

AGENDA MANAGEMENT SHEET

Name of Committee Stratford on Avon Area Committee
Date of Committee 23 January 2008
Report Title E5998 Stoa Lane, Great Alne - A Petition Requesting Mechanically Propelled Vehicles (except farm traffic) be Prohibited

Summary A petition signed by 245 people requires the County Council to prevent Mechanically Propelled Vehicles (except farm traffic) from using Stoa Lane, a non-tarmac surfaced road that lies to the north of Great Alne. It is considered that the grounds cited on the petition do not justify such action and it is therefore recommended that the petitioners' request be refused.

For further information please contact Annmarie Grace
 Access Project Co-ordinator
 Tel. 01926 413426
 annmariegrace@warwickshire.gov.uk

Would the recommended decision be contrary to the Budget and Policy Framework? Yes/No

Background Papers Petition

CONSULTATION ALREADY UNDERTAKEN:- *Details to be specified*

- Other Committees
- Local Member(s) Councillor Mrs N Knapman
(With brief comments, if appropriate)
- Other Elected Members
- Cabinet Member
(Reports to The Cabinet, to be cleared with appropriate Cabinet Member)
- Chief Executive
- Legal I Marriott – comments incorporated.

- Finance
- Other Chief Officers
- District Councils
- Health Authority
- Police
- Other Bodies/Individuals

FINAL DECISION **YES/NO** *(If 'No' complete Suggested Next Steps)*

SUGGESTED NEXT STEPS :

Details to be specified

- Further consideration by this Committee
- To Council
- To Cabinet
- To an O & S Committee
- To an Area Committee
- Further Consultation

Stratford on Avon Area Committee - 23 January 2008

E5998 Stoa Lane, Great Alne - A Petition Requesting Mechanically Propelled Vehicles (except farm traffic) be Prohibited

Report of the Interim Strategic Director for Environment and Economy

Recommendation

That the petitioners' requests to prevent mechanically propelled vehicles (except farm traffic) from Stoa Lane be refused.

1. The Petition

- 1.1 On the 30 October 2007, a petition, sponsored by a local resident of Great Alne was presented to full Council, by the local County Councillor, requesting that mechanically propelled vehicles (except for farm traffic) be prevented from using Stoa Lane, a non-tarmac surfaced, Unclassified County Road that lies to the north of the village ('the road'). The location of the road is shown on **Appendix 1**. The sponsor of the petition lives next to the road.
- 1.2 It is understood the petition was passed to the County Councillor by Great Alne Parish Council at the request of the sponsor of the petition. However no letter of endorsement from the Parish Council accompanied the petition as requested by the sponsor of the petition (letter requesting the endorsement enclosed as **Appendix 2**).
- 1.3 It is stated (on the petition) that the road has been well used by walkers, families with dogs and children, horses and cyclists for many years without problems. Vehicles have returned to use the road and are again damaging the surface, ditches and neighbouring crops, with fast motorbikes being a clear danger particularly to animals and children. Fly tipping also occurs along the road.
- 1.4 The petitioners require the County Council, as highway authority, to prevent mechanically propelled vehicles (MPVs), except farm traffic, from using the road to prevent damage, minimise pollution and ensure the safety of pedestrians, animals and property. The petition was signed by 245 people.

2. Stoat Lane

- 2.1 Stoat Lane ('the road') runs east to west between Park Lane and Coughton Fields Lane, crossing Sernal Lane at its midpoint. The road has a stoned surface along its full length of approximately one mile, and is predominately enclosed by hedges and ditches, except for one section west of Sernal Lane that is bounded on one side by an arable field. Overall the surface is considered to be in good condition suitable for use by walkers, equestrians, cyclists and motorised vehicles (MPVs). The condition of the surface is considered to be one of the best in the County for a non-tarmac surfaced road.
- 2.2 The section of road east of Sernal Lane (B–C on the plan attached as **Appendix 1**) was provided with a stone surface in the late 1990s, with the section west of Sernal Lane (A–B on the plan attached as **Appendix 1**) being partially stoned in 2002 and completed in 2006.

3. The Legislative Background

- 3.1 In considering the petitioners' request, the Committee should be mindful that the County Council has a legal duty, under section 130 Highways Act 1980, to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it.
- 3.2 To assent to the petitioners' request, the Council should be persuaded that there is sufficient evidence to support the points raised in the petition and that this justifies preventing MPVs from the road contrary to its duty to protect and assert the rights of the public to use the road.
- 3.3 In the case of Unclassified County Roads (UCRs), a descriptive phrased used to describe a road that has not been classed, the law has never defined what public rights exist over a UCR and in the absence of legal clarity, the Council works on the presumption that all UCRs, irrespective of surface type, carry public vehicular rights until proven otherwise. In the case of Stoat Lane, no party has presented evidence to show that the road does not carry vehicular rights.
- 3.4 By virtue of section 130 Highways Act 1980, the Council therefore has a duty to protect and assert the rights of vehicular users, like all other users, to use the road.

4. Consideration of the Reasons Cited on the Petition to Close the Road to MPVs, Except Farm Traffic

Damage to the Road's Surface, Neighbouring Crops and Ditches

- 4.1 It is agreed that historically, MPVs did cause significant damage to the road's surface prior to the surface being stoned. The full length of the road now however, benefits from a good quality stone surface. The last section, west of Sernal Lane, was surfaced in 2006 following extensive rutting where the road

follows an arable field headland. The stone surface provides a durable, all season, all weather surface that can accommodate MPVs.

- 4.2 It is recognised that through use, any road irrespective of surface type, will require periodic maintenance. In 2007, volunteers from the Green Lane Association, an organisation promoting responsible 4x4 use, spent a day spreading extra stone on a section of the road east of Spernal Lane that was surfaced in the late 1990s and, which was becoming slightly muddy. This work was not required for vehicular access but was completed by the volunteers as a gesture of good will towards other users.
- 4.3 General wear and tear should not be the grounds for precluding MPVs from the road. The condition of this non-tarmac surfaced road is considered to be one of the best in the County. It would be inconceivable to prevent horses from a bridleway because they may poach the surface. Similarly vehicles should not be prevented from using a road because they may damage the surface. No type of user should be excluded from a route to negate the Council's statutory duty to maintain it.
- 4.4 It is accepted that prior to a stone surface being constructed in 2006, some MPVs sought to bypass the deep ruts alongside the arable field (west of Spernal Lane) by travelling through the adjacent crop. It is further agreed that some MPVs have previously wantonly churned up a non-cropped corner of the same field. However, since the repairs have been made, complaints about crop damaged have ceased. The landowner has installed a barrier to prevent access onto the field corner and this area has now grassed over. Should vehicular trespass become a problem again in the future, the landowner has the physical and legal capacity, and the support of the Council, to continue the barrier along the full length of the field. In addition the Police have powers to take action against any drivers found damaging the crops as it could be considered to be criminal damage. This historical crop damage does not justify preventing legitimate MPVs from using the road in the future.
- 4.5 In the past four years, three or four vehicles have been reported to the Council, by the sponsor of the petition, for 'falling' into the ditch alongside the section of road east of Spernal Lane (B – C on the plan attached as **Appendix 1**). Only one of these vehicles caused any damage to the ditch, and that farm vehicle was, ironically, attempting to mow the soft verge as a gesture of good will in 2006. This damage was easily repaired by the County Council. The other vehicles did not cause any damage to the ditch, they simply knocked back the vegetation growing on and over the ditch. In light of the latter incidents, in which no one was reported as being hurt, marker posts were installed along the top of the bank and the side vegetation cut back. Since this action, no further incidents have occurred.
- 4.6 One instance of ditch damage in four years that required repairs, does not warrant closing the road to MPVs, especially when it was a farm vehicle that caused the damage and the petitioners do not wish to see this type of traffic excluded.

Prevention of Fly Tipping

- 4.7 Fly tipping does occur on Stroat Lane, particularly near the junction with Coughton Fields Lane (Point A on the plan attached as Appendix 1). This action is not only very anti-social it is also unlawful. Sadly, as there would be no physical way of effectively preventing access, if the road was to remain open to farm traffic and horse drawn vehicles as requested by the petitioners, those responsible for the fly tipping are unlikely to cease this activity. Those minded to partake in unlawful acts are unlikely to worry whether the road is officially open or closed to MPVs. Closing the road to MPVs will not prevent fly tipping.

Danger to Non-MPV Traffic

- 4.8 Countryside Recreation has managed the County's non-tarmac surfaced roads network, over 100 routes, for the last five years. During this time no accidents have been reported to the Council involving MPVs on these routes and no accidents have been reported on Stroat Lane.
- 4.9 Many users of any public route may be uncomfortable with other legitimate users of the route due to the perceived danger, whether that is from large frisky horses, dogs running loose or fast moving bicycles. However tolerance of all other users is required at all times. Stroat Lane is not the exclusive domain of any one user type and all parties, including drivers of MPVs and families with children and dogs need to exercise due care and attention when using the road, the same as would be exercised if using a tarmac surfaced road. The lack of a tarmac surface does not indicate that less care is required.
- 4.10 It should also be noted that equestrians and cyclists can only access Stroat Lane by using tarmac surfaced roads and they should therefore be familiar with encountering MPVs.
- 4.11 If desired, road signs warning drivers that pedestrians and equestrians may be in the middle of the road can be installed, albeit some may consider such signs to be unsympathetic with the rural character of the road.
- 4.12 The petitioners require the County Council to prevent mechanically propelled vehicles (MPVs), except farm traffic, from using the road to prevent damage, minimise pollution and ensure the safety of pedestrians, animals and property. However these vehicles are currently not damaging the road, no accidents have occurred during the last 5 years and the requested closure will not prevent fly tipping.

Summary

- 4.13 In summary, the reasons cited on the petition are not considered sufficient grounds to preclude MPVs, except farm traffic, from using the road and it is therefore recommended that the petitioners' request be refused.
- 4.14 Should Members however, be persuaded by the facts of the case that MPVs, except farm traffic, should be prevented from using the road, could this be effectively achieved? This question is examined below.

5. How MPVs Except Farm Traffic Could be Prevented from Using the Road

Highways Act 1980 Section 116 (s.116)

- 5.1 There is no legal mechanism for permanently stopping up a road to certain classes of MPVs, whilst retaining access for other classes of vehicular traffic. Whilst s.116 enables the County Council to apply to the Magistrates' Court to permanently stop up a road (if it is considered 'unnecessary'), this would apply to ALL traffic, reserving if necessary public footpath or bridleway rights only. This would not satisfy the petitioners' request to retain access for farm traffic and non-mechanically propelled vehicles, for example horse and carts. If the road was closed to ALL traffic, except for pedestrian or equestrian rights, any party requiring access over the road, other than on foot, on horse or with a bicycle would need to demonstrate that they had a private right of access. It is not understood that the farm traffic has such a private right. The legal test of 'unnecessary' cannot therefore be met. In addition, other non-agricultural traffic uses the road to access land and property (see paragraph 5.4 below) and it is not understood that these parties have a private right to use the road.

Road Traffic Regulations Act 1984 (The 1984 Act)

- 5.2 Whilst there is no legal mechanism to stop up the road permanently to MPVs, the 1984 Act enables the Council to impose a Traffic Regulation Order (TRO) on a public highway to regulate how a highway is used where it appears that it is expedient to:-
- (i) Avoid danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising, or
 - (ii) To prevent damage to the road or any building on or near the road, or
 - (iii) Facilitate the passage on any road or any other road of any class of traffic (including pedestrians), or
 - (iv) Prevent the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property, or
 - (v) Do so (with or without prejudice to the generality of paragraph iv) above) for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot, or
 - (vi) To preserve or improve the amenities of the area through which the road runs.

- 5.3 Section 2 of the 1984 Act enables a TRO to make provisions prohibiting, restricting or regulating the use of a road, or of any part of the width of a road, by vehicular traffic of any class specified in the order, either generally or subject to such exceptions as may be specified in the order. Such specifications may apply at all times or at times, on days or during periods as specified.
- 5.4 The 1984 Act could therefore be applied to the road to satisfy the petitioners' request if the Council is persuaded by evidence that such a TRO is expedient. Although if made, it should be made with the exception of 'access to premises' rather than 'except for farm traffic' because the road is used by non-farm traffic to access land and property. Severn Trent use the road to access apparatus within and next to the road and the east end of the road, is used by some Great Alne residents to access non-agricultural property, including the sponsor of the petition.
- 5.5 TROs are not permanent and may be revoked or varied in the future if the reasons for making the order change.
- 5.6 If a TRO were to be made, road signs compliant with The Traffic Signs Regulations and General Directions 2002 would need to be erected. Some parties find these signs are not in keeping with a rural situation, but unless displayed, the TRO would not be valid and the Police would not be able to enforce it.

6. Enforcing a TRO

- 6.1 Section 5 of the 1984 Act makes it an offence to contravene a TRO and they can only be enforced by the Police. A fixed penalty fine can be issued or the courts could award a maximum penalty commensurate with level 3 (£1000). However, in reality, a TRO on Stroat Lane is unlikely to be effectively policed.
- 6.2 Physical barriers such as gates or bollards could not be installed because these would restrict access to legitimate users, for example horse drawn carts or those requiring access to land and property such as farm traffic. In practice therefore, the effectiveness of a TRO if made, is likely to have minimal effect at deterring MPV use.

7. Conclusion

- 7.1 Although historically, subject to deep rutting where the road travelled over bare earth, this is no longer the case. The full length of the road now has a stone surface, which makes it suitable for use by MPVs, without significant damage being caused. However, it is not denied that like any other road that is used, periodic maintenance will be required. It is unjustifiable to close a road to avoid routine maintenance.
- 7.2 The safety of all highway users is important and undeniable, however, it does not automatically follow that MPVs travelling on a non-tarmac surfaced road, like Stroat Lane, represent a danger to other users. With no accident record to support a closure of Stroat Lane to MPVs, and the likelihood of such a danger arising being low, given no such accidents have occurred in the past 5 years on

any of the non-tarmac surfaced highways in the County, it is unjustifiable to close the road to MPVs.

- 7.3 The Police already have extensive powers to deal with any traffic offences and criminal actions taking place along Stroat Lane. A TRO is not needed to enable them to take action against fly tipping, underage or unlicensed drivers or drivers not taking due care and attention. A TRO will not alter the current situation.
- 7.4 To assent to a TRO being made on Stroat Lane to prevent damage or prevent the likelihood of a danger arising to non-MPV traffic, without justifiable evidence, could result in an unprecedented demand for similar TROs on the remaining non-tarmac surfaced road network in Warwickshire. This would fundamentally, change how the Council manages these routes.
- 7.5 With no effective method of enforcing a TRO prohibiting MPVs, except for access, its success, even if desirable, would be minimal. It is therefore recommended that a TRO is not made and the petitioners' request be refused.
- 7.6 If it is determined to make a TRO on Stroat Lane, prohibiting all MPVs, except for access, the Committee should decide which section of the 1984 Act (as listed in paragraph 5.2 above) applies.

DAVID PYWELL
Interim Strategic Director for Environment and Economy
Shire Hall
Warwick

16 January 2008

Appendix 2

Stratford on Avon Area Committee. 23rd January 2008.

E5998 Stroat Lane, Great Alne. A petition requesting mechanically propelled vehicles (except farm traffic) be prohibited

"Whitts End", Park Lane,
Great Alne, Alcester,
Warwickshire. B49 6HS

Tel: 01789 488295

Thursday, 27 September, 2007

Mrs L. Holmes,
Clerk, Great Alne Parish Council,
6 Throckmorton Road,
Alcester,
Warwickshire.

Dear Lorraine,

STOAT LANE PETITION

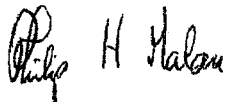
Enclosed is the original, plus one copy for your files, of the Petition I sponsored with regard to closure of Stroat Lane to mechanically propelled vehicles. There are 245 signatures of residents and visitors to Great Alne, a significant proportion of the people who use it for recreational walking and horse or bicycle riding.

I also enclose a copy of the letter I have received from Mrs E. Butterworth, Clerk to Aston Cantlow Parish Council, regarding their efforts to get the classification of a similar lane changed. It is apparent that the two situations are not identical but it may be appropriate for your council to maintain contact with Aston Cantlow Council on the progress of their efforts.

I ask you to lay this Petition before your council with the request that it be passed to the appropriate office in Warwick County Council, the Highway Authority, with their endorsement. I feel that the backing of Great Alne Council is essential and will certainly carry more weight than my signature alone.

I look forward to learning the outcome of this approach.

Yours sincerely,

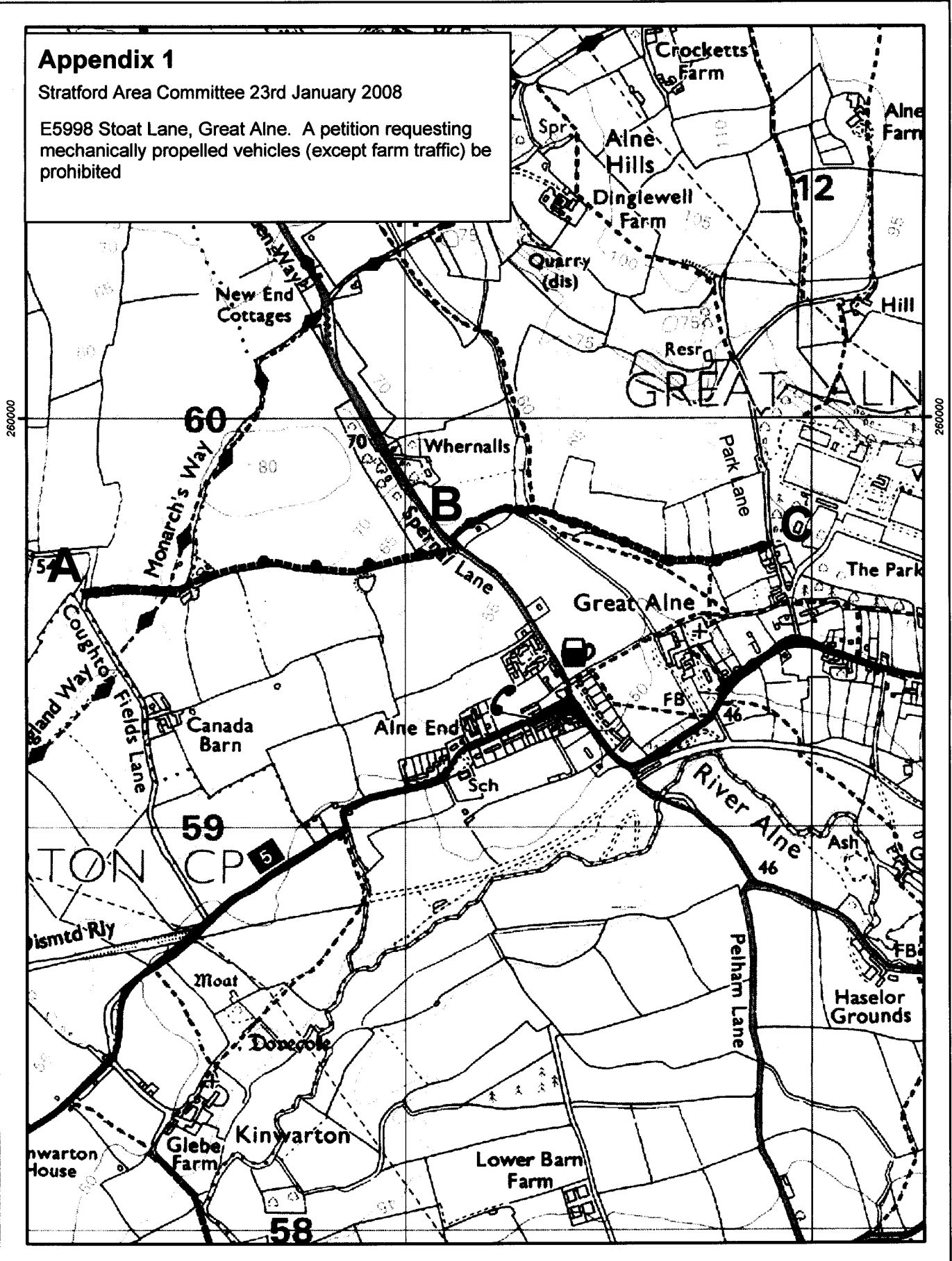


Philip H. Malan

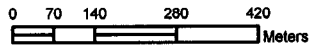
Appendix 1

Stratford Area Committee 23rd January 2008

E5998 Stoa Lane, Great Alne. A petition requesting mechanically propelled vehicles (except farm traffic) be prohibited



E5998 Stoa Lane indicated by the bold broken brown line between points A-B-C



1:12,922

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