

Public Rights of Way Committee

Agenda

Date: Monday 4th December 2017
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.

It should be noted that Part 1 items of Cheshire East Council decision making and Overview and Scrutiny meetings are audio recorded and the recordings will be uploaded to the Council's website.

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

1. **Apologies for Absence**

2. **Declarations of Interest**

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

3. **Minutes of Previous meeting** (Pages 3 - 9)

To approve the minutes of the meeting held on 11 September 2017

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

E-Mail: rachel.graves@cheshireeast.gov.uk

Also in accordance with Procedure Rule No. 35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the 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. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 49 (part), Parish of Rainow** (Pages 10 - 15)

To consider the application to divert part of Public Footpath No.49 in the parish of Rainow

6. **Town & Country Planning Act 1990 section 257: Application for the Diversion of Public Footpaths Nos. 4 and 6 (parts), Shavington cum Gresty** (Pages 16 - 23)

To consider the application to divert parts of Public Footpath Nos.4 and 6 in the parish of Shavington cum Gresty

7. **Wildlife & Countryside Act 1981- Part III, Section 53: Appeal Outcome for Application No. MA/5/251: Application for the Addition of a Public Footpath between no. 95 and 97 King Street to Old Market Place, Knutsford** (Pages 24 - 34)

To note the outcome of the appeal

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 11th September, 2017 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor D Flude (Vice-Chair, in the Chair)

Councillors Rhoda Bailey, S Davies, T Fox, L Gilbert and J Wray

Officers

Mike Taylor, Rights of Way Manager

Marianne Nixon, Public Path Orders Officer

Patricia Evans, Lawyer

Nicky Folan, Lawyer

Rachel Graves, Democratic Services Officer

10 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor M Hardy.

11 DECLARATIONS OF INTEREST

Item 5: Application to Register land in the Parish of Somerford as a town or village green: 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.

12 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meeting held on 12 June 2017 be confirmed as a correct record and signed by the Chairman.

13 PUBLIC SPEAKING TIME/OPEN SESSION

No members of the public present wished to speak.

14 VILLAGE GREEN APPLICATION - APPLICATION TO REGISTER LAND IN THE PARISH OF SOMERFORD AS A TOWN OR VILLAGE GREEN

Councillor J Wray, having previously declared an interest, left the meeting whilst this application was considered.

During consideration of this application Councillors R Bailey and L Gilbert arrived to the meeting. They did not take part in the discussion or voting on the application.

The Committee considered the report of the Independent Expert on the application to register land adjacent to Chelford Road and Black Firs Lane, Somerford as a village green.

The application was submitted by Mr Nicolas Bell in May 2013. The Right of Way Committee originally received a report on 15 September 2014 and resolved that an independent expert be appointed to consider the application on the basis of written representations and to provide a report to the Committee. On 16 March 2015 a further report to the Committee recommended that the view of the independent expert be accepted and the application be rejected. The Committee resolved as such.

Following the decision, a Judicial Review of the decision was commenced on 15 June 2015 alleging amongst other things that there had been a procedural error as the independent expert had not given the Applicant the opportunity to comment on late evidence submitted by the Highway Authority, and that there should have been a public inquiry held to determine facts. In relation to these two points the Judicial Review application succeeded and the village green application fell to be determined again.

On 13 June 2016, the Committee resolved that an appropriately qualified independent expert be appointed to conduct a non-statutory inquiry to consider the application and provide the Committee with a report and recommendation for determination.

Mr Timothy Jones, Barrister, was appointed as the independent expert and was provided with copies of the application, plan and supporting evidence and also the information that resulted in the Judicial Review and copy of the High Court Decision.

Mr Jones held a non-statutory public inquiry to consider evidence over the course of 8, 9, 10 and 11 May 2017 and had subsequently produced a report. At the inquiry Mr Nicholas Bell represented himself until he withdrew from the Inquiry following giving his own evidence. Mr Christian Hawley of Counsel appeared on behalf of the Highways Authority and Mr Andrew Platt, Solicitor appeared on behalf of Richborough.

Mr Jones in his report concluded that part of the land covered by the application should be excluded from the site as it had been the subject of a trigger event, and in relation to the remainder of the land concluded that:

1. the Applicant had not demonstrated that the use of the land took place as of right
2. the Applicant had not demonstrated that the area specified in the application was a locality or neighbourhood; and

3. the Applicant had not demonstrated that if it had been a locality or neighbourhood that the use would have been significant for at least 20 years.

The Committee considered that report and recommendations of the Independent Expert and unanimously

RESOLVED:

That the report of the Independent Expert, Mr Timothy Jones, 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 set out in the Independent Expert's report.

15 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 12 (PART), PARISH OF POTT SHRIGLEY

The Committee considered a report which detailed an application requesting the Council to make an Order to divert part of Public Footpath No.12 in the parish of Pott Shrigley.

In accordance with Section 119(1) of the Highway 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.

During consultation for the Cheshire East Rights of Way Improvement Plan in 2010, Pott Shrigley Parish Council contacted the Public Rights of Way Unit with a suggestion to divert part of Public Footpath No.12 Pott Shrigley. The suggestion was logged and added to the Improvement Plan as an aspiration. In 2012 the landowner of the path, Mrs Veronica Shelly, contacted the Public Right of Way Unit to confirm her support for the proposed diversion and the proposal was added to the waiting list for Highways Act diversions. It had now reached the top of the list and had been initiated in the interests of the public.

The proposed route had been in place as a permissive route for a number of years. This path had a width of two metres with a 1.2 metre compacted stoned surface. It passed through a small wooded area before exiting through a kissing gate onto a layby on Shrigley Road which provided parking and where a parish council notice board was located. The length of the proposed route was approximately 59 metres. The proposed diversion would provide a safer exit point onto Shrigley Road, thereby improving public safety.

The Committee noted that no objections had been received during the informal consultation and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would be of benefit to the public as would provide a safer exit

point onto Shrigley Road. It was considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a Diversion Order were satisfied.

The Committee 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.12 in the Parish of Pott Shrigley by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No. HA/116 on the grounds that it is expedient in the interests of the public.
- 2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

16 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO'S 2 AND 3 (PARTS), PARISH OF HULME WALFIELD

The Committee considered a report which detailed an application from Mr Stuart Hough of Bloor Homes, 2-4 Whiteside Business Park, Station Road, Holmes Chapel, Cheshire, requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1990 to divert parts of Public Footpath Nos.2 and 3 in the parish of Hulme Walfield.

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 public footpath if it was satisfied that it was necessary to do so to enable development to be carried out in accordance with a planning permission which had been applied for or granted.

It was report that in paragraph 9.4 of the report the wording 'Planning Permission Ref 62/3107C' should read 'Planning Permission Ref 16/3107C'.

Planning permission had been granted on 15 May 2017 for a residential development on land between Gaintswood Lane and Manchester Road, Hulme Walfield - planning reference 16/3107C.

The existing alignment of the footpaths would be directly affected by the construction of the residential development. Bloor Homes owned the land

over which both the current footpaths and proposed diversion route ran. Public Footpath No.2 Hulme Walfield would be specifically obstructed by a water pumping station required for the planned residential development and part of the footpath would also run across the entrance estate road of the new development. Furthermore, topographical changes in the land to the east of the hedge line along which it currently ran would render the land unsuitable to carry the footpath in future.

Part of Public Footpath No.3 Hulme Walfield would also run across the entrance estate road and was required to be diverted to eliminate this and to link to the diversion route of Public Footpath No.2 Hulme Walfield.

The developer was presently installing a footpath along the line of the proposed diversion for Public Footpath No.2 Hulme Walfield to provide users with an alternative footpath whilst the current path was closed on health and safety grounds whilst the development was built. If the diversion was approved, this would become the new route and it was the intention of the developer to upgrade to bridleway status.

The Committee considered the application and concluded that it was necessary to divert parts of Public Footpath Nos. 2 and 3 Hulme Walfield to allow for residential development, as detailed in planning reference 16/3107C. It was considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

RESOLVED: That

- 1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert parts of Public Footpath Nos. 2 and 3 Parish of Hulme Walfield, as illustrated on Plan No.TCPA/042, on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 3 In the event of objections to the Order being received and not resolved, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

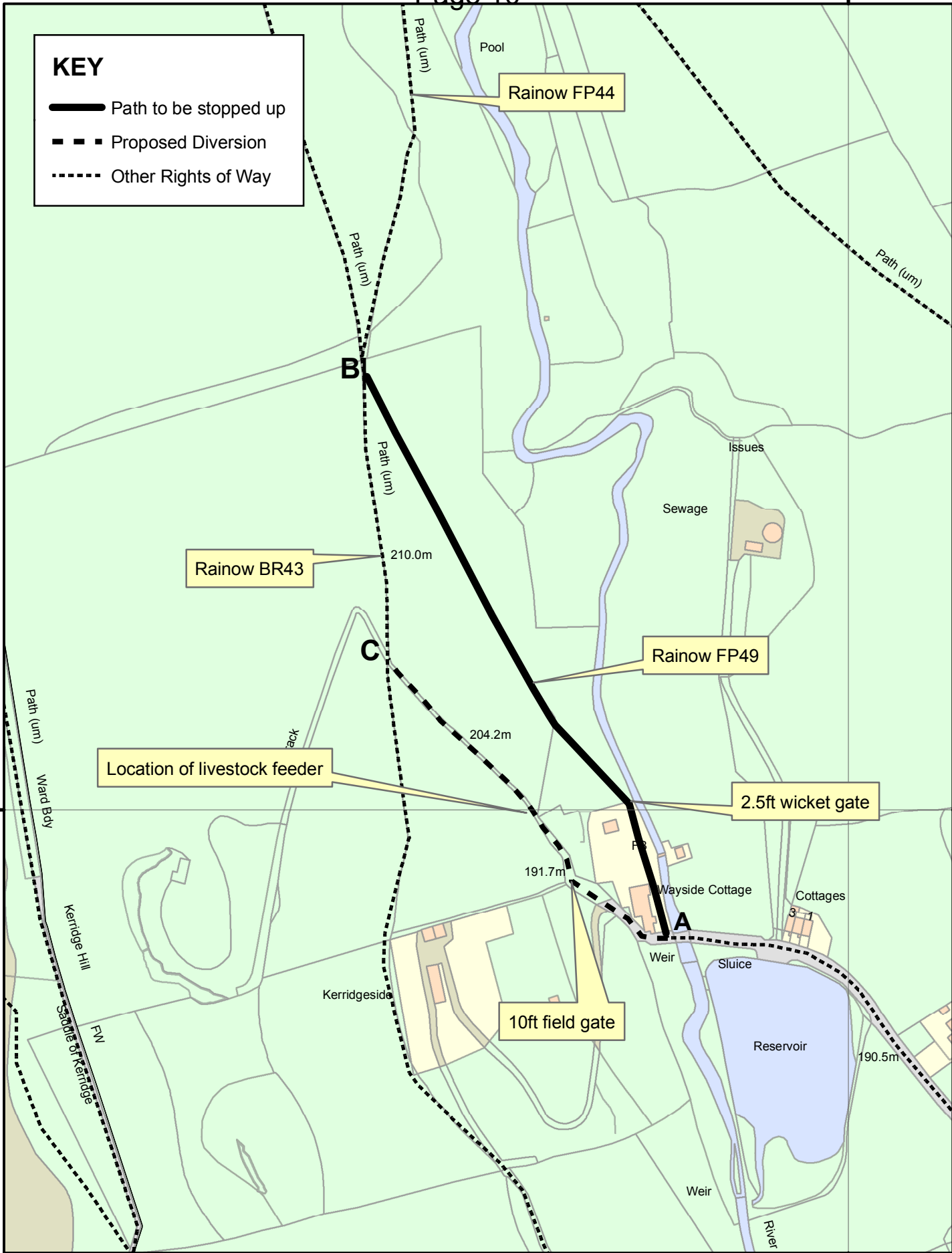
The meeting commenced at 2.00 pm and concluded at 2.30 pm

Councillor D Flude (Vice-Chair, in the Chair)

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KEY

- Path to be stopped up
- Proposed Diversion
- Other Rights of Way



376500

376500



HA80 S119
 Proposed Diversion of Public Footpath
 No. 49 (Part) Parish of Rainow

Plan No.
 HA/117

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



1:2,500

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 4th December 2017
Report of: Public Rights of Way Manager
Subject/Title: Highways Act 1980 s119
Application for the Diversion of Public Footpath No. 49 (part),
Parish of Rainow

1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 49 in the Parish of Rainow. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit in the interests of the landowners. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.

2.0 Recommendation

- 2.1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No. 49 in the Parish of Rainow by creating a new section of public footpath and extinguishing the current path as illustrated on Plan no. HA/117 on the grounds that it is expedient in the interests of the landowners.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowners for the reasons set out in paragraph 10.6 below.

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

- Whether the proposed new path and its exit point are substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:

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

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

3.4 The proposed route will not be 'substantially less convenient' than the existing route. Diverting the footpath would move the footpath away from the applicants home, thereby improving their privacy and security. In addition, there is no cross gradient to navigate on the diverted route, providing an easier walking surface for walkers. It is considered that the proposed route will be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a diversion order are satisfied.

4.0 Wards Affected

4.1 Sutton

5.0 Local Ward Members

5.1 Councillor Hilda Gaddum

6.0 Policy Implications

6.1 Not applicable

7.0 Financial Implications

7.1 Not applicable

8.0 Legal Implications

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

9.0 Risk Management

- 9.1 Not applicable

10.0 Background and Options

- 10.1 An application has been received from Mr and Mrs Weaire of Wayside Cottage, Hough Hole, Rainow, SK10 5UW ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 49 in the Parish of Rainow.
- 10.2 Public Footpath No. 49 Rainow commences at its junction with Public Footpath No. 47 Rainow at Hough Hole House, O.S. grid reference SJ 9470 7630 and runs in a generally north westerly direction to its junction with Public Bridleway No. 43 Rainow at O.S. grid reference SJ 9426 7671. The section of path to be diverted is shown by a solid black line on Plan no. HA/117 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points A-C.
- 10.3 The majority of the land over which the section of the current path to be diverted and the proposed diversion run belongs to Mr W B Moss. Mr Moss has provided written consent for the proposal. Mr and Mrs Weaire own the remainder of the land (at Wayside Cottage).
- 10.4 The section of Public Footpath No. 49 Rainow to be diverted commences at O.S. Grid Reference SJ 9441 7643 (point A on plan no. HA/117) and runs in a generally north westerly direction, in very close proximity to the applicants property (Wayside Cottage) before exiting through a 2.5ft wicket gate onto the adjacent landowners' (Mr Moss) pasture. It then travels up a hill to meet Public Bridleway Rainow No. 43 at O.S. grid reference SJ 9426 7671 (point B on plan No. HA/117). The pasture has a cross gradient slope of approximately 1:3 – 1:4, with a slope of approximately 1:5, this makes for uncomfortable and sometimes difficult walking for users, especially in wet and windy weather. It is proposed to divert approximately 318 metres of the footpath (point A-B on plan No. HA117).
- 10.5 The proposed diversion runs along an existing track in a north westerly direction (from point A on plan No. HA/117) to meet Public Bridleway Rainow No. 43 at O.S. grid reference SJ 9427 7657 (point C on plan No. HA/117), to the west of and parallel to the current line of the footpath. It passes through a 10ft field gate (which will be replaced with a 2 in 1 gate if a diversion Order is made) to the south of Wayside Cottage, as indicated on the enclosed plan, and then climbs the hill at

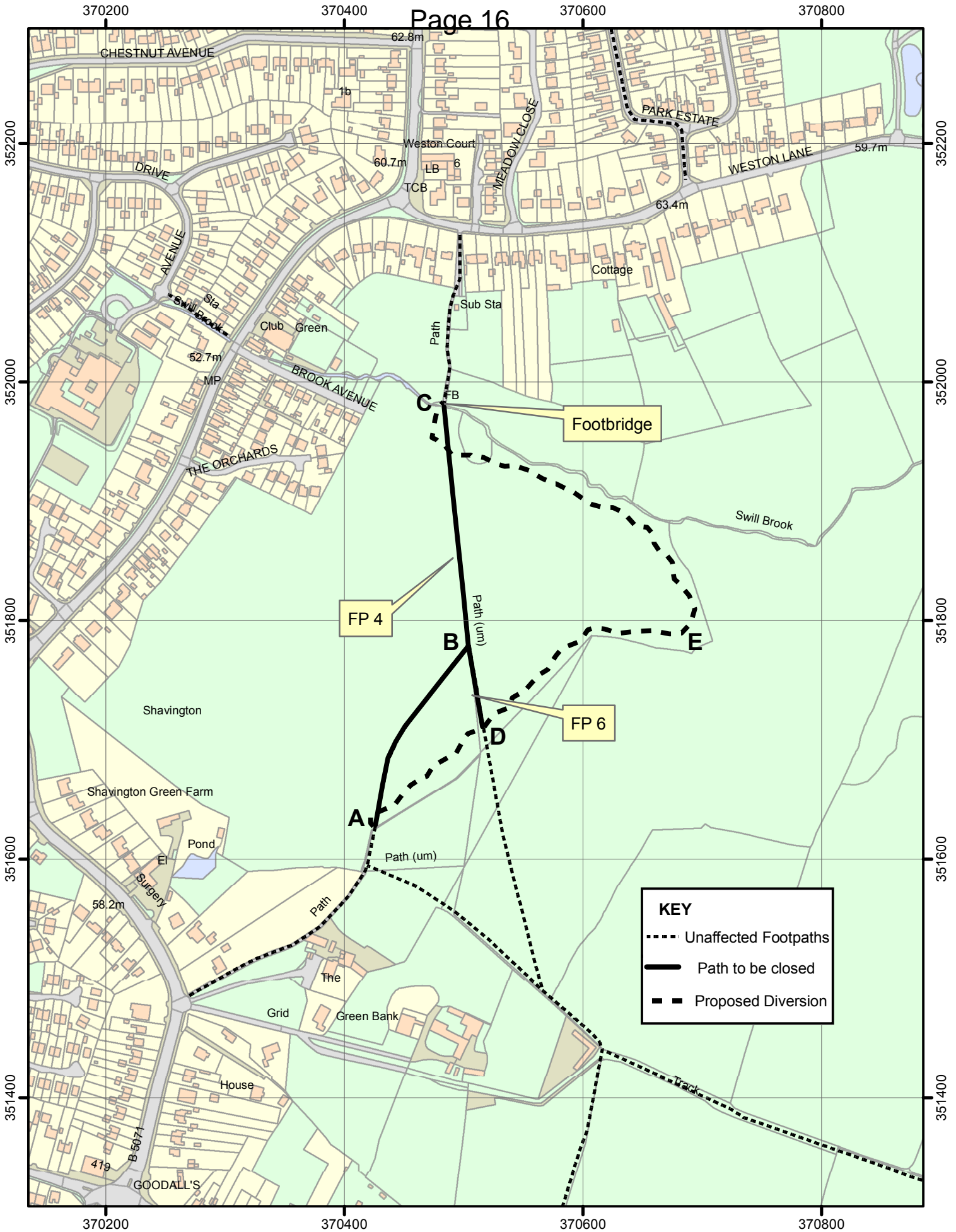
a gradient of 1:5 but with no cross gradient for users to navigate it provides a much easier walking surface. The diverted route (point A-C on plan No. HA/117) is shorter than the current route, at approximately 201 metres, and then from point C to B on plan No. HA117 it is approximately 140 metres.

- 10.6 The proposal is in the interests of the applicants as it would move the footpath away from their home, thereby greatly improving privacy and security. It would also provide an easier walking surface for users.
- 10.7 The Ward Councillor has been consulted about the proposal. No comments have been received.
- 10.8 Rainow Parish Council has been consulted. No comments have been received.
- 10.9 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 10.10 The user groups have been consulted. The Peak and Northern Footpaths Society has responded to state that it has no objection to the proposal.
- 10.11 The East Cheshire Ramblers responded with a number of queries:
1. *Does the adjacent landowner (Mr Moss) intend to move the circular livestock feeder (indicated on plan no. HA/117) to a location well clear of the diverted footpath as the area around the feeder is wet and boggy?* Mr and Mrs Weaire have contacted Mr Moss who has agreed to find an alternative location for the feeder.
 2. *What are the proposals for access through, or next to, the 10ft field gate?* Mr Weaire has confirmed that he will replace the field gate with a '2 in 1' gate (a pedestrian gate built into a field gate forming one structure) if a diversion Order is made.
 3. *A fingerpost, or waymarking post, is required at the northern end of the diversion at the junction with Rainow BR43.* If a diversion Order is made we will ensure that there is appropriate signage for the new route.
- 10.12 The Council's Nature Conservation Officer has been consulted, no comments have been received.
- 10.13 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current route.

11.0 Access to Information

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

Name: Hannah Duncan
Designation: Definitive Map Officer
Tel No: 01270 686062
Email: hannah.duncan@cheshireeast.gov.uk
File No: 253D/538



Town & Country Planning Act 1990 s.257
Proposed Diversion of
Shavington FP's 4 & 6 (pts)

Plan No.
TCPA /043



1:4,000

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of meeting: 4 December 2017
Report of: Public Rights of Way Manager
Title: Town & Country Planning Act 1990 S257:
Application for the Diversion of Public Footpaths Nos.
4 and 6 (parts), Shavington cum Gresty

1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert parts of Public Footpaths Nos. 4 and 6 in the Parish of Shavington cum Gresty. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way Unit as an application has been made by Taylor Wimpey, Manchester Ltd of 1 Lumsdale Road, Stretford, Manchester, M32 0UT, with the consent of the landowner Miss T A Need. The application has been made as a consequence of planning approval granted for:

Planning Application 15/4046N

The approval of reserved matters in respect of appearance, landscaping, layout, and scale for the construction of 275 dwellings including landscaping, recreation and amenity open space on land at Crewe Road, Shavington.

The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the sections of footpaths concerned.

Members are required to consider the issues set out in this report and make a decision as to whether the proposed footpath diversion is necessary to enable development to take place in accordance with section 257 of the Town and Country Planning Act 1990 (as detailed in paragraph 3.1 below).

2.0 Recommendations

- 2.1 An Order is made under Section 257 of the Town and Country Planning Act 1990 to divert parts of Public Footpaths Nos. 4 and 6 as illustrated on Plan No. TCPA/043A on the grounds that the Borough Council is satisfied that it is necessary to do so in order to enable development to be carried out.

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

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

3.0 Reasons for Recommendations

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

3.2 It is considered that it is necessary to divert the Unrecorded Footpath as illustrated on Plan No. TCPA/043 to allow for the construction of 275 houses and associated infrastructure. The footpath would be directly affected by the proposed housing and the road network.

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

4.0 Wards Affected

4.1 Shavington

5.0 Local Ward Members

5.1 Councillor Steven Edgar

6.0 Financial Implications

6.1 Not applicable

7.0 Legal Implications

7.1 Section 257 of the Town and Country Planning Act 1990 ("TCPA") allows the council to make and confirm orders authorising the stopping up or diversion of a footpath if they are satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission applied for. There are requirements of public notice and if objections are received to the proposed order and not withdrawn, the order must be submitted to the Secretary of State for confirmation, who must either call for a local inquiry or give the objectors an opportunity of being heard before making his decision.

This would require attendant legal involvement and use of resources. It follows that the Committee decision may or may not be confirmed by the Secretary of State.

- 7.2 The procedure in making an order is detailed in Schedule 14 to the TCPA and the Town and Country Planning (Public Path Orders) Regulations 1993, which are made under the TCPA.

8.0 Risk Assessment

- 8.1 Not applicable

9.0 Background and Options

- 9.1 An application has been received from Taylor Wimpey, Manchester Ltd (the applicant) requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert parts of Public Footpaths nos. 4 & 6 in the Parish of Shavington cum Gresty.
- 9.2 The footpaths run over land to the east of Crewe Road in Shavington. Public Footpath no. 4 runs from Weston Lane (C504) at grid reference SJ 7049 5212 in a generally southerly and south westerly direction to its junction with Crewe Road (B5071) at grid reference SJ 7026 5148. Public Footpath no.6 runs from its junction with Footpath no. 4 at grid reference SJ 7050 5177 in a generally south easterly direction to the Hough parish boundary at grid reference SJ 7120 5119. The sections of paths to be diverted are shown by solid black lines on Plan No. TCPA/043 running between points A-B-C and B-D. The proposed diversions are illustrated with black dashed lines on the same plan, running between points A-D-E-C.
- 9.3 The proposed diversion is required to accommodate the approved development of 275 houses and associated infrastructure including landscaping, recreation and amenity open space as shown on the attached Development plan. The routes of the two footpaths will partly be subsumed by housing and partly by the internal road layout. The proposed diversion will take the footpath into the peripheral landscaped/green area of the development and will form an attractive informal recreational route. The paths will run along the south easterly and north easterly boundaries, adjacent to open fields to the south east and a wooded valley alongside Swill Brook to the northeast. Footpath no.4 will remain on its current alignment from the Crewe Road end, running alongside the new access road to the site with a green landscaped zone in between. Where it enters the development the section A-B, a distance of approximately 173 metres (on Plan no. TCPA/43) will be diverted to run along the dashed line indicated A-D, a distance of approximately 133 metres, to link with Footpath No. 6.
- 9.4 That part of footpath No.6 where it enters the site at the southern boundary, point D (on Plan no. TCPA/43), to its junction with Footpath

No.4 at point B and the connecting section of Footpath no.4 running northerly from Point B to Point C, will be diverted to the dashed line running D-E-C.(on Plan No TCPA/043). The length of the route D-B-C is approximately 273 metres and the proposed new route will be 540 metres long. Whilst this is practically twice the length of the current section of footpath this path will fulfil a recreational function in this location offering opportunities for short local walks on the rural fringe and access to longer walks via the connecting rights of way network. There will be several connecting paths linking into the adjacent cul de sacs and estate roads. The direct alignment that the current footpath provides will be served by an estate road with a footway to its eastern boundary, thus continuing the functional route northwards to Weston Lane via the unaffected section of Footpath no.4.

- 9.5 The whole of the proposed route (A-D-E-C) will be constructed to a 2 metre width with timber edging and a compacted stone surface. The path will run around the periphery of the development within a green buffer zone of varying width with adjacent housing and access drives facing onto the footpath. The maintenance of the footpath and the green areas will be the responsibility of a management company. Where the unaffected section of footpath no.4 leaves the site towards Weston Road to the north, there is currently a narrow sleeper bridge across Swill Brook. Taylor Wimpey have offered to install a new footbridge to a specification approved by the PROW department and also replace the section of boardwalk that leads to the bridge from the south. The footbridge straddles the boundary of the development site so is not entirely within the developer's control. This will be a welcome improvement to a footpath which will probably be subject to greater usage on full occupation, post completion of the development.
- 9.6 Taylor Wimpey have requested that the Order making stages for these paths be phased; in the first instance making an Order to divert Footpath no. 4(pt) section A – B onto section A – D (as shown on Plan No. TCPA/43). This area is to be the first phase of development and whilst this is undertaken it is proposed that the line D-B-C will be kept open. A second Order will then be made to divert Footpath nos. 4(pt) and 6(pt) D-B-C onto section B-E-D in preparation for the second stage of development to commence.
- 9.6 Councillor Steven Edgar has been consulted as the Ward Councillor. No comments have been received
- 9.7 Shavington cum Gresty Parish Council has been consulted. They have responded that they have no objection to the proposal but have suggested that the path remain as a countryside footpath without surface treatment. Our response to this suggestion has been that there would be a significant deterioration in the path surface caused by likely increased usage and therefore the proposed surfacing will create a more sustainable footpath for the future.

- 9.8 The user groups have been consulted. No comments have been received.
- 9.9 The Council's Nature Conservation Officer has been consulted. No comments have been received.
- 9.10 An assessment in relation to Equality Act 2010 Legislation has been carried out by the PROW Maintenance and Enforcement Officer for the area and it is considered that the proposed diversion would be more convenient to use than the existing route.

10.0 Access to Information

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

For further information:

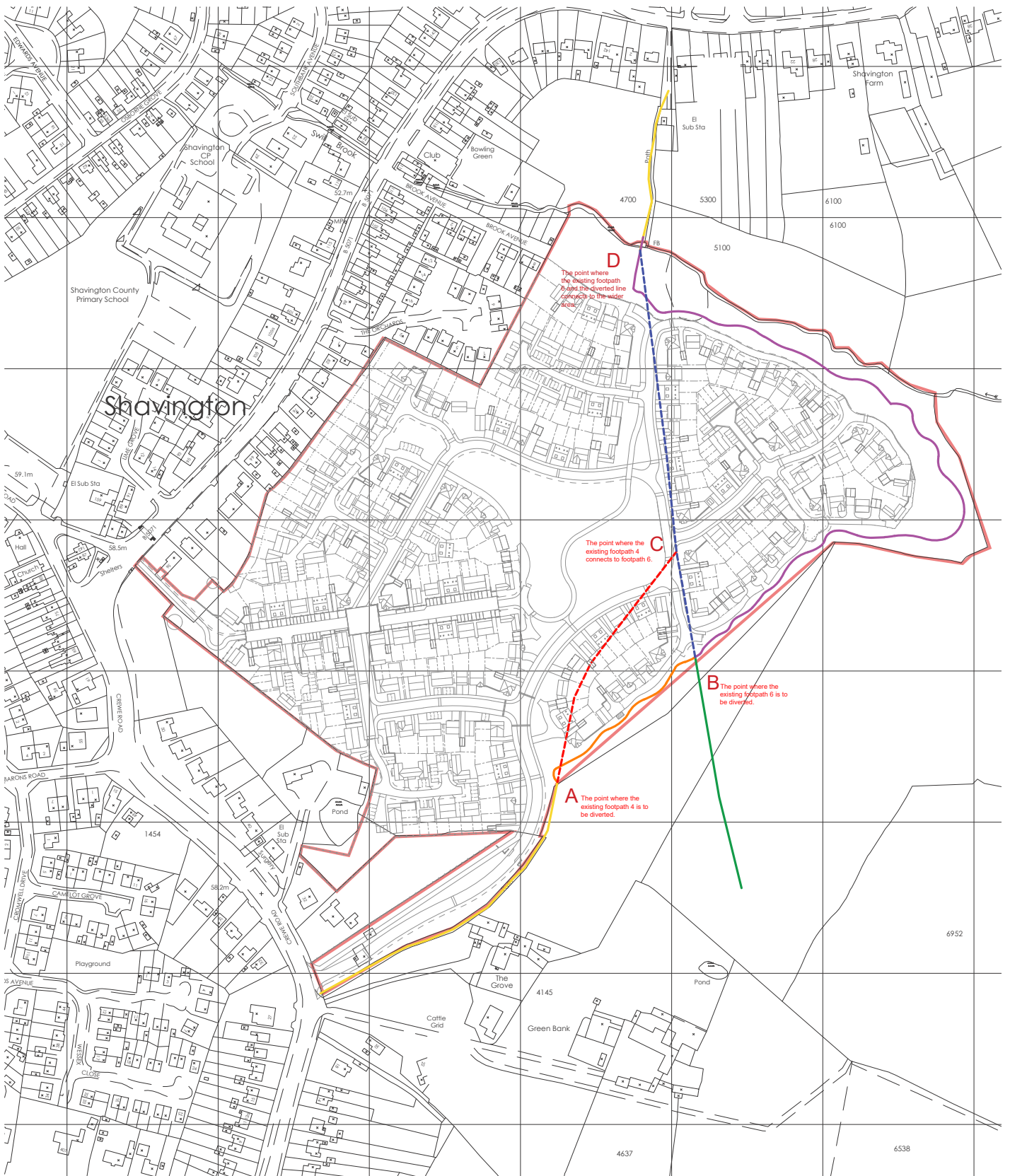
Officer: Clare Hibbert

Tel No: 01270 686063

Email: clare.hibbert@cheshireeast.gov.uk

Background Documents: PROW file 264D/539



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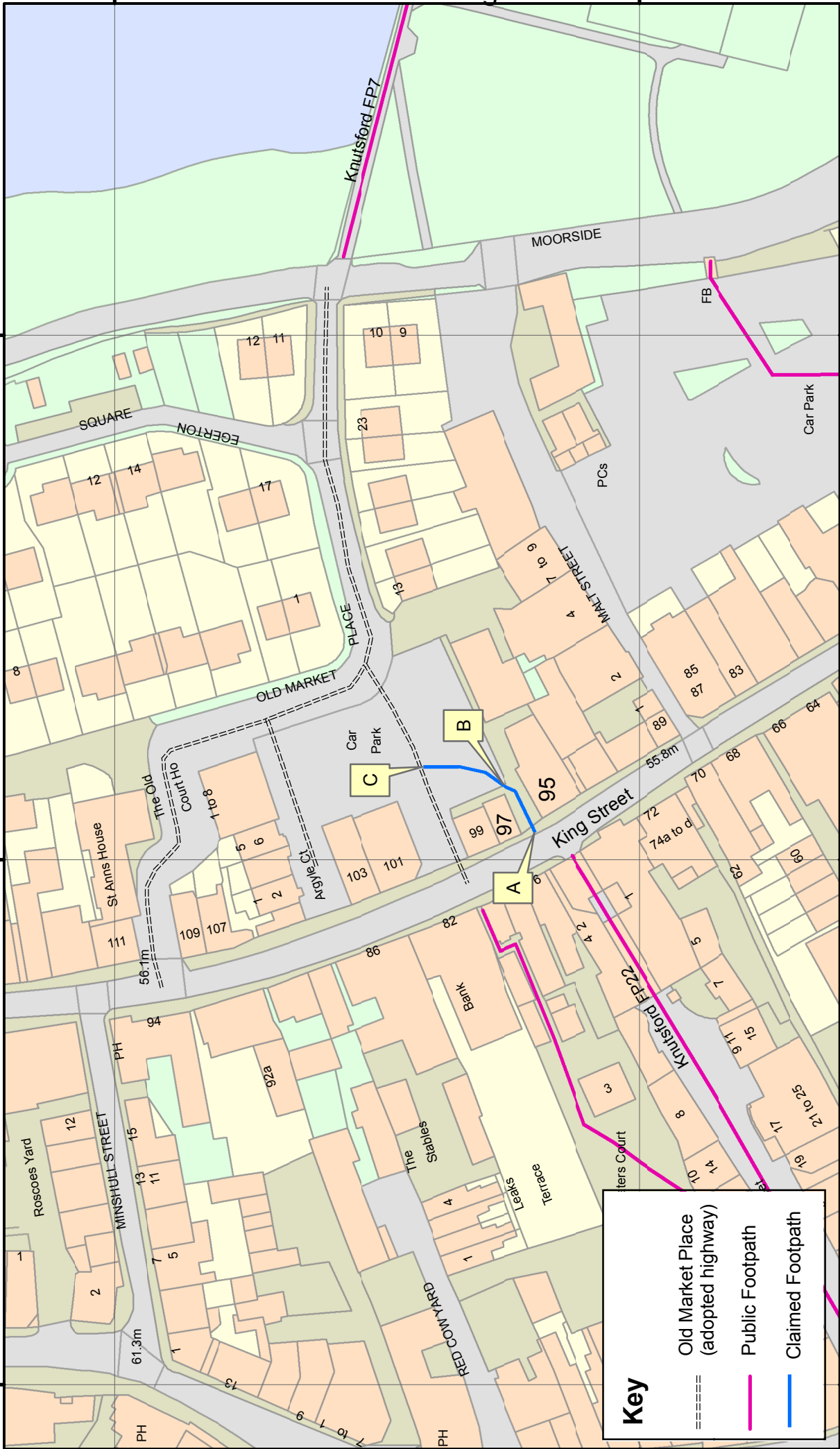


PROW

- Extent of footpath 4 to be retained (outside of the development site).
- Extent of footpath 6 to be retained (outside of the development site).
- - - Extent of footpath 4 to be diverted (stage 1).
- - - Extent of footpath 6 to be diverted (stage 2) - this will remain insitu.
- New line of diverted footpath (stage 1 only).
- New line of diverted footpath (stage 1 only).

B Points where the existing and proposed footpaths cross.

PROJECT 1005-TWM-PR04	DATE Sept 17	SCALE 1:250 @ A1 1:500 @ A3	
PUBLIC FOOTPATH PLAN  Taylor Wimpey Manchester 11, Uniside Road Salford Manchester M22 0UT			



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

Plan No.
WCA/013

Wildlife & Countryside Act 1981 s53
Claimed Public Footpath from King St to Old Market Place Knutsford



1:1,000

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 4th December 2017
Report of: Public Rights of Way Manager
Subject/Title: Wildlife & Countryside Act 1981– Part III, Section 53
Appeal Outcome for Application No. MA/5/251: Application for the Addition of a Public Footpath between no. 95 and 97 King Street to Old Market Place, Knutsford

1.0 Report Summary

1.1 This report is an informative to brief members on the outcome of a recent appeal made by the applicant following this committee's refusal of a Definitive Map Modification Order application.

2.0 Recommendation

2.1 No decision is required by Committee.

3.0 Reasons for Recommendations

3.1 N/A

4.0 Wards Affected

4.1 Knutsford.

5.0 Local Ward Members

5.1 Councillor Dean; Councillor Gardiner; Councillor Wells-Bradshaw..

6.0 Policy Implications

6.1 Not Applicable

7.0 Financial Implications

7.1 Not Applicable

8.0 Legal Implications

8.1 When an order is made it is advertised and may be subject to objections. If objections are not withdrawn the Council cannot then confirm the order itself and must submit the order to the Secretary of State (Planning Inspectorate) for determination. Where a Parish/Town Council objects to an order it is policy for

a local public inquiry to be held. The Council must provide a suitable venue and legal support to facilitate an inquiry.

9.0 Risk Management

9.1 None

10.0 Background and Options

10.1 An application was submitted in May 2016 by Knutsford Town Council to modify the Definitive Map and Statement for the parish of Knutsford by adding a currently unrecorded route as a Public Footpath. The route applied for ran from King Street between numbers 95 and 97 to Old Market Place (shown on Plan No. WCA/013).

10.2 Members will recall the application was based on user evidence; a total of 14 user evidence forms were submitted. The application was submitted following the blocking of the claimed footpath with a fence in 2015 making it inaccessible to the public. In August 2016 a planning application was given approval for an outdoor ground level dining area (planning application no. 16/1717M). The area to be used as an outdoor dining area would affect the claimed footpath.

10.3 Following an investigation by Officers, the Public Rights of Way Committee considered the application at a meeting on 13th March 2017. Officer's believed there was sufficient user evidence to support the existence of footpath rights over the claimed route. However the Committee, by majority, resolved that no order be made and the application was refused. During the investigation it had come to light that a sign had been present on the side wall of number 97 King Street, the sign stated that pedestrian access was by permission. There was another sign underneath which also indicated use was by permission. The Officer's report stated that the majority of witnesses had not seen any signs or notices. There is photographic evidence which shows that the gable wall of number 97 King Street has previously been covered in Ivy. There was some discussion at the Committee meeting regarding the signs. It was clear that the signs have been in situ for a number of years, however, it was unclear for how long and the degree to which the sign was obscured by the ivy; the Committee therefore decided to refuse the application. The Committee concluded that the requirements of section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 had not been met.

10.4 On 27th April 2017 officers were notified by The Planning Inspectorate that Knutsford Town Council had submitted an appeal against the authority's decision not to make an order. Officer's were required to write to all the interested parties to inform them they may submit evidence in respect of the appeal, and give details of when and where they could view the appeal documentation. The Planning Inspectorate required an appeal file from the authority; this included a statement setting out the authority's reasons for refusing the application and all the documents/evidence that were accessed to make the decision.

- 10.5 The Inspector issued a decision on the appeal on 21st July 2017 and allowed the appeal. The appeal decision paper is attached as Appendix A. With regard to the signs he indicates that to bring public use of a path into question and/or indicate a lack of intention on the part of the landowner to dedicate it for public use, would be dependent on the signs being placed in a visible location to members of the public using the path. He states that in this case only one user of the path specifically recalled seeing a sign. Many users referred to the florist stall alongside the gable wall of no.97 King Street and there is a photograph showing an awning covering much of the gable wall. He also refers to the photographic evidence which shows that during some periods there was considerable growth of ivy on the gable wall which might have obscured the signs. In light of this the Inspector states it seems possible that the signs were not visible to users of the claimed route for some or all of the 20 year period before 2015.
- 10.6 Overall the Inspector states it is his view that the available evidence of public use of the claimed route on foot, in the period 1995 to 2015, could raise a presumption in accordance with the provisions of the 1980 Act, that it has been dedicated as a public footpath. However he states there appears to be some doubt as to whether the presence of signs during this period might have brought the public use into question and/or indicated the landowner's lack of intention to dedicate a public right of way. He concludes that it is his view that on the balance of probabilities it is reasonable to allege that the claimed route is a public footpath.
- 10.7 The appeal was therefore allowed and Cheshire East Council is directed to make an order under section 53(2) and schedule 15 of the Act to modify the Definitive Map and Statement to add a public footpath, as shown on plan WCA/013.

11.0 Access to Information

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

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Appeal Decision

by **Barney Grimshaw BA DPA MRTPI (Rtd)**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 21 July 2017

Appeal Ref: FPS/R0660/14A/1

- This Appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of Cheshire East Council not to make an Order under section 53(2) of that Act.
- The Application dated 19 May 2016 was refused by Cheshire East Council on 16 March 2017.
- The Appellant claims that a route running from King Street (between Nos. 95 and 97) and Old Market Place, Knutsford, should be added to the definitive map as a footpath.

Summary of Decision: The appeal is allowed.

Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine this appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act).
2. I have not visited the site but I am satisfied I can make my decision without the need to do so.
3. The plan submitted with the application indicated the claimed route running between Nos. 95 and 97 King Street and then turning to run close to the rear of properties. However, the evidence of users seemed to indicate that the route used was slightly different.
4. I attach a copy of a map prepared by Cheshire East Council (Ref: WCA/013) showing the claimed route, amended in accordance with the evidence of users, for reference purposes.

Main issues

5. Section 53(3)(c)(i) of the 1981 Act provides that an Order should be made to modify the Definitive Map and Statement if evidence is discovered which, when considered with all other relevant evidence available shows 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. In considering the evidence under this section there are two tests which need to be applied, as set out in the case of *R v Secretary of State ex parte Mrs J Norton and Mr R Bagshaw (1994) 68P & CR 402 (Bagshaw)*:

Test A: Does a right of way subsist on the balance of probabilities? This requires me to be satisfied that there is clear evidence in favour of public rights and no credible evidence to the contrary.

Test B: Is it reasonable to allege that on the balance of probabilities a right of way subsists? If the evidence in support of the claimed path is finely balanced but there is no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then I should find that a public right of way has been reasonably alleged.

6. All the evidence in this case relates to usage of the claimed route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 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. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
7. Common law also requires me to consider whether the use of the route and the actions of the landowner have been of such a nature that the dedication of the route by the landowners as a public right of way can be inferred.

Reasons

8. No documentary evidence that would support the existence of public rights over the claimed route has been discovered.

Statutory Dedication

Evidence of public use

9. Fourteen User Evidence Forms (UEFs) have been submitted in support of the claim and in addition ten statements describing use of the claimed route, two of which were made by people who had not also submitted a UEF. These describe use of the route from 1934 until 2015.
10. In 2015, fences were erected across the route obstructing it and clearly bringing public use into question. Nine people claimed to have used the route throughout the 20 years before its obstruction and five for part of that period. Two people had ceased using it before 1995. People had generally used the route on foot and one had used it on a bicycle before 1995. Most people had used the route on a weekly basis or more frequently. Most people also stated that they had seen others using the route.
11. All those providing evidence of use stated that they had never been obstructed or challenged in their use of the route and most stated that they had never seen any signs on the route to suggest that it was not a public right of way. However, one person reported having seen a sign at one time that may have indicated that permission was given for the route to be used. He was not specific regarding the location of this sign or its location. One other person also remembered having seen a sign at some time but could not recall what it said.
12. An objection to the claim made on behalf of the owner of land crossed by the claimed footpath states that signage has been in place on the gable wall of No. 97 King Street, adjacent to the route, since 1980. Photographic evidence has been submitted of a sign, said to have been erected around 1991, stating "*THE USE OF THIS PRIVATE DRIVEWAY IS BY COURTESY OF HILLCREST Estates*"

and of another sign, said to have been placed over the original sign in 1999 and reading "PEDESTRIAN ACCESS BY KIND PERMISSION OF PREGO". Prego formerly operated a sandwich shop business at No.97 King Street. On a site inspection in 2017 both signs were visible, one mainly obscuring the other, and appeared to have been in place for a considerable period.

13. Although the presence of such signs might usually be sufficient to bring public use of a path into question and/or indicate a lack of intention on the part of the landowner to dedicate it for public use, this would be dependent on the signs being placed in a location visible to members of the public using the path.
14. In this case, only one user of the path specifically recalled seeing a sign. Many however referred to the presence of a florist's stall alongside the gable wall of No.97 King Street. A photograph, said to be from the 1980s provided by a previous owner of No.97 King Street shows a flower display with awning covering much of the gable wall. In addition, an e-mail from Lynda Drinkwater who traded as a florist from 97 King Street from 1993 to 2003. States that she displayed flowers and plants alongside the gable wall during this period. There is also evidence that during some periods there was considerable growth of ivy on the gable wall which might also have obscured any signs. In the light of this it seems possible that signs were not visible to users of the claimed route for some or all of the 20 year period before 2015.
15. There is also evidence from statements and photographs that vehicles have been parked on the claimed route at some times during the relevant 20 year period although it is my view that this would not have completely obstructed the route to the extent that passage on foot would not have been possible.

Conclusions regarding statutory dedication

16. Overall, it is my view that the available evidence of public use of the claimed route on foot in the period from 1995 to 2015 could raise a presumption, in accordance with the provisions of the 1980 Act, that it has been dedicated as a public footpath. However, there appears to be some doubt as to whether the presence of signs during this period might have brought public use into question during this period and/or indicated the landowner's lack of intention to dedicate a public right of way.
17. On the basis of all of the information available to me it is my view that on the balance of probabilities there is no incontrovertible evidence that a public footpath cannot be reasonably alleged to subsist over the claimed route.

Common Law

18. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.
19. In this case, there is evidence of public use of the claimed route over a longer period than 20 years. On the other hand, it is also possible that a sign may have been in place for some time before 1995 and one person has stated that there were gates across the route in the 1960s and 70s. However, in view of my conclusions regarding the statutory dedication of the route, it is not

necessary to pursue the possible inference of its dedication at common law any further at this stage.

Other Matters

20. In August 2016 approval was given to a planning application for the use of land crossed by the claimed route as an outdoor dining area in conjunction with the adjoining restaurant. This is a matter outside the criteria set out in the 1981 Act and accordingly I have given it no weight in reaching my conclusion.

Conclusion

21. Having regard to these and all other matters raised in the written representations I conclude that the evidence that is available shows that on the balance of probabilities it is reasonable to allege that the claimed route is a public footpath. The appeal should therefore be allowed.

Formal Decision

22. The appeal is allowed and in accordance with paragraph 4(2) of Schedule 14 to the 1981 Act Cheshire East Council is directed to make an order under section 53(2) and Schedule 15 of the Act to modify the definitive map and statement to add a public footpath, as proposed in the application dated 19 May 2016 amended in accordance with the attached plan (Ref; WCA/013). This decision is made without prejudice to any decision that may be given by the Secretary of State in accordance with his powers under Schedule 15 of the 1981 Act.

Barney Grimshaw

Inspector

