

# Public Rights of Way Committee

## Agenda

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<b>Date:</b>	<b>Monday 9th September 2019</b>
<b>Time:</b>	<b>2.00 pm</b>
<b>Venue:</b>	<b>Committee Suite 1,2 &amp; 3, Westfields, Middlewich Road, Sandbach CW11 1HZ</b>

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

It should be noted that Part 1 items of Cheshire East Council decision 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 5 - 16)

To approve the minutes of the meeting held on 10 June 2019.

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

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

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

**Contact:** Rachel Graves

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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 and Countryside Act 1981- Part III, Section 53: Application No.5/235 for the Addition of a Public Footpath between Meadow Lane and Dryhurst Lane, in Disley** (Pages 17 - 32)

To consider the application for the addition of a Public Footpath between Meadow Lane and Dryhurst Lane in Disley.

6. **Wildlife and Countryside Act 1981 - Part III, Section 53: Application No. CN/7/30 Application to claim public footpath rights forming a circular route at 'Witters Field' linking Public Footpath. No. 2 Wistaston at two separate points** (Pages 33 - 40)

To consider the application to claim public footpath rights forming a circular route at Witters Field linking Public Footpath No.2 Wistaston.

7. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 45 (part), Parish of Mobberley** (Pages 41 - 48)

To consider the application to divert part of Public Footpath No.45 in the parish of Mobberley.

8. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath Nos. 12, 13, 24 and 26 (parts), Parish of Barthomley** (Pages 49 - 58)

To consider the application for diversions of parts of Public Footpaths No.12, 13, 24 and 26 in the parish of Barthomley.

9. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 13 (part), Parish of Pott Shrigley** (Pages 59 - 66)

To consider the application to diver part of Public Footpath No.13 in the parish of Pott Shrigley.

10. **Informative Report: Uncontested Public Path Orders Determined under Delegated Decision** (Pages 67 - 70)

To note the Public Path Orders determined under Delegated Decision.

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**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Public Rights of Way Committee**  
held on Monday, 10th June, 2019 at Committee Suite 1,2 & 3, Westfields,  
Middlewich Road, Sandbach CW11 1HZ

**PRESENT**

Councillor S Pochin (Chairman)

Councillors S Akers Smith, A Critchley (substitute for Cllr B Puddicombe) ,  
H Faddes, I Macfarlane and L Wardlaw

**Officers in attendance**

Genni Butler, Acting Public Rights of Way Manager  
Jennifer Miller, Definitive Map Officer  
Sarah Fraser, Public Path Orders Officer  
Laura Allenet, Public Path Orders Officer  
Andrew Poynton, Planning and Highways Lawyer  
Rachel Graves, Democratic Services Officer

**1 APOLOGIES FOR ABSENCE**

Apologies were received from Councillors B Puddicombe and D Stockton.

**2 DECLARATIONS OF INTEREST**

Councillor S Pochin declared that she was the local ward member for Item 8 – Application for the Extinguishment of Public Footpath No.20 in the parish of Bunbury, and for Item 9 – Proposal for the Diversion of Public Footpath No.6 (part) in the parish of Stoke, and stated that she had not taken part in any discussions on these applications.

Councillor Pochin also declared in relation to Item 10 – Proposed Diversion of Unrecorded Footpath off St Anne's Lane, Nantwich, that she knew the developer and that she had not discussed this application with them.

Councillor L Wardlaw declared in relation to Item 10 - Proposed Diversion of Unrecorded Footpath off St Anne's Lane, Nantwich, that she had, as Portfolio Holder and Deputy Leader, approved the deed of dedication creating the public footpath link and would leave the meeting during consideration of this item.

Councillor S Akers Smith declared that she had been present when Congleton Town Council had discussed and approved to support Item 6 – Application for the Addition of a Public Footpath between Newcastle Road to Padgbury Lane, Congleton and that she would not take part in the consideration of this application.

**3 MINUTES OF PREVIOUS MEETING**

**RESOLVED:**

That the minutes of the meeting held on 11 March 2019 be confirmed as a correct record.

**4 PUBLIC SPEAKING TIME/OPEN SESSION**

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

**5 TERMS OF REFERENCE**

**RESOLVED:**

That the Terms of Reference of the Public Rights of Way Committee be noted.

**6 WILDLIFE AND COUNTRYSIDE ACT 1981- PART III, SECTION 53: APPLICATION NO.CO/8/40, FOR THE ADDITION OF A PUBLIC FOOTPATH BETWEEN NEWCASTLE ROAD (A34) TO PADGBURY LANE, IN THE TOWN OF CONGLETON.**

The Committee considered a report which detailed an investigation into an application for the addition of a Public Footpath between Newcastle Road (A34) and Padgbury Lane in the town of Congleton 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(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 whether to make a Definitive Map Modification Order or not.

One such event under section 53 (3)(c)(i) was 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 54A, a byway open to all traffic.”*

The evidence could consist of documentary/historical evidence or user evidence or a mixture of both. Where the evidence in support was user evidence, section 31(1) of 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.”*

The application had been submitted by Mr Alan Wrench on behalf of the Congleton Group of The Ramblers' Association to amend the Definitive Map and Statement by the additional of a footpath between Newcastle Road and Padgbury Lane, in the town of Congleton. The application was made on the basis of user evidence from seven witnesses; with a further two witnesses later submitting evidence.

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

In addition to the evaluation of the user evidence, an investigation had been carried out into historical documentation to establish if the claimed route had an historical origin. It was found that the claimed route was shown on Commercial County Maps of 1819, 1830 and 1831, the Congleton Tithe Map of 1845 and Ordnance Survey maps.

Nine people had claimed use of the route and all had completed standard user evidence forms. The relevant 20 year period was 1994 to 2014, when the application was made. All the users claimed use of the route on foot, with eight out of the nine users stating they had used the claimed route in excess of the 20 year period. The route had been used for a variety of recreational purposes such as dog walking, visiting friends and walks organised by Congleton Ramblers. The witnesses stated that they had not been challenged and that there was no evidence of any signs at any time along the claimed route.

The claimed footpath was on land which was unregistered with the Land Registry, apart from a very small section at the beginning of the route at Newcastle Road, which had a Caution against first registration – this being made by the owners of March House to protect their right of access to their property.

Notice of the application had been placed at each end of the claimed path and the five properties which border the path had been consulted regarding the application. The owners of Marsh House stated that they believed the route was a footpath, known as Cinder Lane, and supported the application. Another landowner at the Padgbury Lane end regarded the route as a footpath and had no objections to it being added to the Definitive Map.

The report concluded that on the balance of probabilities the user evidence supported the allegation that public footpath rights subsisted

along the claimed route and it was considered that the requirements of Section 53(3)(c)(i) had been met.

The Committee considered the user evidence submitted and the Definitive Map Officer's conclusion and considered that there was sufficient user evidence to support the existence of footpath rights. The Committee considered that, on the balance of probabilities, the requirements of Section 53(3)(c)(i) had been met and that the Definitive Map and Statement should be modified to add the claimed route as a Public Footpath.

The Committee unanimously

**RESOLVED:** That

- 1 an Order be made under Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding as a Public Footpath the route shown between points A-B on Plan No.WCA/018.
  - 2 Public Notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Act.
  - 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.
- 7 **WILDLIFE AND COUNTRYSIDE ACT 1981- PART III, SECTION 53: APPLICATION NO. MA/5/252 - APPLICATION FOR THE DELETION OF FOOTPATH NOS. 15 (PART) AND 23 BETWEEN CHARLES HEAD FARM AND NEIGHBOURWAY FARM PARISHES OF RAINOW AND KETTLESHULME AND APPLICATION NO. MA/5/174 - APPLICATION FOR THE DELETION OF FOOTPATH NO. 23 PARISH OF KETTLESHULME**

The Committee considered a report which detailed an application to amend the Definitive Map and Statement by deleting Public Footpath Nos. 15 (part) and 23 between Charles Head Farm and Neighbourway Farm in the two parishes of Rainow and Kettleshulme.

Under Section 53(2)(b) of the Wildlife and Countryside Act 1981 the Council was required to keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appears requisite in consequence of the occurrence of certain events.

One such event under section 53(c)(iii) required the modification of the Map and Statement to delete a public right of way where:



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

*(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.”*

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

The following case law test and government guidance notes also needed to be considered when considering deletion cases:

- DEFRA Government Circular 1/09 (1990)
- Trevelyan v SOS [2001] EWCA Civ 266 and Burrows v SOS [2004] EWHC 132
- Planning Inspectorate Rights of Way Section Advice No. 9 (2006).

The application had been made by Marie Cunningham in March 2016 and had included a large amount of documentary evidence such as maps, letters and other material sourced from Cheshire Archives, Cheshire East Council Records and elsewhere. In addition there were also twenty statements attached from individuals who stated that they did not believe that Public Footpath Nos. 15 and 23 were public footpaths.

Reference had been made to a previous application made in 1991 to delete Public Footpath No.23 Kettleshulme – MA/5/174. It was understood that this application had been left undetermined at the time. It was Officers’ opinion at the time that there was insufficient evidence to support the application; however Officers had given the applicant further time to submit additional evidence but this was not forthcoming and the application was left in abeyance.

Marie Cunningham attended the meeting and spoke in support of her application, and making reference to the documentary historical evidence, stating that she believed that Public Footpath Nos. 15 and 23 had been included in error and that there had been confusion over the routes as they were in close proximity to Public Footpaths Nos. 16 and 95. She stated that Rainow Parish Council has not claimed Public Footpath No.15 and Kettleshulme Parish Council had not claimed Public Footpath No. 23 in their survey’s for the Definitive Map so there was no continuity of the route.

The report before the Committee detailed the investigation carried out into the documentary historical evidence and user evidence statements and the responses from the consultation undertaken with the user groups/organisations. The report concluded that, whilst it was always a possibility that an error did occur, without very clear substantial and robust documentary evidence of an error in recording the route, or credible evidence of non-use between about 1930 and 1950 the application to delete Footpath Nos. 15 and 23 struggled to meet the legal tests required

by statute and case law and that the requirements of Section 53(3)(c)(iii) had not been met.

The Committee considered the comments from the Applicant, the historical evidence and user evidence submitted and the Definitive Map Officer's conclusion and considered that the evidence was not sufficient to overturn the presumption that the Definitive Map was correct. It was clear that the correct legal procedures had been followed during the time of recording Public Footpath Nos.15 and 23 on the Definitive Map and Statement and no objections were received at that time.

The Committee unanimously

**RESOLVED:** That

- 1 An Order not be made under Section 53 (3)(c)(iii) of the Wildlife and Countryside Act 1981 to delete Public Footpaths No.15 (part) and No.23 in the parishes of Rainow and Kettlethulme, as shown between points C-D-E-F-G-H-I-J-K-M on Plan No.WCA/015.
- 2 Definitive Map Modification Order applications Nos. MA/5/252 and MA/5/174 be refused on the grounds that there is not any robust evidence to overturn the legal presumption that the Definitive Map and Statement are correct.

**8 HIGHWAYS ACT 1980 SECTION 118: APPLICATION FOR THE EXTINGUISHMENT OF PUBLIC FOOTPATH NO. 20 PARISH OF BUNBURY**

The Committee considered a report which detailed an application from the landowner requesting the Council to make an Order to extinguish Public Footpath No. 20 in the parish of Bunbury.

In accordance with section 118(1) of the Highways Act 1980 it was within the Council's discretion to make an Order if it appeared to the Council that it was expedient that a path or way should be stopped up on the ground that it was not needed for public use.

The application to extinguish Public Footpath No.20 Bunbury had been made by one of the landowners directly affected by the right of way on the basis that it was not needed for public use and on the grounds that other alternative footpaths existed within the vicinity of Footpath No.20.

It was noted that prior to accepting the application, diverting the path under section 119 of the Highways Act 1980 on grounds of privacy and security was considered. However, looking at the other footpaths in the area, it was concluded that there was no practical solution with regards to permanently diverting the footpath.

Public Footpath Nos. 19 and 21 Bunbury ran in close proximity to Public Footpath No.20, and both connected with Public Footpath No.17, as illustrated on Plan No. HA/140.

From the informal consultation, twelve letters of support had been received with ten of these stating that there were better alternative paths than Public Footpath No.20 and as such had chosen not to use Footpath No.20. One letter of objection had been received.

Peak and Northern Footpaths Society had initially objected to the proposed extinguishment but this had been withdrawn when informed of the support for the application by members of the public. South Cheshire Ramblers had responded that they did not object to the path being extinguished.

The Committee considered the extent to which the path was used, was likely to be used, the availability of adequate alternative routes and the effect an extinguishment would have on the land served by the footpath and the effect on the rights of way network in the area and concluded that Public Footpath No. 20 Bunbury was not needed for public use and that the legal tests for the making of an extinguishment Order were satisfied..

The Committee unanimously

**RESOLVED:** That

- 1 an Order be made under section 118 of the Highways Act 1980 to extinguish Public Footpath No.20 in the parish of Bunbury, as illustrated on Plan No.HA/140 on the basis that it is expedient to do so on the ground 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 by the said Act.
  - 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.
- 9 **HIGHWAYS ACT 1980 SECTION 119: PROPOSAL FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 6 (PART) IN THE PARISH OF STOKE**

The Committee considered a report which detailed an application from Mr PH Bourne and Partners of Stoke Hall Farm, requesting the Council to make an Order under section 119 of the Highways Act 1980 to divert part of Public Footpath No.6 in the parish of Stoke.

In accordance with section 119(1) of the Highways Act 1980 it was within the Council's discretion to make an Order if it appeared 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.

The land over which the section of path to be diverted, and the proposed diversion ran, belonged to the applicants. The application had been made on grounds of privacy, security, agricultural purposes and improved land management.

The path ran thorough a farm yard and within close proximity to residential property. Part of the path to be diverted was obstructed by an industrial slurry tank, thought to have been installed during the 1970s. A short permissive path was in place to go around the tank. The proposed diversion, as shown on Plan No.HA/141A, would move the path away from the farm yard, property and slurry tank and would be 2 metres wide with a natural grass and earth surface.

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 the long standing obstruction by the industrial slurry tank. 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.6 in the parish of Stoke, by creating a new section of Public Footpath and extinguishing the current path, as illustrated on Plan No.HA/141A, on the grounds that it is expedient in the interest of the owners of the land crossed by the path.
- 2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 3 In the event of objections to the Order be received, Cheshire East Borough Council be responsible for the conduct of any public inquiry.

**10 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257:  
PROPOSED DIVERSION OF THE UNRECORDED FOOTPATH, OFF ST.  
ANNE'S LANE, NANTWICH**

*Having previously declared an interest Councillor L Wardlaw left the meeting during consideration of this application.*

The Committee considered a report which detailed an application from Vision for Nantwich requesting the Council to make an Order under Section 257 of the Town and Country Planning Act 1990 to divert the unrecorded footpath, off St Anne's Lane, Nantwich.

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 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 submitted for a mixed development of 31no. apartments, hotel, restaurants, retail units and assisted car parking, including the demolition of No.17 Welsh Row – planning application 18/6313N.

The footpath to be diverted was an unrecorded route running across land to the east and southeast of St Anne's Lane, Nantwich, as shown on Plan No.TCPA/057. It was currently a well-used link from the Nantwich Riverside Park to Welsh Row and a diversion would allow for the retaining and recording of the pedestrian link on the Definitive Map and Statement. The diversion was necessary to allow a mixed development of the land off St Anne's Lane.

Alongside the diversion, a deed of dedication was proposed to create a public footpath which would link the proposed diversion to the existing Public Footpath No.4 on Mill Island, in order that the diversion does not create a cul-de-sac path on the Definitive Map. The land was owned by Cheshire East Council and the route would follow the unadopted sealed surface path across the northern end of Mill Island.

The Committee considered the application and concluded that it was necessary to divert the unrecorded footpath to allow for development to be carried out in accordance with planning application 18/6313N. 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 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, and in the event that planning consent has been granted, 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.

**11 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257: PROPOSED DIVERSION OF PUBLIC FOOTPATH NO.20 (PARTS) IN THE TOWN OF CREWE.**

The Committee considered a report which detailed an application put forward by Jacobs UK Limited on behalf of Cheshire East Borough Council requesting that the Council make an Order under section 257 of the Town and Country Planning Act 1990 to divert a section of Public Footpath No.20 in the town of Crewe to enable the development of a new spine road to be undertaken.

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 with a planning permission which had been applied for or granted.

Planning permission had been submitted for highway infrastructure measures and associated works in the Leighton area of Crewe, known as the North West Crewe Package – planning reference 18/6118N.

The existing alignment of Public Footpath No.20 Crewe would be affected by the development of the new spine road, as shown on Plan No. TCPA/056. It was proposed that the footpath would be segregated from the road by a green space area. Safe crossing places of the carriage way would be provided with tactile paving and dropped kerbs to indicate their presence.

The Committee considered the application and concluded that it was necessary to divert a section of Public Footpath No.20 Crewe 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 unanimously

**RESOLVED:** That

- 1 a public path diversion Order be made under Section 257 of the Town and Country Planning Act 1990 to divert parts of Public Footpath No.20 in the town of Crewe on the grounds that Cheshire East Borough Council is satisfied that it is necessary to do so in order to enable development.
- 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 in the event that planning consent has been granted, 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.

**12 PUBLIC RIGHTS OF WAY ANNUAL REPORT 2018-19 AND WORK PROGRAMME 2019-20**

The Committee considered a report which detailed the achievements of the Public Rights of Way team during 2018-19 and set out the proposed work programme for 2019-20.

The Acting Public Rights of Way Manager reported on the work carried out during 2018-19 by the Network Management and Enforcement Officers, Technical Administration Officer, Countryside Access Development Officer and the Legal Orders Officers. Specific performance was detailed in the Appendices to the report.

The budget for Public Rights of Way had remained as set throughout the year which had allowed the team to plan spending more efficiently, though costs from suppliers for items such as timber and metal furniture had increased.

**RESOLVED:**

That the Annual Report for 2018-19 be noted and the proposed Work Programme for the Public Rights of Way Team for 2019-20 be approved.

**13 INFORMATIVE REPORT: CASES OF UNCONTESTED PUBLIC PATH ORDERS DETERMINED UNDER DELEGATED DECISION**

The Committee received an information report on the uncontested Public Path Order cases that had been determined under delegated decision.

One decision had been taken under delegation, which related to a Highways Act 1980 Section 118 application for the Extinguishment of Public Footpath No.13 (part) in the parish of Brereton.

**AGREED:**

That the uncontested Public Path Order determined under delegated decision be noted.

The meeting commenced at 2.00 pm and concluded at 3.30 pm

Councillor S Pochin (Chairman)





*Working for a brighter future together*

## Public Rights of Way Committee

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**Date of Meeting:** 09 September 2019

**Report Title:** Wildlife & Countryside Act 1981– Part III, Section 53  
Application No.5/235, for the Addition of a Public  
Footpath between Meadow Lane and Dryhurst Lane, in  
Disley

**Senior Officer:** Frank Jordan, Executive Director Place

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### 1. Report Summary

- 1.1 This report outlines the investigation of an application made by Mr J P Bell on behalf of Disley Footpaths Society to amend the Definitive Map and Statement by adding a public footpath. 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 the public footpath.
- 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 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding as a Public Footpath, the route shown between points A-B on Plan No. WCA/020;
- 2.2 Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Act.

- 2.3 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 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 route. It is considered there is sufficient use of the route without force, secrecy or permission that is without interruption and as of right; to support the existence of footpath rights along the route shown on Plan No. WCA/020.

### **Other Options Considered**

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

## **5. Background**

### **5.1 Introduction**

5.1.1 The application was submitted in July 2007 by Mr J Bell on behalf of Disley Footpaths Society to modify the Definitive Map and Statement for the Parish of Disley by adding a footpath. The application was supported by user evidence. A total of five witnesses submitted evidence initially with the application in 2007, further witnesses were requested to substantiate the claim. Another five evidence forms were then submitted. Since 2007, three of the original witnesses have died, so a further four names were put forward as potential witnesses at the start of the consultation process in March this year.

### **5.2 Description of the Application Route**

5.2.1 The claimed route runs in a generally westerly direction from the cul de sac end of Meadow Lane (UW 3054), adjacent to No. 61, to Dryhurst Lane (UW 2656), between Nos. 6 and 8, in the parish of Disley. It forms a short link of approximately 21 metres in length. There is rough tarmac surface of approximately 1.5 metres width within a wider corridor of grass, earth and stone. There are six bollards at the head of the cul de sac. It is believed that the route was surfaced at some point in the past possibly by Macclesfield Borough Council and there are minutes from Disley Parish Council referring to the path being requested to be 'tidied up' in 1990 and 1991.

### **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.

#### 5.4 *Investigation of the Claim*

5.4.1 An investigation of the evidence submitted with the application (MA/5/235) has been undertaken, together with some additional research. The application was made on the basis of user evidence from ten witnesses; with a further four names being put forward as potential witnesses, one of whom was subsequently interviewed and made a statement. In addition to the user evidence submitted an investigation of any available historical documentation was also undertaken to establish whether the claimed route had 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 2**.

#### 5.5 *Documentary Evidence*

There was no documentary evidence submitted with the application. Due to the age of the properties on Meadow Street it was clear that there would not be any historical evidence dating from before approximately 1900. Therefore only documents of a relevant age have been considered. The documents referred to are considered by collective groupings. The documents that have been considered are listed in **Appendix 2**.

##### *Ordnance Survey Maps*

5.5.1 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.

## 5.5.2 *O.S 2<sup>nd</sup> Edition County Series 1897 – 25 inch*

On this edition of the map, Meadow Lane is not yet constructed and the area appears as open land behind properties fronting Buxton Road (A6) to the south and the Goods sheds/yard beside the Stockport- Buxton railway to the north. The westerly end where the claimed path lies is also open land to Dryhurst Lane.

## 5.5.8 *O.S. 3<sup>rd</sup> Edition County Series 1909- 25 inch*

On this edition most of the houses on the southern side of Meadow Lane are now shown excepting the final block of six houses at the westerly end nearest to the claimed footpath. The northern side of the road is undeveloped and the road itself is not defined but the land remains open through to Dryhurst Lane

## 5.5.9 *Ordnance Survey Six-inch 2nd and 3<sup>rd</sup> Editions*

These two editions depict Meadow Lane in the same way as the 25 inch versions.

## 5.5.10 *Ordnance Survey 1:2500 1936*

This map shows the southern extent of Meadow Lane fully built up to and including No.61, the northern side shows properties along approximately a third of its length with the westerly end fully open through to Dryhurst Lane.

## 5.5.11 *Ordnance Survey One-inch to 1 Mile New Popular Edition 1947*

This shows the southern side of Meadow Lane fully built and the eastern third of the north side constructed too. The westerly end of the Lane remains open through to Dryhurst Lane.

## 5.5.12 *Ordnance Survey 1:2500 1972*

Meadow Lane is depicted in the same way as on the previous map, development to the rest of the northern side of the route not having occurred. The route to the west remains open through to Dryhurst Lane. An aerial photograph dated approximately 1970 shows clearly the area of undeveloped land at the north western end of Meadow Lane which had been the goods yard adjacent to the railway and also that the end of the Lane is open through to Dryhurst Lane.

## *National Parks and Access to the Countryside Act 1949*

5.5.13 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. Disley Rural District Council completed the survey

for this area at the time and did not claim the route in question as a right of way; the route was subsequently omitted from the published Definitive Map.

*Disley Rural District Council Minutes 1899-1906*

5.5.14 Between 1894 and 1929, Rural District Councils was responsible for highway maintenance in their respective areas so any issues or problems during that time could be recorded in the Council minutes.

The main purpose of looking through these minutes was to determine when Meadow Lane was constructed. There were two entries that were helpful. In 1904 plans were submitted for six cottages in Meadow Lane and in 1906 plans were submitted for a further nine cottages. There was reference to development at 'Dryhurst' in 1898. It appears development was more piecemeal and the houses were constructed over a period of years or a decade. There was no reference to the claimed route.

*Disley Parish Council Minutes June 1989 – December 1992*

5.5.15 Parish Councils have sometimes undertaken minor works on public footpaths in their areas and a witness who had previously been a Parish Councillor had indicated that the Council had employed a handyman for a period and recalled that some works had taken place on the path.

A minute of the 9<sup>th</sup> October 1990 meeting, referenced as 'Meadow Lane path', reported that the handyman had cleared the path. A subsequent minute dated 19<sup>th</sup> February 1991, referenced 'Path - Meadow Lane', resolved the Clerk to ask the handyman to tidy up the path.

These indicate that the Parish considered this path to be a route open to the public and that they had probably received requests from members of the public to undertake clearance works to allow clear passage.

*Land Registry Information*

5.5.16 The land forming the path and an area to each side is unregistered. Adjacent landowners have not indicated any interest in the route and local knowledge supports the lack of ownership.

*5.6 Witness Evidence*

5.6.1. The application was made in 2007 and contained user evidence forms from 5 individuals initially with a further 5 being submitted soon after, when additional evidence was requested. Of these 10 witnesses, it was found that 3 had since deceased and consequently a further 4 names were put forward as potential witnesses. These 11 witnesses were all contacted with a view to being interviewed. Of the 7 original witnesses, 5 responded and were

subsequently interviewed and 1 of the additional 4 names responded and was interviewed. The 6 who were interviewed have each signed statements of a summary of their evidence as set out during their interview. A chart illustrating the user evidence from the 10 original witnesses and the 1 additional interviewee is attached as **Appendix 1**.

5.6.2 For public pedestrian rights to have come into being through long use, a twenty year period must be identified during which time use can be established. Where no challenge to the use has occurred, this period can be taken as the 20 years immediately prior to the date of the application. In this case that would be 1987 to 2007.

5.6.3 Use of the route has been largely for functional purposes. It forms a short link between two roads and enables pedestrian access to link to Buxton Road and onwards to the village for shopping; visiting the doctors; going to the library; bus stops and other services offered by the village centre in Disley. Witnesses stated that they use this route for preference as it keeps them away from the busy Buxton Road (A6) for longer than the alternative up to the top of Redhouse Lane. The route is used frequently; weekly and for some people nearly daily. Witnesses have used the route several times a day when their children were young and they walked them to the local primary school on Buxton Road. One witness regularly walked the route from her childhood and since 1991 has used the route on a practically daily basis on an electric scooter. A couple of the witnesses refer to having seen cyclists using the route and one mentioned that occasionally a car has parked on the path at the Dryhurst Lane end.

5.6.4 All the users who were interviewed attest to meeting other people using the route. One witness who moved to the area in 1964 recalls older residents in the street saying the route had been available since the houses were built which might have been in the early 1900s. This evidence is supported by the Ordnance Survey maps and the Rural District Council minutes. Several users refer to Meadow Lane being originally a dirt road. One witness says that they recall the road being made up to adoptable standards when all the adjacent householders contributed to the cost under a Private Street Works scheme. It became an adopted road in 1979. The road adoption plan shows the land comprising the footpath open to Dryhurst Lane.

5.6.5 Of the witnesses represented in the bar chart in Appendix 1, 9 have used the route for the full 20 years required under s.31 (6) of the Highways Act, as set out in paragraph 5.3.3. Of the remaining 2 witnesses, one has used the route for 18 of the 20 years and the other for 15 years. The earliest use stems from 1945 and continues to the present day. It was stated by several interviewees that with the construction and part occupation of new



developments on Redhouse Lane they had noticed an increase in the numbers of people using this route as a cut through.

5.6.6 None of the witnesses had ever been challenged or prevented from using the route. They have never seen signs or barriers to suggest that the route was not open to public use.

## **5.7 Conclusion**

5.7.1 The user evidence submitted demonstrates regular, continuous and long term use of the claimed route. The documentary evidence supports the contention that the route has been open and available for over a hundred years.

5.7.2 Under section 31(1) of the Highways Act 1980 public footpath rights can come into existence by prescription unless there is evidence to the contrary. The use has been uninterrupted for a full twenty year period between 1987 and 2007 without challenge, permission or secrecy.

5.7.3 The evidence in support of this application must show, on the balance of probabilities, that public footpath rights subsist or are reasonably alleged to subsist, along the claimed route. The balance of user evidence supports the case that there is a reasonable allegation that a footpath subsists along the route A-B (Plan No. WCA/020). Therefore it is considered that the requirements of Section 53(3)(c)(i) have been met and it is recommended that a Definitive Map Modification Order is made to add a footpath in the Parish of Disley and thus amend the Definitive Map and Statement.

## **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.

6.1.3 The legal implications are contained within the report.

## **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 & 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.

## **6.10 Climate Change Implications**

6.10.1 There are no direct implications for climate change.

## **7 Ward Members Affected**

7.1 The Councillor in office at the time of the consultation, Councillor Harold Davenport representing Disley Ward, was consulted. No comments were received.

7.2 The new elected Councillor from May 2019, Councillor Brendan Murphy, has been sent a copy of the report. Any comments will be reported verbally.

## **8 Consultation & Engagement**

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

8.2 Disley Parish Council responded to say that the Council had debated the application and voted unanimously in support of it. They added that *'this footpath has been a well-used and highly convenient route connecting areas to the north of the A6 for a long period and would benefit from the protection afforded by a DMMO'*.

8.3 The Peak and Northern Footpath Society responded that they had no additional user information in support of this claim. Their inspector commented that it would be beneficial to have it added to the network.

## **9 Access to Information**

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

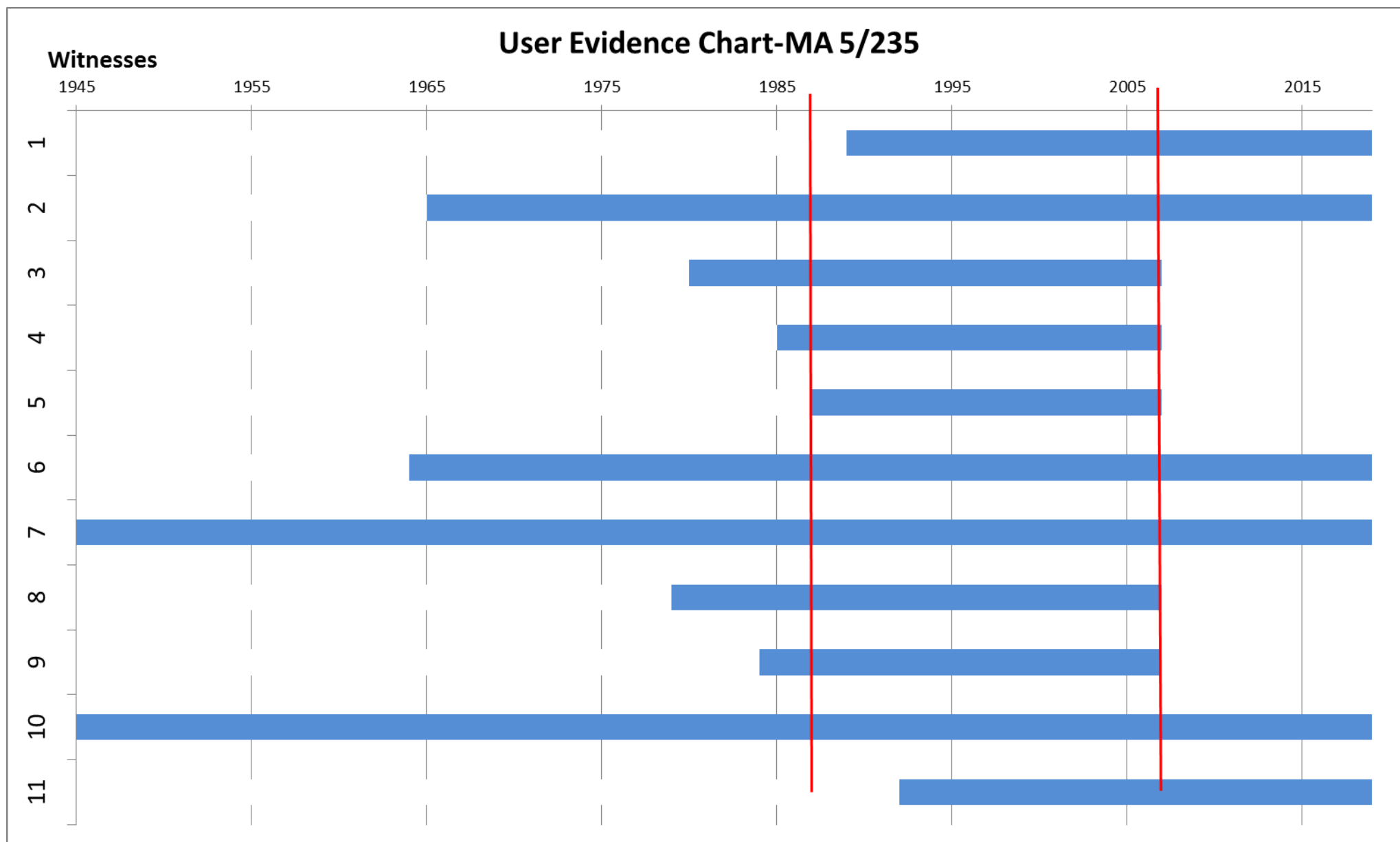
### **Contact Information**

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](mailto:clare.hibbert@cheshireeast.gov.uk)



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### DMMO DOCUMENTARY RESEARCH CHECKLIST

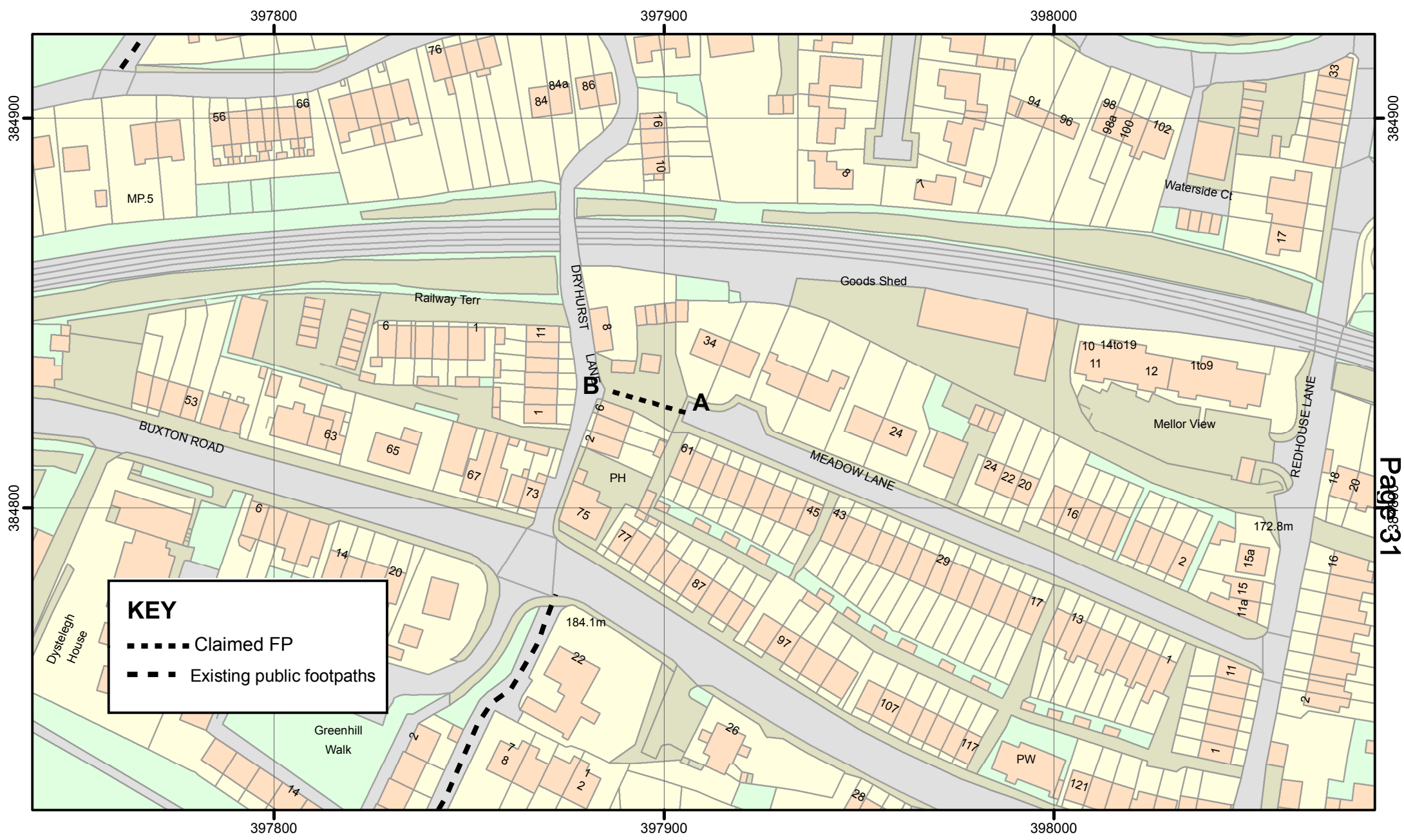
<b>District:</b> Macclesfield	<b>Parish:</b> Disley	<b>Application:</b> MA 5/235
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Document	Date	Reference	Notes
<b><i>Ordnance Survey</i></b>			
25" 2 <sup>nd</sup> Edition	c.1897	PROW Office	Meadow Lane not shown
25" 3 <sup>rd</sup> Edition	c.1909	PROW Office	Southern side of Meadow Lane now shown
Ordnance Survey Six-inch, 2 <sup>nd</sup> and 3 <sup>rd</sup> Editions	c.1897 1909	PROW Office	Shown the same way as 25 inch edition.
Ordnance Survey 1:2500	1936	NLS Website	Southern side of Meadow Lane completed, third of northern side built.
Ordnance Survey One-inch to 1 Mile New Popular Edition 1947	1947	NLS Website	Same as 1936 map.
Ordnance Survey 1:2500	1972	PROW Office	Same as previous two maps, development to north western end of Meadow lane not yet shown.
Aerial Photograph	c.1970	PROW Office	Shows undeveloped land to north western end of Meadow Lane
<b><i>Local Authority Records</i></b>			
Walking Survey - Disley Parish	1952	PROW Office	Route not claimed
Provisional Map	1968	PROW	Not shown
Definitive Map	1971	PROW	Not shown

<b><i>Parish Records</i></b>			
Disley Rural District Council Minutes	1899-1906	CRO LRD 1/2	Refers to houses being built in Meadow Lane 1904 & 1906
Disley Parish Council Minutes	June 1989 – Dec 1992	Disley Parish Council Offices	References to path at Meadow Lane and tidying works

CRO – County Record Office

PROW – Public Rights of Way Unit



1:1,250

**Wildlife & Countryside Act 1981 s.53**  
**Claimed Footpath, Meadow Lane to Dryhurst Lane, Disley**

**Plan No. WCA/020**

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**

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**Date of Meeting:** 9th September 2019

**Report Title:** Wildlife & Countryside Act 1981 – Part III, Section 53.  
Application No. CN/7/30: Application to claim public footpath rights forming a circular route at 'Witters Field' linking Public Footpath. No. 2 Wistaston at two separate points.

**Senior Officer:** Frank Jordan, Executive Director Place

---

### **1. Report Summary**

- 1.1. The report outlines an application made by Mr F. P. Alcock to amend the Definitive Map and Statement by the addition of a Public Footpath. The footpath which is the subject of this application forms a circular route around a field that was the subject of a planning application that has since received planning consent for development. As it was deemed necessary to divert 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 (T.C.P.A 1990). After the Reserved Matters application was approved it was clear that the original diversion proposal could not be accommodated so a Variation Order, under s.333 of the T.C.P.A 1990 was made to slightly vary the alignment. This Order has now been confirmed and certified and consequently the footpath now legally exists if on a different alignment to that which was claimed. The application for the Definitive Map Modification Order, however, must still be determined by the Committee.
- 1.2. The recommendation is consistent with 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. The application to modify the Definitive Map and Statement to record public footpath rights between points A-B-C-D-E-F as shown on plan number

WCA/019 be refused on the grounds that the footpath has been legally recorded through a Diversion and Variation Order process.

**3. Reasons for Recommendation/s**

- 3.1. The footpath which is the subject of the application has been diverted by a legal Order made under The Town and Country Planning Act 1990 section 257 and s.333. As public pedestrian rights have been acknowledged and recorded through this process, the premise of the claim has been achieved. It is therefore recommended that the application is refused.
- 3.2. The recommendation is consistent with 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. In July 2015 Mr Alcock 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.2 Wistaston to the north west of Church Lane and ran in a generally westerly direction crossing Footpath No. 1, then in a northerly direction and finally in a generally easterly direction re-crossing Footpath No.1 to reconnect with Public Footpath No. 2, approximately 207 metres to the north west of the starting point of the path, forming a circular route around the field. The total length of the route was approximately 836 metres. The route is shown between points A-B-C-D-E-F on Plan No. WCA/019. The application was supported by 10 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. However in September 2016 an Appeal was granted by the Secretary of State following the refusal of planning application ref No. 14/3024N by the Council. This brought this item to the top of the list as it is the policy of the Public Rights of Way team to deal with applications that are threatened by development as a priority.
- 5.3. Following meetings and discussions between Officers and the developers an application to divert the claimed path was submitted in January 2017 under the Town and Country Planning Act 1990 section 257. The application was required as the approved outline development proposal would directly affect

the claimed route. The proposal sought to move the path further to the perimeter of the field. There were a significant number of objections to the proposal relating to the wish to see the footpath run to the rear of the existing properties on Church Lane thereby forming a buffer with the new development. The item was deferred by the Public Rights of Way Committee on the 13<sup>th</sup> March 2017 and an amended proposal was consulted on and approved by Committee on the 12<sup>th</sup> June 2017.

- 5.4. A Public Path Diversion Order was made under s.257 of the T.C.P.A. 1990 on the 22<sup>nd</sup> June 2017 and subsequently received one objection which was later withdrawn allowing the Order to be confirmed on the 24<sup>th</sup> August 2017. The footpath was recorded as Wistaston Public Footpath No. 17.
- 5.5. However when the reserved matters application for the site was made, the route of the diverted path was found to require some slight amendments in alignment along the western and northern edges of the site to fit with the required layout of the site. Consequently a Variation Order under s. 333 of the T.C.P.A. 1990 was consulted on and made on the 29<sup>th</sup> November 2018. This Order varied some of the alignment and detail of the confirmed public path diversion order.
- 5.6. Throughout the diversion order and variation order processes the applicant, Mr Alcock, was consulted and is therefore aware that the premise of the claim has been achieved, if by other legal means.
- 5.7. The route as set out in the Variation Order has since been constructed on the ground and therefore this Order was certified and confirmed on the 21<sup>st</sup> February 2019. Footpath No. 17 is now legally recorded on the Definitive Map and Statement.

## **6. Implications of the Recommendations**

### **6.1. Legal Implications**

- 6.1.1. Under section 53 of the Wildlife & Countryside Act 1981 (WCA 1981), 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 1981, 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. There are no direct financial implications.

**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.

**6.10. Climate Change Implications**

6.10.1 There are no direct implications for climate change.

**7. Ward Members Affected**

7.1. Councillors M Simon and J Weatherill, Wistaston Ward, have been consulted, no comments have been received.

**8. Consultation & Engagement**

8.1. Wistaston Parish Council have been consulted and no comments have been received.

**9. Access to Information**

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

**10. Contact Information**

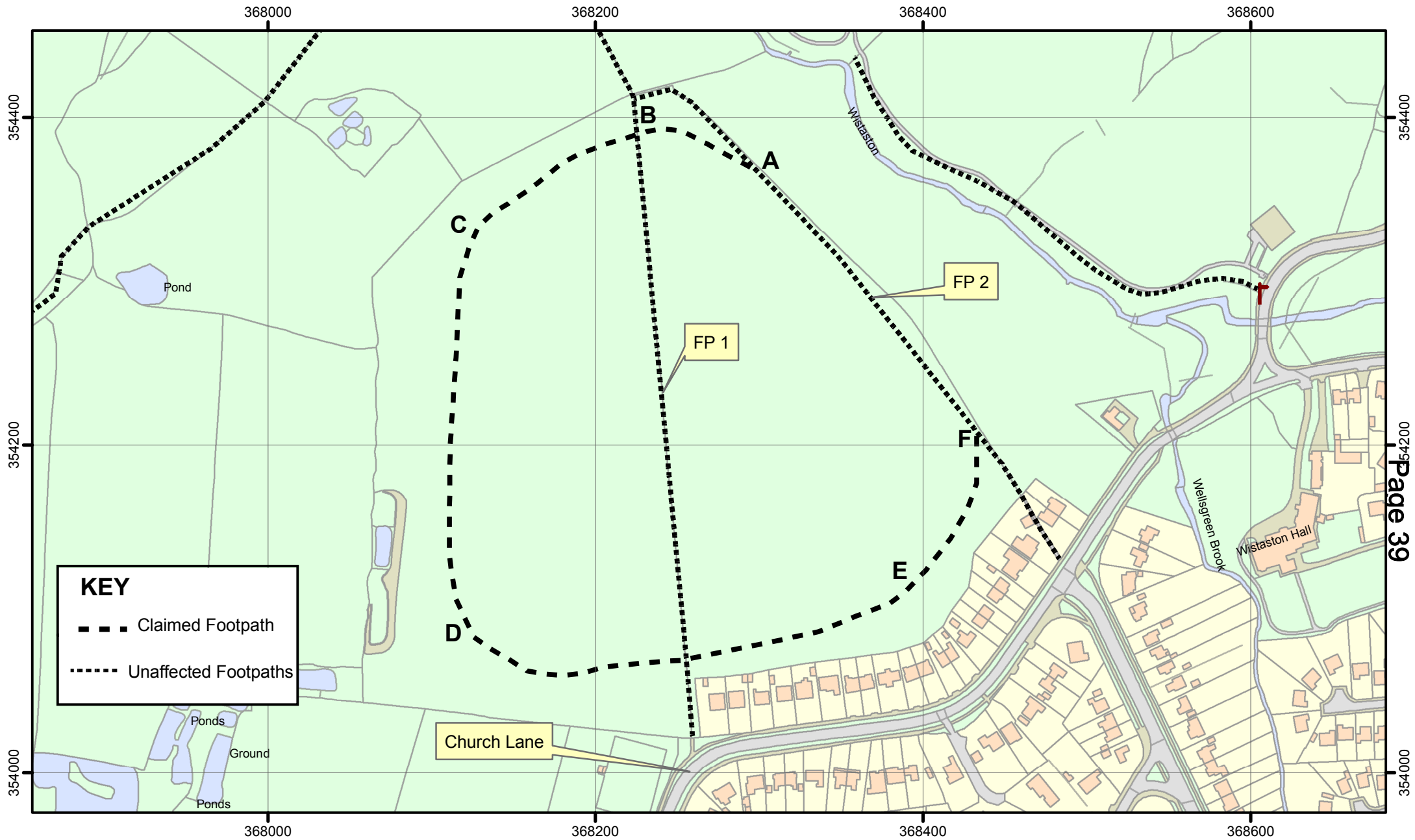
- 10.1. Any questions relating to this report should be directed to the following Officer:

Name: Clare Hibbert

Job Title: Definitive Map Officer

Email: [clare.hibbert@cheshireeast.gov.uk](mailto:clare.hibbert@cheshireeast.gov.uk)

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**Claimed Footpath, 'Witters Field' off Church Lane,  
Parish of Wistaston**

Plan No.  
WCA/019

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and should not be used for legal purposes



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## **Public Rights of Way Committee**

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**Date of Meeting:** 09 September 2019

**Report Title:** Highways Act 1980 s119 Application for the Diversion of Public Footpath No. 45 (part), Parish of Mobberley

**Senior Officer:** Frank Jordan, Executive Director Place

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### **1. Report Summary**

- 1.1. The report outlines the investigation to divert part of Public Footpath No. 45 in the Parish of Mobberley. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion order to be made. The proposal has been put forward by the Public Rights of Way 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. 45 in the Parish of Mobberley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/142 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 Dr Jonathan Eaton of Newton Farm, Graveyard Lane in Mobberley requesting that the Council make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 45 in the Parish of Mobberley
- 5.2. Public Footpath No. 45 Mobberley commences at its junction with Graveyard Lane and then continues in a generally north easterly direction for approximately 1,390 metres to its junction with Public Footpath No. 52 Mobberley. The section of path to be diverted is shown by a solid black line on Plan No. HA/142 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. 45 Mobberley to be diverted and the proposed diversion belongs wholly to the applicants.
- 5.4. The length of Public Footpath no. 45 Mobberley to be diverted commences at Point A on Plan No. HA/142 and continues in a generally north north easterly direction to Point B along the private driveway for the farm. The first 25 metres are unenclosed and run along a stoned track, and then the footpath continues through a kissing gate and along an enclosed section with a width of 2 metres for approximately 63 metres alongside the driveway and parking area for the property. This section is surfaced with a mixture of hardcore and grass.
- 5.5. The proposed diversion would follow a permissive route that is already in place at the farm and will follow A-C-B on the attached plan. The proposed diversion will begin at point A at a junction to the private driveway, and then continue in a generally north easterly direction to point B for approximately 116 metres. At point C, the diversion curves around a small group of trees and hedges. The diversion has a mixture of hardcore and grass surfacing and will be at least 2.5 metres wide, with the section between A-C being 3 metres.
- 5.6. The proposed diversion will take users away from the private buildings and driveway at Newton Farm, therefore increasing the privacy and security of the property. This would also allow for animals to be kept in this area

securely and away from users of the footpath. The proposed diversion will also be more pleasant for users as it provides views over the neighbouring fields while also being firmer and more even under foot, it also removes the need for any gates.

## **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.

**6.10. Climate Change Implications**

6.10.1 There are no direct implications for climate change.+

**7. Ward Members Affected**

7.1. Mobberley Ward: Councillor Charlotte Leach was consulted and no comments were received.

**8. Consultation & Engagement**

8.1. Mobberley 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 Footpath Society responded saying: *We are satisfied that the proposed route is as convenient as the current definitive route, with no loss of views or features of interest. The section between A-C is nice and wide, and the hardcore ensures a decent dry surface. At the time of my visit the grass part of the permissive path had been cut and the path looks well maintained.*

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. 210D/581 relating to this report can be inspected by contacting the report writer.

**10. Contact Information**

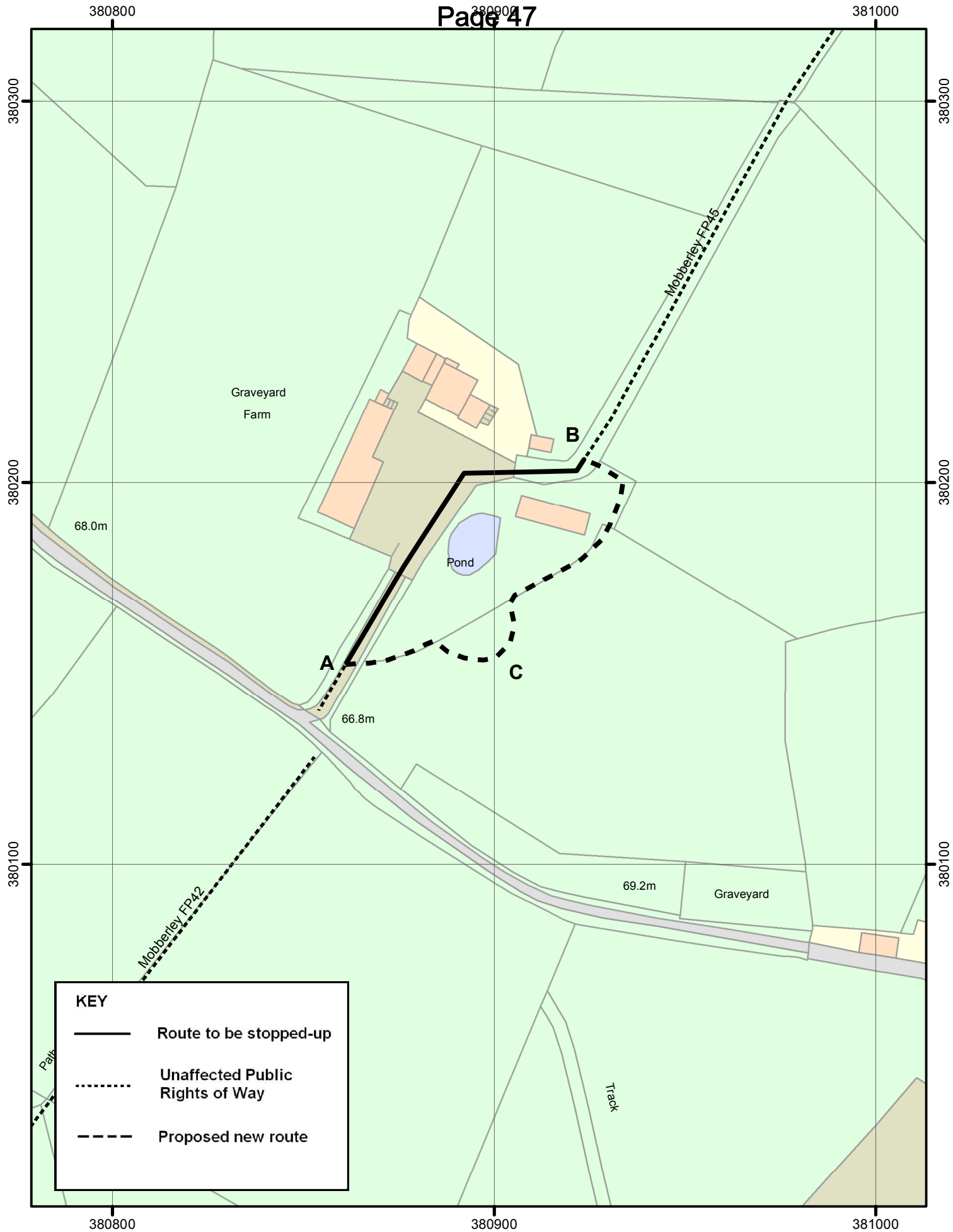
10.1. Any questions relating to this report should be directed to the following officer:

Name: Laura Allenet

Job Title: Public Path Orders Officer

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

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KEY

Route to be stopped-up

Unaffected Public Rights of Way

Proposed new route

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## **Public Rights of Way Committee**

---

**Date of Meeting:** 09 September 2019

**Report Title:** Highways Act 1980 s119 Application for the Diversion of Public Footpath Nos. 12, 13, 24 and 26 (parts), Parish of Barthomley

**Senior Officer:** Frank Jordan, Executive Director Place

---

### **1. Report Summary**

- 1.1. The report outlines the investigation to divert parts of Public Footpath Nos. 12, 13, 24 and 26 in the Parish of Barthomley. 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 parts of Public Footpath Nos. 12, 13, 24 and 26 in the Parish of Barthomley by creating new sections of Public Footpath and extinguishing the current paths as illustrated on Plan No. HA/143 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 landowner 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 the Duchy of Lancaster requesting that the Council make an Order under Section 119 of the Highways Act 1980 to divert parts of Public Footpath Nos. 12, 13, 24 and 26 in the Parish of Barthomley on the land at Flash House Farm.
- 5.2. The land over which the lengths of Public Footpath Nos. 12, 13, 24 and 26 Barthomley to be diverted and the proposed diversions belongs wholly to the applicants. There is currently a tenant farmer at this property and the proposed diversions have also been agreed with them.
- 5.3. This report sets out the proposed diversions in parts that relate to the coloured sections on Plan No. HA/143. The overall, trajectory, context and enjoyment of the whole of Public Footpath Nos. 12, 13, 24 and 26 in the Parish of Barthomley will not change.
- 5.4. The section in red to be diverted as shown on Plan No. HA/143 comprises parts of Public Footpath Nos. 13 and 12. The section of path to be diverted is shown by a solid red line between points A-B-C and the proposed diversion is illustrated with a red dashed line between points A-D.
- 5.5. The current definitive lines of Public Footpath Nos. 13 and 12 Barthomley to be diverted runs between points A-B-C for approximately 369 metres. Public Footpath No. 13 Barthomley runs between points A-B in a generally north westerly direction for approximately 190 metres and Barthomley Public Footpath No. 12 runs between points B-C in a generally north north easterly direction for approximately 180 metres. This is a cross field path that was left running through the middle of the field after the M6 Side Roads Order was made in 1960.
- 5.6. The proposed diversion of Public Footpath Nos. 13 and 12 will run from points A-D in a generally northerly direction for approximately 278 metres along the boundary of the field and will be at least 2 metres wide; it will become part of Barthomley Public Footpath No. 13 and Barthomley Public Footpath No. 12 will commence at point C and run in a north easterly direction. A 2 in 1 field/pedestrian gate will be installed at point D. The width of the proposed diversion will be 2 metres and the surfacing will be the same

as current which is across field. The diversion will enable the landowner to be able to manage the land more efficiently and will be more convenient for users due to its length and better alignment.

- 5.7. The second section to be diverted is shown in green on Plan No. HA/143 and comprises part of Public Footpath No. 26 Barthomley. The section of path to be diverted is shown by a solid green line between points E-F and the proposed diversion is illustrated with a green dashed line between points J-H-F.
- 5.8. The current definitive line of Public Footpath No. 26 Barthomley runs between points E-F in a generally northerly direction for approximately 104 metres. It runs along a private driveway for Scotts Green Cottage, and then through a gate before crossing a field and then a stream.
- 5.9. The proposed diversion of Public Footpath No. 26 runs between points J-H-F in a generally north westerly direction for approximately 116 metres and will connect, at point J, to the proposed diversion of Barthomley Public Footpath No. 12 shown in blue. It will cross the stream at the location of the current footbridge, which has previously been off the definitive line, and which has a stile at both ends. The width of the proposed diversion will be 2 metres apart from the section over the bridge. The diversion will increase the privacy and security for the residents of Scotts Green Cottage as it will remove the footpath from their driveway.
- 5.10. The third section to be diverted is shown in blue on Plan No. HA/143 and comprises part of Public Footpath No. 12 Barthomley. The section of path to be diverted is shown by a solid blue line between points G-I and the proposed diversion is illustrated with a blue dashed line between points G-J-K.
- 5.11. The current definitive line of Public Footpath No. 12 Barthomley runs between points G-I in a generally easterly direction for approximately 267 metres. The definitive line is currently obstructed by two farm buildings and a permissive route is currently in place. In line with the Cheshire East PROW policy, if an obstruction is substantial or impractical to remove the landowner will be required to apply for a diversion rather than remove the obstruction, and also provide an alternative route.
- 5.12. The proposed diversion of Public Footpath No. 12 Barthomley will run between points G-J-K and follows the current permissive route. This will run from point G, where a new 2 in 1 pedestrian/field gate will be installed, in a generally north easterly direction for approximately 7 metres to point J. It will then run in a north easterly direction and follow the field boundary until it reaches a footbridge where a new kissing gate will be installed. The

proposed diversion will then run through a wooded area for approximately 32 metres and will have a width of 1.5 metres, at the end of the wooded area a kissing gate will be installed. The diversion will then follow the route of the stream and pass through a new 2 in 1 pedestrian/field gate at a field boundary and then will terminate at point K where it will meet the proposed diversion of Barthomley Public Footpath No. 24. The total length of the proposed diversion is 307 metres.

- 5.13. The final section to be diverted is shown in orange on Plan No. HA/143 and is for the diversion of part of Public Footpath No. 24 Barthomley. The section of path to be diverted is shown by a solid orange line between points N-M-L and the proposed diversion is illustrated with an orange dashed line between points N-I-M-K-L.
- 5.14. The current definitive line of the Public Footpath No. 24 Barthomley runs between points N-M-L in a generally north westerly direction for approximately 373 metres. The definitive line is currently obstructed for a distance of about 28 metres near its junction with Barthomley Footpath No. 12, the proposed diversion will follow the permissive route and also the route that is currently walked by most users.
- 5.15. The proposed diversion of Public Footpath No. 24 Barthomley will run between points N-I-M-K-L in a generally north westerly direction for a distance of approximately 307 metres. From point N to point I, the proposed diversion will run along the opposite side of the field boundary from the definitive line in order to provide better land management for the landowner. It will then follow the permissive route alongside the obstructed section and will have a width of 2 metres, the diversion will then follow an enclosed section with a width of 2.5 metres between point M and point K; at point K a new kissing gate will be installed. The proposed diversion will then run to point L along an existing track, with a width of 2 metres.
- 5.16. The proposal is in the interests of the applicants due to reasons of land management and privacy and security. It will also ensure that none of the footpaths are obstructed by long term, substantial obstructions while also improving access for users by removing cross field paths, diverting onto the walked routes and installing more accessible furniture.

## **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.

**6.10 Climate Change Implications**

6.10.1 There are no direct implications for climate change.

**7. Ward Members Affected**

7.1. Haslington Ward: Councillor Mary Addison and Councillor Steven Edgar were consulted and no comments were received.

## 8. Consultation & Engagement

- 8.1. Barthomley 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 Footpath Society (PNFS) was consulted and provided in depth comments regarding the diversion. These comments have been summarised as following:
  - 8.2.1. They have no objections to the diversion of the red section (as shown on Plan No. HA/143).
  - 8.2.2. Regarding the green section (as shown on Plan No. HA/143) of the diversion PNFS raised comments regarding electric fences in the field and the overgrowth near to the footbridge. It was confirmed that all electric fences will be removed and these will not obstruct the proposed diversion and a plan for managing the overgrowth will be put in place following further discussion with the Public Rights of Way Network Management and Enforcement Officer.
  - 8.2.3. Regarding the blue section of the diversion (shown on Plan No. HA/143) PNFS raised issues with the proposed furniture, the current overgrowth and the proposed width. This issue is outstanding until a discussion can be had with the Public Rights of Way Network Management and Enforcement Officer for the area and the results will be reported verbally to the Committee.
  - 8.2.4. Regarding the orange section of the diversion, PNFS have no objections to the section running from M-L but have raised objections to the section running from M-N. They state that *"The current legal line that runs along the field boundary between I and N is pleasant to use, affords good views, is convenient etc. The proposed route is substantially less convenient- the ground is lower than the current legal line by about 10 feet, it is muddy for a width of about 3 metres away from the field boundary having been churned up by cattle , it is likely to be unusable in winter due to water run off from the field above, the views are restricted. it is not an acceptable alternative route"* Further discussion is due to be had with PNFS and this will be reported verbally to the Committee.
- 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. 040D/579 relating to this report can be inspected by contacting the report writer.

**10. Contact Information**

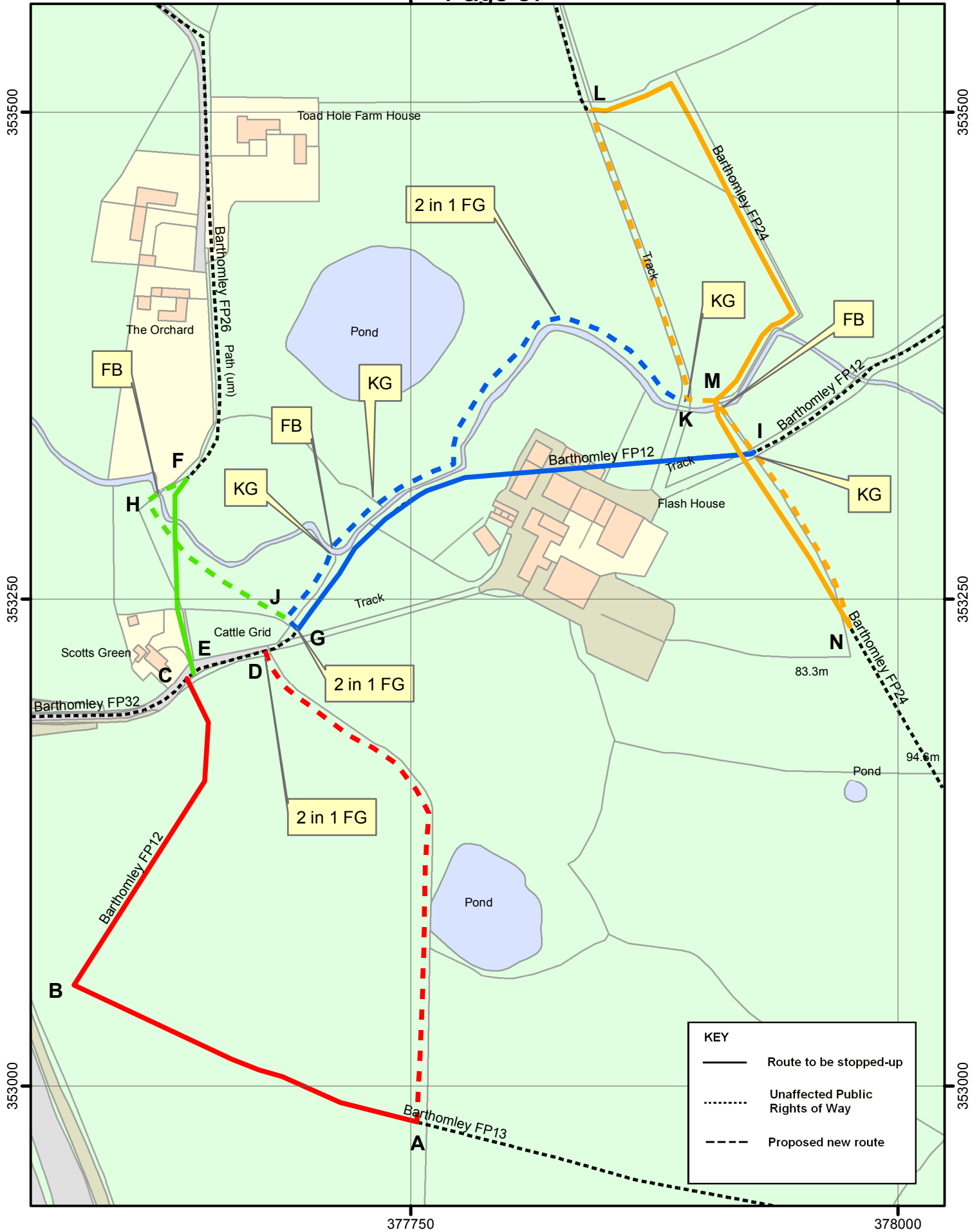
10.1. Any questions relating to this report should be directed to the following Officer:

Name: Laura Allenet

Job Title: Public Path Orders Officer

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





Proposed Diversion of Barthomley FP12, FP13, FP24, FP26

Plan No.  
HA/143

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## **Public Rights of Way Committee**

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**Date of Meeting:** 09 September 2019

**Report Title:** Highways Act 1980 s119 Application for the Diversion of Public Footpath No. 13 (part), Parish of Pott Shrigley

**Senior Officer:** Frank Jordan, Executive Director Place

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### **1. Report Summary**

- 1.1. The report outlines the investigation to divert part of Public Footpath No. 13 in the Parish of Pott Shrigley. 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. 13 in the Parish of Pott Shrigley by creating a new section of public footpath and extinguishing the current path as illustrated on Plan No. HA/144 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 landowner 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 Bourne of Red Acre Hall Farm in Pott Shrigley requesting that the Council make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No. 13 in the Parish of Pott Shrigley.
- 5.2. Public Footpath No. 13 Pott Shrigley commences at its junction with Shrigley Road and then continues in a generally northerly direction for approximately 1,245 metres to another junction with Shrigley Road. The section of path to be diverted is shown by a solid black line on Plan No. HA/144 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. 13 Pott Shrigley to be diverted and the proposed diversion belongs wholly to the applicants.
- 5.4. The length of Public Footpath No. 13 Pott Shrigley to be diverted runs in a generally southerly direction between points A and B on Plan No. HA/144 for approximately 163 metres. It commences at point A and runs along the edge of a pasture field for approximately 62 metres and then continues through a kissing gate to then run through a yard which is used to manage the movement of livestock. After a distance of approximately 46 metres Public Footpath No. 13 Pott Shrigley then continues through a large farm gate and into an enclosed courtyard which is often used for livestock control and also contains the entrance to the private accommodation. Public Footpath No. 13 Pott Shrigley runs through the courtyard for approximately 33 metres and exits through another gate, it then continues along the driveway to point B. Throughout the yard and the courtyard the footpath has a concrete surface.
- 5.5. The proposed diversion would follow the route A-C-B on Plan No. HA/144; this route is already well used by the public as a permissive route around the farm. It runs from point A, where a signpost currently points along the permissive path, and continues in generally south easterly direction alongside a row of trees across a pasture field for approximately 105 metres to point C. At point C a new pedestrian gate will be installed which

will conform to the Cheshire East Council standards for path furniture, the diversion will then continue in a south westerly direction for approximately 209 metres along a stoned track to point B. The diversion will have a width of 2 metres throughout and have a total length of 314 metres.

- 5.6. The landowner has had a permissive footpath in place at the farm for the past 30 years and many of the walking guides in the area describe the permissive footpath instead of the definitive line. If users walk the definitive line they walk very close to the front door and windows of the dwelling which comprises the living area of the farm, so by diverting the footpath permanently on to the permissive route the landowner will have increased privacy and will also be able to use the inner courtyard to manage livestock in a more efficient way. Moving users out of the farm yard may also increase their safety, with many users preferring to avoid such areas in which livestock are held.

## **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.

**6.10 Climate Change Implications**

6.10.1 There are no direct implications for climate change.

**7. Ward Members Affected**

7.1. Poynton East and Pott Shrigley Ward: Councillor Jos Saunders and Councillor Nicky Wylie were consulted and no comments were received.

**8. Consultation & Engagement**

- 8.1. Pott Shrigley 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 East Cheshire Ramblers agreed that the proposed diversion has been used as a permissive route for many years and that they are happy to accept it becomes the definitive line in the future.
- 8.3. Peak and Northern Footpath Society (PNFS) commented that the proposed route between Points A and C suffers deep ruts caused to the surface by cattle. Discussions are ongoing with the applicant as to any mitigation required and will be reported verbally to the Committee.
- 8.4. Both East Cheshire Ramblers and PNFS made comments about signage on the proposed diversion if the Order is confirmed. The route will be well signed if the Order is confirmed to ensure users are aware of the new definitive line.
- 8.5. 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. 244D/580 relating to this report can be inspected by contacting the report writer.

**10. Contact Information**

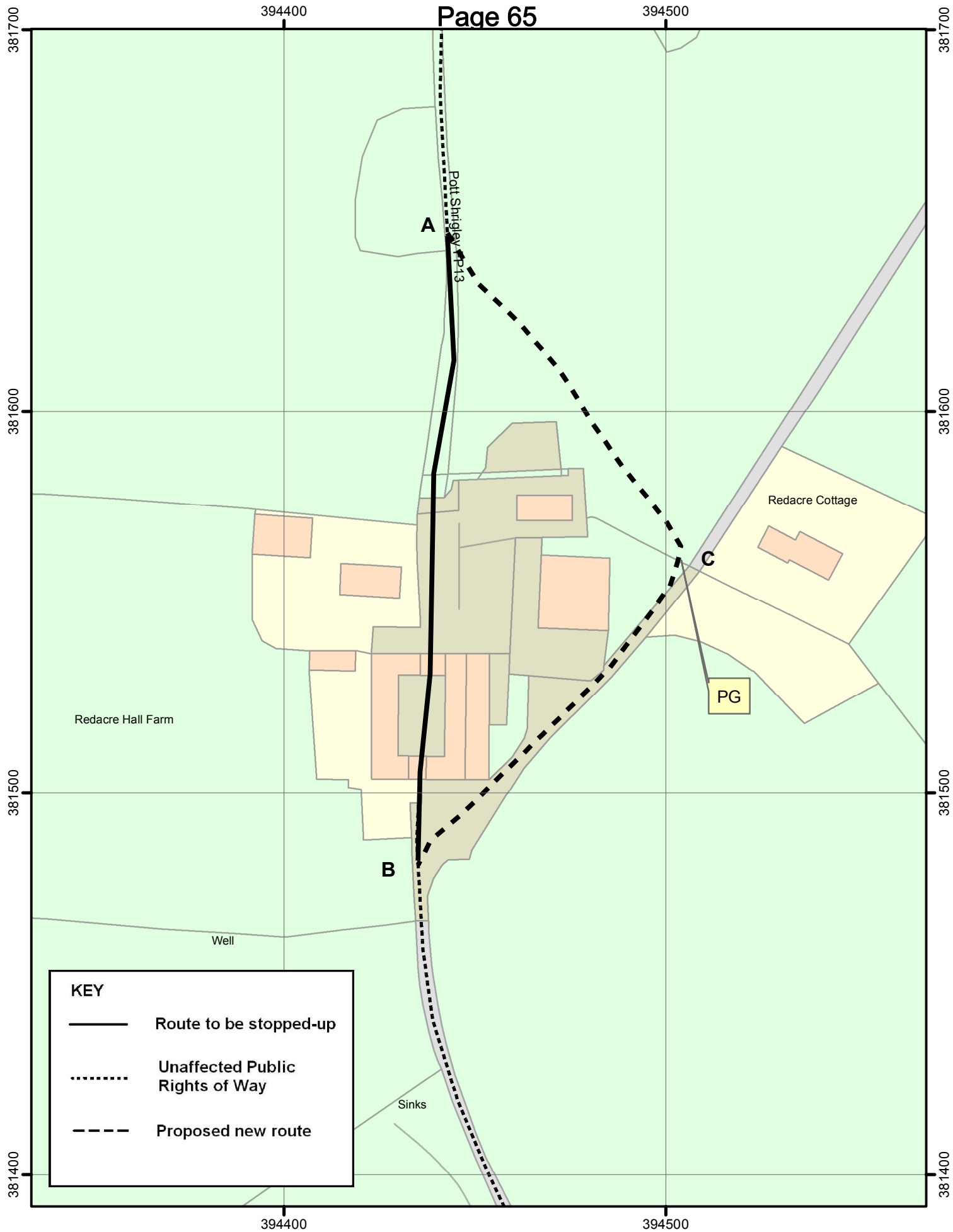
10.1. Any questions relating to this report should be directed to the following Officer:

Name: Laura Allenet

Job Title: Public Path Orders Officer

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





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Proposed Diversion of  
Pott Shrigley FP13

Plan No.  
HA/144

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## **Public Rights of Way Committee**

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**Date of Meeting:** 09 September 2019

**Report Title:** Informative Report on Cases of Uncontested Public Path Orders Determined under Delegated Decision

**Senior Officer:** Frank Jordan, Executive Director - Place

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### **1. Report Summary**

- 1.1. The report informs Members of the uncontested Public Path Order cases that have been determined under delegated decision by the Executive Director of Place in consultation with the Chair and Vice Chair of the Committee.

### **2. Recommendation**

- 2.1. That the report be noted.

### **3. Reasons for Recommendation**

- 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 Under the Council's Constitution and Local Scheme of Delegation under the cascade principle, the Public Rights of Way Manager, in consultation with the Chair and Vice Chair of the Public Rights of Way Committee, may determine Public Path Order cases which are not contested or contentious at the pre-order consultation stage.
- 5.2 This report provides an update on decisions taken under this delegation:
  - 5.2.1 Town and Country Planning Act 1990 Section 257 Proposed Diversion of Public Footpath No. 9 (part) in the Parish of Mottram St. Andrew

- 5.3 Reports for cases determined through this process can be viewed on the Public Rights of Way webpages at [https://www.cheshireeast.gov.uk/leisure\\_culture\\_and\\_tourism/public\\_rights\\_of\\_way/path\\_orders/Public-Path-Order-Delegated-Decision-Reports.aspx](https://www.cheshireeast.gov.uk/leisure_culture_and_tourism/public_rights_of_way/path_orders/Public-Path-Order-Delegated-Decision-Reports.aspx).

## **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.

### **6.10 Climate Change Implications**

- 6.10.1 There are no implications for climate change.

## **7. Ward Members Affected**

- 7.1. All Wards. Consultation with Ward Members is undertaken to inform the decision on each Public Path Order case.

## **8. Consultation & Engagement**

- 8.1. Consultation with Public Rights of Way user groups and statutory consultees is undertaken to inform the decision on each Public Path Order case.

## **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](mailto:genni.butler@cheshireeast.gov.uk)

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