal Recreational Open Space. Grant aid is being soughtImprovements are gradually being made.....This independent island of land will be reserved for wildlife habitat and the valuable long grasses ...will be retained to support wildlife".

Appendix C

Question 11 – Expected Challenge to the Application for Registration

We expect our application for registration to be challenged by six of eight councillors on the Pickmere Parish Council as they are currently proposing to build a Community Centre on the IROS land together with car parking to serve 70-100 members of the public. In addition there would be all the surrounding hard standing required to make the building accessible across the land, (although this hard standing has not yet been shown on any drawings). We estimate that most of the IROS land would be affected and that recreational freedom for villagers and animals would be curtailed and especially inhibited by moving vehicular traffic on the land at any time of the day and night

It is proposed that funding for the new build would be met in part by the sale of our existing village hall and its land, a beautiful, Victorian building in a perfect location on green belt land and part of Piickmere's heritage. We have not yet been advised how the remaining funding would be raised.

Our Parish Plan published circa 2010 indicates that "80% of the community are satisfied with the village hall" so we are uncertain from where the demand for the new build comes from, especially in these days of austerity, and why, as almost the entire community uses the IROS for sport or recreational pastimes.

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