

Public Rights of Way Committee

Agenda

Date: Monday 2nd December 2019
Time: 2.00 pm
Venue: Committee Suite 1,2 & 3, Westfields, Middlewich Road,
Sandbach CW11 1HZ

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

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

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

1. **Apologies for Absence**

2. **Declarations of Interest**

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

3. **Minutes of Previous Meeting** (Pages 3 - 12)

To approve the minutes of the meeting held on 9 September 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.

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

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Also in accordance with paragraph 2.32 of the Committee Procedural Rules and Appendix 7 of the Procedural Rules a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the body in question. Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice of the intention to speak, however as a matter of courtesy, a period of 24 hours notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

5. **Village Green Application: Application to Register Land at Woodside, Knutsford known locally as College Wood** (Pages 13 - 20)

To consider the Village Green Application

6. **Highways Act 1980 Section 119: Application for the Diversion of Public Footpath No. 45 (part), Parish of Mobberley** (Pages 21 - 30)

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

7. **Highways Act 1980 Section 119: Proposed Diversion of Public Footpath No.34 and No.35 (parts) in the Parish of Macclesfield Forest.** (Pages 31 - 40)

To consider the application to divert part of Public Footpath Nos. 34 and 35 in the parish of Macclesfield Forest.

8. **Public Rights of Way Proposed Fees and Charges 2020-21** (Pages 41 - 46)

To note the proposed fees and charges for 2019-20 for charged-for services provided by the Public Rights of Way team.

9. **Wildlife & Countryside Act 1981- Part III, Section 53: Appeal Decision for Application No. CO/8/34: Claimed Footpath from Byley Lane to Carver Avenue, Parish of Cranage** (Pages 47 - 54)

To note the outcome of a recent appeal made by the applicant to the Secretary of State following the Public Rights of Way Committee's refusal of a Definitive Map Modification Order application.

Membership: Councillors S Akers Smith, H Faddes, I Macfarlane, S Pochin (Chairman), B Puddicombe (Vice-Chairman), D Stockton and L Wardlaw

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Public Rights of Way Committee**
held on Monday, 9th September, 2019 at Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor S Pochin (Chairman)
Councillor B Puddicombe (Vice-Chairman)

Councillors S Akers Smith, S Edgar, H Faddes, I Macfarlane and D Stockton

Officers in Attendance

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

14 APOLOGIES FOR ABSENCE

Apologies were received from Councillor L Wardlaw.

15 DECLARATIONS OF INTEREST

In the interests of openness, Councillor S Edgar declared that he was the Ward Councillor for Item 8 – Application for the Diversion of Public Footpath Nos.12, 13, 24 and 26 (parts) Parish of Barthomley and stated that he had not been involved in any discussions on the application.

16 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meeting held on 10 June 2019 be approved as a correct record.

17 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public present who wished to speak.

**18 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**

The Committee considered a report which detailed an application made by Mr JP Bell on behalf of Disley Footpaths Society to amend the Definitive Map and Statement by adding a Public Footpath.

Under section 53 of the Wildlife and Countryside Act 1981, the Council had a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Section 53 (3) (c) allowed for an authority to act on the discovery of evidence that suggested that the Definitive Map 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 section 54A, a byway open to all traffic.”

The application had been submitted in July 2007 for the addition of a public footpath which provided pedestrian access between Meadow Lane and Dryhurst Lane in Disley. The application was made on the basis of user evidence initially from five witnesses, with five further evidence forms being submitted. Since 2007 three of the original witnesses had died, so a further four names were put forward as potential witnesses at the start of the consultation period in March 2019.

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 challenges to the use had occurred, the period can be taken as twenty years immediately prior to the date of the application: in this case it would be 1987 to 2007.

The report before the Committee detailed the investigation carried out into the application and concluded that the user evidence submitted demonstrated regular, continuous and long term use of the claimed route. Documentary evidence from Ordnance Survey Maps and Disley Parish Council minutes June 1989 to December 1992 supported the contention that the route had been available. Use of the claimed route had been

uninterrupted for the full twenty year period between 1987 and 2007 and had been without challenge, permission or secrecy.

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/020,
- 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.

19 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

The Committee considered a report which detailed an application to amend the Definitive Map and Statement by the addition of a Public Footpath.

Under section 53 of the Wildlife and Countryside Act 1981, the Council had a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Section 53 (3) (c) allowed for an authority to act on the discovery of evidence that suggested that the Definitive Map needed to be amended.

In July 2015 an application was made by Mr Alcock to add a circular route around a field – 'Witters Field', linking to Public Footpath No.2 Wistaston. The field was the subject of a planning application. Following refusal by the Council, the planning application was granted on appeal – planning reference 14/3024N. Following meetings between Officers and the

developers an application to divert the claimed path was submitted in January 2017 under the Town and County Planning Act 1990 section 257. The application being required as the approved outline development proposal would directly affect the claimed route.

The original application was deferred by the Public Rights of Way Committee due to a significant number of objections and an amended proposal was consulted on and approved by the Committee on 12 June 2017. The Order was confirmed in August 2017. When the reserved matters application was submitted it was found that some slight amendments along the alignment of the western and northern edges were required and a Variation Order was consulted on and made in November 2018.

The route set out in the Variation Order had now been constructed and Public Footpath No.17 recorded on the Definitive Map and Statement. Throughout the process the applicant – Mr Alcock, was consulted and was aware that the premise of the claim has been achieved, if by other legal means.

The application for the Definitive Map Modification Order however was still required to be determined. The report recommended that the application to amend the Definitive Map and Modification Order be refused as the footpath had been legally recorded through the Diversion and Variation Order process.

The Committee considered the report and concluded that the application should be refused on the grounds that the footpath had been legally recorded through other legal processes.

The Committee unanimously

RESOLVED:

That 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 No.WCA/019 be refused on the grounds that the footpath has been legally recorded through a Diversion and Variation Order process.

20 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 45 (PART), PARISH OF MOBBERLEY

The Committee considered a report which detailed an application from Dr J Easton of Newton Farm, Graveyard Lane, Mobberley requesting the Council to make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath No.45 in the parish of Mobberley.

In accordance with Section 119(1) of the Highways Act 1980, it was within the Council's discretion to make an Order to divert a public footpath if it

appeared to the Council to be expedient to do so in the interests of the public or the owner, lessee or occupier of the land crossed by the path.

The land over which the length of Public Footpath No.45 Mobberley to be diverted and the proposed diversion belonged wholly to the applicants. The current line of the Public Footpath ran along the private drive and parking area for Newton Farm.

A permissive path was in place at the Farm which took users away from the private buildings and driveway. The proposed diversion would follow the line of the permissive path – Points A-C-D on Plan No.HA/142. The diversion would be in the interests of the landowner as it would improve the privacy and security of the property and also allow for animals to be kept securely and away from users of the footpath.

In response to the informal consultation, the Peak and Northern Footpath Society had responded that they were satisfied that the proposed route was as convenient as the current route, with no loss of views or features of interest.

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

The Committee unanimously

RESOLVED: That

- 1 An Order be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No.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 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

21 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NOS. 12, 13, 24 AND 26 (PARTS), PARISH OF BARTHOMLEY

The Committee considered a report which detailed an application from the Duchy of Lancaster requesting the Council to make an Order under Section 119 of the Highways Act 1980 to divert parts of Public Footpaths No.12, 13, 24 and 26 in the parish of Barthomley on the land at Flash House Farm.

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

The Committee was informed that since the publication of the report there had been changes to the proposals and the proposal to divert part of Public Footpath No.24 Barthomley between points I and N had been withdrawn. The revised Plan No.HA/143(2) illustrated the proposed diversions for consideration by the Committee.

The land over which the lengths of Public Footpath Nos. 12, 13, 24 and 26 Barthomley to be diverted and the proposed diversions belonged wholly the applicants. There was currently a tenant farmer at the property and the proposed diversions had been agreed with them.

The current definitive line of Public Footpath Nos 13 and 12 Barthomley (points A-B-C on Plan No.HA/143(2) – highlighted in red) were left running through the middle of a field after the M6 Side Road Orders was made. It was proposed that the path be moved to along the field boundary (points A-D), which would allow the landowner to manage the land more efficiently and it would also be more convenient for users due to the length and better alignment.

The section of Public Footpath No.26 Barthomley to be diverted, between points E-F (highlighted in green on Plan No.HA/143(2)) ran along a private driveway for Scotts Green Cottage, then through a gate before crossing a field and then a stream. It was proposed to move the path away from the drive and to cross the stream at the location of the current footbridge, which had previously been off the definitive line. The diversion would increase the privacy and security for the residents of Scotts Green Cottage.

The section of Public Footpath No.12 Barthomley to be diverted (shown in blue on Plan No.HA/143(2)) was currently obstructed by two farm buildings and a permissive route was currently in place. In line with Cheshire East Public Rights of Way Policy, if an obstruction was substantial or impractical to remove the landowner was required to apply for a diversion

rather than remove the obstruction and also provide an alternative route. The proposed diversion would follow the current permissive route.

The section of Public Footpath No.24 Barthomley to be diverted (shown in orange on Plan No.HA/143(2)) was currently obstructed prior to its junction with Public Footpath No.12 Barthomley. The proposed diversion would follow the permissive route, which was also the route currently walked by most users. This would improve land management and also ensure that the footpath were not obstructed by long term, substantial obstructions.

The Committee noted the comments made by the Peak and Northern Footpath Society and the Public Rights of Way Officer's response.

The Committee considered that the proposed routes would not be substantially less convenient than the existing routes. Diverting the footpaths would be in the interests of the applicant as it would allow better land management and privacy and security of the properties. It was considered that the proposed routes would be satisfactory alternatives to the current ones 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 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(2), on the grounds that it is expedient in the interests of the landowners.
- 2 Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.
- 3 in the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

22 HIGHWAYS ACT 1980 SECTION 119: APPLICATION FOR THE DIVERSION OF PUBLIC FOOTPATH NO. 13 (PART), PARISH OF POTT SHRIGLEY

The Committee considered a report which detailed an application from Mr Bourne of Red Acre Hall Farm, Pott Shrigley requesting the Council to 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.

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

The land over which the section of Public Footpath No.13 Pott Shrigley to be diverted and the proposed diversion belonged wholly to the applicant. The present line of the Public Footpath ran through a yard which was used to manage the movement of livestock and also through an enclosed courtyard which was often used for livestock control and also contained the entrance to the farm house, passing very close to the front door and windows of the dwelling.

A permissive footpath has been in place at the farm for the past 30 years – route A-C-B on Plan No.HA/144, and many of the walking guides in the area describe the permissive footpath instead of the definitive line. Diverting the Public Footpath onto the permissive route would increase privacy for the landowner and also enable the use of the courtyard to manage livestock in a more efficient way. Moving users out of the farm yard would also increase their safety as many users preferring to avoid such areas in which livestock were held.

In response to the informal consultation on the proposal, comments had been received from Peak and Northern Footpath Society on the surface of the proposed route between Points A and C. They had also commented, along with East Cheshire Ramblers, on the need for signage on the route if the Order was confirmed.

The Committee noted the User Groups comments and considered that the proposed route would not be substantially less convenient than the existing route as it had been used as a permissive path for a long time. Diverting the footpath was in the interest of the landowner as it would increase their privacy and improve the efficiency of livestock management. It may also be safer for users of the public footpath. 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.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 landowner.

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

23 INFORMATIVE REPORT: 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 Town and Country Planning Act 1990 Section 257 application for the diversion of part of Public Footpath No.9 in the parish of Mottram St Andrew.

AGREED:

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

The meeting commenced at 2.00 pm and concluded at 2.45 pm

Councillor S Pochin (Chairman)

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Public Rights of Way Committee

Date of Meeting: 02 December 2019

Report Title: Village Green Application: Application to Register Land at Woodside, Knutsford known locally as College Wood

Report of: Director of Governance and Compliance

1. Report Summary

- 1.1. This report deals with an application by Knutsford Town Council under section 15(2) of the Commons Act 2006 to register an area of land known as College Wood, Woodside, Knutsford as a new village green under section 15 of the Commons Act 2006.

2. Recommendations

- 2.1 That the Committee receives and accepts this report, and
- 2.2 That the application is accepted and the application land is registered as a Town or Village Green.

3. Reasons for Recommendations

- 3.1 The application is recommended for approval because it can be concluded in relation to the application land that;
 - a. the applicant has demonstrated that the use of the land took place as of right, and
 - b. the applicant has demonstrated that the area specified in the application was a locality or neighbourhood, and
 - c. the applicant has demonstrated that the area specified in the application was a locality or neighbourhood and that the use has been significant for at least 20 years;

An ability to demonstrate all of these means that the application should be approved.

4. Other Options Considered

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

5. Background

5.1 The Council is the registration authority for village greens and responsibility for this function was delegated to the Rights of Way Committee under Chapter 2 – Part 5 of the Council’s Constitution. The terms of reference allow the Committee “to discharge the authority’s functions in respect of Commons and Town and Village Greens”.

5.2 The application is made pursuant to section 15(2) of the Commons Act 2006. That requires the applicant to demonstrate on the balance of probabilities that the land was used:

- a. for lawful sports and pastimes for a period of at least 20 years and that this use continued to the date of the application.
- b. by a significant number of the inhabitants of a locality or of a neighbourhood within a locality
- c. as of right

5.3 The traditional formulation of the requirement that user must be “as of right” is that the user must be without force, secrecy or permission. “Force” does not just mean physical force. Use is by force if it involves climbing fences or gates or if it is contentious (e.g. in defiance of prohibitory signs) or under protest. Use that is secret or by stealth will not be use “as of right” because it would not come to the attention of the landowner. “Permission” can be express, e.g. erecting notices granting permission to local people to use the land, or implied e.g. the landowner excludes local people on certain days and in this way asserts his right to exclude.

5.4 The application is dated 27th June 2018 and was submitted to the Council by Knutsford Town Council. The application was received by the Council and validated on 27th July 2018. The application relates to a piece of land described in the application form as “College Wood” and lies adjacent to the junction of the roads Woodside and Thorneyholme Drive. The application site consists of unenclosed mixed woodland with an area of approximately 0.35 hectares with a number of informal paths running through the site. A total of 50 witness statements accompanied the application. The land the subject of the application is shown on the map attached as “Appendix A”

- 5.5 A public notice was placed in the Wilmslow and Knutsford Guardian, a paper circulating in the area, on 30th May 2019. Two notices were placed close to the land on an adjacent lamppost and road sign. A copy of the public notice and application were made available at the reception in Westfields and also at the offices of Knutsford Parish Council during the consultation period. A copy of the public notice and application was also provided to the landowner, the Shrewsbury Roman Catholic Diocesan Trustees.
- 5.6 No objections were received from any party by the deadline of 29th July 2019.

6. Analysis

- 6.1 The application land is owned by the Shrewsbury Roman Catholic Diocesan Trustees under Land Registry title CH580131.
- 6.2 As stated in 6.2 above the applicant is required to satisfy the 3 elements in Section 15(2) of the Commons Act 2006 and analysis of the submitted material has established the following:-
- 6.2.1 Whilst not all of the witnesses have used the application land for lawful sports and pastime for more than 20 years there is a large number of witnesses giving evidence that such use has occurred since at least 1956. There is also strong evidence that the use of the land for such purposes was ongoing at the time the application was submitted. Further evidence supplied by the applicant included public comments on a facebook page with reminiscences of using the land in the past. There is therefore enough evidence with the application to demonstrate that this limb of the test has been satisfied.
- 6.2.2 The submitted material demonstrates that the land has been used for lawful sports and pastimes for more than 20 years and that such use was ongoing at the time the application was submitted to Cheshire East Borough Council.
- 6.2.3 The second limb of the test requires significant use by the inhabitants of a locality or of a neighbourhood within a locality. The applicant has confirmed that the locality is the Over Ward parish. The neighbourhood within the locality can be defined as "Cross Town". The majority of the witness statements have come from those who currently or have previously lived within the "Cross Town" neighbourhood within the Over Ward parish. There is

therefore sufficient evidence with the application to demonstrate that this limb of the test has been satisfied.

- 6.2.4 The final element that the applicant is required to demonstrate is that the application land has been used “as of right” by people. To be able to claim a use of land “as of right” such use must be without force, secrecy or permission.
- 6.2.5 In support of the application 50 witness statements have been submitted by the applicant and these confirm that activities such as dog walking, bird watching, picnics, drawing and painting, community events, tree climbing, building dens, wildlife watching, people walking, team games and bicycle riding have all been undertaken on the application land.
- 6.2.6 The witnesses who have provided evidence in support of the application have confirmed that they have used the application land for lawful sports and pastimes openly, without force and without permission and this falls within the definition of the uses being “as of right”. There is therefore sufficient evidence with the application to demonstrate that this limb of the test has been satisfied.
- 6.2.7 No objection has been received from the Shrewsbury Roman Catholic Diocesan Trustees who confirmed receipt of the public notice and application.
- 6.2.8 It is considered that the application satisfactory complies with the 3 requirements of Section 15(2) Commons Act 2006 and that the application can be approved and the application land registered as a Town or Village Green by the Council.
- 6.2.9 Given the lack of objections received to the application when it was publicised it is not considered appropriate to hold a non-statutory public inquiry as there is no requirement for evidence to be tested via such an inquiry.

7. Implications of the Recommendations

7.1. Legal Implications

- 7.1.1 The recommendation is for the report to be accepted by the Committee and for the application land to be registered as a Town or Village Green.

7.1.2 There is no right of appeal against a Committee decision not to register land as a village green. The route for any challenges would be via judicial review.

7.2. Finance Implications

7.2.1 The land will be continued to be owned and managed by the Shrewsbury Roman Catholic Diocesan Trustees. Knutsford Town Council have in the past carried out cleanup works on the site at their own expense.

7.2.2 The Council could decide to hold a non-statutory public inquiry to determine the application. The costs of such an inquiry would be the responsibility of the Council.

7.2.3 Should a judicial review be made against the Council the Council would be responsible for the costs in defending the claim.

7.3. Policy Implications

7.3.1. There are no direct policy implications.

7.4. Equality Implications

7.4.1 There are no direct implications

7.5. Human Resources Implications

7.5.1 There are no direct implications.

7.6. Risk Management Implications

7.6.1 It is important that decisions are taken in a way that demonstrates fairness and complies with the rules of natural justice. To that end the Application has been considered at length in this report and the conclusion reached that there was no need for the Council to a non statutory public inquiry and that the application could be determined without such an Inquiry.

7.7. Rural Communities Implications

7.7.1. There are no direct implications.

7.8. Implications for Children & Young People/Cared for Children

7.8.1. There are no direct implications.

7.9. Public Health Implications

7.9.1. There are no direct implications.

7.10. Climate Change Implications

7.10.1. There are no direct implications.

8. Ward Members Affected

8.1 Knutsford Ward: Councillors Q Abel, T Dean and S Gardiner

9. Consultation & Engagement

9.1 The consultation process followed was that laid down by the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007.

10. Access to Information

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

11. Contact Information

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

Name: Andrew Poynton

Job Title: Planning and Highways Lawyer

Email: andrew.poynton@cheshireeast.gov.uk



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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 02 December 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

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 landowner. 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/146 on the grounds that it is expedient in the interests of the landowner.
- 2.2. Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Acts.

- 2.3. In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3. Reasons for 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 T Cummins of Saltersley Hall Farm, Wilmslow requesting 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 proposed to be diverted is shown by a solid black line on Plan No. HA/146 between points A-B and has a total length of approximately 137 metres. The proposed diversion is illustrated on the same plan with a black dashed line between points A-C-D-E and has a total length of approximately 154 metres.
- 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 applicant.
- 5.4. The section of path proposed to be diverted commences approximately 17 metres from the driveway leading to Saltersley Hall Farm. The path then continues for a distance of approximately 137 metres in a generally easterly direction along the driveway close to various out buildings and the farmhouse to its junction with Mobberley Public Footpath No. 52. The footpath has an undefined width, has a rough surface of stone and earth and is not enclosed.
- 5.5. The proposed diversion would commence at point A and would run in a generally south easterly direction along the field edge for a distance of approximately 115 metres. The path would then turn at point C to take a more southerly direction for a distance of approximately 14 metres before curving at point D to take an easterly direction for a distance of approximately 20 metres to connect at a junction on Public Footpath No. 52.
- 5.6. The proposed path would be 4 metres wide, surfaced with stone chippings and sand dusting and would run across well drained land throughout. There is also an intention to enclose the path between points A-C-D by a wooden

railed fence. There are currently two stiles on the definitive footpath located at points A-B on Plan No. HA/146; they would be replaced by the landowner as part of the diversion process with 1.5 metre kissing gates.

- 5.7. The proposed diversion will take users away from the private driveway, the out buildings and the farmhouse, therefore increasing the privacy and security of the property. The proposed diversion will also be more pleasant for users as it would be firmer and more even under foot.

6. Implications of the Recommendations

6.1. Legal Implications

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

6.2. Finance Implications

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

6.3. Policy Implications

- 6.3.1. There are no direct policy implications.

6.4. Equality Implications

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

6.5. Human Resources Implications

- 6.5.1. There are no direct 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 The Council has committed to becoming carbon neutral by 2025 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint.

6.10.2 The diversion of the Public Footpath would enable better access to the public rights of way network by members of the public on foot with the potential for the improvement and promotion of active healthy lifestyles and wellbeing.

7. Ward Members Affected

7.1.1 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. The following comments were received:

8.2. The Open Spaces Society verbally commented on the proposal saying;

- a. The proposed path would be much longer than the existing route and is therefore less convenient.
- b. The proposal does not meet the test for privacy and security as the path is a reasonable distance from the buildings.
- c. The Open Spaces Society also questioned the landowner's intentions with regards to fencing the footpaths and their intentions concerning the land over which the footpath runs.

8.3. The North and Mid Cheshire Ramblers also commented on the proposal with regards to privacy and security, a "dog leg" proposed during the initial informal consultation stage (subsequently amended) and the width of the path.

- 8.4. Following the landowner's response (referred to below) and the amendment to the consultation plan to that shown in Plan No. HA/146, the Ramblers stated that they were "very pleased" and they would have no objections to the proposed diversion.
- 8.5. The Peak and Northern Footpath Society responded saying;
- a. *"It is difficult to see how the current path affects privacy or security or how the diversion will improve it."*
 - b. *"It was difficult to assess whether the proposed route affords better views due to the heavy machinery (earth moving diggers/ mounds of earth etc) that sit alongside the proposed route."*
 - c. *"The path would also be fenced on its eastern side between points A-C-D and on its western side between E-B.' No reason is given for this. Overall it is difficult to see the need for this diversion at the current time"*
- 8.6. In response to the comments the landowner has stated that the existing route of Footpath No. 45 runs along the main access to the farmhouse which does not benefit from any street lighting and so poses an issue of privacy and security around the property.
- 8.7. The landowner has agreed that the initial proposed diversion would have created a "dog leg" and has amended the line of the proposed path to that shown on Plan No. HA/146. The proposed path would be approximately 20 metres longer than the existing footpath.
- 8.8. The landowner wishes to enclose the proposed diversion and a section of Footpath No. 52 to enable his future plans to restore and improve the land for agricultural purposes. The landowner has also agreed to increase the width of the proposed diversion to 4 metres, from that initially proposed, to ensure the path can be suitably maintained in the future.
- 8.9. The plant machinery and mounds of earth currently obscuring the views along the proposed path are due to some of the improvement works the landowner is currently undertaking.
- 8.10. The Peak and Northern Footpath Society responded to say they are satisfied with the response and have confirmed they will not object to the Order being made.

8.11 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/584 relating to this report can be inspected by contacting the report writer.

10. Contact Information

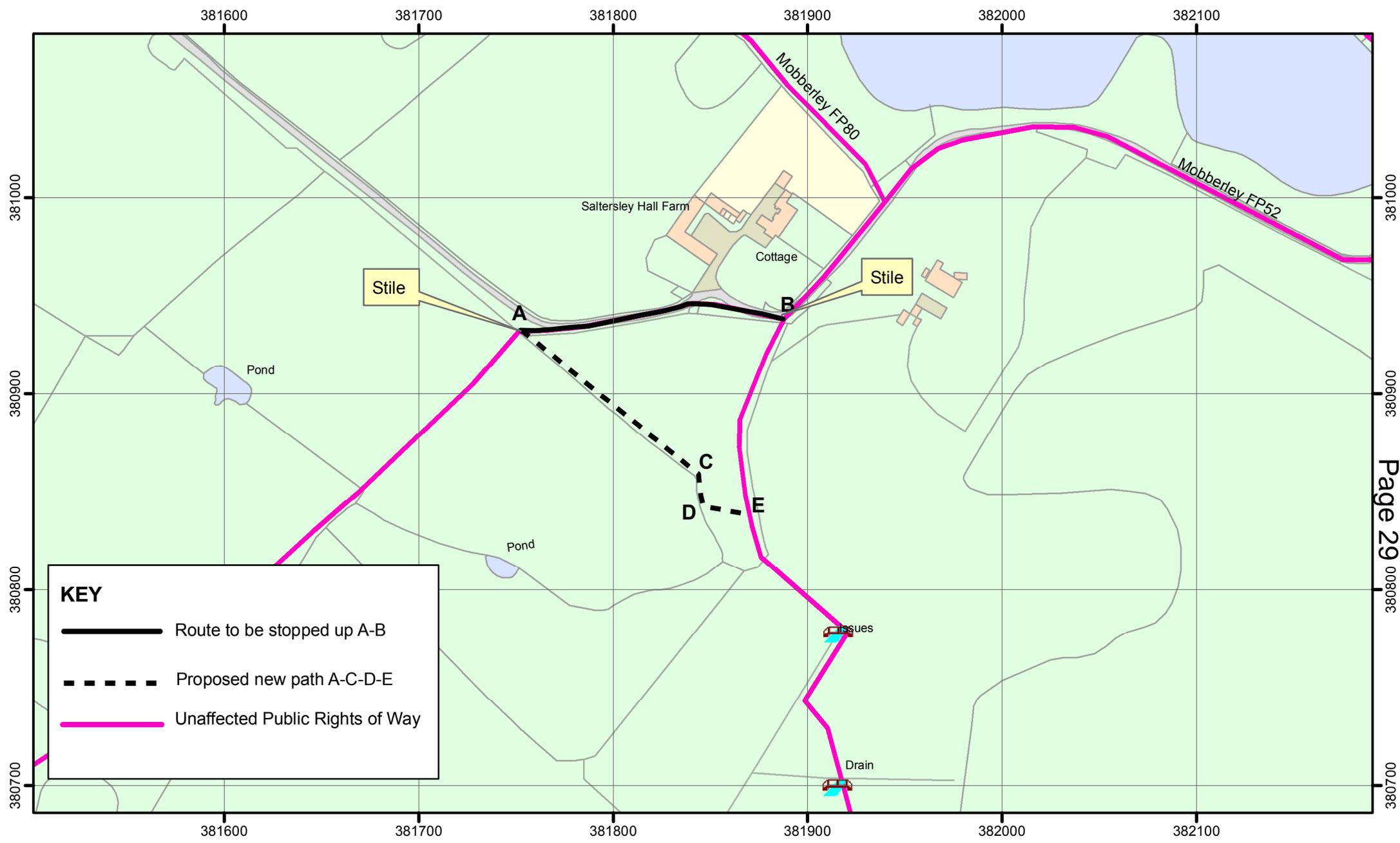
Any questions relating to this report should be directed to the following officer:

Name: Sarah Fraser

Job Title: Public Path Orders Officer

Email: Sarah.fraser@cheshireeast.gov.uk

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KEY

- Route to be stopped up A-B
- Proposed new path A-C-D-E
- Unaffected Public Rights of Way

N
1:2,500

Highways Act 1980 s119 proposed diversion of
Public Footpath No.45 (part) in the Parish of Mobberley

PLAN No.
HA/146



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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 02 December 2019

Report Title: Highways Act Section 119 Proposed Diversion of Public Footpath No.34 and No.35 (parts) in the Parish of Macclesfield Forest.

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

- 1.1 The report outlines the investigation to divert part of Public Footpath No. 34 and part of Public Footpath No.35 in the Parish of Macclesfield Forest. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for a diversion Order to be made. The proposal has been put forward by the Public Rights of Way team in the interests of the landowners. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to divert the section of footpath concerned.
- 1.2 The proposal contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

2. Recommendations

- 2.1 An Order be made under section 119 of the Highways Act, as amended by the Wildlife and Countryside Act 1981, to divert part of Public Footpath No. 34 and part of Public Footpath No.35 in the Parish of Macclesfield Forest by creating new sections of Public Footpath and extinguishing parts of the current paths as illustrated on Plan No. HA/145 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 Recommendations

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

3.7. 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.

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 Hurley of Whitehills Farm Macclesfield Forest, requesting that the Council make an Order under section 119 of the Highways Act 1980 to divert parts of Public footpath No.34 and No.35 in the Parish of Macclesfield Forest. The application is made on grounds of privacy in respect of the residential dwellings, security of the farm and improved management of the land.

5.2. The current definitive line of footpath No.34 commences at a junction with Public Footpath No.11 in the Parish of Macclesfield Forest. The footpath runs in a generally south westerly direction for a distance of approximately 297 metres to a footbridge over a water course. It then continues in the same direction for approximately 86 metres before turning to take a more southerly direction as it passes within very close proximity to a residential property and through the middle of Whitehills Farmyard and animal holding areas for a distance of approximately 50 metres. The path then connects at its junction with Public Footpath No.35. Where the path passes through the farmyard there is an obstruction caused by a wall forming part of an animal holding area and an agricultural structure installed prior to legislation requiring planning permission. To avoid the obstructions walkers are able to use a permissive path that runs to the east of the farm as shown by a bold blue dashed line on plan No. HA/145.

5.3. The section of footpath No.34 proposed to be diverted is shown on plan No. HA/145 accompanying this report by a bold black line between points A-B and has a total distance of approximately 139 metres.

5.4. The current definitive line of Public Footpath No.35 commences at a junction on Public Footpath No.11. The path then continues in a generally north westerly direction for a distance of approximately 135 metres. At this point

the path runs in a generally north westerly direction through an old barn erected sometime in the past, close to residential dwellings and through Whitehills farmyard. The path exits the farmyard onto a farm track and curves in a generally south westerly to north westerly direction for a distance of approximately 134 metres where it connects at a junction with Public Footpath No.10. To access the section of path currently obstructed by the barn, walkers are able to use a short permissive path that runs south of the definitive line as shown by the bold blue dashed line on plan No. HA/145 attached to this report.

- 5.5. The section of footpath No.35 proposed to be diverted is shown by a solid black line between points D-A-C on plan No. HA/145 and has a total distance of approximately 310 metres.
- 5.6. In accessing, the permissive path walkers must negotiate a number of gates and stiles which are shown on the plan accompanying this report. Because the permissive paths also take walkers within close proximity to the residential dwellings and the working areas of the farm, they are not considered suitable alternative footpaths on to which to divert the footpaths.
- 5.7. The proposed diversion of footpath No.34 is shown on plan No. HA/145 by a bold black dashed line between points B-E. The proposed diversion would commence at the footbridge shown at point B on plan No. HA/145 and would run in a generally westerly direction following the natural topography of the landscape before reconnecting to the network at a junction on Public Footpath No.10. The proposed diversion would have a total distance of approximately 213 metres.
- 5.8. The proposed diversion of footpath No.35 is also shown on plan No. HA/145 attached to this report by a bold black dashed line between points F-B. The path would commence at a junction with public footpath No.11 and would extend in a generally north westerly direction for a distance of approximately 66 metres. The path would then continue in a generally west south westerly direction for a distance of approximately 113 metres before extending in a generally north westerly direction for a distance of approximately 29 metres to connect with the footbridge shown as point B on plan No. HA/145. The proposed path would have a total distance of approximately 210 metres.
- 5.9. The effect of the diversion on footpath No.34 would be to increase the length of that footpath by approximately 74 metres. The effect of the diversion on footpath No.35 would be to decrease the length of that footpath by approximately 106 metres. The total combined length of the footpaths proposed to be diverted as shown between points A-B and C-D on plan No. HA/145 is approximately 442 metres. The combined total length of the

proposed diversions shown between points E-B-F as shown on the plan would be 423 metres.

5.10. The proposed diversions would take the existing paths away from the residential properties and the working farm environment, through a safer more scenic route and would reduce the risks associated with walking through a working farm. The proposed diversions would also offer improved views of the surrounding countryside with local landmarks to include, Macclesfield Forest, Shuttlingsloe and the Shining Tor all being visible from the proposed footpaths.

5.11. With regards to the longstanding obstructions on footpaths, Council policy states;

“Where the obstruction is substantial and it would be costly and impractical to remove it, the owner will be requested to apply for the diversion of the path rather than remove the obstruction. The Council will expect the owner to make an alternative route available whilst the diversion process is completed.”

In this case the landowner has agreed to divert the footpaths affected by the obstructions and has requested that the footpaths are diverted away from the residential properties and the farmyard on grounds of privacy, security and improved land management. The permissive footpaths remain available in the meantime.

6. Implications of the Recommendations

6.1. Legal Implications

6.2. 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.

6.3. Finance Implications

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

6.4. Policy Implications

6.4.1. There are no direct policy implications.

6.5. Equality Implications

6.5.1. 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.

6.6. Human Resources Implications

6.6.1. There are no direct implication for human resources.

6.7. Risk Management Implications

6.7.1. There are no direct implications for risk management.

6.8. Rural Communities Implications

6.8.1. There are no direct implications for rural communities.

6.9. Implications for Children & Young People/Cared for Children

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

6.10. Public Health Implications

6.10.1. There are no direct implications for public health.

6.11. Climate Change Implications

6.11.1 The Council has committed to becoming carbon neutral by 2025 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint.

The diversion of the public footpaths would enable better access to the public rights of way network by members of the public on foot with the potential for the improvement and promotion of active healthy lifestyles and well being.

7. Ward Members Affected

7.1. Sutton ward member Councillor Andrew Gregory has been consulted and no comments have been received.

8. Consultation & Engagement

8.1. Macclesfield Forest and Wildboardclough Parish Council, user groups, statutory undertakers and the Councils Nature Conservation Officer have been consulted. The following comments were received:

8.2. The East Cheshire Ramblers undertook a site visit of both the existing and the proposed diversion and reported that they were generally satisfied with the proposal and look forward to walking the path.

8.3. The Peak and Northern Footpath Society responded to the consultation with concerns that the proposed diversion may not meet the legal tests contained in section 119(2) and that the diversion ought to be a section 118 extinguishment and a creation Order under s25 or s26 instead.

The Peak and Northern Footpath Society also undertook to visit the site of the footpaths and the proposed diversions. They comment that the proposed diversion is *“a steeply undulating route through rough pasture... making the route potentially more difficult for walkers.”*

They also expressed concerns that at the time of their visit the section of path shown between points E-B had cattle with a bull in the field and further expressed concerns as to the safety of this for walkers if an Order was made.

The Society also requested confirmation about any limitations such as gates and stiles along the proposed diversions.

8.4. In response to the Peak and Northern Footpath Society’s concerns, section 119 (2) prevents the diversion of a public right of way if it does not connect to a highway and if it does end on a highway, it should be diverted on to the same highway, or a connected highway. In this case footpath No.34 currently connects to footpath No.35, if the diversion is successful the footpaths will continue to connect and footpath No.34 will also connect to footpath No.10. Footpath No.35 currently connects to footpath numbers 11, 34 and 10, again if the diversion is successful that footpath will still connect to both footpath No.34 and No.11. Therefore, both parts of the diversion satisfy the test contained within s119(2) of the Highways Act as both diversions would end on a connected highway.

The gradients of the proposed diversions are similar to the current footpaths and indeed the surrounding area.

With regards to cattle in the field section E-B the landowner has stated that there are cattle in the adjacent field to the north of the footpaths but not in the field through which the proposed diversions will run.

The landowner also confirmed that he will install kissing gates at points B and F on plan No. HA/145.

8.5. Peak and Northern Footpath Society responded to the councils comments saying the issue would be that for the diversions of the footpaths both

Orders would need to succeed in order to meet the legal tests in s119 and as such they would object to the diversion.

The Council confirmed that the proposed diversion of both footpaths would be on the same Order ensuring that the legal tests contained within s119 (2) would be met. The Peak and Northern Footpath Society responded to say they will not object to the Order.

8.6. No other comments have been received.

9. Access to Information

9.1.1. The background papers of file No. 194D/583 relating to this report can be inspected by contacting the report writer.

10. Contact Information

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

Name: Sarah Fraser

Job Title: Public Path Orders Officer

Email: sarah.fraser@cheshireeast.gov.uk

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372900

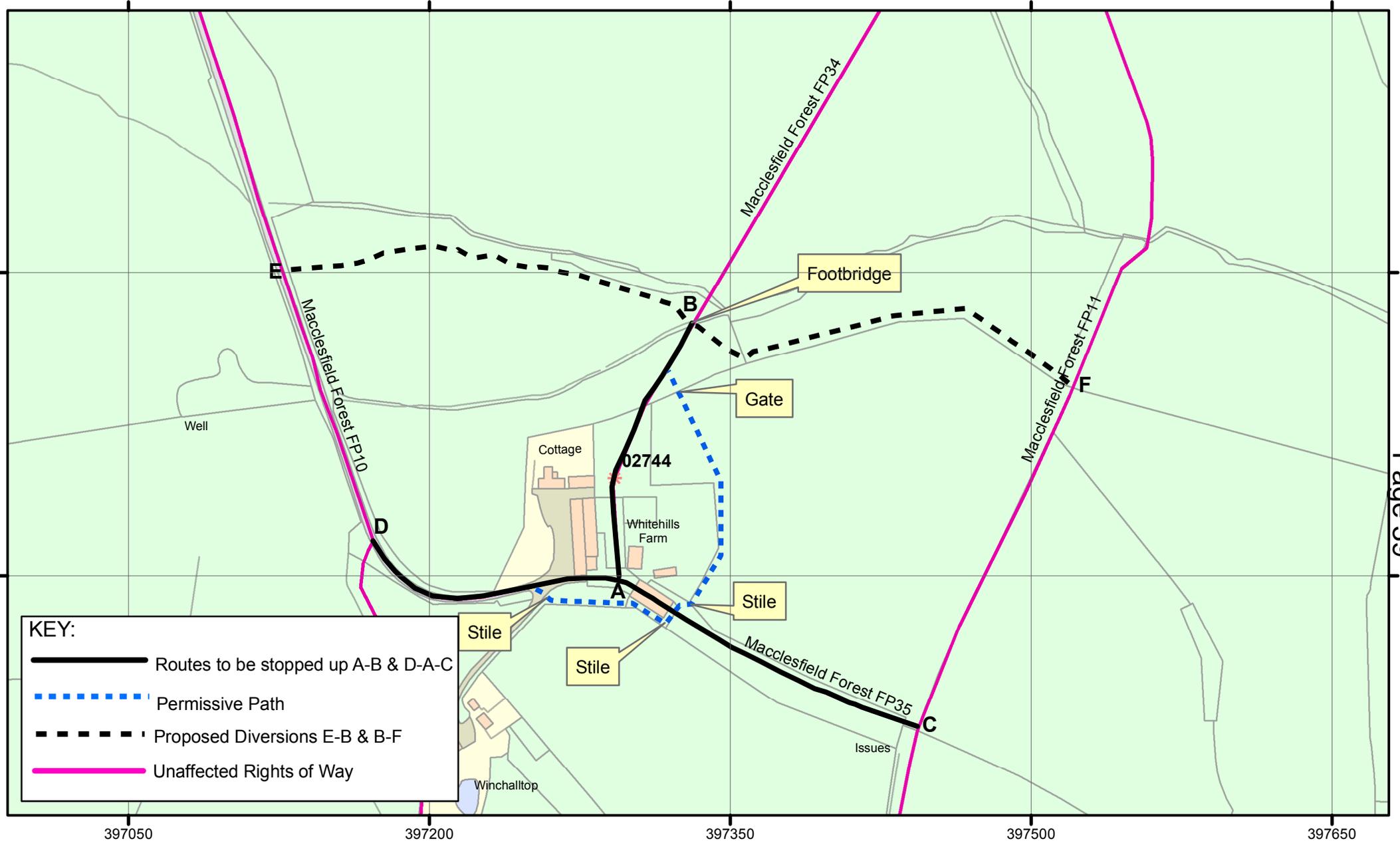
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KEY:

- Routes to be stopped up A-B & D-A-C
- Permissive Path
- Proposed Diversions E-B & B-F
- Unaffected Rights of Way



1:2,500

Proposed S119 Highways Act 1980 Diversion of Public Footpath No.34 (part) and Public Footpath No.35 (part) in the Parish of Macclesfield Forest.

Plan No.
HA/145



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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 02 December 2019

Report Title: Public Rights of Way Proposed Fees and Charges 2020-21

Senior Officer: Frank Jordan, Executive Director – Place

1. Report Summary

- 1.1. This report outlines the proposed fees and charges for 2019-20 for charged-for services provided by the Public Rights of Way team.
- 1.2. The work of the Public Rights of Way team contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

2. Recommendation

- 2.1. 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 Charges are made for services provided by the Public Rights of Way team in six principle areas where recovery of costs is permissible within the relevant legislation:
 - Public Path Orders
 - Temporary Closures
 - Land Searches
 - Landowner declarations, deposits and statements
 - Enforcement action cost recovery

- Meetings, site visits and notice posting at the request of landowners/developers.
- 5.2 Powers for the recovery of costs are set out in various pieces of statutory legislation and reflect full cost recovery of all reasonable costs involved in pursuing the matter including overheads. Costs are based on time analysis of staff based on the final scale point of salary grade with overheads included at the corporate agreed rate. Legislation does not permit the making of a profit. Advertising costs are recovered direct from the applicant, where applicable
- 5.3 An annual review of the fees and charges has been conducted as part of the budget setting process of the Council. The charges for 2020-21 have been increased by inflation, rounded, and also take into account revised corporate recharge rates. In addition, the fees and charges have been amended to reflect revised assessments of costs incurred.
- 5.4 Charges for Public Path Orders are set to recover all administrative costs of the process, with charges made in accordance with “The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993” as amended by “The Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996”. Previous fees and charges schedules have charged the same application fee for orders under both Highways Act 1980 and Town and Country Planning Act 1990. Whilst the processes are, on the whole, the same, the latter, due to the complexity of the planning process, involve additional tasks, dialogue and negotiation. For this reason the fees have been separated to reflect the Officer time and therefore costs involved.
- 5.5 Charges for temporary closures of Public Rights of Way are also set to recover all administrative costs of the process, now separated into those requiring only notices to be processed and those requiring legal orders to be made, again to reflect the different tasks involved in each process.
- 5.6 Land Searches are a discretionary task in which a request is made for formal confirmation of whether or not there are Public Rights of Way recorded on the Definitive Map within a defined area. Charges are set to recover all administrative costs, and to reflect similar charges levied by Cheshire East Highways for similar services.
- 5.7 Landowner declarations, deposits and statements made under the Highways Act 1980 section 31(6) attract a charge set to recover all administrative costs, and are made under the provisions of Commons Act 2006 S15A and S15B.
- 5.8 Enforcement action costs are charged on the basis of actual costs incurred by the Public Rights of Way team, contractors and police, as applicable.

5.9 Costs for meetings, site visits and notice posting at the request of a landowner or developer are charged on the basis of Officer time and mileage.

5.10 The fees and charges proposed for the 2020-21 financial year are detailed below.

Service	2019-20	2020-21
Public Path Order		
Highways Act 1980	£3,900	£4,900
Town & Country Planning Act 1990 – single property / mineral application	£3,900	£5,250
Town & Country Planning Act 1990 – multiple properties	£3,900	£5,800
Temporary Closure		
3 day event closure	£335	£430
Motor event closure	£280	£200
5 day or 21 day closure or extension	£280	£150
6 month temporary closure Order	£510	£430
6 month extension Order via Secretary of State	£335	£300
Land Search	£80	£85
Highways Act 1980 S31(6) deposits and statements on behalf of landowner applicants:		
•deposited statement and plan with consecutive statutory declaration	£240	£300
•a statutory declaration relating to a current, valid statement and plan	£120	£150
Meetings, site visits, notice posting at request of landowner/developer - rate per Officer per hour plus mileage	-	£50
Enforcement cost recovery - rate per Officer per hour plus mileage, plus any contractor and police fees	£49	£50

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 additional financial implications foreseen.

6.3 Policy Implications

6.3.1 The Public Rights of Way Charging Policy will be updated when the revised fees and charges come into operation in 2020-21.

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 foreseen.

6.6 Risk Management Implications

6.6.1 There are no risk management implications foreseen.

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 The Council has committed to becoming carbon neutral by 2025 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint.

6.10.2 The work of the Public Rights of Way team encourages a reduction in carbon emissions and increased environmental sustainability by reducing energy consumption and promoting healthy lifestyles through active travel.

7. Ward Members Affected

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

8. Consultation & Engagement

8.1 Approval for the changes has been obtained from the Portfolio Holder and Head of Service who have the appropriate delegated powers. The revised fees and charges schedule has been submitted as part of the Council's budget setting process which will be approved in February 2020 by full Council.

9. Access to Information

9.1 Contact the report writer.

10. Contact Information

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

Name: Genni Butler

Job Title: Acting Public Rights of Way Manager

Email: genni.butler@cheshireeast.gov.uk

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Working for a brighter future together

Public Rights of Way Committee

Date of Meeting: 02 December 2019

Report Title: Wildlife & Countryside Act 1981– Part III, Section 53: Appeal Decision for Application No. CO/8/34: Claimed Footpath from Byley Lane to Carver Avenue, Parish of Cranage.

Senior Officer: Frank Jordan, Executive Director Place

1. Report Summary

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

2. Recommendation

- 2.1. No decision is required by Committee.

3. Reasons for Recommendation

- 3.1. N/A

4. Other Options Considered

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

5. Background

- 5.1. An application for a Definitive Map Modification Order was submitted in March 2007 by Cranage Parish Council to modify the Definitive Map and Statement by adding several footpaths between Byley Lane, Crescent Road and Carver Avenue in the Parish of Cranage as shown on the attached Plan No. WCA/ 016.
- 5.2. The applicant appealed the lack of determination of this application in October 2017 and in March 2018, Cheshire East Council received a direction to determine the application from the Secretary of State.

- 5.3. A report considering this matter was brought to this Committee in December last year. A detailed investigation had been undertaken by a consultant appointed by the Council which considered all the evidence that had been submitted by the applicant and also any additional evidence that came to light through the consultation period.
- 5.4. The user evidence consisted of 19 people claiming use of the routes, 4 of these were minors at the time of the application. Of the 19, 9 completed standard user evidence forms. 6 users submitted unsigned statements in October 2017. 7 of the witnesses were interviewed.
- 5.5. The use was considered under Common Law as the land had been in the ownership of the Secretary of State for Health up until 2001 and as such was considered to be Crown Land. There cannot be a presumption of dedication of a public right of way over Crown Land under Section 31 of the Highways Act 1980.
- 5.6. The report concluded that although public rights can be deemed to exist under Common Law, where the actions (or inaction) of a landowner are such that it can be inferred that they intended a way to be dedicated and where the public have accepted it; that there was no evidence that the Health Authority as landowner was aware that the land was being used by the public for the purposes of establishing a right of way. The Committee decision was to refuse the application on these grounds.
- 5.7. This decision relating to one of the claimed paths A-B-C-D on Plan No. WCA/016 was appealed by the applicant in January 2019 and following further submissions of comments by all affected parties, the Secretary of State issued a letter directing the Council to make an Order on the 13th September.
- 5.8. Consequently the Authority has made an Order to add Footpath A-B-C-D, as shown on the Order Plan No. WCA/016A, to the Definitive Map and Statement as directed because it appears to the Secretary of State for Environment, Food and Rural Affairs that the Definitive Map and Statement for Cheshire East requires modification in consequence of the occurrence of an event specified in:

Section 53 (3) (c) (i), namely, the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies.

6. Implications of the Recommendations

6.1. Legal Implications

6.1.1. When an order is made it is advertised and may be subject to objections. If objections are not withdrawn the Council cannot then confirm the order itself and must submit the order to the Secretary of State (Planning Inspectorate) for determination. Where a Parish Council objects to an order it is policy for a local public inquiry to be held. It is also likely that where the evidence in support of an Order is based on use, an Inquiry will also be held so that the evidence can be tested in a public forum. The Council must provide a suitable venue and legal support to facilitate an inquiry although in this instance the Council would take a neutral stance at any possible forthcoming inquiry and neither support nor oppose the Order; therefore the level of legal support required would be less onerous.

6.2. Finance Implications

6.1.2 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/Cared for Children

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. The Council has committed to becoming carbon neutral by 2025 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint.

6.10.2. The addition of a footpath to the Definitive Map represents the formal recognition of pedestrian rights creating more opportunities for travel/leisure on foot and potentially reducing the use of cars for short local journeys and therefore energy consumption. It also has the potential for the improvement/promotion of healthy lifestyles.

7. Ward Members Affected

7.1. Dane Valley Ward: Councillors L Gilbert and A Kolker have received copies of the Order and Explanatory Statement.

8. Consultation & Engagement

8.1. This is an Informative report so no further consultation has been undertaken. All relevant parties have been served with a copy of the Order and Explanatory Statement.

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

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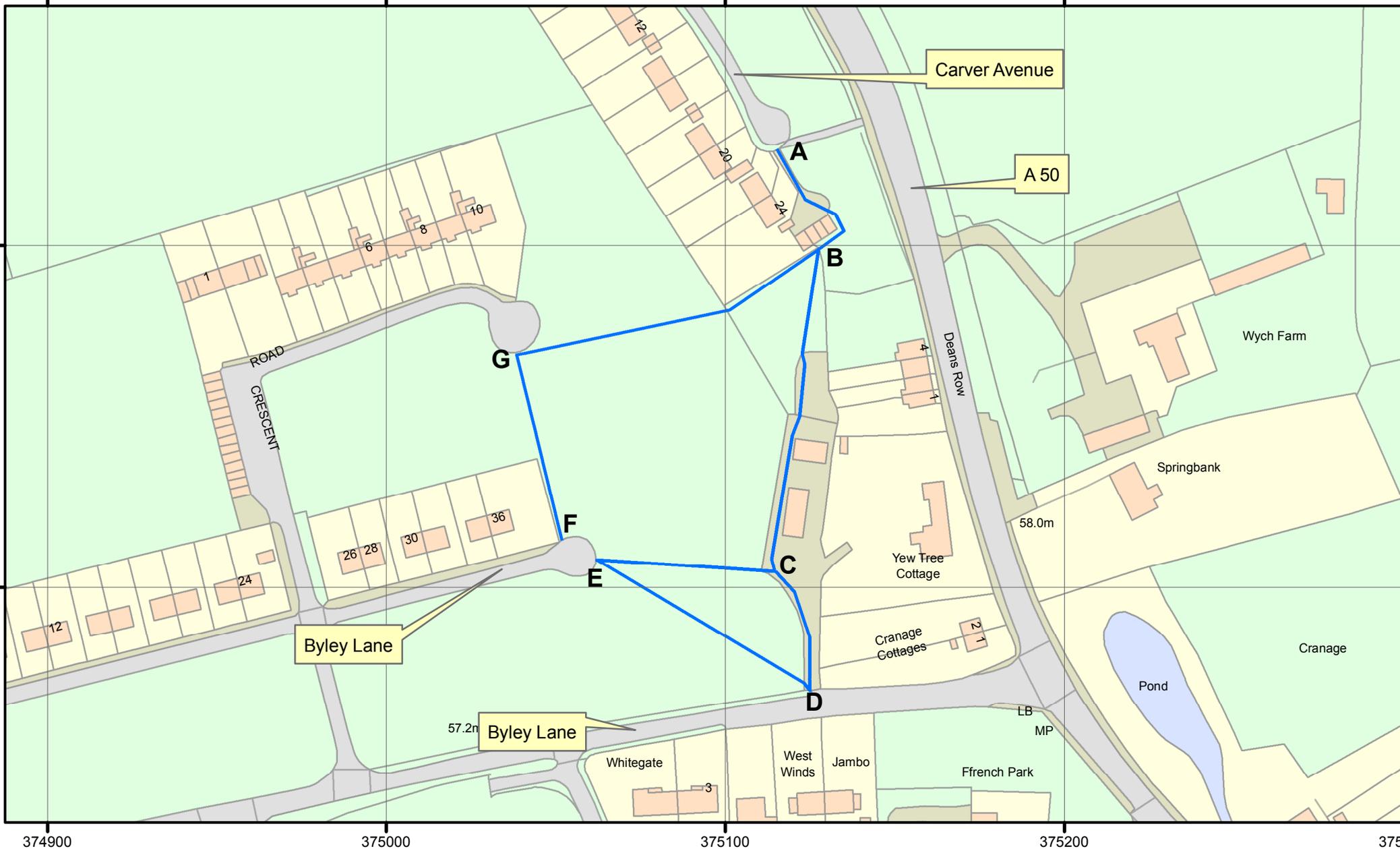
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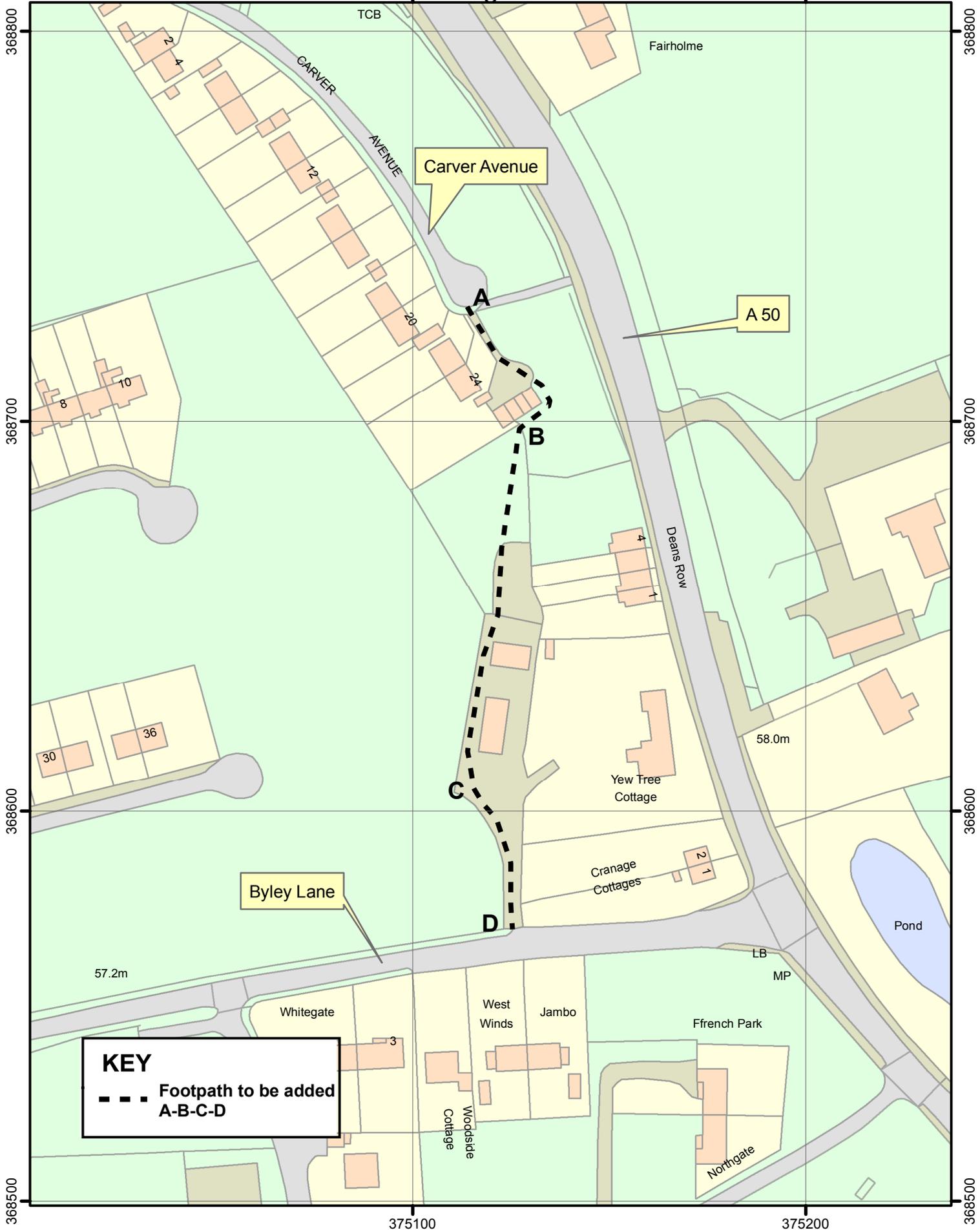
Claimed Footpath Additions
Carver Avenue/ Crescent Road/ Byley Lane
Cranage. Ref: CO/8/34

Plan No.
WCA/016

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



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KEY
 - - - Footpath to be added
 A-B-C-D



**Cheshire East Borough Council Definitive Map and Statement
 (Addition of Public Footpath No. 21, Parish of Cranage)
 Modification Order 2019**

Plan No.
 WCA/016A

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