

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	24 September 2012
Report of:	Greenspaces Manager
Subject/Title:	Wildlife and Countryside Act 1981 – Part III, Section 53: Application to Upgrade Public Footpath No.9 Higher Hurdsfield to Bridleway Highways Act 1980 – Section 118: Stopping Up of Part of Public Footpath No.9 Higher Hurdsfield

1.0 Report Summary

- 1.1 The report outlines the investigation of an application made by Mr R Spoors of Roewood Lane, Macclesfield, to upgrade Public Footpath No. 9 Higher Hurdsfield to Bridleway status. This 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 upgrade the footpath.
- 1.2 The report also outlines the proposal to extinguish part of Public Footpath No. 9 Higher Hurdsfield. This includes a discussion of consultations carried out in respect of the proposal and the legal tests for an extinguishment Order to be made. The report makes a recommendation based on that information, for decision by Members as to whether an Order should be made to extinguish the route described.

2.0 Recommendation

- 2.1 The application to modify the Definitive Map and Statement to record public bridleway rights between points C-H-I-D as shown on plan number WCA/004 be refused on the grounds that there is insufficient evidence to show the existence of Public Bridleway rights;
- 2.2 An Order be made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by upgrading to Public Bridleway, the route as shown between points B and C; and D-J-E on plan number WCA/004;.
- 2.3 An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding as a Public Bridleway, the route as shown between points C-G-D; and E-F on plan number WCA/004;

- 2.4 An Order be made under Section 118 of the Highways Act 1980 to stop up part of Public Footpath no. 9, as shown between points A-B on plan number WCA/004 on the grounds that it is not needed for public use;
- 2.5 Public notice of the making of the Orders be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Orders be confirmed in exercise of the power conferred on the Council by the said Acts.
- 2.6 In the event of objections to the Orders being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 The evidence in support of this claim must show, on the balance of probabilities that public bridleway rights subsist along the claimed route. It is considered that there is sufficient user and historical evidence to support the existence of public bridleway rights along the route B-C-G-D-J-E-F on plan no. WCA/004. On the balance of probabilities, the requirements of Section 53(3)(c)(i) and Section 53(3)(c)(ii) have been met and it is recommended that the Definitive Map and Statement should be modified to show the route as a Public Bridleway. The Order would be made under both Sections of the Act as part of the route is currently a Public Footpath and would be upgraded to Public Bridleway status; and part of the route, which is not currently recorded, would be added as a Public Bridleway.
- 3.2 For the remainder of Public Footpath No. 9 Higher Hurdsfield, as shown between points C-H-I-D on plan no. WCA/004, it is considered that there is insufficient evidence, both user and historical, to show the existence of Public Bridleway rights. For this section only the requirements of Section 53(3)(c)(ii) have not been met and it is recommended that the application be refused. Therefore this section would remain as Public Footpath No. 9 Higher Hurdsfield.
- 3.3 For the part of Footpath No.9 as shown between points A and B on plan no. WCA/004 it is proposed to extinguish this section. In accordance with Section 118(1) of the Highways Act 1980 it is within the Council's discretion to make an Order if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use. This section of Footpath No.9 has not been available for the public to use since the flats at Hillside Court were built in the early 1970's. It is considered that this section of the footpath is not needed for public use as there is suitable access to point B via the adopted highway.

4.0 Wards Affected

- 4.1 Bollington and Macclesfield East

5.0 Local Ward Members

5.1 Councillor P Hayes, Councillor B Livesley and Councillor D Neilson.

6.0 Policy Implications

6.1 Not Applicable

7.0 Financial Implications

7.1 Not Applicable

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 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.

8.2 The legal implications are contained within the report.

9.0 Risk Management

9.1 None

10.0 Background and Options

10.1 *Introduction*

10.1.1 This application was submitted in July 2003 by Mr R Spoors of Roewood Lane, Macclesfield to modify the Definitive Map and Statement by upgrading Public Footpath No.9 in the parish of Higher Hurdsfield to a Public Bridleway. The route applied for is the current definitive line of Footpath No.9; this runs from the junction of Rainow Road (B5470) and Roewood Lane at the northern end (point A on plan no. WCA/004), along Bibby's Lane and past Close House Farm, to Commonsides Farm at the southern end (point E), which is also known as Roewood Lane. The definitive route currently falls short of the nearest adopted highway, which is Ecton Avenue (point F). Plan No. WCA/004 shows the route applied for between points A-B-C-H-I-D-J-E (OS Grid References SJ 9307 7439 to SJ 9355 7363). The application is based on user evidence and historical evidence; 11 user evidence forms and a number of historical documents were submitted with the application.

10.1.2 It has been discovered that a previous application was made to upgrade this route to a bridleway in 1972. Mr Maddock was Bridlepaths Officer for East Cheshire Combined Training Group from 1967/8. He made an application under the Countryside Act 1968 but due to new legislation (Wildlife and

Countryside Act 1981) and non compliance with new procedures he was informed by Cheshire County Council on 27th January 1986 that the claim would not be processed. Correspondence refers to the application as 'Application No. 17/2'; in 1986 he was asked for further evidence and to resubmit his application under the new legislation. It would appear that he requested the forms from Cheshire County Council to do this but did not submit them.

- 10.1.3 The route of Footpath No. 9 at the northern end between points A and B was physically obstructed during the construction of the Hillside Court flats on Roewood Lane. The flats were built by Macclesfield Rural District Council in 1973 and unfortunately legal orders stopping up the affected part of the footpath were never published. It is therefore assumed that since the development of this area, users of the right of way have used the adopted highway to access the start of the path at point B on plan no. WCA/004.
- 10.1.4 There is also an anomaly at the southern end of the route. The Definitive Map shows Footpath No.9 Higher Hurdsfield as ending at the parish boundary with Macclesfield, this is at point E on plan no. WCA/004, adjacent to Commonsides Farm. However, the section of Roewood Lane between points E and F is an unadopted highway therefore the route should continue to point F where it meets Ecton Avenue. It would appear that Officers at the time of the drafting of the Definitive Map recognised that the route should continue into Macclesfield Parish to meet the adopted highway, but for reasons unknown this was omitted from the Definitive Map.
- 10.1.5 Members should be aware that there is another path adjacent to Footpath No.9. This alternative route is shown between points C-G-D on plan no. WCA/004, this was initially installed in 1953 by the previous owners of Close House Farm; Mr Parker (now deceased). The purpose of this alternative path was to avoid having people walk the definitive line which runs to the front of Close House Farm. The alternative route took people well away from the farm as Mr Parker had a herd of cows and was concerned about foot and mouth disease.
- 10.1.6 Mr Parker owned Close House Farm between 1953 and 1967. In 1967 Dr and Mrs Broadbent moved to the property with their family. Dr Broadbent has since passed away but Mrs Broadbent, her son Chris Broadbent and his family now reside at the property. In 1975 Dr Broadbent applied to have part of Footpath No.9 diverted away from the farm and onto the alternative route (between points C-G-D on plan no. WCA/004); however he withdrew the application when objections were received to the consultation. By 1988/9 it was considered that the majority of people were now using the alternative route so another application was made. An Order was made to divert the route in 1991; this led to a Public Inquiry being held in 1994. The decision was made not to confirm the Order; however Cheshire County Council and the applicant then challenged the decision in the High Court and the decision was quashed. The County Council were invited to re-submit the Order and objections for determination. A second Public Inquiry was then held in 1997 again the Order was not confirmed; the Inspector considered that the

proposed diversion would have a negative impact on the public enjoyment of footpath No.9 as a whole. Therefore the legal definitive line of footpath No.9 remains on its original route which passes directly to the front of Close House Farm.

- 10.1.7 In 1989/90 a permissive horse track was installed by Mrs Broadbent (this runs parallel to the footpath diversion in the adjacent field between points H-I on plan no. WCA/004). Prior to that horse riders had been using the route of the alternative footpath (C-G-D on plan no. WCA/004). In response to the consultation for the footpath diversion in 1989, the Ramblers' Association commented that the proposed diverted route was being used extensively by horse riders and made the use of the path and the surface less attractive for walkers. Therefore the horse track was installed parallel to the footpath diversion in the adjacent field. Mr Broadbent has commented that it was only established to support the (unsuccessful) footpath diversion application in case riders insisted on using and damaged the route they hoped to divert to.

10.2 *Description of the Claimed Bridleway*

- 10.2.1 The claimed route commences on the junction of Rainow Road (B5470) and Roewood Lane Point A on Plan no. WCA/004 and runs in a south-easterly direction. The route is however obstructed between points A and B by the front garden of Roewood House and the Hillside Court flats. Users of the path now have to follow the road around the flats by following Roewood Lane, Hillside Drive and Springhill to arrive at Point B. From Point B the path continues in a easterly direction and up a steep incline along an unadopted lane known as 'Bibby's Lane' which serves as the access to Close House Farm and three further properties (Merriehill, Bearda Hill and Tyfelyn). The residents of these properties have paid for Bibby's Lane to have a tarmac surface. At the entrance to Merriehill the lane turns in a south-easterly direction and continues a steep incline. At Point C there is a gate and this marks the entrance and driveway up to Close House Farm; adjacent to the gate is the start of the alternative path, which is currently signed with a 'permissive path' waymarker. A few metres further on there is a gap in the hedge which is the entrance to the permissive horse track at Point H. The claimed route continues along the driveway and passes directly to the front of Close House Farm. After passing the property there is a field gate with stile to the side, the route continues in a southerly direction, from this point the path changes to a grass surface and is bound by dry stone walls on either side. The route continues in a southerly direction passing through a kissing gate, it then meets the permissive horse track at Point I and the alternative footpath at Point D. The path then continues between the dry stone walls in a south-south-easterly direction to Point J where it changes to a tarmac surface and passes to the front of Nursery Cottage and Commonsides Farm. The unadopted lane known as 'Roewood Lane' then goes from Commonsides Farm (just to the south-east of Point J) in a south-easterly then south-westerly direction to Point F, where it meets Ecton Avenue.

10.3 *The Main Issues*

10.3.1 Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Cheshire East Borough 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.

10.3.2 There are two events that are relevant to this application section 53(3)(c)(i) and section 53(3)(c)(ii), the first requires modification of the map by the addition of a right of way and the second requires modification of the map by the upgrading of a right of way. The two sections are quoted below.

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

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

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;”

The evidence can consist of documentary/ historical evidence or user evidence or a mixture of both. All the evidence must be evaluated and weighed and a conclusion reached whether, on the ‘balance of probabilities’ the alleged rights subsist. With regards to the addition of a right of way (section 53(3)(c)(i)) the lesser test of ‘reasonably alleged to subsist’ may be used. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.

10.3.3 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”.

10.3.4 In this case there are a number of dates which could be used as the date the way is ‘brought into question’. Mr Broadbent of Close House Farm states a pole was put across the definitive line of the path in the late 1960’s (the approximate position is marked on plan no. WCA/004). He has provided a photograph of a pole but he believes the photograph was taken in the late

1980's. One witness Mrs Anne Morton recalls a pole but she said she just used to jump over it. In 1987 a Mr Burch wrote to the Council stating the original route was "barred in the vicinity of the farm", he does not state the type of obstruction but he also comments that the diverted route is being used as a bridleway. In 1988 there are notes of a meeting between Cheshire County Council Officers and the Ramblers' Association; the Council confirms the right of way is still immediately adjacent to Close House Farm and it was not obstructed to walkers. Comment is also made that "The problem had been caused by horse riding on the path and also on the permissive diversion". It is not stated what "the problem" was but it is thought that by stating the route was not obstructed to walkers, this could imply that it was obstructed to horse riders. Also in 1988 a letter from Mr Spoors' states "the right of way is frequently blocked by a wooden bar at the junction with the alternative track". Therefore it would appear that from the late 1980's the definitive line of footpath No.9 became obstructed to horse riders and they had no alternative but to use the footpath diversion, although most were already using the alternative route. It is believed the date of 1987 should be used as the date the original definitive route (the application route) was 'brought into question'; therefore the relevant twenty year period to be considered for the user evidence is 1967 to 1987.

10.3.5 In this case there is some evidence of use on horseback prior to 1967; it has been stated that the evidence of use either side of the 20 year period being relied upon buttresses the use made during the 20 year period and can reinforce the conclusion that there was sufficient use during the core period as confirmed by *Rowley v. Secretary of State for Transport, Local Government and the Regions* (2002).

10.3.6 In the case of *Godmanchester Town Council, R (on the application of) 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 user, 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.

- 10.3.7 There is user evidence for the section C-G-D as shown on plan no. WCA/004, therefore although this was not included as part of the application, it must be considered. This section of path is not currently recorded on the Definitive Map, therefore section 53(3)(c)(i) of the Act applies (as quoted above at paragraph 10.3.2). In 1995 Mrs Broadbent submitted a Statutory Declaration under section 31(6) of the Highways Act 1980 to state that no additional ways (other than Footpath no.9) had been dedicated as highways. This is sufficient to negate the presumed dedication of this route from this date; therefore when considering the user evidence for this section the relevant twenty year period to be considered for this section is 1975-1995.
- 10.3.8 If for some reason the statutory test fails, the issue of common law dedication can be considered; that is whether the available evidence shows that the owner of the land over which the way passes has dedicated it to the public. An implication of dedication may be shown at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. As stated above this route was installed by the previous owner in 1953 and it is clear from his statement that he installed it for use by the public and regarded it as a right of way. Use of the route was then accepted by the public and it is clear that such use included horse riders from references in the Parish Council minutes from the 1950's and 1970's; the comments of Mr Maddock in his Survey Report from 1972; the letter from Mr Burch dated 1987; the comments of County Officers in 1988; the comments of the Ramblers' Association in 1989; and the user evidence of this route on horseback which dates from 1967. All of this evidence is discussed below.
- 10.3.9 In relation to the section E-F on plan no. WCA/004, this is also not currently recorded on the Definitive Map, and therefore section 53(3)(c)(i) of the Act also applies here. However public use of this section has not been 'brought into question' by any act and there is no evidence of any challenge to use, therefore when considering the user evidence for this section the relevant twenty year period to be considered is 1992-2012.
- 10.3.10 In relation to the section A-B on plan no. WCA/004, as stated in paragraph 3.3 above it is proposed to stop up this section. The relevant legislation is Section 118 of the Highways Act 1980 which states it is within the Council's discretion to make an Order if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use. It is considered that this section of Public Footpath No.9 is not needed for public use, as alternative access is available between the same points, via the adopted road network of the housing estate.
- 10.3.11 If objections are made and not withdrawn to an Order made under section 118, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will, in addition to the matters discussed at paragraph 10.3.10 above, have regard to:

- The extent (if any) to which it appears to him...that the path or way would, apart from the order, be likely to be used by the public, and
- The effect which the extinguishment of the right of way would have as respects land served by the path or way, and
- The material provision of any rights of way improvement plan prepared by any local highway authority which includes land over which the order would extinguish a public right of way.

Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to above.

10.4 *Consultations*

- 10.4.1 Consultation letters were sent to the Ward Members; Higher Hurdsfield Parish Council; User Groups/Organisations and the landowners.
- 10.4.2 Since being informed of the recommendation to the Committee the applicant, Mr Spoor, has responded with a letter dated 7th August 2012 and additional notes; and a further letter dated 27th August 2012, he has requested these are made available to the Committee, they are both therefore attached at **Appendix 1**.
- 10.4.3 The local member Councillor Peter Hayes commented that he has no objections or comments either way; however he does say that if usage has increased by horse riders then there is merit in making the amendment. No further comments from the local members have been received.
- 10.4.4 The clerk of Higher Hurdsfield Parish Council has written to say that the matter was discussed at their Parish meeting and after discussions with various members of the Parish they can find no evidence that the path has been used as a bridleway. In addition Parish Councillor Robert Buckingham has emailed a number of comments from the Parish Councillors, mainly in relation to the section C-G-D on plan no. WCA/004. One person comments that they have walked this route regularly over the past 3 years and have only seen horse riders once. Other comments relate to the drainage, one person states if the route does become a bridleway the drainage will need improving. Another person who states they have seen no evidence of horse traffic also believes the route is not suitable for bridleway status because it is too narrow. One other comment is in relation to the southern end of the route, it is stated that there is a family run garage where people drop off cars and this could be a potential safety hazard. Officers did respond to inform Mr Buckingham that issues such as safety and suitability are not relevant to the decision of the Committee.
- 10.4.5 The Ramblers Association have raised points regarding the alignment of the path at the northern end, the anomaly at the southern end, and the permissive path around Close House Farm, which Officers were already aware of. (See paragraphs 10.1.3 and 10.1.4). They comment that most of the surface is

hardened and would support use by both riders and walkers; however there is one section just north of the permissive route where it is heavily grassed and the surface is more difficult to establish. They also comment that the current width is substantially less than 2.5 metres in places, particularly nearer Close House Farm due to the growth of vegetation. Finally they state that provided the current width of the path could be increased to allow pedestrians and horses to pass safely and the surface established as hardened throughout, they would not object. Officers have responded to this point on the width of the route. If a Modification Order is made, the width cited is the historical width. In the absence of any historical information then where the route is between physical boundaries the width is presumed to be the whole area between the boundaries. Where there are no boundaries the width will be that which has been habitually used by the public. If an Order is made and confirmed then the vegetation would be cut back to allow for the width cited in the Order.

- 10.4.6 The Ramblers Association have since made further comments since being notified of the proposed recommendation to the Committee. In a letter dated 21st August 2012 it is stated they support the proposed upgrading of Footpath No.9 along the whole definitive line of the existing footpath (B-C-H-I-D-J-E-F on plan no.WCA/004). It is stated the route C-G-D is currently unsuitable for riders and work will be required to establish a bridleway particularly at the southern end where it is steeper than the definitive line. Comments are made in relation to the definitive line between points C-H-I-D which it is proposed will remain as a public footpath. It is stated this section is not correctly waymarked when approaching from the south; and there are misleading signs only pointing to the concessionary path rather than the definitive route. It is stated this section has not been properly maintained by Cheshire East Council or the landowner due to the growth of vegetation on the path. Comment is made that this section has superior views and is less steep than the concessionary path; finally it is stated that as the outcome of the previous public inquiries was to retain the current line of the path, the Ramblers Association would object strongly to any diversion of this route in the future regardless of whether or not the new section of bridleway is created.
- 10.4.7 The Peak and Northern Footpath Society have stated they have no objection to the upgrading of the route.
- 10.4.8 Mike Roberts representing CTC forwarded comments from one of his members Peter McGuckian; he states that he knows the track well and has ridden mountain bikes on it many times. He comments that it is perfectly suited for bikes and horse riders and he has seen many horse riders using it; he would support any application to upgrade the route in fact he always thought it was a bridleway.
- 10.4.9 Natural England has commented to say, this path order would not affect a statutory site for nature conservation (Site of Special Scientific Interest - SSSI, Special Area for Conservation – SAC; Special Protection Area – SPA or a Ramsar site).

- 10.4.10 Mr S Bailey of Higher Fence Farm owns land adjacent to the path. He owns the large field to the west of the route including the two reservoirs; he has been interviewed by Officers. Mr Bailey has lived at this address all his life apart from a 5/6 year break when he got married; his mother lived at the farm for 90 years. He states that he has always regarded the route of Footpath No.9 as more than a footpath, he remembers horses using it when he was young. His sisters always used it on horseback with friends, they used it regularly to exercise the horses; one sister has since moved abroad and the other has now passed away. His daughter, Natalie has always used the route on horseback; she began riding aged five when she went to Blakelow Riding School, she is now 21 years old and still lives at the farm and still uses the route. Mr Bailey also produced a map dated 6th December 1943; it shows the water reservoirs and pipe lines to Hurdsfield Mills, it was given to Mr Bailey by the last bailiffs for the factory. The full length of Footpath No.9 is shown slightly coloured and is referred to as 'Needham's Lane'.
- 10.4.11 Officers have also met with Mr C Broadbent of Close House Farm; Mr Broadbent is also representing his mother Mrs J Broadbent of the same address. Part of Footpath No.9 runs very close to their property, the section just to the south of point H on plan no. WCA/004 passes directly to the front of the property crossing tarmac and gravel before continuing in a southerly direction along the grass track. Mr Broadbent explained that the previous owner Mr Parker (now deceased) installed, what he refers to as the 'unofficial diversion', shortly after moving there in 1953. The diversion referred to is between points C-G-D on plan no. WCA/004. Mr Parker had a herd of dairy cows and was concerned about foot and mouth disease, so the diversion was put in place to avoid contamination. Mr Broadbent has submitted a statement from Mr Parker that is dated 1997. This unofficial diversion is still in place today and is signed with waymarkers as a permissive route. Mr Broadbent stated that virtually all people use this route but if a walker is seen on the definitive line they are asked if they would be prepared to use the alternative route instead, and the vast majority do so.
- 10.4.12 Mr Broadbent stated that the definitive line of the footpath was initially blocked by a pole; he said this would have been in the late 1960's soon after they moved to Close House Farm. The approximate position of the pole is shown on plan no. WCA/004. Mr Broadbent believes the pole would have prevented use of the route on horseback; although walkers would still have been able to get around the pole. He has submitted a photograph of a pole; however he has dated the photograph as being from the late 1980's. Mr Broadbent explained that after the installation of a new water main in 1992 a stile was installed on the definitive route. This stile remained in place until 2007 when it was replaced by a kissing gate. The approximate position is shown on plan no. WCA/004. Mr Broadbent believes that prior to 1992 only one or two riders were seen on the definitive line going past the property and any seen were challenged. They had a couple of friends with horses who may have used the route when visiting. He states that riders may well have used the unofficial diversion. In 1990 Mrs Broadbent installed the horse track, which runs parallel to the unofficial footpath in the adjacent field. There are signs at either end of the track stating 'Horses'. Mr Broadbent said that this was installed to

encourage the odd horse that used the diverted footpath (which is quite narrow) to use the track instead, so that horses and walkers did not meet.

- 10.4.13 Mr Broadbent has also submitted a detailed signed statement including comments and rebuttals of the applicants evidence, and the user evidence forms submitted. The statement dated August 2011 is signed by the following people, Mrs J Broadbent, Dr P Broadbent, Christopher Broadbent, Pamela Broadbent and Sarah Broadbent. Mr Broadbent's comments in relation to the documentary and user evidence are detailed below in paragraphs 10.6 and 10.7 respectively. In the statement Mr Broadbent refers to the Definitive Map process and the Parish Council Walking Survey, this is discussed in more detail below at paragraph 10.6.27, however it should be pointed out here that Mr Broadbent refers to this as a crucial piece of evidence as the local people carrying out the survey recorded a kissing gate on Footpath No.9. Mr Broadbent claims this is completely inconsistent with there being any public equestrian or vehicular access. He has submitted a copy of the walking survey schedule and plan highlighting the reference to a kissing gate.
- 10.4.14 Mr Broadbent states that Close House Farm was one of the properties offered for sale at an auction of the Hurdfield Estate in 1933; he has submitted a copy of the details for Close House Farm (Lot 62). He states there is no mention at all of any public right of way or thoroughfare and the access lanes are described as accommodation roads. The details for Roewood House Farm (Lot 61) describe, "A Right of Way for all purposes, as at present enjoyed, over the roadway passing through this lot, is reserved in favour of Lot 62". Mr Broadbent states this would be unnecessary if the roadway referred to had been a public right of way. Mr Broadbent has submitted the relevant part of the conveyance of Close House Farm in 1933 granting the right of way.
- 10.4.15 Mr Broadbent has also submitted a letter from Macclesfield Rural District Council dated 19th October 1970 in which the Council refer to Bibby's Lane as 'the private occupation road'. However it must be highlighted that this letter is in relation to surfacing requirements for the Roewood Lane Development and the Council is merely pointing out that they would not surface a private road.
- 10.4.16 Also submitted is a letter from Mr Broadbent to Cheshire County Council dated 16th August 1990. As referred to in paragraph 10.1.7 above Mr Broadbent states the horse track has been a permissive route for horse riders since 1989 and he refers to it as a new facility for riders. He states "it was emphatically never the case that the horse track was installed as an unofficial diversion of any known or suspected rights for horse riders". The correspondence confirms this as it explains the difficulties with the suggestion that the horse track be dedicated as a bridleway, i.e. that the remainder of the route is only a footpath. The correspondence also refers to the horse track as a new facility for horse riders.
- 10.4.17 Since being informed of the recommendation to the Committee Mr Broadbent has sent a response. In a letter dated 21st August 2012 Mr Broadbent states, without prejudice to his position in any future proceedings that may develop in

this matter, he confirms that it would not be his intention to object to an Order to add a bridleway between points C-G-D on plan no. WCA/004.

- 10.4.18 Mr and Mrs Heathcote of Commonside Farm have replied to the consultation. In a letter dated 21st July 2011 they firstly point out that the address on the electoral register of their property is Roewood Lane, Higher Hurdsfield. However they choose to use Ecton Avenue as their address, as there is often confusion with the other Roewood Lane at the northern end of the route, off Rainow Road. They state that they have always had a vehicular right of access along the bridleway through to Hurdsfield at all times, should they ever need to use it. They explain that the actual right of way for vehicles was blocked and the path diverted and made into a footpath only. Adjacent to this narrow path, part of a field was then separated for use by horses. They state that the bridleway runs through the middle of their property and is used regularly by horses, bicycles, dog walkers and families. They also point out that the Council should maintain this bridleway more efficiently from the point at which it starts on Ecton Avenue to the end of Roewood Lane; and they explain that on a number of occasions this section has been flooded blocking all access to Commonside Farm and Nursery Cottage.
- 10.4.19 Officers have met with Mr and Mrs Armstrong who also own Commonside Farm. Mr Armstrong had completed a user evidence form; both Mr and Mrs Armstrong have signed statements in relation to their use of the route as a bridleway. Although it is accepted that as owners of land adjacent to the route the nature of their use may not be classed as use 'by the public', especially if they have a private right of access over the route as claimed by Mr and Mrs Heathcote. Mr Armstrong states his family have owned Commonside Farm since the mid 1950's. He owns all of the fields on the eastern side of the route from the field boundary just to the north of point I to Commonside Farm at point E (on plan no. WCA/004). He also owns the field on the western side to the south of point G.
- 10.4.20 Mr Armstrong states that in 1986 he started a livery business at Commonside Farm where he keeps his own and other people's horses. It was from then on he started to use this route on horseback; prior to that he had used it on foot and on his tractor. Mr Armstrong has used the route at least weekly for recreational riding; sometimes he would do organised rides with between three and five other riders. In 1986 when he began to use the route on horseback he would use the route that went past Close House Farm, he also used this route on his tractor. He states when the horse track was installed (1989) he began to use that rather than the route past the house. He still uses the horse track now which is wider, but he has to use the narrow diverted path to access one of his fields. He recalls a pole across the original route, he believes it was put up when the diverted route was put in; he states there was also a gate near to Close House Farm which was usually closed but not locked. He recalls speaking to Mrs Broadbent who told him to use the diverted route, he asked her permission to use the route past the house but this was refused. Mr Armstrong believes this may be because of his livery business she was worried about more horses coming through. Finally he states as a landowner

he has no problem with horses, he sees them using the route several times a week usually more in the evenings and at weekends.

- 10.4.21 Mrs Armstrong states that she first used this route on horseback in around 1975 when she was riding out from Rainow; she used it perhaps once a week or fortnight usually as part of a circular ride. She states back then Mrs Broadbent actually told her to ride past her house. At some point she stopped using the route past the house and began to use the alternative bridleway (horse track). Mrs Armstrong could not recall exactly when this was but she said she met her husband in 1987 and she does not remember going past the house with him. Mrs Armstrong states she never spoke to Mrs Broadbent but she knew through her husband that she did not want people riding past the house, so she just continued to use the alternative route until about 1996. She states she does not recall any obstruction when she used the route past the house.
- 10.4.22 Officers have met and taken a statement from Mrs Higgins of Tyfelyn, Bibby's Lane; her property is at the end of Bibby's Lane adjacent to point C on plan no. WCA/004. Mrs Higgins and her husband (now deceased) owned the site of their property and began building it in 1972, but it was not until 1974 that they moved in. Mrs Higgins states at that time Dr and Mrs Broadbent were already living at Close House Farm. Mrs Higgins was surprised about this application as she thought it was already a bridleway. She had seen signs saying 'Horses' at each end of the horse track, which runs parallel to the narrow footpath diversion; she assumed because of the signs that Mrs Broadbent had diverted the bridleway away from the house. She said these signs appeared after the inquiry into the diversion in the late 1990's, the signs have now disappeared she was not sure when they were removed. Mrs Higgins is aware that Mrs Broadbent does not like people using the route past Close House Farm; she says the only people who use this route are those from the Ramblers Association. She states she has never seen horses use this route but she would only have seen them if she was in her kitchen or garden.
- 10.4.23 When Mrs Higgins first moved here she rarely walked that way; she was working in Style and she used to take the dog with her and go for a walk around the woods there. Mrs Higgins could not recall when the narrow diverted route was put in, although she said after the inquiry in the late 1990's improvements were made to the path and stone chippings were put down. It was at this time that she did begin to use this route for dog walking. She states when walking this path she has seen horse riders using the horse track next to the path, she claims they have never used the narrow footpath as it is not suitable for horses. However very recently, in the last couple of weeks, she has seen horses on the narrow path but she was not sure why this was. Mrs Higgins states the number of horses using the route does vary, some weeks there are more than others and there are definitely more at weekends and during school holidays. Mrs Higgins has a number of concerns, particularly if the route C-G-D becomes a bridleway; she states that if horses continue to use the narrow footpath this is a safety hazard as the horses come out onto Bibby's Lane right next to the entrance to her property. She says she

could easily pull out on them with her car without realising they are there. Mrs Higgins also has concerns regarding the surface, the width of the route, privacy and security issues and concerns about motorbikes using the route; all of which are not relevant to the committee's decision.

- 10.4.24 Officers have interviewed Judy Mossdrop in relation to her use of Footpath No.9 on horseback. Since being informed of the recommendation to the Committee she has submitted further comments. She considers that the bridleway should run past Close House Farm on what she describes as the historical bridle path. She states the way has been barred at point D-I for some 30 years. She states the permitted path and horse track is inferior to the historic route; riders and walkers have been restricted in their enjoyment due to the old route being barred. She states Close House Farm does not appear to be a working farm so therefore there is no practical reason for the restriction and diversion.
- 10.4.25 Officers have met with Mr and Mrs Walton of Roewood House, Roewood Lane. The definitive line of Footpath No.9 affects their property but is currently unavailable and has been for many years. It cuts across the front garden and then goes to the side of the property, through the boundary fence and into Hillside Court, where it is further obstructed by the building, vegetation and a fence. Mr and Mrs Walton have lived at Roewood House for nine years and were aware of the footpath when they bought the property. The previous owners told them the footpath had not been used and they had never encountered anyone attempting to walk it. This has been the same since Mr and Mrs Walton have lived at Roewood House. It appears from the Definitive Map and Statement that the path originally ran between the house and the farm outbuildings, since that time the area has been developed and the path became obstructed. With regard to the upgrading of the remainder of the footpath Mr and Mrs Walton state that they use the path from Bibby's Lane for walking on a regular basis. They do not use the definitive line past the house but choose to use the alternative route provided by the landowner. They state they have seen evidence of use by horses but have only come across one once, they say mountain bikers' use it too but it is mostly walkers. They expressed some concern about the width of the route should it become a bridleway.
- 10.4.26 In addition to the above, separate consultation letters were sent with regards to the proposed extinguishment of part of Footpath No.9. (A-B on plan no. WCA/004).
- 10.4.27 The Ramblers Association have written to say they would not object to the proposal as this would deal with a long-standing anomaly and similar access is provided by the pavement.
- 10.4.28 The Peak and Northern Footpaths Society have no objection to the proposed extinguishment.
- 10.4.29 Two of the utility companies, National Grid and Electricity North West have responded and raised concerns as they both have apparatus in the vicinity.

However no works are required on the ground in this case so the apparatus would not be affected. With regard to access to the apparatus, provision is made in an extinguishment order to protect the rights of statutory undertakers.

10.5 *Investigation of the Claim*

10.5.1 A detailed investigation of the evidence submitted with the application has been undertaken, together with additional research. The application was made on the basis of user evidence from 11 witnesses. The following documents are also referred to in the application; the Hurdsfield Tithe Map and Apportionments; the Ordnance Survey 25" 1st edition Map 1871; the Finance Act Plan and Book of Reference; the Ordnance Survey 6" 2nd edition Map 1911 and the Mining Map for Throstlenest Pit.

10.5.2 In addition to the user evidence an investigation of the available historical documentation has been undertaken to establish whether the claimed route has an earlier origin. The standard reference documents have been consulted; details of all the evidence taken into consideration can be found in **Appendix 2**.

10.6 *Documentary Evidence*

Inclosure Award

10.6.1 The purpose of inclosure was to replace the communal system of open field cultivation and common grazing with a system of land divided into individual plots and fields, redistributed amongst the existing owners. There were three methods of inclosing land: informal inclosure, inclosure by agreement (but often confirmed by a court of law, and inclosure by Private or General Act of Parliament. None of these belong to a strict period in time. By the end of the 18th century all processes were in use. Non-parliamentary enclosure was nationally the dominant form. Parliamentary inclosure was effectively halted in 1876. Inclosure Awards are usually in two parts, the handwritten award and the accompanying plan. The Commissioners responsible for producing the document were empowered to stop up, divert and create public highways and private roads through and to enclosed land. They vary greatly in quality, scale and detail.

10.6.2 In this case there is no inclosure award for Higher Hurdsfield which covers the majority of the route. There is however one for Macclesfield dated 1804 and the very southern end of the route (E-F on plan no. WCA/004) is shown on this plan. The award refers to both the road now known as Ecton Avenue and the spur of Roewood Lane (E-F) as 'Private Occupation Roads'. Ecton Avenue is now an adopted highway. The General Inclosure Act of 1801 did not give authority for the creation of public footpaths or, it would seem, bridleways. Although the term "highway" could possibly include a bridleway it is generally accepted that it would not refer to a footpath. Therefore although E-F is referred to as a private occupation road it maybe that a public footpath or bridleway already existed or came into being later.

County Maps 18th-19th Century

- 10.6.3 These are small scale maps made by commercial map-makers, 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 map-makers checked the status of routes, or had the same sense of status of routes that exist today. There are known errors on many map-makers' 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.
- 10.6.4 Greenwood's Map (1819) shows the spur of Roewood Lane at the southern end of the route as far as the parish boundary (E-F on plan no. WCA/004) but the rest of the route in Hurdsfield is not shown. Swire and Hutching's Map (1830) shows the route from the northern end only as far as Close House Farm. On Bryant's Map (1831) both the northern end as far as Close House Farm and the southern spur of Roewood Lane (E-F on plan no. WCA/004) are shown by a double pecked line, indicated on the key as 'Lanes and Bridleways'.

Hurdsfield and Macclesfield Tithe Maps and Apportionment 1849/1840

- 10.6.5 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.
- 10.6.6 The Tithe Map of Macclesfield dated 1840 shows the very southern end of the route between points E-F on plan no. WCA/004. The route is shown as double solid lines and is excluded from the parcels of land either side. This section of the route does not have an apportionment number but it does appear to be shaded the same as the other known public highways. The Tithe Map and Award of Hurdsfield dated 1849 shows part of the route in question as a double solid line. From the southern end, the route is shown from Commonsides Farm as far as the field boundary to the north-west of point J (on plan no. WCA/004). There is then a small gap where the route is not shown. The route is then shown again (as double solid lines) from roughly where the work 'Track' begins to the north-west of point J and it continues in a northerly direction to the field boundary to the north of point I (on plan no. WCA/004).

This part of the route does not appear to be shaded. This section is given an apportionment number 105a which is described as “Lane” and the land use is described as “Thoroughfare”. The award names an owner and occupier but no rent charge is apportioned; this implies that this section of lane was in private ownership but was not productive. However since it is now recorded as a public footpath, it was presumably dedicated as a public right of way since the date of the tithe. Further north of here no features are shown on the map, no field boundaries or buildings; there is a large blank space as far as Rainow Road and from Cliff Lane down to the canal, presumably this whole area was not subject to a tithe charge. Two copies of the Hurdsfield Tithe Map and Award have been viewed, one at Chester Record Office and one at The National Archives, both copies show the route as described above.

10.6.7 The applicant comments that no conclusion should be drawn from the fact that only the southern parts of the route are shown. He states it is quite common for there to be gaps on Tithe Maps and this only indicates that no tithe was due or it was paid elsewhere. For the Apportionment the applicant states number 105a is recorded as ‘Lane’ and no tithe is due, he claims this indicates that 105a was accepted as a Public Highway in 1849.

10.6.8 Mr Broadbent comments that the Tithe Map does not offer any particular evidence of public use; he states the description of ‘Lane’ does not carry any implication of public use at all. He states it probably was a lane, being a private access to Close House Farm. He also comments that it is not clear why a Public Highway would be recorded as having an occupier.

Ordnance Survey Maps

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

Ordnance Survey Map 1” to 1 mile 1st Edition 1833

10.6.10 This shows the full length of the definitive line of Footpath No.9. The northern and southern ends of the route are shown as double solid lines; the middle section is shown as double dashed lines.

Ordnance Survey Map 1” to 1 mile Revised New Series (in colour) 1897-1904

10.6.11 This map indicates the area was surveyed between 1842-1893, the map revised between 1893-1898 and the colour edition published between 1897-1904. The full length of the definitive line of Footpath No.9 is shown as double solid lines. The route is not shown in colour but the key on the map indicates that the route is a third class metalled road which is fenced.

Ordnance Survey Map 6" to 1 mile, 1st, 2nd and 3rd Editions

- 10.6.12 The full length of the definitive line of Footpath No.9 is shown the same on all three editions. The route is shown as double solid lines throughout and there is a line across the route to the north of Close House Farm, which would indicate a gate or barrier of some kind. This would appear to be the same location as the current gate (point C on plan no. WCA/004). Roewood House, Close House and Commonsides are named on all three editions. The applicant comments that this map shows the route as a substantial public highway with solid lines along both sides. Mr Broadbent comments that it is accepted that there were lanes running north and south from Close House Farm but the fact that they are shown with solid lines is not evidence that this shows a 'Public Highway'.

Ordnance Survey Map 25" to 1 mile, 1st, 2nd and 3rd Editions

- 10.6.13 The full length of the definitive line of Footpath No.9 is shown on the first edition dated 1871 with double solid lines and is coloured throughout, this would appear to be the same as other routes in the area which are now known as public highways. However the interpretation of a coloured way on Ordnance Survey Maps is not straightforward. In her article "*Coloured Roads on Ordnance Survey First Edition 1:2500 Plans and One-Inch Maps 1897-1935, and the Rights of Way Disclaimer*"¹ Yolande Hodson refers to the comments of Winterbotham (DGOS 1930-35) who stated that the colouring of roads represented a metalled surface. However it is evident that not all metalled roads were coloured; nor can it be assumed that every coloured way was necessarily metalled. She also refers to the Ordnance Survey's response in the 1950's to a solicitors query about the use of colour as a possible indication of public status, they claimed that the colouring was of no significance and was for the sake of the artistic appearance of the plan. Further she comments that in the period from at least the late 1870's to 1884 it is evident that artistry was not the sole purpose of the colouring of roads and she describes examples of colour having been applied to identify public first and second class metalled roads and to distinguish them from public third and fourth class roads and private metalled roads. She states that "from April 1884, the use of colour on selected roads cannot be taken as a reliable indication of public status..." this is because an instruction was directed that all 'Carriage Drives properly metalled, and kept in repair, will in future be coloured...' Therefore although this instruction came after the date of this map, it seems that the colouring of the route in this case is ambiguous and may or may not relate to its status. The route is given a number on this map '252'; but no book of reference was available at the Record Office. As with the 6" map referred to above there is a line across the route at point C on plan no. WCA/004 to indicate a barrier, however just because a route is shown as gated this does not always mean it is private. The properties Roewood House, Close House and Commonsides are all named on this map. The second and third editions show the route in the same way but without the colouring, no

¹ The Cartographic Journal Vol.42 No.2 pp. 85-110 September 2005

colour was used on these maps. The only change is the addition of a line across the route just to the south of Close House Farm. The second edition map dated 1896-8 has been attached at **Appendix 3** to show what the area was like before the development at the northern end of the route.

- 10.6.14 The applicant has commented that on this map the route is clearly shown from end to end i.e. Ecton Avenue to Hurdsfield Road. He states it is shown with solid lines on both sides of a substantial public highway throughout the entire length. He also notes the existence of Throstlenest Pit and the Dye Works as well as extensive agriculture, all of which he states were likely to have given rise to various types of usage by the local community.
- 10.6.15 Mr Broadbent states that there is no evidence to support the applicant's assertion that the use of solid lines indicates public usage of the route. He states a 19th century plan of the Throstlenest Dye Works (which appears to be this same Ordnance Survey Map) shows there is at most a footpath (beside the pools) to the route, and no vehicular access at all. He also states it should not be forgotten that the land was until 1922 held under the copyhold title of the Manor and Forest of Macclesfield and was part of the Hurdsfield Estate. Further he states there is no evidence that any activity, whether agricultural or commercial, would give rise to public rights over this land.

Lancashire Derbyshire & East Coast Railway 1891

- 10.6.16 Railway Plans had to be produced and deposited prior to a railway company obtaining an Act of Parliament authorising the construction of their intended railway. The maps covered a corridor of land defining the limits of deviation either side of the line of the intended railway, with plot numbers for the land and public and private routes, which are referred to in a book of reference. They showed the status of routes bisected by the proposed line, the accuracy of which would have been in the interest of those affected. The plans were drawn to comply with parliamentary requirements. The Bill and plans were open to consultation and debate and as such, they carry strong evidential weight. The Book of Reference for a railway which was proposed but not actually built can also provide cogent evidence for the existence of public rights over a way. This is based on the fact that the application was open for public scrutiny and objection.
- 10.6.17 This Plan dated 1891 shows a proposed railway bisecting the route, the line of the railway crosses just to the north-west of point J on Plan no. WCA/004 and then continues on the eastern side of the route, running almost parallel to the route as far as Close House Farm. The proposed line of the railway then veers off in a north-easterly direction. The full length of the route of Footpath No.9 is shown on the Railway Plan apart from the very northern section between point A and half way between points B and C (on plan no. WCA/004), this section is outside of the limit of deviation. The Book of Reference refers to the route as 'Occupation Road' the owner is named as P. Brocklehurst but no occupier is listed. It should be noted that Ecton Avenue at the southern end of the route is given a number on the Railway Plan and also referred to in the

Book of Reference as an 'Occupation Road', although this is now an adopted highway.

The Finance Act 1910

- 10.6.18 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.
- 10.6.19 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.
- 10.6.20 The working sheets are completed on Ordnance Survey 1909 third edition base maps. There are two copies of the working sheet for this area held at Chester Record Office. The first copy is not coloured but indicates some plots with a red outline. The northern end of the route between points A-C is excluded from hereditament number 133, which is an outlined plot to the north and south of the route between these points. The only other plot outlined on this plan for the area is number 131, this covers the area around Commonsides Farm, the field opposite the farm and all of the fields to the eastern side of the route from Commonsides as far as the field boundary to the north of point I (on plan no. WCA/004). The route is not included within this hereditament. The area around Close House Farm and the remainder of the western side of the route is not included within a plot.
- 10.6.21 The second working copy viewed shows the outlined plots as different colours, which is how they are often depicted on the Finance Act Working Plans. The plan has however been annotated since, possibly by Macclesfield Rural District Council or whoever held the plan prior to it being kept at the Record Office. It is therefore difficult to say with any certainty what changes have been made to this plan since the plots were originally drawn. It would appear that the northern section of the route is once again excluded from plot number 133 which relates to Roewood House. There is then a green outline for the plot around Close House Farm and the route would appear to be included within this hereditament between point C and the field boundary just to the north of point I (on plan no. WCA/004). For the remainder of the route from this point south to point F, the route is excluded from the hereditaments either side.
- 10.6.22 The Finance Act plans were prepared according to a statutory process and are generally regarded as good evidence of public rights; although not necessarily status in some circumstances. Planning Inspectorate Consistency Guidelines state that exclusion from hereditaments is generally considered as an

indication of public rights higher than footpath. (Section 11 Planning Inspectorate Consistency Guidelines April 2010).

- 10.6.23 Unfortunately the Finance Act Record Plan has not survived for this area, however, the Field Books for the three plots mentioned above were available. Plot 131 for Commonsides has no reference to rights of way and no deductions were made. Plot 132 for Close House has the word 'footpath' written on the first page of the field book under the heading 'Fixed Charges, Easements, Common Rights and Restrictions', however no deductions are made for Public Rights or Way or Easements. Similarly Plot 133 for Roewood House again states 'footpath' on the first page under the same heading. On the third page there is a sketch of the house, washhouse and piggeries; it then states 'Across Road' and then has a sketch of the Old Cottage and some further outbuildings. This would appear to be referring to the route of Footpath No.9 through the plot as a 'road'. No deduction is made for Public Rights of Way or Easements; however this section of the route does appear to be excluded from the plot on the Working Plan. The Domesday Book shows that no deductions were made for all three plots. The fact that the word 'footpath' was written on two of these field books but no deductions were made is unusual. It may be that the owners acknowledged that a footpath ran over the land but did not want to admit that it was a public right of way by claiming a deduction in value; or it maybe that it was considered a private path, although no deductions were made under easements. For the northern and southern ends of the route, where it is excluded from the hereditaments this could indicate a status higher than that of public footpath. However because the route is included within the plot of Close House Farm around the middle section and the references to 'footpath' in the Field Books this evidence is ambiguous.
- 10.6.24 When referring to the Finance Act Plan and Book the applicant states that "No.9 was not subject to tax as it is excluded from the land assessed and given a number 42, confirming it as a Public Highway". As we have seen above the full length of the route is not excluded from the plots, the number 42 is from the Ordnance Survey Map which was used as a base for the Finance Act Working Plan, it does not relate to the plot numbers. This does not confirm the route as a Public Highway.
- 10.6.25 Mr Broadbent has commented that if the land is not subject to tax this would indicate that no public money had ever been applied to its upkeep, which would be expected for any public right of way.

Hurdsfield Parish Council Minutes 1894-1981

- 10.6.26 The Parish Council make various references to the route, the earliest from 1956; and also the diversion around Close House Farm, from 1959. Quotes from the minutes are included in **Appendix 2**. It is clear from these early minutes (1956 & 1957) that the Parish Council regarded the route as a bridleway. Although the outcome of their query to Macclesfield Rural District Council regarding the status of the route is not referenced, from the next mention of the route in 1959, it is referred to as a footpath. It is clear from the minutes that horse riders have used the diversion around Close House Farm

C-G-D (on plan no. WCA/004) from at least 1973. Dr Broadbent (Mr Broadbent's father) of Close House Farm was a member of the Parish Council at this time. In September 1976, when Dr Broadbent was present at the meeting, it was resolved that a sign be erected at each end of the diversion with a direction sign for horses through the farm and pedestrians around the diversion. There is no other evidence to suggest these signs were actually erected. It was at this time that Dr Broadbent submitted an application to divert the route; therefore it is thought these comments may have been made to possibly help to support his application, as there had been previous concerns about walkers encountering horses on the diverted path.

National Parks and Access to the Countryside Act 1949

- 10.6.27 The Definitive Map and Statement is based on surveys and plans carried out in the early 1950s by each parish in Cheshire of all the ways they considered to be public at that time. The surveys were used as the basis for the Draft Definitive Map. Path no.9 was recorded as a footpath by Hurdsfield Parish on their survey. The route is described as commencing at Roewood Lane and terminating at Commonside at the Macclesfield Borough Boundary, it states the route continues as a 'CRF' (Cart Road used as a Footpath) and 'FP'. The schedule describes two stone stiles; the first one is referred to as a Kissing Gate. On the map two field gates are marked, one to the north of Close House Farm (at point C on plan no. WCA/004) and one just to the south of the farm. The kissing gate is marked on the field boundary just to the north of point I (plan no. WCA/004) and the other stile is just south of point D. The survey was carried out between May and September 1951. A Mr Dancaister is named as one of the two local people who carried out the survey, this may be the same Mr Dancaister mentioned in the parish minutes in 1956 who agreed to inspect maps. Also on the Hurdsfield map the southern end of the route which goes into Macclesfield parish (E-F on plan no. WCA/004) is annotated with an arrow and 'U/C Rd?' this may have been added by an officer at the time.
- 10.6.28 The Parish Survey for Macclesfield failed to include the continuation of Footpath No.9 from the parish boundary on Roewood Lane to Ecton Avenue (E-F on plan no. WCA/004) and it was therefore subsequently omitted from the Definitive Map. However on the Parish Survey map for Macclesfield this section of the route is highlighted and annotated with the word 'Add', so it would seem officers at the time noted this omission.

Rights of Way Officer's Field Notebooks 1954/6

- 10.6.29 These are the original handwritten notes of officers. They are presumably from site visits when checking routes or following up queries in the period leading up to the Draft Definitive Map being published. There is an entry dated August 1954 which refers to the southern end of the route, it describes it as a 'stoney track' and then states 'continue with u/c road junction in Macc MB'. Again this indicates officers were aware that the route needed to join the road junction. There is another entry dated August 1956 which queries the status of the route. It states "Is this a BR or FP? What does schedule state?"

Abbotts letter read 'Bridle for private'. Further it notes to check the railway and canal plans which might give some indication as to status. Clearly this officer was not sure of the status of the route and believed further research was needed. Mr Abbotts was the Clerk for Macclesfield Rural District Council, from these notes it would seem he believed that it was only used as a bridleway in a private capacity.

Mr Maddock's Files 1960/70's

- 10.6.30 As stated above at paragraph 10.1.2 Mr Maddock was Bridlepaths Officer for East Cheshire Combined Training Group from 1967/8. As well as completing a user evidence form and being interviewed by officers he has also submitted files of correspondence and survey records from the 1960s/70's. Mr Maddock applied to upgrade Footpath No.9 to bridleway under the previous legislation in 1972. However when the Wildlife and Countryside Act 1981 was enacted applicants were required to resubmit their application to comply with the new legislation. Mr Maddock was asked to do this in 1986 and although he requested the forms to do this it would appear that the application was not submitted. As part of his role as Bridlepaths Officer Mr Maddock surveyed many routes in Macclesfield and surrounding areas. In his survey report for Footpath No.9 dated 1st April 1972 Mr Maddock states *"This path classified only as a footpath and only a few years ago was diverted to avoid going through the farm yard at Close House. The path has been ridden by all the local riders as far as I can establish for at least thirty years"*. So it is apparent that Mr Maddock believed the route to be a bridleway but he also believed that the route had been diverted.
- 10.6.31 Mr Maddock has been interviewed by officers. He stated that between 1964 and 1966 he would have been riding a minimum of once a week and at least once a month after that. From 1964 he used the route that goes right next to Close House Farm. Then in around 1967 when Dr and Mrs Broadbent moved there he was asked to use the diverted route. He then continued to use the diverted route between one and four times a month between 1967 and 1989 when he moved house. He stated that no one ever stopped him from using this route on horseback; it was a well established and well used route for local riders.

Public Rights of Way Correspondence Files 1970/80's

- 10.6.32 A number of items referring to Footpath No.9 have been discovered dating from 1976 to 1989, these are summarised in **Appendix 2**. Some of the correspondence refers to horse riding on the path and on the diverted path. For example in a letter from The Ramblers Association in 1977 it is stated that the alternative path is used by horses and reference is made to the Parish Council Meeting in 1976 when Dr Broadbent suggested horses could continue to use the route by his house. There are also a number of letters complaining that the route is obstructed, the earliest is a letter from Mr Burch in 1987 and he also comments that the diversion is being used as a bridleway.

Public Footpath Diversion Order Public Inquiry Decision Papers 1995 and 1997

- 10.6.33 As stated above at paragraph 10.1.6 an Order was made to divert part of Footpath No.9 in 1991. The Order states it was proposed to divert the route by extinguishing the section C-H-I-D (on plan no. WCA/004) and creating a new path between points C-G-D. The Order was objected to and subsequently a public inquiry was held on 27th September 1994. The Planning Inspectorate issued a decision paper on 25th January 1995; the Order was not confirmed. In the decision paper under 'The Case for Cheshire County Council' it is stated that *"although only a public footpath exists along the route between Bibby's Lane, Close House Farm and Commonsides Farm, it is a route which is frequently used by horses"*. Mr Spoors, the applicant in this case, gave evidence as an objector at the inquiry. He stated that the footpath is part of an 'ancient trackway' and he highlighted the amenity value of walking between the dry stone walls, it was stated that the proposed diversion would deprive the walker of this enjoyment for a significant part. In his conclusion the Inspector agrees that the diversion is in the interests of the landowner, he also states he does not consider the proposed diversion to be substantially less convenient for walkers; and he says the overall enjoyment would not be significantly affected. The reason given for not confirming the Order was that the diversion would be substantially less convenient for the householders who back onto the proposed diversion, as members of the public at large. Following this the Council and the applicant challenged the decision in the High Court, arguing that the Inspector had misinterpreted the definition of "the public" referred to in section 119 of the Highways Act 1980 as including the householders rather than the general walking public. The decision was quashed by Order of the Court and the County Council was invited to re-submit the Order and objections for determination.
- 10.6.34 A second public inquiry was held on 27th February 1997 and the Inspector's decision was issued on 3rd April 1997, again the Order was not confirmed. Mr Spoors again gave evidence at this inquiry, again stating that the public's overall enjoyment of the route would be affected by this diversion. He also stated that in recent years the public had been encouraged to use the permissive path, due to the inaccurate signposting and the metal bar placed across the definitive right of way. In summary the Inspector decided not to confirm the Order because he considered that the proposed diversion would have a significant negative impact on the public enjoyment of footpath No.9 as a whole.
- 10.6.35 This information on these previous public inquiries is interesting but it must be remembered that they were in relation to an application to divert the Public Footpath, under section 119 of the Highways Act 1980. The Inspectors were not concerned with the status of the route, they were looking at whether or not the proposed diversion met the legal tests required to divert the footpath rights. This application for a Definitive Map Modification Order is quite different and the legal tests are set out above from paragraph 10.3. As can be seen from the recommendation of this report the Public Footpath rights would remain along the route C-H-I-D (on plan no. WCA/004) past Close House

Farm, so walkers could continue to enjoy this route and indeed the remainder of the route.

10.7 *Witness evidence*

- 10.7.1 User evidence was submitted with the application on standard user evidence forms, a chart illustrating the user evidence is attached as **Appendix 4**. Eleven user evidence forms were submitted all claiming use of the route on horseback, officers have interviewed six of the eleven plus one additional person. The remaining five witnesses have not replied to correspondence. The evidence of two of the witnesses interviewed, Mr and Mrs Armstrong, may be construed as being private, rather than public user “as of right”. As owners of Commonsides Farm and land immediately adjacent to the route it is believed they would have a private right of use. Mrs Armstrong did state she used the definitive line of the route, past Close House Farm, on horseback from 1975 until about 1987. This was before she met her husband but may have been with the permission of Mrs Broadbent.
- 10.7.2 As stated above at paragraph 10.3.4 when considering the user evidence for the application route (the definitive line of footpath No.9 past Close House Farm, between points C-H-I-D on plan no. WCA004) the relevant twenty year period is 1967 to 1987. This is because of the various references to this section of the path being obstructed and therefore preventing use on horseback from 1987. Of the seven witnesses interviewed four claim use of this section on horseback. Mr Armstrong, as stated above may have a private right, but only claims he used this route between 1987 and 1989. Mrs Armstrong claims 12 years use between 1975 and 1987 but may have used it with permission. Mrs Morton claims she used this route weekly from 1960 to 1967 but she states she was friends with Viv Parker, the daughter of the previous owner of Close House Farm, so her use may have been with permission also. Finally Mr Maddock claims he used this route weekly between 1964 and 1967. So of those witnesses interviewed only Mrs Armstrong has use within the relevant twenty year period. Of the remaining five persons who were not interviewed, from the information provided on their forms, it would seem that Vivien Johnson (daughter of the previous owner of Close House Farm) is the only other person to have used this route. She claims use between 1956 and 1967, outside of the relevant period, but her use would not be classed as “as of right” for this period when her father owned Close House Farm.
- 10.7.3 For the rest of the claimed route and the additional section between points C-G-D the relevant period to be considered is 1975-1995. As stated in paragraph 10.3.7 above, in 1995 Mrs Broadbent submitted a statutory declaration claiming that no rights of way exist on her land (apart from footpath No.9). This action brings the use of the route as a bridleway into question, so the twenty year period is taken back from this point. Of the seven witnesses interviewed four claim use of this route on horseback during the relevant period. The longest period of use being Anne Morton who used it from 1967 until 2002. One witness claimed use of this route on foot for a 28 year period from 1983. In addition four of those interviewed claimed use of the horse

track, which runs parallel to this route between 1989 (when it was installed) to 1996. All of the witnesses interviewed claim they have never been stopped or challenged when using this route. Also none of the witnesses have mentioned any signs on the route, although there are permissive waymarkers on this route now it is not clear when they were installed. Of the five witnesses that were not interviewed, four claim use of this route on horseback during the relevant period, the fifth claims use after 1995. Two of these five witnesses state on their forms that they were stopped or challenged by Mrs Broadbent. One states she was told it was a footpath; however as they have not been interviewed there is no further details about when or where these challenges occurred. One further witness states she was stopped by a Mr Henson (senior), however she states this was in February 1997 which is outside of the relevant period.

10.7.4 At the southern end, section E-F on plan no. WCA/004, the route has not been 'brought into question'. It would appear that no one has ever been stopped or challenged on this section and the route has not been obstructed at all. It was realised that this section was omitted from the definitive map when investigations began into this application. Therefore the relevant period to be considered is 1992-2012. Three of the witnesses interviewed have used this section at some point during this period. In addition Mr and Mrs Armstrong claim use, but as stated above they will have a private right of access to their farm. Of those not interviewed three witnesses claim use at some point during this period. It is noted that all of the witnesses will have used this section during their use as it is the only access from the southern end of the route to Ecton Avenue.

10.7.5 Mr Broadbent in his submission comments that between moving to Close House Farm in 1967 and 1992, when the stile was installed, Mrs Broadbent is adamant that only one or two riders made any attempt to ride the route past the house, and any seen were challenged and turned back. She does accept that some riders used the diverted footpath but as this is not completely visible from the house it was often not possible to intercept people riding that path. Mr Broadbent has made comment on each of the user evidence forms, in summary he states they were either using the diverted route and therefore not the claimed route; or in the case of Mrs Johnson using the route with permission. He also notes that some of the witnesses accept that they were challenged.

10.8 *Conclusion*

10.8.1 It would appear that at least part of the claimed route, Footpath No.9, existed in 1830. The first time the full length of the route is shown is the 1" to 1 mile 1st edition Ordnance Survey Map dated 1833. The entire claimed route is also shown on the 1st, 2nd and 3rd editions of the 6" and 25" Ordnance Survey Maps. However although this is good evidence of the physical existence of the route, the Ordnance Survey maps do not denote the status of the route and can therefore only be regarded as supporting evidence.

- 10.8.2 The Hurdsfield Tithe Map dated 1849 only shows part of the route and an owner is named which suggests it was in private ownership at that time. The southern spur of Roewood Lane is shown coloured and not given an apportionment number, which may suggest it was public. The Lancashire Derbyshire and East Coast Railway Plan of 1891 shows almost all of the claimed route, however, the book of reference names an owner and refers to it as an occupation road.
- 10.8.3 The Finance Act documents are ambiguous, part of the route is excluded from hereditaments, which is suggestive of public rights higher than public footpath status. However for the middle part of the route, which is included within the plot for Close House Farm, the Field Book shows no deductions made for public rights of way. The field books for Close House and Roewood House state 'footpath' on the first page which may refer to a public or private path; but no deductions are made for any public rights in either book.
- 10.8.4 At the time of the Parish Survey in 1951 it would seem there were field gates a kissing gate and a stile on the route, as these are recorded on the map and in the accompanying schedule. This may have influenced the decision of the parish to record the route as a public footpath. Although in 1956/7 the Parish Council queries the status of the route and claim it has always been a 'bridle road'. From 1959 onwards the route is always referred to in the minutes as a 'public footpath'. In 1977 twelve people from the Parish Council had a meeting to inspect the footpath map and it was agreed that the paths are as shown on the Definitive Map.
- 10.8.5 The historical evidence in relation to the existence of the route is considered good; however as evidence to help determine the status it is limited. Although the Finance Act Working Plan would support the claim that public rights higher than footpath exist along part of the route. The user evidence for the claimed route past Close House Farm is not considered sufficient to meet the legal tests set out in paragraph 10.3.2 above. Only one person claims use on horseback during part of the relevant period, 1967-1987 and she may well have used it with permission during this time. The applicant states that horse riders would have used the definitive line if not for the obstruction (he states from 1962) and overgrown state of the path. However from the Council's correspondence files and the photograph of the pole it would seem that the definitive line was obstructed to horse riders from the late 1980's, no evidence indicating an earlier obstruction has come to light. Therefore in order to prove bridleway rights it must be shown that the route was used as such during the relevant twenty year period. There is insufficient evidence of use during and prior to this period. The users, in particular Mrs Morton and Mr Maddock who had claimed use of the definitive line prior to 1967, then chose to use the alternative route and this was before any obstructions.
- 10.8.6 Under section 31(1) of the Highways Act 1980 public bridleway rights can come into existence by prescription unless there is evidence to the contrary. Mrs Broadbent has claimed she has challenged any horse riders seen on the path by her house. None of the witnesses interviewed state they were challenged by her but they were almost all for the majority of the time using

the alternative path. Some of the witnesses not interviewed may have been challenged but it is not known when or where these challenges took place. None of the witnesses claim to have been challenged on the alternative path and Mrs Broadbent has admitted that horse riders have used this path. The user evidence for the diverted path (C-G-D on plan no. WCA/004) and the remainder of the claimed route is considered sufficient to show bridleway rights. It is believed that the landowner has not negated the presumed dedication of this route.

- 10.8.7 The evidence in support of this application must show, on the balance of probabilities that public bridleway rights subsist along the claimed route. It is considered that there is insufficient historical and user evidence to support the existence of bridleway rights along the route C-H-I-D (on plan no. WCA/004). On the balance of probabilities, the requirements of Section 53(3)(c)(ii) have not been met and it is recommended that this section should remain as a Public Footpath on the Definitive Map and Statement.
- 10.8.8 For the sections B-C and D-J-E (on plan no. WCA/004) again it must be shown on the balance of probabilities that public bridleway rights subsist. For these sections it is considered there is sufficient user evidence to support the existence of bridleway rights. On the balance of probabilities, the requirements of Section 53(3)(c)(ii) have been met and it is recommended that the Definitive Map and Statement should be modified to upgrade these sections from a Public Footpath to a Public Bridleway.
- 10.8.9 For the sections C-G-D and E-F (on plan no. WCA/004) it must be shown on the balance of probabilities that a reasonable allegation has been made that public bridleway rights subsist. Again it is considered that there is sufficient user evidence to support the existence of bridleway rights. The requirements of Section 53(3)(c)(i) have been met and it is recommended that the Definitive Map and Statement should be modified to add these sections as a Public Bridleway.
- 10.8.10 In relation to the section A-B on plan no. WCA/004 the relevant legislation is Section 118 of the Highways Act 1980 which states it is within the Council's discretion to make an Order if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use. It is considered that this section of Public Footpath No.9 is not needed for public use, as alternative access is available. It is therefore recommended that this section is extinguished.

11.0 Access to Information

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

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