

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

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<b>Date of Meeting:</b>	13 March 2023
<b>Report Title:</b>	Wildlife & Countryside Act 1981 – Part III, Section 53. Application No.CO/8/49: Application to add a Public Footpath between Dingle Lane and Footpath No.11 Sandbach
<b>Report of:</b>	Jayne Traverse, Executive Director Place
<b>Ward(s) Affected:</b>	Sandbach Town

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

- 1.1.** This report outlines the investigation into an application made by Mr Trevor Boxer (Sandbach Footpath Group) to amend the Definitive Map and Statement to add a public footpath between Dingle Lane and Footpath No.11 in the town of Sandbach. This report includes a discussion of the consultations carried out in respect of the claim, the historical evidence, user evidence and the legal tests for a Definitive Map Modification Order to be made. The report makes a recommendation based on that information, as to whether an order should be made to add a Public Footpath to the Definitive Map and Statement.
- 1.2** The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

### **2. Executive Summary**

- 2.1** The report considers the evidence submitted and research into the application to add a Public Footpath between Dingle Lane and Footpath No.11 Sandbach. The evidence consists of use on foot by individual witnesses over a period of 20 years and historical documents that demonstrate the existence/status of the route over a period of 200 years.
- 2.2** The report determines whether on the balance of probabilities the status of footpath has been acquired and/or whether the route has higher rights.

The documentary evidence considered in this case demonstrates the existence of the route as from the early 19<sup>th</sup> Century. The user evidence investigated and discussed provides strong evidence of use by foot over a relevant 20 year period and, in conjunction with the historical evidence, leads to the assertion that footpath rights exist, the rationale for this legal status being explained in the report.

### **3. Recommendations**

- 3.1** An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to add a footpath as shown between point A and B on Plan No. WCA/262/029 at Appendix 3.
- 3.2** Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the of the power conferred on the Council by the said Act.
- 3.3** In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

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

- 4.1** The evidence in support of this claim must show, on the balance of probabilities, that public footpath rights subsist along the claimed route. It is considered there is sufficient use of the route without force, secrecy, or permission, that is without interruption and as of right; to support the existence of footpath rights along the route shown between point A – B on Plan No. WCA/262/029 at Appendix 3.
- 4.2** It is considered that the requirements of Section 53(3)(c)(i) have been met in relation to footpath rights and it is recommended that the Definitive Map and Statement should be modified to show a Footpath between Dingle Lane and Footpath No.11 Sandbach.

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

- 1.1.** Not applicable this is a non-executive matter.

### **6. Background**

## **6.1 Introduction**

**6.1.1** The application was made to Cheshire East Council on 31<sup>st</sup> March 2016 by Mr Trevor Boxer of Sandbach Footpath Group to add a footpath between Dingle Lane (leading from Well Bank) to Footpath No.11 in the town of Sandbach. The application consisted of user evidence forms and maps. A total of 12 user evidence forms were submitted demonstrating use on foot.

**6.1.2** Further evidence was submitted in the form of copy of the 1911 Ordnance Survey map.

**6.1.3** The applicant appealed non-determination in September 2021 to the Secretary of State, who directed the Council on the 17<sup>th</sup> of February 2022 to determine the application by the 17<sup>th</sup> of February 2023. During 2022, it was hoped that the matter could be resolved via dedication, however that wasn't forthcoming and the Council has proceeded to determination.

## **6.2 Description of the application route.**

**6.2.1** The claimed route commences from the public highway known as Dingle Lane (UY2126) and runs in a north easterly direction, to its termination at the junction with Footpath No.11 Sandbach.

**6.2.2** The first section of the route runs between No. 7 Dingle Bank and Dingle Farm, bounded on both sides by boundary walls. Slightly further along from the farm entrance there is an unlocked field gate with gap alongside. Beyond the field gate, going north easterly, the route continues between a boundary wall and temporary construction fencing. The surface at this point is a natural well-trodden path for approximately 58 metres. Here the boundary of the route changes to natural hedging for approximately 152 metres to where it terminates at the junction with Footpath No.11 Sandbach.

## **6.3 Main issues**

**6.3.1** Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Council shall keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear to them to be requisite in consequence of the occurrence of certain events:-

**6.3.2** One such event, (section 53(3)(c)(i) is where

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

- (i) that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.

**6.3.3** The evidence can consist of documentary/historical evidence or user evidence or a mixture of both. All the evidence must be evaluated and weighed, and a conclusion reached whether, on the 'balance of probabilities' the rights subsist. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.

Where the evidence in support of the application is user evidence, section 31(1) of the Highways Act 1980 applies. These states; -

"Where a way.....has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."

This requires that the public must have used the way without interruption and as of right; that is without force, secrecy or permission. Section 31(2) states that "the 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question.

In the case of, *R (on the application of Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs (2007)*, the House of Lords considered the proviso in section 31(1) of the Highways Act 1980:

*"...unless there is sufficient evidence that there was no intention during that period to dedicate it".*

The proviso means that presumed dedication of a way can be rebutted. If there is sufficient evidence that there was no intention to dedicate the way, during the relevant twenty-year period. What is regarded as 'sufficient evidence' will vary from case to case. The Lords addressed the issue of whether the "intention" in section 31(1) had to be communicated to those using the way, at the time of use, or whether an intention held by the landowner but not revealed to anybody could constitute "sufficient evidence". The Lords also considered whether use of the phrase "during that period" in the proviso, meant during the whole of that period. The House of Lords held that a landowner had to communicate his intention to the public in some way to satisfy the

requirement of the proviso. It was also held that the lack of intention to dedicate means “at some point during that period”, it does not have to be continuously demonstrated throughout the whole twenty-year period.

For public rights to have come into being through long use, as stated above, a twenty-year period must be identified during which time use can be established. Where no challenge to the use has occurred, this period can be taken as the twenty years immediately prior to the date of the application. In this case the date of challenge can be identified as the date on which the application was submitted, being 31<sup>st</sup> March 2016.

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

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

#### **6.5 Documentary Evidence**

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

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

The claimed route was not shown on any of the early commercial maps at the time of when they were surveyed.

##### **Tithe Records**

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

route is not evidence that it did not exist; merely that it did not affect the tithe charge. Colouring of a track may or may not be significant in determining status. In the absence of a key, explanation, or other corroborative evidence the colouring cannot be deemed to be conclusive of anything.

The Sandbach Township Tithe Map & Apportionment 1841 shows the full extent of the claimed route marked by one single dashed line and is within numbered parcels - parcel No. 400, described as “over dingle field & parcel No. 265”. The tithe appointment shows that there was a tithe payable from Lord Hungerford, Crewe, for both fields with no description of the claimed route was found.

### **Finance Act 1910**

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

The claimed route is partially shown on the map as two solid lines within a coloured hereditament numbered 209 with no description, indicating the road was not considered public highway at the time of the survey.

### **Ordnance Survey Records**

**6.5.5** Ordnance Survey (O.S.) mapping was originally for military purposes to record all roads and tracks that could be used in times of war; this included both public and private routes. These maps are good evidence of the physical existence of routes, but not necessarily of status. Since 1889 the Ordnance Survey has included a disclaimer on all of its maps to the effect that the depiction of a road is not evidence of the existence of a right of way. It can be presumed that this caveat applied to earlier maps.

*O.S. 1<sup>st</sup> edition 1 inch 1856 (Old Series) & 1887 (New Series)*

The 1<sup>st</sup> edition 1 inch of 1856 map does not show the route on this early map. The New Series 1 inch edition of 1887 shows the route as a single dashed line.

O.S. Cheshire Sheet L.NW Six-inch, 1899, 1911 & 1946

The route is shown on this map again as double solid lines with a single line across the route at the north of the route.

O.S. 3<sup>rd</sup> Edition 1 inch Revised 1905, published 1907.

The map shows the route as a single dashed line.

*O.S. Map: 1:500, sheet SJ 76 SE, Date 1989*

The route is shown as a double solid line.

*O.S. Map: 1:1000, sheet SJ 76 SE, Date 1979*

The route is shown as a double solid line.

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

The Definitive Map and Statement is based on surveys and plans produced in the early 1950s by each parish in Cheshire, of all the ways they considered to be public at that time. The surveys were used as the basis for the Draft Definitive Map.

The green book, a pre-definitive map record, sheet No 14 SW, shows the claimed route as a double solid line, but is shown uncoloured on the map, therefore considered not to be public at the time of the survey.

The walking survey map did not identify the claimed route as being public, but clearly shows the claimed route as a physical feature bounded by two solid parallel lines joining Dingle Lane and Footpath No.11 Sandbach. However the parish survey sheets describe Footpath No.11 by '*Path commences at Congleton Road, 80 yards east of the entrance to "Parkhouse Farm" and runs in a south westerly direction and terminates at Well Bank north of "Dingle Lane"*'. This description appears to include the claimed route.

The claimed route also is not marked on the Provisional Map of 5<sup>th</sup> November 1953 as public, but clearly shows the claimed route as a physical feature bounded by two solid parallel lines joining Dingle Lane and Footpath No.11 Sandbach. The route was therefore not marked on the final Definitive Map, hence this application.

Whilst the surveys of the early 1950s do not show the claimed route as public, they do show the route as a clear throughfare between Dingle Lane and Footpath No.11 Sandbach and depicted by parallel solid black lines.

#### **6.5.7 Photographs and other evidence**

During the investigation into this claim photographs were taken in November 2022. The photographs of the route demonstrate that the route is significantly used by the public by the evidence of a well-trodden route on the ground.

Aerial photographs from 1971 to 2015 show the claimed route on the ground as a well-trodden desired route along the entire length of the claimed route.

## **6.6 Witness Evidence**

**6.6.1** The Application, when made on 31<sup>st</sup> March 2016, was accompanied by 12 user evidence forms. Since that time, 1 of the users is now deceased. In total 11 witnesses were contacted to be interviewed. Interviews with 8 were held face to face and 1 was conducted as a phone interview. The users all clearly refer to the same route, all believe it to be a footpath and can give evidence of use from 1985 to 2016 on foot. User evidence from the total number of 11 witnesses is illustrated in a chart at Appendix 2.

The use of the route appears to have been recreational and for active travel. The use of the route was along the full length and for a range of activities, including walking, walking dogs, walking to school and accessing the local shops.

The witnesses refer to the lack of maintenance of the route, and how it has become narrower and overgrown over time. Much of the route is enclosed by hedging on either side, but there is a small section at the southern end of the route where the boundary is walled and fenced. The witnesses all claim the course of the route has not changed in recent memory.

None of the witnesses mentioned any challenges to use on foot, by any of the landowners, and none was given permission to use the route or had any connection with the land or landowners in question. None of the witnesses mentioned seeing any notices along the route to suggest that the route was private.

In the relevant 20 year period retrospective to the application, 1996-2016, no challenge to use of the route has been identified and therefore the 20 year period of deemed dedication has been satisfied. During this period, 11 people claim use throughout the time on foot – 1 of which also claimed very occasional use by bicycle. The use varied in frequency from people using it occasionally to daily and varied through time.

From the interviews it appears to have been a very well-known and used route.

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

## **6.7 Conclusion**

**6.7.1** The documentary evidence considered in this case demonstrates the existence of the route from the mid-18<sup>th</sup> Century. The Tithe Map of 1841 shows the route as a single dashed line within numbered parcels. The Finance Act shows the route within coloured hereditaments, the parish records of the 1950s describe the claimed route as a through-route. In addition, the O.S. map records also provide evidence of the existence of the claimed route at the time of the survey.

**6.7.2** Under s.31(1) of the Highways Act 1980, a right of way can come into being by prescription unless there is evidence to the contrary. The use of the route by walkers can be demonstrated by the witness evidence over the 20 year period 1996-2016. This use can also be supported by the significant length of use up to this period. The use provided is reasonably frequent and covers a long time period and can be considered suitable for the acquisition of rights to have been demonstrated. From interviewing particularly, it has been demonstrated that there is certainly sufficient use to demonstrate footpath rights have come in to being.

**6.7.3** The evidence in support of this application must show, on the balance of probabilities, that footpath rights subsist or reasonably alleged to subsist along the claimed route. The balance of user evidence combined with documentary evidence certainly support the case that a public footpath subsists along the routes A-B (Plan No. WCA/262/029). It is therefore considered that the requirements of Section 53(3)(c)(i) have been met and it is recommended that a Definitive Map Modification Order is made to record a Public Footpath between Dingle Lane and Footpath No.11 Sandbach and amend the Definitive Map and Statement.

## **7. Consultation and Engagement**

**7.1** Consultation letters and a plan of the claimed route were sent out to the Ward Member; Town Council; user groups/organisations; statutory undertakers and landowners.

No responses have been received from the landowners at the time of writing this report. The following responses were received:

Ward Councillors covering the Sandbach area were consulted with: Councillor Crane covering the Ward of Sandbach, Ettiley Heath and Wheelock, responded to say she fully supported the application, and no response was received from Cllr Benson, of Sandbach Town Ward.

Sandbach Town Council responded to say that the Town Council had no objection and support the Definitive Map designation of this footpath.

The Open Spaces Society area officer responded stating that they strongly support the application and that they have personally walked the route for nearly 30 years. The Access Field Officer for The British Horse Society responded on the 20<sup>th</sup> December 2022 with a holding objection until they had the opportunity to review the application further. On the 22<sup>nd</sup> December 2022 they responded to their initial email and removed their holding objection.

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

## **8. Implications**

### **8.1 Legal**

**8.1.1** Under section 53 of the Wildlife & Countryside Act 1981 (WCA), the Council has a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Section 53 (3) (c) allows for an authority to act on the discovery of evidence that suggests that the Definitive Map needs to be amended. The authority must investigate and determine that evidence and decide on the outcome whether to make a Definitive Map Modification Order or not.

Upon determination of this application, the authority must serve notice on the applicant to inform them of the decision. Under Schedule 14 of the WCA, if the authority decides not to make an order, the applicant may, at any time within 28 days after service of the notice, appeal against the decision to the Secretary of State. The Secretary of State will then consider the application to determine whether an order should be made and may give the authority directions in relation to the same.

### **8.2 Finance**

**8.2.1** If objections to an order lead to a subsequent hearing/inquiry, the Council would be responsible for any costs involved in the preparation and conducting of such.

### **8.3 Policy**

There are no direct policy implications of this report.

#### **8.4 Equality**

The legal tests under section 53 of the Wildlife & Countryside Act 1981 do not include an assessment of the effects under the Equality Act 2010.

#### **8.5 Human Resources**

There are no direct implications for Human Resources

#### **8.6 Risk Management**

There are no direct implications for risk management

#### **8.7 Rural Communities**

There are no direct implications for Rural Communities.

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

There are no direct implications for Children and Young People.

#### **8.9 Public Health**

There are no direct implications for Public Health.

#### **8.10 Climate Change**

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

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

<b>Access to Information</b>	
Contact Officer:	John Lindsay john.lindsay@cheshireeast.gov.uk 01270 686203
Appendices:	Appendix 1 – Archive List Appendix 2 – User Evidence Chart Plan No. WCA/262/029
Background Papers:	File no. CO/8/49

## APPENDIX 1

### List of Archive Documents – Application No. CO/8/49 Claim for Footpath in the Town of Sandbach

**PROW = Public Rights of Way**

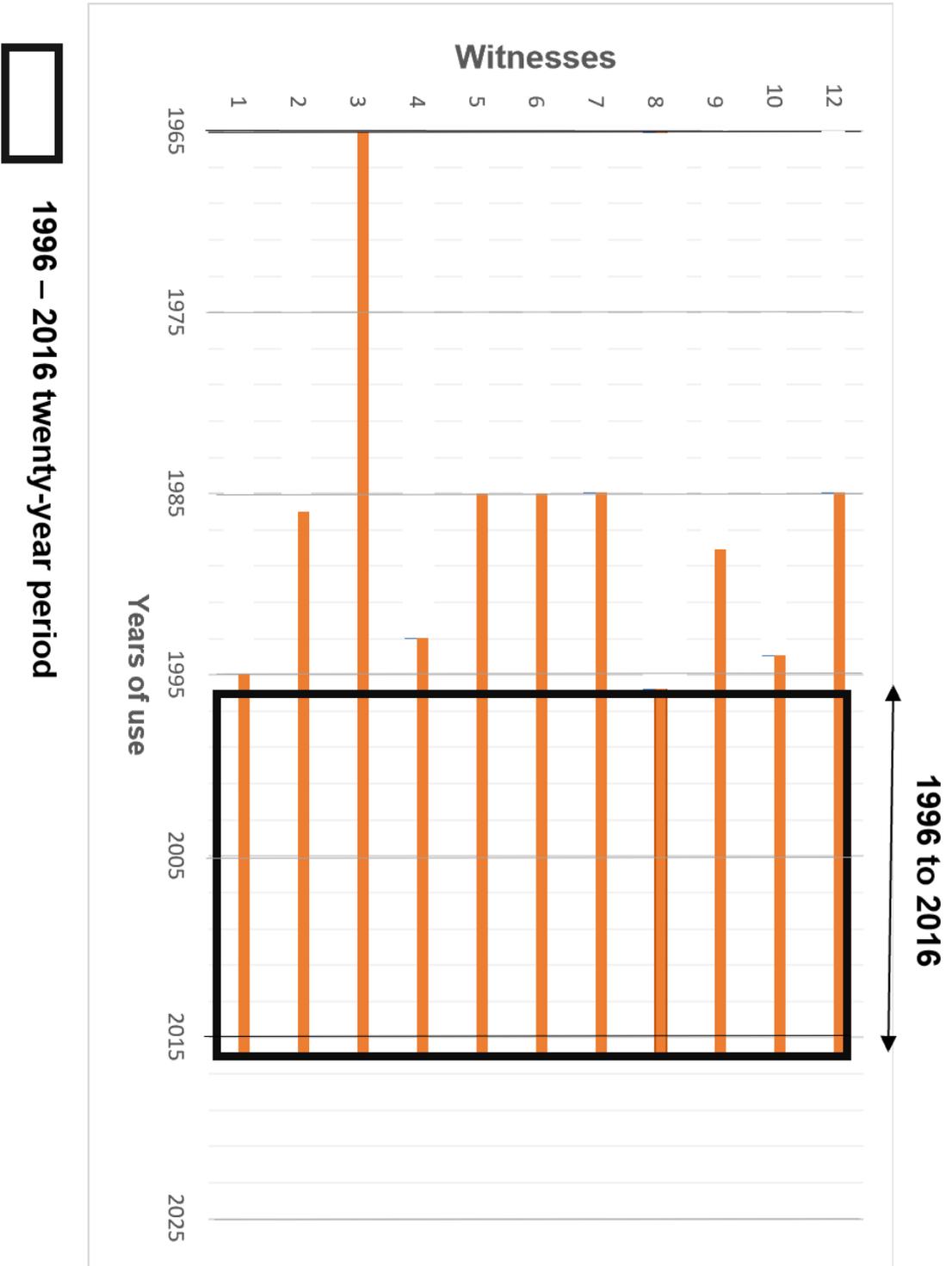
**CRO = Cheshire Record Office**

Primary Sources	Date	Site Shown/Mentioned	Reference Number/Source
Burdett	1794	Claimed Route not shown	<a href="https://maps.nls.uk/counties/cheshire">https://maps.nls.uk/counties/cheshire</a>
Cary J	1809	Claimed Route not shown	<a href="https://maps.nls.uk/counties/cheshire">https://maps.nls.uk/counties/cheshire</a>
Greenwoods	1819	Claimed Route not shown	<a href="https://maps.nls.uk/counties/cheshire">https://maps.nls.uk/counties/cheshire</a>
Bryants	1831	Claimed Route not shown	<a href="https://maps.nls.uk/counties/cheshire">https://maps.nls.uk/counties/cheshire</a>
Swire & Hutching	1830	Claimed Route not shown	<a href="https://maps.nls.uk/counties/cheshire">https://maps.nls.uk/counties/cheshire</a>
Bartholomew Half-inch to a mile	1902 - 1906	Claimed Route not shown	<a href="https://maps.nls.uk/counties/cheshire">https://maps.nls.uk/counties/cheshire</a>
Bartholomew Half-inch to a mile	1937 - 1961	Claimed Route not shown	<a href="https://maps.nls.uk/counties/cheshire">https://maps.nls.uk/counties/cheshire</a>
Tithe Map	1841	Claimed Route shown as a single dash line.	CRO EDT 351/2a
Tithe Apportionment	1841	Claimed route not described in numbered parcels	CRO EDT 351/2b & /2a
Enclosure Records		None available	N/A
Finance Act		Claimed route shown within coloured hereditament's	CRO IR/132/2/2/266
Ordnance Survey 1 <sup>st</sup> Edition 1inch, sheet 73	1856	Claimed Routes not shown	<a href="#"><u>Ordnance Survey Maps - National Library of Scotland (nls.uk)</u></a>
Ordnance Survey, New Series 1:25 inch, sheet 110	Published 1887, Surveyed 1870 to 1877	Claimed Routes shown as a single dashed line.	<a href="#"><u>Ordnance Survey Maps - National Library of Scotland (nls.uk)</u></a>

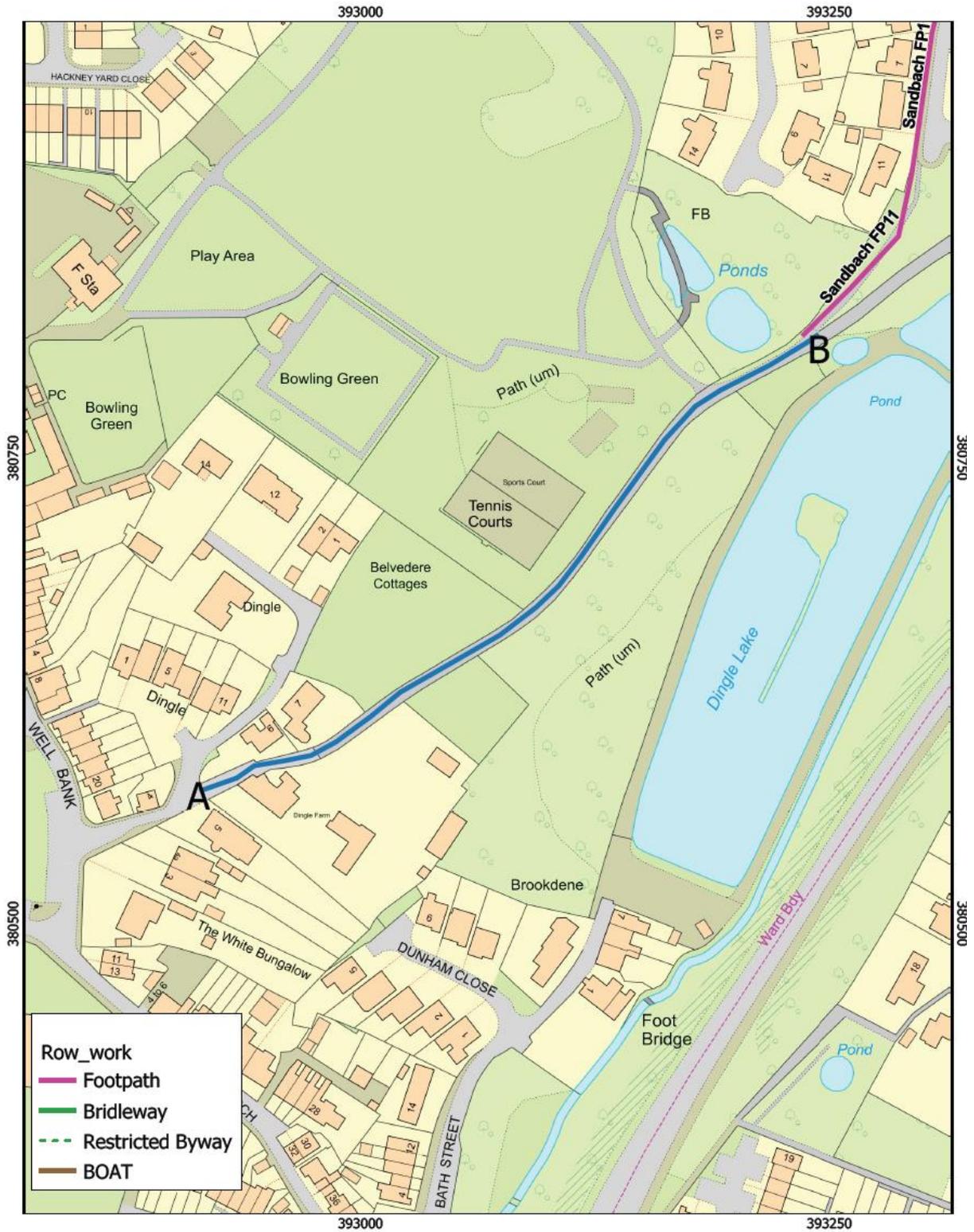
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Ordnance Survey 3 <sup>rd</sup> Edition 1:25 inch, Sheet 110	Revised 1905, Published 1907.	Claimed Routes shown as a single dashed line.	<a href="#">Ordnance Survey Maps - National Library of Scotland (nls.uk)</a>
Cheshire Sheet L.NW Ordnance Survey Six-inch England and Wales	Revised 1897, Published: 1899	Claimed Routes shown as double solid lines and has a line across the claimed route at the northern end.	<a href="#">Ordnance Survey Maps - National Library of Scotland (nls.uk)</a>
Cheshire Sheet L.NW Ordnance Survey Six-inch England and Wales	Revised: 1907 Published: 1911.	Claimed Routes shown as double solid lines and has a line across the claimed route at the northern end.	<a href="#">Ordnance Survey Maps - National Library of Scotland (nls.uk)</a>
Cheshire Sheet L.NW Ordnance Survey Six-inch England and Wales	Revised: 1938 Published: ca 1946.	Claimed Routes shown as double solid lines and has a line across the claimed route at the northern end	<a href="#">Ordnance Survey Maps - National Library of Scotland (nls.uk)</a>
Ordnance Survey Map: 1:500, sheet SJ 76 SE	1989	Claimed Routes shown as double solid lines	PROW/Cheshire East Council
Ordnance Survey Map: 1:10000, sheet SJ 76 SE	1979	Claimed Routes shown as double solid lines	PROW/Cheshire East Council
Aerial Photographs	1971 to 2015	Claimed Route shown as a defined route.	CRO Cheshire Tithe Maps Online ( <a href="#">cheshireeast.gov.uk</a> )
The Green Book, Pre-Definitive Map Record, Sheet No 14 SW		Uncoloured on the map but shown as a double solid line.	PROW/Cheshire East Council
Draft Definitive Map	1950	Claimed Routes shown as two solid lines	PROW/Cheshire East Council Offices
Parish survey sheets	1952	Route described as <i>terminates at Well Bank north of "Dingle Lane"</i>	PROW/Cheshire East Council Offices
Provisional Definitive Map	1953	Claimed Routes shown as two solid lines	PROW/Cheshire East Council Offices
Definitive Map & Statement	1953	Claimed Routes shown as two solid lines	PROW/Cheshire East Council Offices

# APPENDIX 2



# APPENDIX 3



CO/8/49 Claimed Footpath from  
Dingle Lane to Footpath No11  
Sandbach A - B

Plan No.  
WCA/  
262/029

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



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