

Proposed Extinguishment of part of Sandbach Footpath 14

PINS reference number: ROW/3268692

Sandbach Footpath Group – Statement of Case

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1. Introduction

This Statement of Case is made by Sandbach Footpath Group. SFG strongly objects to the Extinguishment of Footpath number 14 in Sandbach and also objects to the questionable method and the late stage at which the extinguishment is being attempted.

1.1. In this document the following terms are defined:

A footpath (FP) is a Public Rights of Way (PRoW) for the use of people, not vehicular traffic, except the occasional farm vehicle.

A footway is a pavement beside a road.

FP14 is Sandbach Footpath number 14, off Hawthorne Drive in Sandbach Heath, going from Hawthorne Drive to Church Lane.

CEC is Cheshire East Council

SFG is Sandbach Footpath Group

T&CPA is Town and Country Planning Act

Sandbach TC or STC is Sandbach Town Council

NPPF is the National Planning Policy Framework

DEFRA is Department for Environment, Food and Rural Affairs

1.2. SFG is a very active group, formed in 2015, with the aims of regularly walking all the local footpaths, whilst improving, protecting and enhancing the paths.

SFG report broken footpath furniture to the Public Rights of Way dept and help to keep the paths as accessible as possible.

1.3. Recently, SFG obtained a grant from the CEC New Homes Bonus Scheme and completed a project to convert about 50 stiles to Kissing Gates. This improved accessibility for those with poor knees, worn hips or a dislike of awkward stiles. Several paths have been improved in this way, proving to be a huge boon to many people who would not otherwise be able to walk out into the countryside. Many people learn the walks from the group events and continue to walk them later.

Example paths are shown on a walk taken from the SFG website: Annex ref **A001**.

1.4. SFG has a website with a library of 24 local walk maps free for people to follow, some of which use FP14. The walks taking in FP14 have proved to be easy to follow and very popular.

1.5. **Petition.** To show the depth of public feeling about FP14, SFG held a petition. Within a few days over 100 people had e-signed.

See D005.

Many people had added their own comments saying why they wanted to retain FP14.

2. Summary

SFG will now present the evidence for our Statement of Case.

Many times in their web-information, brochures and statements (published on the planning websites), Persimmon have committed to retaining FP14. Unfortunately, they have not delivered on any those commitments.

In this Statement of Case, SFG will go back to the beginning and provide evidence to show how Persimmon made many commitments to retain FP14. Furthermore, SFG will show how the relevant planning guidance and regulations were ignored.

We will show that initially, CEC Planning dealt properly with the Persimmon applications, adding conditional clauses to protect FP14. Later it seems, CEC Planning ignored the earlier conditional clauses, eventually supporting the attempted extinguishment of FP14 and issuing an Order, which we are now contesting.

Is there something fundamentally wrong with the planning process that allows all that to happen?

The planning process and these Persimmon applications in particular show how the system is mired in confusing and contradictory information and statements. Is it a deliberate attempt to confuse anyone interested in trying to follow the rationale and make meaningful comments?

To begin with, CEC Planning wrote strong words in the Decision Notices showing what Persimmon had to do to proceed in a proper way.

Why did all that cease, for CEC Planning to eventually issue an Extinguishment Order at the last moment, for the benefit of Persimmon, not for the residents of the estate and the local community?

3. Concepts to learn and understand – *walking is good for you*

- 3.1. SFG have always offered group walks locally, a beneficial effect being people's health and wellbeing, another advantage is being local uses less motor fuel. During Covid restrictions SFG continued with the group walks, within the regulations, and it was especially heartening to see even greater improvements to people's mental health, wellbeing, and general health. For people who were lonely, recently bereaved, depressed and needing exercise and companionship, walking was ideal. Some people volunteered to say, without asking, that "the walks have been a life saver".
- 3.2. There is something to be learned from this: footpaths are precious, enshrined in law, and must be cherished for future generations.
- 3.3. In common with the general population, SFG has learned a lot in the last few years: **walking is good for you.**

CEC, PRow dept agrees, as shown by their submission to the planning application 12/4874C, see SFG ref **A002**.

- 3.4. It is well documented that walking and fresh air are most beneficial to general health and people, especially those with slight impairment, benefit from the exercise and companionship on the group walks. For example, recovering from a stroke or heart problems.
- 3.5. The permanence of Rights of Way is enshrined in Law and any alteration, diversion or extinguishment must go through the proper legal processes in the correct sequence. Apparently, this due process according to the law and the common-sense correct sequence of what is right and proper, has not been applied in the case of FP14.

4. Local Walks

- 4.1. FP14 is an essential footpath connection, from Hawthorne Drive to Church Lane and has been for hundreds of years (as shown on the Tithe map of 1841). See the **Tithe Map A021**.

It is vital to retain it as such and not break it up into cul-de-sacs.

- 4.2. FP14 is a favoured regular walk for local residents. It is part of several circular walks leading onto Church Lane and then into a network of footpaths

beyond., with a choice of open fields, lanes, open countryside, distant views, trees, all combining to make an informal nature trail.

4.3. The developers are clearly aware of the benefits to local people of walking outdoors on suitable footpaths because various estate pathways have been drawn on the plans for this development from Daisybank Drive and in the vicinity of the attenuation pond. If these estate paths are completed as drawn, they will benefit the residents. However, in themselves, the estate paths do not lead to open country, views, or nature. They need FP14 to do that. Clearly, FP14 remains the only and essential link to open country.

4.4. Any loss of footpaths to the local people deprives them the outdoor benefit of exercise and fresh air just where they need it most – on their doorstep.

4.5. Example walks from FP14, see ref **A001**, taken from the SFG website.

4.6. Sandbach has remaining only about 20 rights of way footpaths, open at both ends for safe walking, and FP14 through the Persimmon estate is one of them. The Town cannot afford to lose another footpath, when all the mental health charities are encouraging nature walks and easy access for the less mobile.

4.7. SFG have kept records of the group walks and these are available for inspection if required. The number of people involved would be about 4000.

5. Loss of walks

Negative consequences of extinguishing FP14 and losing Footpaths generally.

5.1. Sandbach Footpath Group see the extinguishment of footpaths, and of footpaths becoming pavements or footways, because of building developers proceeding with poorly thought through site plans as being detrimental to the new site residents for exercise and wellbeing.

Many Footpaths have become non-existent because of extinguishment or negated due to becoming the footways beside an estate road.

There are examples in Sandbach where the developer has made proper allowance for footpaths (Sandbach FP7, see 10.2 and also FP11). Surely, this is a far better method for all concerned. Otherwise, there are objections at the planning stage, possibly resulting in a time-consuming and costly Public Inquiry, as present events show.

5.2. There are only 20 footpaths remaining in Sandbach parish. There are a few more, but these are cul-de-sacs ending nowhere, perhaps due to the M6 now blocking a through route or the footpath emerging onto a very busy and dangerous road with no verge or footway. Therefore, SFG want to preserve what we have remaining.

The loss of FP14 represents 5% of the footpaths in Sandbach parish. Other footpaths are similarly threatened, for example:

a) The continuation of FP14 into the so-called Capricorn planning application, site to the north and east seems, at best, squeezed between buildings or at worst ignored.

b) At the Muller site off Old Mill Road three footpaths appear to be threatened with being ignored, diverted or squeezed between buildings.

5.3. The map produced by Persimmon in **ref A003** (Submitted Plans, Access routes) has been annotated to show thirteen (13) local footpaths swallowed up by developments in the past and those threatened in the future. Some are dead ends, some end on a busy and dangerous road, some have been reduced to ginnels or pavements. For the list and map of the thirteen (13) negated footpaths see **ref A003**.

5.4. Whereas, if FP14 extinguishment were to be permitted, it sets a precedent for other developers to copy to the detriment of footpaths and of people's wellbeing. See 5.2 a) and b).

5.5. Losing a footpath and allowing it to become a pavement by a road carriageway is a severe loss of a footpath, because of the impediments to access that come with the road. Estate roads tend to be narrow, so people are tempted to park, partly or wholly on the pavement. If the Extinguishment were to happen, Driveways on Larch Avenue to seven (7) houses would traverse the pavement so residents' vehicles would be driven across and reversed out over the footway or pavement.

Obviously, this is much more dangerous than a proper Footpath PRow would have been.

This is detrimental to the wellbeing of local people who have walked these paths for many years.

Examples of people parking on the pavement on Larch Drive are shown in **A005**.

5.6. The route of FP14 from Hawthorne Drive crosses the estate road called Buckthorn Road. After Buckthorn Road, the proposed extinguishment would end the footpath. FP14 would restart further along Larch Drive. The whole route from Buckthorn Road and along Larch Drive suffers from the impediments to access mentioned in 5.5 above.

5.7. Buckthorn Road itself is clearly a road crossing a footpath, FP14. Footpaths are PRow and vehicular traffic is not generally permitted. The Countryside and Rights of Way Act 2000 states that it is an offence to drive a mechanically powered vehicle on a public footpath.

Therefore it seems a footpath cannot be crossed by a road.
This puts into doubt the legality of Buckthorn Road crossing FP14.

5.8. Larch Drive is clearly a road coincident with FP14.

The Countryside and Rights of Way Act 2000 states that it is an offence to drive a mechanically powered vehicle on a public footpath.

Therefore it seems a footpath cannot be coincident with a road.

This puts into doubt the legality of Larch Drive being coincident with FP14.

5.9. There has been no application to divert or extinguish the northern end of FP14 on Larch Drive, so apparently, FP14 remains on the road carriageway, not even the pavement.

6. Timeline of Events

21/08/2002	Persimmon Homes Ltd bought the land for £210,000
20/12/2012	Persimmon apply for Outline Planning permission 12/4874C
08/01/2012	Cheshire PROW make first objection re FP14 not being shown.
20/11/2013	Cheshire East grant outline planning permission
29/10/2014	Persimmon apply for Reserved Matters 13/5239C
07/01/2014	Cheshire PROW make second objection re FP14
19/06/2014	Cheshire PROW make third objection (no proposal by Persimmon to divert FP14).
10/07/2015	Cheshire East grant planning permission for the first development (which includes FP14), with a condition that FP14 is not built on.
29/10/2014	Persimmon apply for the Larger Site 13/5242C
25/01/2019	Persimmon request s257 Extinguishment order (see Doc Ref 4)
28/01/2019	CEC PROW write to inform consultees that Persimmon Homes (NW) Ltd have applied for a Section 257 order to extinguish part of FP14
11/03/2019	Cheshire East Public Rights of Way Committee approve stopping up order
11/04/2019	Cheshire East make stopping-up order
Spring 2019	55 objections received (up until closing date of 23May2019)
02/12/2019	CE respond to objections - 2 withdrawn, now 53 objections
09/06/2021	PINS send out an e-mail to Objectors
30/11/2021	PINS send out details of Public Meeting
24/05/2022	Public Enquiry

Other Planning Applications

Related to 12/4874C, 50 homes plus 15 affordable homes:

13/05/2015 15/2186C balancing pond, not relevant to FP14
29/03/2016 16/1462D discharge of conditions, but not inc Cond 10 (FP14)
12/02/2019 19/0746D Discharge of Condition 22 (Application 12/4874C)
21/05/2020 20/2067D discharge of condition22, not relevant to FP14

related to 13/5239C:

29/03/2016 16/1495D discharge of Condition 10 to 13/5239C (electric vehicle charging) not relevant to FP14 (i.e. not Cond 10 to 12/4874C)
11/07/2018 18/3408D discharge of condition 10 to 13/5239C (elect vehicle charging)

Related to the larger site 13/5242C, 138 homes:

11/07/2018 18/3415D wall-pod home charging
12/02/2019 19/0708D landfill, noise, roads, Landscaping, Himalayan Balsam, breeding birds.
14/08/2019 19/3740C minor amendments to road layout
16/06/2020 20/2494D travel plan, archaeology

For ease of reference, all the Application forms followed by the relevant Decision Notices for planning applications 12/4874C, 13/5239C, 15/2186C, 16/1426D, 16/1495D, 18/3408D, 19/0746D, 20/2067D are shown in **A022**.

Similarly, all the Application forms followed by the relevant Decision Notices for planning applications 13/5242C, 18/3415D, 19/0708D, 19/3740C, 20/2494D are shown in **A023**.

7. Planning Application 12/4874C Design & Access, Dec 2012

7.1. To show how Persimmon were well aware of the existence and importance of FP14, it is worth looking at the documents in planning application 12/4874C.

The planning documents refer to FP14 as:

a "**Strategic Footpath Connection**" in about 10 places;

stating the footpath "**will be retained**" in about 5 places;

mentioned as good connectivity in 2 places; and

shown as a PRoW or Footpath in red or orange (dotted) line in 2 places.

The detailed references to substantiate this are below, in this section, 7.3 (and in 7.4).

The documents below are available on the CEC Planning website. A reference to the Annex number is given and this shows the relevant page and the CEC ref number and date for the document on the website.

7.2. A "Masterplan" ref **A006** was submitted as one of the first documents in this planning application (20Dec2012). This ignores FP14 and perhaps shows Persimmon's ultimate plan.

7.3. Ref Annex **A007**

Pages from this substantial document are examined below:

- 7.3.1. Figure 1.01, page 6, shows FP14 going across the site (boundary outlined in red).
- 7.3.2. Figure 2.02, page 11, and figure 2.03, page 12, show FP14 labelled as a **"Public Right of Way"** and identified as an orange dotted line through the site.
- 7.3.3. Section 2.2 "Involvement", page 13 states pre application discussions with senior planning officers covered "Public rights of way" (11th bullet point). Surely at this point the planning officers would have made clear the importance of FP14.
- 7.3.4. Figure 3.06, page 19, again shows FP14 identified by a **dotted orange line**.
- 7.3.5. "Site Opportunities", page 21, states:
"The Public Right of Way will be retained and developed as part of the master plan; greater pedestrian access through the site will be a key design consideration to improve permeability of the development and integration with the existing settlement".
This is exactly what SFG would want and expect of a reputable developer.
Why, having stated that, Persimmon then, later on, apply to extinguish FP14 surely defies logical thinking.
- 7.3.6. Figure 4.01, page 26 and figures 4.03, 4.04, 4.05, page 27, all go further and identify FP14 as a **"Strategic Footpath Connection"** with an orange dotted line.
- 7.3.7. However, in figure 4.05, page 28, Persimmon seem to have forgotten FP14 as a public footpath, right of way, or strategic footpath connection and shown houses on the route of FP14. This reverts to the `Masterplan in 7.2 above Ref **A006**.
- 7.3.8. Creating a Sustainable Neighbourhood is mentioned on page 29, paragraph 2 stating:
"Specifically the developments form and layout also ensure it is sustainable in terms of orientation... .. and accessibility.

Further on, also page 29 Access and Access for All is included, stating:

"As described previously the site is intended to be highly permeable, allowing and offering easy access into the development for all forms of movement. Access and movement is an integral element in the design

*process and was described earlier in this chapter in the route and public realm hierarchy. Vehicular access to the development is primarily via The Gateway, with traffic speeds reduced using a number of traffic calming techniques which are seamlessly part of the Urban Design and Landscape proposals. Pedestrian and Cycle access is a strong integral element of the masterplan, the new footpath/cycleways linking into the **existing paths** as well as ensuring **good connectivity** between the site, wider town **and countryside**. The footpaths also provide good direct access to the surrounding bus stops, Public Transport network and local amenities.*

***Access for All** is tackled as far as possible at this initial stage of the design process. Traffic calming has been designed as an integral part of the proposals to ensure traffic speeds are low, thus reducing conflict between pedestrians in general and disabled users specifically. It would be intended that footways shall be designed to **accommodate wheelchairs** with drop kerbs or level shared surfaces at key crossing points to ensure a smooth passage through the development. Wide drives would be accommodated on all parts of the development and all aspects of the development shall accord with the Building Regulations Part M and associated national and local guidance”.*

For this document we have emboldened text to show Persimmon claimed to retain access and linking to the existing paths, which would include FP14.

Furthermore, accommodation for wheelchairs has been included and therefore we have included in the annex the **Equalities Act 2010** for reference, see **A008**.

For further reference **A009** has been included to show particular detail on the Equalities Act 2010.

7.3.9. The alternative offered to FP14 is along a footway or pavement. This is crossed by driveways to dwellings. Each driveway has a slope for a dropped kerb to the road and some driveways are double. The houses are closely spaced, so the dropped kerbs and slopes are joined together to become continuous in places. This makes it difficult for disabled access. Pushing a wheelchair along a footway with a slope across the direction of travel is quite a difficult and tiring impediment. **This needs to be assessed as part of the Equalities Act** to ascertain if such an impediment would be acceptable for a PRoW or as a replacement footway if the PRoW were to be extinguished.

No such assessment to the **Equalities Act** or any other accessibility standard or guidance is apparent in the documents supplied.

Had the Persimmon design been more friendly to pedestrians and disabled access, the driveways would end on the pavement or footway which would be flat, then there would be the tarmac sloping strip to accommodate the drop to the road for vehicles. Where gaps between

drives to houses occurred, this strip could have been a grass verge with tree planting. Additionally, this would have provided a more pleasant environment. However, Persimmon have not done that, apparently preferring a bland utilitarian outlook.

Consequently, SFG suggests that the houses, unbuilt because of the objections, **remain unbuilt** and the resultant green area be declared a **village green** for the benefit of the environment to residents and for walkers on FP14, which would itself remain as a PRoW in its entirety.

7.3.10. All these points in the above, 7.3.1 to 7.3.6, 7.3.8 and in 7.3.11, show that at an early stage Persimmon were well aware of the existence of FP14 and its importance as a strategic footpath connection. There is therefore no excuse for them to renege on that and try to extinguish the path.

7.3.11. Another two "Masterplans" were submitted, very much later, onto the 12/4874C website (May and June 2013, ref **A010** and **A011**). These appear to be identical and again show FP14 as a "**Strategic Footpath Connection**", similar to those in 7.3.6 and 7.3.7.

7.3.12. Also in the website documents is the [public] "**Consultation**", ref **A012**. In section 4.0 Public Consultation, page numbered 15, the query was:
"The new development will affect the public right of way across the site".
The Persimmon response was:
*"The land is currently privately owned and therefore access to the site is restricted to the designated public footpath which crosses the eastern part of the site and onto Hawthorne Drive. **This footpath will be retained.**"*
To state "**This footpath will be retained**" is perfectly clear and explicit. Yet, in later years Persimmon are attempting to ignore it by applying to extinguish the footpath.
(**A012** has been shortened for the purposes of brevity, only pages 1, 12 and 15 being included.)

7.4. The last document to be added by Persimmon to the 12/4874C website is a Design, access & supporting statement ref **A013** dated 04/06/2013. This is a substantial booklet comprising 36 pages. It is a development of the earlier booklet (ref **A007** in 7.3).

7.4.1. Figure 3.03, page 19 shows FP14 as a Right of Way through the site. This illustrates the section named "Site Opportunities" below.

7.4.2. "Site Opportunities", page 21, states:
"**The Public Right of Way will be retained** and developed as part of the master plan; greater pedestrian access through the site will be a key design consideration to improve permeability of the development and integration with the existing settlement".

This is exactly what SFG would want and expect of a reputable developer.

Unfortunately, Persimmon are now trying to renege on this and seeking to Extinguish FP14.

7.4.3. All this, as referred to on page 21, was stated in a previous document (ref A007, in 7.3). It has therefore appeared twice in the website documentation, thereby showing it was not an error but intentional and presumably thought through at the time.
Why, having stated that twice, Persimmon then apply to extinguish FP14 surely defies logical and rational thinking.

7.4.4. Figure 4.01 shows the route where FP14 would be as an open green space. Furthermore, figures 4.02, 4.03 and 4.04 seem to confirm this and name the route of where FP14 would be as "**Strategic Footpath Connections**".

Persimmon clearly regarded FP14 as strategic and have said so in print about 10 times (*). They have now gone back on their statements and are trying to Extinguish what they have called a **Strategic Footpath**. Whether this is legal is not clear, but what is clear is that it is misleading, devious, confusing and unreasonable. See 2.

(* See 7.3.6 (4 figures/times), 7.3.11 (2 plans/times), 7.4.4 (4 figures/times)

7.4.5. In **A013** "Conclusions", page 35, is stated:

"Persimmon will ensure that their development approach and design process will be inclusive, allowing the local community to be involved in the decision making process as the plans evolve, taking ownership, as they have with the Town Strategy."

That was not to be; there was a consultation, but when asked if the development would affect the PRoW, Persimmon stated "**This footpath will be retained**" (see 7.3.12). It appears that Persimmon were being deliberately evasive, later to attempting to Extinguish FP14.

7.5. It has to be said that the planning application 12/4874C is Outline Planning with "**all matters reserved**". Presumably, FP14 would be included within access.

However, Persimmon has chosen to commit to FP14 as follows:

Shown as a "**Strategic footpath connection**", ref 7.3.6, 7.3.11, 7.4.4;
"**The Public Right of Way will be retained...**", ref 7.3.5, 7.4.2; and
Stated "**This footpath will be retained**", ref 7.3.12

These are strong words and statements and should be upheld and followed through to the next planning application (13/5329) as commitments to be upheld.

Good practice, that a reputable developer and council would follow, should be that if clear and explicit statements are made at the outline planning stage, then they should carry through unaltered to the reserved matters stage. Otherwise, what is the point of Outline Planning?

Alternatively, an explicit statement to the contrary made to clarify the new plans in reserved matters.

Unfortunately, there was, apparently, no good practice, so the statements regarding "**Strategic footpath connection**", "**PRoW will be retained**" and "**this footpath will be retained**" were all ignored and, as we now know, Persimmon are seeking to extinguish FP14.

7.6. **Objection by Hannah Duncan of the CEC PRoW dept. Ref A014.**

This was sent to the website, addressed to CEC Planning on 8 Jan2013. It is strongly worded and clear. PRoW had realised that the intentions of Persimmon were not to retain FP14 and had instructed Persimmon to divert the footpath. The addressee being Planning, it was up to Planning to serve this objection on Persimmon. No reply, acknowledgement, or action for this objection is shown on the planning website 12/4874C.

It would appear that CEC Planning were not keeping Persimmon up to date with important objections, otherwise, surely Persimmon would surely have responded.

It would be up to CEC Planning and Planning Enforcement to show they had responded to the PRoW objections and placed the onus on Persimmon to comply. Persimmon would then need to show their response, one way or the other, to remove the element of doubt.

That doubt was left hanging without resolution for 6 years.

Unfortunately, as we now know, Persimmon tried to proceed with the Extinguishment at a very late stage, 11 April 2019 (over 6 years later).

7.7. **Decision Notice** for 12/4874C, ref **A015.**

This decision notice is dated 20 Nov 2013, this being the final document on the 12/4874 C website.

Condition 10 is particularly relevant. It states:

*"The reserved matters application **shall** incorporate a route for the public right of way Sandbach Footpath No.14.*

Reason: To keep the public right of way open and available for members of the public and to maintain accessibility to / from the site by modes other than the private car, having regard to policies GR9, GR10, GR15 and GR16 of the Congleton Borough Local Plan First Review 2005, and the National Planning Policy Framework".

It is clear that Persimmon had already, several times, identified FP14 as a right of way to be retained as a "Strategic Footpath Connection" and stated clearly and explicitly more than once that the FP14 will be retained.

All **condition 10** is saying is that Persimmon **shall** follow through with that commitment.

Note. The word **shall** is a strong word, similar to **must**.

7.7.1. Following through on the Decision Notice.

It would appear that Cheshire East Planning did not follow through the requirements in the Decision Notice (**A015**) with **due diligence**. Having made a strong statement it was the duty of CEC Planning to ensure that Persimmon did in fact carry out that instruction as a commitment. How the lack of **due diligence** occurred is not clear, but it is clear that it has happened. The PRow team have clearly stated the position, see 7.6, so it would appear that the Planning Department or the Planning Enforcement Department have **not exercised due diligence** and not enforced condition 10, as required in the Decision Notice Nov2013, **A015**.

7.7.2. Conditions in Decision Notice. There were 26 conditions in the Decision Notice for 12/4874. Most of the conditions became Discharged at later dates.

Condition 10, being important to FP14 was apparently never discharged. Had it been discharged in an official procedure and in transparent way, the true intentions of Persimmon may have come to light and a proper public consultation could have taken place at an early stage.

CEC should have followed **due diligence** and insisted on proper procedures in a timely manner and not relied on Persimmon, who delayed and eventually applied for the extinguishment of FP14

7.7.3. Policies GR9, GR10, GR15 and GR16 of the Congleton Borough Local Plan (01-05) are shown in A016. The plan is dated to June 2011. GR16, General Requirements Footpaths, Bridleways, and Cycleway networks, page 3-17 states:

PLANNING PERMISSION WILL BE REFUSED FOR DEVELOPMENTS WHICH FAIL TO TAKE ACCOUNT OF THE EXISTING FOOTPATH, BRIDLEWAY AND CYCLEWAY NETWORK...

7.7.4. The policies were carried through into the Sandbach Neighbourhood Development Plan 2010 to 2030, as shown in A017.

These Plans state:

POLICY PC5 – FOOTPATHS AND CYCLEWAYS (page 36)

Proposals which lead to the loss or degradation of any public right of way or cycleway will not be permitted other than in very special circumstances. Proposals to divert public rights of way and cycleways should provide clear and demonstrable benefits for the wider community.

Apparently all the above clauses GR16 and PC5 and clause 10 in the

Decision Notice (A016, above) were ignored at the time, with neither specific nor general justification given.

Surely, a developer or council working to good practice would make a statement explaining why Clause 10 was being ignored.

Will we ever be told why clause 10 was ignored?

It was a straightforward clause (for a reminder of the Decision Notice and clause 10, please see, 7.7 above).

7.7.5. The Cheshire East Local Plan Strategy 2010-2030, Policy SE 6 Green Infrastructure, adopted July 2017, **A018** (Page numbered 135): *Cheshire East aims to deliver a good quality, and accessible network of green spaces for people to enjoy, providing for healthy recreation and biodiversity and continuing to provide a range of social, economic and health benefits. This will be done by:*

1. Linking the various assets of Cheshire East's unique landscape – its upland fringes, Cheshire Plain, lowland heath, parkland estates, rivers, canals and watercourses, valleys and cloughs, meres and mosses, trees and woodland and wildlife habitats and its distinctive towns and villages and their urban fringe.

(There are numbered points i. to iii. Only iii. is shown below):

iii. Any development should contribute to the creation of a good quality, integrated and accessible multi-functional network of green spaces.

3. Working with partners, to support the potential of strategic green infrastructure assets to contribute to the aims of the wider green infrastructure. The strategic green infrastructure assets (65 note) identified in Cheshire East are:

(There are numbered points i. to x. Only v. is shown below):

v. Public rights of way, cycle routes and greenways

(65 note) Strategic green infrastructure assets are those assets that either provide or could provide wider green infrastructure benefits.

If a developer is attempting to follow this Policy, then the last thing that should be done is to extinguish a PRoW that provided access to green spaces.

For the full pages, **see A018** (for the sake of brevity, only a few relevant pages are given there).

Due Diligence. Referring to The Cheshire East Local Plan Strategy 2010-2030, Policy SE6 Green Infrastructure, A018.

It is apparent that CEC Planning did not appraise Persimmon of this Local Plan Strategy, in either this the Outline Planning or in the reserved Matters (later), in which case, that would be a **lack of due diligence** on the part of CEC Planning.

If they did show the Strategy to Persimmon, then the **lack of due diligence** falls to Persimmon.

7.7.6. Many of these planning policies may have originated from the **National Planning Policy Framework (NPPF)**.

Part of **Section 8 Promoting healthy communities**, is shown here, the full document being **A019**.

In the interest of brevity, only clause 75 is shown below, but all clauses in section 8 are important (69 to 78, NPPF pages 17 to 19):

***75.** Planning policies should protect and enhance public rights of way and access. Local authorities should seek opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.*

Clause number **75** shows how important the Government saw the Public Rights of Way in 2012.

The last thing to result from that would be the extinguishment of a Footpath that provides access to green spaces from the Persimmon estate, endorsed by CEC.

7.8. The Planning Statement A020 (20Dec2012) refers to the right of way (FP14) on several pages:

Page 6. Section 2 The Site and Planning Application, states:

***A Public Right of Way** crosses the site from Hawthorne Drive in a north easterly direction continuing on to Heath Farm, close to the motorway. The town centre is less than 1 kilometre to the west of the site and is within a 10 minute walk. 'Hail and Ride' bus stops are located on Heath Road close to the site providing circular services to the town centre and local neighbourhoods.*

This shows again that Persimmon were fully aware of the presence and value of the PRoW, FP14.

Page 7. Site Opportunities, states:

***The Public Right of Way will be retained** and developed as part of the masterplan; greater pedestrian access through the site will be a key design consideration to improve permeability of the development and integration with the existing settlement.*

This shows how the PRoW, FP14, should have been. Unfortunately, Persimmon were distracted, and FP14 was later ignored and the extinguishment applied for.

Persimmon statements, A020

Page 18-19. Promoting Sustainable Transport and High Quality Design, states:

*In accordance with the NPPF, this application is supported by a Transport Assessment, which outlines the opportunities for sustainable transport modes and the safe and suitable access for all associated with the proposal. The promotion of sustainable transport through the prospective development can be demonstrated through the inclusion of a bike shed for each property, which will significantly encourage cycling within Sandbach. Furthermore, movement through the site for pedestrians will be conserved and enhanced through **the retention of an existing Public Right of Way**, which will run across the proposed development. In terms of the impact of the proposal on the existing highway network, the proposals will result in traffic generation of only 33 vehicle movements in the busiest hour of the day.*

This statement quite rightly refers to the NPPF (see 7.7.6) and clearly states "**the retention of an existing Public Right of Way**". Again, we would expect this of a reputable developer, but we were again to be disappointed.

Page 19. Promoting Healthy Communities, states:

*The **development proposed wholly fulfils the criteria within the NPPF** for the planning system to 'play an important role in facilitating social interaction and creating healthy, inclusive communities'. The provision of open space, play areas, **rights of way and pedestrian and cycle movements** will ensure the scheme will cater for 'shared space' that will 'promote opportunities for meetings between members of the community'.*

A powerful statement, shown as emboldened, emphasised with the word **wholly** and backed up by including mention of **rights of way** (also emboldened). The use of the word **wholly** is very strong and a commitment that cannot be ignored.

It seems both CEC and Persimmon have failed to follow due diligence.

7.9. All this section 7 on 12/4784C, above, shows is that Persimmon were, in many documents, intending to retain FP14 as a Strategic Connection. There was one exception documents (see 7.2), but almost all were in favour of retaining FP14. Although it was Outline Planning, having made commitments, they should be upheld, and carried through to the next stage, that being reserved matters. Failure to do so appears to be lacking in **due diligence** on both parties, Persimmon and CEC Planning.

Unfortunately, it appears that CEC Planning were not watching or reading the web-documents and were not inclined to put pressure on Persimmon to make matters right (see Due Diligence, 7.7.1 7.7.2).

The solution would have been to landscape FP14 into the estate, as shown in the item 10 to follow.

8. Planning Application 13/5239C, Reserved matters

This application seems to have mainly forgotten about FP14, despite the Decision Notice for the outline planning 12/4874C, condition 10, see 7.7. It does not seem right that a developer can move from being committed to retaining FP14 (in 12/4874C) to ignoring it in the next planning application (13/5239C, res matters), but that is what appeared to happen. However, whether unintentionally or confusingly, Persimmon stated in these reserved matters that FP14 would be retained in 5 places (see 8.3, 8.11, 8.13, 8.15.1, 8.16).

8.1. The Planning Layout ref **B001** (12 Dec2013) completely disregards FP14, apart from a note on the drawing showing a short section (See 8.12). "3m Footpath/Cycleway connection", without stating PRow or FP14.

8.2. Despite the fact that in **The Sustainability strategy**, ref **B002**, Persimmon do not mention FP14 by name, it does state under **Home User Guide (HUG)** on page 9:

*The **HUG** will promote healthy lifestyles for residents of the new development, suggesting use of the open space **and beyond for walking, jogging and cycling** via the cycleway links and footpath links provided. Parents will be encouraged to organise "virtual or walking" bus initiatives for children to walk safely to local school.*

If Persimmon are really wanting to promote healthy lifestyle for residents, then extinguishing FP14 is not a good start.

Surely, they should be protecting the footpath and showing residents in the HUG that it leads to a network of paths outside the estate, ref **A001** in 1.3

8.3. In the **Design & Access** document (12Dec2013) ref **B003**, page 11, it lists what are seen to be the relevant clauses in the Congleton Local Plan, by this time absorbed into Cheshire East. The General Requirements (GR) in the Congleton Plan GR16, were omitted from the list, but it seems all the other requirements remained.

Unfortunately, it appears that the General Requirements were not transferred to the Cheshire East Local plans.

However, the essential wording of the clauses were stated in the clause GR16 in the Sandbach Neighbourhood Development Plan 2010, see 7.7.4 As stated before, it appears that the clause was ignored by Persimmon and CEC Planning.

On page 3 of B003, it states that the document contains "Details of the Public Right of Way".

On page 13 it states:

*The existing PROW No 14 has been carefully incorporated into the layout **to ensure it is retained**;*

And,

*The layout incorporates vehicular and pedestrian access points and proposes the utilisation of the previously existing access from Hawthorne Drive. A further pedestrian access is proposed to open the site via the **existing public right of way** from the north east of the site, to provide maximised use of the public open space towards the western end of the site.*

"to ensure it [FP14] is retained" (above) is one of many such commitments to retain FP14, all, it seems, forgotten.

To demonstrate the haste that this Persimmon document (B003) appears to have been put together, using copy and paste techniques, on page 15, it states:

*"...the centre of the site and adjacent to the **canal**."*

There is no **canal**, the nearest being about 2 miles away.

It was probably copied from another Persimmon site off Moss Lane, Ettiley Heath, Sandbach.

- 8.4. In the **Application Form** for Reserved Matters, ref **B004** dated 12/12/2013 (on the website), all the reserved matters boxes are marked as complied: Access, Appearance, Landscaping, Layout, and Scale. There is no section or tick box for Footpaths, or Rights of Way. FP14 is neither mentioned, nor is it stated for extinguishment.

How could a footpath PRoW, enshrined in Law not be included in the Application Form?

Were Persimmon given the wrong form by CEC Planning?

Researching on the internet reveals a (blank) CEC Application form for "Some Matters Reserved", ref **B005**. The form has a footnote identification: **ECAB 2021**.

Section 6 on the form asks

"Do the proposals require any diversions/extinguishments and/or creation of rights of way?"

It would seem sensible for a form such as this to have been provided in this application. Had that been the case the whole issue of FP14 being under threat would have been made clear and transparent from the beginning and there would have been time to resolve the situation to the satisfaction of all parties, without delay, without extinguishment, and well before 2019.

- 8.5. **Objection by Hannah Duncan of the CEC PRoW** dept. Ref **B006**.and **B007**, 07 and 08 Jan2013. This objection was again sent to Planning dept and re-iterated her previous objection, stating her objection remained the same, and the process by which she might withdraw her objection.

As before (see 7.6), it appears that it was ignored or not passed to Persimmon, or if it was passed to Persimmon, it was then ignored. No reply or action for this objection is shown on the planning website 13/5239C. This may be a dereliction of duty on the part of CEC Planning or Planning Enforcement. The clear result was that the objection was totally ignored by all concerned. If CEC and/or Persimmon had taken action at this stage, or earlier, the design could have been adjusted and FP14 need not have been threatened with extinguishment.

- 8.6. This objection (8.5 as above) was followed up by a further response from Jennifer Tench at CEC PRoW, ref **B008**, 19 June 2014. This has, as an attachment, Hannah Duncan's objection (8.5) and Jennifer's own objection, again giving Persimmon the opportunity to make alterations to the plans or diversions to FP14. The possibility of extinguishment was also mentioned. Again, her letter was addressed to a planning officer, but it may not have been sent on to Persimmon. As before, the result was that Persimmon appears to have ignored the objection(s). If Persimmon had taken action at this stage, or earlier, the design could have been adjusted and FP14 need not have been threatened.

As we know the extinguishment was not applied for until about 5 years later in 2019. Why did it take 5 years?

At the very least public consultation and this Inquiry into a possible extinguishment for FP14 could have been held before work had started on the site.

- 8.7. **Objection by Sandbach Town Council**, ref **B009**, 18Nov2014 (final item). Sandbach TC represent the people of Sandbach and is very highly thought of as being fair, open and democratic. This clearly shows their understanding of the proper way FPs should be protected:

Development of the site will obstruct public rights of way and there are no plans in place to divert.

In accordance with DEFRA Circular (1/09) [ref 7.8]

'In considering potential revisions to an existing right of way that are necessary to accommodate the planned development, but which are acceptable to the public, any alternative alignment should avoid the use of estate roads for the purpose wherever possible, and preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic.'

[ref, Defra 1/09, clause 7.8, page 47 of 66]

Sandbach Town Council are clearly in the right here, but it is a pity that neither Persimmon, nor CEC Planning appear to share the views of Sandbach TC and the DEFRA Circular (1/09). No acknowledgement, response or action, to this objection is discernible from CEC or Persimmon or recorded on the web-information.

See B019 for the complete DEFRA 1/09

8.8. **DEFRA 1/09**. This is quite relevant, as the quote below shows:
[ref, Defra 1/09, clauses 5.22 and 5.23, page 27 of 66, **B019**]:

Public path extinguishment orders

1/09, 5.22 Section 118 of the 1980 Act enables authorities to make orders extinguishing footpaths, bridleways and restricted byways. Ways need not be shown on the definitive map and statement before they can be extinguished but authorities must be satisfied as to the status of ways before making an order and take care to ensure that no unrecorded or unacknowledged rights are overlooked in the order- making process.

*1/09, 5.23 **An extinguishment order can be made only if the authority considers it expedient that the way should be stopped-up because it is not needed for public use.** Authorities must disregard temporary circumstances, including any buildings or other structures preventing or diminishing the use of the way. Further information is available in the Planning Inspectorate Advice Note 9 (s18).*

Those words from DEFRA 1/09 are very clear. The emboldened text shows exactly what we have here. FP14 is well used and needed for public use. The conclusion being that it should not be extinguished. No action from CEC or Persimmon is discernible or recorded on the web-information regarding DEFRA 1/09.

8.9. DEFRA Early consultation

Defra 1/09, clause 7.3, 7.4 and 7.5, page 46 of 66.

1/09, 7.3 Most outline planning applications do not contain sufficient information to enable the effect on any right of way to be assessed (and are not required to do so) and consequently such matters are usually dealt with during consideration of the matters reserved under the planning permission for subsequent approval.

*1/09, 7.4 The Department for Communities and Local Government has introduced a document *The validation of planning applications* [note 40] and an associated circular [note 41] 2/08 which lays out the information to be supplied and validated with a planning application. The document specifies (in paragraph 40) that all public rights of way crossing or adjoining the proposed development site must be marked on the plan to be submitted with the full planning application. While **the information supplied by an applicant should therefore make clear how the potential development will impinge on any rights of way**, local planning authorities will need to ensure that all rights of way affected by the development are identified and take into account any applications for the*

addition of a path or way to the definitive map, any modifications that the highway authority itself may be proposing to make, the possible existence of any other rights on the ways shown on the definitive map and any ways not yet recorded on the definitive map.

*1/09, 7.5 Notwithstanding the existing position described in paragraphs 7.3 and 7.4, **it is likely to be to the benefit of the planning authority, highway authority and the developer to be aware of the impact of a development scheme on the local rights of way network as early as possible in the process** (this might be at the pre-application stage or the outline planning stage).*

Note the guidance “**as early as possible in the process**”.

Yet again Persimmon and CEC Planning are shown to be avoiding basic methods of correct working and good practice. Had they followed the early consultation advice in this clause (DEFRA 1/09, 7.5), they could have dealt with any objections (with a diversion or landscaping FP14 into the estate) to the satisfaction of all concerned so avoiding this Inquiry. Instead, it appears, Persimmon and CEC delayed for as much as 6 years, only revealing their intention to Extinguish FP14 at a very late stage in 2019.

note 40 The Validation of Planning Applications – Guidance for local planning authorities: Department for Communities and Local Government December 2007

note 41 Circular 02/2008 Standard application form and validation: Department for Communities and Local Government March 2008

8.10. **Land Registry.**

There appears to be no reason why Persimmon could not have proceeded with a proper request to CEC for the future of FP14 at a much earlier time. The Land Registry, Ref **B010** shows that it was bought by Persimmon from Tangley Properties Ltd for **£210,000 in June 2002**.

Thereafter it remained in Persimmon ownership until the sale of plots began in about the last two years.

8.10.1. Having bought the land for such a low price, it seems there would be plenty of profit in the project, leaving some room for adjusting the site to accommodate FP14 without a significant effect on Persimmon’s profits.

8.10.2. Persimmon could have applied for the extinguishment to FP14 soon after Application 13/5239C (reserved Matters to 12/4874C) was decided 10July2015.

Persimmon did not have to wait until the final planning application was dealt with. The later applications were not material to FP14 and concerned subjects such as electric vehicle charging points and dealing with gas and peat. The matter could have been aired and decided one

way or the other in 2015, not 2019 and continuing through to the present. Please refer to the timeline of events, section 6, above.

- 8.11. **Design, access & supporting statement, Prop[osed] Development**, written by independent consultants (29Oct2014). Please see ref **B011**, which shows in section 4.3:

*4.3.2 Pedestrian access will be provided from a number of access points **including the existing public footpath** to the north east of the site, Hawthorne Drive to the south, Daisybank Drive to the north west and Wright's Lane to the south east of the proposal site. The primary vehicular access point would provide entrance for vehicles, cyclists and pedestrians.*

*4.3.3 **The existing public right of way [FP14]**, to the north east of the site, **will be retained** in order to provide maximum accessibility to the proposed public open space, towards the western end of the site.*

*4.3.4 A shared **pedestrian and cycle link of 3 metres wide** is proposed that would link the neighbouring Capricorn Park site. The Capricorn Park site is located to the north east of the proposed development. The former was granted outline planning application for a mixed use development in June 2014 (subject to S106 agreement and planning conditions).*

The above (*in italics*) states that **FP14 was to be retained**. Yet again, a commitment to retain FP14 is stated, but not to be followed through. How can it be in a Reserved Matters Planning Application (not outline planning) that firm statements are allowed to be made and not actioned?

Regarding 4.3.3 above, we now know the existing footpath to the north east was not to be retained as a proper landscaped-in footpath, but it was mostly routed along the road carriageway (now Larch Drive), not even on the pavement, except for a few metres at the southern end.

Is this the proper way to deal with a well-used Footpath PRoW?

- 8.12. The state of the "**3m wide cycle link**" at the time of writing (March2022) is shown in the photos of the northern end of Larch Drive, Ref **B012**.

It is clear that the section of road has been completed with tarmac surfacing and kerbstones set in place.

However, there is no evidence of a *3m wide cycle link*.

The pavement is about 2m wide, and the road is about 5.5m wide.

The stile is broken and overgrown and the gate broken. When SFG walk this path, we have to duck under the bar of the broken gate.

If Persimmon intended to follow through with their statement regarding a 3m wide path, there would be some evidence of it on the ground.

It seems to be more fine words, but as it turns out, apparently empty words.

8.13. **Design, access & supporting statement "Site Description".**

See **B013**. This states, from section 3:

3.1.4 The proposed site benefits from a relatively high level of access and accessibility to the wider town and surrounding communication network. Sandbach town centre is less than 1 km to the west of the site. The area is also aptly serviced by primary schools, community buildings and medical facilities which are all less than half a mile from the site.

3.1.5 Primary site access would be gained to the proposed development via the existing Hawthorne Drive at the southern corner of the site.

*3.1.6 Pedestrian and cycle links are also proposed via Daisybank Drive to the southwest, and Wright's Lane to the southeast. In addition the **existing public right of way** to the north east of the site **will be retained** and incorporated into the layout of the proposed design.*

This is about the 4th time it has been stated within this Persimmon planning application, **13/5239C**, that FP14 **will be retained**.

Fine words, as always, but unfortunately not followed through by Persimmon.

8.14. **Design, access & supporting statements "Transport Assessment"**, as written by independent consultants, ref **B014**.

Section 2.13 mentions the Cheshire East Local Plan (draft only). Being in draft, it refers in 2.15 that the relevant policies fall to the Congleton Borough Local Plan. In section 2.25, it states:

*Policy GR16 refers to Footpath, Bridleway and Cycleway networks and states that **planning permission will be refused for developments which fail to take into account the existing footpath, bridleway and cycleway network**.*

As with all items appertaining to footpaths, CEC Planning and Persimmon appear to have ignored it.

8.15. **Transport Assessment**, ref **B014**, includes are the following sections:

4.5 There will be two footpaths which will link the site to Wrights Lane to the north-east and to Daisybank Drive to the north-west. Footways within the site will link to existing footways on Hawthorn Drive and Heath Road.

*4.6 There will be a **3m pedestrian and cycle link** through to the neighbouring Capricorn site, which is anticipated to be part of Phase 2 of their development. No vehicular access will be provided through as there is no guarantee that the neighbouring site will be developed and certainly will*

not come forward at the timescales anticipated for the proposed development. Alternative access directly on to Old Mill Road has been considered, however, the proximity of Offley Woods and the brook make this economically, ecologically and environmentally unviable. The woods act as a visual buffer between the site and Old Mill Road and are subject to a group Tree Preservation Order. They also provide a habitat for wildlife which will be retained and improved as part of this development.

These are similar to 8.11 and 8.12, above. Yet more fine words but, as far as FP14 goes, all apparently ignored by Persimmon.

8.15.1. **Alternatives**, in the Design, access & supporting statements, ref **B015**. The italics below are queries and response quoted from the Persimmon text (excerpts only, for full text, see B015):

6.6.1 Feedback from community engagement (see Appendices 1.3 and 1.4) was utilised to inform aspects of the proposed development. Examples of the concerns raised that subsequently influenced the design and layout included, but are not limited to the following [Query and Response]

Query to Persimmon

The new development will affect the public right of way across the site...

Response from Persimmon

6.7.1 These concerns have been considered during the preparation of the development proposal, and seek to meet the needs of local communities in the following ways:

*The land is currently privately owned and therefore access to the site is restricted to the designated public footpath which crosses the eastern part of the site and onto Hawthorne Drive. **This footpath will be retained.** As part of this proposed development there will be a large area of publically[sic] accessible open space created in addition to an equipped children's play area...*

This footpath **will be retained** is stated for about the 5th time in 13/5239C. However, it does not say is that the "retained footpath" would be one of the following:

On the pavement, with cars driven across and reversing out of driveways, and obstructed by vehicles parked on the pavement (see 5.5);

OR

On the road carriageway itself (Larch Drive);

OR

Extinguished

8.16. **Design, access & supporting statement, Consultation** ref **B018**, 29Oct2014. This includes a section 4 Public Consultation on page 15. The queries and responses appear to be identical to those in 7.3.12 and similar to 8.15.1, stating:

"The land is currently privately owned and therefore access to the site is restricted to the designated public footpath which crosses the eastern part of the site and onto Hawthorne Drive. **This footpath will be retained.**"

Yet again, Persimmon state "This footpath [FP14] will be retained".

Yet again, they ignore their own words.

AND...

Eventually an Extinguishment was applied for 5 years later in 2019.

8.17. It is stated in 3 places (see 7.3.12, 8.15.1 and 8.16) that the land is **privately owned**. This was not untrue, but the owner was in fact Persimmon themselves. Perhaps Persimmon felt it necessary to obscure this fact of ownership to confuse people. Persimmon bought the land in 2002, see **B010** and 8.10.

Confusingly, Persimmon use the phrase "privately owned" as if it was owned by some secret or private individual, when in fact Persimmon owned it all along.

8.18. **Decision Notice 13/5239C, B016**. 10July2015.

On the penultimate page, the second INFORMATIVE paragraph states:

"The applicants attention is brought to the following:

*A section of the existing public footpath (Footpath 14 Sandbach) would need to be closed on a temporary basis when works on site begin, but the developer must first provide an alternative temporary diversion / path (to be agreed with the Council). The section of the existing public footpath (Footpath 14 Sandbach) that crosses through the site will require an Extinguishment Order. **The process of applying** for the Extinguishment Order can be started now but the developer **must NOT build on or otherwise permanently obstruct the footpath until the extinguishment is confirmed**. Once the estate road is adopted the Extinguishment Order can come into operation. It should be noted that there is no guarantee that an Extinguishment Order will be successful, if the Council receive objections to the proposed extinguishment then the Order will be sent to The Planning Inspectorate for determination".*

The phrase beginning **must NOT** has been emboldened by SFG. What this means in other words is that it at the developer's own risk to proceed without applying for the Extinguishment Order.

Clearly Persimmon did not follow good practice or due diligence here, because they did not apply for the Extinguishment until some time in March or April 2019, 4 years after the decision notice was done.

Had they attended to the Order in a timely manner, objections could have been dealt with sooner or a solution acceptable for all parties could probably have been agreed, before building had started.

It has been said that the statement in this Decision Notice is not legally binding (ref Ombudsman's report in the CEC Statement of Case, and DOC REF 5 page 52 of 99) because it is in an Informative Note. Is this CEC trying to wriggle through a loophole?

The wording, with the use of the word **must**, is definite. It is an error on the part of CEC Planning that they used **must** in an informative note. CEC has never acknowledged or apologised for this basic error.

Any Professional Officer, especially a legal professional*, would know that words such as **must** or **shall** are not appropriate in an informative section or in informative notes. It appears that CEC have been less than professional, and, in so doing, have favoured the developers, Persimmon.

*Note the Decision Notice (**B016**) is signed by an Authorised Officer for CEC.

SFG contends that the word **must** should stand and that FP14 should not be extinguished, let alone built on.

8.19. **Approval of stopping up order.** Cheshire East Public Rights of Way Committee approve stopping up order **DOC REF 4, 11/03/2019**

One of the justifications for approving the extinguishment of FP14 is shown below (page 6 of 10)

1.2. The proposal contributes to the Corporate Plan Outcomes 4 "Cheshire East is a green and sustainable place" and 5 "People live well and for longer", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

How can it be stated that extinguishing a Footpath contributes to:

"...a green and sustainable place" – Extinguishing a footpath does not make a place greener in any sense;
and

"People live well for longer" – Extinguishing a footpath will probably have the opposite effect;
and

"the Rights of Way Improvement Plan". - extinguishing a Footpath surely cannot be part of a plan to improve rights of way.

8.20. **Obstructing FP14 and Aerial photos.**

Referring to 8.18 above, it was stated that Persimmon **must NOT build over the line of FP14.**

We have aerial photographic evidence, taken with a drone camera, on 23April2019. At that point the Extinguishment had been published (11April2019) but had not been confirmed. The photos show that Persimmon had already built house foundations across the line of FP14 without the Order being confirmed. The photos clearly show the foundations and of the surrounding houses progressing in sequence. Soon after complaints, from SFG, Persimmon covered over the foundations with soil.

At the time of writing, the area is untended and in need of some care.
For **aerial photos, see B017**

Actually, this green area could be landscaped and would now make a pleasant green area to walk.

8.21. Government **DEFRA guidance (Circular 1/09 clause 7.11, see B019)** states that merely having planning permission granted for a site does not infer that any application for Footpath Extinguishment is any more likely to be agreed. The proper procedures for Footpath Extinguishment must still be followed even if planning permission has been agreed. "*Development in so far as it affects the Right of Way should not be started...*" (as quoted from DEFRA 1/09, clause 7.11).

How is it then that Persimmon set the foundations in place before the fate of FP14 had been agreed?.

8.22. It would have been quite straightforward to keep FP14 open and set into a green space; all that needed to be done was to adjust the plans to make more space to properly accommodate FP14. It is likely this could have been done at an early stage (i.e., in 2015 when the Decision Notice was done, see 8.18) without loss to Persimmon.

9. **Persimmon.**

Sections 7 and 8 show that Persimmon stated many times that FP14 would be retained. It is now apparent that they had no intention to do so. The purpose of recording this, admittedly lengthy Statement of Case is to show the devious method by which Persimmon appeared to work.

9.1. Persimmon need not have left it until the last minute to apply for the Extinguishment Order.

In 8.18, The Decision Notice states "*The process of applying for the Extinguishment Order can be started now...*" (10July2015).

Clearly the process did not start at that time, or in that year, but waited a further 4 years. This is surely not a reasonable method.

It may well not be illegal, but it is clearly not reasonable.

9.2. It is well known that Persimmon were going through difficulties with a bad press round about this time. See ref **C001 to C010** This may have caused some distraction. However, it would not explain a delay of 4 years to process an Extinguishment Order eventually on 11April2019.

9.3. Persimmon and CEC have stated that it is necessary to extinguish FP14 to enable the development to go ahead. However, the simple solution would be to leave FP14 exactly where it always has been and not build the remaining houses, so making a village green, with suitable landscaping.

9.4. **Persimmon Application Form to Extinguish FP14**, 24Jan2019, see **D006**.

This document appears start the process of extinguishment for FP14. The plan is shown in the accompanying plan **D006a** of the same date. The red line on this plan shows the part of FP14 that is being applied for extinguishment.

The red line on the application plan does not correspond with the Points A and B in the eventual order, shown in **DOC REF 2** (page 3) and the plan produced for the Cheshire East Public Rights of Way Committee **DOC REF 4** (page 12 of 10).

Point A in DOC REF 2 and DOC REF 4 is placed on the **north side** of Buckthorn Road. This means that people following FP14 as a PRoW would be expected to cross Buckthorn Road diagonally.

Should there have been an assessment, in terms of safety and suitability, either to the Equalities Act (A008) or for able bodied people on crossing a road diagonally? No assessment is apparent.

However, on the Persimmon application plan (24Jan2019), the south end of the red line denoting the part for extinguishment begins on the **south side** of Buckthorn Road. People would then be left to their common sense to cross the road at right angles by the shortest route.

Also, signposting FP14 would have been easier if the cul-de-sac end was on the south side of Buckthorn Road, rather than on the pavement on the north side.

Previously, we questioned whether it was legally right for a road to cross a Footpath PRoW, see 5.7. The Persimmon plan might have been better, in this respect, than the plan produced by Cheshire East.

So, in terms of safety, common sense, signposting and possible legal compliance, the Persimmon plan would have been better.

This may be a minor point and it does not take away from the overriding principle that it would be better if FP14 were not extinguished. However, it

appears to show that the thinking between Persimmon and Cheshire East may not be thought through or joined up.

10. Footpaths properly landscaped.

Two examples are given, hopefully there are more, but the two examples show that proper landscaping of a Footpath PRow can be done.

With a little thought, something similar could have been done in the case of Sandbach FP14.

Presumably Persimmon could not be bothered or thought it might make affect their profits in a minute way.

10.1. The PRow FP18 in Congleton, off Padgbury Lane has been dealt with in a proper way and landscaped into the housing estate quite acceptably. See **D001**.

10.2. Sandbach FP7 is another PRow that has been dealt with in a reasonable way, with the estate Footpath landscaped into the existing trees and hedgerows. See **D002**.

11. Planning Procedures

It seems clear that there is something lacking in the planning process at CEC. The strong objections regarding FP14 from the CEC PRow dept (see 7.6, 8.5, 8.6) were all ignored.

Any instruction in Decision Notices requiring clarity and action on FP14 were ignored.

Presumably, the planning applications were put to Councillors at planning meetings. However, it is questionable how much information the Councillors were given prior to such meetings, otherwise they would surely have made better provision for the protection of FP14.

As an example of Councillors not being properly informed, see **D003**.

It seems that the planning process is not fit for purpose, unless you are a developer, that is. CEC Planning should be forceful with developers and not be bullied into coercion and submission. CEC Planning should follow through and take appropriate action with website comments and objections, not just publish and move on.

Responses to objections from developers should be published. In this case no such responses have been published leading to the thought that they were not passed to Persimmon in the first place.

Planning procedures should be fair and transparent, not weighted in favour of developers, no matter how big and powerful they are.

12. CEC / Persimmon Statement of Case

Referring to the DOC REF 4 in the submission files issued to objectors to the extinguishment of FP14

12.1. Item 9, Legal Test. The planning permission granted was subject to terms and conditions:

a) 12/4874C, see 7.7, ref **A015**. Decision Notice, condition 10 was never further documented, discussed, observed, or discharged. Nor was an opportunity for public consultation made.

b) 13/5239C, see 8.18, ref **B016**. The process of dealing with the informative section was not attended to for 4 years. There is no reason why it could not have been done years before.

12.2. Relevant land purchases were done in 2002, see 8.10, and **A010**. Relevant planning permissions were done in 2015. The consultation on the extinguishment of FP14 could have been done in 2015 before building (foundations or otherwise) had commenced. It need not have waited until 2019.

12.3. CEC state several times that the extinguishment of FP14 is necessary to enable the development to go ahead. That is blindingly obvious, but the deception is that the design could have been modified to accommodate FP14, in a proper way, in 2015, before any building work had started, rather than leaving the consultation until 2019, when Persimmon presumably thought it was too late and everyone had forgotten about it.

12.4. Section 10 of the CEC Statement of Case states that the extinguished path from point A to point B would have a surface of grass. Clearly that cannot be true because it would be on the pavement, made of tarmac, brick or similar. In fact, the whole of FP14 in this Persimmon site would be tarmac, pavement or highway, if the extinguishment went ahead. The mistake is probably another example of the copying and pasting from another document, as seen elsewhere.

If the objection is upheld at the Inquiry, then at least some of the path can be kept as a green area.

13. Local Government Ombudsman

In the CEC Statement of Case, DOC REF 4, clause 7, page 2 of 10[sic, the report goes up to page 15 of 10] there is a mention of the Local Government Ombudsman report, **see D004**. This report was done 14 Oct 2019. Below is clause 39 from that report

*39. I have however, used my discretion to consider whether the Council properly considered the objections from the PROW team at the reserved matters application in 2015. The PROW team submitted objections to the development, but then **withdrew them at the reserved matters application** following discussions with the developer. The records show the developer confirmed it would apply for an extinguishment order which satisfied the PROW's concerns. **Because of this, there were no longer objections for the Council to consider when it decided to approve the application.** The planning officer considered the matter in their report and decided the extinguishment of part of the path was acceptable. The Council has followed the process we would expect and so I find no fault in the way it made its planning decision on the Reserved Matters Application in 2015.*

There appears to be **no record that CEC PRoW actually withdrew their comments** and objections in the reserved matters application, 13/5239C. The closest that we have found are DOC REF 16 and DOC REF 17 in which Marianne Nixon states that CEC supports the Extinguishment Order.

This is not the same as withdrawing objections.

If they exist, the proper documents withdrawing objections need to be made available, publicly and transparently, for the purposes of the Inquiry.

Not only are these documents apparently missing or never existed, the PRoW department would not have been aware that there would be a delay of 4 years to 2019 before the extinguishment was made public, by which time Persimmon were hoping it would be too late. Had CEC PRoW been made aware of this delay, in 2015, it is doubtful that they would have found that acceptable.

14. Conclusion

Persimmon seems to have woven a web of false hope, confusion and devious messages from the first planning application in 2012 through to the present. The outline planning application stated, in several documents, that FP14 will be retained, and several times calling it a strategic footpath connection in maps and diagrams. All that was later ignored and the fate of FP14 delayed until beyond the last moment when the extinguishment order was suddenly published in 2019 with no prior consultation. The delay contrived to wrong-foot the public into thinking it was a fait accompli in favour of Persimmon and thereby the extinguishment of FP14.

Persimmon ignored the comments and objections from CEC PRow regarding FP14. Some of the objections were submitted more than once. All were ignored. CEC Planning may have been part of the problem in not bothering to pass the objections on to Persimmon.

No responses to the comments from CEC PRow were ever recorded on or with the documents published on the Planning web-pages. It leads to thinking that the CEC PRow comments were merely placed on the website with no action or response forthcoming.

It could have been so much better than this. If Persimmon had continued as they had begun with the strategic footpath connection and retained footpath, with a few slight modifications to the site design, we would not have needed this inquiry.

A lesson to be learned is that planning procedures seem to be a sham.

The extinguishment should be overruled.

Leave FP14 where it is and always has been.

Leave the remaining houses unbuilt and create a village green.

Prevent this case being a precedent for other developers to try similar tactics.