

# Public Rights of Way Sub Committee

## Agenda

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**Date:** Monday, 5th December, 2022  
**Time:** 2.00 pm  
**Venue:** Committee Suite 1,2 & 3, Westfields, Middlewich Road,  
Sandbach CW11 1HZ

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

It should be noted that Part 1 items of Cheshire East Council decision making meetings are audio recorded and the recordings will be 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 - 12)

To approve the minutes of the meeting held on 1 August 2022.

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For requests for further information

**Contact:** Karen Shuker

**Tel:** 01270 686459

**E-Mail:** [karen.shuker@cheshireeast.gov.uk](mailto:karen.shuker@cheshireeast.gov.uk) with any apologies

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

In accordance with Public Speaking Appendix, members of the public may speak on a particular application after the Chair has introduced the report, provided that notice has been given in writing to Democratic Services three 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.

Also in accordance with the Committee Procedural Rules and Public Speaking Appendix a total period of 15 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 2 minutes but the Chair 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 wishing to speak are required to provide notice of this at least three clear working days' in advance of the meeting and should include the question with that notice.

#### 5. **Wildlife & Countryside Act 1981 - Part III, Section 53. Application No.CO/8/39: Application to add a Public Bridleway between Dragons Lane and Plant Lane, Moston (Pages 13 - 36)**

To consider an application to amend the Definitive Map and Statement to add a Public Bridleway between Dragons Lane and Plant Lane in the parish of Moston.

#### 6. **Wildlife & Countryside Act 1981 - Part III, Section 53. Application No. CO/8/54: Application for the Deletion of Public Footpath no.66, Congleton. (Pages 37 - 54)**

To consider an application under the Wildlife & Countryside Act 1981 - Part III, Section 53. Application No. CO/8/54: for the Deletion of Public Footpath no.66, Congleton.

#### 7. **Informative Report - Wildlife & Countryside Act 1981- Part III, Section 53 - Contested Order PINs decision for Application No. CO/8/34: Claimed Footpath from Byley Lane to Carver Avenue, Parish of Cranage. (Pages 55 - 62)**

To receive an informative report detailing the decision made by the Planning Inspectorate on the Order made by the Council to modify the Definitive Map and Statement by adding a footpath in Cranage

#### 8. **Informative Report - Bradwall Permissive Path Agreement (Pages 63 - 68)**

To receive an informative report in respect of a new permissive path agreement in the Parish of Bradwall.

9. **Informative Report on Cases of Uncontested Public Path Orders Determined under Delegated Decision** (Pages 69 - 72)

To note the Public Path Orders determined under Delegated Decision.

**Membership:** Councillors S Akers Smith, H Faddes, L Crane (Chair), S Edgar (Vice-Chair), L Gilbert, R Moreton and D Stockton

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**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Public Rights of Way Sub Committee**  
held on Monday, 1st August, 2022 in the Committee Suite 1,2 & 3, Westfields,  
Middlewich Road, Sandbach CW11 1HZ

**PRESENT**

Councillor L Crane (Chair)  
Councillor S Edgar (Vice-Chair)

Councillors S Akers Smith, H Faddes, L Gilbert and D Stockton

**OFFICERS IN ATTENDANCE**

Laura Allenet, Public Path Orders Officer  
Genni Butler, Acting Public Rights of Way Manager  
Richard Doran, Countryside Service Development Manager  
Vicky Fox, Planning Lawyer  
Marianne Nixon, Public Path Orders Officer  
Karen Shuker, Democratic Services Officer

**1 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillor R Moreton.

**2 DECLARATIONS OF INTEREST**

No declarations of interest were made.

**3 MINUTES OF PREVIOUS MEETING**

That the minutes of the meeting held on 14 March 2022 be confirmed as a correct record.

**4 PUBLIC SPEAKING TIME/OPEN SESSION**

There were no public speakers.

**5 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257  
PROPOSED DIVERSION OF PUBLIC FOOTPATHS NO. 12 AND 14 IN  
THE PARISH OF WARDLE**

The Committee considered a report detailing the investigation to divert parts of Public Footpath Nos. 12 and 14 in the Parish of Wardle. The proposal had been put forward as an application had been received from AEW Architects on behalf of Philip Posnett, as detailed within planning reference 21/6382N.

In accordance with Section 257 of the Town and Country Planning Act 1990 as amended by Section 12 of the Growth and Infrastructure Act 2013:

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

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

Diversion of parts of Public Footpath Nos. 12 and 14 had been requested to allow for the development of a spine road and other associated infrastructure works, as detailed within planning reference 21/6382N. It was noted that as planning application 21/6382N had not been approved yet, the proposed diversion would not come in to affect until such time that it was approved.

The Committee considered the application and noted that no objections had been received from the ward member for Bunbury, the user groups, statutory undertakers, adjacent residents, and Cheshire East’s Nature Conservation Officer.

The Committee concluded that it was necessary to divert parts of Public Footpath Nos. 12 and 14 in the Parish of Wardle to enable development to be carried out.

The Committee unanimously

**RESOLVED:** That

- (1) That an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert parts of Public Footpath Nos. 12 and 14 in the Parish of Wardle, as illustrated on Plan No TCPA/070 on the grounds that the Council is satisfied that it is necessary to do so to allow development to take place.
- (2) Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, and 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 to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

**6 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257  
PROPOSED DIVERSION OF PUBLIC FOOTPATH NO. 3 IN THE  
PARISH OF HENHULL**

The Committee considered a report detailing the investigation to divert part of Public Footpath No. 3 in the Parish of Henhull. The proposal had been put forward as an application had been received from Malbank School and Sixth Form College as detailed within planning reference 21/4557N.

In accordance with Section 257 of the Town and Country Planning Act 1990 as amended by Section 12 of the Growth and Infrastructure Act 2013:

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

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

Diversion of part of Public Footpath No.3 had been requested to allow for the replacement of an existing 3 rail timber fence, as detailed within planning reference 21/4557N. The existing alignment of Public Footpath No.3 would be directly affected by construction of the new steel fence; therefore, the diversion was required to preserve the public right of way. The associated planning application, 21/4557N, had been approved.

The Committee considered the application and noted that no objections had been received from the ward member for Bunbury, Action, Edleston and Henhull Parish Council, the user groups, statutory undertakers, and Cheshire East's Nature Conservation Officer. The Committee noted further information reported verbally by the Public Rights of Way Officer.

The Committee concluded that it was necessary to divert part of Public Footpath No. 3 in the Parish of Henhull to enable development to be carried out.

The Committee unanimously

**RESOLVED:** That

- (1) That an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.3 in the Parish of Henhull, as illustrated on Plan No TCPA/074 on the grounds that the Council is satisfied that it is necessary to do so to allow development to take place.

- (2) Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, and 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 to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

**7 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257  
PROPOSED DIVERSION OF PUBLIC FOOTPATHS NO. 2 IN THE  
PARISH OF LEIGHTON.**

The Committee considered a report detailing the investigation to divert part of Public Footpath No. 2 in the Parish of Leighton. The proposal had been put forward as an application had been received from Knights Plc, on behalf of Torus62 Developments as detailed within planning reference 20/3210N.

In accordance with Section 257 of the Town and Country Planning Act 1990 as amended by Section 12 of the Growth and Infrastructure Act 2013:

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

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

Diversion of part of Public Footpath No.2 had been requested to allow for the construction of up to 400 dwellings and associated infrastructure, as detailed within planning reference 20/3210N. The existing alignment of Public Footpath No.2 would be directly affected by construction of a new road and associated infrastructure; therefore, the diversion was required to preserve the public right of way.

The Committee considered the application and noted that no objections had been received from the ward member for Leighton, Minshull Vernon and District Parish Council, the user groups, statutory undertakers, and Cheshire East's Nature Conservation Officer.

The Committee concluded that it was necessary to divert part of Public Footpath No. 2 in the Parish of Leighton to enable development to be carried out.



The Committee unanimously

**RESOLVED:** That

- (1) That an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.2 in the Parish of Leighton, as illustrated on Plan No TCPA/071 on the grounds that the Council is satisfied that it is necessary to do so to allow development to take place.
- (2) Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, and 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 to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

**8 TOWN AND COUNTRY PLANNING ACT 1990 SECTION 257  
PROPOSED DIVERSION OF PUBLIC FOOTPATH MOSTON 7Y (PART)**

The Committee considered a report detailing the investigation to divert part of Public Footpath No. 7Y in the Parish of Moston. The proposal had been put forward as an application had been received from Taylor Wimpey as detailed within planning references 09/2083C, 14/4218C and 14/4212C.

Taylor Wimpey had also been granted consent for the change of use of an area within their development, the 'Yew Tree Farm complex', for residential and non-residential development in the future.

In accordance with Section 257 of the Town and Country Planning Act 1990 as amended by Section 12 of the Growth and Infrastructure Act 2013:

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

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

Diversion of parts of Public Footpath No.7Y had been requested to enable the development of residential homes and businesses with associated infrastructure and public open space as detailed in planning references 09/2083C, 14/4218C and 14/4212C.

The rear gardens of residential homes situated between points D-E-F highlighted in Plan No. TCPA/072 would obstruct the current footpath, therefore it was considered necessary to realign the footpath via the diversion proposal such that it would pass outside the gardens and preserve the right of passage for the public.

Further, the diversion proposal would realign the footpath such that it would no longer run across the estate roads and pavements at the points shown between a-b and c-C on Plan No. TCPA/072.

Finally, the diversion proposal would by default, resolve obstruction by an electricity substation located between points C-D on Plan No. TCPA/072.

The Committee considered the application and noted that no objections had been received from the ward member for Brereton Rural, Moston Parish Council, the user groups or statutory undertakers.

The Committee noted the objection received from Network Rail in relation to expected increased number of users, and types of user, at the level crossing that carries Moston Public Footpath No.7Y over the railway.

In response, it was explained that the proposed diversion would not have any impact on the number of users or types of user reaching the level crossing. The number and types of user would be the same irrespective of whether users approached via the current route or the proposed diversion route. The proposed diversion would only change the alignment of Moston Public Footpath No.7Y within the development and have no impact on user types or numbers reaching the level crossing that lies outside of the development.

The Committee concluded that it was necessary to divert part of Public Footpath No 7Y in the Parish of Moston to enable development to be carried out.

The Committee unanimously

**RESOLVED:** That

- (1) That an Order be made under Section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath No.7Y in the Parish of Moston, as illustrated on Plan No TCPA/072 on the grounds that the Council is satisfied that it is necessary to do so to allow development to take place.
- (2) Public Notice of the making of the Order be given and in the event of there being no objections within the period specified, and 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 to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

**9 INFORMATIVE REPORT - PUBLIC RIGHTS OF WAY ANNUAL REPORT 2021-22 AND WORK PROGRAMME 2022-23**

The Committee considered a report which detailed the achievements of the Public Rights of Way team during 2021-22 and set out the proposed work programme for the year 2022-23.

The Acting Public Rights of Way Manager reported on the work carried out during 2021-22 by the Network Management and Enforcement Officers, Technical Administration Officer, Public Path Orders Officers and Definitive Map Officers. Specific performance was detailed in the Appendices to the report.

The Covid-19 pandemic had created financial pressures due to reduced income and increased expenditure which had resulted in an £108k pressure on the budget which had only been partly covered by a government grant. In addition, it was noted that the team would continue to face budget pressures in future due to continued supplies and services price rises which will have a consequent reduction in outputs on the PROW network.

It was also noted that extreme weather events, coupled with the increased usage during the Covid-19 lockdowns, had resulted in increased reports about the network, damaged bridges, put path surfaces under pressure and caused landowners issues.

In the legal order process area of work, the waiting list for Public Path Orders was at 67 applications due to complexities of current cases, other work priorities and a long-term absence in the team. At the end of the 2021-22 year, the waiting list of Definitive Map Modification Order applications stood at 48, with additional resource having been secured for the following year to help address this.

The Public Rights of Way Team had continued to deliver an excellent service across all functions despite the challenges caused by the Covid-19 pandemic. Additional resources would be required in order to continue the maintenance of the PROW network and services in the future given the pressures outline earlier, therefore business cases would be submitted.

The good condition of the network was highly regarded by user groups, the processing of legal orders continued to serve both users and landowners, and the high standard of response and service from the team as a whole was widely recognised.

The anticipated implementation of the Deregulation Act 2015 represented a risk to the capability of the team to meet their duties of the Highway

Authority with regards to Public Rights of Way. The effect of the Act once implemented would require an appraisal of processes and policies for dealing with Definitive Map Modification Orders and Public Path Orders. Tight timescales would be introduced by the legislation requiring application processing within specified time limits and additionally the processing of Public Path Orders would become a duty rather than a discretionary service.

The Committee congratulated the Public Rights of Way Team on their hard work and achievements over the last twelve months, acknowledged the challenges they faced going forward and offered their full support.

**RESOLVED**

That the report be noted

**10 INFORMATIVE REPORT ON 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 delegate decision.

One decision had been taken under delegation which related to Town and Country Planning Act 1990 Section 257 for the Proposed Diversion of Public Footpath Hulme Walfield No.3 (Part).

**AGREED**

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

The meeting commenced at 2.00 pm and concluded at 3.05 pm

Councillor L Crane (Chair)



*Working for a brighter future together*

## **Public Rights of Way Sub-Committee**

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<b>Date of Meeting:</b>	5 <sup>th</sup> December 2022
<b>Report Title:</b>	Wildlife & Countryside Act 1981 – Part III, Section 53. Application No.CO/8/39: Application to add a Public Bridleway between Dragons Lane and Plant Lane, Moston
<b>Report of:</b>	Jayne Traverse, Executive Director Place
<b>Ward(s) Affected:</b>	Brereton Rural

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### **1. Purpose of Report**

- 1.1.** This report outlines the investigation into an application made by David Nixon to amend the Definitive Map and Statement to add a Public Bridleway between Dragons Lane and Plant Lane in the parish of Moston. 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 a Public Bridleway to the Definitive Map and Statement.
- 1.2.** The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

### **2. Executive Summary**

- 2.1** The report considers the evidence submitted and researched in the application to add a Public Bridleway between Dragons Lane and Plant Lane in the parish of Moston. The evidence consists of use on foot, horseback and bicycle by individual witnesses over a period of over 20 years and historical documents that demonstrate the existence/status of the route over a period of over 200 years. The report determines whether on the balance of probabilities the status of the bridleway has acquired and/or whether the route already has higher rights. The documentary

evidence considered in this case demonstrates the existence of the route as a bounded lane of a status higher than footpath from the early 18<sup>th</sup> Century, and that the route historically is evidenced to have had public road status. The user evidence investigated and discussed provides strong evidence of use by walkers, horseriders and cyclists over a relevant 20 year period and, in conjunction with the historical evidence, leads to the assertion that Restricted Byway rights exist, the rationale for this legal status being explained in the report.

### **3. Recommendations**

- 3.1** An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to add a Restricted Byway as shown between point A and B on Plan No. WCA/025.
- 3.2** 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.
- 3.3** 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.

### **4. Reasons for Recommendations**

- 4.1** The evidence in support of this claim must show, on the balance of probabilities, that public restricted byway rights 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 restricted byway rights along the route shown between points A - B on Plan No. WCA/025. It is also considered that the historical evidence discovered demonstrates the existence of higher rights than a footpath or bridleway along the route consistent with a restricted byway.
- 4.2** It is considered that the requirements of Section 53(3)(c)(i) have been met in relation to restricted byway rights and it is recommended that the Definitive Map and Statement should be modified to show a Restricted Byway between Dragons Lane and Plant Lane.

## 5. Other Options Considered

5.1. Not applicable.


## 6. Background

### 6.1. *Introduction*

**6.1.1** The Application was made to Cheshire East Council on 14<sup>th</sup> July 2014 by Mr David Nixon to add a Public Bridleway between Dragons Lane and Plant Lane in the parish of Moston. The application consisted of user evidence forms and maps and photographs. A total of 11 user evidence forms were submitted demonstrating use on foot, horseback and pedal cycle.

**6.1.2** Further evidence was also submitted in the form of photographs, copies of county maps, Ordnance Survey maps, Definitive Map draft and provisional maps and a Tithe Map extract and other letters, documents and reports.

### 6.2. *Description of the Application Route*

**6.2.1** The claimed route commences from the southern end of the public highway known as Plant Lane. The first section of the route runs from a rough stone surfaced layby off Plant Lane before proceeding down a route bounded between two fences along a grassy/earth surfaced route. It passes initially between 2 widely spaced metal bollards and then continues for approximately 400 metres along a route in a generally north easterly direction varying in width and with surrounding vegetation and small trees. The route gets wetter as it approaches Dragons Lane at the northern end and is also narrower at this end. It exits onto Dragons Lane again, passing between metal bollards.

### 6.3 *Main Issues*

**6.3.1** 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:-

**6.3.2** 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 on 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 rights subsist. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.

**6.3.3** 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”.

**6.3.4** 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.

**6.3.5** For public rights to have come into being through long use, as stated above, 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 twenty years immediately prior to the date of the application. In this case the date of challenge can be identified as the date on which the application was submitted, being 14<sup>th</sup> July 2014.

**6.3.6** The Planning Inspectorate guidelines state, “Section 31, Highways Act 1980, as amended by section 68 of Natural Environment and Rural Communities Act (NERC) 2006, provides that use of a way by non-mechanically propelled vehicles (such as a pedal cycle) can give rise to a restricted byway”.

**6.3.7** The case of *Whitworth v Secretary of State for the Environment, Food and Rural Affairs* (2010) is often quoted where there is evidence of use on horseback and pedal cycle. Section 30 of the Countryside Act 1968 gave pedal cyclists the right to ride on a bridleway; consequently, any use from 1968 onwards is said to be “by right”. In *Whitworth* the route was found to have pre-existing bridleway status, i.e., it was decided the status was a bridleway prior to 1968. It was suggested that subsequent use by cyclists of an accepted, but unrecorded, bridleway, where use of the bridleway would have been permitted by virtue of section 30 of the Countryside Act 1968, could not give rise to anything other than a bridleway.

**6.3.8** The Natural Environment and Rural Communities Act 2006 (NERC) Section 67 (1) extinguished existing motor propelled vehicular rights where they were not recorded on the Definitive Map and Statement at commencement (i.e. the date of the Definitive Map) although there are a few exceptions to this outlined in subsections S67(2) & (3) of the Act.

#### **6.4** *Investigation of the Claim*

**6.4.1** An investigation of the available evidence has been undertaken. The documentary evidence that has been examined is referred to below and a list of all the evidence taken into consideration can be found in **Appendix 1**.

## 6.5 *Documentary Evidence*

### *County Maps 18<sup>th</sup>/19<sup>th</sup> Century*

- 6.5.1** These are small scale maps made by commercial mapmakers, some of which are known to have been produced from original surveys and others are believed to be copies of earlier maps. All were essentially topographic maps portraying what the surveyors saw on the ground. They included features of interest, including roads and tracks. It is doubtful whether mapmakers checked the status of routes or had the same sense of status of routes that exist today. There are known errors on many mapmakers' work and private estate roads and cul-de-sac paths are sometimes depicted as 'cross-roads'. The maps do not provide conclusive evidence of public status, although they may provide supporting evidence of the existence of a route.

The claimed route is described on various early commercial maps, being identified by solid parallel lines and marked as a cross road route. The route is described in the key as "Cross Road" on Greenwood's map of 1819, under "Cross Roads & House" on Swire and Hutchings's map of 1828/9 and as "Lanes & Bridle Ways" on the Bryant's map of 1831. This identification of the claimed route as a cross road route is strong evidence of the route as a public highway but doesn't prove stand-alone higher rights than bridleway status.

### *Tithe Records*

- 6.5.2** *Moston Township Tithe Map and Apportionment 1840*

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

The Tithe Map of Moston Township, dated 1840, is a second-class map, which means it does not have a certified seal by The Tithe Commissioners as first class maps do. Only first class maps were considered sufficiently accurate to serve as legal evidence of boundaries and land plots, the second class maps vary in accuracy. The Moston Tithe Map shows the full extent of the claimed route marked by two parallel solid black lines. It is un-numbered and not within a numbered parcel and therefore there is no evidence for the route in the associated apportionment records. The route is shown as a clear linking route in the same way as the public roads of Plant Lane and Dragons Lane. The route is marked as a clearly defined physical through-route and provides strong evidence this was not part of surrounding hereditaments and likely to have public status.

#### **6.5.3**     *Railway Plan Records (1871)*

On the Sandbach and Winsford Junction Railway Plan of 1871 the route is shown specifically numbered, in this case as “22” within the Limits of Deviation. The book of reference describes the route as ‘public’, in this case a “Public Road”, in parcel number “22”. The route is listed with the owner of the route as public body or officer, in this case “Highway Board of the Highway District of Northwich in the Hundred of Northwich, Charles Frederick Barker, Clerk, Thomas Swinton, Surveyor”, with the implied responsibility for the maintenance of public highways. Given such Railway Plans were drawn up under an Act of Parliament, they provide strong evidence where public status routes are indicated.

#### **6.5.4**     *Ordnance Survey Records*

Ordnance Survey (O.S.) 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 is not evidence of the existence of a right of way. It can be presumed that this caveat applied to earlier maps.

##### *O.S. 1<sup>st</sup> edition 1 inch 1842 (Old Series) & 1902 (New Series)*

This mapping shows the route as a clear double solid line bounded feature similar to the surrounding public roads it joins, Dragons Lane and Plant Lane. “Dragons Lane” at the north end is annotated.

The New Series 1 inch edition of 1902 marks the route as a 3<sup>rd</sup> class metalled road.

*O.S. 1st Edition County Series 25" to 1 mile 1875*

The route is shown on this map again as double solid lines with a double pecked track feature down the middle but clearly part of surrounding solid line route. The route is also shown lined with trees on the boundaries.

*O.S. 2<sup>nd</sup> Edition County Series 25" to 1 mile 1897*

The route is shown throughout in the same way as on the 1<sup>st</sup> edition.

*O.S. 3<sup>rd</sup> Edition County Series 25" to 1 mile 1909*

The route is again shown throughout unchanged from the previous edition.

*O.S 25" 1<sup>st</sup> edition Book of Reference (Parish of Warmingham) 1876*

The Book of Reference covers the area of the claimed route but demonstrates no evidence of the claimed route.

**6.5.5** *Finance Act 1910*

The Finance Act of 1910 involved a national survey of land by the Inland Revenue so that an incremental value duty could be levied when ownership was transferred. Land was valued for each owner/occupier and this land was given a hereditament number. Landowners could claim tax relief where a highway crossed their land. Although the existence of a public right of way may be admitted it is not usually described or a route shown on the plan. This Act was repealed in 1920.

The Finance Act Survey map demonstrates evidence for the route and shows it as uncoloured and excluded from hereditaments. This suggests the route was considered a public highway at the time of the survey, but does not in itself provide evidence about the class of rights of over it.

**6.5.6** *Definitive Map Process – National Parks and Access to the Countryside Act 1949*

The Definitive Map and Statement is based on surveys and plans produced 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.

There is no public right of way marked up on the Walking Survey maps of 1951 & 1952 for the claimed route although the route is clearly shown as a physical feature bounded by two solid parallel lines joining Plant Lane and Dragons Lane either end. The route was therefore not marked on the final Definitive Map, hence this application, and whilst the Provisional and Draft Map of the early 1950s also does not show the claimed route as a public right of way, they do again show the route as a clear throughfare between Dragons Lane and Plant Lane as it is depicted in the same way to these public roads by parallel solid black lines.

#### **6.5.7 *Land Registry Information***

The claimed route is on land that is un-registered at the Land Registry. A land registry search was conducted in 2022 to confirm this. It did show that there was one landowner abutting the whole length of the claimed route to the east of the route and a collection of 3 other landowners immediately abutting the west of the claimed route.

#### **6.5.8 *Photographs and other evidence***

##### **Photos**

The applicant submitted photos with their application to demonstrate that they had attempted to notify any landowner of the route of the application. The notice was dated 29th August 2014 and informed the public an application had been made to claim the route as a public bridleway. Further notices were also posted in summer 2022 in order to again attempt to notify any affected landowner.

During consultation a planning consultant also provided photographs of the route from around 2011 to demonstrate it had become rather overgrown in places but appeared to have been used.

##### **Discovery of Lost Ways Project**

In 2018 a company called LandAspects completed an investigation as part of the “Discovery of Lost Ways” national project. They completed and supplied the Council with a review of documentary evidence in relation to this route. They examined and analysed the evidence, most of which is already incorporated into this report. They came to the conclusion that the claimed

route was a public carriageway i.e. it had public vehicular rights based on the reasons summarised in the conclusion of this report.

### ***Sales particulars of 1999***

The applicant supplied with their application sales particular maps dated 1999 from Strutt & Parker that relate to sale of Hill Farm, Moston Green. This clearly identifies the claimed route by solid parallel lines with a pecked line track feature down the middle. The claimed route is labelled clearly down the side as “Dragons Lane” and at the southern end of the claimed route annotated “Grass Road”.

### ***Additional verbal evidence***

During a site visit, which the landowner to the west of the claimed route and the applicant attended on 24<sup>th</sup> August 2022, it was mentioned that a now-deceased local landowner had explained that in the past, underneath the current earth/grass surface, the route had a cobbled surface down the middle. Whether this is true has not been ascertained physically.

## **6.6 Witness Evidence**

- 6.6.1 The Application, when made in 2014, was accompanied by 11 user evidence forms. Since that time, 2 of the users are now deceased and 2 have moved away from the area. In total 7 witnesses were contacted to be interviewed. Interviews with 3 were held face to face and the remaining 4 were conducted as phone interviews. The users all clearly refer to the same route, all believe it to be a bridleway and can give evidence of use from 1936 to 2014 on foot, by horse and by bicycle. A chart illustrating the user evidence from the total number of 11 witnesses is attached as Appendix 2.
- 6.6.2 The use of the route appears to have been entirely recreational. Their use of the route was for the full range of normal activities, including walking dogs, exercising horses, and taking children for walks. This often involved such things as picking blackberries, watching birds, and going fishing.
- 6.6.3 The witnesses refer to the lack of maintenance of the route, and how it has become narrower and more overgrown over time, but still passable. It seems that the surface was probably originally of stone but has become covered by soil and vegetation. The

route is enclosed by hedges on either side and has not changed its course in recent memory. Some of the horse riders interviewed remember being able to ride two abreast in the past when the route was not so overgrown, and all horse riders said they used the route with others at times and know of many other users (at least 5 other individuals each) who also used the route on horse, thereby making the total horse rider usage greater than initially submitted with the application.

- 6.6.4 5 of the witnesses mention the erection of bollards at either end to prevent the use of the route by vehicles. Upon interviewing it has been established that the parish council erected these (just over 5ft apart) sometime in the early 2000s to prevent quad bikes and vehicles going down the route and to discourage anti-social behaviour, which there had been an issue with. None of the witnesses mentioned any challenges to use on foot, horse, or bicycle by any landowner, and no one was given permission to use the route or had any connection with the land or landowners in question. In fact, one witness mentioned they were seen using the route by 4 different landowners, who all own abutting land, without any challenge.
- 6.6.5 In the relevant 20 year period prior to the application 1994-2014, no challenge to use of the route has been identified and therefore the 20 year period of deemed dedication has been satisfied. During this period, 6 people claim use throughout the time on foot – 2 of which also claim use by horse. A further 4 people claim use for some part of the period – all 4 on foot, 2 by horse and one by bicycle. At no time between 1994 and 2014 were there less than 7 people claiming use on foot, with a peak of 10 between 2007-2009. In the same period, there were 4 people claiming to be riding horses every year, except for 3 in 2012 and 2013. Bicycle use peaked in 1994-1995 at 2, was 1 until 2009, and then none. The use attested to varied in frequency from people using it occasionally to daily, and also varied through time.
- 6.6.6 From interviewing it appears to have been a very well known and used route, with those interviewed stating they had named the route locally with many different local names, ranging from “Gypsy Lane”, “Plant Lane Bridleway”, “Cow Lane” and other similar names. A few of the witnesses remembered historical use by Gypsies and Travellers with horses and carts and one interviewee mentioned that in the wider area half way down the route, Gypsies would camp out for a period and pegs were made by them before they moved on.



- 6.6.7 It can be concluded from the user evidence presented, and more detailed interviewing of witnesses, that a prima facie case of sufficient evidence of use in the relevant 20 year period has been made for deemed dedication to have occurred as a public bridleway, at least.

**6.7** *Conclusion*

- 6.7.1 The documentary evidence considered in this case demonstrates the existence of the route as a bounded lane of a status higher than footpath from the early 18<sup>th</sup> Century. The three key documents that evidence this route had indeed public road status are (i) the Finance Act of 1910 which clearly shows the route uncoloured and separate from the surrounding hereditaments (ii) The Railway Plan of 1871 that clearly describes the route as a Public Road (iii) The Tithe Map of 1840 which has no number and is separate from the surrounding hereditaments. In addition to these three the O.S. map records also add weight to public road status having it recorded as a 3<sup>rd</sup> class metalled road on the 1 inch new series map of 1902, combined with the fact the route has been over time recorded on other maps such as sale particulars as a lane or road.
- 6.7.2 Under s.31(1) of the Highways Act 1980, a right of way can come into being by prescription unless there is evidence to the contrary. The use of the route by walkers, horse riders and cyclists can be demonstrated by the witness evidence over the 20 year period 1994-2014. This use can also be supported by the significant length of use up to this period. The use provided is reasonably frequent and covers a long time period and can be considered suitable for the acquisition of rights to have been demonstrated. From interviewing particularly, it has been demonstrated that there is certainly sufficient bridleway use to demonstrate bridleway rights have come in to being.
- 6.7.3 The evidence in support of this application must show, on the balance of probabilities, that restricted byway rights subsist along the claimed route. The balance of user evidence certainly supports the case that a public bridleway, at least, subsists along the routes A-B (Plan No. WCA/025) and combined with the documentary evidence that the route historically is evidenced to have had public road status. However, due to the implications of NERC Act (see paragraph 6.3.8), that higher status cannot now be recorded, this means the status on balance has to be lower, that of restricted byway status (use on foot, pedal cycle,



horseback and horsedrawn carriage). 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 record a Restricted Byway between Dragons Lane and Plant Lane and thus amend the Definitive Map and Statement.

## **7. Consultation and Engagement**

- 7.1 Consultation letters and a plan of the claimed route were sent out to the Ward Member; Parish Council; user groups/organisations; statutory undertakers and landowners on the 21<sup>st</sup> July, 2022. Further letters were sent to the adjoining landowners to the west and east of the claimed route.
- 7.2 No responses were received from the landowners to the west of the claimed route however the landowner to the east of the claimed route did respond and also attended a site visit. The following responses were also received:
- 7.3 Ward Councillor John Wray covering the parish of Moston, responded to say he fully supported the application.
- 7.4 A Peak and Northern Footpath Society Area Officer responded stating they have walked the claimed route and noted from evidence on the ground that it is well used.
- 7.5 Moston Parish Council responded to say, further to a meeting on 10<sup>th</sup> August 2022 when they discussed the application, that they gave the application full support as a public bridleway. They also mentioned that on no occasion had anyone been prevented from walking the track that had been in existence for 200 years. They state that they believe that since the application was made there were further reasons to add the route, including covid which has brought an increase of use and they also believe that this route is safer. They also mentioned the Moston Neighbourhood Plan of 2019 mentioning protecting public rights of way and that horse riding takes place on various land and the particular claimed track.
- 7.6 Sandbach Footpath Group responded stating they strongly supported the addition of the claimed public bridleway. They referred to various walks they organise in the area from the car park at the Plant Lane end and that this route being on the Definitive Map would be a very useful addition for walking possibilities.
- 7.7 A Planning consultant who stated they assisted with applications/appeals for the Traveller pitches for the land to the west of the claimed route, mentioned that as part of their investigations they noted the claimed route but never saw

anyone else on it, but it was clear it was being used by the public and connected the two roads. They mention not remembering seeing any locked gates or signs but due to the vegetation doubted it was being used as a bridleway. The consultant attached various photos from 2011 onwards stating it looked rather overgrown.

- 7.8 United Utilities also responded to state they had no objection to the application.

## **8. Implications**

### **8.1. Legal**

- 8.1.1 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
- 8.1.2 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.
- 8.1.3 Legal implications are also included within the report.

### **8.2. Finance**

- 8.2.1 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.

### **8.3. Policy**

- 8.3.1 There are no direct policy implications of this report.

### **8.4. Equality**

- 8.4.1 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.

### **8.5. Human Resources**

8.5.1 There are no direct implications for Human Resources

## **8.6. Risk Management**

8.6.1 There are no direct implications for risk management

## **8.7. Rural Communities**

8.7.1 There are no direct implications for Rural Communities.

## **8.8. Children and Young People/Cared for Children**

8.8.1 There are no direct implications for Children and Young People.

## **8.9. Public Health**

8.9.1 There are no direct implications for Public Health.

## **8.10. Climate Change**

8.10.1 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.

8.10.2 The addition of a restricted byway to the Definitive Map represents the formal recognition of pedestrian, equestrian and cycle rights, creating more opportunities for active travel and leisure and potentially reducing the use of cars for short local journeys. It also has the potential for the improvement and promotion of healthy lifestyles.

<b>Access to Information</b>	
Contact Officer:	Jennifer Ingram jennifer.ingram@cheshireeast.gov.uk 01270 686029
Appendices:	Appendix 1 – Archive List Appendix 2 – User Evidence Chart Plan No. WCA/025
Background Papers:	File no. CO/8/39

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**APPENDIX 1****List of Archive Documents –****Application No. CO/8/39****Application to add a Public Bridleway between Dragons Lane and Plant Lane, Moston**

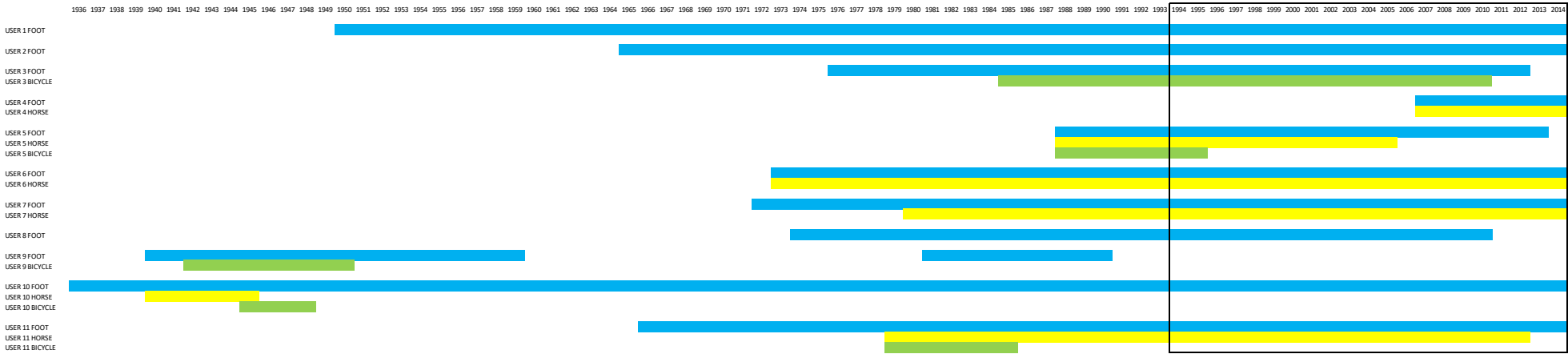
PROW = Public Rights of Way Unit

CRO = Cheshire Record Office

TNA = The National Archives, Kew

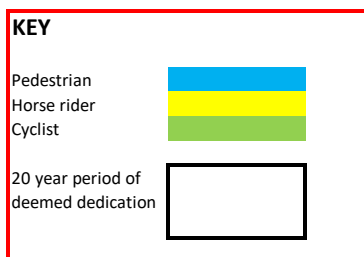
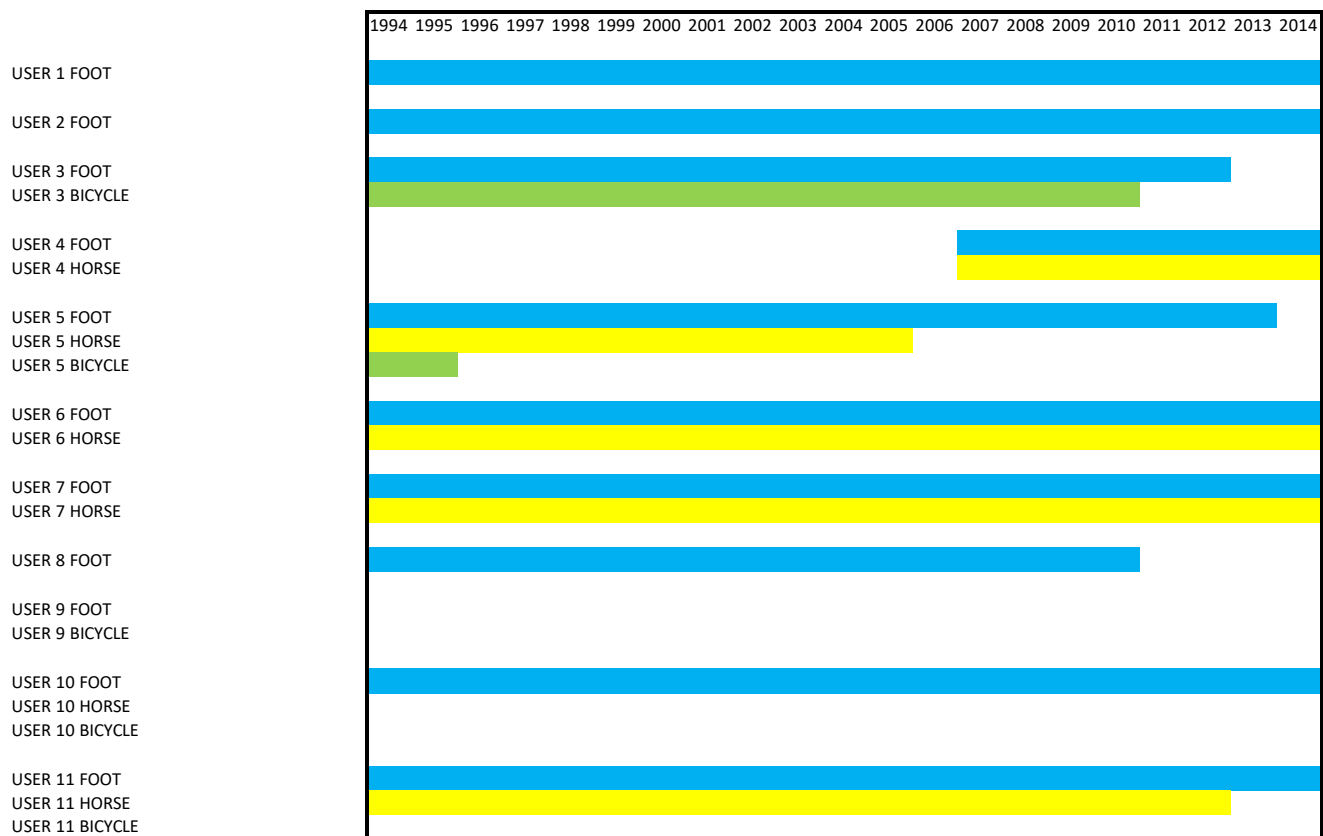
<b>Primary Sources</b>	<b>Date</b>	<b>Site Shown/Mentioned</b>	<b>Reference Number/Source</b>
<b>County Maps</b>			
Greenwood Map	1819	Route described as Cross Road	CRO/PM 13/10
Swire & Hutchings Map	1828/9	Described as Cross Road	CRO /PM/13/8
Bryants Map	1831	Described as Lane & Bridle Ways	CRO/M/5
<b>Tithe Records</b>			
Tithe Map	1840	Route shown as clear feature unnumbered indicating public status	CRO EDT/280/2
Tithe Apportionment	1840	Not recorded as not numbered on map	CRO EDT/280/2
<b>Ordnance Survey Maps</b>			
O.S. 1" to 1 mile 1 <sup>st</sup> Edition	1842	Route shown as physical feature	PROW/Cheshire East Council
O.S. 1 <sup>st</sup> Edition 1:25 inch	1875	Route shown as physical feature	PROW/Cheshire East Council
O.S. 2 <sup>nd</sup> Edition 1:25 inch	1897	Route shown as physical feature	PROW/Cheshire East Council
O.S 1" to 1mile New Series	1902	Route is marked from key as 3 <sup>rd</sup> class metalled road	PROW/Cheshire East Council
O.S. 3 <sup>rd</sup> Edition 1:25 inch	1909	Route shown as physical feature	PROW/Cheshire East Council
<b>Finance Act</b>			
Working Copy Map	1910	Route shown uncoloured and excluded from surrounding hereditaments therefore indicating public status	CRO NVB 49/8

<b>Local Authority Records</b>			
Walking Survey Schedules and Maps	Early 1950's	Route not shown as PROW on 195 & 1952 survey maps but as clear physical feature	PROW Unit
Draft Map	1950's	Route not shown as PROW but clear physical feature	PROW Unit
Provisional Map	1952	Route not shown as PROW but clear physical feature	PROW Unit
Definitive Map & Statement	1953	Route not shown as PROW but clear physical feature	PROW Unit
<b>Railway Records</b>			
Sanbach & Winsford Junction Railway Plan & Book of Reference	1871	Claimed route shown clearly and described as public highway	CRO Plan QDP/496
<b>Additional records</b>			
Photos	2014/2022	Attempts to contact any landowner of claimed route plus 2022 planning consultants photos	PROW Unit
Hill Farm, Moston Sale particulars	1999	Clearly shows claimed route as track /lane feature and annotated Dragons lane and Grass road at S end of claimed route.	Supplied by applicant

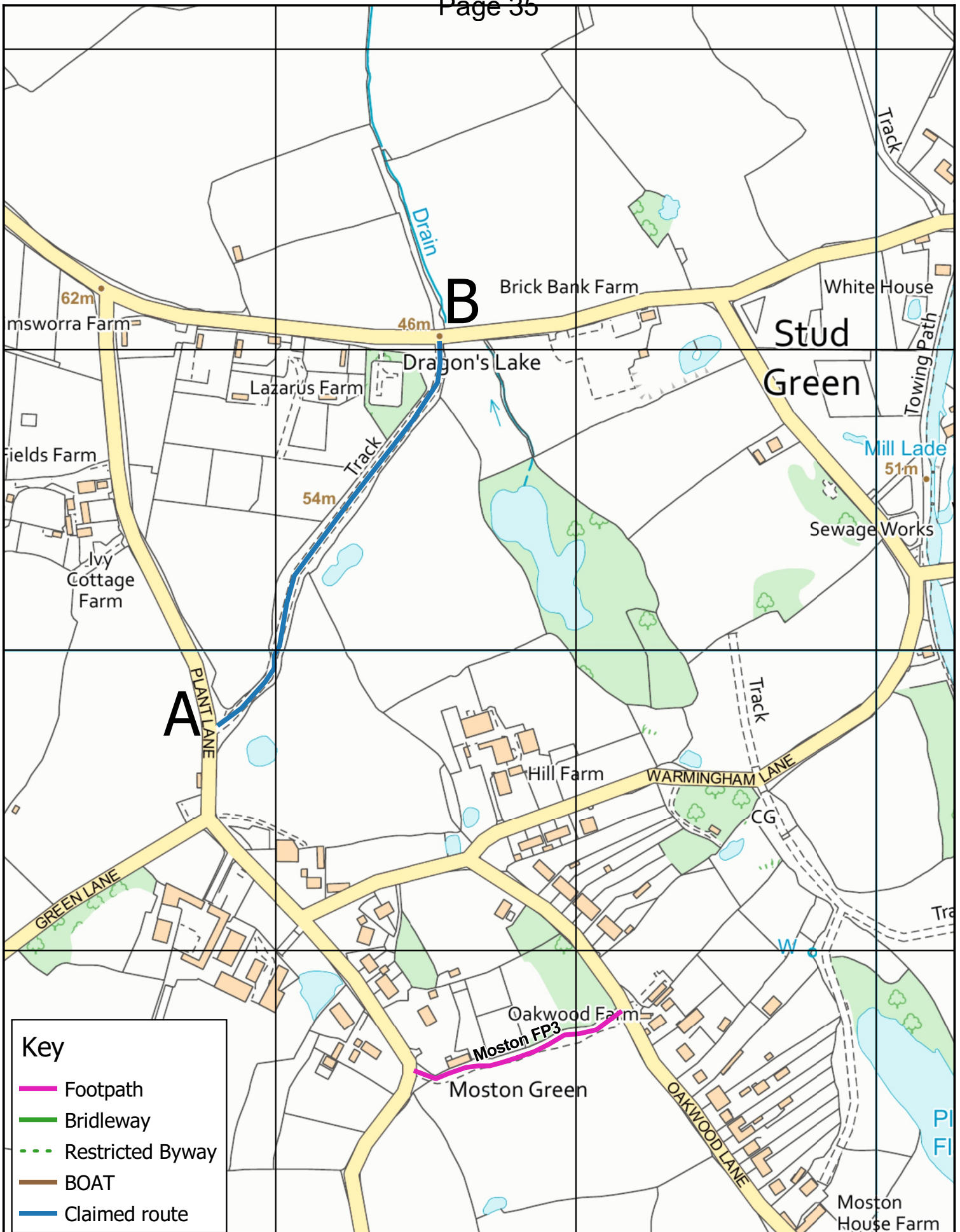


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1:4000

Wildlife & Countryside Act 1981 Application  
CO/8/39 Addition of a Restricted Byway between  
Plant Lane and Dragons Lane, Moston

Plan No.  
WCA/  
025

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



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*Working for a brighter future together*

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## **Public Rights of Way Sub-Committee**

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<b>Date of Meeting:</b>	5th December 2022
<b>Report Title:</b>	Wildlife & Countryside Act 1981 – Part III, Section 53. Application No. CO/8/54: Application for the Deletion of Public Footpath No. 66, Congleton.
<b>Report of:</b>	Jayne Traverse, Executive Director Place
<b>Ward(s) Affected:</b>	Congleton

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### **1. Purpose of Report**

- 1.1. This report outlines the investigation into an application made by Andrea Bossen to amend the Definitive Map and Statement to delete Public Footpath Congleton No. 66. This report includes a discussion of the consultations carried out in respect of the deletion application, the historical evidence, witness evidence provided by the landowner 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 delete the public footpath.
- 1.2. The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

### **2. Executive Summary**

- 2.1 The report considers the evidence submitted and researched in the application to delete Public Footpath No. 66, Congleton. The evidence consists of a detailed letter from the applicant with reference and statements as to why they believe the route should be deleted. It includes reference to historical documents such as the Enclosure Award, sale plans, Tithe Map, Finance Act Map, Peak and Northern Footpath Society reports and more. The report determines whether on the balance of probabilities the application to delete this public footpath meets the legal tests to make an order to do so.

### **3. Recommendations**

- 3.1** That an Order is not made under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to delete Public Footpath Congleton No. 66 as shown on Plan No. WCA/026.
- 3.2** The application 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.

### **4. Reasons for Recommendations**

- 4.1** The evidence in support of this claim must demonstrate significant and robust evidence to overturn the presumption that the Definitive Map and Statement are correct.
- 4.2** Whilst a substantial amount of research by the applicant has been undertaken it is concluded that there is not sufficient convincing supporting evidence to overturn the legal presumption that the Definitive Map and Statement are correct at this point in time. The reasons for this recommendation have been discussed in detail within this report.
- 4.3** In particular, it is concluded that the evidence examined does not meet the legal test laid out in the case law 'Trevelyan vs. Secretary of State' (2001) which clearly states that some evidence of substance has to be put in the balance if it is to outweigh the initial presumption that a way has been correctly included. There has to be some evidence that was 'beyond the realms of credibility that a right of way existed'.
- 4.4** Following on from the investigation it has been concluded that whilst there are several statements made by the applicant that there may have been an error in recording Public Footpath No. 66 on the Definitive Map, it is concluded that the documentary information provided by the applicant is not deemed sufficient to overturn the presumption that the Definitive Map is correct. In particular, it is clear that the correct legal procedures were followed during the time of recording Public Footpath No. 66 on the Definitive Map and Statement with no objections being received at the time. In addition, there is also evidence of the public having used the footpath over many years and it serves a key link in the overall network.
- 4.5** It is considered that the requirements of Section 53(3)(c)(iii) have not been met in relation to deleting a public footpath and it is recommended that the Definitive Map and Statement should not be modified.

### **5. Other Options Considered**

- 5.1.** *Not applicable.*

## **6. Background**

### **6.1. *Introduction***

**6.1.1** The Application was made to Cheshire East Council in February 2022 by Andrea Bossen the landowner of the property Puddle Bank, Congleton, at the far southern end of Public Footpath No. 66. The application consisted of evidence from numerous historical documents and maps. The application is based on purely historical evidence and statements by the landowner.

**6.1.2** A site visit was made on 25<sup>th</sup> August 2022. The route was walked in full south to north and back again and an interview conducted and documented with the applicant. The landowner at the north end at Castle Farm did not respond to the consultation but a brief phone conversation was held as well as speaking to other residents on the ground at Castle Farm on 25<sup>th</sup> August 2022.

### **6.2 *Description of the Application Route***

**6.2.1** Congleton Footpath No. 66 commences near the southern end of Congleton Edge Road (UY694) adjacent to the Methodist Church at Congleton Edge and heads in a north westerly direction passing nearby to the property of Puddle Bank. The route passes via a pedestrian gate and stone stile enclosed by a stone wall to the west of Puddle Bank before continuing in a north westerly direction across farmland past a few small ponds and via various gates before approaching Castle Farm. The route is mostly a grassy surface in nature apart from the tracks at either end near properties. The route meanders a little east as it enters Castle Farm and then proceeds between outbuildings and passes the main farm courtyard. The last section where the route joins a crossroad junction of other public footpaths (namely Footpaths Nos. 64 & 66 and Newbold Astbury Footpath No. 29); on the ground it heads down the tarmac drive to join the other public footpaths (however the legal line just here is shown on the Definitive Map as running close to the house then directly north across a small field but this does not appear open on the ground, although there is a small metal gate in the wall as you leave the yard but no exit onto the drive and link to other footpaths). No width of the route is recorded on the Definitive Statement. On the ground the width varies but is an average of 1.5 metres in most places.

### **6.3 *Main Issues***

**6.3.1** 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: -

**6.3.2** One such event, (section 53(3)(c)(iii) requires modification of the map and statement to delete a public right of way where:

“the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) 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 can consist of documentary historical evidence or user evidence or a mixture of both. All the evidence must be evaluated and weighed before a conclusion is reached. Any other issues, such as safety, security, suitability, desirability, cost or the effects on property or the environment, are not relevant to the decision.

The legal test for deleting a public right of way is somewhat different than for claiming a public right of way or for applications to change the status or alignment of a route. In particular, there are specific case law tests and government guidance notes to be considered when examining deletion cases.

#### **DEFRA Government Circular 1/09 (1990)**

This circular states that ‘in making an application for an order to delete or downgrade a right of way, it will be for those who contend that there is no right of way or that a right of way is of a lower status than that shown, to prove that the map is in error by the discovery of evidence, which when considered with all other relevant evidence clearly shows that a mistake was made’ the circular further states “it is not for the authority to demonstrate that the map is correct, but for the applicant to show that an error was made” and ‘the evidence needed to remove a public right from such an authoritative record, will need to be cogent’.

#### **Trevelyan v SoS [2001] EWCA Civ 266**

In the above case the Court of Appeal held that where an application was made to delete a path from the definitive map, and it fell to the Secretary of State or an Inspector to decide whether the right of way did exist, he had to start with an initial presumption that it did. Some evidence of substance had to be put in the balance if it was to outweigh the initial presumption that the way had been correctly included. There has to be some evidence that was ‘beyond the realms of credibility that a right of way existed’.



**6.3.3 Planning Inspectorate Rights of Way Section Advice, no 9 (2006)** on such cases also states, ‘An enquiry cannot simply re-examine evidence examined when the way or ways in question were first entered on the Definitive Map, there must be some new evidence, when considered with all the other evidence available, justifies the modification’.

**6.3.4** The guidance notes also refer to the maxim “once a highway, always a highway”. Meaning once a highway such as a public footpath has come into being by whatever means it continues indefinitely no matter whether it is used or not. In the case of *Harvey v Truro RDB* (1903) the judge states “*mere disuse of a highway cannot deprive the public of their rights, where there has once been a highway no length of time during which it may not have been used will preclude the public from resuming the exercise of the right to use it if and when they think proper*”.

#### **6.4** *Investigation of the Claim*

**6.4.1** An investigation of the available evidence has been undertaken. The documentary evidence that has been examined is referred to below and a list of all the evidence taken into consideration can be found in **Appendix 1**.

#### **6.5** *Documentary Evidence*

##### **6.5.1** *1798 Enclosure Award*

Extracts from the 1798 Enclosure Award were provided by the applicant, but it has not been possible to conclude exactly what is being said about the route. However, it is of limited relevance to the recording of a footpath over 150 years later. The route appears to be awarded as a private drift and carriage road.

An extract from the enabling Act for the 1798 Enclosure was also supplied with the application, which would have been a private Act and pre-dates the general Enclosure Acts of the 19<sup>th</sup> century.

##### **6.5.2** *Congleton Tithe Map and Apportionment 1845*

Tithe Awards were prepared under the Tithe Commutation Act 1836, which commuted the payment of a tax (tithe) in kind, to a monetary payment. The purpose of the award was to record productive land on which a tax could be levied. The Tithe Map and Award were independently produced by parishes and the quality of the maps is variable. It was not the purpose of the awards to record public highways. Although depiction of both private occupation and public roads, which often formed boundaries, is incidental, they may provide good supporting evidence of the existence of a route,

especially since they were implemented as part of a statutory process. Non-depiction of a route is not evidence that it did not exist; merely that it did not affect the tithe charge. Colouring of a track may or may not be significant in determining status. In the absence of a key, explanation or other corroborative evidence the colouring cannot be deemed to be conclusive.

The Tithe Map of Congleton and apportionment dated 1845 viewed online from Cheshire Archives (ref EDT 123/2) and supplied in part by the applicant, is a second-class map. The route is shown as through route either bounded by solid or pecked double lines. The apportionment accompanying it seems to imply that the route is (at least in part) a public road, with the rest described as a “thoroughfare” – as a public way of some sort. Interestingly it is also noted that the Tithe Map has what is now Castle Farm annotated as Puddle Bank at the northwest end of the route. The modern Puddle Bank is obviously now at the southern end and was not built at the time of the Tithe Map.

### **6.5.3 *Ordnance Survey Records***

Ordnance Survey (O.S.) 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 is not evidence of the existence of a right of way. It can be presumed that this caveat applied to earlier maps.

#### ***O.S. 1<sup>st</sup> edition 1 inch to 1 mile 1841***

This mapping shows the route as a very clear through route shown with bounded double solid lines as depicted by other roads in the area along the same route the public footpath is now marked. Puddle Bank is annotated on the northwest end of the route which is now Castle Farm. The modern Puddle Bank was not built at the southern end until later in the 1900s.

#### ***O.S. 1<sup>st</sup> Edition County Series 25” to 1 mile 1871***

The route is shown on this map in the same alignment as it is in the current day. It is more difficult to see on this map but there is still a clear through route along the footpath alignment mostly depicted by a double pecked line braced to nearby fields and more solid feature at the far end. Again, Puddle Bank is annotated at the northern end.

*O.S. 2<sup>nd</sup> Edition County Series 25" to 1 mile 1890*

The route is shown throughout as a through route mostly with double pecked lines across the fields braced to nearby fields and more solid lines nearer the south and north end. Puddle Bank is again annotated at the northern end.

*O.S. 3<sup>rd</sup> Edition County Series 25" to 1 mile 1910*

The route is again shown as in previous editions and is perhaps even clearer now as a through route. Near the southern end the route is annotated with the letters 'F.P' to indicate the physical nature of a public footpath.

**6.5.4 *Bartholomew's Half Inch to a Mile***

These maps were revised for the benefit of tourists and cyclists with help from the Cyclists' Touring Club (CTC). Local CTC members would generally have cycled every available route in their area, and it is subsequently assumed that any route that appeared on these maps had initially at least, been used without hindrance. These maps were well used by cyclists for their outings so the depiction here is likely to have led to it being used.

Several versions of the Bartholomew map were examined (1902, 1923, 1941 and 1943). All versions show the route of the existing footpath as a very clear through route bounded by solid lines all the way along the route as an uncoloured lane ("other road").

**6.5.5 *Finance Act 1910***

The Finance Act of 1910 involved a national survey of land by the Inland Revenue so that an incremental value duty could be levied when ownership was transferred. Land was valued for each owner/occupier and this land was given a hereditament number. Landowners could claim tax relief where a highway crossed their land. Although the existence of a public right of way may be admitted it is not usually described or a route shown on the plan. This Act was repealed in 1920.

Two sets of plans were produced: the working plans for the original valuation and the record plans once the valuation was complete. Two sets of books were produced to accompany the maps; the field books, which record what the surveyor found at each property and the so-called 'Domesday Book', which was the complete register of properties and valuations.

In this case, the Field Book that accompanies the Land Valuation Book relating to the Finance Act Map, gives a deduction of £40 for public rights of way for the hereditament No. 2881 which covers a fairly large area in the Congleton Edge locale, including Puddle Bank

at the north (now Castle Farm) and the modern Puddle Bank at the south end and encompasses a number of public rights of way not just the application route. The applicant has provided two copies of the map (a working copy and a final version obtained from the National Archives in Kew). The Field Book notes there are 3 footpaths 6500 feet in length. The deduction for public rights of way in the Congleton Edge area is not specific as to what location or routes this relates to, although the applicant believes the length of public rights of way listed in this hereditament No. 2881 must not have included the part of Public Footpath No. 66 in question as the length stated would be too short. However, no specifics as to how the lengths in the area are added up is detailed in the Field Book to be conclusive enough evidence to make and justify this argument. Whilst it might appear on mathematical calculations that the application route would appear to have not been included; given the total length of other routes there could be various possibilities for this. Why the total length of routes appears shorter in the Field Book than if it included the application route is unknown and there could be various explanations for this. Either way this is not felt sufficient evidence alone for the route to be removed from the Definitive Map. In addition, the maps supplied do not seem to cover the whole of the hereditament. See also further comments in Section 7.4

## **6.6** *Definitive Map Process – National Parks and Access to the Countryside Act 1949*

**6.6.1** The Definitive Map and Statement is based on surveys and plans produced in the early 1950s by each parish in Cheshire, of all the ways they considered to be public at that time and the process was advertised and should have been well known about in the local area given it took place over a number of years. The surveys were used as the basis for the Draft Definitive Map which was then followed by the Provisional Map. In this case the relevant date for the Congleton Definitive Map is 1<sup>st</sup> Nov 1953 which means it was the 20 years prior to this that users claimed to have used the route.

**6.6.2** Examining the various different maps leading to the final Definitive map the maps consistently always show the part of Footpath No. 66 subject to this application both on the draft and provisional map. Footpath No. 66 is also shown consistently on these maps continuing north past the now Castle Farm. The Statement is detailed with the only obstruction described at the northern end of the path and not on the length subject to this application. There are no obvious problems seen with the drafting of the map or statement. There were two surveys – one in 1952 by members of Congleton branch of CPRE – then one in 1953 by two engineering assistants from the Congleton Borough Engineer and Surveyor's Dept. The

route is described as going “through farmyard (Castle Farm) then across field along S.E side of hedge and out onto Congleton Edge Road by the Chapel via a grassy path”. Therefore, it is clear that the route described matches with what is now shown on the Definitive Map and was consistently shown on the previous map stages. Definitive Maps and Statements do vary in detail, but Footpath No. 66 is a clear record.

## **6.7**      *Land Registry Information*

**6.7.1**    The full extent of the Public Footpath existing runs over 2 different landownerships: Puddle Bank owns/occupies the southern end of the land the footpath crosses. Castle Farm owns/occupies the northern end of the land the footpath crosses.

## **6.8**    *Photographs and other evidence*

**6.7.2**    The applicant also supplied some additional documentary evidence:

- (i)        A photograph has more recently been supplied by the applicant, the date of which we are informed is around the 80s or possibly before, taken by a neighbour who has since moved away. It shows the southern end of the route where the applicant believes the route was historically obstructed. It is difficult to see any obstruction but it does appear to be some barrier, whether wall, fence or gate or combination of, adjacent and near to where the modern Puddle Bank has been built.
- (ii)        Sale particulars from 1932 for Puddle Bank Farm describe the route as “second driveway” to Congleton Edge.
- (iii)        The Peak and Northern Counties Footpaths Preservation Society reports for 1931 & 1932 refer to problems of obstruction of the route of Footpath No. 66. In 1932, the report says many more people have provided user evidence – now over 40 witnesses giving evidence of up to 50 years user evidence (i.e. back to at least 1882) – but that “conflicting evidence” is preventing the Corporation taking action to remove any obstruction.

## **7**    **Conclusion**

**7.1**        A large amount of historical information has been examined in this investigation of the application both documentation before and leading up to the formation of Footpath No. 66 being confirmed on the Definitive Map

and documents post Definitive Map. The historical evidence examined in this case does not show that a clear mistake has occurred and is not backed up by robust supporting evidence.

- 7.2** The strict legal test for an application such as this, has set the bar very high as per case law *Trevelyan vs SoS* (2001) which clearly states that some new overwhelmingly robust evidence must be evidenced to overturn the legal presumption that the Definitive Map is correct. In addition, guidance notes state *'An enquiry cannot simply re-examine evidence examined when the way or ways in question were first entered on the Definitive Map, there must be some new evidence, when considered with all the other evidence available, justifies the modification'*. The test is high because in order for a public right of way to appear on the Definitive Map & Statement it has already gone through a lengthy process with opportunities for objections/corrections. Consequently, some very clear evidence of substance has to be provided or found to overturn the legal presumption.
- 7.3** In the case of Footpath No. 66 there were no objections to its recording on the Definitive Map and the process of recording it on the Definitive Map was followed correctly. Indeed, the Definitive Map recording for this Footpath is one of the most consistent and thorough seen compared to others.
- 7.4** There are two main arguments the applicant mentions as to why they strongly believe a mistake was made on recording the route on the Definitive Map. The first being the Finance Act Map argument that this part of Footpath No. 66 could not have been included in the length of path recorded in the hereditament 2881. However, it is not considered that this is a sufficiently strongly evidenced argument as Footpath No. 66 is longer in length than just between Puddle Bank and Castle Farm and also the length referred to in the Field Book is one general length not itemised with lengths for each of the paths; there is no specific evidence that identifies this part of Footpath No. 66 as having been omitted. Also, even if the calculation was done to add up various combinations of different lengths of path in this hereditament, this would still not be sufficient evidence alone to justify removal of the route from the Definitive Map and Statement. In addition, none of the Finance Act maps appear sufficiently good quality to draw any conclusions from (even the Kew extract), except to say that they do not seem to show anything that could support an argument that this part of Footpath No. 66 could not exist at that time. All they appear to show is that it was unlikely to have been considered to be a public road in 1910.

The second main argument put forward refers to a belief that the Public Footpath could not have been walked properly as they believe the route was physically blocked off at the southern end prior to it appearing on the Definitive Map and that there could not have been 20 years' uninterrupted use prior to its recording on the Definitive Map in 1952. In addition, it is pointed out that the Peak District and Northern Counties Footpaths

Preservation Society mention an issue of obstruction on the route but with no detail and that, because after 1932 they do not mention it in their annual report, this is evidence of non-existence. However, it is not considered that this is a sufficiently strongly evidenced fact as it could equally mean that the issue of “conflicting evidence” mentioned in their report of 1932 was resolved or in stalemate until the 1952 survey; in any case, is not evidence of non-existence. Even if there was some barrier in part or full at the southern end, users may have still used the route for at least 20 years prior to the Definitive Map.

**7.5** Other points and document assessment where there is a difference of interpretation with the applicant’s viewpoint are as follows:

7.5.1 The Enclosure Award 1798 map showing the route as a private drift and carriage road along with enabling Act all pre-dates the general Enclosure Acts of the 19<sup>th</sup> century and the Definitive Map process. The fact the status of the routes does not include any public rights in 1798 does not mean such rights did not accrue after.

7.5.2 The sale particulars of 1932 relating to the historic position of Puddle Bank Farm (which relates to Castle Farm, previously called Puddle Bank) describes the route along which the Public Footpath runs as a “second driveway” to Congleton Edge which may very well have been true. It is understood that the route of the Footpath was the route from what is now Castle Farm to Congleton Edge before the more modern access road, to the north, was put in as the main access to Castle Farm. However, this does not exclude the possibility of there also being a public footpath over a driveway, which the applicant believes. Given this was also the time an obstruction was mentioned it is possible that the reason no progress on any obstruction was made was because the farm was for sale at that time.

**7.6** Overall whilst there are always possibilities mistakes could have happened in the past when the Definitive Map was drawn up, in this case it does not appear that sufficient robust evidence has come to light to overturn the Definitive Map and Statement to delete the route. Obviously, a lot of time has passed which makes this more difficult. In addition, the route has obviously been well walked for many years since its inclusion on the Definitive Map as evidenced from the consultation responses.

## **8 Consultation and Engagement**

**8.1** Consultation letters and a plan of the application route were sent out to the Ward Member, Town Council, user group organisations, statutory undertakers and landowners on 26<sup>th</sup> July 2022. Further letters were sent to the landowners at either end of the application route.

- 8.2 There were 5 formal written responses from consultees summarised below.
- 8.3 The Open Spaces Society representative sent a brief response to say they would object if a deletion order was made as they did not believe there was any information to support a deletion order.
- 8.4 The Congleton Ramblers Group representative responded with a table of the groups record of surveying the public footpath in 2013, 2014 and 2018 where it was recorded as an open and available route. They also stated the public footpath was a vital recreation route and had obviously been walked for a long period of time and noted a further inspection in 2019 by the group noting it remains open.
- 8.5 The Sandbach Footpath Group representative responded to say he objects to the possibility of Footpath No. 66 being deleted as it is a direct and natural link that has been used for many years since the early 1950s and is not a useless route. They mentioned if there was a problem with people walking near the farm, that the path could be diverted at that location or a permissive route put in place.
- 8.6 A local resident, responded stating the route is a useful way connecting routes on and around the slopes leading up to Congleton Edge and Mow Cop and mentions could be possibly diverted around farm if issue.
- 8.7 BT Openreach responded to say they have no issues with the application from a utility stance.

## **9 Implications**

### **9.1 Legal**

- 9.1.1 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.
- 9.1.2 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.
- 9.1.3 Legal implications are also included within the report.

### **9.2 Finance**

- 9.2.1 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.



### **9.3 Policy**

9.3.1 There are no direct policy implications of this report.

### **9.4 Equality**

9.4.1 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.

### **9.5 Human Resources**

9.5.1 There are no direct implications for Human Resources

### **9.6 Risk Management**

9.6.1 There are no direct implications for risk management

### **9.7 Rural Communities**

9.7.1 There are no direct implications for Rural Communities.

### **9.8 Children and Young People/Cared for Children**

9.8.1 There are no direct implications for Children and Young People.

### **9.9 Public Health**

9.9.1 There are no direct implications for Public Health.

### **9.10 Climate Change**

9.10.1 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.

9.10.2 The deletion of a public footpath on the Definitive Map which has been recorded on the Definitive Map for over 50 years would represent the formal removal and recognition of pedestrian opportunities, creating less opportunities for travel/leisure on foot and potentially increasing the use of cars for short local journeys and therefore energy consumption. It would also remove potential for the improvement/promotion of healthy lifestyles as part of a recognised recreational route.

<b>Access to Information</b>	
Contact Officer:	Clare Hibbert clare.hibbert@cheshireeast.gov.uk 01270 686063
Appendices:	Appendix 1 – Archive List Plan No. WCA/026
Background Papers:	File No. CO/8/54

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**APPENDIX 1****List of Archive Documents –****Application No. CO/8/54****Application to delete part of Public footpath no.66, Congleton**

PROW = Public Rights of Way Unit

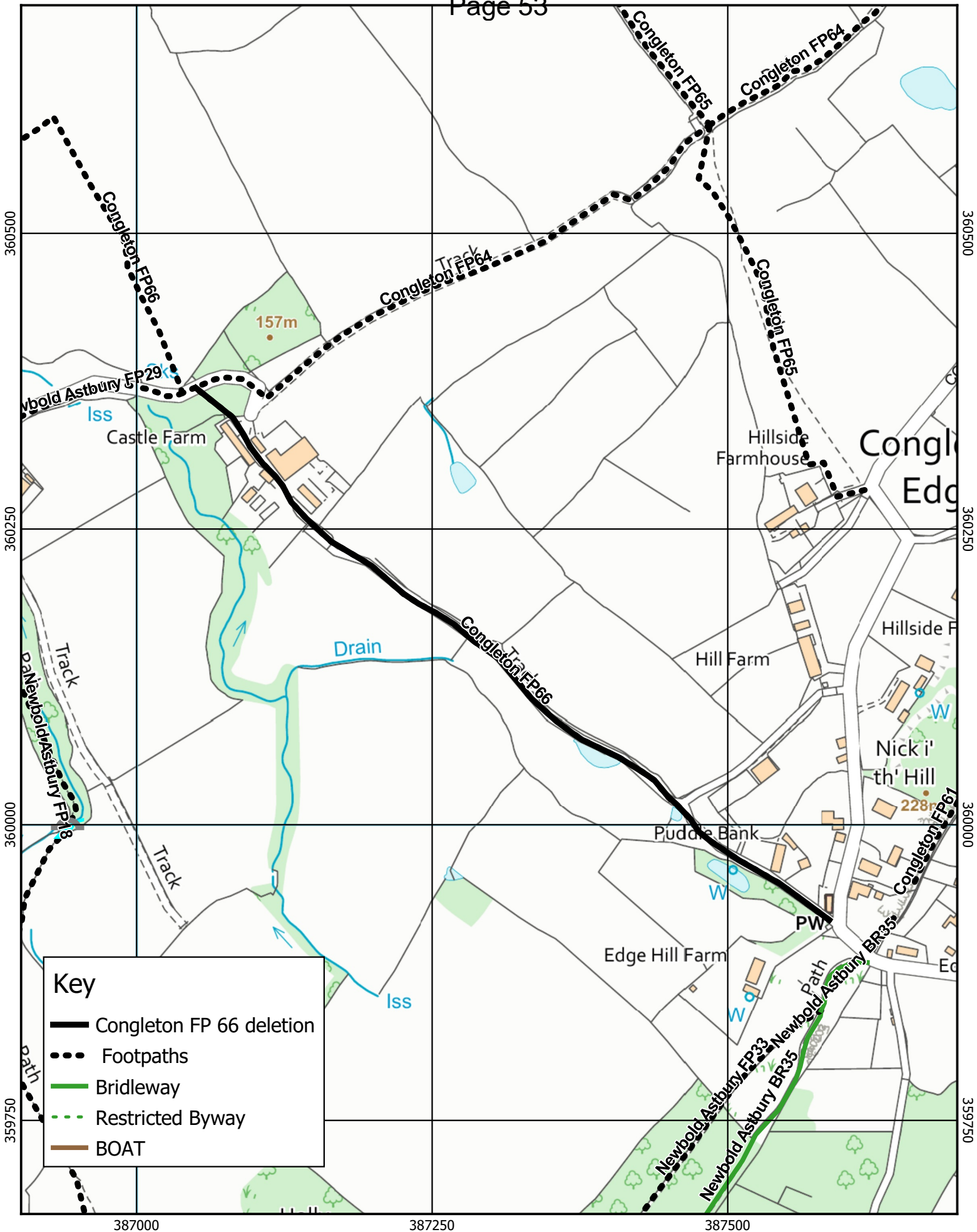
CRO = Cheshire Record Office

TNA = The National Archives, Kew

<b>Primary Sources</b>	<b>Date</b>	<b>Site Shown/Mentioned</b>	<b>Reference Number/Source</b>
<b>Inclosure Map &amp; Award</b>	1798	Appears to be awarded as private drift and carriage road	TNA QDE/2/8
<b>Tithe Records</b>			
Tithe Map	1845	Route shown	CRO EDT 123/2
Tithe Apportionment	1846	Implies in part throughfare.	CRO EDT 123/2
<b>Ordnance Survey Maps</b>			
O.S. 1" to 1 mile 1 <sup>st</sup> Edition	1841	Route shown	PROW/Cheshire East Council
O.S. 1 <sup>st</sup> Edition 1:25 inch	1871	Route shown	PROW/Cheshire East Council
O.S. 2 <sup>nd</sup> Edition 1:25 inch	1890	Route shown	PROW/Cheshire East Council
O.S. 3 <sup>rd</sup> Edition 1:25 inch	1910	Route shown	PROW/Cheshire East Council
Bartholomew's half inch 1902 new series	1902	Route shown	<a href="https://maps.nls.uk/view/75202839">https://maps.nls.uk/view/75202839</a>
Bartholomew's revised half inch 1923 new series	1923	Route shown	<a href="https://maps.nls.uk/view/75202839">https://maps.nls.uk/view/75202839</a>
Bartholomew's revised half inch	1943	Route shown	<a href="https://maps.nls.uk/view/128076561">https://maps.nls.uk/view/128076561</a>
<b>Finance Act</b>			
Working Copy Map	1910	Shows route in parcel 2881	CRO NVB L1.10
Kew Copy of Map	1910	Shows route in parcel 2881	TNA NR 51-10
Field Book	1910	Records deductions for PROW's	CRO IR/ 58/284459
<b>Local Authority Records</b>			
Walking Survey Schedules and Maps	Early 1950's	Route shown	PROW Unit

Draft Map	1950's	Route shown	PROW Unit
Provisional Map	1952	Route shown as FP66	PROW Unit
Definitive Map & Statement	1953	Route clearly marked and described as FP 66	PROW Unit
<b>Additional records</b>			
Black & White photo south end	Approx. 80's	Shows southern end of FP66 seems could have been barrier but unclear	Supplied by applicant
Puddle Bank Sale particulars	1932	Describes route as second driveway	Supplied by applicant
Peak and Northern Counties Footpath Preservation Society Reports	1931 & 1932	Mentions obstruction on route but also mentions lots of use and some conflicting evidence but unclear.	Supplied by applicant

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1:4000

**Deletion of Congleton FP 66**  
**s.53 Wildlife & Countryside Act 1981**

**Plan No.**  
**WCA/026**

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 sub committee**

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**Date of Meeting:** 5<sup>th</sup> December 2022

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

**Report of:** Jayne Traverse, Executive Director Place

**Ward(s) Affected:** Dane Valley Ward

---

### **1. Purpose of Report**

- 1.1. This report is an informative to brief Members on the decision made by the Planning Inspectorate on the Order made by the Council to modify the Definitive Map and Statement by adding a footpath in Cranage.
- 1.2. The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

### **2. Executive Summary**

- 2.1 The report informs Members that following the referral of this Order to the Planning Inspectorate following an objection; a site meeting was held with an appointed Inspector. Along with consideration of the submitted evidence and correspondence with the affected parties, the Inspector determined that the Order not be confirmed. The report also sets out the background to this application and the various stages of its progress.

### **3. Recommendations**

- 3.1.** No decision is required by Committee

### **4. Reasons for Recommendations**

- 4.1.** Not Applicable and other options are therefore not relevant.

### **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 2018. 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, 7 of the witnesses were interviewed. 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.
- 5.5.** 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 in this instance 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.
- 5.6.** This decision relating to one of the claimed paths A-B-C-D on Plan No. WCA/016A 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 13<sup>th</sup> September 2019.



- 5.7. Consequently, the Authority 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.
- 5.8. The Order was advertised between the 14<sup>th</sup> and 31<sup>st</sup> December 2019 and drew two objections which were not withdrawn.
- 5.9. When objections are received that are not subsequently withdrawn, an Authority must refer the contested order to the Secretary of State for an independent Inspector to determine whether to confirm the Order or not.
- 5.10. This matter was referred to the Secretary of State on the 9<sup>th</sup> March 2020. The progress was then severely impacted upon by the Covid pandemic and lockdown, and it was not until January 2022 that the official start date to the formal process began.
- 5.11. It was agreed that the outcome would be decided by written representations with an accompanied site visit once the correspondence was concluded. The site visit was eventually held on the 2<sup>nd</sup> August 2022.
- 5.12. The Inspector's decision was received on the 25<sup>th</sup> August 2022. The Inspector determined that the Order **not** be confirmed. In confirming an Order, the Inspector must consider a higher test than that required to make an Order. They must consider whether a right of way subsists according to the user evidence and the tests under Common Law. Section 31 of the Highways Act 1980 does not apply in this case as the land was held by the Health Authority until 2000 which constitutes Crown Land. Section 31 does not apply to Crown Land.
- 5.13. The Inspector considered whether the user evidence was sufficient, on the balance of probabilities, to demonstrate an inference of dedication under Common Law. They concluded, due to the various inconsistencies and omissions from the evidence provided, that there had not.
- 5.14. The Inspector was also not satisfied that there was sufficient evidence to determine the alignment of the claimed route between points A and B on the order Plan No. WCA/016A and also across the small field south of B.
- 5.15. Finally, the Inspector determined that there was no evidence to indicate that the landowner took any action to dedicate a right of way or to prevent the dedication of one prior to 2006 or 2007. And that they were not satisfied that the level of use would have been sufficient for a landowner to realise that they needed to take action to prevent a public right of way being established over their land.

## **6. Consultation and Engagement**

- 6.1.** This is an Informative report, so no further consultation has been undertaken. All relevant parties were provided with a copy of the Inspector's decision letter.

## **7. Implications**

### **7.1. Legal**

- 7.1.1.** There are no further legal implications for the Authority.

### **7.2. Finance**

- 7.2.1.** There are no potential further financial implications.

### **7.3. Policy**

- 7.3.1.** There are no direct policy implications.

### **7.4. Equality**

- 7.4.1.** 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

### **7.5. Human Resources**

- 7.5.1.** There are no direct implications for Human Resources.

### **7.6. Risk Management**

- 7.6.1.** There are no direct implications for risk management.

### **7.7. Rural Communities**

- 7.7.1.** There are no direct implications for rural communities.

### **7.8. Children and Young People/Cared for Children**

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

### **7.9. Public Health**

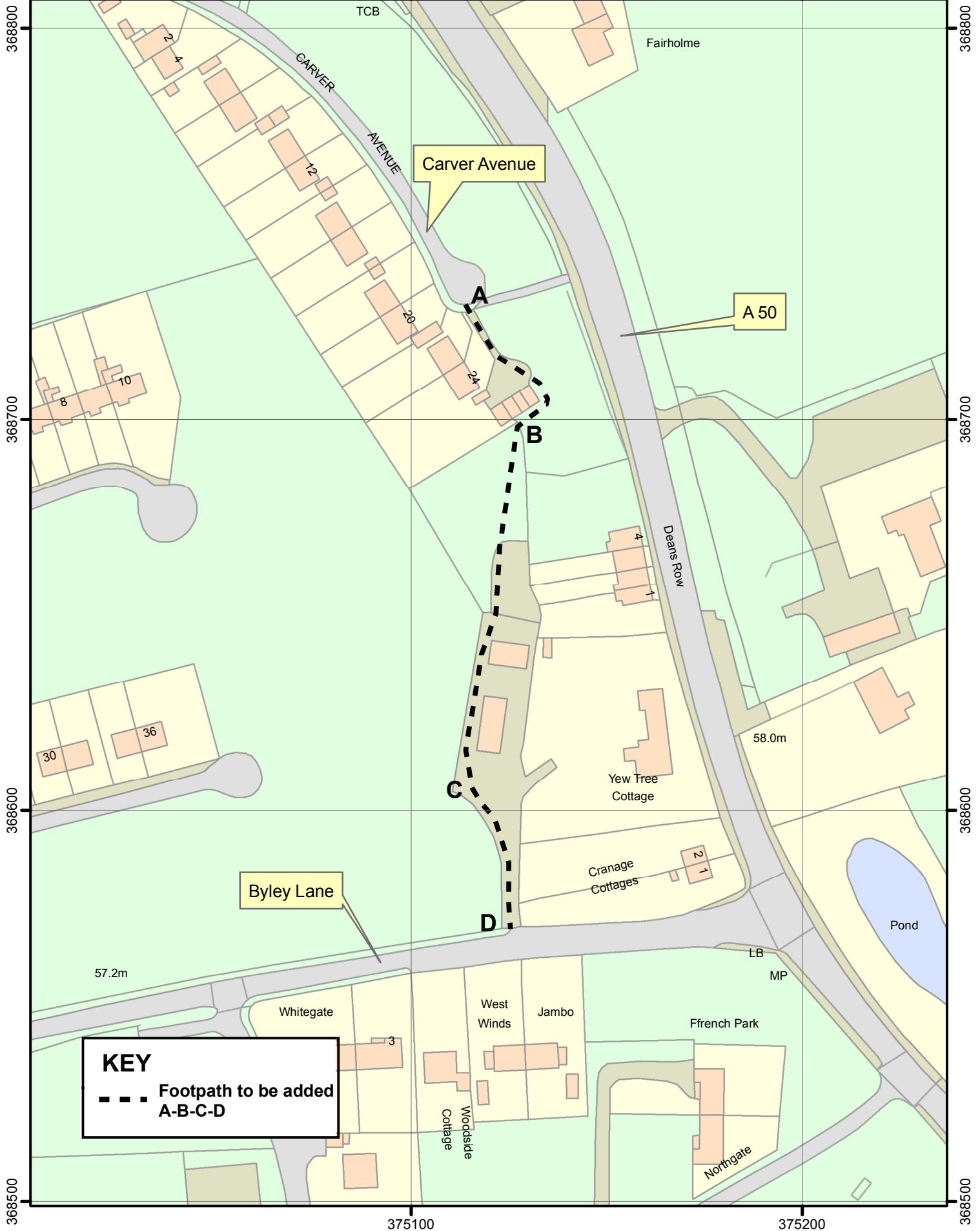
- 7.9.1.** There are no direct implications for public health

### **7.10. Climate Change**

- 7.10.1.** 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.
- 7.10.2.** The decision taken by the Inspector not to add this footpath to The Definitive Map and Statement does not contribute to this commitment.

Access to Information	
Contact Officer:	Clare Hibbert clare.hibbert@cheshireeast.gov.uk 01270 686063
Appendices:	Appendix 1 – Map WCA/016A
Background Papers:	Case file CO/8/34

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

Plan No.  
WCA/016A

1:1,250

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## **Public Rights of Way Sub Committee**

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<b>Date of Meeting:</b>	5 <sup>th</sup> December 2022
<b>Report Title:</b>	Permissive Path Agreement in the Parish of Bradwall - Informative Report
<b>Report of:</b>	Jayne Traverse, Executive Director Place
<b>Ward(s) Affected:</b>	Brereton Rural, Sandbach Town

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### **1. Purpose of Report**

- 1.1 This report is an informative report describing a new permissive path agreement in the Parish of Bradwall.
- 1.2 The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

### **2. Executive Summary**

- 2.1 This report seeks to inform Members about a new permissive path agreement in the Parish of Bradwall.

### **3. Recommendations**

- 3.1. That the report be noted – no decision is required.

### **4. Reasons for Recommendations**

- 4.1. To formally note that a permissive path agreement has been entered into between the Council, Bradwall Parish Council and respective landowners. The report is for information only.

### **5. Other Options Considered**

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

## **6. Background**

- 6.1 Bradwall Parish Council have secured the agreement of third party landowners for the creation of a permissive footpath in the parish as shown on Plan No. PPA/007.
- 6.2 The aim of the 273m long path is to form a safe and pleasant off-road link alongside a section of Bradwall Road where there is no footway, limited verges and limited sightlines. In recent years there has been an increase in the number of walkers from Sandbach using this road to form circular routes using other public footpaths in the area.
- 6.3 The Parish Council will be bearing all costs of construction, maintenance and liabilities throughout the duration of the agreement.
- 6.4 The agreement will be in place for an initial term of 3 years.
- 6.5 Cheshire East Council is a signatory to the agreement so that it is formally recorded with the Highway Authority.

## **7. Consultation and Engagement**

- 7.1 A permissive path agreement is essentially a private agreement between the Council and the third parties concerned and therefore it is not necessary for public consultation to be carried out.
- 7.2 Cllr Wray, Ward Member for Brereton Rural Ward, and Cllr Benson, Ward Member for Sandbach Town Ward, have been informed, with both indicating their full support for the proposal. Cheshire East Highways have also been informed.

## **8. Implications**

### **8.1. Legal**

- 8.1.1.** There are no direct legal implications.

### **8.2. Finance**

- 8.2.1.** There are no direct financial implications.

### **8.3. Policy**

- 8.3.1.** There are no direct policy implications.

### **8.4. Equality**

- 8.4.1.** There are no direct equality implications

### **8.5. Human Resources**

- 8.5.1.** There are no direct implications for human resources.



## 8.6. Risk Management

**8.6.1.** There are no direct implications for risk management.

## 8.7. Rural Communities

**8.7.1.** There are no direct implications for rural communities.

## 8.8. Children and Young People/Cared for Children

**8.8.1.** There are no direct implications for children and young people/cared for children.

## 8.9. Public Health

**8.9.1.** There are no direct implications for public health.

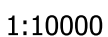
## 8.10. Climate Change

**8.10.1.** 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.

**8.10.2.** 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.

Access to Information	
Contact Officer:	Genni Butler Acting Public Rights of Way Manager <a href="mailto:genni.butler@cheshireeast.gov.uk">genni.butler@cheshireeast.gov.uk</a>
Appendices:	Plan No. PPA/007
Background Papers:	The background papers relating to this report can be inspected by contacting the Officer above.

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*Working for a brighter future together*

## **Public Rights of Way Sub Committee**

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<b>Date of Meeting:</b>	5 <sup>th</sup> December 2022
<b>Report Title:</b>	Informative Report on Cases of Uncontested Public Path Orders Determined under Delegated Decision
<b>Report of:</b>	Jayne Traverse, Executive Director Place
<b>Ward(s) Affected:</b>	Alsager

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### **1. Purpose of Report**

- 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 Sub Committee.
- 1.2 The work of the Public Rights of Way team contributes to the Corporate Plan priority "A thriving and sustainable place", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

### **2. Executive Summary**

- 2.1. 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 Sub Committee.

### **3. Recommendation/s**

- 3.1. That the report be noted.

### **4. Reasons for Recommendation/s**

- 4.1. The report is for information only.

### **5. Other Options Considered**

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

## **6. Background**

6.1 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 Sub Committee, may determine Public Path Order cases which are not contested or contentious at the pre-order consultation stage.

6.2 This report provides an update on decisions taken under this delegation:

6.2.1 Highways Act 1990 Section 119 Proposed Diversion of Public Footpath No. 14 in the Town of Alsager (part)

6.3 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).

## **7. Consultation and Engagement**

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

## **8. Implications of the Recommendations**

### **8.1. Legal**

8.1.1. There are no legal implications.

### **8.2. Finance**

8.2.1. There are no financial implications.

### **8.3. Policy**

8.3.1. There are no policy implications.

### **8.4. Equality**

8.4.1. There are no equality implications.

### **8.5. Human Resources**

8.5.1. There are no human resource implications.

### **8.6. Risk Management**

8.6.1. There are no risk management implications.

## 8.7. Rural Communities

8.7.1. There are no implications for rural communities.

## 8.8. Implications for Children & Young People

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

## 8.9. Public Health

8.9.1. There are no implications for public health.

## 6.10 Climate Change

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

Access to Information	
Contact Officer:	Genni Butler, Acting Public Rights of Way Manager genni.butler@cheshireeast.gov.uk 01270 686059
Appendices:	N/a
Background Papers:	<a href="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</a>

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