

Public Rights of Way Committee Agenda

Date: Monday 3rd December 2018
Time: 2.00 pm
Venue: Committee Suite 1,2 & 3, Westfields, Middlewich Road,
Sandbach CW11 1HZ

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

It should be noted that Part 1 items of Cheshire East Council decision meetings 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**

To receive any apologies for absence.

2. **Declarations of Interest**

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

3. **Minutes of Previous meeting** (Pages 5 - 14)

To approve the minutes of the meeting held on 10 September 2018.

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.

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

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Also in accordance with 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. **Wildlife & Countryside Act 1981- Part III, Section 53: Application No. CO/8/34, for the addition of Public Rights of Way, Byley Lane to Carver Avenue, in the Parish of Cranage** (Pages 15 - 46)

To consider the application for the addition of Public Footpaths from Byley Lane to Carver Lane in the parish of Cranage.

6. **Highways Act 1980 Section 119: Proposal for the Diversion of Public Footpath No. 10 (part) in the Parish of Alsager** (Pages 47 - 54)

To consider the application to divert part of Public Footpath No.10 in the parish of Alsager.

7. **Highways Act 1980 Section 119: Proposal for the Diversion of Public Footpath No.2 (part) in the Parish of Eaton** (Pages 55 - 66)

To consider the application to divert part of Public Footpath No.2 in the parish of Eaton.

8. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 2 (part), Parish of Arclid** (Pages 67 - 74)

To consider the application to divert part of Public Footpath No.2 in the parish of Arclid.

9. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 29 (part), Parish of Brereton** (Pages 75 - 82)

To consider the application to part of Public Footpath No.29 in the parish of Brereton.

10. **Highways Act 1980 Section 118: Application for the Extinguishment of Public Footpath No. 1 (part), Parish of Holmes Chapel** (Pages 83 - 90)

To consider the application to extinguish part of Public Footpath No.1 in the parish of Holmes Chapel.

11. **Town and Country Planning Act 1990 Section 257: Application for the Diversion of Public Footpath No. 4 (part), Parish of Ridley** (Pages 91 - 98)

To consider the application to divert part of Public Footpath No. 4 in the parish of Ridley.
12. **Town and Country Planning Act 1990 Section 257: Proposed Diversion of Public Footpath No.4 (part) in the Parish of Cholmondeston** (Pages 99 - 106)

To consider the application to divert part of Public Footpath No.4 in the parish of Cholmondeston.
13. **Informative Report - Town & Country Planning Act Section 257: Public Path Diversion Order, Mottram St Andrew FP's 8 & 9(parts) Abandoned Order** (Pages 107 - 114)

To note the abandonment of an Order for Public Footpath Diversion Order for parts of Public Footpath Nos.8 and 9 in the parish of Mottram St Andrew.
14. **Informative Report - Highways Act 1980 Proposed Diversion of Public Footpath No.16 (part) in the Parish of Wilmslow** (Pages 115 - 124)

To note the remaking of a Public Path Order for part of Public Footpath No.16 Wilmslow to reflect a change in the relevant administrative boundary.
15. **Informative Report - Highways Act 1980 Proposed Diversion of Public Footpath No.12 (part) in the Parish of Lower Withington** (Pages 125 - 138)

To note the remaking of a Public Path Order for part of Public Path No.12 Lower Withington to reflect a change in the alignment of the diverted path.
16. **Informative Report - Town & Country Planning Act s.257, Public Path Diversion Order, Peover Superior Footpath No. 4 (part)** (Pages 139 - 144)

To note the change of planning application reference against which the Public Path Order for the diversion of part of Public Footpath No.4 Peover Superior will be made and confirmed.
17. **Uncontested Public Path Orders: Change to Scheme of Delegation** (Pages 145 - 148)

To note that the delegation is now in place for the determination of uncontested Public Path Order applications by the Executive Director of Place in consultation with the Chair and Vice Chair of the Committee.

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 10th September, 2018 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor S Pochin (Chairman)
Councillor D Flude (Vice-Chairman)

Councillors Rhoda Bailey, S Davies and T Fox

Councillors in Attendance

Councillor G Williams, Deputy Portfolio Holder for Environment

Officers in Attendance

Genni Butler, Acting Public Rights of Way Manager
Marianne Nixon, Public Path Orders Officer
Laura Brown, Public Path Orders Officer
Sarah Fraser, Public Path Orders Officer
Andrew Poynton, Planning and Highways Lawyer
Rachel Graves, Democratic Services Officer

14 APOLOGIES FOR ABSENCE

Apologies were received from Councillor L Gilbert.

15 DECLARATIONS OF INTEREST

In the interest of openness, Councillor S Pochin declared that she knew the applicants for Item 5 - Application for the Diversion of Public Footpath No.18 (part) in the parish of Bunbury and for Item 7 – Proposed Diversion of Public Footpath No.12 (part) in the parish of Wardle and that she had not discussed the applications with them.

16 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meeting held on 11 June 2018 be confirmed as a correct record and signed by the Chairman.

17 PUBLIC SPEAKING TIME/OPEN SESSION

The Chairman advised that she would invite those registered to speak to come forward to speak when the application was being considered by the Committee.

18 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 18 (PART), PARISH OF BUNBURY

The Committee considered a report which detailed an application from Mr & Mrs Langley of Oaklands, Bunbury requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.18 in the parish of Bunbury.

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

The land over which the length of Public Footpath No.18 Bunbury to be diverted ran and the proposed diversion ran belonged to the applicants. The proposal had been put forward in the interest of the applicants due to reasons of security and for better livestock and land management. The applicants kept beef cattle on their land and had encountered issues in the past with cattle contracting neosporosis, which is passed to cattle in dog faeces and leads to females aborting their calves. The proposed diversion would enable users to be kept separate from any livestock, including cows, calves and bulls, as the route would be enclosed from the agricultural land. The proposed diversion would also move the current definitive line away from the silage store and the feeders for the livestock, which was an area well used by the livestock and was susceptible to muddy conditions in the winter.

The Committee noted the comments from Spurstow Parish Council objecting to the diversion and the Public Rights of Way Officer's response.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would move the footpath from the field and improve land management for the applicant. 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.18 in the Parish of Bunbury by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No. HA/132, 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.

19 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 4 (PART), PARISH OF PEOVER SUPERIOR

The Committee considered a report which detailed an application from Mr B Kettle of Wharfe Home Planning (agent) on behalf of Mr D Cox of Paradise House, Holmes Chapel Road, Over Peover, requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1980 to divert part of Public Footpath No.4 in the parish of Peover Superior.

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.

Planning permission had been granted for the construction of an agricultural barn – planning reference 16/2659M. Construction of the barn had commenced when it was found to be incorrectly positioned and obstructing Public Footpath No.4. The Council's Planning Enforcement Team took enforcement action to prevent any further construction of the barn until either the barn was moved to the correct location or until the footpath was diverted. The decision was taken by the applicant to apply for an Order to divert the footpath.

The proposed diversion route would move the footpath so that it ran to the south of the barn. The new route would have a surface consisting in part a semi-surfaced track and part grass.

Mr B Kettle, agent for the applicant, spoke in support of the application and stated that it had been a genuine mistake that the line of the footpath had been obstructed by the barn construction and asked that the Committee approved the application to divert the Public Footpath. He thanked the Public Rights of Way Officers and Enforcement Officers for their assistance in resolving the issue.

The Committee noted that North and Mid Cheshire Ramblers had requested that adequate signage be installed. The Committee considered the application and concluded that it was necessary to divert part of Public Footpath No.4 to allow for the construction of an agricultural barn, as

detailed in planning application 16/2659M. It was considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

RESOLVED: That

- 1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 4 in the Parish of Peover Superior, as illustrated on Plan No. TCPA/050, on the grounds that the Council is satisfied that it is necessary to do so to allow development to take place.
- 2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
- 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.

20 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.12 (PART) IN THE PARISH WARDLE

The Committee considered a report which detailed an application from Mr P Posnett requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1980 to divert part of Public Footpath No.12 in the parish of Wardle.

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.

Planning permission had been granted for the approval of reserved matters seeking approval for a new spine road and other associated infrastructure works - planning application 18/2028N.

The existing alignment of Public Footpath No.12 Wardle would be directly affected by the development and infrastructure within the planning consent, resulting in the partial obstruction of the footpath by a new substation and spine road.

The current alignment of the section of path to be diverted ran along a field boundary and a dirt track. The proposed diversion points A-D, as shown on Plan TCPA/051, would run along a new stone surfaced maintenance

track which would be used for access to the new foul pumping station and would be 4 metres in width. From points D-C, as shown on Plan TCPA/05, the surface would be a sealed surfaced footpath of a width of 3 metres and would run along the boundary of the adjoining land at a distance of 7 metres from the road edge. This road would remain private and would not be adopted highway.

The Open Spaces Society had submitted comments in response to the informal consultation relating to the use of the maintenance track and had objected to the proposed diversion along the roadside. Based on their comments the applicant had revised the alignment of points D-C so that it ran further away from the edge of the road at a distance of 7 metres.

The Committee considered that application and concluded that it was necessary to divert part of Public Footpath No.12 to allow for the development approved in planning application 18/2028N. 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 a Public Footpath Diversion Order be made under Section 257 of the Town and Country Planning Act 1990 on the grounds that Cheshire East 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 be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
- 3 In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

21 TOWN & COUNTRY PLANNING ACT 1990 SECTION 333(7): APPLICATION FOR VARIATION OF TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257 CHESHIRE EAST BOROUGH COUNCIL (UNRECORDED FOOTPATH CHURCH LANE, PARISH OF WISTASTON) PUBLIC PATH DIVERSION ORDER 2017

The Committee considered a report which detailed an application by Mr Clarke of Bloor Homes North West requesting the Council to make a Variation Order to the Town and Country Planning Act 1990 Section 257 Cheshire Borough Council (unrecorded Footpath Church Lane, Parish of Wistaston) Public Path Diversion Order 2017.

In accordance with Section 333(7) of the Town and Country Planning Act 1990 the Borough Council, as Planning Authority, can make a Public Path Variation Order provided the same procedures are carried out under which the Order was originally made.

On 12 June 2017 the Committee had resolved to make a Diversion Order for the previously unrecorded footpath now known as Wistaston Footpath No.17. The Order was duly made, signed and sealed on 22 June 2017 and confirmed on 24 August 2017.

Planning permission had now been granted for the approval of details of the appearance, landscaping, layout and scale being matters reserved under approval APP/R0660/W/15/3136524 – planning reference 17/6042N.

A Variation Order was now requested to reflect the slight changes identified in the practical alignment of Public Footpath No.17 in the 2017 Order, as the development proposals now consented by the reserved matters application had altered slightly from those originally proposed at the outline stage.

The proposed variation of the diverted path was shown by a bold blue dashed line between points M-N-H-I on Plan TCPA/048. The proposed Variation Order would not significantly change the nature, widths, surface or general orientation of Wistaston Footpath No.17 but would instead alter the practical alignment of several sections of the footpath.

It was proposed that the existing lines of Points H-N and N-G, as shown on Plan TCPA/048, would be slightly amended to align with what was agreed with in the approved reserved matters planning application. The existing line of Points I-H would conflict with several small bodies of water that required a minimum 8 metres undeveloped buffer zone, deemed necessary to mitigate the impact of the development upon protected species and the biodiversity of the area. The proposed Variation would therefore move the alignment of the path between these points approximately 8 metres to the east of its current alignment and the ponds.

The Committee considered the application and concluded that it was necessary to divert parts of Public Footpath No.17 Wistaston to allow for the approved reserved matters, as detailed in planning application 17/6042N. It was considered that the legal tests for the making and confirming of a Variation Order under section 333(7) of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

RESOLVED: That

- 1 A Public Path (Variation) Order be made under section 333(7) of the Town and County Planning Act 1990 to vary the Cheshire East

Borough Council (unrecorded Footpath Church Lane, Parish of Wistaston) Public Path Diversion Order 2017 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 be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
- 3 In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

22 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.2 (PART) IN THE PARISH WISTASTON

The Committee considered a report which detailed an application from Mr Clarke of Bloor Homes North West requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1980 to divert part of Public Footpath No.2 in the parish of Wistaston.

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.

Planning permission had been granted for the approval of details of the appearance, landscaping, layout and scale being matters reserved under approval APP/R0660/W/15/3136524 – planning application reference 17/6042N.

The existing alignment of Public Footpath No.2 Wistaston would be affected by residential development and infrastructure of the approved planning application resulting in the partial obstruction of the footpath by the construction of the planned residential dwellings. A diversion was required to preserve the Public Right of Way.

The proposal to divert the path between Points B-C-D, as shown on Plan TCPA/049, would move the current line approximately 13 metres east of its current alignment onto the actual walked line of the path. The section from Point A to C would be two metres wide, timber edged and surfaced with self-binding gravel. The section between Points C-D-E would be concrete edged and surfaced with tarmac as it would offer access to the proposed play area of the development.

The Committee considered the application and concluded that it was necessary to diver part of Public Footpath No.2 Wistaston to allow for the

approved development as detailed in planning reference 17/6042N. 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 a Public Path Diversion Order be made under section 257 of the Town and Country Planning Act 1990 on the grounds that Cheshire East 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 be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
- 3 In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

23 TOWN & COUNTRY PLANNING ACT 1990 SECTION 333(7): APPLICATION FOR VARIATION OF TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257 CHESHIRE EAST BOROUGH COUNCIL (RESTRICTED BYWAY NO.1 (PT), PARISH OF EATON) PUBLIC PATH DIVERSION ORDER 2017

The Committee considered a report which detailed an application by Mr Fyles of Tarmac Trading Ltd requesting the Council to make a Variation Order to the Town and Country Planning Act 1990 Section 257 Cheshire Borough Council (Restricted Byway No.1 (pt) Parish of Eaton) Public Path Diversion Order 2017.

In accordance with Section 333(7) of the Town and Country Planning Act 1990 the Borough Council, as Planning Authority, can make a Public Path Variation Order provided the same procedures are carried out under which the Order was originally made.

On 5 December 2016 the Committee had resolved to make a Diversion Order to divert part of Restricted Byway No.1 which was affected by an extension of the sand quarry. The Order was made, signed and sealed on 12 January 2017. An objection was subsequently received from an adjacent landowner concerning the proximity of part of the new route to the trajectory of clays from their shooting range. Consequently a second Order was made on 6 July 2017 altering the section of route affected. No objections were received to this Order and over the following months the construction of the path was commenced.

Following a site visit it was noted that the alignment of the route on the ground had not been installed as per the approved Order. The route on the ground had been put in to a 4 metre width with a double post and wire fence line. The sections of path that did not follow the approved Order were between points G - H, H - I and M - N, as shown in red on Plan TCPA/052.

A Variation Order was now required to reflect the changes identified by the site visit and thereby alter the legal alignment of the route in the second Diversion Order of 2017. The proposed Order would not significantly change the nature, width, surface or general direction of the route of Restricted Byway No.1.

The sections G – H and H – I had both been constructed to follow the boundary of ponds and field edges. Sections M – N had been sited closer to the northern boundary of a rectangle of woodland. It may be the case that variation to this section would not be required if on consultation with the adjacent landowner it transpired that this alignment was still too close to the clay shoot. If this was the case the route would be altered to reflect the route of the second 2017 Diversion Order.

The Committee considered the application and concluded that it was necessary to divert parts of Restricted Byway No.1 Eaton to enable the approved development to be carried out. It was considered that the legal tests for the making and confirming of a Variation Order under section 333(7) of the Town and Country Planning Act 1990 were satisfied.

The Committee unanimously

RESOLVED: That

- 1 A Public Path (Variation) Order be made under section 333(7) of the Town and Country Planning Act 1990 to vary the Cheshire East Borough Council (Restricted Byway No.1 (pt), Parish of Eaton) Public Path Diversion Order 2017 to reflect the alignment of the route set out and available on the ground.
- 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 Act.
- 3 In the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.

24 PUBLIC RIGHTS OF WAY PROPOSED FEES AND CHARGES 2019-20

The Committee received a report which detailed the proposed fees and charges for 2019-20 for charged-for services provided by the Public Rights of Way team.

An annual review of the fees and charges are conducted as part of the budget setting process of the Council. The charges for 2019-20 had been increased by inflation and rounded. In addition, the fees and charges had been amended to reflect changes in legal process enacted by legislation.

Approval for the changes had been obtained from the Portfolio Holder/Head of Service who had the appropriate delegated powers. The revised fees and charges schedule had been submitted as part of the Council's budget setting process, which would be finalised by full Council in February 2019.

RESOLVED:

That the report be noted.

The meeting commenced at 2.00 pm and concluded at 2.55 pm

Councillor S Pochin (Chairman)



Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 03 December 2018

Report Title: Wildlife & Countryside Act 1981– Part III, Section 53
Application No. CO/8/34, for the addition of public rights of way, Byley Lane to Carver Avenue, in the Parish of Cranage.

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1 This report outlines the investigation of an application made by Cranage Parish Council to amend the Definitive Map and Statement by the adding of several public footpaths. This report includes a discussion of the consultations carried out in respect of the claim, the historical evidence, witness evidence and the legal tests for a Definitive Map Modification Order to be made. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to add public footpaths.
- 1.2 The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

2. Recommendations

- 2.1 That application CO/8/34 to record public footpaths between points A-B-C-D; B-G; G-F; E-C and E-D as shown on Plan No. WCA/016 be refused on the grounds that there is insufficient evidence to show that public footpath rights exist along these routes.

3. Reasons for Recommendation/s

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

along the claimed routes. It is considered there is insufficient use of the routes without, force, secrecy or permission, that is without interruption and as of right; to support the existence of footpath rights along the routes shown on Plan No. WCA/016.

- 3.2 There is also insufficient evidence under Common Law to show that the landowners have dedicated route A-B-C-D as a public footpath, as shown on Plan No. WCA/016.

4. Other Options Considered

- 4.1. Not applicable – this is a non-executive matter.

5. Background

5.1 *Introduction*

5.1.1 Cranage Parish Council had written to Cheshire County Council in July 2005 expressing concern that the paths on the attached Plan No. WCA/016 were going to be fenced off. They then wrote again in January 2006 to say that some of the paths had now been fenced and sending photographs of the situation on the ground.

5.1.2 The application was submitted in March 2007 by the then Clerk to Cranage Parish Council to modify the Definitive Map and Statement for the Parish of Cranage by adding these footpaths. The application was supported by user evidence. A total of 19 users submitted evidence, 4 of those were minors at the time the evidence was written.

5.1.3 In April 2007 a meeting was held on site between representatives of the Parish Council, landowners, a local County Councillor and an Officer from Cheshire County Council, to discuss the possibilities for securing use of the footpaths through other means. The Parish Council decided to investigate permissive path agreements with the landowners and wrote to the witnesses who gave user evidence for the application for their comments. In July 2007 the Parish Council confirmed that permissive path agreements were the best way forward. However this line of action does not appear to have been pursued since that time.

5.1.4 The Applicant, Cranage Parish Council, sought a direction from the Secretary of State for a decision to be made on the application as it was still awaiting investigation. A direction decision dated 16 March 2018 was received from an Inspector representing the Secretary of State. The decision, pursuant to paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981, directed the Council to determine the application no later than 6 months from the date of the direction.

- 5.1.5 In July 2018, following a tendering process, an external consultant was appointed to investigate this application on behalf of Cheshire East Council. They commenced the investigation by sending out introductory and consultation letters to affected and interested parties.

5.2 *Description of the Application Routes*

- 5.2.1 **Route A-B-C-D** runs from the southern end of Carver Avenue (point A on Plan No. WCA/016) south south eastward around the southern side of the boundary and garages of No. 24 Carver Avenue (point B on the Consultation Plan). The route then proceeds from the southern side of the garages south south westerly to the western side of Yew Tree Cottage (point C on the Consultation Plan), the route then continues southwards to Byley Lane (point D on the Consultation Plan).
- 5.2.2 **Route A-B-G** runs from the southern end of Carver Avenue (point A on the Consultation Plan) and proceeds to the southern side of the garages (point B on the Consultation Plan) and then runs in a generally westerly direction to join the eastern end of Crescent Road (point G on the Consultation Plan).
- 5.2.3 **Route G-F** runs from Crescent Road (point G on the Consultation Plan) in a generally southerly direction to the southeast corner of No. 36 Byley Lane (point F on the Consultation Plan).
- 5.2.4 **Route E-C** runs from the eastern end of Byley Lane (point E on the Consultation Plan) in a generally easterly direction to the west of Yew Tree Cottage (point C on the Consultation Plan).
- 5.2.5 **Route E-D** runs from the eastern end of Byley Lane (point E on the Consultation Plan) in a generally south easterly direction to the west of Cranage Cottages on Byley Lane (point D on the Consultation Plan).

5.3 *The Main Issues*

- 5.3.1 Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Council shall keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events:-
- 5.3.2. One such event, (section 53(3)(c)(i)) is where
- “(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic

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

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

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

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

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

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

The proviso means that presumed dedication of a way can be rebutted if there is sufficient evidence that there was no intention to dedicate the way, during the relevant twenty year period. What is regarded as 'sufficient evidence' will vary from case to case. The Lords addressed the issue of whether the "intention" in section 31(1) had to be communicated to those using the way, at the time of use, or whether an intention held by the landowner but not revealed to anybody could constitute "sufficient evidence". The Lords also considered whether use of the phrase "during that period" in the proviso, meant during the

whole of that period. The House of Lords held that a landowner had to communicate his intention to the public in some way to satisfy the requirement of the proviso. It was also held that the lack of intention to dedicate means “at some point during that period”, it does not have to be continuously demonstrated throughout the whole twenty year period.

Common Law Dedication

5.3.5 If for some reason the statutory test fails, the issue of common law dedication can be considered; that is whether the available evidence shows that the owner of the land over which the way passes has dedicated it to the public. An implication of dedication may be shown at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication.

5.3.6 Under Common Law the onus of proof is on the claimant to show that the landowners, who must have the capacity to dedicate, intended to dedicate a public right of way; or that public use has gone on for so long that it could be inferred; or that the landowners were aware of and acquiesced to public use. Use of the claimed way by the public must be as of right (without force, secrecy or permission) however, there is no fixed period of use, and depending on the facts of the case, may range from a few years to several decades. There is no particular date from which use must be calculated retrospectively.

5.4 *Investigation of the Claims*

5.4.1 An investigation of the evidence submitted with the application (CO/8/34) has been undertaken, together with some additional research. The application was made on the basis of user evidence from 19 witnesses, 4 of which were minors at the time their evidence was submitted. In addition to the evidence submitted an investigation of any other available historical documentation is also undertaken to establish whether the claimed routes are of an historical origin. The documentary evidence that has been examined is referred to below and a list of all the evidence taken into consideration can be found in **Appendix 1**.

5.5 *Documentary Evidence*

There was no documentary Evidence submitted with the application. The documents referred to are considered by collective groupings.

Tithe Maps and Apportionment

5.5.1 Tithe Awards were prepared under the Tithe Commutation Act 1836, which commuted the payment of a tax (tithe) in kind, to a monetary payment. The purpose of the award was to record productive land on which a tax could be levied. The Tithe Map and Award were independently produced by parishes and the quality of the maps is variable. It was not the purpose of the awards to record public highways. Although depiction of both private occupation and public roads, which often formed boundaries, is incidental, they may provide good supporting evidence of the existence of a route, especially since they were implemented as part of a statutory process. Non-depiction of a route is not evidence that it did not exist; merely that it did not affect the tithe charge. Colouring of a track may or may not be significant in determining status. In the absence of a key, explanation or other corroborative evidence the colouring cannot be deemed to be conclusive of anything.

5.5.2 The Tithe Map shows the area of land as apportionment numbers 242, 253, 354, 255, 257, 256. The apportionment numbers represent land and buildings. There is no evidence of the existence of public highway or rights of way across the land.

Ordnance Survey Maps

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

5.5.3 *O.S. 1st Edition County Series 25" to 1mile 1871/2*

There is a physical depiction of a track across the land from Hall Farm to Byley Lane however; this track is not on the same alignment as any of the Application Routes.

5.5.4 *O.S 2nd Edition County Series 1890*

The track shown on the first edition O.S. Map is shown in the same way on this edition.

5.5.5 *O.S. 3rd Edition County Series 1910/11*

The track shown on the first edition O.S. Map is shown in the same way on this edition.

5.5.6 *Ordnance Survey Six-inch England and Wales, Revised 1907 to 1908, Published: 1911*

There is a track from Hall Farm shown however, no evidence of any tracks or public rights of way on the same alignment as the Application Routes

5.5.7 *Ordnance Survey Six-inch England and Wales, Revised: 1938, Published: C1946.*

There is a track from Hall Farm however, no evidence of any tracks or public rights of way on the same alignment as the Application Routes.

5.5.8 *Ordnance Survey 1:25,000 maps of Great Britain, 1937-1961, printed and published 1948 Sheet: SJ76 (includes: Middlewich; Sandbach)*

There is a track from Hall Farm shown however, no evidence of any tracks or public rights of way on the same alignment as the Application Routes.

5.5.9 *Ordnance Survey Post War circa 1950s Map*

This Ordnance Survey map shows the relevant area of land showing the development of Carver Avenue, and Byley Lane. Crescent Road is not included. The map depicts roads and tracks. The map does not however, identify the status of those roads and tracks.

5.5.10 *Ordnance Survey Map: May 1968, Boundaries October 1975*

The Map shows buildings similar to what is in existence today. Roads and tracks are also depicted. The map does not however, identify the status of those roads and tracks.

Aerial Photographs

The Aerial Photographs do not give evidence of the existence of public rights of way they contribute to the history of the area and help to identify the features in existence on the ground at the date of the photographs.

5.5.11 *Aerial Photograph 1940s*

This photograph shows a field and trees in the relevant area. There is evidence of tracks from Hall Farm southwards however these tracks are not on the same alignment as the Application Routes.

5.5.12 Aerial Photograph 1971

This photograph shows the development of houses in the area relevant to this application. There is however, no evidence of any tracks other than those known and registered as public vehicular highway, that is, Carver Avenue, Crescent Road and Byley Lane.

5.5.13 Rights of Way Act 1932

Under this Act a Landowner could submit a plan indicating those paths which were accepted to be public rights of way on their land. The Cheshire Joint Board for the Mentally Defective ('the Board') prepared such a plan which was deposited with the County Council on 14 June 1934. The plan did not depict or admit that any public rights of way existed. The Rights of Way Act was superseded by section 31 of the Highways Act 1980 which required the submission of a Statement and Plan on a six yearly basis to afford protection from additional rights being accrued across the land indicated. The Board did not submit a further statement and plan ending the protection of the land from public right of way claims.

5.5.14 National Parks and Access to the Countryside Act 1949

The Definitive Map and Statement is based on surveys and plans carried out in the early 1950s by each parish in Cheshire of all the ways they considered to be public at that time. The surveys were used as the basis for the Draft Definitive Map. Cranage Parish Council completed the survey for this area at the time and claimed a route from Byley Lane to the Hall however; this route was omitted from the published Definitive Map. This route is not, in any event, on the same alignment as any of the Application routes.

5.5.15 Estate Plans

Estate plans were produced for various reasons, and are of varying degrees of accuracy. They can however be used to as supporting evidence. A map may give an indication of highway status if for example there is a route which at either end states where the route is from or to.

Cranage Estate Plans 1920-1 & 1934. There was no evidence of public rights of way found on these plans.

5.5.16 *Highway Committee Minutes 1995 - 2009*

The information contained in Highway Committee Minutes varies, however some of the information may be good evidence as entries may indicate whether or not a way is publicly maintainable.

No evidence of public rights of way relating to the application routes was found.

5.5.17 *Summary of Documentary Evidence*

There is no documentary evidence available to suggest that public rights exist along the Application routes.

5.6. *Site Visit*

A visit to the site was made in both March 2007 and September 2018. Photographs taken on each occasion show the changes between the two dates. Outside No. 24 Carver Avenue there was an open drive/route to the garages in March 2007. Since, however, this area has been enclosed and a worn path is in evidence on the outside of the boundary wall of No. 24.

More fencing has appeared since March 2007 between the garages and the open area behind No. 4 Dean's Row. There is evidence of a worn path on the ground between the fencing.

The grass field areas are fenced and secured; there is no evidence of use across the fields in either set of site visit photographs.

5.7 *Witness Evidence*

5.7.1. A chart illustrating the user evidence is at **Appendix 2**. The evidence pre-dating 1985, i.e. outside the relevant 20 year period, is recorded in the text.

5.7.2 19 people claimed use of the route(s), 4 of these were minors at the time of the application. Of the 19, 9 completed standard user evidence forms. 6 users submitted unsigned statements in October 2017. 7 of the witnesses have been interviewed. All witnesses were written to however given that most of the forms had been completed in 2007 it is not surprising that not all of the witnesses responded.

5.7.3 The use is by foot, bicycle, horseback and one claims use by vehicle. The earliest reported use is from as early as 1934 (since birth). The routes were used for visiting, recreational purposes, to get to the post box and for deliveries. The majority of use was from Carver Avenue to Byley Lane (A-B-

C-D on Plan No. WCA/016). There is very little user evidence of use of the other routes.

5.7.4 The letters written by the children who were under 16 at the time of the application indicate that their use was predominately play and recreation. There is therefore, insufficient evidence of use along the alignment of the routes to include the children's evidence in this report.

5.7.5 Users do not report being challenged, however, there are reports of areas being fenced off which changed the alignment of the route A-B-C-D and fencing was installed preventing use of some of the other routes possibly in 2005/6 and others in 2007.

5.7.5 **Witness 1**, in an email dated 30 July 2018 in response to the consultation process, advised that they would walk the path designated or not.

5.7.6 **Witness 2**, in a telephone call on 10 August 2018 advised that route B-C-D on Plan No. WCA/016 is the same as it was in 1959. The routes B-F, E-D and E-C are no longer available as the land was fenced, possibly before 2007. Route A-B-C-D is used today but is on a different alignment between A-B. Witness 2 confirms that they used the routes from Byley Lane to Carver Avenue in early 1960s and continues to use it today.

5.7.7 **Witness 4**, completed a user evidence form but did not respond to correspondence. They claimed use from 1993; more than twice a day however, it is unclear which routes were used.

5.7.8 **Witness 6**, completed a user evidence form and also attended an interview. Witness 6 advises that they used all the routes from 1975. They used the routes on foot, daily to go to work, as a short cut to the village and to the telephone box when it was located on Carver Avenue. They stopped using the routes before 2008 (exact date not known) as they were fenced when travellers were in the area.

5.7.9 **Witness 7**, completed a user evidence form, claims that they used the paths from 2001, several times a week until they were fenced off. From the map attached to their evidence form Witness 7 appears to have used route A-B-G. Witness 7 also notes in a letter dated 2 July 2005 to the Parish Council that one piece of land was fenced preventing access through the wood.

5.7.10 **Witness 9**, completed a user evidence form and attended an interview. He advised that he used the routes from 1986 (from 4 years old) to go to school and for pleasure. They used route A-B-C-D daily and used all other routes as much as weekly. Witness 9 used the routes until they went to university in 2000. They also use route A-B-C-D now as they has their own children. They used the routes mostly on foot and occasionally by bicycle.

5.7.11 **Witness 10**, completed a user evidence form and attended an interview. They used the route A-B-C-D regularly (156 times a year) from 1978 and used the other routes but not regularly. Witness 10 used the routes on a bicycle, on horseback and on foot.

5.7.12 **Witness 11**, completed a user evidence form and attended an interview. They used the routes from 1979 either weekly or 3/5 times a week. Witness 11 used route A-B-C-D daily and route B-G every 3 weeks. The fencing stopped them using route B-G. They used the routes on foot and bicycle.

5.7.13 **Witness 12**, completed a user evidence form, submitted a statement and attended an interview. They advised that they used route A-B-C-D and Route C-E from September 1986. The routes were used on foot for dog walking. Horse riders were seen initially using route A-B-C-D. Route C-E was fully secured in the last 12 months. At points F and G there were private / keep off signs.

5.7.14 **Witness 15**, completed a user evidence form. They used the routes from 1997-2006 on horseback and 2001-2006 on foot. They used route A-B and then across the field to Byley Lane, and from October 2005 to May/June 2006 used route A-B-C-D. They advised that fencing was placed across route A-B-C-D at about point B in May/June 2006 and Witness 15 advises that the open grassland was fenced in October 2005.

5.7.15 **Witness 18**, completed a user evidence form with the help of a relative in December 2017 and they also attended an interview. Witness 18 advised that they used the routes from 1934 (year of birth) on a daily basis. They still use Route A-B-C-D but are unable to use the other routes as they were fenced in 2007. The route used was the same as the on Plan No. WCA/016 until a chicken coop was positioned over the path.

5.7.16 **Witness 19**, completed a user evidence form and attended an interview; they also telephoned on 1 August 2018 advising that they have lived there for 26 years. In interview they said that the land had been blocked off in 2006. They said that children walked every day to the school bus and also claims that people used to walk to the telephone box on the corner of Carver Avenue. Witness 19 advised in their interview that they used a route across the field from G-F-E-D to go to work and to the post box before it was relocated further along Byley Lane. They used route G-B to go to Carver Avenue.

5.7.17 A local resident, wrote in reply to the consultation letter on the 30 July 2018 to say that they do not have land in the area but have lived in the area for 20 plus years and been a member of the Parish Council for 10 years.

Route A-B-C-D has been used regularly for many years. The main use is children who walk from Carver Avenue and Hall Farm Estate to catch the school buses on Byley Lane near point D. The route is also used by people wishing to walk to the playing fields and bowling green to the south of Cranage. They have also occasionally seen cyclists and joggers use the route. The area containing the other routes has been fenced off for many years but prior to that, routes G-F, E-C and E-D were used by children from Crescent Road to reach point D. They are unable to comment on route A-B-G.

5.8 Summary of User Evidence

5.8.1 The witness evidence shows clear evidence of use of the route A-B-C-D, however, evidence of use of the other routes is fewer in number. 9 people claimed use of the route A-B-C-D and of those 6 were interviewed to verify their evidence. The alignment of route A-B-C-D was changed when fencing was installed in approximately 2006/7 and the width at that time was also reduced preventing the use by horses. In regard to the other routes; 6 witnesses, of whom 5 were interviewed, claimed use of route B-G; 4 claimed use of route G-F, all of whom were interviewed; 5 claimed use of route C-E, all of whom were interviewed and 4 claimed use of route D-E, all of whom were interviewed. Routes B-G; G-F; E-C and E-D are within the open grassland area and were also fenced preventing free access. The dates of the installation of the fencing range from 2005 to 2007.

5.8.2 For route A-B-C-D, the earliest use is from 1934 to the current time (albeit on a different alignment to the claimed route shown on Plan No. WCA/016. The alignment may have changed around 2006-2007 when fencing was erected. 9 witnesses used the route on foot, 6 of those also used the route on a bicycle, 2 used the route on horseback; 1 twice a year, the other weekly. Use of the route is regular. Two witnesses claim that 5% of their use was by bicycle. Some users have observed others using the routes on foot, bicycle and horseback.

5.8.3 The use of the routes on horseback and bicycle is limited as there are only 2 people who claim use on horseback, and it is not for the full 20 year period and for those who claim bicycle use it is also in addition to foot use. Landowners claim bicycle use is by children. It is therefore, likely that the majority of use is on foot.

6. Landowner Evidence

6.1 The land affected by the application was acquired from the Secretary of State for Health in 2001. The land had been under the ownership of Hospital and Health Authorities from at least 1934 as evidenced from the deposit mentioned in paragraph 5.5.3 above. The land was however, sold in 2001 and

then divided into smaller plots and some of the land was sold again in 2006. The land is now owned by several landowners. However, some sections are still unregistered.

6.2 *Crown Land.* The Land affected by this application, was previously owned by The Secretary of State for Health, which is a government department. Land belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, the Duchy of Cornwall, a government department or held in trust for a government department, is Crown Land.

6.3 *Landowner 1* purchased the land he owns in 2006, from a previous owner who originally bought it from the Secretary of State for Health. In a letter to the Parish Council dated 4 March 2006, Landowner 1 lists several reasons for his objections to the establishment of footpaths across their property, in particular:-

No previous owner of the land has dedicated a path for public use.

Landowner 1 does not believe a presumed right of way exists under the 20 year rule as they can remember the access from Carver Avenue being blocked, so within the last 13 years the right of way has been challenged.

The number of people using the access across the field increased dramatically since the bus stop was moved from the A50 a few years ago. Landowner 1 advises that there is a small saving in distance, surely no justification for infringement of privacy of residents of Deans Row and Yew Tree Cottage. Landowner 1 also says that it is safer to cross the field than use the A50. However, the A50 has a footpath separate from the road itself. The route via the track at the back of Deans Row and Yew Tree Cottage has no provision for pedestrians.

Landowner 1 admits in their letter that a line shown on a map they enclose is more or less the route taken by people cutting across the land, which is unacceptable to them and says "*I do not say that I am going to grant access across my land but.....there may be room for negotiation*".

6.3.1 In a letter dated 18 March 2007 to Cheshire County Council, Landowner 1 advises that a post and wire fence which dissects route B-G has been in place since about June 2005 (*This may be the fence referred to in Witness 6's evidence form preventing use of Route A-G-B*). Several fences were erected in the summer of 2005 to keep travellers off the land. This has also prevented people riding horses or driving cars across the field to Crescent Road. Landowner 1 has lived here for nearly 14 years and they say

that the number of times they have seen people following the routes; B-G; E-D and G-F could be counted on the fingers of one hand. There certainly have never been well worn tracks.

Landowner 1 advises that route E-C is a well-worn track, they have used it themselves. The owner left gaps in the fence at both ends to allow access. It had only become difficult to use recently because of building work behind an adjacent property.

Route A-B-C-D, as explained in their letter of 4 March 2006 (above), had been diverted across the middle of their land because of the rubble dumped by a neighbour. Since the rubble was removed people have kept more to the edge of the field. Landowner 1 does not object to people occasionally crossing their land provided they keep to the boundary.

Landowner 1 then states that they object to any formal establishment of a footpath for safety, nuisance and vandalism reasons. They also object to the establishment of the part of route B-G that affects their land for litter, nuisance, vandalism reasons and that they have rarely seen anybody on route B-G.

6.3.2 In a letter dated 29 April 2007, Landowner 1 advises that the route south of point B could have only been in existence from 1994 to 2006 as in 1994 rubble and soil was moved onto the field. This forced anyone cutting across the land to take a route further westerly. In 2006 when Landowner 1 brought the land they removed the mound of rubble and soil, since then people have used the route claimed.

6.3.3 Landowner 1 wrote to Cheshire East Council in October 2014 having received a letter from the Parish Council which made reference to registering the footpath. The landowner attended a meeting with the Parish Council and was told that the permissive path was to 'preserve the status quo'. In their letter to the Borough Council they say that they would be willing to maintain a permissive path but opposes a public right of way and that they had made this clear to the Parish Council.

6.3.4 In 2015 Landowner 1 carried out an analysis of the claim, which they submitted to Cheshire East Council, and concluded that the evidence statements are inconsistent and sometimes incorrect. In addition there are exaggerations when reporting usage. They submit that the claimed path between Carver Avenue and Byley Lane fails the 20 year test. They state that there is no doubt that the path from Carver Avenue to Byley Lane is used, though not used anything like as frequently as the witness statements claim and that they would be willing to agree to a permissive footpath.

6.3.5 In a letter dated 16 October 2017 to Cheshire East Council, Landowner 1 advises that the diagram published by the Parish Council in a newsletter does not accurately show the position of the footpath. They state that nobody can claim to have walked the path because it is shown blocked by the building at the end of Carver Avenue. When the application was made to claim the paths, a meeting was held and the landowners agreed to a 'permissive path' which should have settled the matter. They state that the landowners have never suggested that the path would be closed and the path shown on the diagram differs considerably from the path claimed in 2007.

6.3.6 In a letter dated 31 July 2018 in response to the consultation letter, Landowner 1 advises that they are only concerned with Route B-C on Plan No. WCA/016. This is used mostly by school children (half a dozen at most) taking a short cut to Byley Lane to get the school bus. Out of term time usage is negligible. There are a few dog walkers who use the path occasionally. Occasionally a cyclist will use the path but this is fairly rare (usually children). Horse riders occasionally used the path though not as frequently as the witness statement would have us believe, at least not in the last 10 years as the fence is restrictive. Landowner 1 advises that they have never given anyone permission to cross their land but has not ever stopped anyone using it or suggested closing it.

6.3.7 In interview Landowner 1 advised that they had owned the land at point B as shown on the Consultation Plan, from 2006 and the other area which is currently unregistered to the east of A-B, they have occupied since 2010. They advised that No. 4 Dean's Row extended their garden in 1994 and confirms that route A-B-C-D is used by people occasionally, school children use it for the school bus and 2 people use it every day for dog walking. Horses also used to come through route E-C occasionally. Otherwise, Landowner 1 advised that use of the other routes is spurious, mostly kids wandering. The current fencing, post and wire, was installed around the field areas in 2006/7.

Landowner 1 reiterates that the route used, A-B-C-D, was not as shown on the Consultation Plan as there was rubble in the way which was moved in 1994. They claim that this route has moved several times over the years. Landowner 1 objects to the path going through the middle of their land but does not object to where the path is now.

In a follow up letter dated 12 September 2018, Landowner 1 advises that No. 4 Deans Row extended his garden to the north and to the west. It is more accurate to say that there were two regular dog walkers, but a few others use the path from time to time. Cyclists rarely use Route A-B-C-D, those who do are usually children.

6.4 *Landowner 2*: Following receipt of the consultation letter, Landowner 2 telephoned on the 2 August 2018 to advise that they own the garages at the end of Carver Avenue and that they were re-built with planning consent and agreement from the Council. They advise that they use this route and as long as it does not affect their property they are not interested in the application. They have not seen any horse riders, in any event there is nowhere for them to go.

6.4.1 In interview Landowner 2 advised that they moved into their property in 2009. They have concerns with the depiction of route A-B on the Consultation Plan and say it should be outside the boundary of their wall. They do not want people using the drive to the garages. They have seen people using the route outside their boundary wall on bikes and foot but not horses. It is not used in the winter as it gets wet and muddy. They do not want the path to be removed as they use it.

6.4.2 Landowner 2 called on 13 September 2018 to confirm that it was Cheshire East Council who had no issue with the fence on the boundary of their property not the Parish Council. He said he would write in and confirm this and also send a copy of the letter he received from the Council; this was not received.

6.5 *Landowner 3*. A previous owner of an adjacent property telephoned on the 18 July 2008, to object to the application. This was followed by an email confirming that they object as the route is directly in front of their property and runs over land that they hope to buy. This person is no longer resident in the area.

6.6 *Landowner 4*. In a letter dated 27 March 2007 to the Parish Council and copied to the Cheshire County Council, Landowner 4 confirms that they are prepared to re-establish a 'Permissive Path'.

6.6.1 Landowner 4 telephoned the Borough Council on the 12 August 2015 regarding their landownership where part of the route between B and D runs. The Parish Council had asked them if the Parish Council could put a kissing gate on the route. Landowner 4 advised that they are not averse to the idea that one path exists here (not two as claimed). They said that the land was brought from Merseyside Health Authority in 2000 with a caveat that the land was to be held as amenity land and not built on for at least 30 years.

6.6.2 In a follow up e-mail to the Parish Council and copied to Cheshire East dated 12 August 2015, Landowner 4 advises that they cannot agree to kissing gates being erected from Byley Lane cul de sac across the field (route E-C) until the issue of the other 5 proposed crossings are

resolved. They advise that they would not object to point C if the other access points are dropped from the application.

- 6.6.3 In their interview Landowner 4, advised that they purchased the field area in 2001 from the Secretary of State for Health. They then sold the northern area in 2006. The fences were put up in 2007. At that time the routes across the fields were restricted. At F there was a gap and a staggered opening at C. Landowner 4 advised that route E-C is in the incorrect position on Plan No. WCA/016 and should be further northwards. Underneath is a drainage pipe which affects the surface above it and helps the route to stay dry. People were able to use E-C after the fields were fenced in 2007 but Landowner 4 never saw anyone using it. They do not object to the use of E-C. One lady used E-D, she lived on Byley Lane. Landowner 4 did see a horse go onto the field from A-B on 2 occasions. They have no knowledge of other routes on the Plan.
- 6.7 *Landowner 5.* In a letter dated 30 March 2007 to Cheshire County Council, sent by their solicitor in response to the application being made, this landowner stated their objection to the proposal.
- 6.7.1 In a letter dated 23 August 2018 in response to the consultation letter they further advise that they still object to the designation of the proposed public footpaths on their land (route B-G). They acquired the land in 2006 and immediately erected a fence around the perimeter and set up two notices advising that it was private. They are not aware of any use by the public of the land.
- 6.8 *Landowner 6,* in a letter dated 25 August 2018 in response to the consultation, they advise that they have lived in the area since August 2003 and the path, route A-B-C-D, has been in constant use. The route is used on a daily basis during term time for school children to walk from Carver Avenue and is also used by day and night for people from the direction of Carver Avenue to use while dog walking. The route is used all year round and at all times by day and night. They did not even know that the other routes existed. They do not object to anyone using the footpaths and regularly use Route A-B-C-D in both directions whilst out walking.
- 6.9 In an email dated 10 January 2011 from the Council's Property Services, it is advised that an area of land between Carver Avenue and the A50 is owned by the Council.
- 6 10 An e-mail generated internally by Development Management dated 26 April 2011 advises that a small piece of land behind Deans Cottages

and to the side of Carver Avenue has been currently fenced off. It is causing much disruption and bad feeling with other residents as it has always been part of a footpath/woodland that school children have walked across.

7 Summary of Landowner Evidence

The Landowners are, in general, accepting and agree that route A-B-C-D is used by the public. Landowner 1 however, does not want the route to go across their land as shown on Plan No. WCA/016, they are happy for it to remain where it is now. They have stated their willingness to enter permissive path agreements on several occasions including in direct discussions with the Parish Council and other affected landowners in 2007. The current (2018) alignment of this route is shown in its approximate location in the plan at Appendix 3. A full survey of this route has not been undertaken.

It is also clear that the width of route A-B-C-D was reduced by the fencing and boundary wall put in by Landowner 2 and also the alignment was set out between fences by Landowner 1.

The other routes, Landowner 5 claims, were fenced in 2006. It is not entirely clear as to when the fences were installed as the application was made in early 2007 and the user evidence forms were completed late 2006 to early 2007. One user claims that fencing was installed in October 2005, this is however, likely to be the fence referred to in Landowner 1's letter of 18 March 2007. Landowner 6, through his solicitor, claims that the fencing was put up in 2006.

There is a general consensus that route A-B-C-D has been used although some landowners may have been in the belief that it was on a permissive basis. There is less evidence of use of the other routes which have been challenged by fencing and also private signs in a couple of locations.

8 Bringing the right to use the routes into question

8.1 In this case the date the use of the Application Routes was brought into question can be considered to be the date the application was made in March 2007, however there is evidence of some of the routes being fenced in 2006.

8.2 *Route A-B-C-D*

The alignment of this route was changed by the installation of fencing, prior to March and April 2007 and the later development of the garages at Carver Avenue; there is evidence of this from site photographs taken in March 2007.

8.3 *Route A-B-G*

Fencing was installed, across A-B-G, possibly in 2005, according to one witness, preventing use from Crescent Road to Carver Avenue

8.4 *Route G-F*

Fencing was installed again possibly in 2005, when the land was divided and sold, preventing use of Route G-F and A-B-G.

8.5 *Route E-C*

Fencing was installed in 2007 however; gaps/entrances were left at either end until closed for the grazing of sheep in the same year. A private sign is also in existence at the turning circles at points F and G and it seems that these were installed at a similar time as the fencing.

8.6 *Route E-D*

Fencing was in place around this area of land in January 2006, as evidenced by a letter and photographs dated 5 January 2006 from Cranage Parish Council.

8.7 In order to show that public rights have been acquired along the length of the claimed routes through usage, a twenty year period must be identified during which use of the route by the public has been established. This period is usually taken as the twenty years immediately prior to a challenge to that use. It is considered that the date of the application, March 2007 would have brought the right to use the route(s) into question. The relevant period would therefore, be 1987 to 2007, this would apply to route A-B-C-D. However there is also evidence that fencing prevented use of the other routes; it is possible that a fence was installed across route A-B-G and G-F in 2005 making the relevant period for those affected routes would to be 1985-2005. Routes E-C and E-D were fenced in 2007.

8.8 However, as noted previously the land in question was until 2001, Crown Land. The Highways Act 1980 (Section 327) indicates that the Act does not apply to land belonging to a government department unless there is an agreement between the highway authority and the government department that the Act shall apply. In any event, the Crown is not bound by any statute unless the statute expressly binds the Crown therefore there cannot be a presumption of dedication of a public right of way over Crown Land under Section 31. The land affected by the application was owned by the Health Authority from at least 1934 until 2001. The use of the routes was challenged from at least 2005 when the first section of fencing was installed. The use of the routes has therefore, only been available to use 'as of right' by the public

from 2001 to 2005 and in some cases to 2007, depending on when the fencing was installed and the route in question. There are therefore insufficient years of use available to satisfy the 20 year test as the period of use outside of the ownership of the Health Authority is only 4-6 years.

9. Common Law Dedication

Public rights could however, be deemed to exist under Common Law where the actions (or inaction) of a landowner are such that it can be inferred that they intended a way to be dedicated and where the public have accepted it. There needs to be evidence of use but not necessarily 20 years.

9.1 Under Common Law there can be a presumption of dedication over Crown Land however, whilst there appears to have been use of the routes in question to some degree, the existence of the deposited plan referred to in paragraph 5.5.13 demonstrated that there was no intention to dedicate the land and subsequently no action on the part of the landowner to indicate a contrary intent. Further, when the land was sold there was no indication of the existence of public rights of way. It is also unknown as to whether or not the Health Authority observed and were aware of the usage and accepted the use as being consistent with the establishment of public rights of way.

9.2 When the land was purchased in 2001 it remained open. However, since approximately 2005 the routes were fenced preventing access except for route A-B-C-D, again showing a negative intention to dedicate any of the land for use as public rights of way.

9.3 With reference to route A-B-C-D the use of the alignment and width of the route was challenged as a path was accommodated on a revised alignment by the installation of fencing in approximately 2007. Its use was also challenged by a letter stating objection to the establishment of formal footpaths in 2006 and the later development of the garages and boundary of No. 24 Carver Avenue. Use of this route, as applied for in the application, was therefore challenged from point A to the boundary of No.4 Deans Row, again therefore, showing a negative intention to dedicate.

10. Conclusions

10.1 The evidence in support of this application must show, on the balance of probabilities that public rights subsist or are reasonably alleged to subsist along the claimed routes.

10.2 There is insufficient documentary and historic evidence to show that public rights of way exist along the alignment of the Application Routes.

10.3 As the land was Crown Land prior to 2001 there is insufficient evidence of use since that time for a full 20 years to support the dedication of the routes as public rights of way. Therefore, it is considered that the requirements of section 31(1) of the Highways Act 1980 have not been met.

10.4 There is insufficient evidence to show that public rights are deemed to exist under Common Law dedication during the time of ownership by the Crown and since 2001 by subsequent landowners.

11 Implications of the Recommendations

11.1 Legal Implications

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

11.1.2 Upon determination of this application, the authority must serve notice on the applicant to inform them of the decision. Under Schedule 14 of the WCA, if the authority decides not to make an order, the applicant may, at any time within 28 days after service of the notice, appeal against the decision to the Secretary of State. The Secretary of State will then consider the application to determine whether an order should be made and may give the authority directions in relation to the same.

11.1.3 The legal implications are contained within the report.

12.2 Finance Implications

12.2.1 If objections to an Order lead to a subsequent hearing/inquiry, the Council would be responsible for any costs involved in the preparation and conducting of such.

12.3 Policy Implications

12.3.1 There are no direct policy implications.

12.4 Equality Implications

The legal tests under section 53 of the Wildlife & Countryside Act 1981 do not include an assessment of the effects under the Equality Act 2010.

12.5 Human Resources Implications

There are no direct implications for human resources.

12.6 Risk Management Implications

There are no direct implications for risk management.

12.7 Rural Communities Implications

There are no direct implications for rural communities.

12.8 Implications for Children & Young People

There are no direct implications for children and young people.

12.9 Public Health Implications

There are no direct implications for public health.

13 Ward Members Affected

13.1 Councillor Les Gilbert and Councillor Andrew Kolker, Dane Valley Ward, have been consulted. Councillor Gilbert, sent an email dated 27 July 2018, advising that it would not be appropriate for him to comment as he sits on the Council's Public Rights of Way Committee.

14 Consultation & Engagement

14.1 The user groups, neighbouring landowners and statutory undertakers have been consulted.

14.2 Cadent, National Grid, Plant Protection, replied in a letter dated 1 August 2018 advising that they have apparatus in the area and therefore, object to activities pending further investigation.

14.3 Congleton Ramblers responded by email dated 31 August 2018, that they would welcome the addition of these footpaths as Public Rights of Way.

15 Access to Information

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

Contact Information

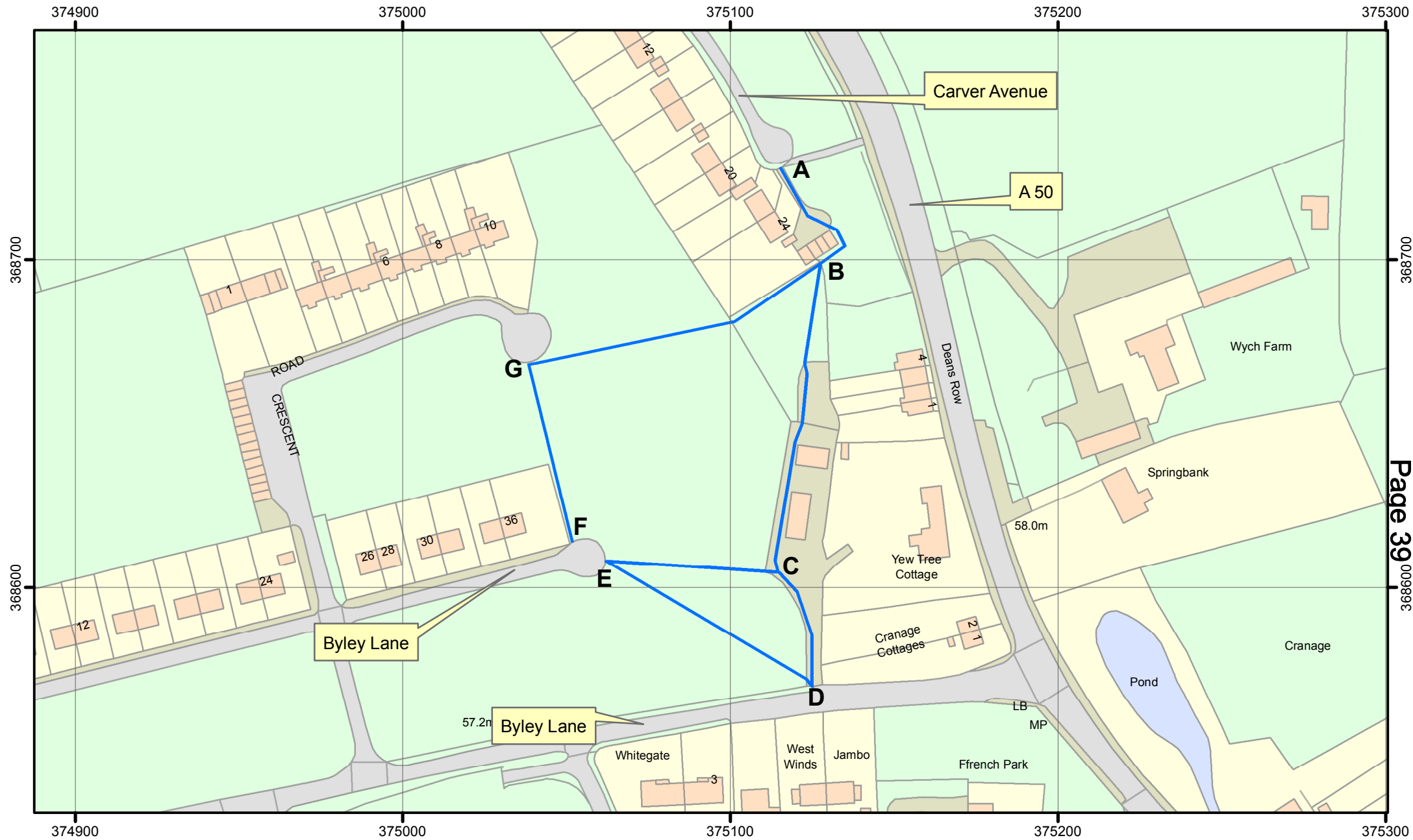
Any questions relating to this report should be directed to the following Officer:

Name: Clare Hibbert

Job Title: Definitive Map Officer

Email: clare.hibbert@cheshireeast.gov.uk

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Claimed Footpath Additions
Carver Avenue/ Crescent Road/ Byley Lane
Cranage. Ref: CO/8/34

Plan No.
WCA/016

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 and should not be used for legal purposes



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APPENDIX 1**List of Archive Documents –****Application No. CO/8/34****Claim for Footpaths in the Parish of Cranage****PROW = Public Rights of Way Unit****CRO = Cheshire Record Office**

Primary Sources	Date	Site Shown/Mentioned	Reference Number/Source
Tithe Papers	1841/4	Claimed Routes not shown	CRO ETD 128/2
Ordnance Survey 6' and 25'	1911	Claimed Routes not shown	CRO D1666/3
Ordnance Survey 1 st Edition 1:25 inch	1871/2	Claimed Routes not shown	PROW/Cheshire East Council
Ordnance Survey 2 nd Edition 1:25 inch	1890	Claimed Routes not shown	PROW/Cheshire East Council
Ordnance Survey 3 rd Edition 1:25 inch	1910/11	Claimed Routes not shown	PROW/Cheshire East Council
View: Cheshire XLII.NW (includes: Allostock; Church Hulme; Cranage; Goostrey; Twemlow.... - Ordnance Survey Six-inch England and Wales	Revised 1907 to 1908, Published: 1911	Claimed Routes not shown	https://maps.nls.uk/view/101599042
Cheshire XLII.NW (includes: Allostock; Church Hulme; Cranage; Goostrey; Twemlow.... - Ordnance Survey Six-inch England and Wales	Revised: 1938, Published: Ca.1946.	Claimed Routes not shown	https://maps.nls.uk/view/101599039

SJ76 (includes: Middlewich; Sandbach) - Ordnance Survey 1:25,000 maps of Great Britain, 1937-1961	1937-1961, printed and published 1948	Claimed Routes not shown	https://maps.nls.uk/view/91791884
Ordnance Survey Map: May 1968, Boundaries October 1975	May 1968, Boundaries October 1975	Claimed Routes not shown	PROW/Cheshire East Council
Cranage Estate Plans	1920-1921	No evidence of claimed routes	CRO CV1/8677/11
Map of Cranage Hall Estate, deposit under Rights of Way Act 1932 s.1 (4) (a)	1934	Claimed Routes not shown	CRO LRC/46
Aerial Photographs	1940 and 1971	Claimed Routes not shown	PROW/Cheshire East Council
Draft Definitive Map		Claimed Routes not shown	PROW/Cheshire East Council Offices
Book FP EG 7		No evidence of claimed routes	PROW/Cheshire East Council Offices
Highway Committee Minutes	1995-2009	No evidence of claimed routes	CRO LDC / LDC 7938/19

APPENDIX 2

Route A-B-C-D

Witness No.		Years Routes Used																								Fencing on part of route	
		1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	
2																											
6																											
8																											
9																											
10																											
11																											
12																											
15											1			A-B	A-B	A-B	A-B	A-B	A-B	A-B	A-B	A-B	A-B	A-B	A-B	A-B	
18																											

Route A-B-G

Route A-B-G																	Fencing								
	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
6																									
7																									
9																									
10																									
11																									
18																									

Route G-F

Fencing

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
6																									
9																									
10																									
18																									

Route E-C

Fencing

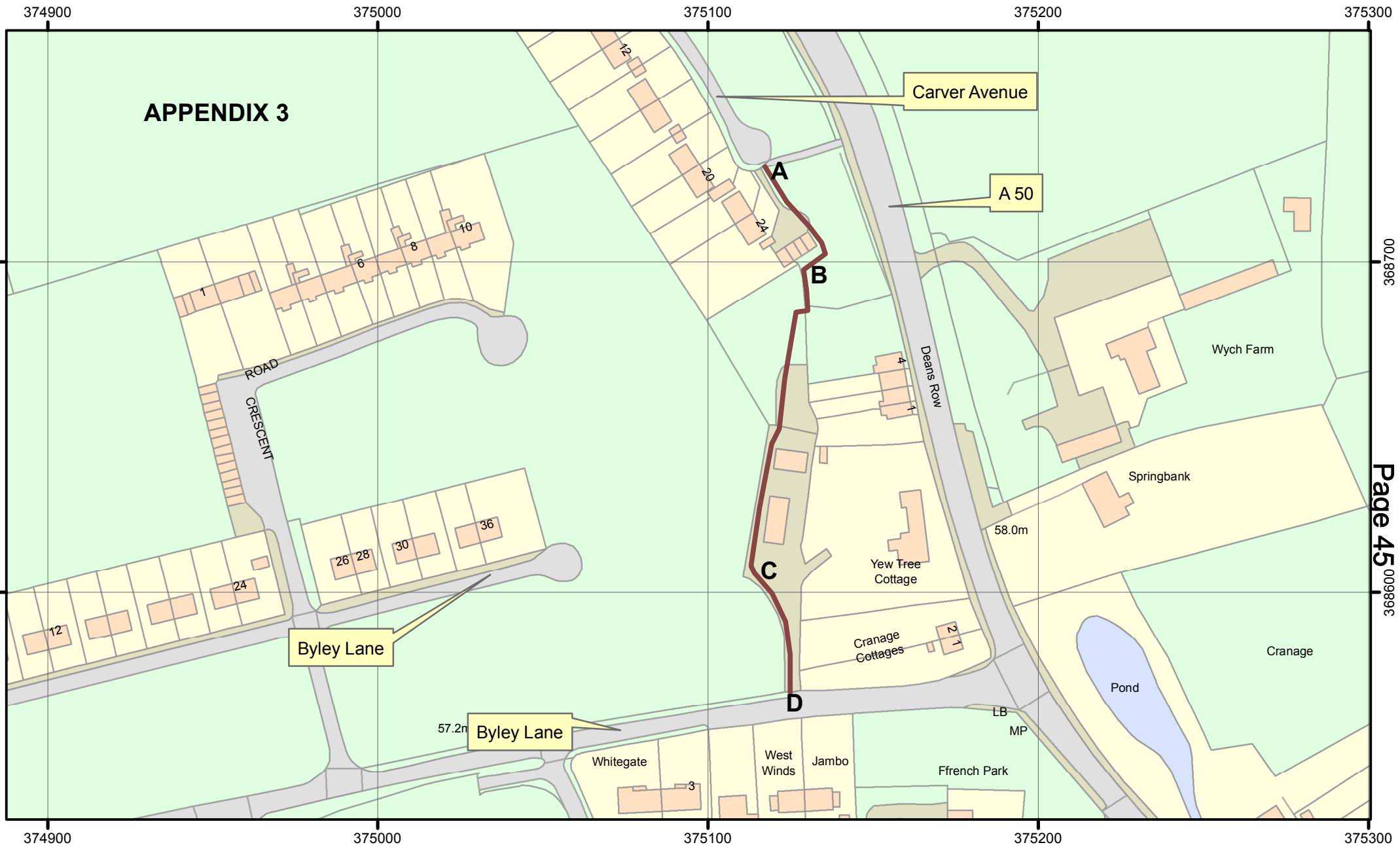
	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
6																									
9																									
10																									
12																									
18																									

Route E-D

Fencing

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
6																									
9																									

APPENDIX 3



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**Approximate route of
Changed Alignment of A-B-C-D
Carver Avenue to Byley Lane
Cranage. Ref: CO/8/34**

Plan No.

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and should not be used for legal purposes



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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 3rd December 2018

Report Title: Highways Act 1980 s.119: Proposal for the Diversion of Public Footpath No. 10 (part) in the Parish of Alsager

Senior Officer: Frank Jordan, Executive Director Place

1 Report Summary

- 1.1 The report outlines the proposal to divert part of Public Footpath No. 10 in the Parish of Alsager. 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 team in the interests of the public. 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.
- 1.2 By proposing an improved accessible path through open space to connect residential areas with the town centre, the proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

2 Recommendations

- 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. 10 in the Parish of Alsager by creating a new section of Public Footpath and extinguishing the current path as illustrated on Plan No. HA/126 on the grounds that it is expedient in the interests of the public.
- 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 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 public for the reasons set out in paragraph 5 below.
- 3.2 Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:
- Whether the path is substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:

- The effect that the diversion would have on the enjoyment of the path or way as a whole.
 - The effect that the coming into operation of the Order would have as respects other land served by the existing public right of way.
 - The effect that any new public right of way created by the Order would have as respects the land over which the rights are so created and any land held with it.
- 3.3 Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.2 above.
- 3.4 The proposed route will not be 'substantially less convenient' than the existing route and diverting the Footpath will in fact enable investment in the surface of the Footpath to make it more accessible. 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 Other Options Considered

- 4.3 Not applicable – this is a non-executive matter.

5 Background

- 5.1 The section of Alsager Footpath No.10 proposed to be diverted commences at a junction on the footway extending from the houses to the rear of Swettenham Close at OS grid reference SJ 7917 5502 and runs in a generally south westerly direction for approximately 195 metres where it connects with an un-adopted section of Hall Drive at OS grid reference SJ 7931 5513 before continuing southwards towards Alsager Footpath No.8. At present that section of the footpath extends within very close proximity to the brook, it is narrow with a mud and in some places a compacted stone surface.
- 5.2 The diversion is proposed in the interests of the public because the legal line of the footpath has been cut across by the meanders of Valley Brook in places and in other stretches runs very close to the banks of the brook. The proposed diversion would move the path approximately 5-6 metres away from the banks of the brook which would enable the protection of the public footpath from further erosion caused by the river. It would also offer a route away from potential hazards arising from the proximity of the brook, and would enable the surface of the footpath to be improved to increase its accessibility. The improved surface would mean that the footpath can be used year-round by pedestrians and people with pushchairs and wheelchairs, as a leisure route and a route between residential areas and the town centre.
- 5.3 The route to be closed is shown on Plan No. HA/126, as a bold black line running between points A-B-C. The proposed new route is shown as a dashed black line running between points A-D-C. The new route between points A-D-C would be 2 metres wide and have a recycled self-binding aggregate surface.

6 Implications of the Recommendations

6.1 Legal Implications

- 6.1.1 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.

6.2 Finance Implications

- 6.2.1 S106 developer contributions have been secured (ref. 15/3410C) to fund the proposed improvement works on the proposed diverted alignment of the Footpath.
- 6.2.2 If objections to the Order lead to a subsequent hearing/inquiry, this legal process would have financial implications for the Council.

6.3 Equality Implications

- 6.3.1 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 more accessible than the current route.

6.4 Human Resources Implications

- 6.4.1 There are no direct Human Resource implications.

6.5 Risk Management Implications

- 6.5.1 There are no direct Risk Management implications.

6.6 Rural Communities Implications

- 6.6.1 There are no direct implications for rural communities.

6.7 Implications for Children & Young People

- 6.7.1 There are no direct implications for children and young people.

6.8 Public Health Implications

- 6.8.1 There are no direct implications for public health, other than an improved and more accessible Footpath would encourage active travel and leisure activities.

7 Ward Members Affected

- 7.1 Alsager Ward Members Councillor Deakin, Councillor Fletcher and Councillor Hough have been consulted and no comments have been received.

8 Consultation & Engagement

- 8.1 Alsager Town Council has been consulted and have no objection to the proposed diversion.
- 8.2 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.

- 8.3 The user groups have been consulted and no comments have been received objecting to the proposed diversion.
- 8.4 The Council's Nature Conservation Officer has been consulted; no comments have been received.
- 8.5 Officers from ansa, which manages the Public Open Space through which the Footpath runs, have responded to the consultation in an email dated 17th October 2018 and suggest that the walked line of the footpath be "made good" following the diversion of the path. A quote has since been obtained for this which will be funded from s106 developer contributions. ansa also suggest that the path be flush to the ground to enable the mower to mow both sides of the path. The path is currently and will continue to be maintained by ansa.
- 8.6 Officers from the Council's Assets team, as the current and proposed diversion alignments of the Footpath run across Cheshire East Council land, have been consulted and no objections have been received.

9 Access to Information

- 9.1 Plan No. HA/126 is attached.
- 9.2 Further information may be obtained from the Officer named below and file reference No. 011D/558.

10 Contact Information

- 10.1 Any questions relating to this report should be directed to the following officer:

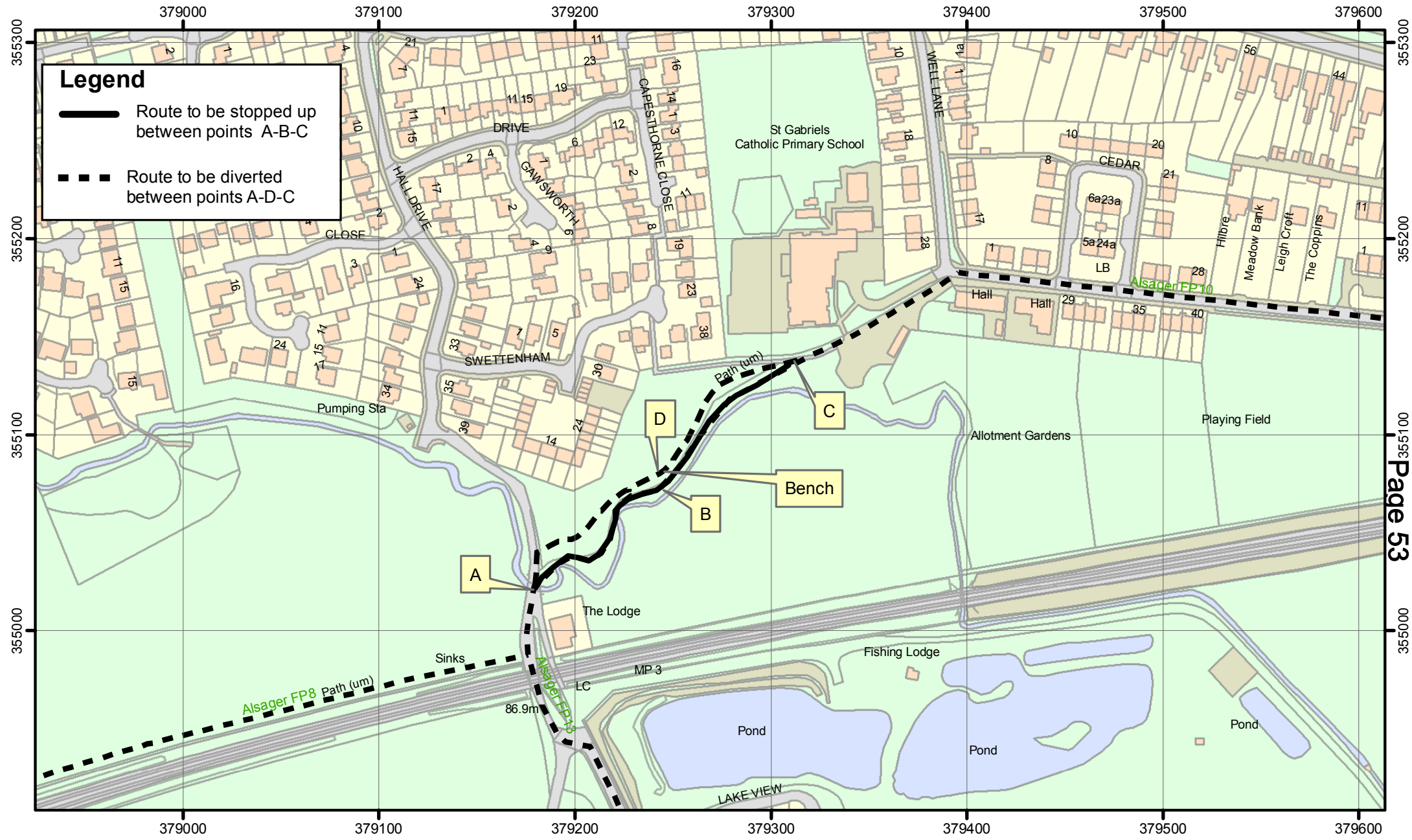
Name: Sarah Fraser

Job Title: Public Paths Orders Officer

Email: sarah.fraser@cheshireeast.gov.uk

Tel: 01270 686070

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**Proposed Highways Act 1980 s119 Diversion
Public Footpath No. 10 (part), in the Parish of Alsager**

**Plan No.
HA/126**

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and should not be used for legal purposes



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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 03 December 2018

Report Title: Highways Act 1980 s.119: Proposal for the Diversion of Public footpath No.2 (part) in the parish of Eaton

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to divert part of Public Footpath No.2 in the Parish of Eaton. 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. This proposal has been put forward by the Public Rights of Way team in the interests of the landowners and makes a recommendation based on that information, for a quasi-judicial decision by Members as to whether or not an Order should be made or not to divert the section of footpath concerned.
- 1.2. The proposal contributes to the corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer" and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

2. Recommendation/s

- 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.2 in the Parish of Eaton by creating a new section of Public Footpath and extinguishing the current path as illustrated on Plan No.HA/135 on the grounds that it is expedient to do so in the interests of the owner of the land affected by the Public Right of Way.
- 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. Reasons for Recommendation/s

- 3.1. In accordance with section 119 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 owner for reasons set out in section 5 below.
- 3.2. Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 3.1 above, have regard to:
- Whether the path is substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:

- The effect that the diversion would have on the enjoyment of the path or way as a whole.
 - The effect that the coming into operation of the Order would have as respects other land served by the existing public right of way.
 - The effect that any new public right of way created by the Order would have as respects the land over which the rights are so created and any land held with it.
- 3.3. Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 3.2 above.
- 3.4. 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. Other Options Considered

- 4.1. Not applicable this is a non-executive matter.

5. Background

- 5.1. An application has been submitted by Mr Bell of Wheelwrights Cottage requesting the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.2 in the Parish of Eaton.
- 5.2. The land over which the section of the current path to be diverted and the proposed path runs 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 to be expedient in the interests of the landowner to make an Order to divert the path.
- 5.3. The route to be closed is shown on Plan No. HA/135, as a bold black line running between points A-B-C-D-E. The proposed new route is shown as a bold black dashed line between points A-F-G-H-I-J-E.
- 5.4. The section of Public Footpath No.2 to which the application relates commences at its junction with Hulme Walfield Public Footpath No.5 at O.S. grid reference SJ 8565 6548 (Point A on Plan No. HA/135) and extends in a generally southwardly direction for approximately 135 metres through the middle of a cultivation field to O.S. grid reference SJ 8567 6535 (point B on Plan No. HA/135) where it enters the residential grounds and garden of Wheelwrights Cottage. The path at this point then runs in a generally south easterly direction for approximately 78 metres (Point C on Plan No. HA/135) before turning to a generally south westerly direction for a distance of approximately 33 metres before exiting the garden of the Cottage via a stile (shown at point D on Plan No. HA/135) at O.S. grid reference SJ 8568 6527. From that point the path then continues for approximately a further 115 metres in a slightly south south westerly direction to the kissing gate located O.S. grid reference 8567 6515 and identified at point E on Plan No. HA/135. The total length of the affected path is approximately 360 metres and the surface is grass and earth. The remainder of Public Footpath No. 2 is unaffected by the diversion application.
- 5.5. The proposed new path would commence at its junction with Hulme Walfield Footpath No.5 (point A on Plan No. HA/135) at O.S. grid reference SJ 8565 6548 and would extend in a generally south westerly direction for a distance of approximately 141 metres to O.S. grid reference SJ 8555 6537 shown at point F on Plan No. HA/135. The path would then take a south easterly direction for approximately 33 metres to O.S. grid reference SJ 8557 6535 (point G on Plan No. HA/135) the path would then extend in a generally south westerly direction for approximately 87 metres to O.S grid reference SJ 8554 6527 identified at point H on Plan No. HA/135. The path would then continue for approximately a further 10 metres to O.S. grid

reference SJ 8555 6526 shown as point I on Plan No. HA/135. From point I on Plan No. HA/135 the path extends in a generally south westerly direction for approximately 72 metres to O.S. grid reference SJ 8553 6519 before turning to take a generally south easterly direction for approximately 151 metres to point E on Plan No. HA/135. The proposed diversion would have a total distance of 492 metres.

- 5.6. The proposed path between points A-F on Plan No. HA/135 would be 2.5 metres wide and would run parallel to a stream bordered with trees and an earth embankment. The path would be 3 metres wide between points F-G-H-I-J-E and would be enclosed between a low post and wire fence with open views of the countryside. The path would have a grass and earth surface throughout.
- 5.7. The proposed diversion would be made in the interests of the landowner as it will divert walkers away from the middle of a cultivation field which would improve their land management, and away from the Cottage, residential garden and existing outbuildings, thus considerably improving the privacy and security of the property as a whole. At present there is a permissive path to the west of the definitive line that follows the garden boundary. The permissive path also runs in very close proximity to the Cottage. The applicant believes that the alternative path would not be substantially less convenient than the existing path and that enjoyment of the path as a whole would be improved as it will reduce a likely sense of intrusion and awkwardness when walking through the garden and private areas of the residential property.
- 5.8. The definitive line of the path has a number of obstacles in the form of two gates, two stiles and two kissing gates along the section of path proposed to be diverted (shown at various points on Plan No. HA/135). The proposed diversion would reduce the number of obstacles to one kissing gate at either end of the proposed route shown at points A & E on Plan No. HA/135, making the path more accessible to members of the public.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. 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.

6.2. Finance Implications

- 6.2.1. If objections to the Order lead to a subsequent hearing/inquiry, this legal process would have financial implications for the Council.

6.3. Equality Implications

- 6.3.1. 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 more accessible than the current route.

6.4. Human Resources Implications

- 6.4.1. There are no direct Human Resource implications.

6.5. Risk Management Implications

- 6.5.1. There are no direct Risk Management implications.

6.6. Rural Communities Implications

- 6.6.1. There are no direct implications for rural communities.

6.7. Implications for Children & Young People

- 6.7.1. There are no direct implications for children and young people.

6.8. Public Health Implications

- 6.8.1. There are no direct implications for public health.

7. Ward Members Affected

- 7.1. Gawsworth Ward Member Councillor Smetham and Brereton Rural Ward Councillor Wray have been consulted and no comments have been received.

8. Consultation & Engagement

- 8.1. Eaton Parish Council have been consulted and no comments have been received.
- 8.2. The statutory undertakers have been consulted and have also 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.

8.3. The user groups have been consulted. The Open Spaces Society objected to the proposal in an email dated 22nd October 2018. In that email the Society states that;

8.4. *"The proposed diversion is significantly less convenient and less enjoyable than the existing route ... and will be quoting PINS decisions which state that "The straightness of the route gives walkers a sense of purpose which is lost on a route which turns ..." and also "The diversion will result in a loss of historic continuity. Walkers appreciate that they are following an ancient route and the knowledge of the history adds to their enjoyment of the path"."*

8.5. The Society goes on to state that;

"the proposed route was less than 900mm wide... also that there was standing water on the route even during the recent dry summer" and that the "views from the proposed path are obstructed by earthworks".

8.6. The Open Spaces Society also comment that *"the proposed path can only be maintained at extreme cost"* and that the junction between Hulme Walfield footpath No.5 and Eaton footpath No.2 is obstructed at point A and that they *"will elaborate on their objections as this matter progresses to PINS."*

8.7. In response to those objections, the Planning Inspectorate decision to which The Open Spaces Society refers to is **The London Borough of Harrow Harrow School Playing Fields** FPS/M5450/4/1 & 4/3 & 6/1 & 6/2. That case applied to an application to divert a path in order to avoid a modern obstruction through a school which would have adversely affected the public's enjoyment of a path as follows;

... "leading to and with views ahead of, a historic destination adds to public enjoyment of the route, whereas, in contrast the diverted route leads away from the obvious desire line to skirt man-made features".

The key point being the diversion would have meant a loss of views in the loss of sight of a historical monument and sight of the desired destination. This is not considered relevant in this case.

8.8. With regards to the embankment, width and maintenance of the proposed diversion; it is agreed that the embankment does have the potential to affect the enjoyment of the path and the landowner is aware that he will need to remove it to prevent the likelihood of objections to the Order. The temporary fencing that has been installed on site may give the impression that the path

is 900mm wide however, the proposed widths are 2.5 and 3 metres. The Public Rights of Way Network Management and Enforcement Officer has surveyed the path and considers the proposal to be satisfactory. Maintenance of the path would also be ensured through normal path management and enforcement roles. However, should a Diversion Order be made the proposed path would not be confirmed or certified until the Cheshire East Borough Council is satisfied that the path is of a standard suitable for use by members of the public.

- 8.9. The Peak and Northern Footpaths Society in an email dated 12th November 2018 commented on the enjoyment of the path and the proposed diversion stating in particular that;

“it is difficult to see how this proposed new route is substantially as convenient as the existing route.” That *“it is noted that the termination points of the path have remained unchanged”* ... *“the proposed route is not as direct as the existing route”* and that *“the proposed new route does not offer the same quality of views along its length”*... *“these now being obstructed by an embankment”*.

- 8.10. The Society also commented on the width of the proposed route and state that *“to enclose the path gives the perception of narrowness and is uninviting”* and that the path will be difficult to maintain due to overgrowth that may obstruct passage.
- 8.11. In response to the comments the legal tests are set out in paragraph 3 to this report. In that context the proposed path should be “substantially as convenient” to the public where it reconnects to the highway, meaning that it should be ‘as good as or as close to that it makes no difference’. This part of the legal test applies to both the commencement and termination points of the proposed right of way and ease of use as opposed to the enjoyment of the path. In this instance the proposed diversion will commence and terminate at the same existing points thus satisfying that particular legal test.
- 8.12. A further test contained in the Act is that the proposed path should not be “substantially less convenient” to the public as a result of the diversion having regard to the effect of the diversion on the public enjoyment of the path as a whole. The test aims to balance the interests of the public with those of the applicant and implies that the path can be less convenient than the existing right of way provided that the public’s enjoyment of the path as a whole is not unreasonably compromised. The Proposed diversion will add a further 132 metres or 19% to the overall length of the path.

8.13. Although a more direct route maybe the preferred option in some instances extra distance, especially on a recreational walk as in this case, can be a positive factor rather than a negative one. (***The London Borough of Harrow Harrow School Playing Fields FPS/M5450/4/1 & 4/3 & 6/1 & 6/2.***)

8.14. With regards to the embankment, width and maintenance of the path this has been discussed at paragraph 8.8.

8.15. The East Cheshire Ramblers responded to the informal consultation in an email dated 19th November 2018. The Ramblers state that they are opposed to the proposed diversion as there is already an acceptable way to get around the garden of Wheelwrights Cottage, using the permissive path that has been there for some years and question why that path is not considered a suitable alternative. The Ramblers claim that the proposed diversion;

“is very long and substantially less convenient and less enjoyable than the current route.”

8.16. The Ramblers also seek assurances that the section of the path between points F to E will be 3 metres wide as the width to the current temporary fence line appears to be significantly narrower than the 3 metres quoted. They also request that the proposed path between points A-F be 2.5 metres wide to conform with Cheshire East Council requirements and not 2 metres wide it is at present as the path is enclosed on both sides either by a wire fence and a thick Hawthorn hedge. The Ramblers also comment that there is a ‘crossfall’ on the path that slopes towards the stream between points F to J which reduces the width for walking along that section of the path and they ask if those sections will be infilled to provide the specified width.

8.17. The Council would require the path to be a minimum of 2.5 metres wide should the path be enclosed. Furthermore and as stated at paragraph 8.8 the Council will not confirm or certify the Order unless satisfied that the path is suitable for use by the public.

8.18. The permissive path is not considered by the applicant as a suitable alternative to the proposed path as it is narrow in places and runs within very close proximity to the cottage giving rise to its own issues of privacy and security.

8.19. The Council’s Nature Conservation Officer has been consulted; no comments have been received.

9. Access to Information

- 9.1. Plan No. HA/135 is attached.
- 9.2. Further information may be obtained from the Officer named below and file reference No. 117D/572

10. Contact Information

- 10.1. Any questions relating to this report should be directed to the following officer:

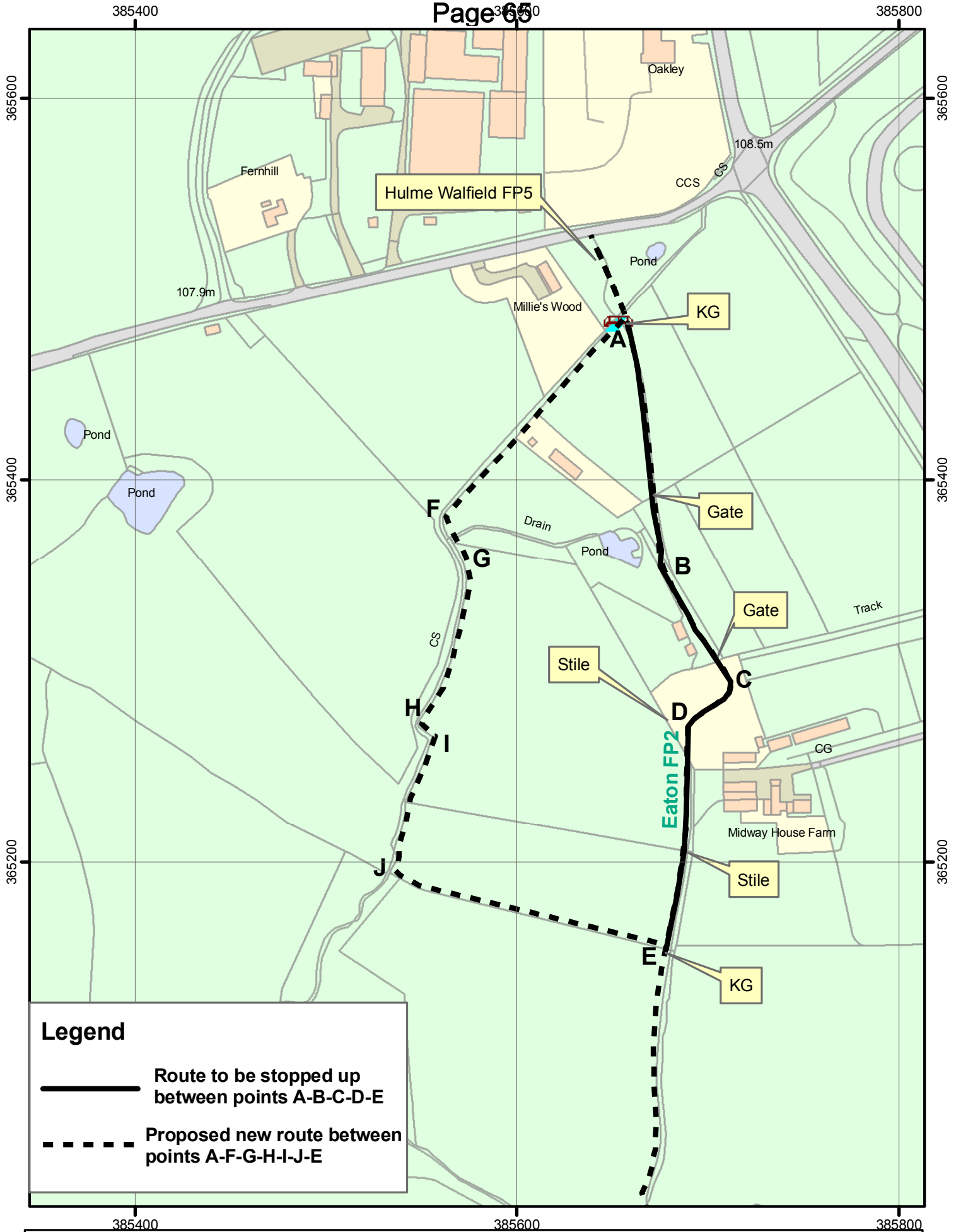
Name: Sarah Fraser

Job Title: Public Paths Orders Officer

Email: sarah.fraser@cheshireeast.gov.uk

Tel: 01270 686070

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Legend

- Route to be stopped up between points A-B-C-D-E
- Proposed new route between points A-F-G-H-I-J-E



1:2,500

Highways Act s.119 Proposed Diversion
Footpath No.2 in the Parish of Eaton

Plan No. HA/135

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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 03 December 2018

Report Title: Highways Act 1980 s119 Application for the Diversion of Public Footpath No. 2 (part), Parish of Arclid

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to divert part of Public Footpath No. 2 in the Parish of Arclid. 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 team 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.
- 1.2. The proposal contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

2. Recommendations

- 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. 2 in the Parish of Arclid by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/133 on the grounds that it is expedient in the interests of the landowner.
- 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. 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 5.7 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 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 resolve long-standing problems, providing a legal, usable route on the ground where none has existed for many years. It would separate walkers from the garage forecourt, providing a benefit to the landowner in terms of security and privacy for the business. Moving walkers away from the heavy plant and machinery will also benefit users in terms of health and safety. 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.

- 3.5 The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

4. Other Options Considered

- 4.1. Not applicable – this is a non-executive matter.

5. Background

- 5.1. An application has been received from Mr N Forster and Mr R Pace of Crane Hire Direct Ltd, Old Smithy Garage, Newcastle Road, Arclid, CW11 2UE requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 2 in the parish of Arclid.
- 5.2. Public Footpath No. 2 in the parish of Arclid commences on Congleton Road (A534) at O.S. grid reference SJ 7841 6191 and runs in a generally easterly direction for approximately 439 metres to Newcastle Road (A50) at O.S. grid reference SJ 7882 6193. The section of path to be diverted is shown by a solid black line on Plan No. HA/133 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points A-C-D.
- 5.3. The land over which the diversion runs belongs to the applicants’ adjacent landowner. Written permission for the proposal has been provided by the adjacent landowner.
- 5.4. Public Footpath No. 2 in the parish of Arclid runs across the curtilage of the garage forecourt at Pace’s Garage/Crane Hire Direct. It is partly obstructed by a large garage and has been for several decades, possibly since the 1960s. The remainder of the route runs across the garage forecourt which is used by heavy crane and other machinery. The current landowner (Mr R Pace) of Pace’s Garage/Crane Hire Direct is in the process of selling the land and business. The proposed new landowner (Mr N Foster) has made an application, with the current landowner’s agreement and permission, under the Highways Act 1980 to divert the footpath and try to resolve this long standing issue. The application, under the Highways Act, has been made in the interests of the privacy and security of the landowner.

- 5.5. The section of Public Footpath No. 2 in the parish of Arclid to be diverted commences at O.S. grid reference SJ 7841 6191 (point A on Plan No. HA/133) and runs in a generally north easterly direction until it reaches Newcastle Road (A50) at O.S. grid reference SJ 7882 6193. The section of the footpath to be diverted is approximately 63 metres.
- 5.6. The proposed diversion (points A-C-D on Plan No. HA/133) would run in a south easterly direction to the rear of the garage for approximately 23 metres and then turn to run in a north easterly direction for approximately 58 metres to Newcastle Road. Other than the short section of path which runs behind the garage which is 1.2-1.5 metres wide due to existing constraints, the path would be enclosed by a post and rail fence on the southern side of the route and security fencing on the northern side of the route, with a width of 2 metres. The surface is mainly tarmac/compacted hardcore with a short section of natural earth where the path travels behind the garage. The total length for the diversion is approximately 81 metres
- 5.7. Separating walkers from the garage forecourt will provide a benefit to the landowner in terms of security and privacy for the business. Moving walkers away from the heavy plant and machinery will also benefit users in terms of health and safety. There will be a clear view of the majority of the length of path from Newcastle Road to offer natural surveillance of the path. The diversion has been sought by the Council to resolve long-standing problems with the footpath. It is the policy of the Council, in the instance of a long standing obstruction which is substantial and costly and impractical to remove, for a diversion application to be required. In such circumstances the Council expects an alternative route to be available, which is the case in this instance via a permissive path. It will provide a legal, usable route on the ground where none has existed for many years.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. 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.

6.2. Finance Implications

- 6.2.1. If objections to the Order lead to a subsequent hearing/inquiry, this legal process would have financial implications for the Council.

6.3. Policy Implications

6.3.1. There are no direct policy implications.

6.4. Human Resources Implications

6.4.1. There are no direct implications for human resources.

6.5. Risk Management Implications

6.5.1. There are no direct implications for risk management.

6.6. Rural Communities Implications

6.6.1. There are no direct implications for rural communities.

6.7. Implications for Children & Young People

6.7.1. There are no direct implications for children and young people.

6.8. Public Health Implications

6.8.1. There are no direct implications for public health.

7. Ward Members Affected

7.1. Brereton Rural Ward: Councillor Wray was consulted and no comments were received.

8. Consultation & Engagement

8.1. Arclid Parish Council has been consulted and have responded to state that they raise no objection to the diversion.

8.2. The user groups have been consulted. Peak and Northern Footpaths Society have replied to state that they have no objection to the proposal.

8.3. 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.

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

9. Access to Information

9.1. The background papers of file No. 016D/567 relating to this report can be inspected by contacting the report writer.

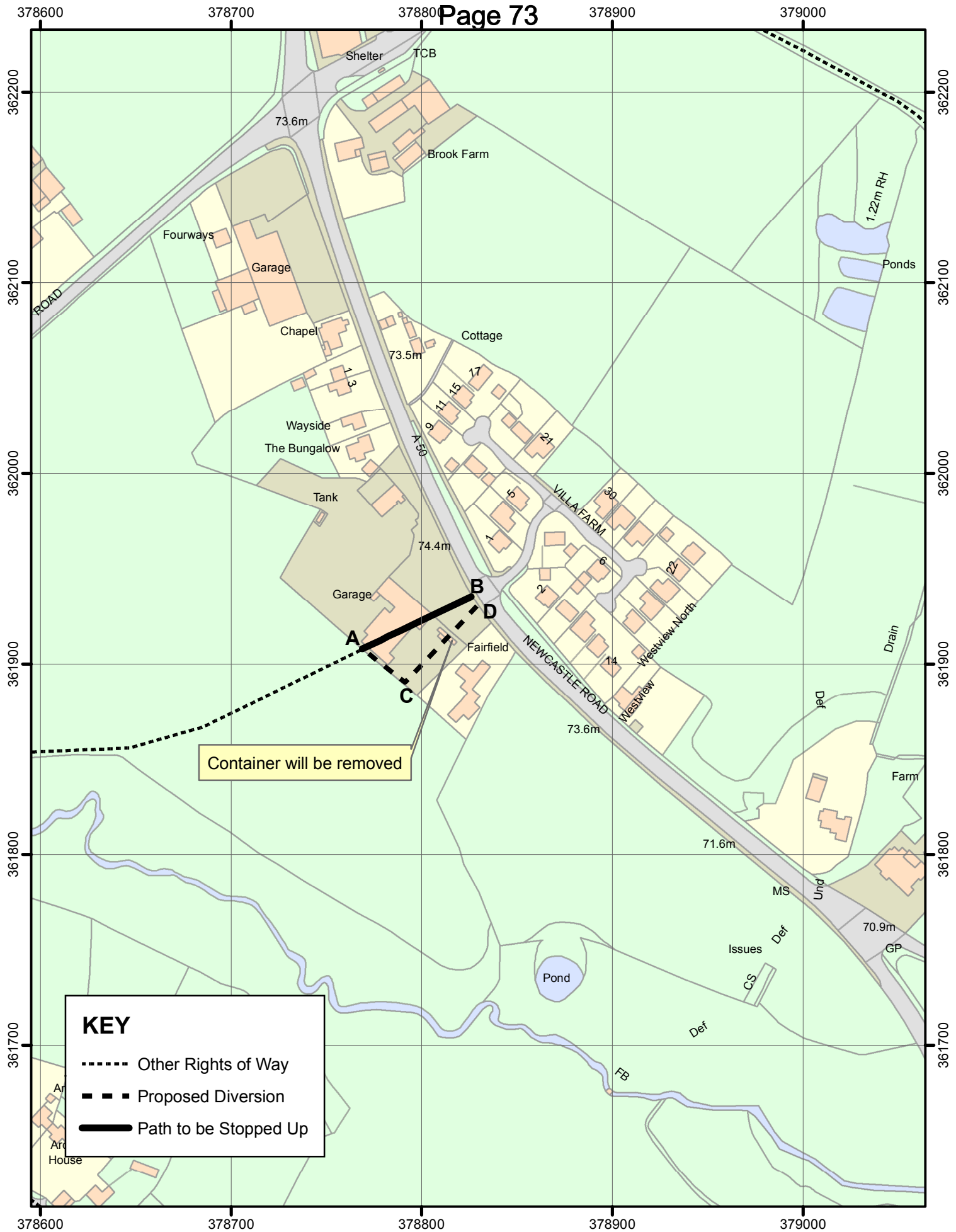
10. Contact Information

10.1. Any questions relating to this report should be directed to the following officer:

Name: Hannah Duncan

Job Title: Definitive Map Officer

Email: hannah.duncan@cheshireeast.gov.uk



KEY

- Other Rights of Way
- - - Proposed Diversion
- Path to be Stopped Up



1:2,500

Proposed Diversion of Public Footpath
No. 2 (Part) Parish of Arclid

Plan No.
HA/133

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



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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 03 December 2018

Report Title: Highways Act 1980 s119 Application for the Diversion of Public Footpath No. 29 (part), Parish of Brereton

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to divert part of Public Footpath No. 29 in the Parish of Brereton. 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 team 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.
- 1.2. The proposal contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

2. Recommendations

- 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. 29 in the Parish of Brereton by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/136 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. Reasons for Recommendation/s

- 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 5.9 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 remove the footpath from the yard and remove the interaction between users and large vehicles. 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.
- 3.5 The proposal contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

4. Other Options Considered

- 4.1. Not applicable – this is a non-executive matter.

5. Background

- 5.1. An application has been received from Ms Briggs of Fir Farm in Brereton requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No. 29 in the Parish of Brereton.
- 5.2. Public Footpath No. 29 Brereton commences at its junction with the A50 at Point A (Plan No. HA/136), it then continues in a generally north easterly and then easterly direction for approximately 183 metres along a shared private driveway. It then continues in a generally north easterly direction for 821 metres across open fields to its junction with Davenport Lane. The section of path to be diverted is shown by a solid black line on Plan No. HA/136 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points C-D-B.
- 5.3. The land over which the length of Public Footpath No. 29 Brereton to be diverted and the proposed diversion belongs wholly to the applicant.
- 5.4. The length of Public Footpath No. 29 Brereton to be diverted commences at its junction with the A50 at Point A on Plan No. HA/136, at O.S. grid reference SJ 7836 6290. It then continues along a sealed surface private shared driveway in a north easterly direction for approximately 67 metres and then continues in an easterly direction for approximately 129 metres. The definitive line then continues across a large storage yard to Point B on Plan No. HA/136 for approximately 196 metres. The total length is approximately 379 metres.
- 5.5. The yard through which the definitive line runs is used to store large trailers and immobile, old machinery as part of a business need. In line with Cheshire East PROW policy, if an obstruction is impractical to remove the landowner will be required to apply for a diversion rather than remove the obstruction, and also provide an alternative route. The permissive route has been in place for some time and has been accepted as an alternative route by the public. The permissive route (Point D to Point B on Plan No. HA/136) currently follows the boundary of the yard and crosses one stile before entering an open field and running along the boundary to then meet with the definitive line at point B (Plan No. HA/136).
- 5.6. The proposed diversion will run between points C-D-B (on Plan No. HA/136). It will commence at point C (on Plan No. HA/136) at a new junction with the A50 at O.S. grid reference SJ 7844 6281 which is

approximately 116 metres from Point A (on Plan No. HA/136). There is a footway between the current and proposed commencement points of the path. It will then continue in a north easterly direction to Point B (on Plan No. HA/136) for approximately 316 metres.

- 5.7. The landowners have submitted a planning application for a new access road that will run between Points C and D on Plan No. HA/136 (Planning Reference 18/2961C). The new proposed route will run along the southern side of this new access road and then continue along the permissive route from Point D to Point B. The section of the footpath from Point C to Point D will be surfaced with compacted aggregate and the section from point D to point B will remain as a natural surface.
- 5.8. There will be an enclosed section running in a north easterly direction from point D (on Plan No. HA/136) to the kissing gate, this will have a waist high post and rail fence on one side and an existing hedge on the other and will be 2.5 metres in width. An existing stile will be replaced with a kissing gate at the location marked on the Plan No. HA/136.
- 5.9. The proposal is in the interests of the applicant due to reasons of security of the yard and to allow for the efficient running of the business due to the removal of the interaction of users and large vehicles. Users will no longer need to walk on the access track to the yard and, in addition, will now be able to walk along a segregated path away from vehicular movements. The new access road will not have any local, residential traffic.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. 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.

6.2. Finance Implications

- 6.2.1. If objections to the Order lead to a subsequent hearing/inquiry, this legal process would have financial implications for the Council.

6.3. Policy Implications

- 6.3.1. There are no direct policy implications

6.4. Equality Implications

6.4.1. 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 one.

6.5. Human Resources Implications

6.5.1. There are no direct implications for human resources.

6.6. Risk Management Implications

6.6.1. There are no direct implications for risk management.

6.7. Rural Communities Implications

6.7.1. There are no direct implications for rural communities.

6.8. Implications for Children & Young People

6.8.1. There are no direct implications for children and young people.

6.9. Public Health Implications

6.9.1. There are no direct implications for public health.

7. Ward Members Affected

7.1. Brereton Ward: Councillor John Wray was consulted and no comments were received.

8. Consultation & Engagement

8.1. Brereton Parish Council, the user groups, statutory undertakers and the Council's Nature Conservation Officer have been consulted. No comments were received apart from the following.

8.2. Peak and Northern Footpaths Society was consulted and provided the following comments which the Open Spaces Society gave their support to.

There are no connecting paths from Brereton 29 to the south, but there are two connecting paths to the north, Brereton 16 & 19. We would therefore be concerned at the exit point of the footpath being moved to point C. This would require an extra walk of 120 metres along a very busy road on a footway which is only 0.5 metre wide and adjacent to the kerb edge. We are concerned about the safety aspects of this proposal.

A response was sent to Peak and Northern Footpaths Society and Open Spaces explaining that the benefit of removing the unsegregated interaction of users and vehicles from the definitive line was considered to outweigh the use of an existing segregated footway next to the road.

- 8.3. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

9. Access to Information

- 9.1. The background papers of file No. 055D/564 relating to this report can be inspected by contacting the report writer.

10. Contact Information

- 10.1. Any questions relating to this report should be directed to the following officer:

Name: Laura Allenet

Job Title: Public Path Orders Officer

Email: laura.allenet@cheshireeast.gov.uk

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KEY

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

Brereton FP19 Pond

Wellcroft

Tudor Cottage

73.8m
Holly Cottage

Fir Farm

Brereton FP29

Kissing Gate

D

C

Farm

72.2m

Pond

CS Holding's Drumble

69.8m

Und

Def



Highways Act 1980 s119
Proposed Diversion of Brereton FP29

Plan No.
HA/136

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



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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 03 December 2018

Report Title: Highways Act 1980 s118 Application for the Extinguishment of Public Footpath No. 1 (part), Parish of Holmes Chapel

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to extinguish part of Public Footpath No. 1 in the Parish of Holmes Chapel. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for an extinguishment order to be made. The proposal has been put forward (following representations from the landowner) by the Public Rights of Way team to resolve an anomalous situation. 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.
- 1.2. The proposal contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

2. Recommendations

- 2.1. An Order be made under section 118 of the Highways Act 1980 to extinguish part of Public Footpath No. 1 in the Parish of Holmes Chapel as illustrated on Plan No. HA/134 on the grounds that it is not needed for public use.

- 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. Reasons for Recommendations

- 3.1. In accordance with Section 118(1) of the Highways Act 1980 it is within the Council's discretion to make an Order if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use. It is considered that part of Public Footpath No. 1 in the Parish of Holmes Chapel is not needed for public use, as an alternative route is available via adopted footway FY342 as indicated on Plan No. HA/134.
- 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:
 - The extent (if any) to which it appears to him...that the path or way would, apart from the order, be likely to be used by the public, and
 - The effect which the extinguishment of the right of way would have as respects land served by the path or way, and
 - The material provision of any rights of way improvement plan prepared by any local highway authority which includes land over which the order would extinguish a public right of way.
- 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. Although there is currently an outstanding objection to the consultation on this proposal, the issues raised by the objector have no impact and do not relate directly to the proposed extinguishment. In addition, as discussed in paragraph 3.1, an alternative route is available and it is therefore considered that the path is not needed for public use.
- 3.5. The proposal contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer",

and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

4. Other Options Considered

- 4.1. Not applicable – this is a non-executive matter.

5. Background

- 5.1. Public Footpath No.1 in the Parish of Homes Chapel has been registered as an anomaly for a number of years. In early 2018 Mr R Morgan at 16 Lochmaben Close, Holmes Chapel submitted a planning application for a single storey side and rear extension to the property which would further obstruct the definitive alignment of Public Footpath No. 1 in the Parish of Holmes Chapel. In light of this application, after discussions with the landowner, it was agreed that the PROW team would take forward a proposal to extinguish this short section of footpath.
- 5.2. Public Footpath No. 1 in the Parish of Holmes Chapel commences on Chester Road at O.S. grid reference SJ 7609 6693 and runs in a generally south westerly direction for approximately 399 metres to Brereton parish boundary at O.S. grid reference SJ 7589 6660. The section of path to be extinguished is shown by a solid black line on Plan No. HA/134 between points A-B.
- 5.3. The majority of the land over which the extinguishment runs belongs to Mr R Morgan at No. 16 Lochmaben Close. A very short section of the route (approximately 1.5 metres) at the southern end of the route belongs to Cheshire East Borough Council.
- 5.4. The short section of Public Footpath No. 1 in the Parish of Holmes Chapel it is proposed to extinguish (points A to B on Plan No. HA/134) has been unavailable since the mid-1990s when the housing development between Chester Road and London Road in Holmes Chapel was built. It appears that Congleton Borough Council may have intended to divert the southern section of the footpath to follow the footway that runs through an area of greenspace adjacent to the property, but this legal process was not undertaken.
- 5.5. The majority of the length of path it is proposed to extinguish is obstructed by the property and garden at 16 Lochmaben Close. A short section of the route (approximately 1.5 metres) at the southern end crosses land owned by Cheshire East Borough Council. When the houses were built, the adopted footway was created, FY342, which the majority of the footpath follows. This footway is the route which users now follow and ensures that a legal route for the public is maintained. This subsequently means that

this short section of Public Footpath No. 1 in the Parish of Holmes Chapel is no longer required for public use.

- 5.6. The extinguishment has been sought by the Council to resolve a long-standing anomaly and provide clarity and certainty to the affected landowner.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. 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.

6.2. Finance Implications

- 6.2.1. If objections to the Order lead to a subsequent hearing/inquiry, this legal process would have financial implications for the Council.

6.3. Policy Implications

- 6.3.1. There are no direct policy implications.

6.4. Human Resources Implications

- 6.4.1. There are no direct implications for human resources.

6.5. Risk Management Implications

- 6.5.1. There are no direct implications for risk management.

6.6. Rural Communities Implications

- 6.6.1. There are no direct implications for rural communities.

6.7. Implications for Children & Young People

- 6.7.1. There are no direct implications for children and young people.

6.8. Public Health Implications

- 6.8.1. There are no direct implications for public health.

7. Ward Members Affected

- 7.1. Brereton Rural: Councillor Wray was consulted and no comments were received.

Dane Valley: Councillor Les Gilbert has responded to state that he has no comment to offer.

Dane Valley: Councillor Andrew Kolker was consulted and no comments were received.

8. Consultation & Engagement

- 8.1. Holmes Chapel Parish Council has been consulted and have responded to state that they raise no objection to the extinguishment.
- 8.2. The statutory undertakers have been consulted and have raised no objections to the proposed extinguishment. If an extinguishment order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.
- 8.3. The Council's Nature Conservation Officer has been consulted, no comments have been received.
- 8.4. The user groups have been consulted. Peak and Northern Footpaths Society have replied to state that they have no objection to the proposal.
- 8.5. Sandbach Footpaths Group have been consulted and have responded to state that they have no objection to the proposal.
- 8.6. The local correspondent from the Open Spaces Society has objected to the proposal with the following comments:

1. Divert Brereton FP1 and FP2 onto the line shown on OS maps, thereby aligning the paths with the current footbridge over the river

Brereton Footpath Nos. 1 and 2 are currently on our anomalies list and it is intended to begin work on proposed diversions for these routes at some point in the near future. The outcome of these proposals has no impact and does not affect the proposed extinguishment of Public Footpath No. 1 in the Parish of Holmes Chapel.

2. Amend your interactive map to show "Footpaths and Footways", or to show "Footways" as a separate field. Footways would then appear in much the same way as footpaths appear now

A call has been logged with CEC IT; an option to view adopted footways on the interactive mapping is now available. The outcome of this has no

impact and does not affect the proposed extinguishment of Public Footpath No .1 in the Parish of Holmes Chapel.

3. Extinguish the entire length of Holmes Chapel FP1, including that part that lies between your points A and B

The majority of Public Footpath No .1 in the Parish of Holmes Chapel is not an anomaly and does not affect any householder. The current proposal aims to resolve an anomalous situation for the householder at 16 Lochmaben Close.

Although this objection is outstanding, none of the points raised by on behalf of the Open Spaces Society have any impact on, or affect, the proposal to extinguish part of Public Footpath No .1 in the Parish of Holmes Chapel.

9. Access to Information

- 9.1. The background papers of file No. 157E/568 relating to this report can be inspected by contacting the report writer.

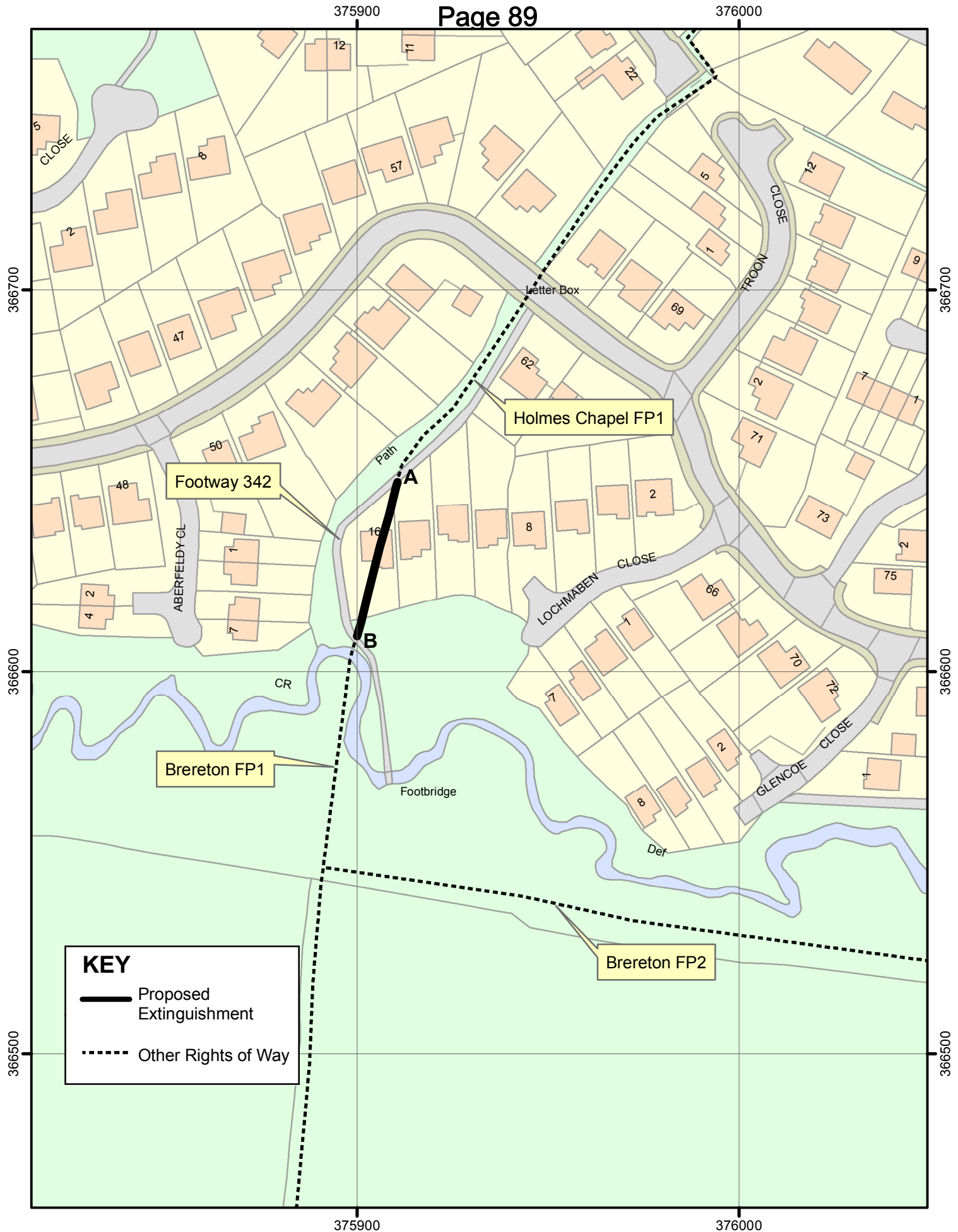
10. Contact Information

- 10.1. Any questions relating to this report should be directed to the following officer:

Name: Hannah Duncan

Job Title: Definitive Map Officer

Email: hannah.duncan@cheshireeast.gov.uk



Highways Act 1980 S118
Proposed Extinguishment of Public
Footpath Holmes Chapel No. 1 (part)

Plan No.
HA/134

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



1:1,250

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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 03 December 2018

Report Title: Town and Country Planning Act 1990 s257 Application for the Diversion of Public Footpath No. 4 (part), Parish of Ridley

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to divert part of Public Footpath No. 4 in the Parish of Ridley. 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 team as a response to a planning application. The diversion application has been submitted by Mr A Marrs (agent) of Strutt and Parker on behalf of Cheshire Farm Services (applicant), Cheshire East Borough Council, HQ First Floor, 58, Nicholas Street, Chester, to apply for permission to convert a traditional barn into two residential properties (Planning reference: 18/3879N).
- 1.2. 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.
- 1.3. A diversion of part of the above footpath has been requested since conversion of a barn into two residential properties would then result in obstruction of the footpath by one of the properties (property no. 2).
- 1.4. The proposal contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

2. Recommendations

- 2.1. That an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 4 in the Parish of Ridley, as illustrated on Plan No TCPA/054 on the grounds that the Council is satisfied that it is necessary to do so to allow development to take place.
- 2.2. Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, and on condition that permission is granted for the planned development, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
- 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. Reasons for Recommendation/s

- 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
- 3.2 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, providing that the application has been formally registered with the Council.
- 3.4 It is considered necessary to divert part of Public Footpath No. 4 in the Parish of Ridley as illustrated on Plan No. TCPA/054 to enable the conversion of the traditional barn, into two residential properties, as detailed within Planning Application: 18/3879N.
- 3.5 The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

4. Other Options Considered

- 4.1. Not applicable – this is a non-executive matter.

5. Background

- 5.1. An application has been received from Mr A Marrs (agent) of Strutt and Parker on behalf of Cheshire Farm Services (applicant), Cheshire East Borough Council, HQ First Floor, 58, Nicholas Street, Chester, requesting that the Council make an Order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 4 in the Parish of Ridley.
- 5.2. Public Footpath No. 4 Ridley commences at its junction with Whitchurch Road (A49/1/52) at O.S. grid reference SJ 5552 5474 and runs in a generally east, south easterly direction through Ridley Farm (now derelict) and then across pasture fields over a footbridge across a stream, after which it follows a generally easterly direction to its junction with Public Footpath No. 25 in the Parish of Spurstow at the parish boundary, at O.S. grid reference SJ 5607 5455. In total, the footpath covers a distance of approximately 581 metres.
- 5.3. The section of path to be diverted is shown by a solid black line on Plan No. TCPA/054 between points A-B-C and has a length of 198 metres and surfaces of semi-surfaced track and grass. The proposed diversion is illustrated on the same plan with a black dashed line between points D-E-F-C and has a length of 144 metres. The new route will be approximately 54 metres longer.
- 5.4. The land over which both the section of path to be diverted and the diversion route run are owned by the applicant.
- 5.5. Planning permission for the conversion of the barn has yet to be granted although decision is anticipated on 30th November 2018. The application is cited as Planning Permission Ref: 18/3879N. The details of the application are for the conversion of a traditional barn into two residential properties.
- 5.6. The existing alignment of Public Footpath No. 4 Ridley is currently obstructed by the barn to be converted and the conversion cannot go ahead unless the footpath is diverted to preserve the right of way for the public from Whitchurch Road to the fields lying to the east of the planned development. There is an alternative route that enables users to pass the barn along its northern side. It is Cheshire East Public Rights of Way policy when dealing with substantial obstructions, to require the landowner to apply for a diversion of the Public Right of Way and to make available an alternative route whilst the process is completed.

- 5.7. Referring again to Plan No. TCPA/054, the part of Ridley FP4 proposed for diversion is aligned through Ridley House Farm in a generally east, south easterly direction and then exits to cross a pasture field terminating immediately before a stile leading into a second field (points A-B-C).
- 5.8. The proposed diversion route would move the footpath such that it runs around the western and northern perimeters of the development. The new route would start at the entrance to Ridley House Farm at point D which is set back a distance of 2 metres from the edge of the carriageway. It would then run in a generally northerly and then east, north easterly directions (points E-F) to exit into the pasture field across which it would then run in a generally south westerly direction to rejoin the current route immediately before the stile at point C.
- 5.9. Where enclosed around the perimeter of the development site (points D-E-F), the new route would have a width of 2.5 metres and a natural surface of grass. The current rough surface would be levelled and then enclosed alongside the established hedge with a 1 metre high post and rail fence.

Where unenclosed across the pasture field (points F-C), the route would have a width of 2 metres and a grass surface.

A pedestrian gate would be installed at point A and a kissing gate would be installed at the point where the enclosed route leads to the pasture field at point F.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1 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.

6.2. Finance Implications

- 6.2.1 If objections to the Order lead to a subsequent hearing/inquiry, this legal process would have financial implications for the Council.

6.3. Policy Implications

- 6.3.1 There are no direct policy implications.

6.4. Equality Implications

6.4.1 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 one.

6.5. Human Resources Implications

6.5.1 There are no direct implications for human resources.

6.6. Risk Management Implications

6.6.1 There are no direct implications for risk management.

6.7. Rural Communities Implications

6.7.1 There are no direct implications for rural communities.

6.8. Implications for Children & Young People

6.8.1 There are no direct implications for children and young people.

6.9. Public Health Implications

6.9.1 There are no direct implications for public health.

7. Ward Members Affected

7.1 Wrenbury Ward: Councillor Stan Davies has been consulted and no comments have been received.

8. Consultation & Engagement

8.1. Ridley Parish Council has been consulted and no comments have been received.

8.2. The user groups have been consulted and no objections have been received. The Peak and Northern Footpath Society registered no objection although requested assurance that the pedestrian gate and kissing gate proposed for the new route would comply with BS 5709, and that provision would be made to ensure that the hedge along the enclosed path section would be properly maintained.

In response, it was explained that wherever possible, structures which are erected on Public Rights of Way will comply with the British Standard BS5709:2006. Where this is not possible, structures will comply with the local

“Cheshire East Standard for Path Furniture”. In both cases, the path furniture on the proposed diversion route would be more accessible than that on the current Definitive line.

With regard to the hedge, the owner of the hedge would be responsible for its maintenance although if the hedge became overgrown, the Council would have a statutory duty to liaise with the owner to ensure that the hedge was cut back to keep the footpath open and available for use.

- 8.3. The statutory undertakers have been consulted and, at the time of writing, 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
- 8.4. The Council's Nature Conservation Officer has been consulted, at the time of writing no comments have been received.

9. Access to Information

- 9.1. The background papers of file No. 254D/570 relating to this report can be inspected by contacting the report writer.

10. Contact Information

- 10.1. Any questions relating to this report should be directed to the following officer:

Name: Marianne Nixon
Job Title: Public Path Orders Officer
Email: marianne.nixon@cheshireeast.gov.uk

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109.7m

Boundary of development

A 534

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A

B

F

C

KEY

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



1:1,250

Town and Country Planning Act 1990 s257
Proposed diversion of Footpath 4 (part) Parish of Ridley

Plan No.
TCPA/054



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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 03 December 2018

Report Title: Town and Country Planning Act 1990 Section 257 Proposed Diversion of Public Footpath No.4 (part) in the Parish of Cholmondeston

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to divert Public Footpath No. 4 (part) in the Parish of Cholmondeston. This includes a discussion of the consultations carried out in respect of the proposal and the legal tests to be considered for the diversion Order to be made. The proposal has been put forward by the Rights of Way Team, an application has been submitted by Mrs McDonald of The Byre, Daisy Bank Farm Cholmondeston in response to the following reserved matters application being granted:-

Planning Application: 18/1947N – *Approved Single storey side extension, garage conversion and internal alterations*

- 1.2 The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not a diversion Order should be made for that section of footpath.
- 1.3 The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

2. Recommendation

- 2.1. A Public Path Diversion Order be made under Section 257 of the Town and Country Planning Act 1990 on grounds that Cheshire East Borough Council is satisfied that it is necessary to do so in order to enable development to be carried out.

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

3. Reasons for Recommendation

- 3.1. In accordance with Section 257 of the Town and Country Planning Act 1990 (“TCPA”) 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.”

- 3.2. 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, providing that the application has been formally registered with the Council.
- 3.3. The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

4. Other Options Considered

- 4.1. Not applicable – this is a non-executive matter.

5. Background

- 5.1. An application has been received from Mrs McDonald requesting that the Council make an Order under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No 4 in the Parish of Cholmondeston.

- 5.2. Public Footpath No. 4 Cholmondeston commences at its junction with a stone surfaced driveway and continues in a southerly direction for approximately 70 metres and then continues in a westerly direction and runs through the back gardens of the properties. The footpath then enters the neighbouring field and continues eastward before it continues in a generally southerly direction for approximately 609 metres across fields until it meets the railway line where it then continues in an easterly direction for approximately 112 metres to its junction with Winsford Road. The section of path to be diverted is shown by a bold solid black line on Plan No. TCPA/053 between points A-B-C-D. The proposed diversion is illustrated on the same plan with a black dashed line between points A-E-D.
- 5.3. The existing alignment of the footpath will be directly affected by the development and infrastructure within the planning consent, resulting in the partial obstruction of the footpath by a new extension and associated parking arrangements. Therefore the diversion is required to preserve the public right of way.
- 5.4. The length of Public Footpath No. 4 Cholmondeston to be diverted commences at its junction with a stone surfaced driveway (Point A on Plan No. TCPA/053) at O.S. grid reference SJ 6297 5835 and continues in a generally southerly direction for approximately 73 metres to Point B (on Plan No. TCPA/053). The definitive line then runs through the back gardens of the properties and enters the neighbouring field and runs in a generally easterly direction for approximately 81 metres to Point C (on Plan No. TCPA/053) at O.S. grid reference SJ 6304 5828. It then continues in a generally southerly direction across the field for approximately 170 metres to Point D (on Plan No. TCPA/053) at O.S. grid reference SJ 6306 5812. The total length of the line to be diverted is 324 metres.
- 5.5. The definitive line is currently obstructed by a number of substantial garden fences, a pergola and established hedges and shrubs between Point B and Point C. In line with the Cheshire East PROW policy if an obstruction is substantial and impractical to remove the landowner will be required to apply for a diversion rather than remove the obstruction, and also provide an alternative route. There is currently a permissive route on site which has been used and accepted by the public and which continues alongside the gardens of the property and enters the field between points C and E as shown on Plan No. TCPA/053.
- 5.6. The proposed diversion would commence at Point A (on Plan No. TCPA/053) and run in a generally south south westerly direction for approximately 105 metres to Point E (Plan No. TCPA/053). After approximately 65 metres from Point A (Plan No. TCPA/053) it will cross into

a neighbouring field through a pedestrian gate and then continue along the field boundary. The proposed diversion will then continue from Point E (Plan No. TCPA/053) in a generally south easterly direction for approximately 179 metres to Point D (Plan No. TCPA/053), a new pedestrian gate will be installed at Point E (Plan No. TCPA/053). This will allow users of the footpath to walk directly across the adjacent field instead of taking the definitive line which is a less direct route. The proposed diversion will have a length of 291 metres and will be a grassed surface.

6. Implications of the Recommendations

6.1. Legal Implications

6.1.1. 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 Public Inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.

6.2. Finance Implications

6.2.1. If objections to the Order lead to a subsequent hearing or inquiry, this legal process would have financial implications for the Council.

6.3. Policy Implications

6.3.1. There are no direct policy implications.

6.4. Equality Implications

6.4.1. 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 one.

6.5. Human Resources Implications

6.5.1. There are no direct human resource implications.

6.6. Risk Management Implications

6.6.1. There are no direct risk management implications.

6.7. Rural Communities Implications

6.7.1. There are no direct implications for rural communities.

6.8. Implications for Children & Young People

6.8.1. There are no direct implications for children and young people.

6.9. Public Health Implications

6.9.1. There are no direct implications for public health.

7. Ward Members Affected

7.1. Bunbury Ward: Councillor Chris Green was consulted and no comments were received

8. Consultation & Engagement

8.1. Cholmondeston & Wettenhall Parish Council, the user groups, statutory undertakers, and the Council's Nature Conservation Officer have been consulted and no comments have been received.

8.2. If a diversion order is made, existing rights of access for the statutory undertakers to their apparatus and equipment are protected.

9. Access to Information

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

10. Contact Information

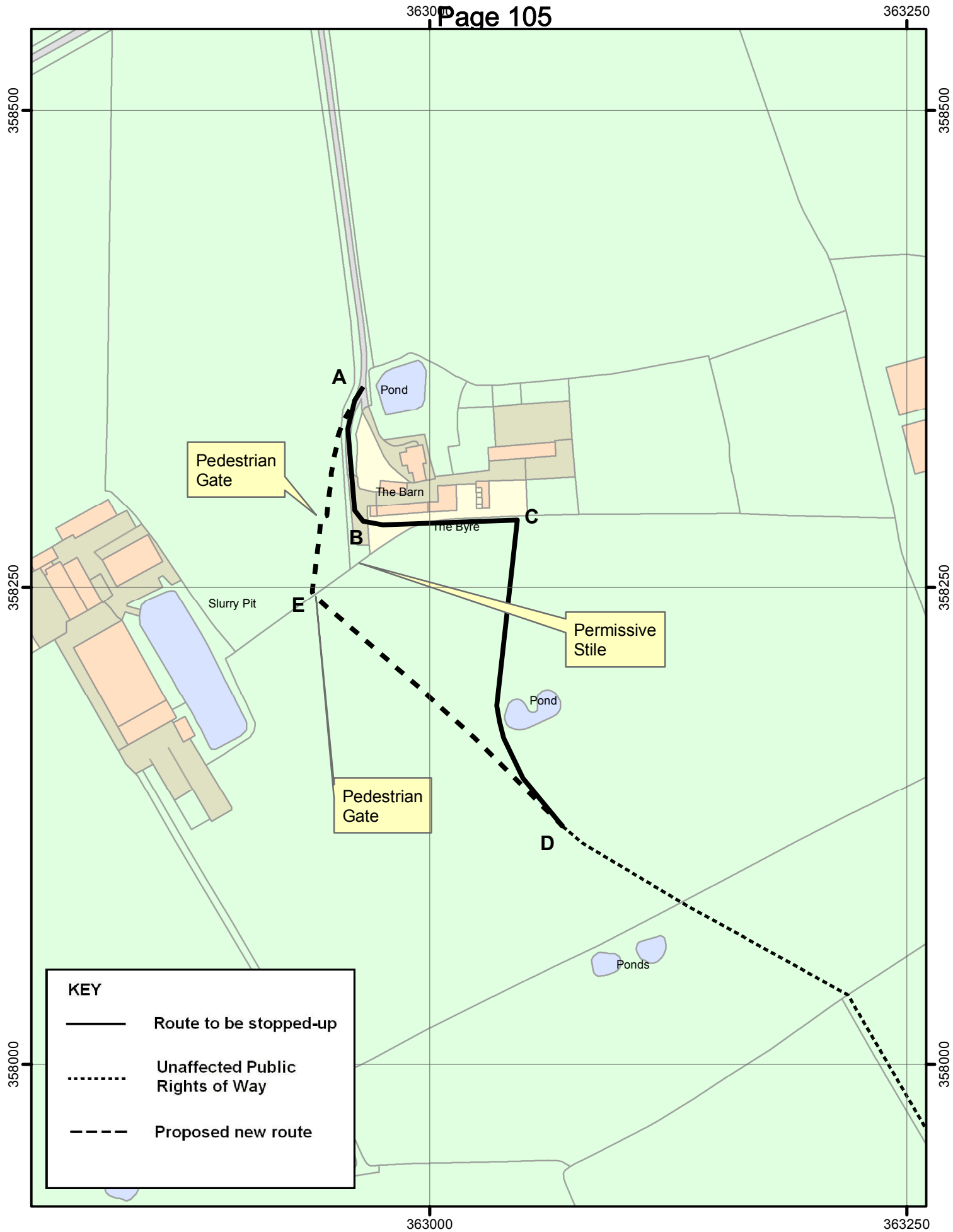
10.1. Any questions relating to this report should be directed to the following Officer:

Name: Laura Allenet

Job Title: Public Path Orders Officer

Email: laura.allenet@cheshireeast.gov.uk

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Town and Country Planning Act
1990 Section 257
Proposed Diversion of Public Footpath
No.4 (part) in the Parish of Cholmondeston

Plan No.
TCPA/053

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



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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 03 December 2018

Report Title: Town & Country Planning Act s.257, Public Path Diversion Order, Mottram St Andrew FP's 8 & 9(parts) Abandoned Order – Informative Report

Senior Officer: Frank Jordan, Executive Director, Place

1. Report Summary

- 1.1. This report is to inform the Committee that an Order, previously approved for making and confirmation by Committee on the 12th December 2016 will not be confirmed.

2. Recommendation

- 2.1. That the content of this report be noted and minuted.

3. Reasons for Recommendation

- 3.1. To be formally noted that the resolution of the Committee for the Order to be confirmed if no objections are received, cannot be undertaken.

4. Other Options Considered

- 4.1. Not applicable – this is a non-executive matter.

5. Background

- 5.1. An application was made by Kitson Architecture Ltd., acting as Agent for Mottram Hall Limited ('the Applicant'), requesting that the Council make an Order under section 257 of the Town and County Planning Act 1990 to divert parts of Public Footpaths Nos. 8 & 9 (parts) in the Parish of Mottram St Andrew.
- 5.2. The proposed diversion was necessary to accommodate an extension to the hotel and associated diversion of the existing internal road and a new service hub and delivery yard in line with a planning approval 16/2236M:

Proposed extension of Mottram Hall Hotel to provide: new meeting rooms with enlargement of existing function suite; an extension to provide 34 new bedrooms; refurbishment of south wing to provide 15 additional bedrooms; alterations to the main entrance/reception area; 52 additional car parking spaces and; a new service hub and yard.

- 5.3 Public footpaths Nos. 8 & 9 (parts), Mottram St Andrew were to be diverted in accordance with the attached Order and plan no. TCPA/035A to allow for this development. A Public Path Diversion Order was subsequently made on the 2nd February 2017 and duly advertised and sent out for consultation. No objections were received and the Order was therefore capable of confirmation once the new route had been constructed and certified as satisfactory.
- 5.4 Following a period of uncertainty as to when the development works would commence and the new route be constructed; it was confirmed that there had been some restructuring within the parent company of the hotel and that the development work in accordance with the approved planning permission would not now go ahead.
- 5.5 As the purpose of a diversion order under s.257 of the Town & Country Planning Act 1990 is to enable development to be carried out; where the approved development is not undertaken, the diversion is no longer necessary and therefore cannot be confirmed.

6. Implications of the Recommendations

6.1 Legal Implications

- 6.1.1 There are no legal implications

6.2 Finance Implications

- 6.2.1 There are no financial implications

6.3 Policy Implications

- 6.3.1 There are no direct policy implications

6.4 Equality Implications

- 6.4.1 There are no direct equality implications

6.5 Human Resources Implications

- 6.5.1 There are no direct human resources implications

6.6 Risk Management Implications

6.6.1 There are no direct risk management implications.

6.7 Rural Communities Implications

6.7.1 There are no direct implications for rural communities.

6.8 Implications for Children & Young People

6.8.1 There are no direct implications for children and young people.

6.9 Public Health Implications

6.9.1 There are no direct implications for public health.

7 Ward Members Affected

7.1 Prestbury Ward - Councillor Paul Findlow was originally consulted.

8 Consultation & Engagement

8.1 Statutory and local user groups and statutory undertakers were originally consulted.

9 Access to Information

9.1 The background papers of file No. 216D/526 relating to this report can be inspected by contacting the report writer.

10 Contact Information

10.1 Any questions relating to this report should be directed to the following officer:

Name: Clare Hibbert

Job Title: Definitive Map Officer

Email: clare.hibbert@cheshireeast.gov.uk

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**PUBLIC PATH DIVERSION ORDER
TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257
CHESHIRE EAST BOROUGH COUNCIL**

**THE CHESHIRE EAST BOROUGH COUNCIL
(PUBLIC FOOTPATH NOS. 8 & 9 (PARTS) PARISH OF MOTTRAM ST ANDREW)
PUBLIC PATH DIVERSION ORDER 2017**

This Order is made by Cheshire East Borough Council ("the Authority") under Section 257 of the Town and Country Planning Act 1990 ("the 1990 Act") because it is satisfied that it is necessary to divert the footpaths to which this Order relates in order to enable development to be carried out in accordance with planning permission granted under Part III of the 1990 Act. Namely:

Planning Application: 16/2236M

Proposed extension of Mottram Hall Hotel to provide: new meeting rooms with enlargement of existing function suite; an extension to provide 34 new bedrooms; refurbishment of south wing to provide 15 additional bedrooms; alterations to the main entrance/reception area; 52 additional car parking spaces and; a new service hub and yard

BY THIS ORDER:

1. The Public Footpaths over the land situated in the Parish of Mottram St Andrew and shown by a bold black continuous line on the plan contained in this Order and described in Part 1 of the Schedule to this Order ("The Schedule") shall be stopped up as provided below.
2. There shall be created to the reasonable satisfaction of the Authority an alternative highway for use as a replacement for the said footpaths as provided in Part 2 of the Schedule and shown by bold black dashes on the attached plan.
3. The diversion of the footpaths shall have effect on the date which the Authority certifies that the terms of Article 2 above have been complied with.
4. Where immediately before the date on which the footpaths are diverted there is apparatus under, in, on, over along or across it belonging to the statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.
5. This Order shall be cited as "The Cheshire East Borough Council (Public Footpath Nos. 8 & 9 (Parts) Parish of Mottram St Andrew) Public Path Diversion Order 2017".

THE COMMON SEAL OF
CHESHIRE EAST BOROUGH COUNCIL

was hereunto affixed this
2nd day of February 2017

Two Thousand and Seventeen in the presence of:-



Authorised Signatory

9503 (1)

SCHEDULE

PART 1

Description of site of existing Paths or Ways to be diverted

Public Footpath No.8 Mottram St Andrew

That length of Public Footpath No. 8 in the Parish of Mottram St Andrew commencing at O.S. grid reference SJ 8851 7950 (point A on Plan No. TCPA/035A) and running in a generally easterly direction for a distance of approximately 27 metres to O.S. grid reference SJ 8853 7950 (point B on Plan No. TCPA/035A) and its junction with Footpath No. 9, Mottram St. Andrew as indicated by a solid black line between the points marked A- B on Plan No. TCPA/035A.

A total distance of approximately 27 metres in length

Public Footpath No.9 Mottram St Andrew

That length of Public Footpath No.9 in the Parish of Mottram St Andrew commencing at O.S. grid reference SJ 8853 7950 (point B on Plan No. TCPA/035A) and running in a generally easterly direction for a distance of approximately 131 metres to O.S. grid reference SJ 8867 7950 (point F on Plan No. TCPA/035A) and its junction with the unaffected section of Footpath No. 9 Mottram St. Andrew.

A total distance of approximately 131 metres in length

PART 2

Description of site of new Paths or Ways

Public Footpath No.8 Mottram St Andrew

A footpath, in the Parish of Mottram St. Andrew, commencing at O.S. grid reference SJ 8851 7950 (point A on Plan No. TCPA/035A) and running in a generally easterly direction for a distance of approximately 28 metres to O.S. grid reference SJ 8853 7950 (point C on Plan No. TCPA/035A) and its junction with Footpath No.9, Mottram St Andrew.

A total distance of approximately 28 metres in length

The footpath running between O.S. grid reference SJ 8851 7950 and SJ 8853 7950 on Plan No. TCPA/035A is 1.6 metres wide.

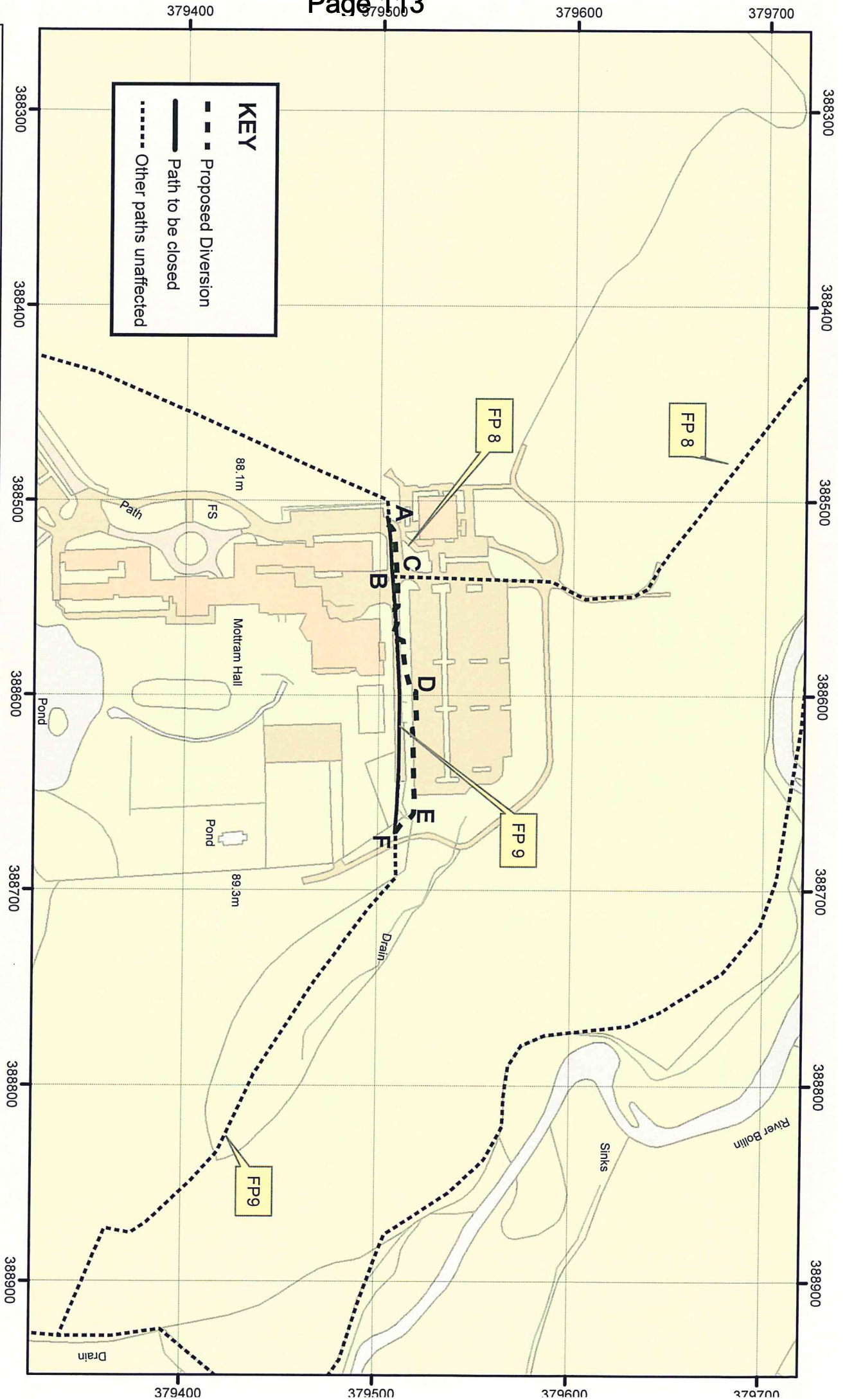
Public Footpath No.9 Mottram St Andrew

A footpath, in the Parish of Mottram St Andrew, commencing at O.S. grid reference SJ 8853 7950 (point C on Plan No. TCPA/035A) and running in a generally easterly and east north easterly direction for a distance of approximately 64 metres to O.S. grid reference SJ 8859 7951 (point D on Plan No. TCPA/035A) then running in a generally easterly direction for approximately 62 metres to O.S. grid reference SJ 8866 7951 (Point E on Plan No. TCPA/035A) then turning in a generally south easterly direction for approximately 14 metres to O.S. grid reference SJ 8867 7950 (Point F on Plan No. TCPA/035A) and its junction with the unaffected route of Mottram St Andrew FP 9.

A total distance of approximately 140 metres in length

The sections of footpath running between these grid references:

- 1) O.S. grid reference SJ 8853 7950 and SJ 8857 7951 is 1.6 metres wide.
- 2) O.S. grid reference SJ 8857 7951 and SJ 8861 7951 is 2 metres wide.
- 3) O.S. grid reference SJ 8861 7951 and SJ 8865 7951 is 1.8 metres wide.
- 4) O.S. grid reference SJ 8865 7951 and SJ 8867 7950 is 2 metres wide.



Town & Country Planning Act 1990 s.257
Proposed Diversion of Public Footpaths nos 8 (pt) & 9 (pt)
Parish of Mottram St Andrew

1:2,500



Plan No.
TCPA/035A





Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 03 December 2018

Report Title: Highways Act 1980 Proposed Diversion of Public Footpath No.16 (part) in the Parish of Wilmslow - Informative Report

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. This report is to inform the Public Rights of Way Committee that an Order (attached as Appendix 1 to this report) previously made on 2nd August 2018 will be remade to reflect a change in the relevant administrative boundary.

2. Recommendation/s

- 2.1. That the existing Order be abandoned and a new Order be made and the content of this report be noted and minuted.

3. Reasons for Recommendation/s

- 3.1. Wilmslow Town Council informed the Cheshire East Borough Council that the administrative boundary for Wilmslow Footpath No. 16 falls within the Parish of Styal and not the Parish of Wilmslow.

4. Other Options Considered

- 4.1. Not applicable - this is a non-executive matter.

5. Background

- 5.1. An application was submitted by The National Trust, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert part of Public footpath No.16 in the Parish of Wilmslow.
- 5.2. The Public Rights of Way Committee resolved to make the Order on 11th June 2018. A copy of the minutes detailing that decision is attached as Appendix 2 to this report.

- 5.3. The Order was made on 2nd August 2018 and refers to the diversion of Wilmslow Footpath No.16 in the Parish of Wilmslow. However, the administrative boundary for the footpath has changed since the time the Definitive Map and Statement was produced. The new Order will reflect the correct Parish boundary placing Wilmslow Footpath No.16 in the Parish of Styal.
- 5.4. Statutory consultations will be repeated once the new Order has been made.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. There are no legal implications.

6.2. Finance Implications

- 6.2.1. If objections to the Order lead to a subsequent hearing/inquiry, this legal process would have financial implications for the Council.

6.3. Policy Implications

- 6.3.1. There are no direct policy implications.

6.4. Equality Implications

- 6.4.1. There are no direct equality implications.

6.5. Human Resources Implications

- 6.5.1. There are no direct implications for Human Resources.

6.6. Risk Management Implications

- 6.6.1. There are no direct implications for risk management.

6.7. Rural Communities Implications

- 6.7.1. There are no direct implications for rural communities.

6.8. Implications for Children & Young People

- 6.8.1. There are no direct implications for children and young people.

6.9. Public Health Implications

- 6.9.1. There are no direct implications for public health.

7. Ward Members Affected

- 7.1. Ward Councillor Don Stockton will be re-consulted.

8. Consultation & Engagement

- 8.1. The statutory consultation process will be repeated following the making of the new Order.

9. Access to Information

- 9.1. Order No.10543(1) and Plan HA/128/A are attached as Appendix 1 to this report.
- 9.2. [Agenda for meeting of Public Rights of Way Committee 11 June 2018](#)
- 9.3. A copy of the Public Rights of Way Committee meeting minutes dated 11th June 2018 detailing the resolution to make the Order is appended.
- 9.4. The background papers File Ref: 355D/560 relating to this report can be inspected by contacting the report writer.

10. Contact Information

- 10.1. Any questions relating to this report should be directed to the following officer:

Name: Sarah Fraser

Job Title: Public Paths Orders Officer

Email: sarahfraser@cheshireeast.gov.uk

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**PUBLIC PATH DIVERSION ORDER
HIGHWAYS ACT 1980 S119
THE CHESHIRE EAST BOROUGH COUNCIL
(FOOTPATH NO. 16 (PART) PARISH OF WILMSLOW)
PUBLIC PATH DIVERSION ORDER 2018**

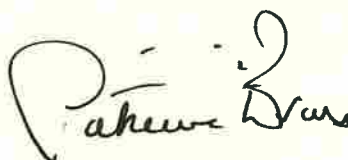
This Order is made by Cheshire East Borough Council ("the Authority") under Section 119 of the Highways Act 1980 ("the 1980 Act") because it appears to the Authority that in the interests of the owners of the land crossed by the path it is expedient that the line of the path described in Paragraph 1 of this Order should be diverted.

Wilmslow Parish Council have been consulted as required by section 120 (2) of the 1980 Act;

BY THIS ORDER:

1. The Public Footpath over the land situated in the Parish of Wilmslow and shown by a bold continuous black line on the attached plan and described in Part 1 of the Schedule to this Order ("the Schedule") shall be stopped up on the date on which the Cheshire East Borough Council certifies that the work has been carried out to bring the new highway mentioned in Article 2 into a condition fit for use by the public.
2. There shall be on the date of confirmation a Public Footpath over the land situated in the Parish of Wilmslow as described in Part 2 of the Schedule and shown by bold black dashes on the attached plan.
3. Where immediately before the date on which the Public Footpath referred to in paragraph 1 is diverted there is apparatus under, in, on, over, along or across it belonging to the statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.
4. The rights conferred on the public under this Order shall be subject to the limitations and conditions set out in Part 3 of the Schedule.
5. This Order shall be cited as "The Cheshire East Borough Council (Footpath No. 16 (Part) Parish of Wilmslow) Public Path Diversion Order 2018."

THE COMMON SEAL OF CHESHIRE EAST BOROUGH COUNCIL
was hereunto affixed this second day of August
Two Thousand and eighteen
in the presence of:-



10543
(1)

Authorised Signatory

SCHEDULE

PART 1

Description of site of existing Path or Way to be diverted

That length of Public Footpath No. 16 (Part) in the Parish of Wilmslow commencing at its junction with restricted byway No.18 Wilmslow also known as Quarry Bank Road at O.S. grid reference SJ 8357 8316 (point A on Plan No. HA/128A) and running in a generally north easterly direction for a distance of approximately 95 metres to a kissing gate at O.S. grid reference SJ 8359 8326 (point B on Plan No. HA/128A), as indicated by a bold continuous black line between the points marked A-B on Plan No. HA/128A.

A total length of approximately 95 metres.

SCHEDULE

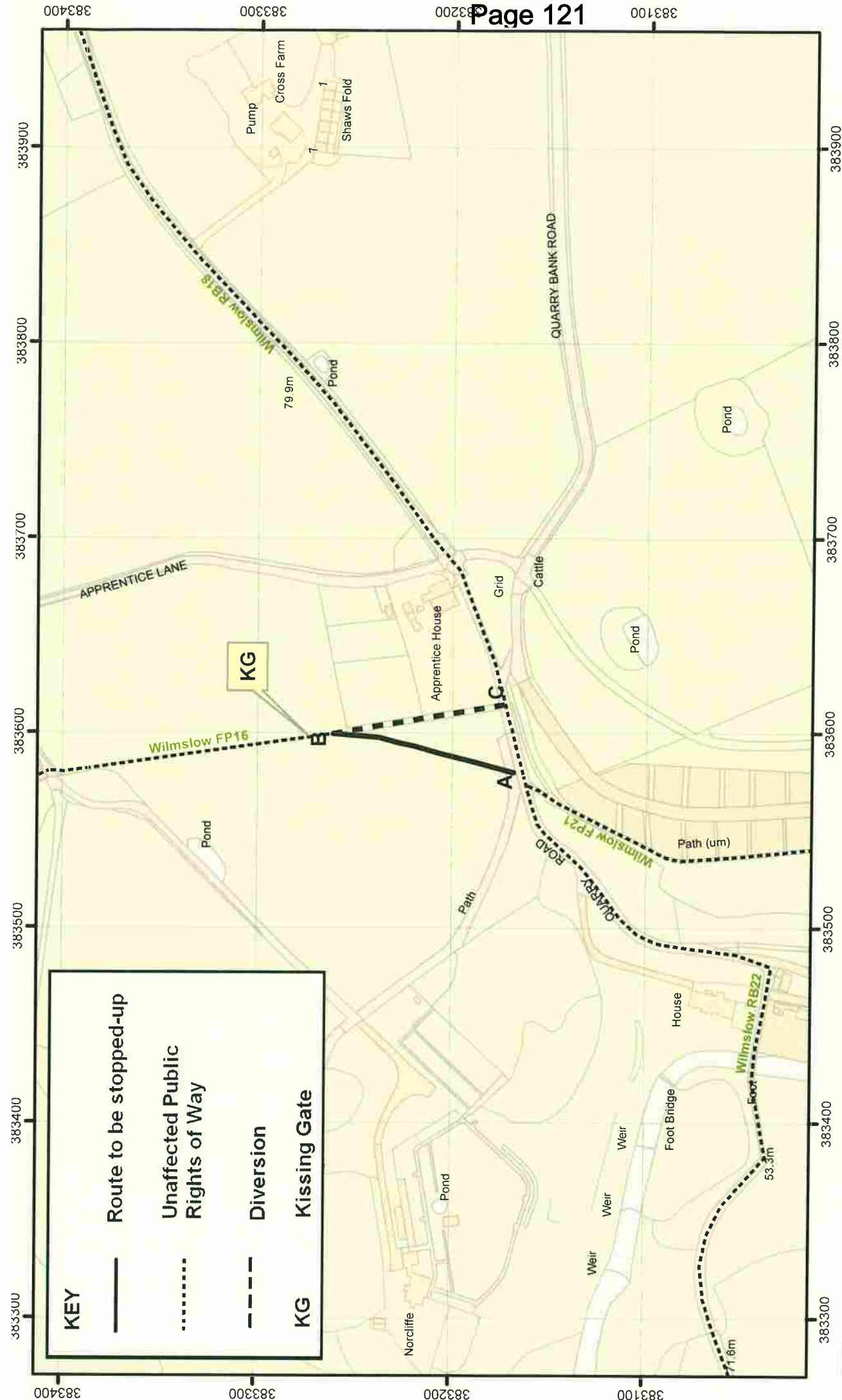
PART 2

Description of site of new Path or Way

A footpath, to be known as part of Public Footpath No.16 in the Parish of Wilmslow commencing at its junction with restricted byway No.18 Wilmslow also known as Quarry Bank Road at O.S. grid reference SJ 8361 8317 (point C on Plan HA/128A) and running in a generally northerly direction for approximately 90 metres to a kissing gate at O.S. grid reference SJ 8359 8326 (point B on Plan No. HA/128A), as indicated by bold black dashes between the points marked C-B on Plan No. HA/128A.

A total length of approximately 90 metres.

The footpath running between points C-B on Plan No. HA/128A is 2.5 metres wide, enclosed between a post and rail fence to the east and a wooden fence and planted hedges to the west. The path has a sealed surface throughout.



Highways Act 1980 s.119 The Cheshire East Borough Council
(Footpath No.16 (part) in the Parish of Wilmslow) Public Path Diversion Order 2018.

Plan No. HA/128/A

Cheshire East Council

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1:2,500



Extract from the minutes of a meeting of the Public Rights of Way Committee held on 11 June 2018.

10 Highways Act 1980 section 119 Application for the Proposed Diversion of Public Footpath No.16 (part) in the Parish of Wilmslow

The Committee considered a report which detailed an application by the National Trust requesting the Council to make an Order to divert part of Public Footpath No.16 in the parish of Wilmslow.

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

The land over which the section of path to be diverted and the proposed diversion ran both belonged to the applicant. The section of path to be diverted took walkers from the junction between Restricted Byways Nos. 18 and 22, Point A as shown on Plan No.HA/128, up a slight embankment, through a narrow gap between an oak tree and stone wall and across the corner of an agricultural field to the gate at Point B.

The proposed diversion would move the path out of the field and to the east of the current alignment onto a permissive path, which ran parallel to the agricultural field boundary and reconnected with the definitive line of the path at Point B. The permissive path was already in use by members of the public and was 2.5 metres wide with a hard, level well drained surface throughout. The diversion would be in the interests of the landowner as it would divert walkers out of the agricultural field and improve land management.

The Committee noted that not objections had been received during the informal consultations and noted the comments from the Peak and Northern Footpaths Society stating that this was a retrospective application, which satisfied all the requirements with the only qualification being that it no longer visibly linked to Footpath No.21. The Committee considered that the proposed diversion would not be substantially less convenient than the existing route. Diverting the footpath would improve the landowners' agricultural and land management responsibilities. 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.16 in the parish of Wilmslow by creating a new section of public footpath and extinguishing the current path, as illustrated on Plan No.HA/128, on the grounds that it is expedient in the interests of the owners of the land crossed by the right of way.
- 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 being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry.



Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 03 December 2018

Report Title: Highways Act 1980 Proposed Diversion of Public Footpath No.12 (part) in the Parish of Lower Withington - Informative Report

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. This report is to inform the Public Rights of Way Committee that an Order (attached as Appendix 1 to this report) previously made on 7th June 2018 will be remade to reflect a change in the alignment of the diverted path.

2. Recommendations

- 2.1. That the existing Order be abandoned and a new Order be made and the content of this report be noted and minuted.

3. Reasons for Recommendation/s

- 3.1. Objections have been received to the alignment of the diverted path as shown on the Order Plan HA/120/A.

4. Other Options Considered

- 4.1. Not applicable - this is a non-executive matter.

5. Background

- 5.1. An application was submitted by Mr J Kennerley and Son of Shellmore Hill 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. The Public Rights of Way Committee resolved to make the Order on 12th March 2018. A copy of the minutes detailing that decision is attached as Appendix 2 to this report.
- 5.2. The Order was made on 7th June 2018 and following the formal consultation 3 objections to the alignment of the path between points A-E-F-G on Order Plan No. HA/120/A were submitted.

- 5.3. In order to resolve the objections the applicant has agreed to change the alignment of the path to the other side of the hedge as shown on Plan No. HA/120/B attached as Appendix 3 between points A-E-F.
- 5.4. Statutory consultations will be repeated once the new Order has been made.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. There are no legal implications.

6.2. Finance Implications

- 6.2.1. If objections to the Order lead to a subsequent hearing/inquiry, this legal process would have financial implications for the Council.

6.3. Policy Implications

- 6.3.1. There are no direct policy implications.

6.4. Equality Implications

- 6.4.1. There are no direct equality implications.

6.5. Human Resources Implications

- 6.5.1. There are no direct implications for Human Resources.

6.6. Risk Management Implications

- 6.6.1. There are no direct implications for risk management.

6.7. Rural Communities Implications

- 6.7.1. There are no direct implications for rural communities.

6.8. Implications for Children & Young People

- 6.8.1. There are no direct implications for children and young people.

6.9. Public Health Implications

- 6.9.1. There are no direct implications for public health.

7. Ward Members Affected

- 7.1. Gawsworth Ward Councillor Lesley Smetham will be re-consulted.

8. Consultation & Engagement

- 8.1. The statutory consultation process will be repeated following the making of the new Order.

9. Access to Information

- 9.1. Order No.10426 (1) and Plan HA/120/A are attached as Appendix 1 to this report.
- 9.2. [Agenda for the meeting of the Public Rights of Way Committee 12 March 2018](#)
- 9.3. A copy of the Public Rights of Way Committee meeting minutes dated 12th March 2018 detailing the resolution to make the Order is attached as Appendix 2.
- 9.4. Plan No. HA/120/B showing the new alignment of the proposed diversion is attached as Appendix 3.
- 9.5. The background papers File Ref: 325D/546 relating to this report can be inspected by contacting the report writer.

10. Contact Information

- 10.1. Any questions relating to this report should be directed to the following officer:

Name: Sarah Fraser

Job Title: Public Paths Orders Officer

Email: sarah.fraser@cheshireeast.gov.uk

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**PUBLIC PATH DIVERSION ORDER
HIGHWAYS ACT 1980 S119
THE CHESHIRE EAST BOROUGH COUNCIL
(FOOTPATH NO. 12 (PART) PARISH OF LOWER WITHINGTON)
PUBLIC PATH DIVERSION ORDER 2018**

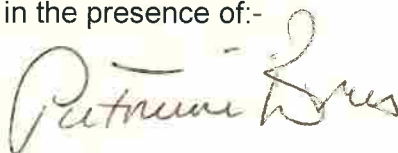
This Order is made by Cheshire East Borough Council ("the Authority") under Section 119 of the Highways Act 1980 ("the 1980 Act") because it appears to the Authority that in the interests of the owners of the land crossed by the path it is expedient that the line of the path described in Paragraph 1 of this Order should be diverted.

Lower Withington Parish Council has been consulted as required by section 120 (2) of the 1980 Act;

BY THIS ORDER:

1. The Public Footpath over the land situated in the Parish of Lower Withington and shown by a bold continuous black line on the attached plan and described in Part 1 of the Schedule to this Order ("the Schedule") shall be stopped up on the date on which the Cheshire East Borough Council certifies that the work has been carried out to bring the new highway mentioned in Article 2 into a condition fit for use by the public.
2. There shall be on the date of confirmation a Public Footpath over the land situated in the Parish of Lower Withington described in Part 2 of the Schedule and shown by bold black dashes on the attached plan.
3. Where immediately before the date on which the Public Footpath referred to in paragraph 1 is diverted there is apparatus under, in, on, over, along or across it belonging to the statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.
4. The rights conferred on the public under this Order shall be subject to the limitations and conditions set out in Part 3 of the Schedule.
5. This Order shall be cited as "The Cheshire East Borough Council (Footpath No. 12 (part) Parish of Lower Withington) Public Path Diversion Order 2018."

THE COMMON SEAL OF CHESHIRE EAST BOROUGH COUNCIL
was hereunto affixed this 7th Day of June
Two Thousand and eighteen in the presence of:-



Authorised Signatory

10426
(1)

SCHEDULE

PART 1

Description of site of existing Path or Way to be diverted

That length of Public Footpath No. 12 in the Parish of Lower Withington commencing at O.S. grid reference SJ 8168 7024 (point A on Plan No. HA/120A) and running in a generally east, north easterly direction for a distance of approximately 319 metres to O.S. grid reference SJ 8198 7036 (point B on plan HA/120A) and then running in a generally east, south easterly direction for 154 metres to O.S. grid reference SJ 8212 7033 (point C on Plan No. HA/120A) and then running in a generally northerly direction for a distance of approximately 819 metres to O.S. grid reference SJ 8207 7114 (point D on Plan No. HA/120A) as indicated by a bold continuous black line between the points marked A-B-C-D on Plan No. HA/120A.

A total length of approximately 1292 metres.

SCHEDULE

PART 2

Description of site of new Path or Way

A footpath, to be know as part of Footpath No. 12 in the Parish of Lower Withington, commencing at O.S. grid reference SJ 8168 7024 (point A on Plan No. HA/120A) and running in a generally north, north westerly direction for a distance of approximately 29 metres to O.S. grid reference SJ 8167 7027 (point E on Plan No. HA/120A) and then running in a generally east, north easterly direction for a distance of approximately 24 metres to O.S. grid reference SJ 8169 7028 (point F on Plan HA/120A) and then running in a generally north, north westerly direction for a distance of approximately 203 metres to O.S. grid reference SJ 8160 7046 (point G on plan HA/120A) and then running in a generally south westerly direction for approximately 10 metres to O.S. grid reference SJ 8159 7059 (point H on Plan HA/120A) and then running in a generally north westerly direction for a distance of approximately 36 metres to O.S. grid reference SJ 8157 7049 (point I on Plan HA/120A) and then running in a generally north easterly direction for a distance of approximately 109 metres to O.S. grid reference SJ 8164 7057 (point J on plan HA/120A) and then running in a generally northerly direction for a distance of approximately 90 metres to O.S. grid reference SJ 8163 7065 (point K on plan HA/120A) and then running in a generally east, north easterly direction for a distance of approximately 77 metres to a timber bridge crossing a water course at O.S. grid reference SJ 8170 7069 (point L on Plan No. HA/120A) and then running in a generally northerly direction for a distance of approximately 250 metres to its junction with Public Footpath No. 18 in the Parish of Lower Withington at O.S. grid reference SJ 8164 7093 (point M on plan HA/120A) as indicated by a bold continuous black dashed line between the points marked A-E-F-G-H-I-J-K-L-M on Plan No. HA/120A.

A total length of approximately 828 metres.

The footpath running between points marked A-E-F-G-H-I-J-K-L-M on Plan No. HA/120A is 2.5 metres wide throughout.

SCHEDULE

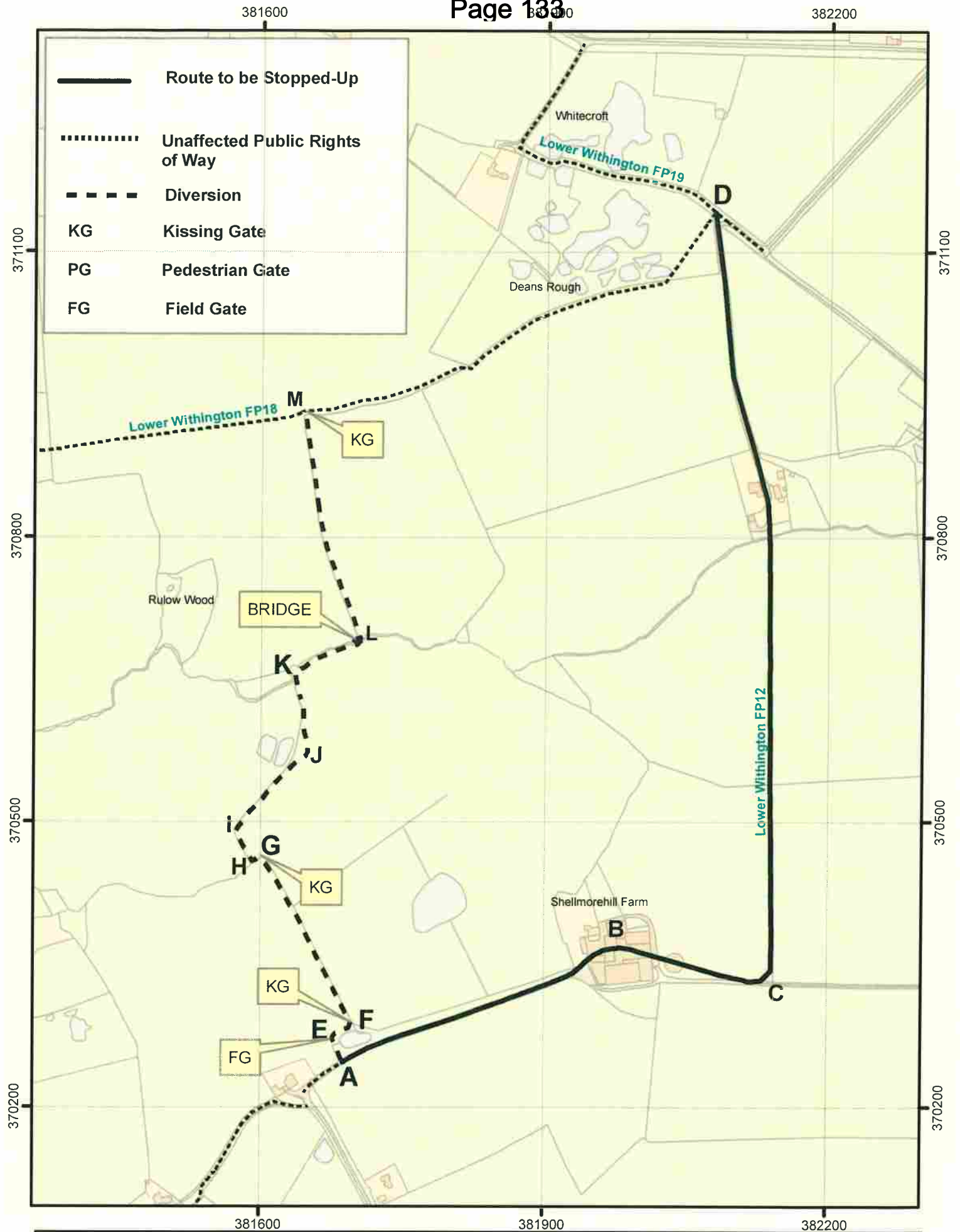
PART 3

Limitations and Conditions

A 2 in 1 field gate with pedestrian access of 1.2 metres width conforming to Cheshire East Borough Councils standard for path furniture on public rights of way (version 1, 1st March 2010) at O.S. grid reference SJ 8167 7027 (point E on Plan No. HA/120A).

Three kissing gates of 1.2 metres width conforming to Cheshire East Borough Councils standard for path furniture on public rights of way (version 1, 1st March 2010) at O.S. grid references SJ 8169 7028, SJ 8160 7046 and SJ 8164 7093 (points F, G and M on Plan No. HA/120A).





Highways Act 1980, s119
The Cheshire East Borough Council
(Footpath 12 (part) Parish of Lower Withington)
Public Path Diversion Order 2018

Plan No.
HA/120A



Appendix 2

Extract from the minutes of a meeting of the Public Rights of Way Committee held on 12 March 2018

34 Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 12 (part), Parish of Lower Withington

The Committee considered a report which detailed an application from Mr J Kennerley and Son of Shellmorehill Farm, Lower Withington requesting the Council to make an Order to divert part of Public Footpath No.12 in the parish of Lower Withington.

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

The land over which the section of footpath to be diverted and the proposed diversion ran belonged to the Applicants. The section of Public Footpath No.12 to be diverted ran along a stone surfaced track to Shellmorehill Farm. The footpath then continued past two dwellings and crossed a holding area leading to a milk parlour, before passing through collecting and silage yards to exit through a slurry tank which obstructed the line of the path. The footpath continued across a field and a farm track until it joined Public Footpath No.19 Lower Withington.

Within the farm yard area there were three large gates for controlling the movement of cattle between the yards for milking and these needed to be opened and closed by users in order to walk the path. A permissive path was in place to pass the slurry tank which obstructed the footpath.

The proposed route would commence near the start of the track to Shellmorehill Farm at Point A on Plan HA/120 and run along field boundaries until it joined Public Footpath No.18 Lower Withington at Point J on Plan HA/120. The route would be 2.5 metres wide and have a grass surface. Kissing gates and a footbridge would be installed on the route.

The Committee noted that no objections had been received during the informal consultation and noted the comments from the Applicant, Mr Morrow, Mr & Mrs Mitchell and the East Cheshire Ramblers.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would allow the Applicant to improve the privacy and security of their farm and home and improve the safety for users. It was considered that the proposed route would be a satisfactory alternative to the current one and that the legal tests for the making and confirming of a Diversion Order were satisfied.

The Committee unanimously

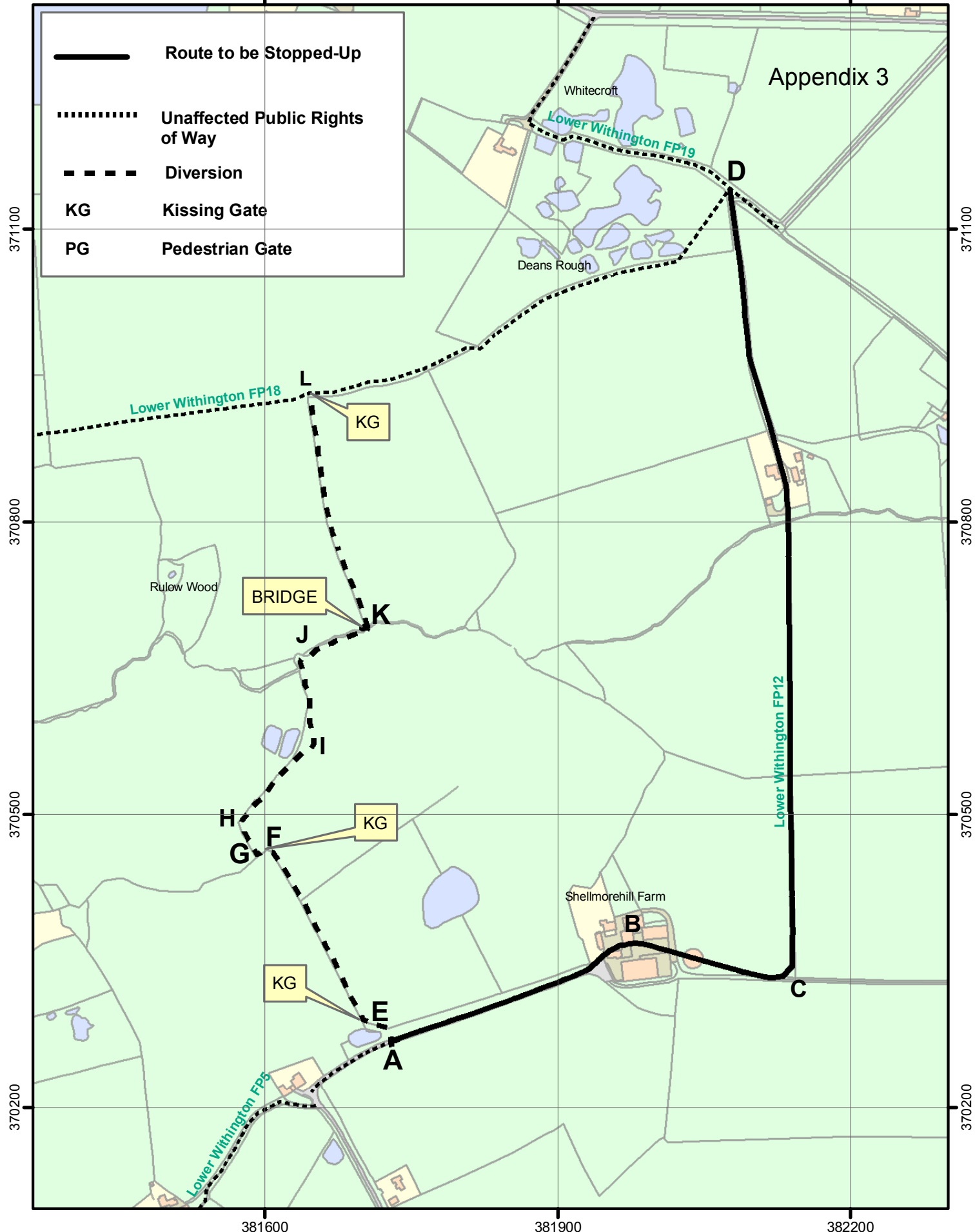
RESOLVED: That

- 1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No.12 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.

381600

381700

382200



Appendix 3

Highways Act 1980, s119
The Cheshire East Borough Council Diversion
(Footpath 12 (part) Parish of Lower Withington)

Plan No.
HA/120/B



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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 03 December 2018

Report Title: Town & Country Planning Act s.257, Public Path Diversion Order, Peover Superior Footpath No. 4 (part) – Informative Report

Senior Officer: Frank Jordan, Executive Director, Place

1. Report Summary

- 1.1. This report is to inform the Committee that the Planning Application 16/2659M against which the proposed diversion of Peover Superior Footpath No. 4 (part) was approved by the Committee on 10th September 2018, has been superseded by Planning Application 18/5249M so the Order that will be made and confirmed will be undertaken in reference to this new planning application.

2. Recommendation/s

- 2.1. That the content of this report be noted and minuted.

3. Reasons for Recommendation/s

- 3.1. To be formally noted that Planning Application 16/2695M against which, on 10th September 2018, the Committee resolved to make an Order to divert part of Public Footpath No. 4 in the Parish of Peover Superior, has been superseded by Planning Application 18/5249M and the Order will now be made in reference to this new application.

4. Other Options Considered

- 4.1. Not applicable – this is a non-executive matter.

5. Background

- 5.1. An application was received from Mr B Kettle (agent) of Wharfe Rural Planning on behalf of Mr D Cox (applicant) of Paradise House, Holmes Chapel Road, Over Peover, requesting that the Council make an Order

under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 4 in the Parish of Peover Superior.

- 5.2. The application was made in response to enforcement action taken by the Council to stop any further construction of an agricultural barn in a position that did not comply with the planning application 16/2695M, and which then also obstructed the current definitive alignment of Public Footpath No 4 Peover Superior.
- 5.3. On 10th September 2018, the Committee resolved that an Order be made and confirmed to divert part of Peover Superior Footpath No. 4 under section 257 of the Town and Country Planning Act to enable the construction of the barn to be completed. The diversion is shown on Plan No. TCPA/050.
- 5.4. Subsequently, as well as choosing to divert part of Peover Inferior Footpath No. 4 obstructed by the partially constructed barn, the applicant has submitted a new planning application to seek permission from the Council to allow the completion of the barn in its existing position in order to comply with the planning enforcement requirements.
- 5.5. The Committee is now informed that, because a new planning application has been submitted by the applicant to seek permission to complete the construction of the barn in its current position, the diversion Order will be made and confirmed in reference to this new planning application 18/5249M, should planning permission be granted.

6. Implications of the Recommendations

6.1 Legal Implications

- 6.1.1 There are no legal implications.

6.2 Finance Implications

- 6.2.1 There are no financial implications.

6.3 Policy Implications

- 6.3.1 There are no direct policy implications.

6.4 Equality Implications

- 6.4.1 There are no direct equality implications.

6.5 Human Resources Implications

6.5.1 There are no direct human resources implications.

6.6 Risk Management Implications

6.6.1 There are no direct risk management implications.

6.7 Rural Communities Implications

6.7.1 There are no direct implications for rural communities.

6.8 Implications for Children & Young People

6.8.1 There are no direct implications for children and young people.

6.9 Public Health Implications

6.9.1 There are no direct implications for public health.

7 Ward Members Affected

7.1 Chelford Ward Councillor George Walton was originally consulted.

8 Consultation & Engagement

8.1 Statutory and local user groups and statutory undertakers were originally consulted.

9 Access to Information

9.1 The background papers of file No. 239D/566 relating to this report can be inspected by contacting the report writer.

10 Contact Information

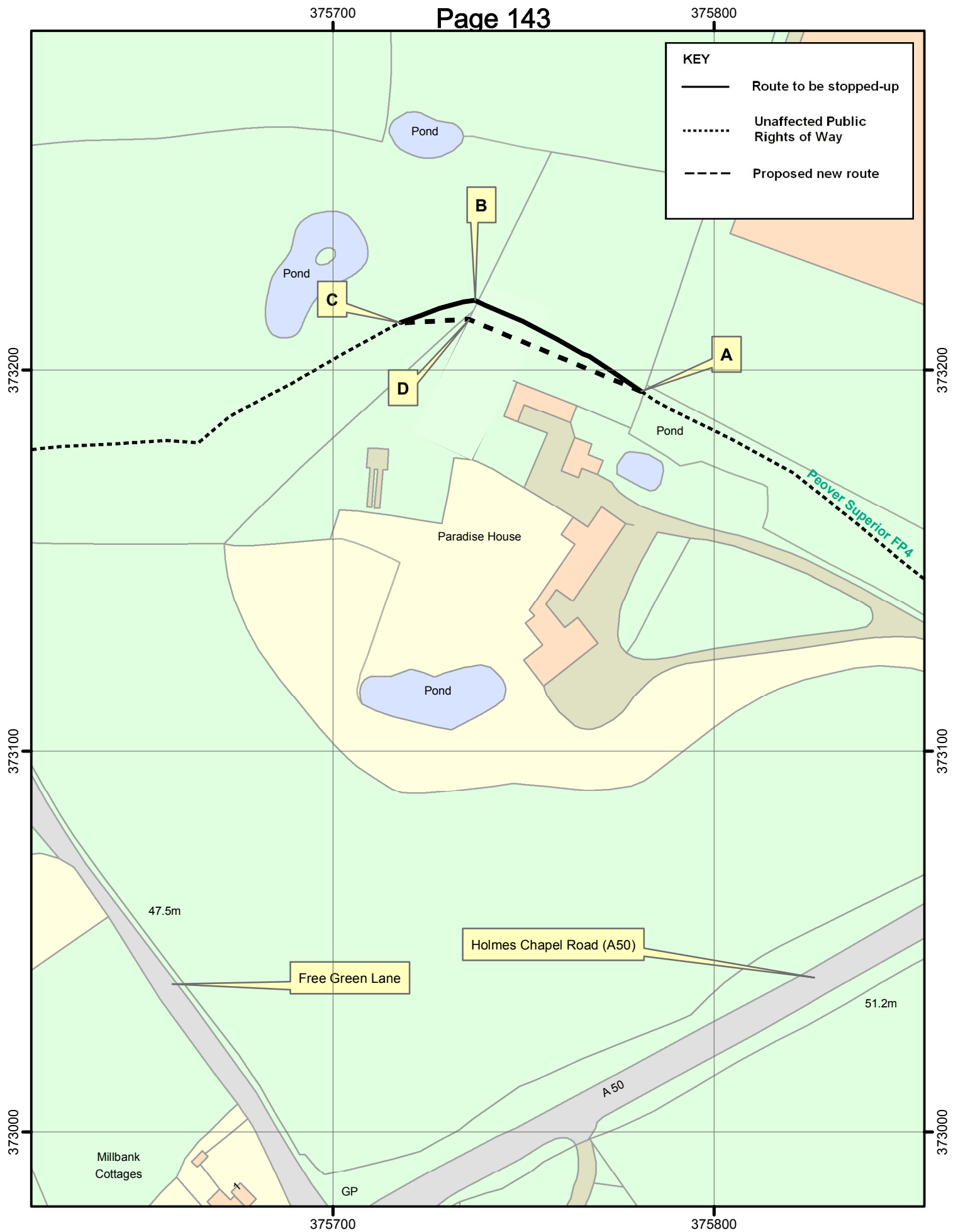
10.1 Any questions relating to this report should be directed to the following officer:

Name: Marianne Nixon

Job Title: Public Path Orders Officer

Email: marianne.nixon@cheshireeast.gov.uk

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1:1,250

Town and Country Planning Act 1990 s257
Proposed diversion of Footpath 4 (part) Parish of Peover Superior

Plan No.
TCPA/050



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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 03 December 2018

Report Title: Uncontested Public Path Orders: Change to Scheme of Delegation

Senior Officer: Frank Jordan, Executive Director - Place

1. Report Summary

- 1.1. The report informs Members that the delegation is now in place for the determination of uncontested Public Path Order applications by the Executive Director of Place in consultation with the Chair and Vice Chair of the Committee.

2. Recommendation/s

- 2.1. That the report be noted.

3. Reasons for Recommendation/s

- 3.1. The report is for information only.

4. Other Options Considered

- 4.1. Not applicable – this is a non-executive matter.

5. Background

- 5.1 At its meeting on 11th June 2018, the Committee received a paper regarding proposed changes to processes associated with Public Path Orders. The proposals were designed to increase the expediency with which cases could be processed. One of the proposals was for the determination of uncontested Public Path Order applications by the Executive Director of Place in consultation with the Chair and Vice Chair of the Committee
- 5.2 Following that meeting, the proposal was put before the Constitution Committee of the Council on 20th September 2018. The Constitution Committee resolved:

That Council be recommended to approve that the scheme of delegation be amended to enable the Executive Director Place to determine, in consultation with the Chairman and Vice Chairman of the Public Rights of Way Committee, any Public Path Order applications that are not contested or contentious at the pre-order consultation stage.

- 5.5 Following this resolution, the proposal was put to Full Council on 18th October 2018. The meeting resolved:

That approval be granted for the scheme of delegation to be amended to enable the Executive Director Place to determine, in consultation with the Chairman and Vice-Chairman of the Public Rights of Way Committee, any Public Path Order applications that are not contested or contentious at the pre-order consultation stage.

- 5.6 The Constitution has been amended accordingly and the Local Scheme of Delegation under the cascade principle enables the Public Rights of Way Manager to make the delegated decision. The delegation is therefore in place and operative. The Public Rights of Way Committee will be informed of decisions taken under this delegation.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. There are no legal implications.

6.2. Finance Implications

- 6.2.1. There are no financial implications.

6.3. Policy Implications

- 6.3.1. There are no policy implications.

6.4. Equality Implications

- 6.4.1. There are no equality implications.

6.5. Human Resources Implications

- 6.5.1. There are no human resource implications.

6.6. Risk Management Implications

- 6.6.1. There are no risk management implications.

6.7. Rural Communities Implications

6.7.1. There are no implications for rural communities.

6.8. Implications for Children & Young People

6.8.1. There are no implications for children and young people.

6.9. Public Health Implications

6.9.1. There are no implications for public health.

7. Ward Members Affected

7.1. All Wards. No Ward Member engagement is required as the report is for information only.

8. Consultation & Engagement

8.1. Engagement with Public Rights of Way user groups has been undertaken through the Rights of Way Consultative Group.

9. Access to Information

9.1. Not applicable.

10. Contact Information

10.1. Any questions relating to this report should be directed to the following officer:

Name: Genni Butler

Job Title: Acting Public Rights of Way Manager

Email: genni.butler@cheshireeast.gov.uk

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