

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

**3<sup>rd</sup> July 2023**

**Wildlife & Countryside Act 1981 – Part III, Section 53.  
Application No.CO/8/56: Application to add a Public  
Footpath between Wright Lane and Footpath No.14 Sandbach**

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**Report of: Peter Skates, Director of Growth and Enterprise**

**Ward(s) Affected: Sandbach Heath and East**

### **Purpose of Report**

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 Wrights Lane and Footpath No.14 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, for quasi-judicial decision by Members as to whether an order should be made to add a Public Footpath to the Definitive Map and Statement.
- 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.

### **Executive Summary**

- 3 The report considers the evidence submitted and research into the application to add a Public Footpath between Wrights Lane and Footpath No.14 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 The evidence consists of use on foot by individual witnesses over a period of 20 years and historical documents that demonstrate the existence/status of the route over a period of nearly 200 years.
- 4 The report determines whether on the balance of probabilities the status of footpath has been acquired. The documentary evidence considered in this case demonstrates the existence of the route as from the 18<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.

## RECOMMENDATIONS

The Public Rights of Way Sub Committee is recommended to:

1. Decide that a Modification Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Public Footpath as shown between points A and B on Plan No. WCA/262/031 at Appendix 3.
2. Decide that public notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
3. Note that 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. Background

### 4.1 Introduction

**4.1.1** The application was made to Cheshire East Council on 29<sup>th</sup> September 2021 by Mr Trevor Boxer of Sandbach Footpath Group to add a footpath between Wrights Lane (leading from Heath Road) to Footpath No.14 in the town of Sandbach. The application consisted of user evidence forms and maps. A total of 19 user evidence forms were submitted demonstrating use on foot.

**4.1.2** The applicant appealed non-determination on 14<sup>th</sup> November 2022 to the Secretary of State because the Council had not determined the application within 12 months. The Council responded to a request for information on the 5<sup>th</sup> January 2023. Since then, the Council has not received a direction from the Secretary of State but has proceeded to determine application in the absence of a direction.

### 4.2 Description of the application route.

**4.2.1** The claimed route commences from the junction with the adopted public highway known as Wrights Lane (UY2320), at Ordnance Survey (O.S) grid reference: SJ 76780 60784. It then runs in a north easterly direction to O.S grid reference: SJ 76870 60992 to its termination at the junction with Footpath No.14 Sandbach.

**4.2.2** The route is bound on one side with a newly erected closed boarded fence around a housing development on the west and a overgrown hedge on the east. The surface throughout is a natural trodden path for approximately 215 metres in length.

### **4.3 Main issues**

**4.3.1** 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: -

**4.3.2** 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.

**4.3.3** 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 29<sup>th</sup> September 2021.

#### **4.4.1 Investigation of the Claim.**

**4.4.1** 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.

#### **4.5 Documentary Evidence**

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

**4.5.1** 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 shown on the Bryants 1831 map as two solid lines, which indicates at the time of the survey the route was similar character to the surrounding highways and was recorded as such. Although, it isn't shown on Burdett 1777, Greenwood 1819, Bartholmews 1902 and Swire & Hutching 1830 at the time of when they were surveyed.

## **Tithe Records**

**4.5.2** 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 c1841 shows the full extent of the claimed route marked by two solid lines and is shaded, similar to the surrounding highways. In the absence of a key on the map, status can't be determined but the route is clearly shown. It is not numbered or within numbered parcels, therefore there is no entry in the appointment, which indicates the route wasn't tithable.

## **Finance Act 1910**

**4.5.4** 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 shown on the map as two solid lines not in a coloured hereditament, uncoloured routes could indicate it was a public highway of some status. It isn't numbered, and due to the condition of the map the adjoining parcel number is faded to the extent that the number couldn't be read.

## **Ordnance Survey Records**

**4.5.5** Ordnance Survey mapping was originally for military purposes to record all roads and tracks that could be used in times of war; this included both public and private routes. These maps are good evidence of the physical existence of routes, but not necessarily of status. Since 1889 the Ordnance Survey has included a disclaimer on all of its maps to the effect that the depiction of a road 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 to a mile 1842 (Old Series)*

The 1<sup>st</sup> edition 1 inch of 1842 map show the route on this early map as two solid lines, which indicates a second/third class road.

O.S. one-inch England & Wales 1872 - 1914

The route is shown as double solid lines.

O.S. One-inch "Popular" Edition England & Wales, 1919 – 1926

The route is shown as double solid lines.

*O.S. Map: 1:500, sheet SJ 76 SE, Date c1875*

The route is shown as a double solid line.

*O.S. Map: 1:1000, sheet SJ 76 SE, Date c1898*

The route is shown as a double solid line.

## **4.5.6 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 walking survey map did not identify the claimed route as being a public right of way, but clearly shows the claimed route as a physical feature bounded by two solid parallel lines joining Wrights Lane and Footpath No.14 Sandbach. The parish records for the area do not mention the route.

The claimed route also is not marked on the Provisional Map of 5<sup>th</sup> November 1953 as public right of way, but clearly shows the claimed route as a physical feature bounded by two solid parallel lines joining Wrights Lane and Footpath No.14 Sandbach. The route was therefore not marked on the final Definitive Map, hence this application.

#### **4.5.7 Photographs and other evidence**

During the investigation into this claim photographs were taken in June 2023. 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 imagery from 1971-73, 1999-03, 2010, 2015-17, and 2019-21 show the hedge line where the claimed route runs along the entire length.

#### **4.6 Witness Evidence**

**4.6.1** The application, when made on 29<sup>th</sup> September 2021, was accompanied by 19 user evidence forms. Since that time, 1 of the users has moved out of the country and two others do not wish to provide additional evidence. Out of the 19 who submitted user evidence forms 3 people had not used the route for the required 20 year period.

In total 19 witnesses were contacted to be interviewed. Interviews with 10 users were conducted as a phone interviews. The users all clearly refer to the same route, all believe it to be a footpath and can give evidence of use from 1965 to 2021 on foot. User evidence from the total number of 19 witnesses is illustrated in a chart at Appendix 2.

The use of the route appears to have been both recreational and for active travel purposes. 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. All of the route is enclosed by hedging or fencing on either side but is overgrown along the central section. 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 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 prior to the application, 2001-2021, 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, all 19 people claimed 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.

## **4.7 Conclusion**

**4.7.1** 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.

**4.7.2** 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 two solid lines outside of numbered parcels. The Finance Act 1910 map shows the route uncoloured and outside of coloured hereditaments. The Bryants 1831 county map shows the route as two solid lines, but it is not shown on any of the other early county maps, the O.S. map records also provide evidence of the existence of the claimed route at the time of the survey, but not clear evidence as to the status.



**4.7.3** 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 2001-2021. 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 sufficient use to demonstrate footpath rights have come in to being.

## **5. Consultation and Engagement**

**5.** Consultation letters and a plan of the claimed route were sent out on the 23<sup>rd</sup> March 2023, 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:

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

The Congleton Ramblers responded stating that they “had no objection to the route being made a Public Right of Way”. A named individual also responded to state that they “had no objection”. Openreach also responded, stating that they had no objection to the application.

There were no other responses to the consultation.

## **Reasons for Recommendations**

**6.** The balance of user evidence combined with documentary evidence support the case that a public footpath subsists along the routes A-B (Plan No. WCA/262/031). 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 Wrights Lane and Footpath No.14 Sandbach and amend the Definitive Map and Statement.

**7.** 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.

## **Other Options Considered**

**8.** Not applicable – this is a non-executive matter.

## Implications and Comments

### *Monitoring Officer/Legal*

9. Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the Local Authority to confirm the Order itself, and may lead to a hearing or Public Inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.

### *Section 151 Officer/Finance*

10. 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. The maintenance of the Public Right of Way, if added to the Definitive Map and Statement, would fall to the landowner and Council in line with legislation. The associated costs would be borne within existing Public Rights of Way revenue and capital budgets.

### *Policy*

11. 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.

#### **A thriving and sustainable place**

- A great place for people to live, work and visit
- Welcoming, safe and clean neighbourhoods
- Reduce impact on the environment
- A transport network that is safe and promotes active travel
- Thriving urban and rural economies with opportunities for all
- Be a carbon neutral council by 2025

### *Equality, Diversity and Inclusion*

12. 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.

### *Human Resources*

13. There are no direct implications for Human Resources.

### *Risk Management*

14. There are no direct implications for risk management.

### *Rural Communities*

15. There are no direct implications for Rural Communities.

*Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)*

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

*Public Health*

17. The recommendations are anticipated to offer a positive overall impact on the health and wellbeing of Cheshire East residents.

*Climate Change*

18. The recommendations will help the Council to reduce its carbon footprint and achieve environmental sustainability by reducing energy consumption and promoting healthy lifestyles.

<b>Access to Information</b>	
Contact Officer:	John Lindsay <a href="mailto:john.lindsay@cheshireeast.gov.uk">john.lindsay@cheshireeast.gov.uk</a>
Appendices:	Appendix 1 – Archive List Appendix 2 – User Evidence Chart Appendix 3 – Plan No. WCA/262/031
Background Papers:	CO-8-56