

# Public Rights of Way Committee Agenda

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**Date:** Monday 12th March 2018  
**Time:** 10.30 am  
**Venue:** Committee Suite 1,2 & 3, Westfields, Middlewich Road,  
Sandbach CW11 1HZ

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

It should be noted that Part 1 items of Cheshire East Council decision making are audio recorded and the recordings are 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 5 - 10)

To approve the minutes of the meeting held on 4 December 2017

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

In accordance with paragraph 9 of Appendix 7 of the Procedure Rules, members of the public may speak on a particular application after the Chairman has introduced the report, provided that notice has been given in writing to Democratic Services by 12 noon one clear working day before the meeting. A total of 6 minutes is allocated for each application, with 3 minutes for objectors and 3 minutes for supporters. If more than one person wishes to speak as an objector or supporter, the time will be allocated accordingly or those wishing to speak may agree that one of their number shall speak for all.

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

**Contact:** Rachel Graves

**Tel:** 01270 686473

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

Also in accordance with paragraph 2.32 of the Committee Procedural Rules and Appendix 7 of the Procedural Rules 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. **Village Green Application: Application to Register Land adjoining Swift Road, Bamford, Rochdale as a Town or Village Green** (Pages 11 - 34)

To consider the report of the Independent Expert

6. **Village Green Application: Application to Register Land opposite the entrance to St. Vincents RC Primary School adjacent to Caldershaw Road Cut Lane and Shearing Avenue Norden Rochdale as a Town or Village Green** (Pages 35 - 41)

To consider the application for a Village Green

7. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath no.31 (part), Parish of Kettleshulme** (Pages 42 - 47)

To consider the application to divert part of Public Footpath No.31 in the parish of Kettleshulme

8. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 41 (part), Parish of Haslington** (Pages 48 - 53)

To consider the application to divert part of Public Footpath No.41 in the parish of Haslington

9. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 5 (part), Parish of Adlington** (Pages 54 - 61)

To consider the application to divert part of Public Footpath No.5 in the parish of Adlington

10. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 45 (part), and Public Footpath No. 44 (part) Parish of Bollington** (Pages 62 - 69)

To consider the application to divert part of Public Footpath Nos.44 and 45 in the parish of Bollington

11. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 12 (part), Parish of Lower Withington** (Pages 70 - 77)

To consider the application to diver part of Public Footpath No.12 in the parish of Lower Withington

12. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath no. 3 (part), Parish of Cranage** (Pages 78 - 83)

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

13. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 46 (part), Parish of Mobberley** (Pages 84 - 89)

To consider the application to divert part of Public Footpath No.46 in the parish of Mobberley

14. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No 7 and Public Bridleways No. 10 and 11 (parts), Parish of Arclid** (Pages 90 - 97)

To consider the application to divert Public Footpath No.7 and parts of Public Bridleway No.10 and 11 in the parish of Arclid

15. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No's 3 (part) and 4 (parts) in the Parish of Worleston and Public Footpath No 4 (4parts) in the Parish of Henhull** (Pages 98 - 105)

To consider the application to divert parts of Public Footpaths No.3 and 4 in the parish of Worleston and parts of Public Footpath No.4 in the parish of Henhull

16. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath no. 11 (part), Parish of Basford** (Pages 106 - 112)

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

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**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Public Rights of Way Committee**  
held on Monday, 4th December, 2017 at Committee Suite 1,2 & 3, Westfields,  
Middlewich Road, Sandbach CW11 1HZ

**PRESENT**

Councillor M Hardy (Chairman)  
Councillor D Flude (Vice-Chairman)

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

**Councillor in Attendance**

Councillor G Williams

**Officers**

Mike Taylor, Public Rights of Way Manager  
Clare Hibbert, Definitive Map Officer  
Jennifer Tench, Definitive Map Officer  
Andrew Poynton, Planning and Highways Lawyer  
Rachel Graves, Democratic Services Officer

**17 APOLOGIES FOR ABSENCE**

Apologies were received from Councillor S Davies.

**18 DECLARATIONS OF INTEREST**

No declarations of interest were made.

**19 MINUTES OF PREVIOUS MEETING****RESOLVED:**

That the minutes of the meeting held on 11 September 2017 be confirmed as a correct record and signed by the Chairman.

**20 PUBLIC SPEAKING TIME/OPEN SESSION**

No members of the public present wished to speak.

**21 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 49 (PART), PARISH OF RAINOW**

*During consideration of this application Councillor J Wray arrived to the meeting. He did not take part in the discussion or voting on the application.*

The Committee considered a report which detailed an application from Mr and Mrs Weaire of Wayside Cottage, Hough Hole, Rainow (the Applicant) requesting the Council to make an Order to divert part of Public Footpath No.49 in the parish of Rainow.

In accordance with Section 119(1) of the Highways Act 1980, it was within the Council's discretion to make an Order 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 majority of the land over which the section of path to be diverted, and the proposed diversion, belonged to Mr W B Moss. Mr Moss had provided written consent for the proposal. The Applicant owned the remainder of the land at Wayside Cottage.

The proposals were in the interests of the applicants as it would move the footpath away from their home, thereby greatly improving privacy and security.

The section of Public Footpath No.49 Rainow to be diverted ran in very close proximity to the Applicants property, before exiting through a 2.5ft wicket gate onto the adjacent landowner's pasture. The path then travelled up a hill to meet Public Bridleway No.43 Rainow. The pasture had a cross gradient slope of approximately 1:3-1:4, with a slope of approximately 1:5. This made for uncomfortable and sometimes difficult walking for users, especially in wet and windy weather.

The proposed diversion would run along an existing track to meet Public Bridleway No.43 to the west and parallel to the current line of the path. It would pass through a 10ft field gate, which would be replaced with a 2 in 1 gate if the Order was made, to the south of Wayside Cottage, as indicated on Plan HA/117. The path would then climb the hill at a gradient of 1:5 but with no cross gradient for users.

The Committee noted that no objections had been received during the informal consultation and noted the queries from Cheshire Ramblers and responses provided, as set out in the report.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would be of benefit to the applicant as moving the footpath away from their home would improve privacy and security. 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.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 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.

**22 TOWN & COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATHS NOS. 4 AND 6 (PARTS), SHAVINGTON CUM GRESTY**

The Committee considered a report which detailed an application from Taylor Wimpey, Manchester Ltd requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpaths No.4 and 6 in the parish of Shavington cum Gresty.

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 reported that in paragraph 2.1 of the report the wording "TCPA/043A" should read "TCPA/043", and in paragraph 3.2 "Unrecorded Footpath" should be deleted and replaced with "Shavington Footpaths 4 & 6 (parts)".

Planning permission had been granted for 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 - planning reference 15/4046N.

The existing alignment of the two footpaths would partly be subsumed by housing and partly by the internal road layout. The proposed diversion would take the footpath into the peripheral landscaped/green areas of the development and would form an attractive informal recreational route.

Footpath No.4 Shavington would 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 entered the development the section of path A-B, as shown on Plan TCPA/43, would be diverted to run along line A-D to link with Footpath No.6.

From where Footpath No.6 entered the site at the southern boundary 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, would be diverted along the line marked D-E-C on plan TCPA/43. The proposed new route would be twice the length of the current section of footpath and would fulfil a recreational function, offering opportunities for short walks on the rural fringe and access to longer walks via the connecting rights of way network. There would be several connecting paths linking into adjacent cul de sacs and estate roads. The direct alignment that the current footpath provided would be served by an estate road with a footway thus continuing the functional route northwards to West Lane via the unaffected section of Footpath No.4.

The whole of the proposed route would be constructed to a 2 metre width with timber edging and a compacted stone surface.

Taylor Wimpey had requested that the Order making stages for these paths be phased if approved; in the first instance making an Order to divert Footpath No.4 part section A-B onto section A-D. This was to be the first phase of development and whilst this was undertaken, it was proposed that the line D-B-C be kept open. A second Order would then be made to divert Footpath No. 4 part and No. 6 part D-B-C in preparation for the second stage of development to commence.

The Committee noted the comments from Shavington cum Gresty Parish Council and the response provided by the Public Rights of Way Team.

The Committee considered the application and concluded that it was necessary to divert parts of Public Footpaths No.4 and 6 Shavington cum Gresty to allow for construction of 275 houses and associated infrastructure, as detailed in planning reference 15/4046N. It was considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

**RESOLVED:** That

- 1 An Order is made under Section 257 of the Town and Country Planning Act 1990 to divert parts of Public Footpaths No.4 and No.6, as illustrated on Plan No.TCPA/043, 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 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.

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.

**23 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**

The Committee received an information report on the outcome of an appeal by Knutsford Town Council against the Council's decision not to make an Order to modify the Definitive Map and Statement.

An application had been made by Knutsford Town Council to modify the Definitive Map and Statement by adding an unrecorded route as a Public Footpath, which ran from King Street between numbers 95 and 97 to Old Market Place. The application was based on user evidence. The Public Rights of Way Committee had considered the application at its meeting on 13 March 2017 and resolved to refuse the application.

On 27 April 2017 the Council was informed by the Planning Inspectorate that Knutsford Town Council had submitted an appeal against the decision. All interested parties were informed that they may submit evidence in respect of the appeal and were given details on when and where they could view the appeal documents. The Council submitted an appeal file which included a statement setting out the reasons for refusing the application and all the documents/evidence that were accessed to make the decision.

The Inspector issued a decision notice on 21 July 2017 and allowed the appeal. The Inspector found 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 had been dedicated as a public footpath.

Cheshire East Council was directed to make order under section 53(2) and schedule 15 of the Act to modify the Definitive Map and Statement to add a public footpath.

**RESOLVED:**

That the report be noted.

The meeting commenced at 2.00 pm and concluded at 2.33 pm

Councillor M Hardy (Chairman)

## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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**Date of Meeting:** 12 March 2018  
**Report of:** Director Of Legal (Interim)  
**Subject/Title:** Village Green Application: Application to Register Land adjoining Swift Road, Bamford, Rochdale as a Town or Village Green

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#### **1.0 Purpose of Report**

- 1.1 This report deals with an application by Ms Janice Lesley Arden under section 15(2) of the Commons Act 2006 to register an area of land adjoining Swift Road, Bamford, Rochdale as a new village green under section 15 of the Commons Act 2006.

#### **2.0 Recommendations**

- 2.1 That the Committee receives and accepts the report of Timothy Jones, Barrister (attached as Appendix A), and
- 2.2 That the application is rejected and the application land is not registered as a Town or Village Green, and
- 2.3 Written notification of the Committee's decision is sent to Rochdale Borough Council within 7 days of the date of publication of the minutes of this meeting.

#### **3.0 Reasons for Recommendation**

- 3.1 The application is recommended for rejection because an Independent expert (Timothy Jones, Barrister) has concluded that in relation to the application land the Applicant has not demonstrated that the use of the land took place as of right.
- 3.2 A failure to establish this fact means that the application should be rejected.

#### **4.0 Ward Affected**

- 4.1 n/a

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

- 5.1 n/a

**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 having accepted a delegation of powers from Rochdale Borough Council ("RBC") in accordance with s.101 of the Local Government Act 1972 and therefore has a statutory duty to decide this application.

**7.0 Legal Implications**

- 7.1 There is no right of appeal against a Committee decision not to register land as a village green. The route for any challenges would be via judicial review.
- 7.2 Although the findings of the Independent expert are recommended for acceptance by the Committee, the Committee is not bound to follow them.

**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 Application has been considered by an independent expert who advised that there was no need for the Council to a non statutory public inquiry and that the application could be determined without such an Inquiry.

**9.0 Background and Options**

- 9.1 The Council is the registration authority for village greens and responsibility for this function is delegated to the Public Rights of Way Committee under the Council's constitution. A delegation of powers to determine this application on behalf of RBC was accepted by the Public Rights of Way Committee at its meeting on 13<sup>th</sup> June 2016.
- 9.2 The application is dated 23rd June 2015 and was submitted to RBC by Mrs Janice Lesley Arden. The application relates to a piece of land described in the application form as "Village Green" in the location at "Swift Road, Bamford, Rochdale" and it was advertised by RBC in accordance with the statutory requirements. The land, the subject of the application ('the application land'), is shown marked "Village Green" on the map attached as Appendix B.
- 9.3 The application is made pursuant to section 15(2) of the Commons Act 2006. That requires the applicant to demonstrate on the balance of probabilities that the land was used:
- a. for lawful sports and pastimes for a period of at least 20 years and that this use continued to the date of the application
  - b. by a significant number of the inhabitants of a locality or of a neighbourhood within a locality
  - c. as of right



- 9.4 The application was initially accepted as valid by RBC's Legal Services Section. When accepting the application as valid RBC's Legal Services Section also confirmed that there had been no trigger or terminating event in respect of the application land and the application could be processed.
- 9.5 RBC undertook a public consultation exercise providing for a period of 6 weeks when the plan of the application lane was available for inspection at the Council's offices and the provision of site notices explaining the procedure for making representations. Those notices were dated 22<sup>nd</sup> July 2015 and noted that any objection should be made in writing to RBC prior to the expiration of the consultation period on 2<sup>nd</sup> September 2015. The application was also published in the Rochdale Observer on 22<sup>nd</sup> July 2015.
- 9.6 RBC in its capacity as landowner objected to the application via a letter dated 2<sup>nd</sup> September 2015 and a copy of that letter is attached as Appendix C. A copy of that objection was sent to the applicant who responded by way of letter dated 5<sup>th</sup> May 2015 and a copy of that letter is attached as Appendix C.
- 9.7 As an objection had been received to the application it was forwarded to an Independent expert for consideration by the Legal Services Section of Cheshire East Council.
- 9.8 The Independent Expert was provided with copies of the application, plan and supporting information in the form of witness statements and correspondence as well as RBC's objection letter and the response received from the applicant.
- 9.9 The Independent Expert's report is attached as Appendix A. It takes account and considers all of the written information produced to the Independent expert.
- 9.10 The Independent expert concisely details the background to the acquisition of the land by RBC in paragraphs 1 to 4 of his report and refers to conditions on 2 planning permissions issued in respect of the application land in 1983 and 1985 which required that the land be provided "for use by the general public". The application land was subsequently purchased by RBC from the developers in 1988.
- 9.11 The application land was acquired by RBC for the purposes of the Town and Country Planning Act 1971 with particular regard to the statement "The Council are to maintain the land as a landscaped area".
- 9.12 The Independent expert considered in paragraph 9 of his report the basis of the objection submitted by the Property Services Section of RBC to the application. The second of which being that the application land had been used "by right" rather than "as of right" by the applicant and local residents.

- 9.13 In this paragraph the Independent expert confirms the view of RBC's Property Services Section that in order for the application land to have been used "as of right" it would have had to have been used without force, without stealth and without permission. The objection states that the application land has been used with permission from RBC due to:

"The development of the surrounding housing estate was subject to the following condition: "The area of public open space shown on the approved plan shall be provided for use by the general public concurrent with the carrying out of the approved development and shall be maintained to the satisfaction of the local planning authority thereafter."

- 9.14 In paragraph 11 of the report the Independent Expert details his findings in relation to the statements submitted in support of the application and whilst noting that they do not fully address the issue as to whether the application land had been used "as of right" or "by right" some say that they had been told that the application land was for communal or resident's use.
- 9.15 In paragraphs 12 to 14 of his report the Independent Expert considers the relevant case - law and legislation pertinent to this application and then carefully analyses the facts relating to this application in the following paragraphs.
- 9.16 In his overall conclusion at paragraphs 22-23 the Independent Expert concludes that he is of the firm opinion that no part of the land should be registered as a village green, and recommends that the land is not registered and that there is no need to hold a Public Inquiry.
- 9.17 The basis of the Independent Expert's conclusion is that in following case law RBC had given permission to the public to use the land and that those residents who had been informed that the land was for communal or resident's use had been correctly informed. This is also apparent by the Independent Expert's finding from the submitted witness statements that the purposes for which members of the public state to have used the land for is entirely consistent with land being held for such purposes.
- 9.18 A draft copy of the report has been circulated to the Applicant and the Objectors for them to review and check for accuracy.

## 10. **Applicant's Comments**

- 10.1 Having been sent a copy of the draft report for consideration the applicant made the following comments:

"With reference to our application for Village Green status we were very disappointed to receive the news that Counsel, acting on behalf of Cheshire East Council had recommended that our application be rejected. It is particularly difficult for us as our friends in our adjoining Ward of Norden had their Village Green application recommended for

approval. We really could see no, or very little, difference between the two applications. Of course Rochdale BC did not support our application which did not help.

The result has hinged on a technicality that the residents used the Bamford Village Green 'with permission' from Rochdale Council even though we were not aware they actually owned the land. Indeed, it has never been in the public domain that Rochdale Council had re-purchased this small plot of land for the nominal sum of £1 from the Housing Developer.

In no way detracting from the success of the Norden application, on the surface, there would appear to be a contradiction here between the results of the two VG Applications in terms of how the land was used with/without permission. It is hard to see why their use was any different, other than Rochdale BC objected to the Bamford VG Application but not to Norden's.

Although we do respect the great experience of the Barrister, to lose on such a small, unimportant point seems heartbreaking. When the residents bought these houses in the Swift Road area, clearly marked on their deeds on this piece of land are the words "Village Green". So that was what it was intended to be – a small piece of recreational land in an area where there are no free green spaces for residents to use. The residents were firm in their belief that this was a designated Village Green. Rochdale have already tried to sell this piece of land once for a few more houses which would change the whole aspect of this attractive residential area. Currently the land has been withdrawn from sale but Village Green status would keep it safe from future development. Both Wards fought hard and fairly to save their precious pieces of green space. As things stand, it would appear that Norden has won and we have lost. This does not help community cohesion but we are pleased that our neighbours have saved their Green.

I hope you will all read this short report and look favourably on our request for Village Green status to be granted for the small Swift Road site. It means everything to us and to future generations."

#### **11.00 Access to Information**

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

Officer: James Felton

Tel No: 01270 686526

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- 2017 -

IN THE MATTER OF AN APPLICATION  
TO REGISTER LAND ADJOINING  
SWIFT ROAD, BAMFORD, AS A  
VILLAGE GREEN

JANICE LESLEY ARDEN

**Applicant**

and

ROCHDALE METROPOLITAN  
BOROUGH COUNCIL

**Objector**

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# OPINION

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Timothy Jones

686852

Director of Legal Services,  
Cheshire East Council,  
First Floor (Westfield's),  
C/o Municipal Building,  
Earle Street,  
Crewe, CW1 2BJ.

## **OPINION**

1. I am asked to advise in respect of a town or village green (“TVG”) application to register land adjoining Swift Road, Bamford, Rochdale, as a town or village green (“the Land”).

2. On 25<sup>th</sup> April 1983 Rochdale Borough Council (“RBC”) granted planning permission for 68 dwellings on land at Martlett Avenue, Bowling Green Farm, Bamford, subject to 6 conditions. Condition 8, which relates to the Land, stated:

*The area of public open space shown on the approved plan shall be landscaped as shown on the approved plan and provided for use by the general public concurrent with the carrying out of the approved development and shall be maintained to the satisfaction of the Local Planning Authority thereafter.*

3. A further planning permission was granted on 14<sup>th</sup> November 1985 subject to 6 conditions. Condition 6, which relates to the Land, stated:

*The area of public open space shown on the approved plan shall be provided for use by the general public concurrent with the carrying out of the approved development and shall be maintained to the satisfaction of the Local Planning Authority thereafter.*

4. RBC bought the land from Whelmar Homes in 1988. Nothing in the papers that I have seen indicates a legal change since then that is material to this Opinion. The purpose of acquisition is stated as the Town and Country Planning Act 1971 without specifying any section, but with attention being drawn to the statement “*The Council are to maintain the land as a landscaped area.*”

5. On 23<sup>rd</sup> June 2015 Ms Janice Lesley Arden applied to RBC to register the land as a TVG, specifying the locality or neighbourhood that is served as “*Moor Park Development*”. The application makes it clear that this comprises houses adjoining Swift Road, Teal Court, Kestrel Mews, Fulmar Garden and part of Swallow Drive.

6. There has been no “trigger event” in respect of the Land.



7. Cheshire East Council has accepted RBC's delegation of powers under the Local Government Act 1972 s101 to determine this and another TVG application.

8. The application is made under the Commons Act 2006 s15(2). Section 15 provides for the registration of greens. Its subsections 15(1) and (2) state:

*(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.*

*(2) This subsection applies where—*

- (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. RBC<sup>1</sup> in its capacity as owner of the land has objected to the application on two grounds, the second of which is that the land has been used "*by right*" rather than "*as of right*". I shall not consider the first reason in this Opinion, since, if it stood alone, it would necessitate a public inquiry. RBC rightly says that, in order to pass the "*as of right*" test, the land must have been used without force, without stealth and without permission. It then avers that the land has been used with permission, giving the following reasons:

*The development of the surrounding housing estate was subject to the following condition: "The area of public open space shown on the approved plan shall be provided for use by the general public concurrent with the carrying out of the approved development and shall be maintained to the satisfaction of the local planning authority thereafter."*

10. RBC also relies on a no dog fouling sign. This is capable of being evidence of permission to use the land. However there is no evidence as to when this sign was on the site and, on the photographs I have seen, which postdate the application, it looks new. In the absence of any such evidence I shall ignore this for the purpose of this Opinion. Apart from the statement recorded in paragraph 7 above, RBC does not specify the statutory power under which it holds the land.

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<sup>1</sup> Under the description RMBC Property Services.

11. I have read all the statements in support of the application. Not surprisingly and not unusually, since this seems to be an application by a lay-person with no legal qualification, they do not fully address the “*as of right*” or “*by right*” issue and they often deal with the planning merits, more than the TVG issues. Some do say that they were told the Land would be for communal or residents’ use. The applicant’s response includes the following:

- (1) *“The residents... had no idea that the Council owned the land until January 2015... Having no idea of who owned the land up to that point, logically it cannot follow that the residents were using it with anybody’s permission.”*
- (2) *“The planning permission... contains a reason... for the imposition or that particular condition, namely it was added... for the purpose of protecting the ‘visual amenity’... the condition was actually only imposed to protect the visual aspects of the development”*
- (3) *“... the local people have in fact used it in a much broader way and fundamentally in excess of any possible implied permission”.*

### **Relevant Case Law**

12. In R (Barkas) v North Yorkshire County Council,<sup>2</sup> the Supreme Court reconsidered the reasoning of the House of Lords in R (Beresford) v Sunderland City Council<sup>3</sup>. Barkas related to a field laid out as a recreation ground serving a 14-hectare council-housing development created in the 1950s. The basic issue in the case was: “*where land is provided and maintained by a local authority pursuant to section 12(1) of the Housing Act 1985 or its statutory predecessors, is the use of that land by the public for recreational purposes “as of right” within the meaning of section*

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<sup>2</sup> [2014] UKSC 31, [2015] AC, 21<sup>st</sup> May 2014.

<sup>3</sup> [2003] UKHL 60, [2004] 1 AC 889.



15(2)(a) of the Commons Act 2006?”<sup>4</sup> Answering that question Lord Neuberger of Abbotsbury PSC (with whom the other judges of the Supreme Court agreed) said:

“21... So long as land is held under a provision such as section 12(1) of the 1985 Act, it appears to me that members of the public have a statutory right to use the land for recreational purposes, and therefore they use the land “by right” and not as trespassers, so that no question of user “as of right” can arise. In *Sunningwell* at pp 352H-353A, Lord Hoffmann indicated that whether user was “as of right” should be judged by “how the matter would have appeared to the owner of the land”, a question which must, I should add, be assessed objectively. In the present case, it is, I think, plain that a reasonable local authority in the position of the Council would have regarded the presence of members of the public on the Field, walking with or without dogs, taking part in sports, or letting their children play, as being pursuant to their statutory right to be on the land and to use it for these activities, given that the Field was being held and maintained by the Council for public recreation pursuant to section 12(1) of the 1985 Act and its statutory predecessors.

22. It is true that this case does not involve the grant of a right in private law, which is the normal issue where the question whether a use is precario arises... Thus, it is a right principally enforceable by public rather than by private law proceedings. It is also a right which is clearly conditional on the Council continuing to devote the Field to the purpose identified in section 12(1) of the 1985 Act... Accordingly, the right alleged by the Council to be enjoyed by members of the public over the Field is not precisely analogous to a public or private right of way. However, I do not see any reason in terms of legal principle or public policy why that should make a difference. The basic point is that members of the public are entitled to go onto and use the land – provided they use it for the stipulated purpose in section 12(1), namely for recreation, and that they do so in a lawful manner.

23. ...Section 12(1) of the 1985 Act and its statutory predecessors bestow a power on a local (housing) authority to devote land such as the Field for public recreational use (albeit subject to the consent of the Minister or Secretary of State), at any rate until the land is removed from the ambit of that section. Where land is held for that purpose, and members of the public then use the land for that purpose, the obvious and natural conclusion is that they enjoy a public right, or a publicly based licence, to do so. If that were not so, members of the public using for recreation land held by the local authority for the statutory purpose of public recreation would be trespassing on the land, which cannot be correct. Of course, a local authority would be entitled to place conditions on such use – such as on the times of day the land could be accessed or used, the type of sports which could be played and when and where, and the terms on which children or dogs could come onto the land. Similarly, the local authority would clearly be entitled to withdraw the licence permanently or temporarily. Thus, if and when it lawfully is able, and decides, to devote the land to some other statutorily permitted use, the local authority may permanently withdraw the licence; and if,

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<sup>4</sup> Judgment of Lord Neuberger PSC, paragraph 12.

*for instance, when the land is still held under section 12(1), the local authority wants to hold a midsummer fair to which the public will be charged an entrance fee, it could temporarily withdraw the licence."*

13. The basic issue related to land *"maintained by a local authority pursuant to section 12(1) of the Housing Act 1985 or its statutory predecessors"*. It is however clear from comments within the judgment that Lord Neuberger consider that the same principle applied to land held by local authorities under section 164 of the Public Health Act 1875 and various sections of the New Towns Acts of 1965 and 1981. Lord Neuberger then considered the effect of the decision of the House of Lord in Beresford, stating:

*46... The facts of the present case are very different. The Field was, as I see it, "appropriated", in the sense of allocated or designated, as public recreational space, in that it had been acquired, and was subsequently maintained, as recreation grounds with the consent of the relevant Minister, in accordance with section 80(1) of the 1936 Act: public recreation was the intended use of the Field from the inception.*

*... 48 ... I am quite satisfied that we should grasp the nettle and say that the decision and reasoning in Beresford should no longer be relied on...*

14. However one part of Beresford was not overruled and continues to be applied. Lord Bingham of Cornhill stated:

*"... As Pill LJ rightly pointed out in R v Suffolk County Council, Ex p Steed (1996) 75 P & CR 102, 111: "it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green..." It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision-makers must consider carefully whether the land in question has been used by the inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years' indulgence or more is met."*

## Analysis

15. The Town and Country Planning Act 1990 now defines *"open space"* as meaning *"any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground"*. The same definition applied in s290(1) of the Town and Country Planning Act 1971. In the absence of good reason



to the contrary “*open space*” in condition 8 of the 1983 permission will be interpreted in accordance with this definition.<sup>5</sup> I am not aware of any such reason. Of the three elements to this definition it is clear in this case that neither the first, nor the third applies and that the second “*used for the purposes of public recreation*” does apply.

16. It follows from the part of the speech of Lord Bingham quoted in paragraph 14 above that, if one of the ingredients of the definition is clearly not established, there is no need for a public inquiry.

17. It is clear from Barkas that some types of publicly owned land is used for lawful sports and pastimes “*by right*” and therefore not “*of right*”. Where this is clearly the case on the papers, there is no need for a public inquiry and the registration authority (or another authority acting on its behalf) can reject the application after considering them on the papers. Before doing so, the authority should, of course, give careful consideration to as to whether the conclusion that the use was by right depends on a disputed factual issue. If it does, Somerford Parish Council v Cheshire East Borough Council<sup>6</sup> makes it clear that should be an inquiry.

18. It follows that in determining whether there should be an inquiry (but not for other purposes) statements of primary fact made by and in support of the applicant should be assumed to be true. This does not extend to unevidenced generalised assertions.

19. It is clear “*how the matter would have appeared to the owner of the land*” is important, but not whether local people know the identity of the owner. There is no prospect of the point quoted in paragraph 11(1) above succeeding.

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<sup>5</sup> Wyre Forest District Council v Secretary of State for the Environment and Allens [1990] 2 AC 357, HL(EW).

<sup>6</sup> [2016] EWHC 619 (Admin), Stewart J, 21<sup>st</sup> March 2016.

20. As to the point raised in paragraph 11(2) above, inadequate reasons for planning permissions are commonplace and do not alter the meaning of conditions if they are unambiguous as is the case here. The land was not intended solely for visual amenity.

21. As to the point raised in paragraph 11(3) above, this is a mere generalised assertion for which no justification is given. The intended use of the land was “*for the purposes of public recreation*”. No example of any use that goes beyond this is given or is apparent from the witness statements. Rather those statements record uses that are consistent with that purpose.

22. It would have helped if RBC had been more specific about the statutory power under which the land was held beyond stating a lengthy Act. Nonetheless I am satisfied that, applying the principles established by Barkas, RBC was giving permission to the public to use the Land and that those residents who were told that the land was from communal or residents’ use were correctly informed.

23. In these circumstances a public inquiry would not assist. I advise rejection of the application without one.

TIMOTHY JONES



No. 5 Chambers,

Birmingham - London - Bristol - Leicester

Tel. 0845 210 5555

18<sup>th</sup> May 2017.



Exhibit marked 'A' reference to in  
the statutory declaration of (or)  
made this (date) 05/05/15 before  
me. *Osstott, J.P.*

MAP 'A'



OS MasterMap 1250/2500/10000 scale  
13 March 2015, ID: BLJT-00409986  
[www.planningapplicationmaps.co.uk](http://www.planningapplicationmaps.co.uk)

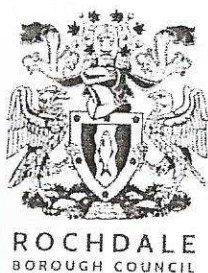
1:2500 scale print at A4, Centre: 386826 E, 413143 N

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100051661



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David Wilcock  
Head of Legal and Governance Reform  
Rochdale Borough Council  
First Floor  
Brook House  
Oldham Road  
MIDDLETON  
M24 1AY

Dear David

**Re: Commons Act 2006 – Section 15 (1)  
Notice of an Application for the Registration of Land as a Town or Village Green  
Open Green Land at Swift Road, Bamford, Rochdale**

I am writing on behalf of Rochdale Borough Council to formally object to the application made under Section 15 (1) of the Commons Act 2006 and in accordance with the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 to register the land known as open green land at Swift Road, Bamford, Rochdale as a Town or Village Green.

The objection is based on the Council's view that the applicant does not meet the legal test as laid down in Section 15 (1) in that "a significant number of the inhabitants of any locality, or of any neighbourhood in a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years", and that the land has been used "by right" rather than "as of right" and thus the application fails to meet the criteria in Section 15 (1).

In order to successfully demonstrate that the land has been used "as of right" the use must have been on the following basis:

- Without force
- Without stealth
- Without permission

The Council objects on the grounds that the land has been used with permission and thus the use does not satisfy all three criteria.

This is by virtue of the following:

- Whilst the site was originally sold to Whelmar Homes the Council bought it back in 1988. Whelmar Homes paid the Council £2,500 towards the cost of maintenance of the land and the completion statement report refers to the land's future maintenance as a landscaped area. Please find relevant documentation attached.

## Economy and Environment

**Director  
Mark Widdup**

**Property, Highways and Strategic Housing**

Donna Bowler  
Interim Head of Service

Floor 2, No.1 Riverside,  
Smith Street, Rochdale, OL16 1XU

Telephone: 01706 923273  
E-mail: [beverley.hirst@rochdale.gov.uk](mailto:beverley.hirst@rochdale.gov.uk)  
Web Site: [www.rochdale.gov.uk](http://www.rochdale.gov.uk)

Your Ref.  
Our Ref. EAM/BJH  
Enquiries: Beverley Hirst  
Extension: 3273  
Date: 2 September 2015

- Planning permission for the development of the surrounding housing estate attached the following condition to the land:

"The area of public open space shown on the approved plan shall be provided for use by the general public concurrent with the carrying out of the approved development and shall be maintained to the satisfaction of the Local Planning Authority thereafter."

Please find relevant documentation attached.

- The Council enforces no dog fouling on the site as evidenced by the sign on the gate. Please find photographs attached.

- Whilst the site is gated the gate is unlocked and access is readily available to members of the public either via the gate or to the side of the gate.

The Council strongly believes that the above provide both explicit and implicit permission to use the land.

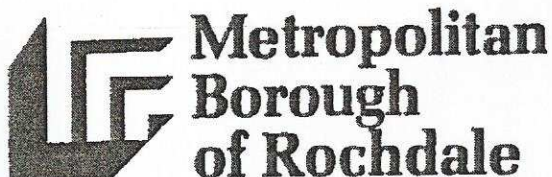
For this reason the application must fail as the application does not meet the criteria as set out in Section 15 (1) of the Commons Act 2006 as the land has been used with permission of the Council as landowner.

Yours sincerely



Beverley Hirst BSc (Hons) MRICS  
Estate Manager  
Estates and Asset Management  
Rochdale BC





Town and Country Planning Act 1971

PLANNING PERMISSION

Name and address for correspondence

Salvesen Homes,  
Whelmar Ltd.,  
Whelmar House,  
Holden Road,  
Leigh. WN7 1HH

Name of applicant

Salvesen Homes,

Part 1 - Particulars of application

Date of application  
5th September 1985

Application No.  
D18377

Proposal and location

SUBSTITUTION OF HOUSE TYPES

PLOTS 57-59 MARTLETT AVENUE, BAMFORD, ROCHDALE.

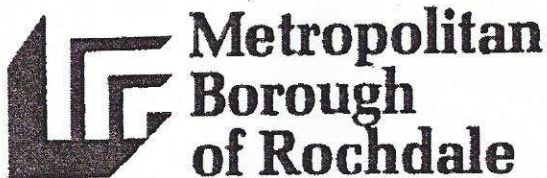
Part II - Particulars of decision

The Rochdale Metropolitan Borough Council hereby give notice in pursuance of the provisions of the Town and Country Planning Act 1971 that permission has been granted for the carrying out of the development referred to in Part I hereof in accordance with the application and plans submitted subject to the following conditions:

- 01 The development must be begun not later than the expiration of five years beginning with the date of this permission.
- 02 Notwithstanding any description of materials in the application, no development shall be commenced until samples or full details of materials to be used externally on the building(s) have been submitted to and approved by the Local Planning Authority. Such details shall include the type, colour and texture of the materials.
- 03 No building, fence, wall, hedge, caravan or boat shall be placed in the area between the building line shown in blue on the approved plan and the boundary of any highway, without the prior written consent of the Local Planning Authority.
- 04 Before the buildings erected pursuant to this permission are first occupied, a wall or close boarded fence to a design and height approved by the Local Planning Authority shall be erected on the site in the positions indicated with a brown line on the approved plan; and such wall or fence shall be retained thereafter and kept in good repair.
- 05 Before any development is commenced, a landscaping scheme shall be submitted for the approval of the Local Planning Authority. Such a scheme shall include details of the type, species, siting, planting distances and the programme of planting of trees and shrubs. The scheme

Continued .....





Application No.D18377  
 .....continued

of planting, as approved, shall be carried out during the first planting season after the development is substantially completed and the areas which are landscaped shall be retained as landscaped areas thereafter. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within three years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.

- 06 The area of public open space shown on the approved plan shall be provided for use by the general public concurrent with the carrying out of the approved development and shall be maintained to the satisfaction of the Local Planning Authority thereafter.

The reasons for the conditions are :

- 01 Required to be imposed pursuant to section 41 of the Town and Country Planning Act 1971.
- 02 In order to ensure a satisfactory appearance in the interests of visual amenity.
- 03 In order to ensure a satisfactory appearance in the interests of visual amenity.
- 04 In order to ensure a satisfactory appearance in the interests of visual amenity.
- 05 In order to achieve a satisfactory level of landscaping in the interests of the amenity of the area.
- 06 In order to ensure a satisfactory appearance in the interests of visual amenity.

Date of decision 14th November 1985

Signed .....  
 On behalf of the Council

IMPORTANT 1.PLEASE ENSURE THAT YOU HAVE READ AND FULLY UNDERSTOOD THE CONTENTS OF THIS DECISION NOTICE.

2.YOUR ATTENTION IS DRAWN TO THE ATTACHED NOTES.













ROCHDALE METROPOLITAN BOROUGH COUNCIL

COMPLETION STATEMENT : PURCHASE/XXXXXXXXXX

From: DEPUTY TOWN CLERK

Ref: JP/EC/L.10111

Name &amp; Ext: Mr Paramor 4746

Date: 17th June 1988

To: DIRECTOR OF ENVIRONMENT &  
EMPLOYMENT Ref: EST/LEA/9956  
TREASURER (2) + ACCOUNTANCY (1)  
~~DIRECTOR OF HOUSING XXXXX~~  
~~REVENUE SECTION~~  
FILE  
COMPLETION REPORT FILE  
DEED PACKET  
DIRECTOR OF COMMUNITY LEISURE

1. Property and Interest : Area Square Yards :	Land at Swift Road, Bamford shown edged red on the attached plan - Freehold	
2. (a) Consideration : (b) Legal Fees : (c) <del>Surveyors Fees</del>	£1.00 £85.00 paid to the Council	3. Committee and Date : March LAND 1988 Min.199 (U) Min.No.
4. Date of Document :	26th May 1988	5. Insurance Cover Required : NO
6. Deed Packet Number :	B 13969	
7. Statutory Authority Purpose of Acquisition/ Disposal Owing Committee	Town & Country Planning Act 1971 - see box 10 below	
8. Name and Address of Vendor/ <del>XXXXXXXXXX</del>	Whelmar Homes Ltd 25 Abercrombie Place, Edinburgh, Scotland	
9. <del>xxxx Rent Details xxx</del> <del>Amount xxx methods and dates xxx</del> <del>of payment xxx amount paid xxx</del> <del>completion xxx</del>		
10. Additional Points	<p>In addition Whelmar <sup>paid</sup> pay to the Council the sum of £2,500 towards the cost of maintenance of the land.</p> <p>The Council are to maintain the land as a landscaped area.</p>	

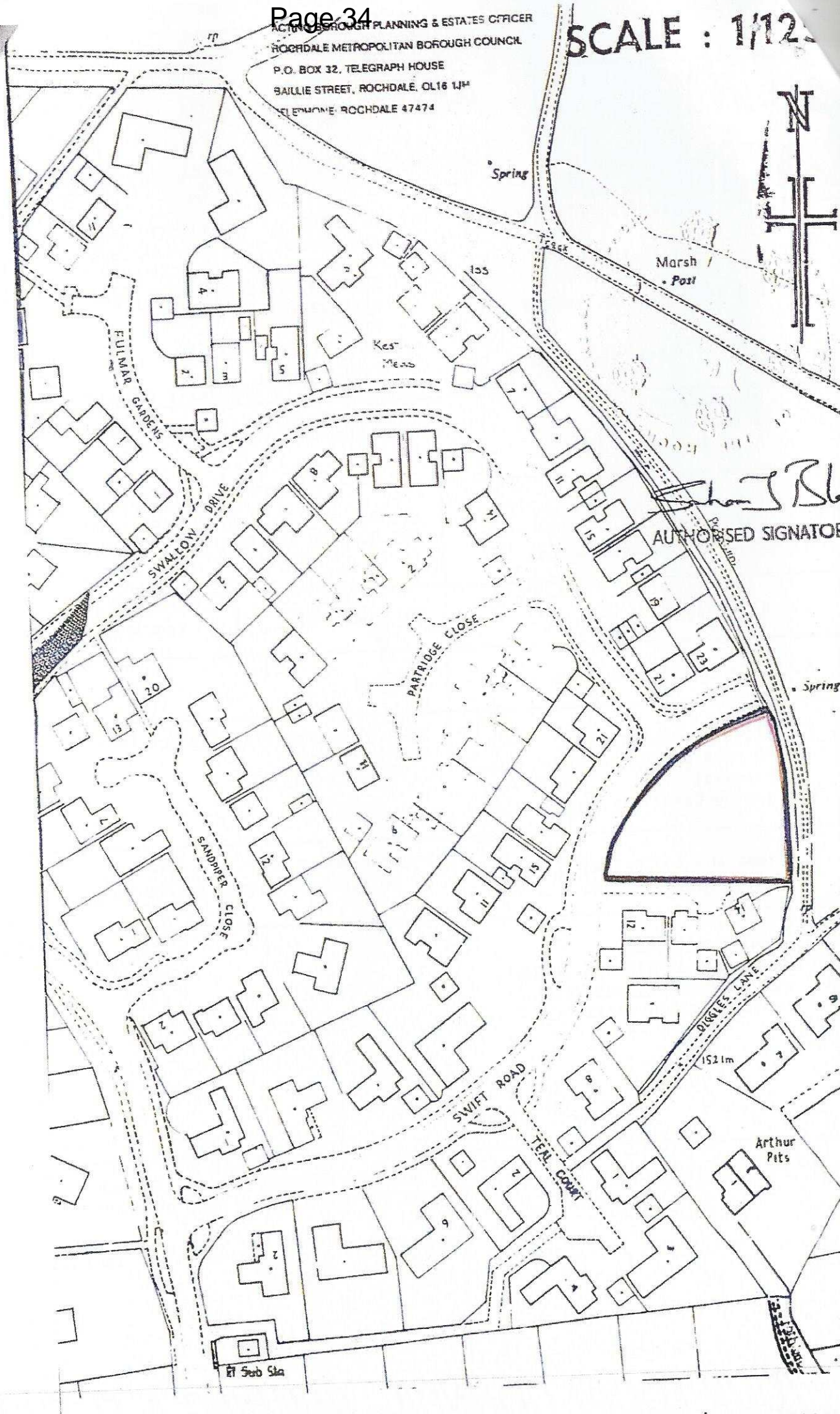
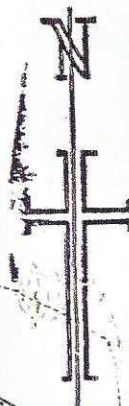


YOUR LOCAL COUNCIL - BUILDING A FUTURE



ACTING BOROUGH PLANNING & ESTATES OFFICER  
ROCHDALE METROPOLITAN BOROUGH COUNCIL  
P.O. BOX 32, TELEGRAPH HOUSE  
BAILLIE STREET, ROCHDALE, OL16 1JH  
TELEPHONE: ROCHDALE 47474

SCALE : 1/12



## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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**Date of Meeting:** 12<sup>th</sup> March 2018  
**Report of:** Director Of Legal (Interim)  
**Subject/Title:** Village Green Application: Application to Register Land opposite the entrance to St. Vincents RC Primary School adjacent to Caldershaw Road Cut Lane and Shearing Avenue Norden Rochdale as a Town or Village Green

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#### **1.0 Purpose of Report**

- 1.1 This report deals with an application by The Friends of Heritage Green c/o Adrian Sutcliffe under section 15(2) of the Commons Act 2006 to register an area of land opposite the entrance to St. Vincents RC Primary School adjacent to Caldershaw Road, Cut Lane and Shearing Avenue, Norden, Rochdale as a new village green under section 15 of the Commons Act 2006.

#### **2.0 Recommendations**

- 2.1 That the Committee receives and accepts this report, and
- 2.2 That the application is noted and the application along with all background information is sent to an Independent Expert experienced in determining Town and Village Green Applications to determine:-
- a) whether the application can be determined on the papers or if a non-statutory public inquiry is required to be held; and
  - b) to issue such timetable for the submission of representations/progression of this matter as they consider appropriate; and
  - c) to determine the application and prepare a written report for the Council recommending whether or not the application should be approved or rejected by reference to the submitted evidence, and
- 2.3 That written notification of this Committee's decision is sent to Rochdale Borough Council within 7 days of the publication of the minutes of this meeting.
- #### **3.0 Reasons for Recommendation**
- 3.1 The application is recommended for submission to an Independent expert because whilst it could initially be concluded in relation to the application land that;

1. the Applicant has demonstrated that the use of the land took place as of right, and
2. the Applicant has demonstrated that the area specified in the application was a locality or neighbourhood, and
3. the Applicant has demonstrated that the area specified in the application was a locality or neighbourhood and that the use for lawful sports and pastimes has been significant for at least 20 years;

An ability to demonstrate all of these meant that the application was previously recommended for approval.

- 3.2 Following preparation of the previous report a representation was received from Rochdale BC indicating that they took a differing view and that any use of the application land by members of the public was by right as the land had been compulsorily acquired by the Council previously and held by them as housing land.
- 3.3 In view of the fundamental nature of the representation received from Rochdale BC it is now considered appropriate that the application should be referred to an Independent expert for them to determine by reference to all the submitted material.

#### **4.0 Ward Affected**

- 4.1 n/a

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

- 5.1 n/a

#### **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 having accepted a delegation of powers from Rochdale Borough Council ("RBC") in accordance with s.101 of the Local Government Act 1972 and therefore has a statutory duty to decide this application.

#### **7.0 Legal Implications**

- 7.1 There is no right of appeal against a Committee decision not to register land as a village green. The route for any challenges would be via judicial review.
- 7.2 Although the findings within this report are recommended for acceptance by the Committee, the Committee is not bound to follow them and is entitled to reach their own conclusion in the matter.



**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 Application has been considered at length in this report and the conclusion reached that given the very strong case submitted by the Applicant and the representation received from RBC the matter would be best determined by reference to an Independent expert who could also decide as a preliminary point whether it was appropriate to hold a non-statutory public inquiry to test such evidence and also, if appropriate provide a timetable for the determination of the application.

**9.0 Background**

- 9.1 The Council is the registration authority for village greens and responsibility for this function is delegated to the Public Rights of Way Committee under the Council's constitution and a delegation of powers to determine this application on behalf of RBC was accepted by the Public Rights of Way Committee at its meeting on 13<sup>th</sup> June 2016.
- 9.2 The application is dated 9<sup>th</sup> October 2015 and was submitted to RBC by The Friends of Heritage Green c/o Mr Adrian Sutcliffe. The application relates to a piece of land described in the application form as "Village Green" being the area of land opposite the entrance to St. Vincents RC Primary School adjacent to Caldershaw Road, Cut Lane and Shearing Avenue, Norden, Rochdale". The land, the subject of the application ('the land'), is shown shaded red on the map attached as Appendix A.
- 9.3 The application is made pursuant to section 15(2) of the Commons Act 2006. That requires the applicant to demonstrate on the balance of probabilities that the land was used:
- a. for lawful sports and pastimes for a period of at least 20 years and that this use continued to the date of the application
  - b. by a significant number of the inhabitants of a locality or of a neighbourhood within a locality
  - c. as of right
- 9.4 When accepting the application as valid RBC's Legal Services Section also confirmed that there had been no trigger or terminating event in respect of the land and the application could be processed.
- 9.5 RBC undertook a public consultation exercise providing for a period of 6 weeks when the plan of the application land was available for inspection at the Council's offices and the provision of site notices explaining the procedure for making representations. Those notices were dated 8<sup>th</sup> April 2017 and noted that any objection should be made in writing to CEBC prior to the expiration of the consultation period on 30<sup>th</sup> May 2017. The application was also published in the Rochdale Observer on 8<sup>th</sup> April 2017.

- 9.6 No representations were received in response to the publication of the application.
- 9.7 As no objections were received to the application it was initially viewed as appropriate for this Committee to consider and determine the application based on a written report as opposed to it being forwarded to an Independent expert for consideration but given the representation received from RBC it is now considered appropriate for the matter to be determined by an Independent expert.

## **10 Analysis**

- 10.1 The application land is owned by RBC under title numbers LA101788 and GM332481 having been part of a wider site acquired by RBC for housing purposes under a Compulsory Purchase Order in 1957.
- 10.2 It would appear that a decision of RBC to sell the land resulted in the application to register it as a town or village green.
- 10.3 As stated in 9.3 (above) the applicant is required to satisfy the 3 elements in Section 15(2) of the Commons Act 2006 and analysis of the submitted material has established the following:-

10.3.1 Whilst not all of the witnesses have used the application land for lawful sports and pastime for more than 20 years there is a large number of witnesses giving evidence that such use has occurred since 1994 or earlier. There is also strong evidence that the use of the land for such purposes was ongoing at the time the application was submitted. Further enquiries have established the existence of a facebook page promoting the use of the application land for recreational purposes and it appears to have a great deal of support from local residents/members. There is therefore, enough evidence with the application to demonstrate that this limb of the test has been satisfied.

10.3.2 The submitted material demonstrates that the land has been used for lawful sports and pastimes for more than 20 years and that such use was ongoing at the time the application was submitted to RBC.

10.3.3 As part of their application the applicant has submitted a map showing an area of land edged purple and being marked up "Neighbourhood of Heritage Green Estate" to demonstrate the neighbourhood within the locality of the ward of Norden, Rochdale, Greater Manchester.

10.3.4 There is considerable case law on the issue as to a neighbourhood within a locality and whilst the courts have emphasised the imprecision of the expression "neighbourhood" they have said that it cannot simply be any line drawn on a map – it must have some element of cohesiveness. The applicant was previously asked to clarify the criteria on which they based their definition of "neighbourhood" and they have confirmed that the "neighbourhood" they have identified consists of what is known as the "Heritage Green Estate".

10.3.5 The final element that the applicant is required to demonstrate is that the application land has been used “as of right” by people. To be able to claim a use of land “as of right” such use must be without force, secrecy or permission ie nec vi, nec clam, nec precario.

10.3.6 In support of the application 136 Village Green Questionnaires have been submitted by the applicant and these confirm that activities such as ball games, dog walking, flying kites, picnics, Frisbee throwing, Horse riding, wildlife watching, people walking, golf practice, playing in the snow, team games and bicycle riding have all been undertaken on the application land.

10.3.7 Many of the witnesses who have provided evidence in support of the application have confirmed that they have used the application land for lawful sports and pastimes openly, without force and without permission and this falls within the definition of the uses being “as of right”.

10.3.8 It is pertinent that the application land was acquired by RBC under a Compulsory Purchase Order in 1957 for housing purposes. Recent case law *R(Barkas) v North Yorkshire County Council* decided that where land had been acquired and held by a council for housing purposes and the council used the land for public recreational purposes in accordance with powers in the housing legislation, the public had a legal right to use the land and were accordingly using it “by right” than “as of right”.

10.3.9 A representation has been received from RBC in relation to this application on this basis – ie use being “by right” rather than “as of right” which would effectively mean the application would have to be refused. On that basis, it is considered reasonable to assume that the principle in *Barkas* may apply to this application and any claimed use may have been “by right” thereby not satisfying the third limb of section 15(2).

10.4 It is considered that the application satisfactorily complies with the first 2 requirements of section 15(2) Commons Act 2006 but a determination will have to be made as to whether the third such element is satisfied via any such use of the land being “as of right” as opposed to “by right” that the application should be determined by an Independent expert..

10.5 Given the nature of the representation received to the application it is considered appropriate that the matter be referred to an Independent expert for determination.

## **11. Applicant’s Response**

11.1 This report has been discussed with the Applicant who has expressed concerns about the fact that an objection has been received at such a late stage from RBC and when a report with a positive recommendation had been prepared for the previous meeting in December. Whilst the concern and frustration of the Applicant is noted officer’s firm belief is

that whilst submitted late the representation from RBC must be taken into account in determining this application.

- 11.2 As part of any referral to an Independent Expert for determination it may be considered appropriate to invite them as a preliminary matter to issue a timetable for RBC to set out their objection to the application in writing and for such an objection to be forwarded to the applicant to respond within a defined number of days and the expert then, when considering all the evidence in this matter will attach such weight to any objection as they consider appropriate. This is considered to be the most equitable way of resolving this matter in light of the objection received.
- 11.3 When previously discussing this report with the Applicant they requested that if the Committee were minded to reject their application that consideration be given to the matter being referred to a non statutory public inquiry. Whilst this is a potential option for Committee as part of the process of considering this report it is worth noting that public inquiries are usually reserved for instances where conflicting or differing evidence has been presented in relation to an application being submitted and advertised and that then needs to be tested in an inquiry before an independent inspector.
- 11.4 In respect of this application it is considered by officers that it would be appropriate for an Independent Expert to determine whether or not to hold such an inquiry by reference to the representation received to the application and the large amount of evidence has been presented in support of the application which, when considered by officers potentially satisfies the first 2 elements in Section 15(2) of the Commons Act 2006 and the issue being as to whether the 3<sup>rd</sup> element is satisfied.
- 11.5 A draft copy of the report has been circulated to the Applicant for them to review and check for accuracy.

## 12 Access to Information

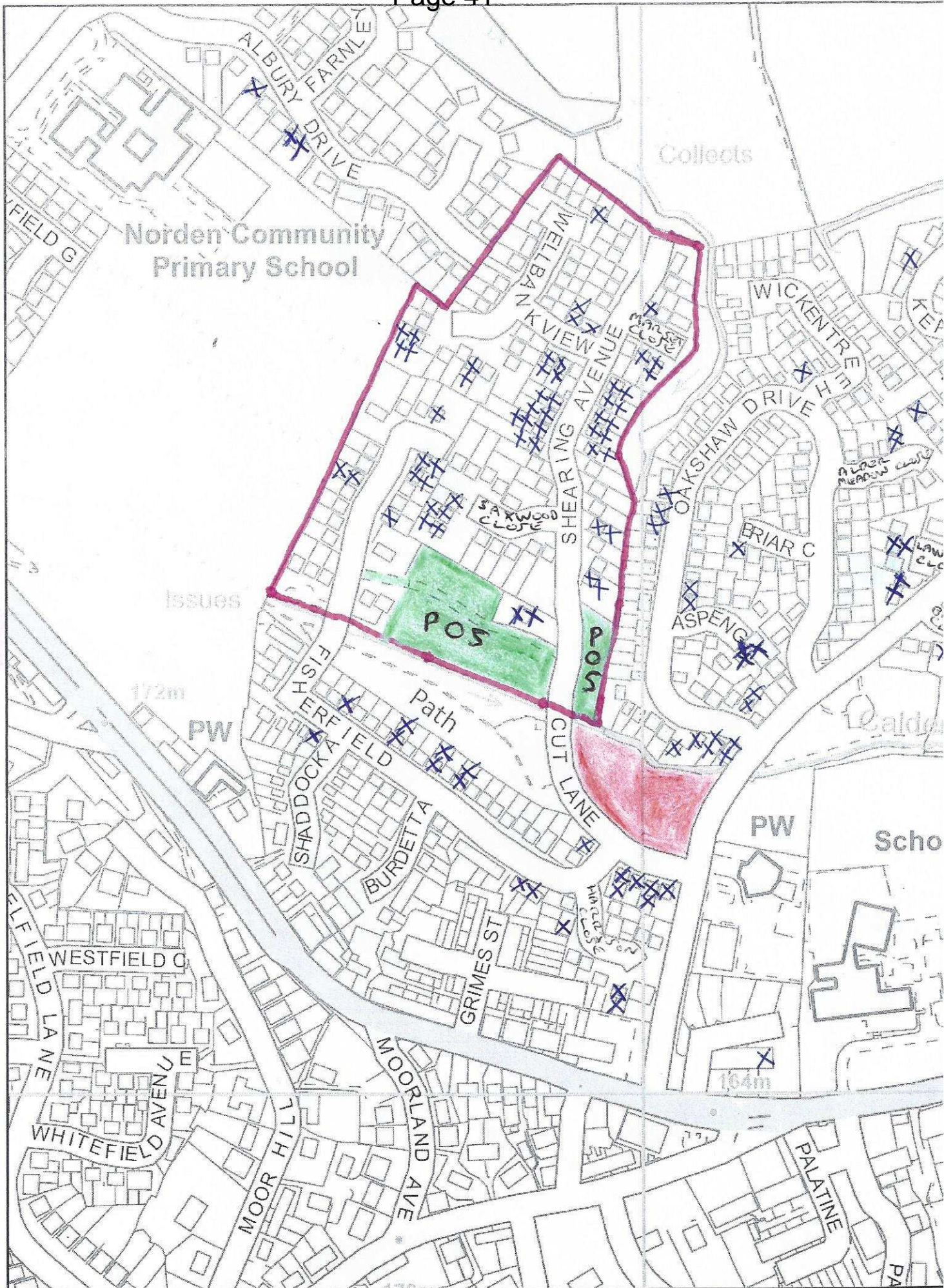
The background papers relating to this report can be inspected by contacting the report writer:

Officer: James Felton

Tel No: 01270 686526

Email: [james.felton@cheshireeast.gov.uk](mailto:james.felton@cheshireeast.gov.uk)



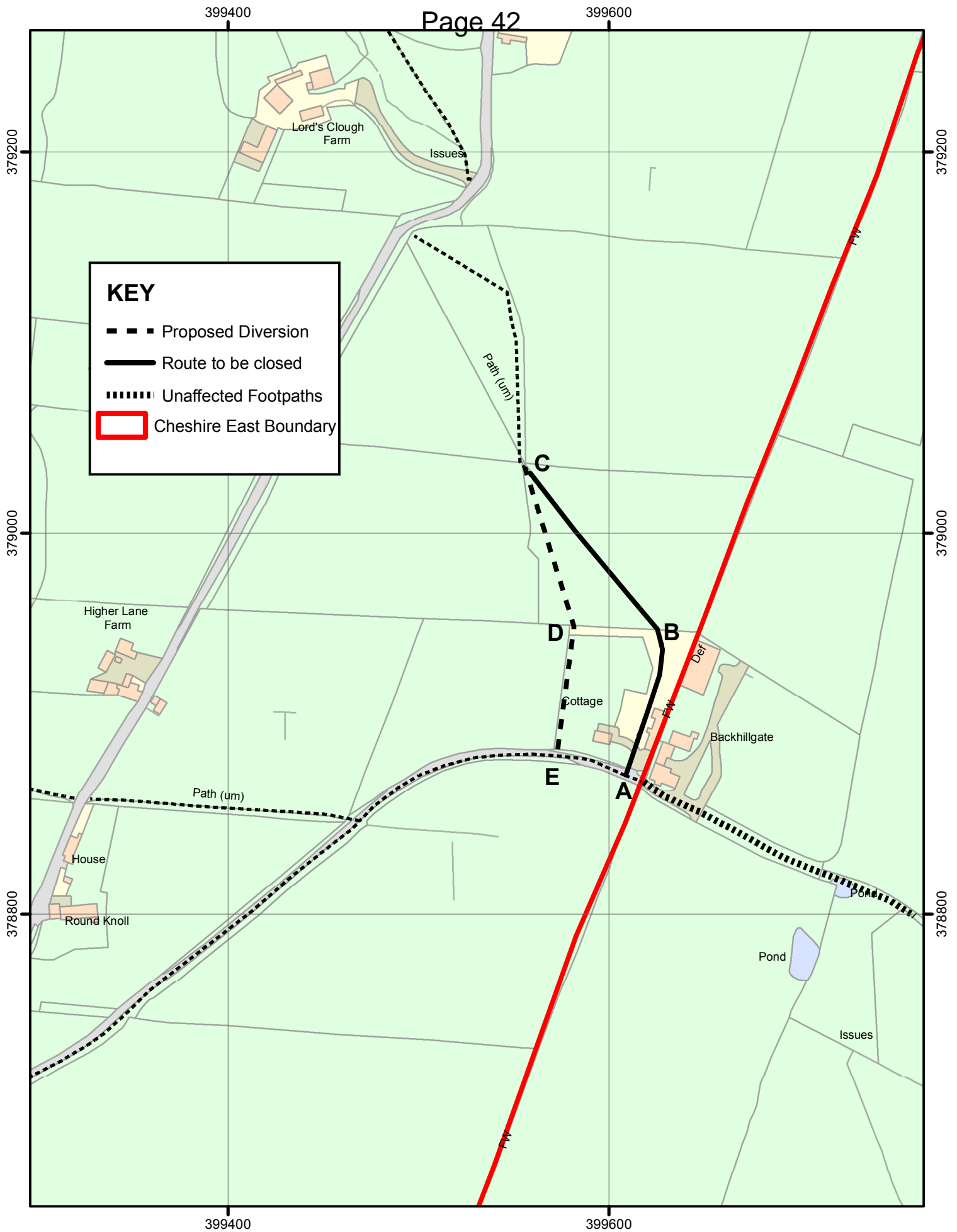


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MAP OF SOUTH-WEST PART OF  
LOCALITY OF THE METROPOLITAN  
DISTRICT WARD OF NORDEN

— LOCATION OF CLAIMED GR  
— NEIGHBOURHOOD OF HERITAGE  
— PUBLIC OPEN SPACE (POS)





**Proposed Diversion of  
Kettleshulme FP 31(pt)  
Highways Act 1980 s.119**

Plan No.  
HA/118

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and should not be used for legal purposes



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## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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**Date of Meeting:** 12<sup>th</sup> March 2018  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Highways Act 1980 Section 119  
Application for the Diversion of Public Footpath no.31 (part),  
Parish of Kettleshulme

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#### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.31 in the Parish of Kettleshulme. 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.31 by creating a new section of public footpath and extinguishing the current path as illustrated on Plan no. HA/118 on the grounds that it is expedient in the interests of the owner of the land crossed by the path.
- 2.2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

#### 3.0 Reasons for Recommendations

- 3.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of the landowner for the reasons set out in paragraph 10.7 below.
- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering

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

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

And whether it is expedient to confirm the Order considering:

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

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

3.4 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath will offer increased privacy and security and more efficient land and stock management capability for the landowner on his farm. 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 Kettleshulme

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

5.1 Councillor H Murray and Councillor J Saunders

#### **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 John Hodgson of Black Hill Gate Farm, Kettleshulme SH23 7EH requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath no. 31 in the Parish of Kettleshulme. The alignment of the current footpath is along the driveway and then in very close proximity to the front of the cottage at Blackhill Gate Farm. This has a significant impact on the privacy and security of the property. A permissive alternative route has been in place which takes the path away from the immediate frontage of the cottage and has been in use for many years.
- 10.2 Public Footpath No. 31 Kettleshulme commences at its junction with footpath no.22, Kettleshulme and runs in a generally north north easterly direction along the drive of the cottage at Blackhill Gate and passes immediately in front of the windows and sunroom. The path then runs through a small pasture area where it is proposed to construct an extension to an existing livestock barn and fence in a secure area for handling cattle. The current footpath would run through the fenced area. A planning application for this barn extension was submitted to the Peak Park planning department in September 2017 and has since been given approval. The path then continues in a north westerly direction diagonally across an open field to a pedestrian gate and then continues generally northerly and north westerly to its junction with Clayholes Road (UW 2546). The route to be diverted is indicated on the attached plan between points A-B-C.
- 10.3 The land over which the section of the current path A-B (on plan no. HA/118) and the proposed section E-D runs, is owned by Mr J Hodgson. Where the current section B-C and the proposed section D-C runs, the land is owned by Mr A Hodgson who has given his written consent to the proposal. 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. 31, Kettleshulme to be diverted commences at its junction with Kettleshulme footpath no. 22, just to the west of the County boundary with Derbyshire at Grid Reference SJ 9960 7887 (Point A on Plan no. HA/118). It runs in a generally north north easterly direction along the driveway to the cottage and then within a metre of the front windows of the property and continues across the garden area. It passes through a pedestrian gate and crosses a small paddock that is intended to become a holding area for livestock within the curtilage of the proposed extension to a current livestock shed. It then passes through a second

pedestrian gate at grid reference SJ 9962 7894 (point B on Plan No. HA/118) and turns to run generally north westerly across a pasture field to the north east corner at grid reference SJ 9955 7903 (point C on Plan No. HA/118). It is shown as a bold black solid line between points A-B-C.

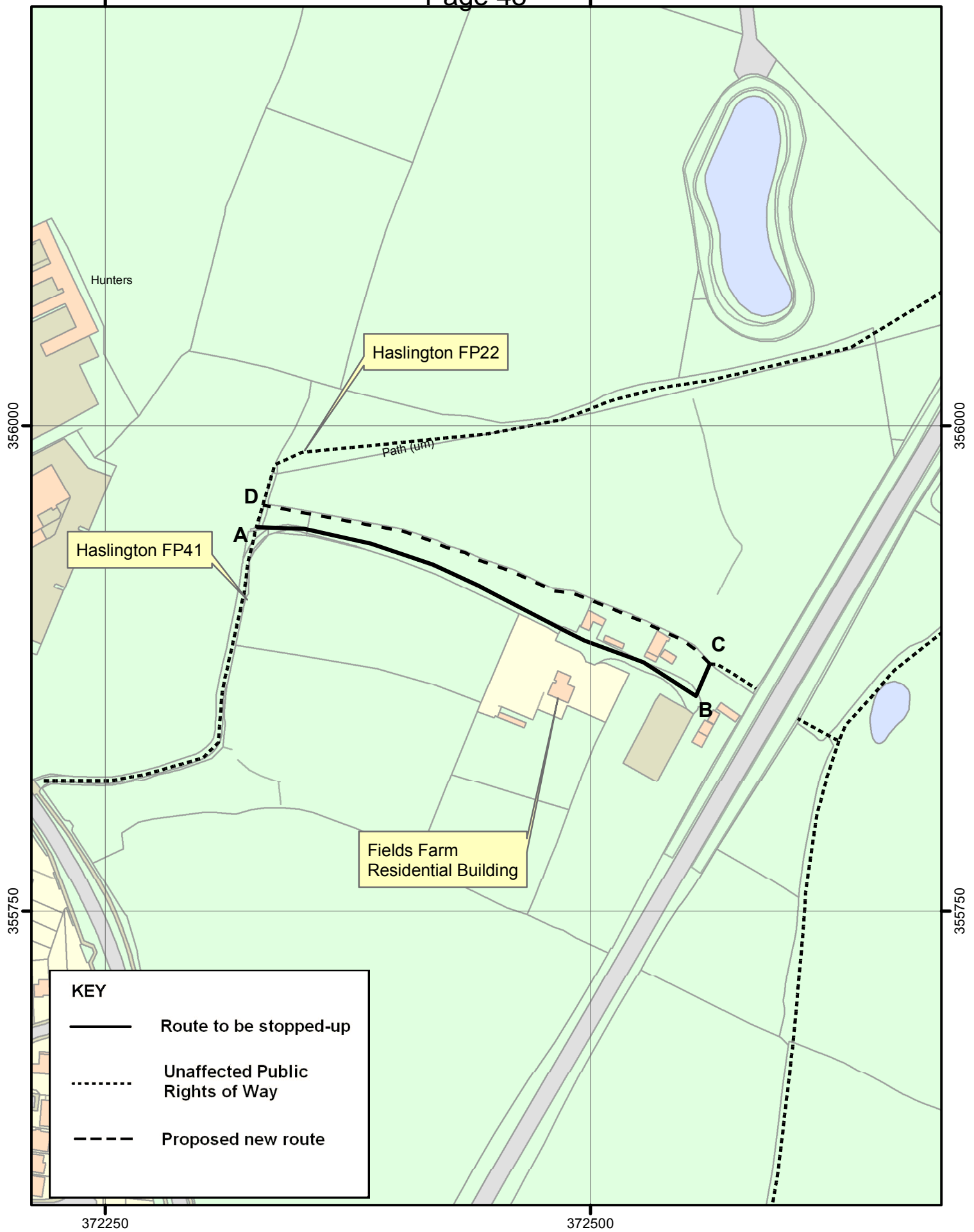
- 10.5 The proposed diversion for this part of Footpath no. 31 would run from its junction with Kettleshulme Footpath No. 22 at grid reference SJ 9957 7888 (point E on Plan No. HA/118) approximately 37 metres to the west of its current location, through a pedestrian gate in a dry stone wall. It then runs in a generally northerly direction across a small pasture field to point D (on Plan No. HA/118) at grid reference SJ 9958 7895 and continues generally north north westerly across a second pasture field to Point C (on Plan No. HA/118) and its junction with the unaffected section of the footpath. It is shown by a bold dashed line between E-D-C on Plan No. HA/118. The route of the proposed diversion is currently available for use by the public as a permissive alternative and has been for approximately 30 years. The landowner has found that walkers tend to prefer the alternative route as the current definitive footpath is so potentially intrusive to the occupants of the cottage.
- 10.6 The new route would have a width of 2 metres and would not be enclosed; it would be a grass surface. There would be two pedestrian gates as described at points E and D. The existing gate at point B would be re-used and re-sited at point D. In terms of accessibility the new route is considered no less easy to use than the original and given the rough and sometimes boggy nature of part of the current footpath, the alternative surface of pasture is an improvement. The proposed route is approximately 167 metres in length; the current route is approximately 189 metres so in terms of convenience there is very little difference. It would be beneficial for walkers and the landowner for the path not to run through the area proposed for holding livestock adjacent to the new barn extension.
- 10.7 This diversion can be demonstrated to be in the landowners' interest for reasons of privacy and security with regard to the current footpath's proximity to the cottage and also for reasons of land and animal management due to the current planning permission to extend the livestock shed. The diversion would allow the landowner to significantly improve security for the cottage and would have benefits for farm working practices.
- 10.8 The Ward Councillors were consulted about the proposal. No comments were received.
- 10.9 Kettleshulme Parish Council has been consulted and no response has been received.
- 10.10 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

- 10.11 The user groups have been consulted. East Cheshire Rambler's have responded to say that they support the proposal as it will take the path away from crossing a private garden and put in pedestrian gates on the new route.
- 10.12 The Council's Nature Conservation Officer and the Peak Planning Board have 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: Clare Hibbert  
Designation: Definitive Map Officer  
Tel No: 01270 686063  
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File No: 170D/540



1:2,500

Highways Act 1980 s119  
Proposed Diversion of Haslington  
FP41 (part)

Plan No. HA/124

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



## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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**Date of Meeting:** 12<sup>th</sup> March 2018  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Highways Act 1980 Section 119  
Application for the Diversion of Public Footpath No. 41 (part),  
Parish of Haslington

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#### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 41 in the Parish of Haslington. 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. 41 in the Parish of Haslington by creating a new section of public footpath as illustrated on Plan No. HA/124 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 off the driveway of the Fields Farm property and ensure privacy and security for the landowner and their livestock is increased. 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 Haslington

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

5.1 Councillors John Hammond and David Marren

#### **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 Victoria Webb-Johnson, Fields Farm, Sydney Road, Crewe, Cheshire, CW1 5LT ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 41 Haslington.
- 10.2 Public Footpath No. 41 Haslington commences at its junction with Sydney Road at O.S. grid reference SJ 7221 5581 and runs in a generally easterly direction for approximately 85 metres before turning in a generally northerly direction for approximately 114 metres. At point A (on Plan No. HA/124), Public Footpath No. 41 Haslington meets Public Footpath No 22 Haslington and turns and runs along the driveway for Fields Farm in a generally east, south easterly direction for approximately 245 metres. At point B (on Plan No. HA/124) it makes a turn in a northerly direction for approximately 17 metres, then at point C it makes a turn in a generally east, south easterly direction for approximately 26 metres until it's junction with the A534. Public Footpath No. 41 then continues for a short distance on the easterly side of the road to its termination at its junction with Public Footpath No.38. The section of path to be diverted is shown by a solid black line on Plan no. HA/124 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 section of Public Footpath No. 41 Haslington to be diverted and the proposed diversion runs belongs to 'the Applicant', Victoria Webb-Johnson.
- 10.4 The section of Public Footpath No. 41 Haslington to be diverted commences at Point A, and runs between A-B-C on plan no HA/124. From point A, at it's junction with Public Footpath No. 22 Haslington, it runs in a generally south easterly direction along the driveway to Fields Farm for approximately 245 metres. It has a stone surface and is approximately 3m wide. It then turns in a generally north easterly direction for approximately 17 metres crossing an area of grass. There is currently a pedestrian gate at point C (on Plan No. HA/124), which will remain the same under the new proposals. It is proposed to divert approximately 262 metres of the footpath.



- 10.5 The proposed diversion will run between points D and C on Plan No. HA/124. It will commence at O.S. grid reference SJ 7233 5595 at a new junction with Public Footpath No. 22 Haslington which is approximately 12 metres north of the existing junction at point A on Plan no. HA/124. It will then continue in an east south easterly direction for approximately 247 metres to point C at O.S. grid reference SJ 7256 5587. The path will run along the northern boundary of the property and will be 2.5 metres wide within which there will be a stone surfaced width of at least 1.2 metres. The Applicant intends to enclose the path for livestock management and personal security and is intending to use a post and rail fence similar to other fences that are already on site. A new pedestrian gate will be installed at point D to allow the new diversion to connect with Public Footpath No. 22 Haslington.
- 10.6 The proposal is in the interests of the applicant due to reasons of privacy and security. By moving the path to the north of the landowners' boundary it moves it away from the residential buildings and improves privacy and security for the occupants. It will also provide better security and land management for grazing livestock. By moving the path from the access drive it removes any risk from the interaction of walkers and vehicles.
- 10.7 The Ward Councillor's have been consulted about the proposal and have confirmed there support for the footpath diversion.
- 10.8 Haslington Parish Council has been consulted and has confirmed they have no objections to the proposal.
- 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. The South Cheshire Ramblers have been consulted, no comments have been received.
- 10.11 The Council's Nature Conservation Officer has been consulted, no comments have been received.
- 10.12 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:

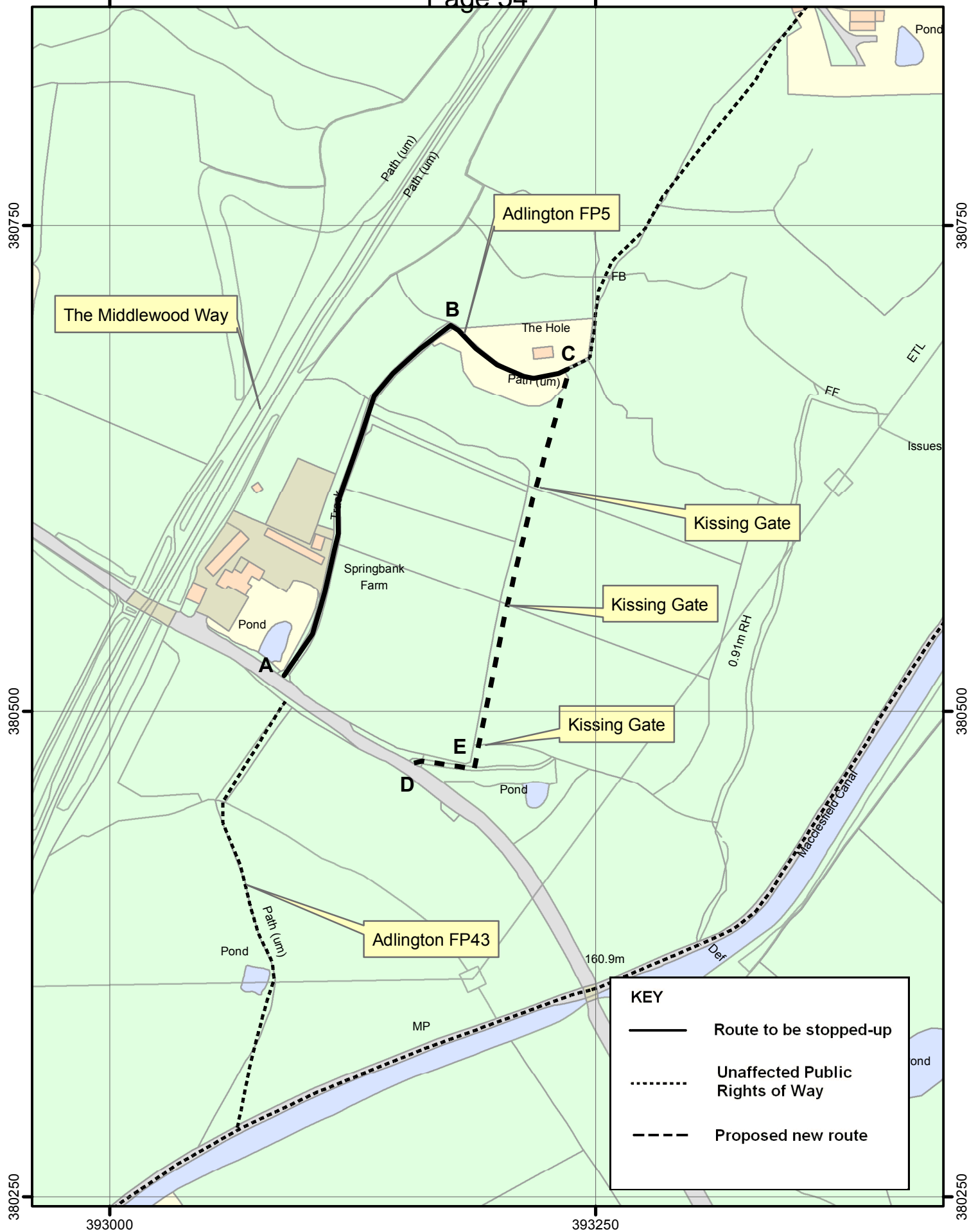
Name: Laura Brown

Designation: Public Path Orders Officer

Tel No: 01270 686053

Email: [laura.brown@cheshireeast.gov.uk](mailto:laura.brown@cheshireeast.gov.uk)

File No: 146D/549



1:2,500

Highways Act 1980 s119  
Proposed Diversion of Adlington FP 5

Plan No. HA/123

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and should not be used for legal purposes

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## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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**Date of Meeting:** 12 March 2018  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Highways Act 1980 Section 119  
Application for the Diversion of Public Footpath No. 5 (part),  
Parish of Adlington

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#### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 5 in the Parish of Adlington. 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 That the decision to make the Order be delegated to the Head of Rural and Cultural Economy or his nominated delegatee who, in consultation with the Chairman of the Public Rights of Way Committee, consider the proposal together with any comments received from members of Poynton West and Adlington Parish Council, East Cheshire Ramblers and Peak and Northern Footpath Society.
- 2.2 If an Order is made, in accordance with Section 119(1) of the Highways Act 1980, 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 on condition that the diversion of Adlington FP5 is complete.
- 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 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 applicant's home, thereby improving their privacy and security. It is considered that the legal tests for the making and confirming of a diversion order are satisfied.

#### **4.0 Wards Affected**

4.1 Poynton West and Adlington.

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

5.1 Councillor Michael Beanland; Councillor Mike Sewart.

#### **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 Mrs Cox of Springbank Farm, Springbank Lane, Adlington, Cheshire SK10 4LD ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 5 in the Parish of Adlington.
- 10.2 Public Footpath No. 5 Adlington commences at its junction with Public Footpath No. 3 Adlington on Schoolfold Lane, O.S. grid reference SJ 9341 8097 and runs in a generally south westerly direction to Springbank Lane at O.S. grid reference SJ 9308 8051. The section of path to be diverted is shown by a solid black line on Plan No. HA/123 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points D-E-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 Mrs C Cox. The section of the path to be diverted that runs (between points B and C on Plan No. HA/123) through the property known as The Hole belongs to Mr and Mrs Taylor, who have provided their written consent.
- 10.4 The section of Public Footpath No. 5 Adlington to be diverted commences at O.S. grid reference SJ 9323 8067, point C on Plan No. HA/123, just outside of the boundary of 'The Hole'. It then crosses a stile and runs in a generally westerly direction for approximately 68 metres through the garden of 'The Hole' passing very close to residential buildings. At point B (on Plan No. HA/123) the footpath exits the garden by crossing a stile. It then makes a turn in a generally south westerly direction for approximately 205 metres along a private track which also acts as a driveway for 'The Hole' and visitors to Springbank Farm and its stables. This track is surfaced and is used by vehicles and for the movement of horses. The footpath terminates at its junction with Springbank Lane at point A on Plan No. HA/123, O.S. grid reference SJ 9308 8051 after passing through a large gate.
- 10.5 The proposed diversion will commence at point C on Plan No. HA/123, just outside the boundary of 'The Hole' at O.S. grid reference SJ 9323 8067. It will then run in a generally south easterly direction for 209 metres. The footpath will pass through three field boundaries so a kissing gate will be installed at each. At point E the footpath turns in a generally westerly direction and follows



an existing track for approximately 31 metres to its junction with Springbank lane at O.S. grid reference SJ 9315 8047 (Point D on Plan No. HA/123). The new junction of Public Footpath No. 5 Adlington on Springbank Lane at Point D is approximately 80 metres from the original junction (Point A), this road is currently well used by walkers as a link between the Macclesfield Canal and the Middlewood Way. This section of road is relatively straight with good sightlines and has areas of verge which allows people to step off the road if necessary.

- 10.6 The proposed diversion will have a width of 2 metres within which a stone track will be laid along its whole length and will follow an alignment that provides an enjoyable view of the surrounding countryside to the current route. The total length of the proposed diversion will be approximately 240 metres which is a shorter and more convenient route if approaching the route from the canal. However it would be approximately 47 metres longer if using Adlington Footpath 43 or the Middlewood Way.
- 10.7 The proposed diversion is in the interests of the privacy and security of the applicant as it will enable the residents of Springbank Farm and The Hole to install a full security gate at point A as there is a history of burglaries at The Hole and also at the neighbouring Jepsonclough Farm. It will also enable higher levels of equine control for the stables at Springbank Farm as the current gate has a history of being left open, putting the horses and members of the public at risk.
- 10.8 The Ward Councillor has been consulted about the proposal and supports the comments made by the Parish Council as stated below.
- 10.9 Poynton West and Adlington Parish Council has been consulted, they raised concerns that *“the proposed diversion of Footpath 5 will compromise the safety of walkers because those using Footpath 43 (opposite point A on the attached plan) would have to walk along a stretch of highway, which has no pavement and can be busy, in order to join Footpath 5 to continue their journey, rather than simply crossing the road as is the case with the current route. The Parish Council was of the view that a preferable proposal would be for points A & D or A & E (on the attached plan) to be linked by a path inside the field, thereby avoiding pedestrians having to use the highway to continue on their route”*

After speaking with the Landowner a route between point A & D and A & E is not possible due to how she manages her horses. It has been explained to the Parish council that the road is already well used by walkers as a connection between the canal and the Middlewood Way. There are areas of verge next to the road which are large enough to allow walkers to step off the road if need be and the road is straight which allows good sightlines of traffic in both directions.

The highways department has also provided data on the number of injury collisions reported between 1<sup>st</sup> January 2012 and 30<sup>th</sup> November 2017 with no incidents reported in that time period.

10.10 The statutory undertakers have also been consulted and have raised no objections to the proposed diversion. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

10.11 The user groups have been consulted. The Peak and Northern Footpaths Society has responded to state that it has objections to the proposal:  
*The current route is a very easy walk down the driveway with pleasant views to the East.*

*We were not able to walk the proposed new route, and only able to view the ground from either end.*

*From what we could see the ground is very uneven, with undulating terrain, as the straight line of the proposed route crosses from one side of the small meandering valley and back again. This would involve considerable increases of gradient from the current route, and also a less enjoyable route with regards to views from the lower ground. There is also considerable cross gradient along the proposed route.*

*It looks like there is a tendency for water to drain across parts of the route causing extremely soft conditions. The section D-E is also very boggy. Whilst the proposal is for a "stone surface", we question that this would be sustainable given the surrounding boggy conditions, and the action of the horses kept in the area could make the path impassable. It would be a pity if we end up with ongoing maintenance concerns and need for boardwalks etc as it's so poorly drained and churned up by hooves.*

*Also the current path links up nicely with Adlington 43 at point A. The new route requires walking along the narrow road with no footway to link, and will not be substantially as convenient.*

*Any diversion is an opportunity for improvement. It is not clear how this path will be an improvement on the existing path.*

*We are mindful of the desire for the residents privacy, and understand the requirement for a diversion, however, at this stage we feel that the Society should object to the proposed route if the Order is made.*

A response was sent to The Peak and Northern Footpath Society further explaining the surfacing of the proposed path and information about walking along the road. The Peak and Northern Footpath Society have referred the issue to the Courts and Inquiries Officer for Cheshire East.

10.12 The East Cheshire Ramblers responded with a number of issues after a meeting with them and the landowner on site:

*The proposed diversion appears to be potentially satisfactory however we would wish to see it extended north-west from point E to a point opposite the end of footpath FP 43 on Spring Bank Lane. The lane is subject to the continual passage of vehicles, both private and commercial, some travelling*

*fast, making it unsafe for pedestrians. Both FP 43 and FP5 are part of the designated North Cheshire Way long distance footpath which is shown on the Ordnance Survey map. As such, it might be expected to attract a significant number of walkers.*

*The route from E north-north-east to point C was considered and appeared to be very muddy, wet and uneven throughout. A substantial amount of work will be required to the surface to bring it up to a suitable standard such that it can be walked at all times of the year. We note that the current right of way between points A and C is on a stone track which can easily be walked at all times.*

*Please could we have sight of the specification for the work between E and C which could, for example, involve removing some of the mud and replacing with larger stones topped with finer material. We understand that three kissing gates will be provided and we note that there is no intention to fence eastern side of the proposed path between E and C.*

A response was sent to the East Cheshire Ramblers highlighting that the stretch of road is often used by walkers as it connects the canal towpath to the Middlewood Way. The data from the highways department showing that there were no reported injury collisions between 1<sup>st</sup> January 2012 and 30<sup>th</sup> November 2017 was also highlighted.

No surface specification was sent to the East Cheshire Ramblers but it was emphasised that the proposed works will not be approved unless it has been constructed to a satisfactory standard.

10.13 The Council's Nature Conservation Officer has been consulted, no comments have been received.

10.14 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.

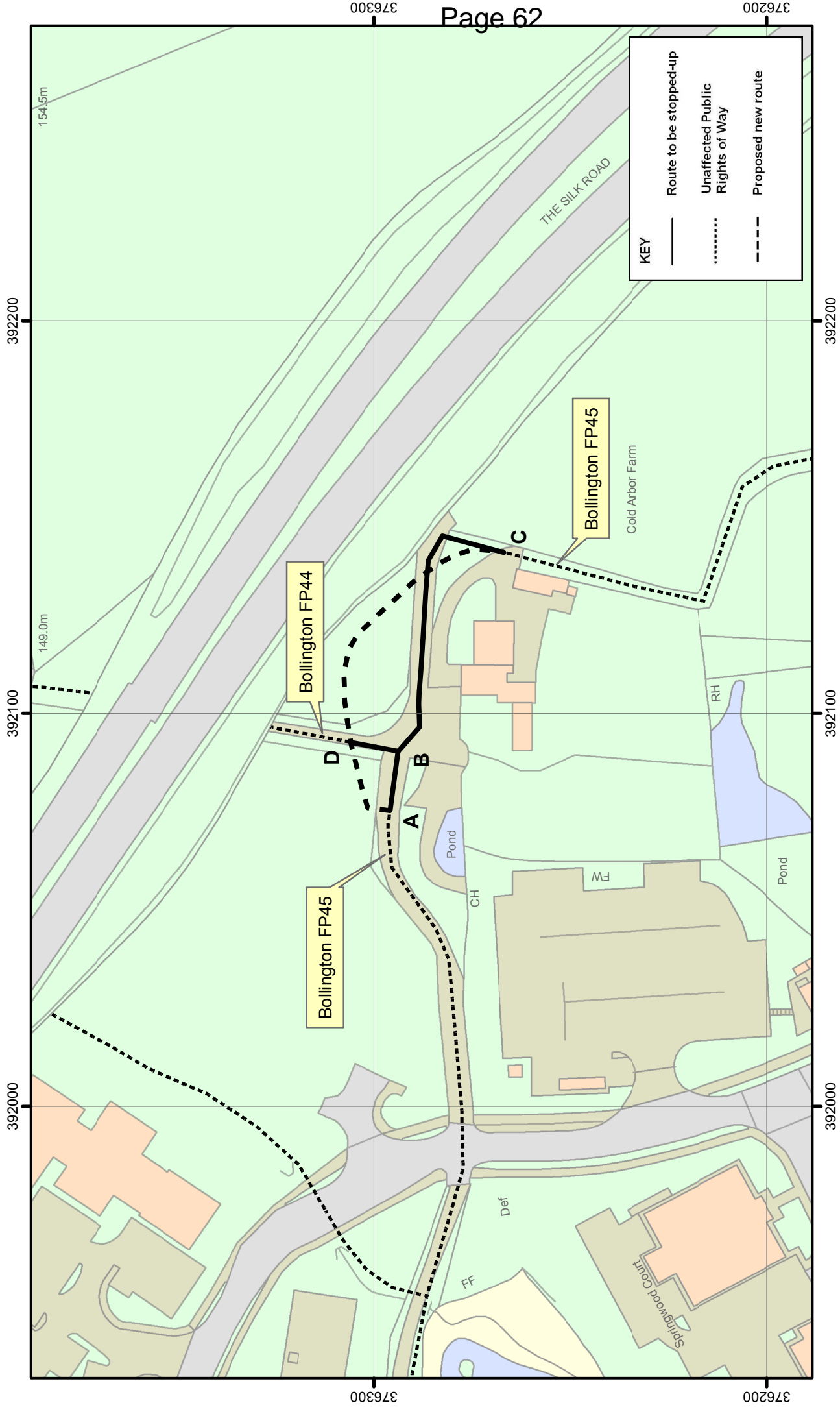
## **11.0 Access to Information**

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

Name: Laura Brown  
Designation: Public Path Orders Officer  
Tel No: 01270 686053  
Email: [laura.brown@cheshireeast.gov.uk](mailto:laura.brown@cheshireeast.gov.uk)  
File No: 003D/547

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Highways Act 1980 s119  
Proposed Diversion of Bollington FP45 and Bollington FP44

Plan No. HA/122

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



## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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**Date of Meeting:** 12<sup>th</sup> March 2018  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Highways Act 1980 Section 119  
Application for the Diversion of Public Footpath No. 45 (part),  
and Public Footpath No. 44 (part) Parish of Bollington.

---

#### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert parts of Public Footpath No. 45 and Public Footpath No. 44 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 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 parts of Public Footpath No. 45 and Public Footpath No. 44 in the Parish of Bollington by creating a new section of public footpath and extinguishing the current paths as illustrated on the Plan no. HA/122 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 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 out of the new development of Cold Harbour Farm ensuring future residents' privacy and security is increased. 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 Bollington

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

5.1 Councillors James Nicholas and Amanda Stott

#### **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 Jones Homes (North West) Limited, Emerson House, Heyes Lane, Alderley Edge, SK9 7LF ('the Applicant') requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert parts of Public Footpath No. 45 and Public Footpath No. 44 in the Parish of Bollington.
- 10.2 Public Footpath No. 45 Bollington commences at its junction with Public Footpath No. 38 Bollington at O.S. grid reference SJ 9195 7628 and runs in a generally westerly direction for approximately 203 metres until it meets point C (on Plan no. HA/122) at O.S. grid reference SJ 9214 7628 where it turns in a generally southerly direction and runs for approximately 67 metres to O.S. grid reference SJ 9212 7621. It then turns in an approximately westerly direction before arcing round and running in a generally southerly direction to its junction with Public Footpath No. 48 Bollington at O.S grid reference SJ 9218 7611. The section of path to be diverted is shown by a solid black line on Plan no. HA/122 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points A-D-C.
- 10.3 The section of Public Footpath No. 45 Bollington to be diverted commences at O.S. grid reference SJ 9207 7629 and runs in a generally easterly direction to O.S grid reference SJ 9214 7626 as shown between points A-B-C on Plan No. HA/122. It begins at point A (on Plan No. HA/122) runs along a private driveway and passes through an open set of gates. The footpath then crosses over an area of landscaped garden to the north of the gates to join a temporary surfaced path over the garden that leads to a pedestrian gate in the fence line. The path then leaves the Cold Arbour Farm development and crosses a further grassy area and then along a paved path to Point C (on Plan No. HA/122) It is proposed to divert approximately 90 metres of the footpath.
- 10.4 Public Footpath No. 44 Bollington commences at its junction with Clarke Lane at O.S grid reference SJ 9208 7642 and runs in a generally southerly direction for approximately 18 metres until the Silk Road bisects it. The footpath resumes at O.S. grid reference SJ 9209 7632 and runs in a generally southerly direction for approximately 32 metres to it's junction with Bollington

FP 45 at O.S. grid reference SJ 9208 7629. The section of path to be diverted is shown by a solid black line on the Plan between points D-B.

- 10.5 The section of Public Footpath No. 44 Bollington to be diverted commences at O.S. grid reference SJ 9209 7630 (Point D on Plan No. HA/122) and continues in a southerly direction for approximately 12 metres until it meets Public Footpath No. 45 Bollington at Point B.
- 10.6 The land over which the sections of Public Footpaths Nos. 44 & 45 Bollington to be diverted and the proposed diversion run belongs to Jones Homes.
- 10.7 The proposed diversion would follow a permissive route that is already constructed and well used by the general public, this runs between points A-D-C on the Plan No. HA/122. At O.S. grid reference SJ 9207 7629, point A on the Plan, the footpath makes a northerly turn for approximately 5 metres and then continues in a generally easterly direction crossing Public Footpath No. 44 Bollington at point D and then continues in a generally easterly and then south easterly direction to point C at O.S. grid reference SJ 9214 7626. The Developers Plan of Cold Arbour Farm also shows the proposed diversion but alongside the current layout of the new houses. The proposed diversion has a Breedon gold gravel topped surface laid on MOT stone with timber edgings and is approximately 2 metres wide throughout. The diverted route is very similar in length to the current route, at approximately 95 metres.
- 10.8 The proposal is in the interests of the applicants as it would make the housing development at Cold Arbour Farm more private and secure for future residents.
- 10.9 The Ward Councillors have been consulted about the proposal. No comments have been received.
- 10.10 Bollington Parish Council has been consulted. No comments have been received.
- 10.11 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.
- 10.12 The user groups have been consulted. The Peak and Northern Footpaths Society has responded to state that it has no objection to the proposal.
- 10.13 The Council's Nature Conservation Officer has been consulted, no comments have been received.
- 10.14 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: Laura Brown

Designation: Public Path Orders Officer

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File No: 028D/544



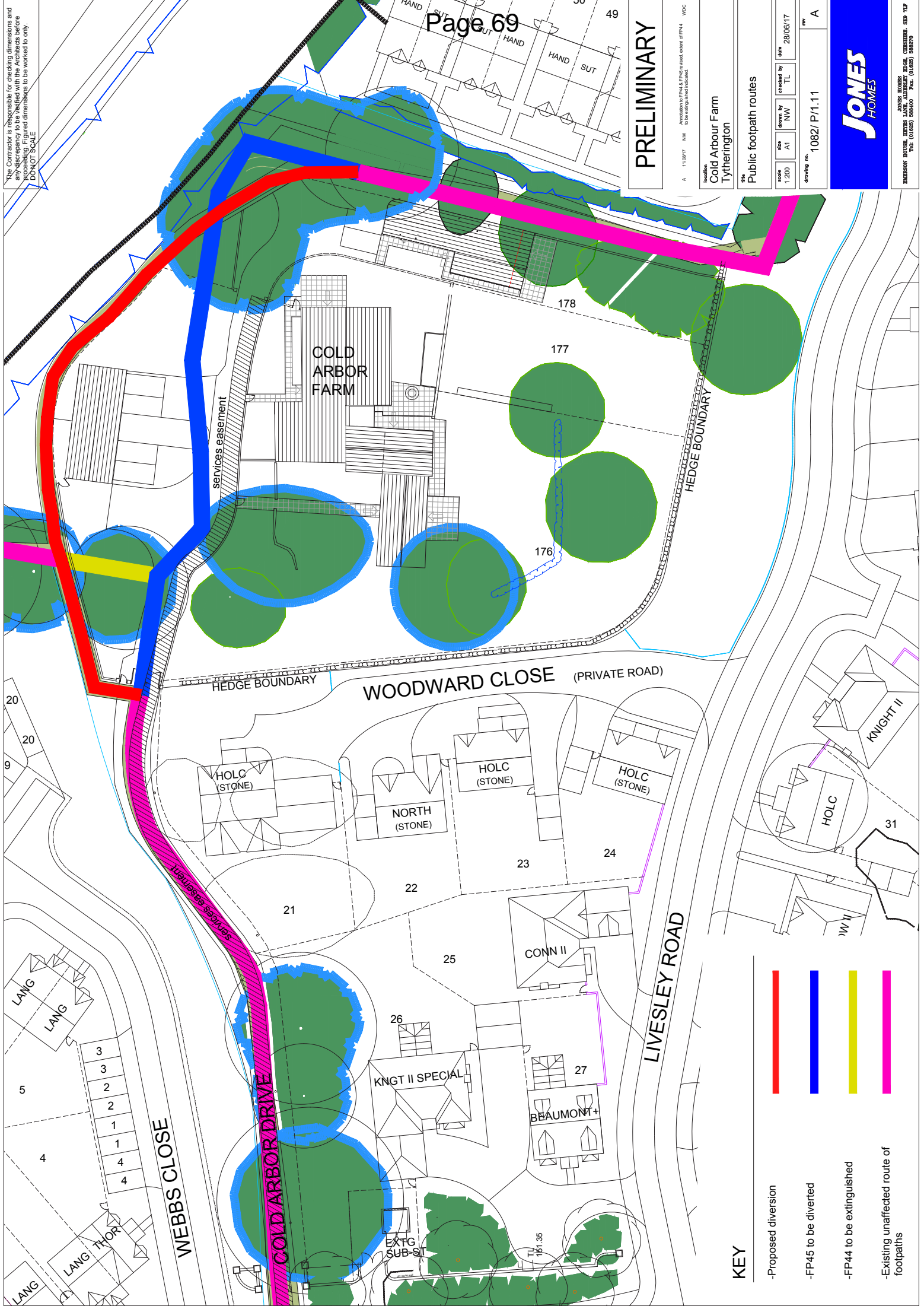
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A	11/08/17	NW	WDC
			Annotation to FP44 & FP45 revised, extent of FP44 to be extinguished indicated.

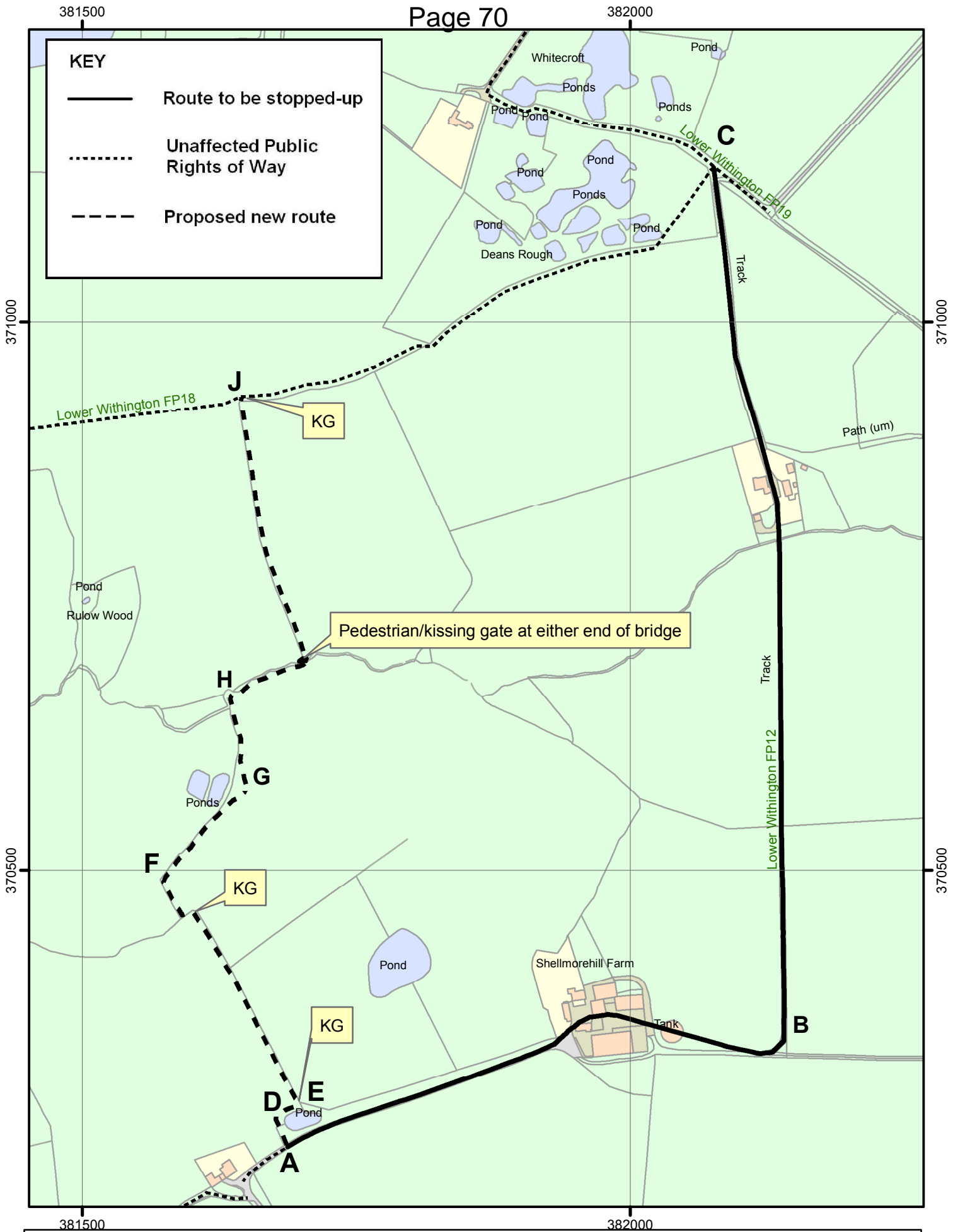
Public footpath routes

scale 1:200	size A1	drawn by NW	checked by TL	date 28/06/17
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drawing no.	1082/ P/1.11	rev	A
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-Existing unaffected route of footpaths



S119 Highways Act 1980 Proposed  
Diversion Lower Withington FP12

Plan No.  
HA/120

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





## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

---

**Date of Meeting:** 12<sup>th</sup> March 2018  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Highways Act 1980 Section 119  
Application for the Diversion of Public Footpath No. 12 (part),  
Parish of Lower Withington

---

#### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.12 in the Parish of Lower Withington. 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 landowners concerned. The report makes a recommendation based on that information, for a 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.12 Lower Withington by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/120 on the grounds that it is expedient in the interests of the owners 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 landowners for the reasons set out in paragraph 10.8 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 This diversion is in the landowners' interest as part of the current route goes through their working dairy farm and within very close proximity to their residential properties. There has also been a long standing issue with a slurry tank obstructing part of the footpath through the farm yard. The alternative route is not substantially less convenient than the definitive path and the enjoyment of the path as a whole would be significantly improved. The section of path that runs through the farm yard is difficult to walk due to the number of gates, daily operations of the farm and the very close proximity of the cattle that are sometimes held within the yard. Following a full discussion of the costs and procedure Officers agreed to progress the application for a diversion of the footpath under the Highways Act s119; which is funded by the landowner. It is considered that this is the best way forward to hopefully resolving the problems currently affecting the route and to fully re-instating a safe and useable path for the public.

#### **4.0 Wards Affected**

4.1 Gawsworth

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

5.1 Councillor Lesley Smetham

#### **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 or 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 submitted from Mr J Kennerley and Son of Shellmorehill Farm, Lower Withington requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 12 in the Parish of Lower Withington.

10.2 The land over which the section of path to be diverted, and the proposed diversion run, belongs to the applicants; 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.

10.3 Public Footpath Lower Withington No.12 commences on Pitt Lane (UY1335) at O.S. Grid Reference SJ 8164 7021, and currently runs in a generally east north easterly direction for approximately 325 metres along a stone surfaced track to Shellmorehill Farm. The path then continues past two dwellings and crosses a holding area leading to a milking parlour, before passing through collecting and silage yards to exit through a slurry tank which obstructs the line of the path. The path then continues for approximately 23 metres over part of the field to the east of the tank where it meets the corner of a farm track before turning to run in a generally northerly direction for approximately 800 metres to connect with public footpath Nos's 18 and 19 Lower Withington at O.S. Grid Reference SJ 8164 7093

10.4 Within the farm yard area there are three large gates for controlling the movement of cattle between yards for milking that need to be opened and closed by users in order to walk the path. Walkers at this point come within very close proximity to waiting cattle, loader and scraper tractors.

10.5 Currently the definitive line of the footpath is partly unavailable on the ground. The unavailable section of the path is obstructed by industrial farm structures and a silage tank. To avoid the obstruction the public are currently using a

permissive path which comes within very close proximity to working machinery and cattle.

- 10.6 The section of path to be diverted is shown by a solid black line on Plan No. HA/120 between points A-B-C. The proposed diversion is illustrated on the same plan with a black dashed line between points A and J.
- 10.7 The proposed path commences at point A on plan No. HA/120 and runs in a generally north westerly direction for approximately 26 metres, through a field gate with pedestrian access at point D on plan HA/120 where it turns to a generally north easterly direction for approximately 28 metres to a kissing gate at point E on plan No. HA/120. The path then turns again to run in a generally north westerly direction for approximately 252 metres to a kissing gate at point F on plan HA/120. It then turns to run a generally north easterly direction at point G (on plan HA/120) taking a slightly more easterly direction at point H (plan HA/120) for 238 metres to the bridge shown on plan No. HA/120 before returning to a generally northerly direction to meet with a kissing gate at point J on plan No. HA/120 and it's junction with public footpath No.18 Lower Withington.
- 10.8 The applicant states that as the landowner it is in his interests to divert the path as 'it will improve the privacy and security of their homes, the farm, the animals and farming equipment and that it will also improve the safety of farm employees and animals by removing potential conflicts between passing farm vehicles, animals and walkers'. He states that 'cows cross the existing path to get to various parts of the farm and by diverting walkers away from the farm yards bio-security would also be improved for everyone'.
- 10.9 Mr Morrow, who also owns property over which the current public footpath runs, emailed the Rights of Way team on the 30<sup>th</sup> January 2018 supporting the application for the proposed diversion commenting, 'that the new route will bring benefits to all groups using the path including the public, the farmer and families such as his own, whose homes straddle the current route'. He states 'all will be safer and more secure, as the line of the current route shares the drive to and across his land and that it passes within 3 metres of his front door and two side gates'.
- 10.10 Mr Morrow states that the proposed diversion will have the following benefits: 'the safety of walkers when they encounter visitors' cars and delivery vehicles will be significantly improved. The security and privacy of their homes will be improved and that he endorses the proposed diversion and hopes it will be agreed by all parties'.
- 10.11 Mr and Mrs Mitchell who live next to the existing path wrote to Cheshire East Council on 29<sup>th</sup> January 2018 supporting the proposal to move the existing footpath.
- 10.12 The new route will have a width of 2.5 metres. The route will have a grass surface, will not be enclosed and will for the most part follow the line of field boundaries. The proposed path will require the installation of a footbridge



shown on plan HA/120 with a kissing or pedestrian gate at either end. There will also be a requirement for a field gate with pedestrian access at point C on plan No. HA/120 and three kissing gates to be installed along the path as shown at points E-F-J on the attached plan HA/120. Occasionally when stock is present in the field's temporary fencing will be installed enclosing the path to the agreed 2.5 metres width.

- 10.13 The Ward Councillor was consulted about the proposal. No comments have been received.
- 10.14 All other statutory undertakers have 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.
- 10.15 The user groups have been consulted. The Peak and Northern Footpath Society in an email dated 29th January 2018 comment they have no objection to the proposals. The East Cheshire Ramblers emailed the Local Authority with regard to the proposed diversion requesting a site inspection of the path as the diversion seems quite extensive. The Ramblers met with the applicant to walk the proposed path on 25<sup>th</sup> January 2018. The East Cheshire Ramblers in a letter dated 6<sup>th</sup> February 2018 responded to the consultation as being 'generally satisfied with the proposed diversion which will avoid an awkward section of path through the farm yard and silage pit'. The Ramblers also noted that there is a track immediately to the south of the farm and the existing public right of way which is way marked as permissive and 'is the route taken by most walkers'.
- 10.16 The Ramblers also noted that the proposed diversion replaces a right of way which is on a stone track, with the proposed path being described as 2.5 metres wide and a surface of grass throughout. The Ramblers have asked that 'measures be taken to ensure the path is well drained' and suggest 'that near the proposed gates and footbridge some stone be deposited to avoid the deterioration of the surface'. The Ramblers further stated that they understand that when the fields are grazed, 'the stock will be prevented from poaching the surface of the proposed path by a temporary fence' and that at all other times the fence will be removed.
- 10.17 As a final point the Ramblers request confirmation that if the diversion is confirmed, there will be clear permanent signs on both sides of the track directing walkers along the revised route 'as it will be some years before the OS maps show the diverted route and that this would be helpful to both the landowner and walkers'. The Cheshire East Council's Public Rights of Way team will ensure that if the Order is confirmed to divert the public footpath, clear and permanent signage will be installed at either end of the new route.
- 10.18 The Council's Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.

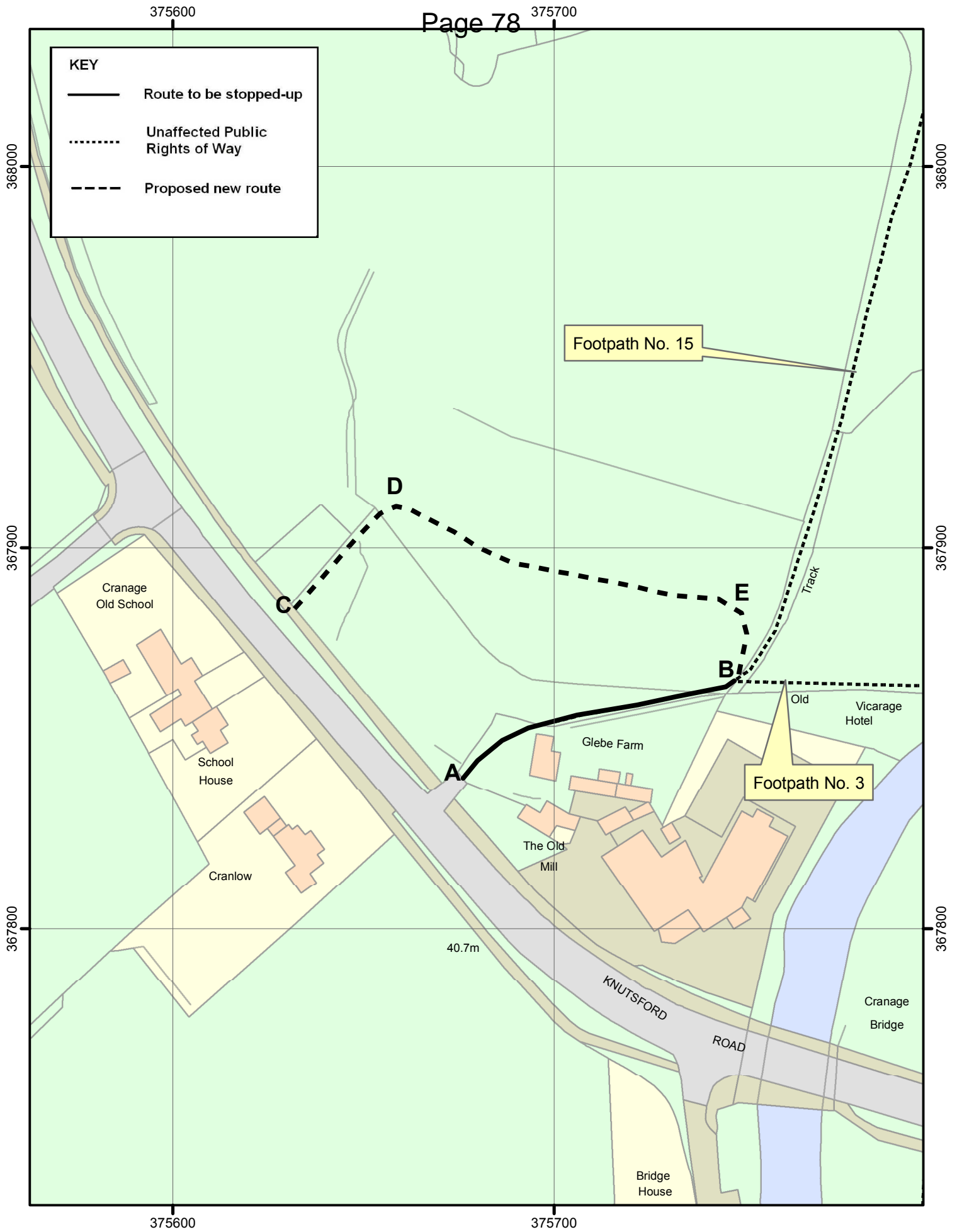
- 10.19 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current route.

#### **11.0 Access to Information**

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

Name: Sarah Fraser  
Designation: Public Paths Orders Officer  
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PROW File: 325D/546

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S119 Highways Act 1980 Proposed Diversion  
of Cranage Footpath No.3

Plan No.  
HA/119

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





## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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**Date of Meeting:** 12<sup>th</sup> March 2018  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Highways Act 1980 Section 119  
Application for the Diversion of Public Footpath no. 3 (part),  
Parish of Cranage

---

#### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.3 in the Parish of Cranage. 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 landowners 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.3 by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/119 on the grounds that it is expedient in the interests of the owners of the land crossed by the path.
- 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, 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 10.8 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 would allow the landowner to protect the privacy and security of their home and business premises. 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 Dane Valley

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

5.1 Councillors Les Gilbert and Andrew Kolker

#### **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 or 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 submitted from Mr M Gibson, Glebe Farm, Holmes Chapel, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 3 in the Parish of Cranage.
- 10.2 The land over which the section of path to be diverted, and the proposed diversion run, belongs to the applicant; Under section 119 of the Highways Act 1980 the Council may accede to an applicants' request, if it considers it expedient in the interests of the landowner to make an Order to divert the footpath.
- 10.3 Public Footpath No. 3 Cranage commences on Knutsford Road (A50/DB/01) at O.S. grid reference SJ 7567 6783,(Point A on Plan no. HA/119) and runs in an easterly direction to point B, (Grid Ref SJ 7574 6785) where it meets the unaffected part of Footpath No.3 at the junction with Cranage public footpath No. 15. Approximately the first 86 metres of footpath No.3 is affected by the proposed diversion. The remaining section of the footpath is unaffected by the proposed diversion. The section of path to be diverted is shown by a solid black line on Plan No. HA/119 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points B-C.
- 10.4 The section of Public Footpath No.3 to be diverted commences at point A (on plan No. HA/119) and runs in an easterly direction for approximately 86 metres. The path runs through the applicant's driveway and yard access for approximately 8 metres where it passes within very close proximity to both business and domestic premises. Beyond this point the path narrows from approximately 8 metres wide with an even gradient to approximately 1.5 metres wide at its widest point, narrowing to approximately 1 metre wide with an uneven gradient. The path at this point is also enclosed for approximately 78 metres creating a corridor effect to its junction with Public footpath No. 15.
- 10.5 The narrow width and uneven gradient of this part of the route makes this section of the path difficult to walk which is further compounded by the often wet and muddy conditions caused by the frequent flooding of two natural underground springs that flow directly under the footpath.
- 10.6 The proposal is to divert that part of the footpath shown between points A-B (on Plan No. HA/119). The proposed route will commence at its junction with Knutsford Road (point C on Plan No. HA/119) approximately 61 metres to the northwest of the current path and will follow the natural line of the field

boundary to re-join the unaffected part of Footpath No.3 at its junction with Public footpath No. 15. The proposed path will follow a north easterly direction for approximately 35 metres turning to a east south easterly direction at point D (SJ 7565 6791) and a more southerly direction at point E (SJ 7575 6788) to re-join the unaffected part of Footpath No. 3 at its junction with Footpath 15 at point B.

- 10.7 The new route will have a minimum width of 2.5 metres. The route would be enclosed between post and wire fencing and it would have a grass surface. There is no requirement for any furniture on the route.
- 10.8 This diversion is in the landowners' interest as part of the route currently goes through their driveway and yard access and within close proximity to their business and domestic premises; the diversion would allow the landowners a greater degree of privacy and security and more control over how they run their businesses. The landowner believes the alternative route is no less convenient than the definitive right of way and that the proposed path will have better accessibility and will also improve the enjoyment of the public when using the path as a whole.
- 10.9 In support of the application to divert the path the applicant has stated the present path is at times unpassable due to flooding spring water and high water tables. He further states that he and the Parish Council receive weekly complaints from walkers using the current path. The applicant comments that the removal of the path from its current location would benefit walkers, enabling them to walk all year round without the dangerous conditions frequently complained about. He states the proposed path would be more scenic and would be easier to use making for a more enjoyable walk.
- 10.10 He also states that at present the path goes through his farm yard meaning he cannot secure the premises or property from theft or vandalism, which they have been the victims of at least four times during the last year. The suggested path would mean that the applicants' house, farm yard and animals would be secure as he has had dozens of animals stolen, injured or killed by dogs. He states his signs for the farm have been pulled down, windows broken, tools stolen and vehicles damaged. The applicant goes on to say he has had people in his garden at all hours, has had vegetables stolen and destroyed and has had several confrontations with drunken teenagers of which both the Police and Council are aware.
- 10.11 Cranage Parish Council was consulted about the proposal. Julie Mason the parish clerk replied to the consultation by email on 23<sup>rd</sup> January stating that from a walker's perspective there is no downside to the diversion as the current pathway is prone to flooding, is generally poorly maintained and is difficult to pass in the summer due to the nettles. The clerk also commented that provided the diverted pathway is in good condition then it can only be of benefit to walkers. They requests that the existing footpath not be closed until the proposed one is in a good walkable condition. The Clerk further comments that the proposed footpath is running through generally wet farm land and unless properly prepared similar challenges will emerge. The clerk



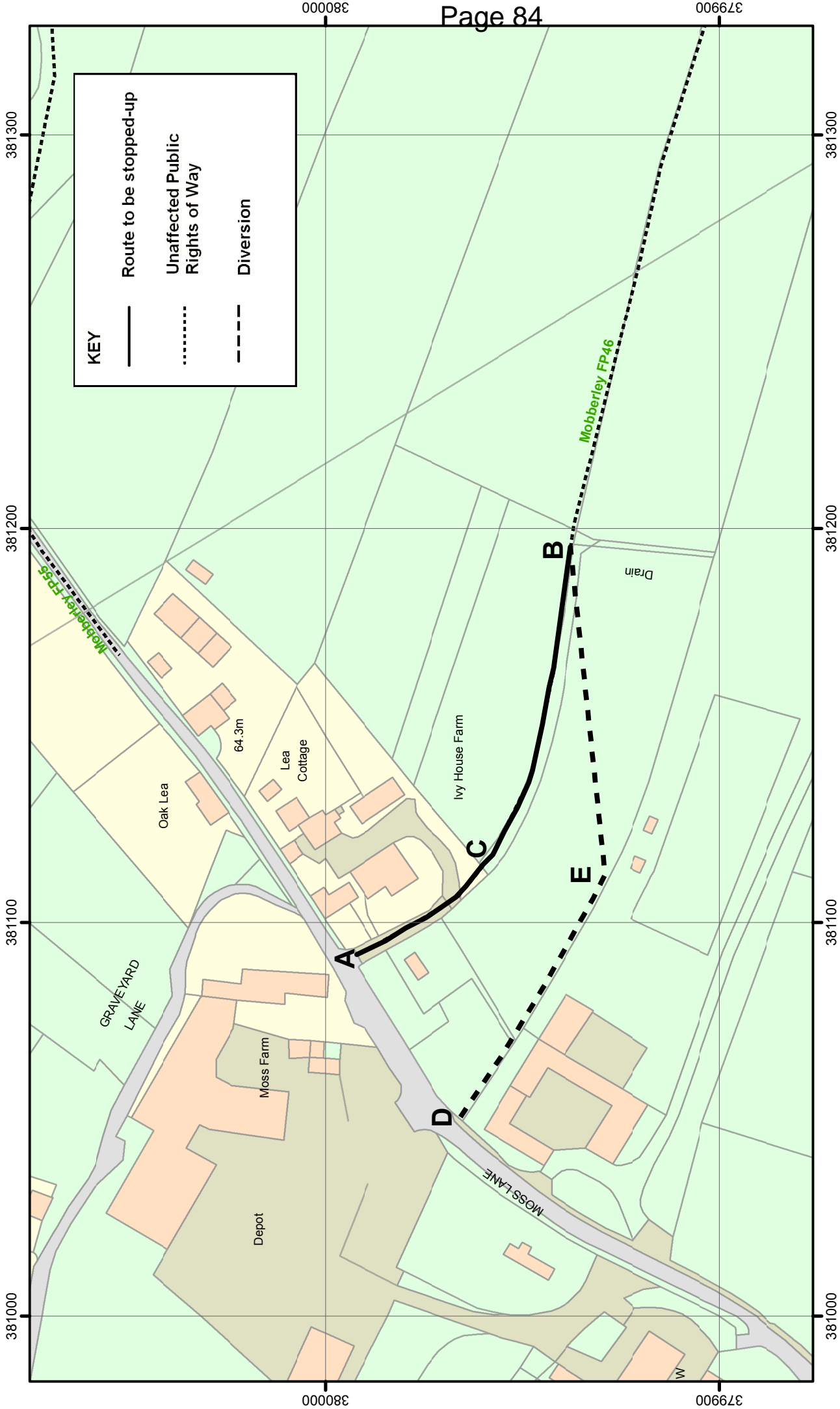
further states the proposed footpath should have a minimum width of 2.5 metres as the existing one is only a metre wide and gives no room for deviation if flooded

- 10.12 The Holmes Chapel Parish Council in an email dated 13<sup>th</sup> February 2018, commented on the diversion as Holmes Chapel residents regularly use the footpath. The Parish Council Committee considered the consultation on the proposed diversion of the footpath and resolved to make no objection.
- 10.13 The Ward Councillors were consulted about the proposal. Councillor Les Gilbert replied to the consultation by email on Thursday 11<sup>th</sup> January 2018 stating that as a member of the Public Rights of Way Committee he would not make any comments in advance of the committee meeting.
- 10.14 The statutory undertakers have 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.
- 10.15 The user groups have been consulted. The Peak and Northern Footpath Society in an email dated 29<sup>th</sup> January 2018 comment they have no objection to the proposals. The Ramblers Association in an email dated 11<sup>th</sup> February 2018 comment, that they have no objections to the proposed diversion of part of Cranage footpath No.3 they also went on to state that the proposed diversion "would help to improve the security for private and retail premises and avoid a very muddy and rather unpleasant section of existing path."
- 10.16 The Council's Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.
- 10.17 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current route.

## **11.0 Access to Information**

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

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Designation: Public Path Orders Officer  
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PROW File: 094D/543



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

Plan No.  
**HA/121**

S119 Highways Act 1980 Proposed  
Diversion Moberley Footpath No. 46



1:1,250

## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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**Date of Meeting:** 12<sup>th</sup> March 2018  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Highways Act 1980 Section 119  
Application for the Diversion of Public Footpath No. 46 (part),  
Parish of Mobberley

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#### 1.0 Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No.46 in the Parish of Mobberley. 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 landowners concerned. The report makes a recommendation based on that information, for a 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. 46 in the Parish of Mobberley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/121 on the grounds that it is expedient in the interests of the owners 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 landowners for the reasons set out in paragraph 10.6 below.

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

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

And whether it is expedient to confirm the Order considering:

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

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

3.4 The proposed route will not be 'substantially less convenient' than the existing route and diverting the footpath would preserve the landowners privacy and security. 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 Mobberley

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

5.1 Councillor Jamie Macrae

#### **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 submitted from Mrs Uttley of Ivy House Farm Mobberley, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 46 in the Parish of Mobberley.
- 10.2 The land over which the section of the current path to be diverted, and the proposed diversion run, belongs to the applicant; 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.
- 10.3 Public Footpath No. 46 in the Parish of Mobberley commences on Moss Lane (UW2144) at O.S. Grid Ref: SJ 8109 7999 (point A on Plan No. HA/121), and runs along the applicant's driveway in a generally south-easterly direction for approximately 39 metres to meet with a stile (point C on Plan No. HA/121). The footpath then continues over farm land for approximately 91 metres to another stile (point B on Plan No. HA/121) before continuing in the same south-easterly direction to meet with Paddock Hill Lane (UW2145) at O.S. Grid Ref: SJ 8166 7976. Approximately the first 130 metres of the public footpath is subject to the proposed diversion, the remainder of the path will be unaffected. The section of path to be diverted is shown by a solid black line on Plan No. HA/121 between points A-C-B from O.S. Grid Ref: SJ 8109 7999 to SJ 8119 7993. The proposed diversion is illustrated on the same plan with a black dashed line between points D-E-B from O.S. Grid Ref: SJ 8105 7996 to SJ 8119 7993.
- 10.4 The proposal is to divert approximately the first 130 metres of footpath No. 46 in the Parish of Mobberley away from the applicant's driveway from a new commencement point on Moss Lane to the pass through an old orchard approximately 50 metres to the southwest of its current position at OS Grid Ref: SJ 8105 7996 (as shown on the attached Plan No. HA/121 at point D). The proposed path will then run in the same south-easterly direction along the field boundary for approximately 70 metres before taking a more easterly direction at O.S. Grid Ref: SJ 8111 7992 (shown at point E on Plan No. HA/121) for approximately 80 metres across the field to meet with the stile shown at O.S. Grid Ref: SJ 8119 7993 (point B on Plan No. HA/121). The path will then continue to run on its previously recorded alignment.
- 10.5 The new route will have a minimum width of 2.5 metres. Approximately the first 25 metres of the proposed path will be partially surfaced with stone and

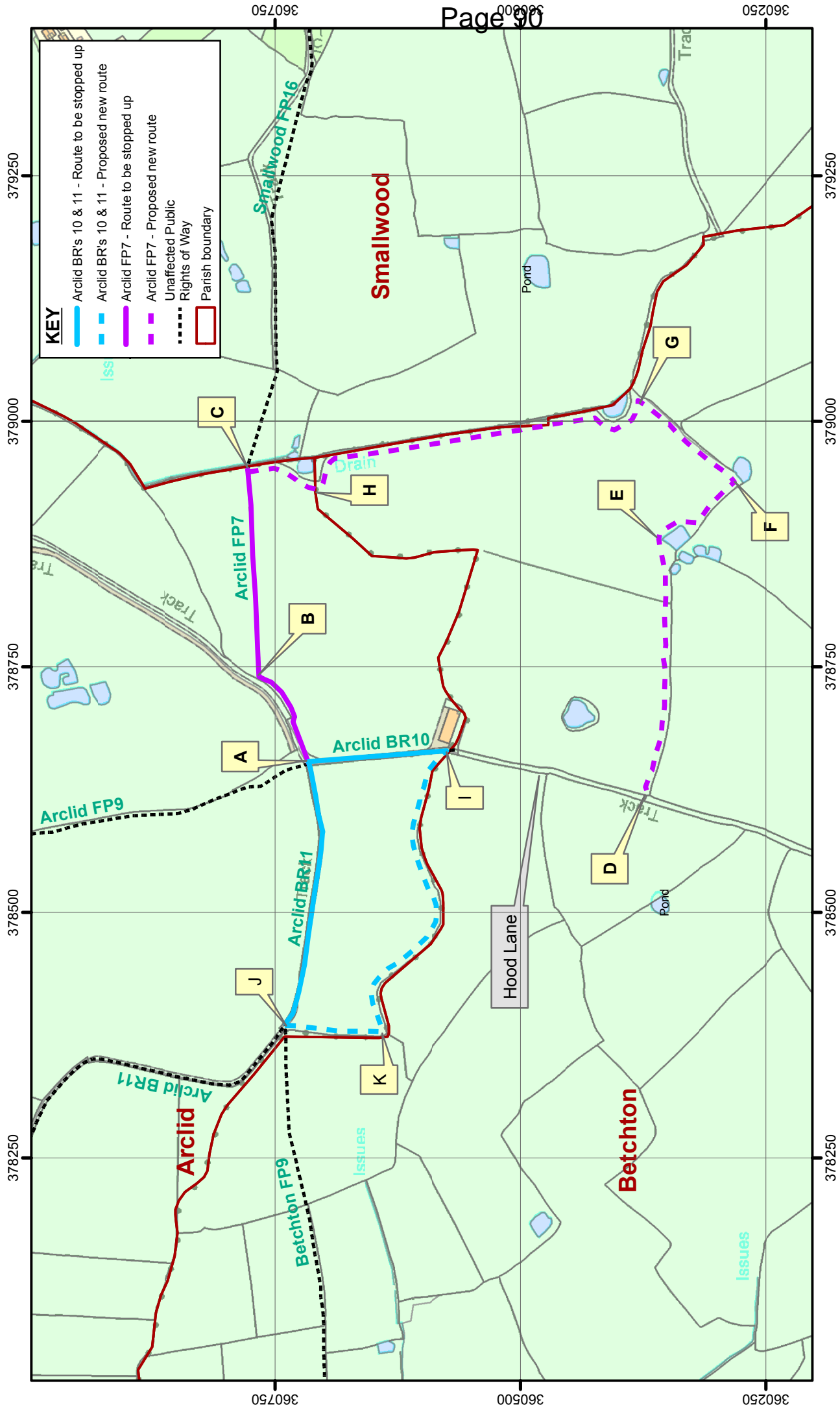
the remainder of the path will run across free draining dry land comprising of a stone, earth and grass surface. There is a requirement to add a kissing gate at the commencement point of the proposed path (point D on Plan No. HA/121).

- 10.6 This diversion is in the landowners' interest on grounds of privacy and security as the current route partly goes through their driveway. The landowners believe the alternative route is not substantially less convenient than the Definitive right of way and the enjoyment of the path as a whole will be improved.
- 10.7 The Ward Councillor was consulted about the proposal. No comments have been received.
- 10.8 The statutory undertakers have 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 East Cheshire Ramblers by email on 26<sup>th</sup> January 2018 responded to the consultation on the proposed diversion and stated they have no objections to taking the path away from the house and acknowledge that 'it has some advantage provided the new route has adequate signage and the installation of a new gate on Moss Lane'. The Ramblers also support the installation of a stone surface along the hedge line of the path. Having walked the proposed path the Ramblers also commented that 'although there were big puddles near by, the actual path line was fairly firm'. However, they also noted that there was 'a lot of evidence of horses which have broken up the ground quite considerably'. Stating that 'this can more easily become waterlogged especially at the stile at point B' they suggested that some 'stone surfacing near the stile would prevent this becoming a problem'. It is considered that there is no requirement at this time to add stone to the surface around the stile. No further responses from the user groups have been received.
- 10.10 The Council's Nature Conservation Officer and Natural England have been consulted and have raised no objection to the proposals.
- 10.11 An assessment in relation to the Equality Act 2010 has been carried out by the PROW Network Management and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current route.

## **11.0 Access to Information**

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

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PROW File: 210D/550



Town and Country Planning Act 1990, s.257  
 Cheshire East Borough Council  
 (Footpath7 and, Bridleways 10 and 11 (parts), Parish of Arclid)  
 Public Path Diversion Order 2018



Plan No.  
 TCPA/46



## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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<b>Date of Meeting:</b>	12 March 2018
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No 7 and, Public Bridleway No's 10 and 11 (parts), Parish of Arclid

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#### 1.0 Purpose of Report

The report outlines the investigation to divert Public Footpath No 7 and, parts of Public Bridleway No's 10 and 11 in the Parish of Arclid. This includes a discussion of consultation 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. The application has been submitted by the Archibald Bathgate Group Ltd, Arclid Quarry, Sandbach, Cheshire, CW11 4SN, for permission to excavate sand from the southern eastern extension to the existing silica sand workings at South Arclid Quarry (Planning reference: 09/2291W). 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 footpath and sections of bridleway concerned.

#### 2.0 Recommendations

- 2.1 That the decision to make the Order be delegated to the Head of Rural and Cultural Economy or his nominated delegatee who, in consultation with the Chairman of the Public Rights of Way Committee, will consider the proposal together with any comments received from members of Arclid and Betchton Parish Councils following their meetings on 15<sup>th</sup> March 2018.
- 2.2 If an Order is made, 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 on condition that the diversion of Arclid FP9 (see Item 16 within the minutes of from the Public Rights of Way Committee, Monday 13<sup>th</sup> June, 2016) is complete.
- 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 Public Footpath No 7 and parts of Public Bridleway No's 10 and 11 in the Parish of Arclid as illustrated on Plan No. TCPA/046 to allow for further excavation of sand from the south eastern area of Arclid Quarry as detailed within planning reference: 09/2291W.
- 3.3 Consultation is still ongoing (until Friday 7<sup>th</sup> March 2018) although to date, has 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 Brereton Rural Ward

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

- 5.1 Councillor J Wray

#### **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 Applications have been received from Mr Rick Bright of Bright & Associates on behalf of the Archibald Bathgate Group Ltd, c/o Langtons, The Plaza, 100 Old Hall Street, Liverpool, L3 9QJ, requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990, to divert Public Footpath No 7 and parts of Public Bridleway No's 10 and 11 in the Parish of Arclid.
- 6.2.1 Public Footpath No 7 in the Parish of Arclid commences at its junction with Public Footpath No 9 and public Bridleway No's 10 and 11 in the Parish of Arclid at O.S. grid reference SJ 7865 6071 and runs in generally east, north easterly and then easterly directions for a total distance of approximately 316 metres crossing the airfield of the Cheshire Microlite Centre to terminate at

the parish boundary at its junction with Public Footpath No 16 in the Parish of Smallwood at O.S. grid reference SJ 7895 6077.

- 6.1.2 Public Bridleway No 10 in the Parish of Arclid commences at its junction with Public Footpath No's 7 and 9, and Public Bridleway No 11 in the Parish of Arclid at O.S. grid reference SJ 7895 6077 and runs in generally southerly direction for a distance of approximately 150 metres along a semi-surfaced track terminating at its junction with Hood Lane (adopted highway UY1128) at O.S. grid reference SJ 7866 6056.

Public Bridleway No 11 in the Parish of Arclid commences at the parish boundary where it junctions with Public Byway No 44 in the Parish of Sandbach 7 and 9, at O.S. grid reference SJ 7794 6106 and runs in generally easterly, then southerly and then easterly directions for a distance of approximately 938 metres along a semi-surfaced track terminating at its junction with Public Footpath No's 7 and 9 and Public Bridleway No 10 in the Parish of Arclid at O.S. grid reference SJ 7865 6071.

- 6.3 The existing alignments of the footpath and bridleway sections proposed for diversion by the Archibald Bathgate Group Ltd will be directly affected once the south eastern part of the quarry is excavated for sand.

The land over which the current routes run and over which the proposed routes would run is entirely owned by Archibald Bathgate Group Ltd.

- 6.4 Planning permission was granted to the Archibald Bathgate Group Ltd. on 20<sup>th</sup> February 2013. The application is cited as Planning Permission Ref: 09/2291W. The details of the application are for the extension of the southern eastern extension of South Arclid Quarry to enable further silica sand excavations and workings.
- 6.5 Further sand excavation into the south eastern extension of the South Arclid Quarry would destroy the land over which run the current alignments of Public Footpath No 7 in the Parish of Arclid and a section of bridleway consisting of parts of Public Bridleway No's 10 and 11 in the Parish of Arclid. Therefore, it is necessary to firstly divert the footpath and the bridleway sections, to ensure that these public rights of way are preserved.
- 6.6 Referring to Plan No. TCPA/046, the footpath and, the bridleway sections to be diverted are colour coded:

#### **Diversion of Public Footpath No 7 in the Parish of Arclid**

This footpath is shown by a solid **purple** line on Plan No. TCPA/046 running between points A-B-C. The proposed diversion of this footpath is illustrated with a **purple** dashed line on the same plan, running between points D-E-F-G-H-C.

The current alignment of Public Footpath No 7 in the Parish of Arclid is detailed in section 6.2.1.

It is proposed that this footpath be diverted to run around the southern and eastern perimeter of the south eastern sand excavation area and soil storage areas (points D-E-F-G-H-C) that will form once excavations begin in this area. Currently, this area of land is an airfield used by the Cheshire Microlite Centre.

The new diversion route would start within the parish of Betchton at a point along Hood Lane (point D) from which it would enter a field to run in a generally easterly direction along the southern boundaries of two fields to a pond (point E). Past the pond, it would then continue along the southern boundary of the second field in a generally south easterly direction to reach the south eastern field corner (point F). From there, it would follow the eastern field boundary in a generally north, north westerly direction, immediately passing another small pond and then passing a third pond by which it would cross the boundary between the parishes of Betchton and Arclid (point H) before reaching its termination point at the boundary between the parishes of Arclid and Smallwood (point C).

The new route would be a minimum of 2.5 metres wide and users would be protected from the quarry area by a fence. In future, it is intended that this fence would be removed as part of the land restoration project once excavation and restoration works are complete. Consequently, whilst the works were ongoing and for the purposes of considering this proposal, the footpath would be enclosed but long term, it would be unenclosed.

#### **Diversion of Public Bridleways No's 10 and 11 (parts)**

Parts of Public Bridleway No's 10 and 11 form the full extent of the section of bridleway proposed for diversion:

The part of Public Bridleway No 11 in the Parish of Arclid proposed for diversion starts at its junction with Public Footpath No 9 in the Parish of Betchton at the boundary between the Parishes of Arclid and Betchton (point J). It then runs in a generally easterly direction across a field to terminate at its junction with Public Bridleway No 10 and Public Footpath No's 7 and 9 (point A). From this point, the bridleway continues along Public Bridleway No 10 to run in a generally southerly direction terminating at its junction with the adopted unclassified lane, Hood Lane (UY1128) adjacent to the Cheshire Microlite Centre (point I).

It is proposed that the bridleway be diverted to run along the southern and western perimeter of the south eastern sand excavation area and soil storage areas along the current boundary between the parishes of Arclid and Betchton (points I-K-J).

The new diversion route for Public Bridleway No 11 in the Parish of Arclid would start at its junction with Public Footpath No 9 in the Parish of Betchton (point J) and run in a generally southerly direction along the boundary between the parishes of Arclid and Betchton to terminate at point K. The new diversion route for Public Bridleway No 10 in the Parish of Arclid would then start at this point (point K) and run in a generally east, south easterly



direction to undulate along the parish boundary to terminate at its junction with Hood Lane (point I).

The new route would have a surface of compacted loose aggregate material that would freely drain, would be 4 metres wide and enclosed by a post and rail fence.

The proposed footpath and bridleway diversion routes would be linked by the current unclassified lane, Hood Lane (UY1128) between points D-I.

It is important that, should the proposal succeed and a diversion Order be confirmed, that confirmation of this Order does not precede the completion of the diversion of Public Footpath No7 in the Parish of Arclid as doing so would leave a cul de sac footpath. The diversion of Public Footpath No 7 in the Parish of Arclid is detailed within Item 16 of the minutes from the Public Rights of Way Committee, Monday 13<sup>th</sup> June, 2016.

- 6.9 Consultation on the proposed diversion of Public Footpath No 7 and parts of Public Bridleway No's 10 and 11 in the Parish of Arclid, will complete on Friday 7<sup>th</sup> March 2018. Responses to date are given in the remainder of this paper and any comments received between now and the Committee meeting on 12<sup>th</sup> March will be verbally reported at that meeting.

- 6.9 The local ward Councillor has been consulted about the proposal.

- 6.10 Arclid and Betchton Parish Councils have been consulted about the proposal. Members from both Parish Council requested an extension to the consultation deadline such that they can properly consider the proposal at their meetings on 15<sup>th</sup> March 2018 (three days after the committee meeting).

- 6.11 The statutory undertakers have also been consulted and have no objections to the proposed diversion. Cadent and National Grid registered no objection. BT and United Utilities registered that the proposal should not affect their apparatus. No other comments have been received.

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. It was confirmed to the Open Spaces Society, Congleton Ramblers and the Peak and Northern Footpath Society that the length of Hood Lane linking the new route proposed for Public Footpath No 7 in the Parish of Arclid and the new route proposed for Public Bridleway No 10 in the Parish of Arclid (points D-I on Plan No TCPA), is a public highway that is adopted and maintained by the Council as an unclassified road. The Open Spaces Society also questioned the timing of the diversion against the closure of the microlite centre and subsequent commencement of the new sand excavations. A response is being sought and will be reported verbally.

- 6.13 The Council's Nature Conservation Officer has been consulted and has not raised objection to the proposal.

- 6.14 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 not be significantly less convenience than the current route.

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

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

Officer: Marianne Nixon

Tel No: 01270 686 077

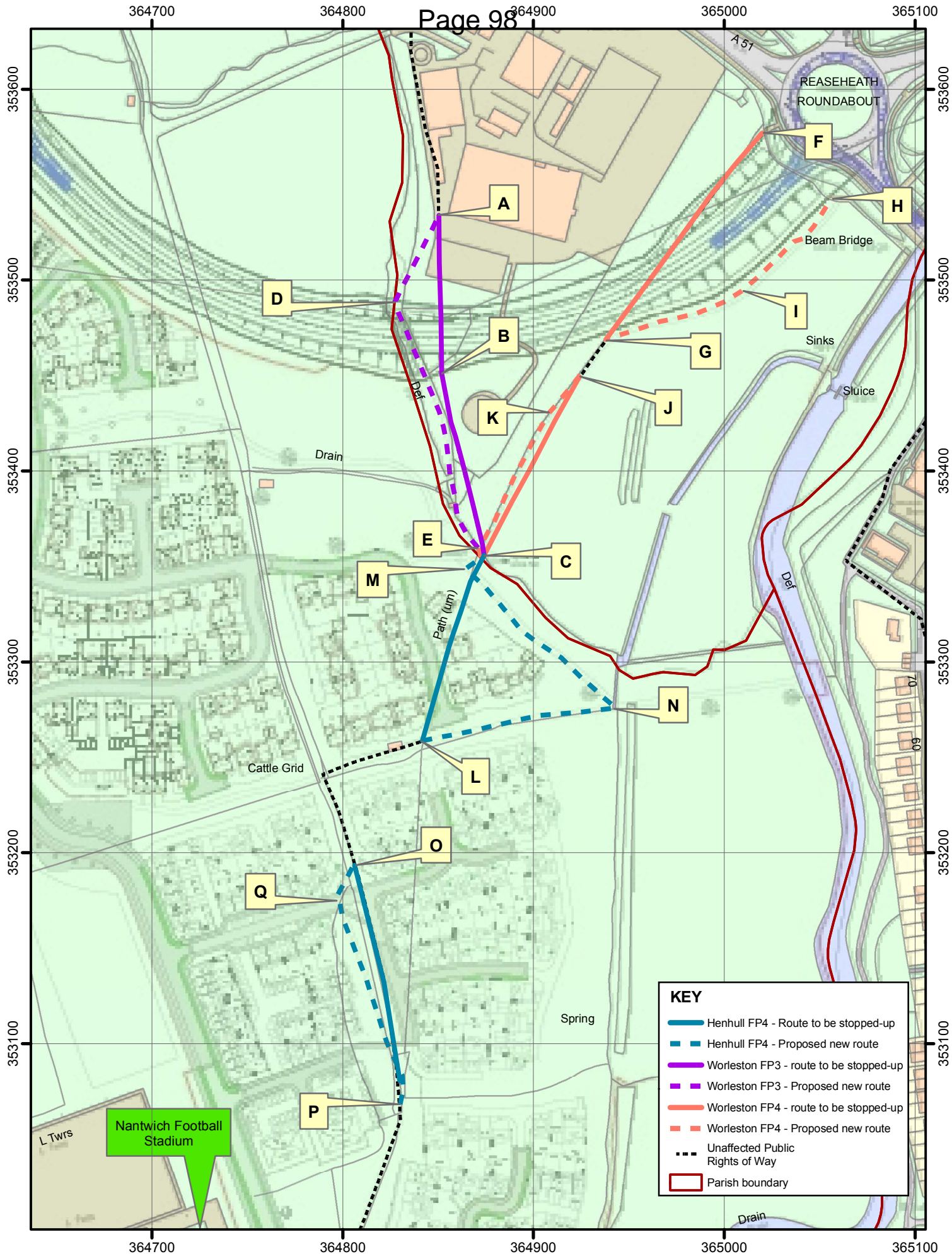
Email: [marianne.nixon@cheshireeast.gov.uk](mailto:marianne.nixon@cheshireeast.gov.uk)

#### **Background Documents:**

PROW files:

- 016D/548 Diversion of Public Footpath No 7 in the Parish of Arclid
- 016D/554 Diversion of Public Bridleway No's 10 and 11 in the Parish of Arclid

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**KEY**

- Henhull FP4 - Route to be stopped-up
- Henhull FP4 - Proposed new route
- Worleston FP3 - route to be stopped-up
- Worleston FP3 - Proposed new route
- Worleston FP4 - route to be stopped-up
- Worleston FP4 - Proposed new route
- Unaffected Public Rights of Way
- Parish boundary



Town and Country Planning Act 1990 s257  
 The Cheshire East Borough Council  
 (Footpath No 4 (part) Parish of Henhull and Footpah No's 3 and 4 (parts) Parish of Worleston)  
 Public Path Diversion Order 2018

Plan No.  
 T CPA/045





## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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**Date of Meeting:** 12<sup>th</sup> March 2018  
**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's 3 (part) and 4 (parts) in the Parish of Worleston and Public Footpath No 4 (parts) in the Parish of Henhull

---

#### 1.0 Purpose of Report

- 1.1 The report outlines the investigation to divert part of Public Footpath No 3 and parts of Public Footpath No 4 in the Parish of Worleston and parts of Public Footpath No 4 in the Parish of Henhull. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for the diversion orders to be made. The proposal has been put forward by the Public Rights of Way Unit as a response to an application following outline planning approval granted to the North West Nantwich Consortium (consisting of Taylor Wimpey (North West), Redrow Homes and David Wilson Homes (North West)) for the residential development of up to 1,100 dwellings, 1.82ha of land for business use, a potential primary school, community facilities and local centre, allotments, recreational open space and associated landscaping, highways, access roads, cycleways, footways and drainage infrastructure (Planning reference: 13/2471N). The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not Orders should be made to divert the sections of footpath concerned.

#### 2.0 Recommendation

That three Orders be made under Section 257 of the Town and Country Planning Act 1990 to divert the following footpath sections as illustrated on Plan No TCPA/045:

- i) Two parts of Public Footpath No 4 in the Parish of Henhull
- ii) Part of Public Footpath No 3 in the Parish of Worleston
- iii) Two parts of Public Footpath No 4 in the Parish of Worleston

The recommendation is made on the grounds that the Borough Council is satisfied that it is necessary to do so to allow the development to take place.

- 2.2 Public Notice of the making of the Orders be given and in the event of there being no objections within the period specified, the Orders 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 Orders 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 Public Footpath No 3 and parts of Public Footpath No 4 in the Parish of Worleston and parts of Public Footpath No 4 in the Parish of Henhull as illustrated on Plan No TCPA/045, to allow for residential development. Planning consent was granted on the 20<sup>th</sup> January 2016 by Cheshire East Council; reference number 13/2471N.
- 3.3 It is considered that the legal tests for the making and confirming of three Diversion Orders under section 257 of the Town and Country Planning Act 1990 are satisfied.

### **4.0 Ward Affected**

- 4.1 Bunbury

### **5.0 Local Ward Members**

- 5.1 This ward is currently electing a new Councillor. At the time of consultation, the ward was without a local ward member.

### **6.0 Financial Implications**

- 6.1 Not applicable

### **7.0 Legal Implications**

- 7.1 Objections received to the proposed orders, 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**

- 9.1 An application has been received from Mr Kevin Coyne of Taylor Wimpey (North West Ltd), Washington House, Birchwood Park, Warrington, WA3 6GR on behalf of a consortium of housing developers (Taylor Wimpey

(North West) Ltd, Redrow Homes Ltd and David Wilson Homes Ltd.), requesting that the Council make three Orders under section 257 of the Town and County Planning Act 1990 to divert part of Public Footpath No 3 and parts of Public Footpath No 4 in the Parish of Worleston and, part of Public Footpath No 4 in the Parish of Henhull.

- 9.2 Public Footpath no. 3, Parish of Worleston commences at its junction with Millstone Lane (A51) at O.S. grid reference SJ 6483 5370 and runs across pastureland in a generally southerly direction for a distance of approximately 357 metres to its junction at the parish boundary with Public Footpath No 4, Parish of Henhull and Public FP No. 4, Parish of Worleston at O.S. grid reference SJ 6487 5335.

Public Footpath no. 4, Parish of Worleston commences at its junction with Reaseheath Roundabout at O.S. grid reference SJ 6502 5357 and runs in a generally south westerly direction for a distance of approximately 265 metres across pastureland to its at the parish boundary at its junction with Footpath No 4, Parish of Henhull and Public FP No. 3, Parish of Worleston at O.S. grid reference SJ 6487 5335.

Public Footpath No 4, Parish of Henhull commences at the parish boundary where it joins Public Footpath No's 3 and 4, Parish of Worleston at O.S. grid reference SJ 6487 5335 and runs across pasture land in generally south, south westerly, then south, south easterly, then south, south westerly directions for total distance of approximately 572 metres to terminate at its junction with Public Footpath No. 4 Parish of Nantwich at O.S. grid reference SJ 6474 5285.

- 9.3 The existing alignment of the footpaths would be directly affected by the construction of the residential development. The consortium of developers (Taylor Wimpey (North West), Redrow Homes and David Wilson Homes (North West)), own the land over which both the current footpaths and proposed diversion routes run and all have given written permission for the diversions as proposed.
- 9.4 Planning permission was granted to the applicant on 20<sup>th</sup> January 2016. The application is cited as Planning Permission Ref: 13/2471N. The details of the decision notice are for a residential development to be known as Kingsley Fields on land between Waterlode and Mill Lane, Nantwich and comprising of 1,100 houses with associated business and community assets.
- 9.5 Referring to Plan No. TCPA/045, the footpath sections to be diverted are colour coded:

### **Public Footpath No 3 in the Parish of Worleston**

Two sections of Public Footpath No 3 in the Parish of Worleston proposed for diversion are shown by solid **orange** lines on Plan No. TCPA/045 running between points F-G and J-C. The proposed diversions of these

sections are illustrated with **orange** dashed lines on the same plan, running between points H-I-G and J-K-E-C.

#### **First section – points F-G**

The construction of the ascribed new road would result in the need for users of the first section to cross this road in order to follow the footpath's current definitive alignment. Diverting the footpath to run along the southern side of the road would take users to a safer crossing point at Reaseheath roundabout.

Consequently, it is proposed that the start point of the new route for this section should be relocated to the south side of the new road (point H) from where it would then run in a generally south westerly direction to point I and then in a generally west, south westerly direction to terminate on rejoining the current footpath at point G.

#### **Second section – points J-C**

The second section would benefit from being diverted to run across higher ground above ponds that will serve as a sustainable urban drainage system (SUD) to manage excess surface water on the land.

The new route for this section would start at point J and run in a generally south westerly direction to point K from where it would follow a generally south, south westerly direction to terminate at its junction with Henhull FP4 at the parish boundary (point C).

#### **Public Footpath No 4 in the Parish of Worleston**

The section of Public Footpath No 4 in the Parish of Worleston proposed for diversion is shown by a solid **purple** line on Plan No. TCPA/045 running between points A-B-C. The proposed diversion is illustrated with a **purple** dashed line on the same plan, running between points A-D-E.

This section would be obstructed by a new road so to take users of this footpath safely to the other side of this new road, it is proposed that this section be diverted to enter and exit beneath a planned underpass. Note that the underpass would be lit.

The new diversion route would start at point A but would then run in a generally south, south westerly direction to reach the underpass (point D) beneath which it would pass in a generally south, south easterly direction exiting to continue in this direction to terminate at its junction with the proposed diversion route of Public Footpath No 4 in the Parish of Worleston (point E).

#### **Public Footpath No 4 in the Parish of Henhull**

The sections of Public Footpath No 4 in the Parish of Henhull proposed for diversion are shown by solid **blue** lines on Plan No. TCPA/045 running between points C-L and O-P. The proposed diversions of these sections



are illustrated with **blue** dashed lines on the same plan, running between points C-M-N-L and O-Q-P.

#### **First section – points C-L**

This section would be obstructed by residential houses so it is necessary that be diverted to preserve the right of way for the public.

The new route would start at its junction with Public Footpath No's 3 and 4 in the Parish of Worleston and would run in a generally south westerly direction for a short distance to point M and then in a generally south easterly direction to point N and then in a generally west, south westerly direction to terminate on rejoining the current footpath at point L.

#### **Second section – points O-P**

A second part of Public Footpath No 4 in the Parish of Henhull would run partly along an estate road before veering onto adjacent open space. The developers have proposed a diversion that would re-align this section of footpath onto a tarmac route to be constructed as part of the planned landscaping within the development.

The new route would start at point O and run in a generally south, south westerly direction and then south, south easterly direction to terminate on re-joining the current footpath at point P.

Except for the new section of Henhull FP4 running between points C-M-N-L, all the new routes would have a surface of compacted stone with timber edging and be no less than 2 metres. The section of Henhull FP4 would form part of a new walkway/cycleway that would have a tarmac surface and width of 3 metres.

In summary, the new diversion routes would reduce the need for users to cross or walk along roads and maintain the footpath network such that a public right of way would still be available between Waterlode and, Reaseheath roundabout and Mill Lane (at its junction with Worleston FP3) albeit the nature of the routes would alter due to the change in use of the land for residential development.

- 9.7 Consultation on the proposed diversion of part of Public Footpath No 3 and parts of Public Footpath No 4 in the Parish of Worleston and, part of Public Footpath No 4 in the Parish of Henhull, will complete on Friday 7<sup>th</sup> March 2018. Responses to date are given in the remainder of this paper and any comments received between now and the Committee meeting on 12<sup>th</sup> March will be verbally reported at that meeting.
- 9.8 Given that the local ward of Bunbury does not have a Councillor at present (elections ongoing), consultation with the local ward Councillor has not been possible.
- 9.9 Worleston and District Parish Council and Acton, Edleston & Henhull Parish Council have been consulted about the proposal. No comments have been received.

- 9.10 The statutory undertakers have also been consulted. United Utilities and Cadent Gas registered no objection. No other comments have been received.
- 9.11 The user groups have been consulted. No objections have been registered.
- 9.12 The Council's Nature Conservation Officer has been consulted and has not raised objection to the proposals.
- 9.13 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 diversions would be an improvement on the current routes since they would all have a better walking surface for less abled users.

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

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

Officer: Marianne Nixon

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

#### **Background Documents:**

PROW files:

330D/551 – Diversion of Worleston FP3 (part)

330D/352 – Diversion of Worleston FP4 (parts)

154D/553 – Diversion of Henhull F4 (parts)

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## KEY

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

REWE ROAD

Parish boundary

Development site boundary

Jack Mills Way

PROPOSED  
COMMERCIAL  
DEVELOPMENT

Basford FP11

A500

A500



1:5,000

Town and Country Planning Act 1990 s257  
The Cheshire East Borough Council  
(Footpath 11 (part) Parish of Basford)  
Public Path Diversion Order 2018

Plan No.  
TCPA/047





## CHESHIRE EAST COUNCIL

### Public Rights of Way Committee

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**Date of Meeting:** 12 March 2018  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Town and Country Planning Act 1990 Section 257:  
Application for the Diversion of Public Footpath no. 11 (part),  
Parish of Basford

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#### 1.0 Purpose of Report

The report outlines the investigation to divert part of Public Footpath No. 11 in the Parish of Basford. 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. The application has been submitted by Mr Paul Heslop of Goodman Real Estates (UK) Ltd, Nelson House, Blythe Valley Park, Shirley, Solihull, West Midlands, B90 8BG to apply for permission to construct a commercial development for general industry, storage and distribution (Planning reference: 14/0378N). 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 That the decision to make the Order be delegated to the Head of Rural and Cultural Economy or his nominated delegatee who, in consultation with the Chair of the Public Rights of Way Committee, consider the proposal together with all consultee comments received during the consultation following its completion on Tuesday 10<sup>th</sup> April 2018.
- 2.2 If an Order is made 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 on condition that the diversion of Arclid FP9 (see Item 16 of the minutes of from the Public Rights of Way Committee, Monday 13<sup>th</sup> June, 2016) is complete.
- 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 as amended by Section 12 of the Growth and Infrastructure Act 2013:

“(1A) Subject to section 259, a competent authority may by order authorise the stopping up or diversion in England of any footpath, bridleway or restricted byway if they are satisfied that—

- (a) an application for planning permission in respect of development has been made under Part 3, and
- (b) if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out.”

Thus the Council, as the Local 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 before that permission is granted, providing that the application has been formally registered with the Council.

- 3.2 It is considered that it is necessary to divert part of Public Footpath No. 11 in the Parish of Basford as illustrated on Plan No. TCPA/047 to allow for the construction of a commercial development for industrial, storage and distribution businesses as detailed within planning reference:14/0378N.
- 3.3 Consultation is currently ongoing to consider the proposal against the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990. The consultation is due to be completed on Tuesday 10th April 2018.

It is recognised that completion of the consultation process after the committee has considered the proposal is not normal process. However, in this case, it is critical that the diversion is undertaken quickly and in line with the Planning process, in order to allow consideration of this matter in the round and address the impacts on local business and jobs. Consequently, the Council is seeking to secure final decision on the proposal at the earliest opportunity without compromising the full process, such that the diversion process does not create any undue delays (see section 9,7 for further details).

### **4.0 Ward Affected**

- 4.1 Shavington and Haslington wards

### **5.0 Local Ward Members**

- 5.1 Councillor S Edgar, Councillor D Marren and Councillor J Hammond

### **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**

- 9.1 An application has been received from Mr C Hadjivassiliou of THDA Consulting Engineers (agent) on behalf of Mr P Heslop of Goodman Real Estates (UK) Ltd, Nelson House, Blythe Valley Park, Shirley, Solihull, West Midlands, B90 8BG requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert part of Public Footpath No. 11 in the Parish of Basford.

- 9.2 Public Footpath No. 11 in the Parish of Basford commences at its junction with Jack Mills Way at O.S. grid reference SJ 7106 5322 and runs in a generally easterly direction for a short distance and then runs in a south easterly direction to its junction with Weston Lane (C504) at OS grid reference SJ 7161 5221.

The section of this footpath that is proposed for diversion by Goodman Real Estate (UK) Ltd, is shown by a solid black line on Plan No. TCPA/047 running between points A-B-C-D. The proposed diversion is illustrated with a black dashed line on the same plan, running between points A-E-F-G-H-D.

- 9.3 The land over which the current route runs and over which the proposed route would run is owned by Goodman Real Estates (UK) Ltd.
- 9.4 Planning permission for the commercial development was granted to Mr P Heslop of Goodman Real Estate (UK) Ltd, on 18<sup>th</sup> July 2014. The application is cited as Planning Permission Ref: 14/0378N. The details of the application are for the construction of a commercial development for general industry, storage and distribution business. Of relevant reserved matters relating to landscaping application 17/3374N was approved on 3<sup>rd</sup> January 2018. Applications, 18/0377N and 18/0475N, are currently being progressed. with expectation that permission for each will have been granted by end April 2018 (as estimated).
- 9.5 The land over which runs the existing alignment of the footpath section proposed for diversion by Goodman Real Estate (UK) Ltd. would obstruct the current alignment of Public Footpath 11. Therefore, diversion is required to preserve the right of way for the public between Jack Mills Way and Weston Road.
- 9.6 The proposed new route would take users through a landscaped area that will be developed outside the western and southern perimeters of the site.

Although this would provide a longer route by approximately 365 metres, it is considered that this would be more scenic and easier to negotiate than any alternative that weaved between the buildings of the new commercial development and demanded users negotiate the new commercial estate roads and associated traffic.

Referring again to plan No. TCPA/047, The new route as proposed would start at the eastern end of a tarmac 'Y' shaped area (point A) and would run in a generally south, south easterly direction along a grass track to a roundabout providing entry to the new commercial development. It would cross the entry road in the same direction to point E and then immediately turn in a westerly direction for approximately 25 metres before returning in a generally south, south easterly direction to reach the south western corner of the development (point G). It would then arc around the eastern perimeter of a pond to point H that would leave it close to the A500. It would then follow a generally easterly direction to the north of the A500, to terminate on rejoining the current alignment of Basford FP11 at point D. This proposed new route is shown on the plan by a dashed bold black line between points A-E-F-G-H-D.

The new route would be 2 metres wide, free of footpath furniture and would have a grass surface. It would run through a landscaped corridor between trees and ponds.

Noise impact from the A500 has been considered by the applicant and specific mitigation against this is not deemed necessary since the footpath would be a minimum of 20 metres from the edge of the carriageway, be lower than the carriageway (1.5 metres minimum, 4 metres maximum), lie within trees, ponds and other vegetation and there is an existing small bund approximately 0.5 metres high between the highway and the site boundary. A further bund is proposed on the other side of the footpath to screen the footpath from the commercial development. This would be 2-3 metres high with a 1:3 side slope.

- 9.7 For economic reasons to secure locally based business and jobs already committed to the commercial development, it is necessary to enable the commercial development to go ahead urgently. Consequently the proposal is being presented to the Committee prior to completion of the informal consultation period which will run for a further four weeks following the meeting, completing on Tuesday 10<sup>th</sup> April 2018.

Comments received prior to the Committee meeting will be verbally reported at that meeting for consideration together with the diversion proposal. Thereafter, with Committee approval, later comments will be considered at the end of the consultation period to enable final decision to be taken. In line with the recommendation, this would be taken by the Head of Rural & Cultural Economy (or his delegated deputy the Public Rights of Way Manager) following consultation with the Chairman of the Public Rights of Way Committee (or the Vice Chairman in their absence) under the scheme of delegation.

Progressing the diversion in this way would enable the diversion proposal to be considered by the Committee at the earliest opportunity. This would avoid



waiting for the consultation period has completed which would result in a delay until the June Committee meeting. However, it still allows for consultation to be properly undertaken and for comments to be considered in undertaking the final decision regarding the making of an Order.

- 9.8 The local Councillors have been consulted about the proposal.
- 9.9 Weston and Basford and, Shavington-cum-Gresty, Parish Councils have been consulted.
- 9.10 The statutory undertakers have also been consulted. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 9.11 The user groups have been consulted.
- 9.12 The Council's Nature Conservation Officer has been consulted.
- 9.13 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 although longer than the current route, the proposed diversion would not be significantly less convenient to use than this route and is considered to be the best achievable route.

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

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

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**Background Documents:** PROW file 042D/557

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