

Public Rights of Way Committee

Agenda

Date:	Monday 11th March 2019
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**

2. **Declarations of Interest**

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

3. **Minutes of Previous Meeting** (Pages 3 - 20)

To approve the minutes of the meeting held on 3 December 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. CN/7/25 - Application for the Addition of a Public Footpath connecting Public Footpath No.14 and Public Footpath No.15 in the Parish of Bunbury.** (Pages 21 - 30)

To consider the application for the addition of a Public Footpath connecting Public Footpath No.14 and Public Footpath No.15 in the parish of Bunbury.

6. **Highways Act 1980 s119: Application for the Diversion of Public Footpath No. 4 (part), Parish of Poole** (Pages 31 - 40)

To consider the application to divert part of Public Footpath No.4 in the parish of Poole.

7. **Town and Country Planning Act 1990 s 257: Application for the Extinguishment of Public Footpath No. 14 (part), Parish of Sandbach** (Pages 41 - 50)

To consider the application to extinguish part of Public Footpath No.14 in the parish of Sandbach.

CHESHIRE EAST COUNCIL

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

PRESENT

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

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

Councillor in attendance

Councillor G Williams, Deputy Portfolio Holder for Environment

Officers in attendance

Genni Butler, Acting Public Rights of Way Manager

Laura Allenet, Public Path Orders Officer

Sarah Fraser, Public Path Orders Officer

Clare Hibbert, Definitive Map Officer

Marianne Nixon, Public Path Orders Officer

Andrew Poynton, Planning and Highways Lawyer

Rachel Graves, Democratic Services Officer

25 APOLOGIES FOR ABSENCE

Apologies were received from Councillor S Pochin.

26 DECLARATIONS OF INTEREST

There were no declarations of interest.

27 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meeting held on 10 September 2018 be confirmed as a correct record and signed by the Chairman.

28 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.

**29 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**

The Committee considered a report which detailed an investigation into an application for the addition of public rights of way from Byley Lane to Carver Avenue in the parish of Cranage to the Definitive Map and Statement.

Under Section 53 of the Wildlife and Countryside Act 1981, the Borough Council had a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Section 53 (3)(c) allowed the Authority to act on the discovery of evidence that suggests that the Definitive Map and Statement needed to be amended. The Authority must investigate and determine the evidence and decide on the outcome whether to make a Definitive Map Modification Order or not.

The event relevant to the application was Section 53 (3)(c)(i), which required modification of the map by change of status of a right of way:

“(c) discovery by the authority of evidence which (when considered with all other relevant evidence) shows:

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

The evidence could consist of documentary/historical evidence or user evidence or a mixture of both.

Where the evidence in support of the application is user evidence, section 31(1) if the Highways Act 1980 applied:

“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.”

If the statutory test failed, the issue of common law dedication could be considered: that was whether the available evidence showed that the owner of the land over which the way passed had dedicated it to the public. Under Common Law the onus of proof was 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. There is no fixed period of use, and depending on the facts of the case, may range from a few years to several decades.

Cranage Parish Council had submitted an application to modify the Definitive Map and Statement to Cheshire County Council in March 2007 for the addition of footpaths from Carver Avenue to Byley Lane – route A-B-C-D; route A-B-G; route G-F; route E-C and route E-D as shown on Plan No.WCA/016. The application was supported by 19 user evidence form, 4 of those being minors at the time their evidence was submitted. The application was made because of the installation of fencing across the paths.

In April 2007 a meeting had been held between representatives of the Parish Council, landowners, the local County Councillor and an Officer from Cheshire County Council to discuss the possibilities for securing use of the footpaths through other means and in July 2007 the Parish Council confirmed that permissive path agreements would be the best way forward. However, this line of action does not appear to have been pursued since that time.

Cranage Parish Council had 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 dated 16 March 2108 was received, which directed the Council to determine the application no later than 6 months from the date of direction.

Following a tendering exercise an external consultant was appointed to investigate the application on behalf of the Council.

Councillor Rachel Hurst, on behalf of Cranage Parish Council, addressed the Committee and commented that the evidence tended to show that the public use of the application routes began when the land was owned by the government department and was therefore Crown Land. The application should be considered on common law principles that the public rights of way had come into existence through long use and not under the statutory assumptions. The 1934 dedication by the Health Board was not relevant as they had failed to renew the declaration and had lost the protection. The user evidence showed that on the balance of probabilities that route A-B-C-B had been used consistently since the 1950s without interruption from the landowners.

The report before the Committee detailed the investigation carried out into the application.

In addition to the user evidence submitted, an investigation was undertaken to establish whether the claimed routes were of historical origin. Investigation was undertaken to see if the routes were shown on the Tithe Maps, Ordnance Survey Maps, aerial photographs, plans submitted under the Rights of Way Act 1932, the surveys and plans undertaken for the National Parks and Access to the Countryside Act 1949 and other documents. It was found that these documents did not show any evidence to suggest that public rights existed along the claimed routes.

Investigation of the 19 user evidence forms submitted showed clear use of the route A-B-C-D with 9 witnesses claiming use of the route on foot, cycle or horseback. Evidence of use of the other routes was fewer in number. The letters written by children who were under 16 at the time of the application indicated that their use was predominately play and recreation. There was therefore, insufficient evidence of use along the alignment of the routes to include the children's evidence.

In order to show that public rights of way have been acquired along the claimed routes, a twenty year period must be identified during which use of the route by the public had been established. It was considered that the date of the application – March 2007, would have brought the right to use the routes into question and therefore the relevant twenty year period would be 1987 to 2007. However until 2001 the land in question was classed as Crown Land and section 327 of the Highways Act 1980 indicates that the Act does not apply to land belonging to any government department unless there is an agreement between the highway authority and the government department that the Act shall apply. 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 had 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 on the route in question. There was 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 was only 4-6 years.

The land, as Crown Land, had been under the ownership of Hospital and Health Authorities from at least 1934, when the Cheshire Joint Board for the Mentally Defective had deposited a plan which did not depict or admit that any rights of way existed. However, the Board did not submit a further statement and plan ending the protection of the land from public rights of way claims.

The land was sold in 2001 and divided into smaller plots and some of the land was sold again in 2006. The land was now owned by several landowners. However some sections were still unregistered.

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

Under Common law there can be a presumption of dedication over Crown Land. Whilst it appeared that there had been use of the claimed routes, the existence of the deposited plan by the Hospital Board demonstrated that there was no intention to dedicate a public right of way. When the land was sold there was no indication of the existence of public rights of way. 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 garages and boundary. Use of this route, as applied for in the application, was therefore challenged, showing a negative intention to dedicate.

The Officer's report concluded that there was insufficient documentary and historic evidence to show that public rights of way existed along the alignment of the claimed routes and that as the land was Crown land prior to 2001, there was insufficient evidence of use since that time for a full 20 years to support the dedication of the routes as public rights of way.

The report concluded that there was insufficient evidence to show that public rights were deemed to exist under Common Law dedication during the time of ownership by the Crown and since 2001 by subsequent landowners.

The Committee considered the comments from the parish council, the historical evidence, the user evidence submitted, the landowner evidence submitted and the Definitive Map Officer's conclusion and considered that there was insufficient evidence to show that public footpath rights existed along the routes claimed.

The Committee by majority

RESOLVED:

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.

30 HIGHWAYS ACT 1980 SECTION 119: PROPOSAL FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 10 (PART) IN THE PARISH OF ALSAGER

The Committee considered a report which detailed an application requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.10 in the parish of Alsager.

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.

Sally Young spoke in objection to the application and stated she had concerns about the proposed width of the footpath and route it was to take and its effect on the enjoyment of the public open space. She was

concerned that the 2 metre width of the path would encourage motorised use and this would lead to accidents with path users. Work had been carried out on the banks of the brook where the new houses had been built and she asked why this could not be done on this section to allow retention of the present line of the path.

The proposed section of Public Footpath No.10 Alsager to be diverted commenced at a junction with the footway extending from the houses to the rear of Swettenham Close and ran in a generally south westerly direction where it connected with an un-adopted section of Hall Drive before continuing southwards towards Public Footpath No.8 Alsager. At present that section of footpath extended within very close proximity to the Valley Brook, it was narrow with a mud, and in some places, a compacted stone surface.

The diversion was proposed in the interests of the public because the legal line of the footpath had been cut across by the meanders of Valley Brook in places and in other stretches ran 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. The new route would be 2 metres wide and have a recycled self-binding aggregate surface.

The Committee noted the suggestion received from Ansa, who manage the Public Open Space through which the Public Footpath ran, that the walked line of the footpath be 'made good' following the diversion of the path and that a quote had been obtained for the work, which would be funded from s106 developer contributions.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would enable investment in the surface of the Footpath to make it more accessible. 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.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 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.

31 HIGHWAYS ACT 1980 SECTION 119: PROPOSAL FOR THE DIVERSION OF PUBLIC FOOTPATH NO.2 (PART) IN THE PARISH OF EATON

The Committee considered a report which detailed an application from Mr Bell of Wheelwrights Cottage requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.2 in the parish of Eaton.

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

The land over which the section of the current path to be diverted and the proposed path ran belonged to the applicant. The section of footpath to be diverted ran through the middle of a cultivation field and on into the grounds and gardens of Wheelwrights Cottage and exiting into pasture land. The path passed close to the Cottage and at present there was a permissive path in place to the west of the definitive line that followed the garden boundary. The permissive path also ran in very close proximity to the Cottage.

The proposed diversion - points A-F-G-H-I-J-E on Plan No.HA/135, would be made in the interests of the landowner as it would 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 improving the privacy and security of the property as a whole.

An objection to the proposed diversion had been received from the Open Spaces Society and the Peak and Northern Footpaths Society and East Cheshire Ramblers had submitted comments, all relating to whether the proposed new route would be substantially as convenient as the existing route and on the effect of the embankment and temporary fencing on the enjoyment of the route.

The Committee considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would improve land management and privacy and security of the property. 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.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 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.

32 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 2 (PART), PARISH OF ARCLID

The Committee considered a report which detailed an application from Mr N Forster and Mr R Pace of Crane Hire Direct Ltd, Old Smithy Garage, Newcastle Road, Arclid requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.2 in the parish of Arclid.

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.

Public Footpath No.2 Arclid ran across the curtilage of the garage forecourt at Pace's Garage/Crane Hire Direct. It was partly obstructed by a large garage and had been for several decades. The remainder of the route ran across the garage forecourt which was used by heavy crane and other machinery.

Mr R Pace of Pace's Garage/Crane Hire Direct was in the process of selling the land and business. The proposed new landowner - Mr N Forster, had made the application with the current landowner's agreement and permission to try to resolve the long standing obstruction. The land over which the diversion would run belonged to the applicants' adjacent landowner. Written permission for the proposal had been provided by the adjacent landowner.

The proposed diversion would run to the rear of the garage and then turn towards Newcastle Road – as shown on Plan No.HA/133. Other than the short section of path behind the garage, which was 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.

Separating walkers from the garage forecourt would provide a benefit to the landowners in terms of security and privacy for the business and moving walkers away from heavy plant and machinery would be of benefit in terms of health and safety.

The Committee noted that no objections had been received during the informal consultation process and considered that the proposed route would not be substantially less convenient than the existing route. Diverting the footpath would resolve a long standing problem and provide a legal, usable route on the ground where none had existed for many years. 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.2 in the parish of Arclid by creating a new section of public footpath and extinguishing the current line, as illustrated on Plan No.HA/133, on the grounds that it is expedient in the interests of the landowner.
- 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.

33 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 29 (PART), PARISH OF BRERETON

The Committee considered a report which detailed an application from Ms Briggs of Fir Farm, Brereton, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.29 in the parish of Brereton.

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 Public Footpath No.29 Brereton to be diverted and the proposed diversion would run belonged to the applicant. The section of footpath ran along a sealed surface private shared drive and then across a storage yard which was used to store large trailers and immobile old machinery as part of a business need. The definitive line of the footpath was obstructed in the storage yard. In line with Cheshire East PROW policy if an obstruction was impractical to remove the landowner was required to apply for a diversion rather than remove the obstruction and also provide an alternative route. A permissive route, which followed the boundary of the yard, had been in place for some time and had been accepted as an alternative route by the public.

The landowner had submitted a planning application for a new access road and the proposed new route of the public footpath would run along the southern side of the new access road - Points C-D on Plan No.HA/136, and then along the permissive route from Points D-B.

The Committee noted the comments made by the Peak and Northern Footpath Society and supported by the Open Spaces Society in relation to the exit point of the footpath being moved to further along a very busy road 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 remove the footpath from the yard and remove the interaction between users and large vehicles. 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.29 in the parish of Brereton by creating a new section of public footpath 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 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.

34 HIGHWAYS ACT 1980 SECTION 118: APPLICATION FOR THE EXTINGUISHMENT OF PUBLIC FOOTPATH NO. 1 (PART), PARISH OF HOLMES CHAPEL

The Committee considered a report which detailed an application requesting the Council to make an Order under section 118 of the Highways Act 1980 to extinguish part of Public Footpath No.1 in the parish of Holmes Chapel.

In accordance with section 118(1) of the Highways Act 1980, it was 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 grounds that it is not needed for public use.

Public Footpath No.1 Holmes Chapel had been registered as an anomaly for a number of years as a short section – points A to B on Plan No.HA/134, had been unavailable since the mid-1990s when the housing development was built and was obstructed by the house and gardens of 16 Lochmaben Close. It appeared that Congleton Borough Council may have intended to divert this section of the footpath to follow the footway that ran through an area of greenspace adjacent to this property but the legal process was not undertaken. In early 2018 the owner of 16 Lochmaben Close, Holmes Chapel submitted a planning application for a single story side and rear extension to the property which would further obstruct the definitive line of the footpath.

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 ensured that a legal route for the public was maintained. This subsequently meant that the short section of Public Footpath No.1 Holmes Chapel was no longer required for public use and an extinguishment was sought by the Council to resolve the long standing anomaly and provide clarity to the affected landowner.

The Committee noted the objections received from the Open Spaces Society and the Public Rights of Way Officer's comment that none of points raised had any impact on, or affected the proposal to extinguish part of the Public Footpath No.1 Holmes Chapel.

The Committee considered the application and concluded that the proposed extinguishment met the legal tests for the making and confirming of an Extinguishment Order.

The Committee unanimously

RESOLVED: That

- 1 An Order be made under section 118 of the Highways Act 1980 to extinguish part of Public Footpath No. 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 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 in the said Acts.
- 3 In the event of objections to the Order be received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

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

The Committee considered a report which detailed an application from Strutt and Parker on behalf of Cheshire Farm Services requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No. 4 in the parish of Ridley.

In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as Planning Authority, could 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 applied for to convert a barn into two residential properties - planning reference 18/3879N, which would result in the obstruction of the Public Footpath No.4 Ridley by one of the properties.

The existing alignment of Public Footpath No.4 Ridley was currently obstructed by the barn to be converted and the conversion would not be able to go ahead unless the footpath was diverted to preserve the right of way for the public from Whitchurch Road to the fields lying to the east of the planned development. At present there was an alternative route to enable users to pass the barn along its northern side.

The proposed diversion route would move the footpath so that it ran around the western and northern perimeters of the development and on into the pasture fields behind – points D-E-F-C on Plan No.TCPA/054.

The Committee noted the comments received from the Peak and Northern Footpath Society and the Public Rights of Way officer's response to these.

The Committee considered the application and concluded that it was necessary to divert part of Public Footpath No.4 to allow for development to be carried out if planning permission was granted. It was considered that the legal tests for the making and confirming of a Diversion Order under section 257 of the Town and Country Planning Act 1990 were satisfied.

The Committee by majority

RESOLVED: That

- 1 An Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.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 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.
- 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.

**36 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:
PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.4 (PART) IN THE
PARISH OF CHOLMONDESTON**

The Committee considered a report which detailed an application from Mrs McDonald of The Byre, Daisy Bank Farm, Cholmondeston requesting the Council to make an Order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.4 in the parish of Cholmondeston.

In accordance with Section 257 of the Town and Country Planning Act 1990, the Borough Council, as Planning Authority, could make an Order diverting a public footpath if it was satisfied 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 a single storey side extension, garage conversion and internal alterations - planning reference 18/1947N.

The existing alignment of Public Footpath No.4 Cholmondeston would be directly affected by the development and infrastructure within the planning consent, resulting in partial obstruction of the footpath by the new extension and associated parking arrangements.

The length of the footpath to be diverted commenced at its junction with a stone surfaced driveway and then ran through the back gardens of the properties and on into neighbouring fields – points A-B-C-D on Plan TCPA/053. The definitive line was currently obstructed by a number of substantial garden fences, a pergola and established hedges and shrubs between points B-C. There was currently a permissive route on the site which had been used and accepted by the public and which continued alongside the gardens of the property and entered the field between points C and E on the plan TCPA/053.

The proposed diversion would move the footpath away from the property; points A-E-D on Plan No.TCPA/053, and allow users to walk directly across the adjacent field instead of taking the definitive route which was a less direct route.

The Committee considered the application and concluded that it was necessary to diver part of Public Footpath No.4 to allow for the development approved in planning permission 18/1947N. 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.
- 37 **INFORMATIVE REPORT - TOWN & COUNTRY PLANNING ACT SECTION 257: PUBLIC PATH DIVERSION ORDER, MOTTRAM ST ANDREW FP'S 8 & 9(PARTS) ABANDONED ORDER**

The Committee received an information report on the abandonment of an Order to divert parts of Public Footpaths Nos.8 and 9 in the parish of Mottram St Andrew.

The Committee, at its meeting on 5 December 2016, had resolved that an Order be made to divert parts of Public Footpaths Nos. 8 and 9 in the parish of Mottram St Andrew as it was necessary to do so to allow for an extension to Mottram Hall Hotel, an associated diversion of the existing internal road and new service hub and delivery yard in line planning approval 16/2236M.

Following a period of uncertainty as to when the development works would commence and the new route constructed it had been confirmed that there had been some restructuring within the parent company of the hotel and the that the development in accordance with the approved planning permission would not now go ahead.

As the purpose of the diversion under section 257 of the Town and Country Planning Act 1990 was to enable development to be carried out, where the approved development was not undertaken the diversion was no longer necessary and therefore could not be confirmed.

AGREED:

That the report be noted.

38 INFORMATIVE REPORT - HIGHWAYS ACT 1980 PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.16 (PART) IN THE PARISH OF WILMSLOW

The Committee received an information report on the remaking of the Public Order for part of Public Footpath No. 16 Wilmslow to reflect a change in the relevant administrative boundary.

The Committee, at its meeting on 11 June 2018, had resolved that an Order be made to divert part of Public Footpath No.16 in the parish of Wilmslow. The Order was made on 2 August 2018 and referred to the diversion being in the parish of Wilmslow. However since the time the Definitive Map and Statement was produced the administrative boundary for the footpath had changed and a new Order was required to be made to show the correct parish boundary, which placed Public Footpath No.16 in the parish of Styal. Statutory consultations would be repeated once the new Order had been made.

AGREED: That

1 the report be noted; and

2 the existing Order be abandoned and a new Order be made.

39 INFORMATIVE REPORT - HIGHWAYS ACT 1980 PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.12 (PART) IN THE PARISH OF LOWER WITHINGTON

The Committee received an information report on the remaking of a Public Path Order for part of Public Footpath No.12 Lower Withington to reflect a change in the alignment of the diverted path.

The Committee, at its meeting on 12 March 2018, had resolved that an Order be made to divert part of Public Footpath No. 12 Lower Withington. Following the formal consultation on the Order, 3 objections had been received to the alignment of the path between points A-E-F-G, as shown on Order Plan No.HA/120/A.

In order to resolve the objections the applicant had agreed to change the alignment of the path to the other side of the hedge - revised alignment of the path detailed on Plan No.HA/120/B between points A-E-F. Statutory consultations would be repeated once the new Order had been made.

AGREED: That

1 that the report be noted, and

2 the existing Order be abandoned and a new Order be made.

40 INFORMATIVE REPORT - TOWN & COUNTRY PLANNING ACT S.257, PUBLIC PATH DIVERSION ORDER, PEOVER SUPERIOR FOOTPATH NO. 4 (PART)

The Committee received an information report on a change to the planning reference against which the Public Path Order for the diversion of part of Public Footpath No.4 Peover Superior would be made and confirmed.

The Committee, at its meeting on 10 September 2018, had considered an application to divert part of Public Footpath No.4 Peover Superior which had been 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 approved planning application 16/2695M and resolved that an Order be made to divert the footpath to enable the construction of the barn to be completed.

Subsequently, as well as choosing to divert part of Public Footpath No.4, the applicant had submitted a new planning application to seek permission to allow the completion of the barn in its existing position in order to

comply with the planning enforcement requirements. As a result of this, the diversion Order would now be made and confirmed in reference to the new planning application 18/5249M should the planning permission be granted.

AGREED:

That the report be noted.

41 UNCONTESTED PUBLIC PATH ORDERS: CHANGE TO SCHEME OF DELEGATION

The Committee received an information report on the change to the scheme of delegation for the determination of uncontested Public Path Orders applications.

The Constitution Committee considered the proposal to amend the scheme of delegation, at its meeting on 20 September 2018, and 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.”*

The recommendation was considered by full Council on 18 October 2018 and it was 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.”*

The Constitution has been amended accordingly and the Local Scheme of Delegation under the cascade principle enabled the Public Rights of Way Manager to make the delegated decision. The Public Rights of Way Committee would be informed of decisions taken under the delegation.

AGREED:

That the report be noted.

The meeting commenced at 2.00 pm and concluded at 3.31 pm

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

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Public Rights of Way Committee

Date of Meeting: 11th March 2019

Report Title: Wildlife & Countryside Act 1981 – Part III, Section 53.
Application no. CN/7/25: Application for the Addition of a Public Footpath connecting Public Footpath No.14 and Public Footpath No.15 in the Parish of Bunbury.

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines an application made by Bunbury Parish Council to amend the Definitive Map and Statement by the addition of a Public Footpath. The footpath which is the subject of this application crosses a site that has received planning consent for development. As it was deemed necessary to stop up the footpath to enable the development to be carried out, an Order was made under section 257 of the Town and Country Planning Act 1990. The Order has now been confirmed; therefore the footpath has been legally extinguished; however Members are still required to make a decision on the Parish Council's application.

2. Recommendation/s

- 2.1. The application to modify the Definitive Map and Statement to record public footpath rights between points A-B as shown on plan number WCA/017 be refused on the grounds that the footpath has been extinguished by legal Order.

3. Reasons for Recommendation/s

- 3.1. The footpath which is the subject of the application has been extinguished in a legal Order made under The Town and Country Planning Act 1990 section 257. This negates the need to investigate whether or not public footpath rights exist. Therefore it is recommended that the application is refused.

4. Other Options Considered

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

5. Background

- 5.1. In August 2006 Bunbury Parish Council's Footpath Officer made an application under section 53 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of a Public Footpath. The route applied for began at a point on Footpath No.14 Bunbury, approximately 61 metres from its northern end, to the west of Bunbury Lane. The route then ran diagonally across a field in a south westerly direction to join Footpath no.15 Bunbury in the corner of the field. The total length of the route was approximately 164 metres. The route is shown between points A-B on Plan No. WCA/017. The application was supported by 14 user evidence forms.
- 5.2. Due to a backlog of Definitive Map Modification Order (DMMO) applications, the application was not investigated straight away but was registered and placed on a waiting list of outstanding applications. The application remained on the waiting list, which is reviewed annually in line with the published Statement of Priorities. In 2014 Officers became aware of a planning application which would affect Footpath no.14 and 15 Bunbury and also the unrecorded footpath that was the subject of the undetermined DMMO application.
- 5.3. Following meetings and discussions between Officers, the landowners and the developer two applications were submitted in 2016 under the Town and Country Planning Act 1990 section 257. One application was for the diversion of Footpath no.14 Bunbury and the other was for the extinguishment of the unrecorded footpath. With the diversion of Footpath no.14 and the retention of the existing route of Footpath no.15 it was considered there would be a suitable route through the site. The Public Rights of Way Committee gave approval for both Orders to be made at their meeting on 12th September 2016.
- 5.4. The Cheshire East Borough Council (Unrecorded Footpath, Land off Oak Gardens, Parish of Bunbury) Public Path Extinguishment Order 2017 was made on 29th June 2017. After receiving objections and being referred to The Planning Inspectorate for determination the Order was subsequently confirmed on 23rd October 2018. A copy of the confirmed Order is attached as Appendix 1.
- 5.5. Normally Officers would investigate the DMMO application to determine whether or not the evidence submitted is sufficient for an Order to be made to modify the Definitive Map. However in this case the Extinguishment Order has

now been confirmed so this negates the need to investigate whether or not the public rights exist.

6. Implications of the Recommendations

6.1. Legal Implications

6.1.1. 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.

6.1.2. 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.

6.2. Finance Implications

6.2.1. 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.

6.3. Policy Implications

6.3.1. There are no direct policy implications.

6.4. Equality Implications

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

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. Councillor Chris Green, Bunbury Ward has been consulted, no comments have been received.

8. Consultation & Engagement

8.1. Bunbury Parish Council have been consulted and have responded stating they have no comments to make.

9. Access to Information

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

10. Contact Information

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

Name: Jennifer Miller

Job Title: Definitive Map Officer

Email: jennifer.miller@cheshireeast.gov.uk

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

**THE CHESHIRE EAST BOROUGH COUNCIL
(UNRECORDED FOOTPATH, LAND OFF OAK GARDENS, PARISH OF BUNBURY)
PUBLIC PATH EXTINGUISHMENT 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 extinguish the footpath 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: 16/2010N

Construction of 15 no. residential dwellings and associated works on land off Oak Gardens, Bunbury, CW6 9QN.

BY THIS ORDER:

1. The Unrecorded Footpath over the land situated in the Parish of Bunbury 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. The extinguishment of the footpath shall have effect on the date of confirmation of this order.
3. Where immediately before the date on which the footpath is extinguished 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 (Unrecorded Footpath, Land off Oak Gardens, Parish of Bunbury) Public Path Extinguishment Order 2017".

THE COMMON SEAL OF
CHESHIRE EAST BOROUGH COUNCIL
was hereunto affixed this
29th June Two Thousand
and Seventeen in the presence of:-



Patricia Burns

Authorised Signatory

The foregoing order is hereby confirmed

Jean Russell 23 OCT 2018

An Inspector appointed by The Secretary of
State for Environment, Food and
Rural Affairs

OFFICIAL

SCHEDULE

PART 1

Description of site of existing Path or Way to be Extinguished

Unrecorded Footpath, Land off Oak Gardens Bunbury

That length of Unrecorded Footpath on land off Oak Gardens (UX1896) in the Parish of Bunbury commencing at its junction with public footpath no.14 Bunbury at O.S. grid reference SJ 5629 5753 (point A on Plan No. TCPA/031B) and running in a generally west south westerly direction for a distance of approximately 164 metres to O.S. grid reference SJ 5614 5746 (point B on Plan No. TCPA/031B) and its junction with public footpath no. 15 Bunbury as indicated by a solid black line between the points marked A- B on Plan No. TCPA/031B.

356300

356300

356200

356200

356100

356100

Key

- Unaffected rights of way
- Path to be stopped up

Oak Gardens

Bunbury FP14

Bunbury FP15

Spurstow FP18

A

B



1:1,000

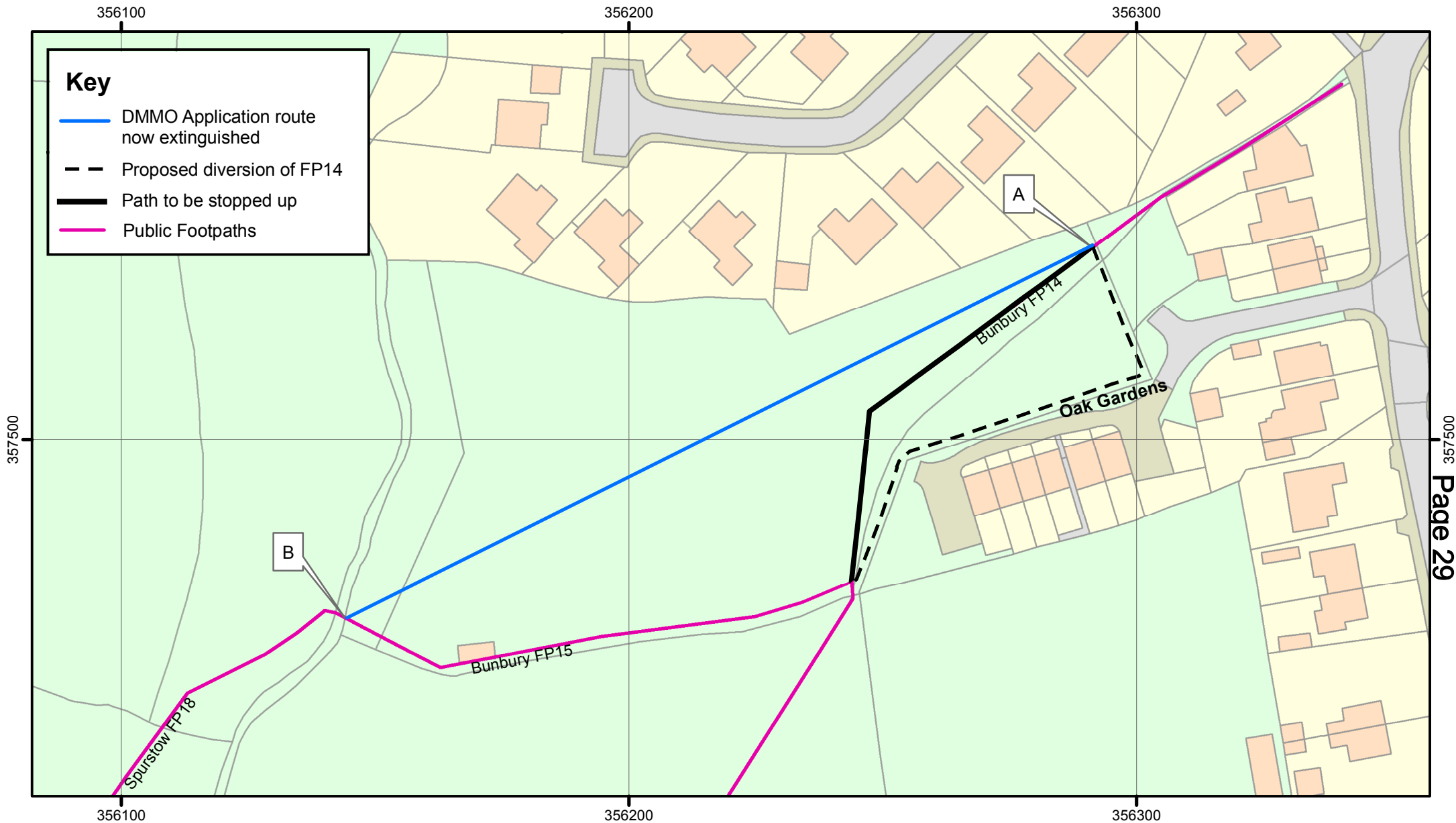
TOWN & COUNTRY PLANNING ACT 1990 S257

THE CHESHIRE EAST BOROUGH COUNCIL (UNRECORDED FOOTPATH, LAND OFF OAK GARDENS, PARISH OF BUNBURY) PUBLIC PATH EXTINGUISHMENT ORDER 2017

Plan No.
TCPA/031B







1:1,000

Wildlife & Countryside Act 1981 section 53
Application no. CN/7/25 Addition of a Footpath connecting
FP14 and FP15 (Land off Oak Gardens) Parish of Bunbury

Plan No.
WCA/017



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Public Rights of Way Committee

Date of Meeting: 11 March 2019

Report Title: Highways Act 1980 s119 Application for the Diversion of Public Footpath No. 4 (part), Parish of Poole

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 Poole. 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. 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. 4 in the Parish of Poole by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/139 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 public for the reasons set out in section 5 below.
- 3.2. Section 119 of the Act also stipulates that a public path diversion order shall not alter the point of termination of the path if that point is not on a highway, or, where it is on a highway, otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
- 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 this section of the report.
- 3.4. 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.
- 3.5. In considering whether or not to confirm the Order, in addition to the matters discussed at paragraphs 3.1 and 3.2 above, the Secretary of State where the Order is opposed, or the Council where the Order is unopposed, must be satisfied that the path or way is not substantially less convenient as a consequence of the diversion having regard to the effect:
- The diversion would have on the public enjoyment of the path 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.
- 3.6. In confirming an Order the Secretary of State where the Order is opposed, or the Council where the Order is unopposed, will also have regard to any

material provision of the Rights of Way improvement Plan prepared by the local highway authority and the effect of the path or way on the needs of agriculture, forestry and biodiversity.

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 and Mrs Oglesby of Poole Hall in Nantwich requesting that the Council make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 4 in the Parish of Poole.
- 5.2. Public Footpath No. 4 Poole commences at its junction with Poole Old Hall Lane and then continues in a generally southerly direction for approximately 800 metres to its junction with Cinder Lane. The section of path to be diverted is shown by a solid black line on Plan No. HA/139 between points A-B. The proposed diversion is illustrated on the same plan with a black dashed line between points A-C-B.
- 5.3. The land over which the length of Public Footpath No. 4 Poole to be diverted and the proposed diversion belongs wholly to the applicants.
- 5.4. The length of Public Footpath No. 4 Poole to be diverted commences at Point A on Plan No. HA/139 and continues across a field that is used as beef cattle grazing for approximately 314 metres to Point B on Plan No. HA/139. At Point A there is a stile to enter the field and field surface is long grass which is grazed by cattle.
- 5.5. The applicants are applying for the diversion so that the interaction of users and cattle can be controlled. Currently the applicants find that users do not like walking through a field of cattle and tend to walk up the private driveway, close to the front of the house, and continue along an estate track to meet point A. The applicants have installed clear signage at the southern end of the footpath and have challenged users using this route multiple times but still find it happens.
- 5.6. The proposed diversion will run between Points A-C-B on Plan No. HA/139. It will commence at Point A where a new kissing gate will be installed and then continue in a generally south south westerly direction for approximately 308 metres to Point C (on Plan No. HA/139). It will then continue in a generally east south easterly direction for approximately 146 metres to Point B (on Plan No. HA/139) The total length of the diversion will be 454 metres and the full length will be enclosed with Cheshire railings at

a width of 2.5 metres; where there are any large trees, the width of 2.5 metres will be maintained.

- 5.7. By enclosing the diversion route it will eliminate any interaction between cattle and users in this field, and will hopefully reduce any trespassing on the applicants' land. The applicants are also hoping it will reduce any stress to the cattle that users might inadvertently currently cause. The proposed diversion route from Points C-B takes users along the top of the valley bank and gives improved views of the listed bridge and the countryside, and despite the diversion being further from Poole Hall, views of the property are still maintained.
- 5.8. The proposal is in the interests of the applicants due to reasons of land management and privacy and security of the property. Users will no longer have to interact with cattle in the field and will be encouraged to walk along the public right of way instead of trespassing on the grounds of Poole Hall.

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

8. Consultation & Engagement

8.1. Worleston & District 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. The Open Spaces Society was consulted and provided the following comments:

We are concerned about the connection from the end of the recorded footpath, south along Cinder Lane to Wettenhall Road. So far as we can tell, none of Cinder Lane is on the list of streets, and even if part of it is, where is the limit of public maintenance — does it include the junction with footpath 4? If it does not, then we are unable to accept any diversion which fails to address this definitive map anomaly.

The Public Rights of Way team responded to this point and informed the Open Spaces Society that this connection is currently on our anomalies list for investigation in the future. The terminus of the path is not within the scope of the current diversion application and this matter is outside the control of the applicants.

Secondly, why is it necessary to maintain the artificial route from C, east to B, then descending to the bridge over the brook? Why not a more natural route from C direct to the bridge?

In response, it was explained that the footpath is not being diverted from the bridge to Point C as the landowners use the land for keeping livestock and this would compromise another of their fields and potentially increase the chance of users mixing with the livestock. That alignment would also involve numerous rabbit holes and burrows therefore making it an unpleasant route and potentially less safe for walkers. Walking this way would also be across a slope rather than straight up it and walking between B and C is a much more pleasant route with further-reaching views. The Open Spaces society responded to this comment with the following:

The bank is not steeper, it is the same height over a very much longer length, it is therefore much shallower. There are no rabbit holes or burrows on the already extant path! If the Applicant wants to engage in an adult dialogue based on the facts please let us know.

The final point that the Open Spaces Society made is:

Finally the intention to fence off with 'Cheshire railings' suggests that it will be impossible to maintain the path except with hand tools — and this will become yet another right of way which the council must maintain, and will fail to maintain for want of adequate resources. How long before it becomes impenetrable?

The applicants were approached to clarify how this area will be maintained and said that “*The maintenance of the path will match the rest of the private estate walk which is currently mown using a ride on mower/brushcutter. It won't be crown green standard, but is certainly a pleasant, easy walking surface. Better than the undulation caused by the grazing beef cattle in winter months.*”

The Open Spaces Society replied with the following:

How does the Applicant expect to access the enclosed path with his ride on mower/brush cutter? Can he turn the machine in the path's width? If the current application is allowed to succeed cattle placing their heads over the fence will obstruct the path and walkers will not be able to detour as they can in an open field.

The Council are happy that the footpath will be maintained to an acceptable standard. The issue raised with cows placing their heads over the fence is not a valid objection as this is not a permanent obstruction. We also ask for a width of 2.5 metres on an enclosed path in order to allow for overgrowth; there will be plenty of space for users to pass if a cow decided to place its head over the fence.

- 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. 243D/575 relating to this report can be inspected by contacting the report writer.

10. Contact Information

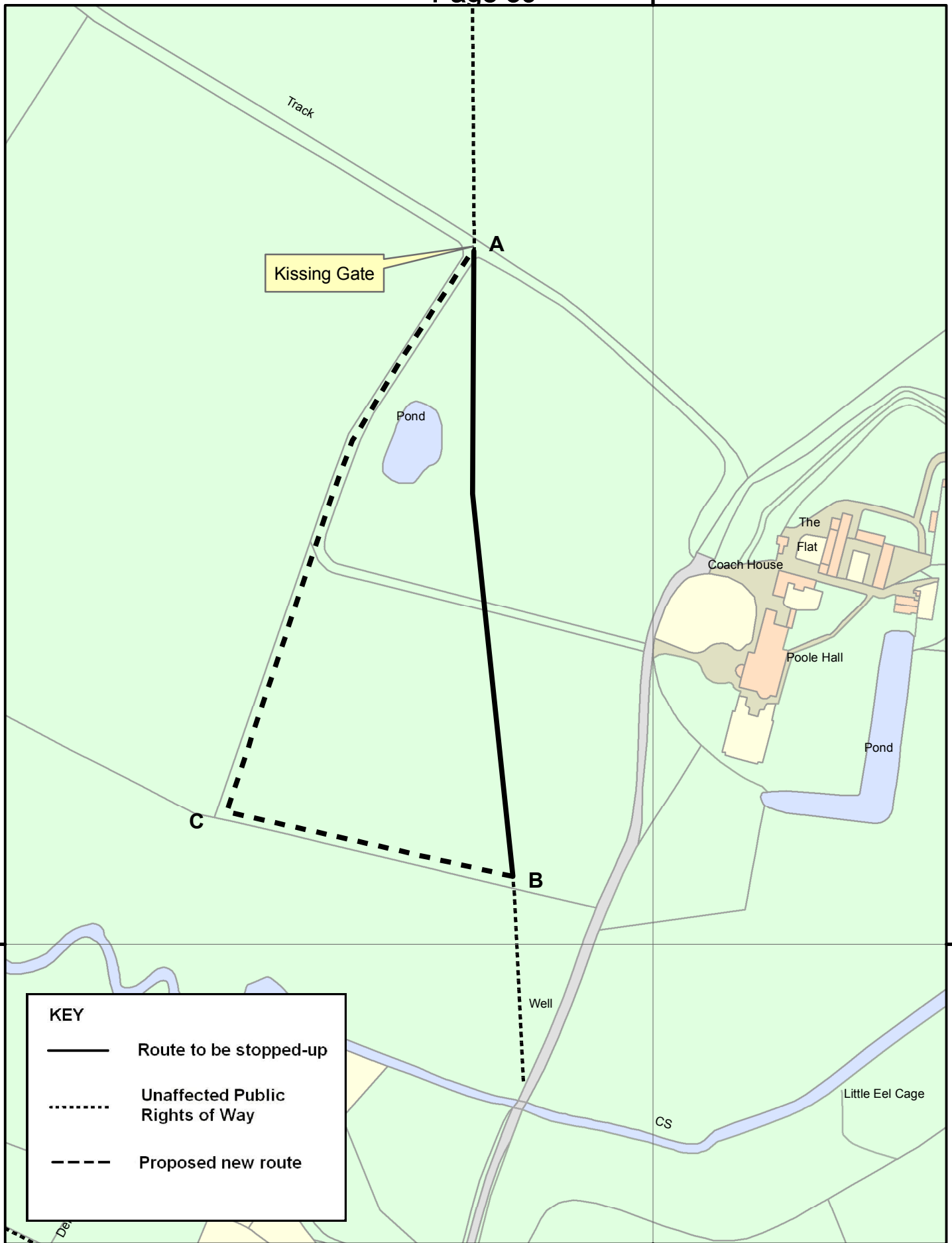
- 10.1. Any questions relating to this report should be directed to the following officer:

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



Highways Act 1980 s119
Proposed Diversion Poole FP4

Plan No. HA/139

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

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Public Rights of Way Committee

Date of Meeting: 11 March 2019

Report Title: Town and Country Planning Act 1990 s 257 Application for the Extinguishment of Public Footpath No. 14 (part), Parish of Sandbach

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1. The report outlines the investigation to extinguish part of Public Footpath No. 14 in the Parish of Sandbach. 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 by the Public Rights of Way team as an application has been submitted by Persimmon Homes (North West) Ltd., 30 – 34 Crofts Bank Road, Urmston, Manchester. The application has been made following the granting of outline planning consent and subsequent consent for reserved matters relating to the first phase of a residential development:

Outline Planning Application: 12/4874C

Land off Hawthorne Drive, Sandbach, Cheshire, CW11 4JH

'Outline application for residential development, comprising 50 homes, including 15 affordable homes to include an area of public open space and a children's play area.'

Permission granted: 20th November 2013

Reserved Matters Application (first development phase): 13/5239C

Reserved Matters following Outline Approval (12/4874C) for residential development, comprising 50 homes, including 15 affordable homes to include an area of public open space and a children's play area (accompanied by an Environmental Statement).

Permission granted: 10th July 2015.

For information, the second phase of this development is detailed within the following planning application:

Reserved Matters Application (second development phase): 13/5242C

Residential development comprising 138 dwellings, access and associated works (accompanied by an Environmental Statement).

Permission granted: 13th October 2017

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 extinguish 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. That an Order be made under Section 257 of the Town and Country Planning Act 1990 to extinguish part of Public Footpath No. 14 Sandbach, between points A and B, as illustrated on Plan No. TCPA/055 on the grounds that the Borough Council is satisfied that it is necessary to do so to allow development to take place.
- 2.2. Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 2.3. In the event of objections to the Order being received, 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:

“Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out in accordance with planning permission granted under Part 3 “

- 3.2 It is considered that it is necessary to extinguish part of Public Footpath No. 14 in the Parish of Sandbach between points A and B as illustrated on Plan No. TCPA/055 to allow for the residential development as detailed within planning references: 12/4874C and 13/5239C. It is considered that the legal test for making and confirming of an Extinguishment Order under section 257 of the Town and Country Planning Act 1990 are satisfied.
- 3.3 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.
- 3.4 Where there are no outstanding objections, it is for the Council to confirm the Order.
- 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 Persimmon Homes (North West) Ltd, requesting the Council make an order under section 257 of the Town and Country Planning Act 1990 to extinguish part of Public Footpath no.14 in the Parish of Sandbach as shown between points A and B on Plan No. TCPA/055.
- 5.2. The section of Public Footpath No.14 Sandbach that will be affected by the proposed residential development is shown by a solid black line on Plan No. TCPA/055 running between points A and B. The section commences at O.S. grid reference SJ 7668 6080 (point A on plan No. TCPA/055) and runs in a generally north easterly direction for a distance of approximately 63 metres to O.S. grid reference SJ 7672 6085 (point B on plan No. TCPA/055). The line of the footpath, which ran through pasture fields, will be obstructed by a house and run across gardens and parking spaces.
- 5.3. The Planning permissions for the residential development have been granted. The application for outline permission is cited as Planning Application Ref: 12/4874C, granted on 20th November 2013, and the application for permission of reserved matter relating to this outline application is cited as Planning Application Ref: 13/5239C, granted on 10th July 2015. Permission for both applications has been granted to Persimmon Homes (North West) Ltd, to construct a residential

development, comprising of 50 homes and including 15 affordable homes to include an area of public open space and a children's play area. This forms the first phase of the development. It is considered necessary to extinguish part of Public Footpath No. 14 Sandbach to allow for the residential development that would otherwise obstruct the footpath, to go ahead as detailed within these planning applications.

- 5.4. For information, permission for a second phase has also been granted for development of a further 138 dwellings (Planning Application Ref: 15/5242C) but this will not affect the current alignment of Public Footpath No. 14 Sandbach.
- 5.5. If an Order is made extinguishing the section of footpath affected by the proposed development (between points A and B on Plan No. TCPA/055), it is recognised that this will result in two cul-de-sac paths running between Hawthorn Drive and point A, and between point B to Mill Lane, such that the full length will no longer be legally available for public use. However, the two paths will be legally connected again in due course by a section of the new estate road, Larch Drive, once it is formally adopted by the Council.

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. 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

Sandbach Heath and East: Councillor Sam Corcoran was consulted and opposes the application to extinguish the footpath

His objection is on the basis that this course of action is a denigration of the existing provisions and benefits provided by this footpath.

He was under the impression that when the Persimmon development was proposed, he thought that the footpath route would have to be resolved before any plans were approved. However, work has already started on the site and to date; he received several complaints from residents about restricted access on Public Footpath No14 Sandbach.

He is of the opinion that this proposal seems as if it is being treated as a fait accompli by Persimmon.

He stated that if we are to tackle climate change and have truly sustainable development then we need to have cycling and walking at the heart of development – not as an afterthought.

There is a planning condition that the developer offers an alternative route to bypass the closed path. It appears that this condition is being waived without any benefit to the community.

The developers must show some benefit to the community if the planning condition is to be waived and the footpath extinguished.

It is acknowledged that the development would result in a loss to the community of a valuable rural footpath but within the scope of the TCPA legislation for a footpath extinguishment, this aspect cannot be considered. However, eventually, a legal right of way would exist for the public between Hawthorn Drive and Mill Lane on a footway alongside a new estate road.

The impact on the footpath by the development and any mitigation action taken to include the footpath within the development cannot be considered against the current proposal to extinguish a section of this footpath to enable the development to go ahead. Such matters were for consideration at the time the planning application was being determined. The Public Rights of Way team submitted holding objections as consultees of the planning department until a proposal was made to deal with the affected section of Public Footpath No.14 Sandbach.

The requirements of the planning permission cannot be considered within the scope of the extinguishment procedure as both the planning and extinguishment procedures are legally separate and one cannot influence the other.

The Developer has applied to the Council under Section 257 of the Town and Country Planning Act 1990 for the footpath to be extinguished between points A and B.

The test within Section 257 of the Town and Country Planning Act 1990 is whether the Council is satisfied that it is necessary to authorise the stopping up or diversion of any footpath, bridleway or restricted byway to enable development to be carried out in accordance with planning permission granted.

8. Consultation & Engagement

- 8.1. The consultation period ends on Friday 8th March 2019 and any comments received once this report has been written, will be presented verbally at the Committee meeting. At the time of writing, the following comments had been received.
- 8.2. Sandbach Town Council has been consulted and registered objection stating:

'Members object to sections of footpath in Sandbach being swallowed up by the development and would prefer to see the footpath diverted. Members would agree to a diversion of the footpath'.

The decision to create a route for the section of Sandbach Footpath 14 affected by this development was a matter for resolution during the planning process. As such, the Public Rights of Way team were consulted during that process but, given the outline plan presented at that time, submitted holding objections until the developer sought to extinguish the footpath section since there was no option to divert it within the development, to a new alignment. This situation did not change and as a

result, the planning consent now demands that the developer seeks to extinguish the footpath section as detailed within this report.

It is recognised that much of the alignment of this footpath will be lost as it will be absorbed within the higher rights of the new estate road, Larch Drive, once the road is adopted as a legal Highway. As a result, despite the fact that the route from Hawthorn Drive to Mill Lane will change from a rural route to an urban footpath, eventually, a legal right of way between the two highways will be provided for the public.

- 8.3 The user groups have been consulted. Other than the the Open Spaces Society (OSS), no objections have been received. The OSS have registered objection on the basis that:

a) the developer failed to use the provisions within the Town and Country Planning Act to address issues relating to Public Footpath No.14 Sandbach that were raised in two separate objections placed by the Public Rights of Way team when this team were consulted on the initial planning application.

It was explained that the two objections from the Public Rights of Way team were holding objections placed against the development until a proposal was made to resolve the issues relating to the footpath that would enable the development to go ahead. The extinguishment that is proposed, resolves the issues by removing the section of footpath that would otherwise be unlawfully obstructed by the development.

b) creating two cul de sac paths must be illegal given that the route will only become legal again once the estate road is adopted.

It is not illegal to extinguish a section of footpath to leave two cul de sac paths when the reason for doing so is that it is necessary for the development to go ahead. This is not an illegal situation.

c) by superimposing the estate road onto the public footpath from point B to the boundary of the development site, fails to comply with the DEFRA guidelines.

The DEFRA guidelines relating to placing footpaths on roads, states the following:

7.8 In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose where possible and preference

should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic.

Whilst the Council endeavours to comply with the best practice as set out within these guidelines they are not relevant in this instance since the footpath section between point B to the boundary of the development site is not being diverted onto a road.

- 8.4 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.
- 8.5 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. 262E/574 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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KEY

-  Route to be extinguished
-  Route along pavement of new estate road
-  Unaffected Public Rights of Way

Gardens**House****B****A****Sandbach FP14****Sandbach FP22****Hawthorn Drive****HEATH ROAD****Heath Road**

1:1,250

Town and Country Planning Act 1990 s257
 The Cheshire East Borough Council
 (Footpath No 14 (part) Parish of Sandbach)
 Public Path Diversion Order 2019

Plan No.
 TCPA/055



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