

Public Rights of Way Sub-Committee

Date of Meeting:	13 March 2023
Report Title:	Wildlife & Countryside Act 1981 – Part III, Section 53. Application No. CO/8/41: Application for the Addition of a Public Bridleway, Watch Lane, Moston.
Report of:	Jayne Traverse, Executive Director Place
Ward(s) Affected:	Brereton Rural

1. Purpose of Report

- 1.1. This report outlines the investigation into an application made by Mr David Nixon to amend the Definitive Map and Statement to add a Public Bridleway at Watch Lane in the Parish of Moston. This report includes a discussion of the consultations carried out in respect of the claim, the historical evidence, witness evidence and the legal tests for a Definitive Map Modification Order to be made. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to add a Public Right of Way to the Definitive Map and Statement.
- 1.2. The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

2. Executive Summary

- 2.1 The report considers the evidence submitted and researched in the assessment of an application to add a public bridleway in the Parish of Moston. The evidence consists of use on foot, horseback and pedal cycle by individual witnesses over a period of over twenty years and historical documents that demonstrate the existence/status of a route historically

forming part of the ordinary road network over a period of over 200 years. The report determines whether on the balance of probabilities the status of public bridleway or higher rights has been acquired. The reputation of the route as a thoroughfare linking two adopted roads is demonstrated through the County Maps, Tithe Map, Ordnance Survey maps and others and provides good evidence of a route with rights of bridleway status at least. Research has found that historically the claimed route was also part of the Ordinary Road Network and vehicles passed along it as with the other parts of Watch Lane. In 1952 a Traffic Regulation Order permanently restricted use by vehicles on part of the lane. The user evidence investigated and discussed provides evidence of use by those on foot, horseback and pedal cycle over a relevant 20 year period leading to the assertion that at least Public Bridleway rights have been acquired over time. The conclusion reached by Officers is that it is recommended the claimed section be recorded as a Restricted Byway.

3. Recommendations

- 3.1** An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to add a Restricted Byway as shown between points A and B on Plan No. WCA/027.
- 3.2** Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Act.
- 3.3** In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

4. Reasons for Recommendations

- 4.1** The evidence in support of this claim must show, on the balance of probabilities, that public restricted byway rights subsist along the claimed route. It is considered there is sufficient use of the route without force, secrecy, or permission, that is without interruption and as of right; to support the existence of restricted byway rights along the route shown between points A - B on Plan No. WCA/027. It is also considered that the historical evidence discovered demonstrates the existence of higher rights than a footpath or bridleway along the route consistent with a restricted byway.
- 4.2** It is considered that the requirements of Section 53(3)(c)(i) have been met in relation to restricted byway rights and it is recommended that the

Definitive Map and Statement should be modified to show a Restricted Byway along Watch Lane between points A - B on Plan No. WCA/027.

5. Other Options Considered

5.1. Not applicable.

Option	Impact	Risk
N/A	N/A	N/A

6. Background

6.1. *Introduction*

6.1.1 The Application was made to Cheshire East Council in November 2014 by Mr David Nixon to add a Public Bridleway to the section of unadopted part of Watch Lane in the Parish of Moston. The application consisted of user evidence and a few letters (one from applicant and some letters relating to neighbouring landowner). A total of 13 user evidence forms were submitted demonstrating use on foot, horseback and pedal bicycle.

6.2. *Description of the Application Route*

6.2.1 The claimed route commences at the eastern end from a car park at Watch Lane Flash (point A on Plan No. WCA/027, OS grid reference SJ 7272 6068) which is a fishing area with various lakes in the surrounding fields. The route proceeds along a slightly raised embankment (via an initial gap between posts with another barrier adjacent) and runs in a south westerly direction. It passes a junction with Public Footpath No.7 (which is to the south) before turning in a more north westerly direction where it re-joins the adopted section of Watch Lane at the western end by Watch Lane Farm (point B on Plan No. WCA/027, OS grid reference SJ 7225 6062).

6.2.2 The surface of the route is a mixture of stone/gravel/earth with small trees/shrubs on both sides of the route that take up some of the usable width. The width of the usable route varies but is on average for the most part approximately 7 metres getting slightly wider as it approaches Watch Lane Farm. The width between the solid bounded feature lines marked on modern maps (therefore including the usable width), varies between approximately 5 metres and up to 20 metres, with its widest point in the middle of the application route.

6.3 Main Issues

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

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

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

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

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

6.3.3 Where the evidence in support of the application is user evidence, section 31(1) of the Highways Act 1980 applies. This states:

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

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

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

“...unless there is sufficient evidence that there was no intention during that period to dedicate it”.

The proviso means that presumed dedication of a way can be rebutted if there is sufficient evidence that there was no intention to dedicate the way, during the relevant twenty year period. What is regarded as ‘sufficient evidence’ will vary from case to case. The Lords addressed the issue of whether the “intention” in section 31(1) had to be communicated to those using the way, at the time of use, or whether an intention held by the landowner but not revealed to anybody could constitute “sufficient evidence”. The Lords also considered whether use of the phrase “during that period” in the proviso, meant during the whole of that period. The House of Lords held that a landowner had to communicate his intention to the public in some way to satisfy the requirement of the proviso. It was also held that the lack of intention to dedicate means “at some point during that period”, it does not have to be continuously demonstrated throughout the whole twenty year period.

- 6.3.5** For public rights to have come into being through long use, as stated above, a twenty year period must be identified during which time use can be established. Where no challenge to the use has occurred, this period can be taken as the twenty years immediately prior to the date of the application. In this case the date of challenge can be identified as the date on which the application was submitted being 14th November 2014.
- 6.3.6** The Planning Inspectorate guidelines state, “Section 31, Highways Act 1980, as amended by section 68 of Natural Environment and Rural Communities Act (NERC) 2006, provides that use of a way by non-mechanically propelled vehicles (such as a pedal cycle) can give rise to a restricted byway”.
- 6.3.7** The case of *Whitworth v Secretary of State for the Environment, Food and Rural Affairs* (2010) is often quoted where there is evidence of use on horseback and pedal cycle. Section 30 of the Countryside Act 1968 gave pedal cyclists the right to ride on a bridleway; consequently, any use from 1968 onwards is said to be “by right”. In *Whitworth* the route was found to have pre-existing bridleway status, i.e. it was decided the status was a bridleway prior to 1968. It was suggested that subsequent use by cyclists of an accepted, but unrecorded, bridleway, where use of the bridleway would have been permitted by virtue of section 30 of the Countryside Act 1968, could not give rise to anything other than a bridleway.

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

6.3.9 Two of the exceptions are Section 67(2)(b) and 67(2)(e) of the Act:

(b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.6) (list of highways maintainable at public expense).

and:

(e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.

These particular exceptions are discussed at paragraph 6.7.3 and 6.7.4 below, and it is explained why Officers believe the circumstances of this case do not meet these exceptions.

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 18th/19th Century

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

6.5.2 *William Swire and W.F Hutching's map of the County of Cheshire, 1830*

This appears to be a first-class map bearing the words "From actual accurate Survey, Made in the years 1829 and 1829". The claimed route appears depicted as a category 'Cross Road' at a time before 1835 when maintenance fell on inhabitants of the Parish. It was clearly in existence as a highway therefore before the 1835 Highways Act and is depicted as a historical minor road.

6.5.3 *Bryant's map of Cheshire 1832*

This map correlates closely with modern day surveys. The claimed route is named and depicted as category 'Lanes & Bridle Ways' and is therefore further evidence it was in existence prior to 1835.

6.5.4 *Moston Tithe Map 1846*

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

The Tithe Map of Moston shows the claimed route and the rest of the adopted sections of Watch Lane as a clear through route bounded by two solid lines and no parcel numbering. It is depicted the same as other known public highways. The parcel is not numbered and therefore will not be shown in the accompanying apportionment.

6.5.5 *Enclosure Award & Map*

No Enclosure Award of Map exists for the Parish of Moston in the 1700s.

6.5.6 *Ordnance Survey Records*

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

O.S. 1st edition 1 inch 1842

The claimed route is shown as a defined feature and annotated as Watch Lane.

O.S. 1st , 2nd , 3rd Edition County Series 25" to 1 mile 1875, 1897, 1909

All three editions show the claimed route in the same way. The claimed route is shown a defined feature and annotated as Watch Lane. The claimed route section also has a defined track feature down the middle shown by double pecked lines between defined solid bounded boundary lines.

An old parish division boundary line is also annotated by dots along Watch Lane and annotated with 4ft R.H which refers to the distance from the root of the hedge to the boundary line.

O.S. revised New Series 1:63,360 (1 inch:1 mile) 1897

The claimed route is shown as a very clear through-route from Crabmill Lane to Red Lane bounded by solid lines and being slightly wider in the middle where the fishing ponds are now located.

O.S. Book of Reference 1876

The claimed route is described in a manner which fails to confer any indication of status, in this case as "Road" in parcel number "266".

6.5.7 *Bartholomew's Half Inch to a Mile*

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

The 1902, 1923 and 1941 versions show the route as a road of different descriptions from 'Indifferent Roads' (Passable) to (Passable by Cyclists) to 'Other Road and Tracks'. Therefore, the claimed route continues to be shown as a minor road on the Ordinary Public Road Network well into the motoring age.

6.5.8 *Finance Act 1910*

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

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

The Finance Act Survey map shows the claimed route including the entire length of Watch Lane as uncoloured and excluded from surrounding hereditaments and is depicted as a route of two parallel solid black lines. This therefore suggests that the route was considered to be a public highway at the time of the Finance Act Survey but does not itself provide evidence about the class of rights that existed over it.

6.5.9 *List of Streets and Traffic Regulation Order (TRO) 1952*

The claimed route (part of Watch Lane) is not shown on the Council's List of Streets which shows highways maintainable at public expense, although at its western and eastern end it currently joins parts of Watch Lane which are recorded on the List of Streets (route numbers: UY117/B at the eastern end and UY1117 at the western end). It is believed the full length of Watch Lane was once on the List of Streets, but how or when this section was removed is not known.

From examining minutes of the County Council's Roads and Bridges Committee, there is reference in 1950 to "Watch Lane U/C, Elton – Subsiding Roadway" which is clearly referring to the claimed route with a resolution that the flooded portion of this road be closed for vehicles under the provisions of Sec 85 Highways Act 1835. However, no Stopping Up (extinguishment) Order made under the Highways Act has been found.

It would seem that rather than stopping up the highway permanently it was subsequently decided to make a Traffic Regulation Order (TRO) instead. With TRO Orders the highway rights remain albeit with restrictions on the use. The legal Order was produced and dated on 8th August 1952 and subsequently advertised in the London Gazette on 9th September 1952. The Order clearly states that a section of Watch Lane (approximately 212 metres), was restricted for vehicular use. Rights of passage for pedestrians, horse riders, pedal cyclists and horsedrawn carriages remained. The section subject to the TRO is from approximately point A (on Plan No. WCA/027) in a south westerly direction for approximately 212 metres. This section covers part of the claimed route.

It is not known if the claimed route was removed from the List of Streets following this TRO, though this would not have been a reason to remove it, as the highway rights were not stopped up and legally still existed. Also the section that is not recorded on the List of Streets is longer than that which is subject to the TRO. Today there is a modern 'road closed' highways sign located at the eastern end of the route.

6.5.10 *Pre-Definitive Map Records*

The Public Rights of Way team hold records that pre-existed the Definitive Map process. The route is not shown on any of these maps.

6.5.11 *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 claimed route is not shown on any of the 1950s records and maps leading up to the formation of the Definitive Map and Statement. The route is not shown on the Definitive Map, Draft Map or Provisional Map. Neither is it recorded on the Elton (Moston) footpath walking survey schedules. In 1970 the parishes of Elton and Tetton joined and became Moston. What is recorded however on all maps is Public Footpath No. 7 which joins the claimed route towards its western end and on the Moston walking survey schedule sheet is recorded as termination on “*Watch Lane - UC/3/26, 200yards SE of Watch Lane Farm*”.

Section 31(6) Highways Act 1980

Under this provision of the Act, a landowner may submit a Statement and Plan to the local authority, declaring the extent of their landownership and depicting the rights of way that they accept to exist. This and a subsequent statutory declaration, have the effect of asserting that the landowner has no intention of dedicating any further right of way over their land.

There is no statutory declaration for the claimed route, but this is not surprising given there is no known landowner registered at Land Registry.

6.5.12 *Land Registry Information*

The applicant highlighted within their application that there is no known/registered landowner along the claimed route. This has been confirmed with the Land Registry in 2022. The applicant did supply at the time of application Land Registry details of the landowner that abuts the claimed route.

6.5.13 *Photographs and other evidence*

No photographs of the claimed route were supplied with the application, but a series of photos were taken in 2022 and are included at Appendix 3.

In 2018 a company called LandAspects working on behalf of Natural England completed an investigation as part of the “Discovery of Lost Ways” national project. They completed and supplied the Council with a review of documentary evidence in relation to this route. A report on this claimed route dated 16th May 2018 was produced by LandAspects. This report concluded that the route should be a public carriageway and that it met the legal tests under the Wildlife and Countryside Act 1981 to be added to the Definitive Map & Statement as a route with public vehicular rights. However this status can no longer be recorded due to the implications of the NERC Act, this is discussed at paragraphs 6.3.8 and 6.3.9 above.

6.6 *Witness Evidence*

- 6.6.1 The Application was made in November 2014, with 13 supporting user evidence forms, seeking to add a length of roadway between Watch Lane Farm and the Watch Lane Flash nature reserve as a bridleway. All 13 witnesses completed the forms correctly, with only a few questions unanswered, and most provided additional information. 12 provided evidence of use from 1962 to 2014, while the 13th provided evidence between 1942 and 1955. There is ample evidence of use from 1980 to suggest that this route has been well used over many years on foot, horseback and pedal cycle.

No evidence of challenge to public use has been shown, apart from the erection of signs and bollards to prevent vehicular access. No attempt has been made to prevent pedestrians, horseriders, pedal cyclists and horse-drawn carriages from gaining access. Therefore, the challenge date is taken as the date of the application – November 2014 – and the relevant 20 year period is thus 1994-2014. It is noted that in any one year, most users are represented as multi users of the route and therefore the maximum number of users of all kinds in any one year is 12. A chart illustrating the user evidence from the total number of 13 witnesses is attached as Appendix 2.

- 6.6.2 All users claim to have used the route in some form on a frequency ranging between weekly and monthly, with some daily.

This demonstrates sufficient frequency of use for any landowner to have observed it and taken actions to dissuade users if they had wished to prevent it.

- 6.6.3 All 13 witnesses seem to have been acting “as of right” not “by right” following permission or invitation. The only exception to this is user No. 12 who appeared on follow up to have used the route as an angler of Elworth Angling Society. The overwhelming majority of the use attested to is over the whole length of the route claimed and can be reasonably described as public in nature. For example, they are not using it with permission or as private access. Furthermore, the users themselves appear to represent the public at large, and not a small interest group or family.
- 6.6.4 Apart from the excepted provision in any time period including 2001, when areas of the countryside were closed because of foot and mouth disease, there is no period within the relevant 20 years when use was interrupted.
- 6.6.5 No evidence from any landowner has been seen. However, it is noted that several witnesses mention being seen by nearby residents while using the route and talking to an adjacent landowner who owned land adjacent in the 1990s and grazed cattle. It seems likely that no attempts have been made by any landowners to prevent dedication – the only action taken has been to prevent vehicular use of the route.
- 6.6.6 There is unanimity that the route claimed has not changed and follows the enclosed roadway of Watch Lane. Whilst witness No.11 answered in their user evidence form that ‘no the route has not been on the same alignment’, on interviewing it has been clarified that this should have stated that there has been no change of alignment. From O.S. map editions going back to the 19th century it is clear that Watch Lane has not changed course in recent history.
- 6.6.7 2 users (Nos. 4 & 9) were interviewed in person in December 2022, 3 (Nos. 2, 5 & 7) took part in phone interviews and one emailed (No. 12) some information and the others have not been able to be contacted. Of those interviewed all confirm the above summary of multi user evidence and indeed confirm that they all saw others using the route as well. Few of the horseriders remember being able to canter two a breast when the route was

less overgrown, and it has been used as a circular route to keep off the roads.

- 6.6.8 The application demonstrates a sufficient volume and frequency of public usage along a specific claimed route to reasonably allege that dedication of a bridleway occurred in the period 1994 – 2014.

6.7 *Conclusion*

- 6.7.1 The documentary evidence considered in this case demonstrates the existence of the route known as Watch Lane as a bounded lane which includes the claimed route that was clearly part of the Ordinary Road Network from early commercial maps. Indeed, as far back as 1830 the route was depicted as a public road of some sort. The claimed route has been an unaltered clear physical feature in the landscape from at least the 1800s. The tithe map also concurs with this albeit difficult to draw from this map alone its public status or otherwise. Likewise, the Finance Act Map also shows the route as a clear physical feature in the landscape and the fact the route is uncoloured and separate from surrounding hereditaments indicates public highway status of some degree. From research it has been demonstrated that the route did indeed have historical vehicular use and a legal Traffic Regulation Order was made in 1952 that permanently stopped up vehicular use on part of the claimed route.
- 6.7.2 The Green Lane Association state that they believe the route was historically a public road which Officers agree is backed up by historic evidence. Whilst the claimed route is currently not on the List of Streets, making it a highway maintainable at public expense, it had been until 1952. Past highway committee minutes provide clear evidence that the section of Watch Lane in this application must have been on the List of Streets prior to this date as there was discussion of proposals to legally close it as a public highway to vehicles, under section 85 Highways Act 1835.
- 6.7.3 The Natural Environment and Rural Communities Act (NERC) 2006 Section 67 (1) extinguished existing motor propelled vehicular rights where they were not recorded on the Definitive Map and Statement (DMS) at commencement (i.e. 2006) although there are a few exceptions to this, outlined in subsections S67(2) & (3) of the Act.

Officers consider that two of the subsection exceptions (that vehicular rights have not been extinguished) require discussion in this case, Sections 67(2) (b) and 67(2)(e) of the Act reading:

(b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c.6) (list of highways maintainable at public expense).

and:

(e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.

Officers consider the other exemptions outlined in subsections S67(2) & (3) do not apply to this case.

- 6.7.4 If the claimed route fits into one or both of the exceptions (b) and (e) above the only outcome for this claimed route is for it to still have vehicular rights and be recorded as a Byway Open to All Traffic (BOAT). However, Officers do not consider that the exceptions apply. With regard to s 67(2)(b) the claimed section of Watch Lane was not on the List of Streets immediately before commencement of the Act in 2006; and although the evidence suggests it perhaps should have been, the fact is it was not.
- 6.7.5 An Inspector's decision dated 2nd December 2021 considered an Order made by Cornwall Council, the Order is titled "*The Cornwall Council (Addition of Restricted Byway from Road U6177 at Mawgan-in-Pydar School to Road U6177 at Lanvean in the Parish of St Mawgan-in-Pydar) Modification Order 2017*". The Planning Inspectorate Order Ref: ROW/3230685. In that case following a Public Inquiry the Inspector confirmed the Order. In that case the Parish Council argued that the omission of the road from the Council's 'List of Streets' had been an error of documentation and the Inspector should take the view that the route should have been recorded and treat it as such. The Inspector was neither satisfied nor persuaded that it was possible or appropriate to take this action and concluded that the Order route was not shown on the 'List of Streets' immediately prior to commencement of the 2006 Act and therefore vehicular rights were not saved from extinguishment by virtue of this exception.
- 6.7.6 With regard to s67(2)(e) the Inspector in the Cornwall case stated that the exemption to extinguishment of vehicle rights in this subsection relies on the route being *created* by virtue of use by vehicles during a period ending before 1 December 1930. The

Inspector was satisfied that use was established long before the beginning of the twentieth century and therefore did not consider that vehicular rights are saved from extinguishment by the exemption in subsection 67(2)(e) of the 2006 Act.

- 6.7.7 A High Court appeal against the Secretary of State for the Environment, Food and Rural Affairs and Cornwall Council was made by the Trail Riders Fellowship and Green Lane Association Limited to have the Modification Order quashed. The two grounds for appeal were the lawfulness of the Inspector's application of Section 67(2) of NERC 2006 and decision to not insist that a reference to the Ordnance Survey Map be included in Part II of the Order. A decision by The Honourable Mrs Justice Steyn DBE in the High Court of Justice dismissed both grounds. Citation number: [2022] EWHC 1804 (Admin) 16th June 2022.
- 6.7.8 This High Court challenge to this case shows that the Inspector correctly applied the exemptions. As the circumstances in respect to these two exemptions are similar to the Watch Lane claim, Officers consider the exemptions do not apply in this case and therefore the vehicle rights are extinguished under the NERC Act 2006.
- 6.7.9 With regard to the user evidence, 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 those on foot, horseback and cyclists can be demonstrated by the witness evidence over the 20 year period 1994 to 2014. This use can also be supported by the significant length of use up to this period. The use provided has been frequent and regular and as it covers a long time period can be considered suitable for the acquisition of rights to have been demonstrated. Therefore at least bridleway rights exist.
- 6.7.10 The evidence in support of this application must show, on the balance of probabilities, that restricted byway rights subsist along the claimed route. The balance of user evidence certainly supports the case that a public bridleway, at least, subsists along the route shown between points A and B on Plan No. WCA/027 and, combined with the documentary evidence, that the route historically is evidenced to have had public road status. However, due to the implications of NERC Act (see paragraph 6.7.3), that higher status cannot now be recorded, this means the status on balance has to be lower, that of restricted byway status (use on foot, pedal cycle, horseback and horse-drawn carriage). It is considered that the requirements of Section 53(3)(c)(i) have been

met and it is recommended that a Definitive Map Modification Order is made to record a Restricted Byway along Watch Lane, in the Parish of Moston, between points A and B on Plan No. WCA/027 and thus amend the Definitive Map and Statement.

7. Consultation and Engagement

- 7.1** Consultation letters and a plan of the claimed route were sent out to the Ward Member; Parish Council; User Groups/Organisations; statutory undertakers and landowners on the 6th October 2022.
- 7.2** There were two responses from the consultees.
- 7.3** Moston Parish Council sent a very short email response simply stating that they support the application.
- 7.4** GLASS (Green Lane Association) sent a lengthy response accompanied by various maps. In general, they made the point backed up by map evidence from various commercial maps that demonstrates the claimed route had been part of the Ordinary Road Network since the earliest map (Swire and Hutchings' Map 1830). They stated they believed that further research would show the route to be a publicly maintainable road and that the Definitive Map Modification Order determination should not conclude with the recording of a Public Right of Way, but rather the Council's Highways records should reflect the existence of a public all-purpose carriageway. They touched on various pieces of legislation including the Natural Environment and Rural Communities Act 2006 and their interpretation on the law regarding motor propelled vehicles in application to the claimed route along Watch Lane. This is discussed in more detail in the conclusion in Section 6.7

8. Implications

8.1. Legal

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

8.2 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.

8.3 Legal implications are also included within the report.

8.2. Finance

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

8.3. Policy

8.3.1 There are no direct policy implications of this report.

8.4. Equality

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

8.5. Human Resources

8.5.1 There are no direct implications for Human Resources

8.6. Risk Management

8.6.1 There are no direct implications for risk management

8.7. Rural Communities

8.7.1 There are no direct implications for Rural Communities.

8.8. Children and Young People/Cared for Children

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

8.9. Public Health

8.9.1 There are no direct implications for Public Health.

8.10. Climate Change

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

8.10.2 The addition of a restricted byway to the Definitive Map represents the formal recognition of pedestrian, equestrian, pedal cycle and horse-drawn carriage rights, creating more opportunities for travel/leisure on foot, horseback and cycle and potentially reducing the use of cars for short local journeys and therefore energy consumption. It also has the potential for the improvement and promotion of healthy lifestyles as part of a recognised recreational route.

Access to Information	
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Appendices:	Plan No. WCA/027 Appendix 1 – Archive List Appendix 2 – User Evidence Chart Appendix 3 – Photo sheet
Background Papers:	File No. CO/8/41