

OPEN

Highways and Transport Committee

20 June 2024

**Report Title: Wildlife & Countryside
Act 1981 – Part III, Section 53.**

**Application No. No. CN-7-28:
Application for the addition of a Public
Footpath in Audlem Parish**

**Report of: Peter Skates, Peter Skates, Acting Executive Director –
Place and Director of Growth & Enterprise**

Report Reference No: HTC/27/24-25

Ward(s) Affected: Audlem

Purpose of Report

- 1 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

- 2 The report considers the evidence submitted and researched in the application to amend the Definitive Map and Statement in adding Public Footpaths in Audlem Parish. This 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 register a Public Footpath
- 3 The evidence consists of 13 user evidence forms submitted by witnesses who claimed to have walked the paths. The report determines whether on the balance of probabilities public footpaths have been reasonably shown to subsist. Various historical documents have been viewed

including various maps such as County Maps and Ordnance Survey maps, Tithe Map and Finance Act plans and valuation book.

- 4 Whilst there was a reasonable number of user evidence forms submitted with the application, further investigation showed that there was little consistency with regards to the route or routes being used and public footpaths could not be reasonably alleged to subsist on a balance of probabilities.

RECOMMENDATIONS

The Highways and Transport Committee is recommended to decide:

1. That the application for the addition of footpaths is to be refused on the grounds that it cannot be demonstrated that the rights subsist or can be alleged to subsist.

Background

- 5 The application was submitted by the Audlem West Footpath Group on the 16th November 2012. A follow up map was submitted on the 29th November 2012 following a request from Cheshire East Council's Right of Way team. The application consisted of user evidence from thirteen individuals claiming use on foot. The application form is signed but no name is printed and whilst an address is provided it does not match with any of the user evidence forms submitted; as such there is no named applicant.

Description of the application route

- 6 Travelling north to south and using the plan WCA-032 in appendix 1 as a reference, the application shows a route starting from Tollgate Drive from OS grid reference SJ6568:4361 for a distance of 230 metres to Moorsfield Avenue at OS grid reference SJ6551:4348, continuing for a further 230 metres to Whitchurch Road at OS grid reference SJ6559:4336
- 7 Commencing at point A at the end of Tollgate Drive the route heads through double gates (currently padlocked) and leads across the corner of the field to a gap in the hedge at point B (this field is currently not navigable due to the location of an electric fence running around most of its perimeter). The route continues along a trod line clearly visible in the grass in a southerly direction to a pair of double gates at point C (currently locked) where it is possible to access onto Moorsfield Avenue. The route

continues south to point D where it turns through 90 degrees as it joins the remnants of an old lane. The route now leads in an easterly direction along the lane to a gate and livestock feeder at point E (it is not possible to open the gate and it is not hung). The route continues along the lane of a width of approximately 4.5m, which is overgrown but still passable. There is a barbed wire fence placed directly behind a locked gate at point F, which restricts any further access. The route continues onto what looks like shared tarmac access to the side of no38 Whitchurch Road and out to Whitchurch Road itself at point G.

- 8 Between point B and point D there is a trod alignment through the fields. It is also possible to make out a walked route along the old lane from point D to point F, albeit it would now be difficult to navigate due to the existence of a barbed wire fence at point F.

Photographs

- 9 Photographs of the claimed route can be seen at Appendix 2 and includes photographs of the existing signs up at the ends of the claimed route.

Main Issues

- 10 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:-

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.”

- 11 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 are reasonably alleged to exist. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.
- 12 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.

- 13 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”.
- 14 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.
- 15 In this case the rights of the public to use the paths was challenged in 2012 when gates at Whitchurch Road, Moorsfield Avenue and Tollgate Drive were locked and signs erected; it hasn’t been possible to decipher the exact month the challenge took place given the time that has elapsed. There were thirteen individuals who provided evidence of use on foot, with eight indicating that they had used the paths for a period of twenty years. In total the use spans 43 years, between 1979 and 2012.

Public rights can also be established under common law based on evidence of public use and there is no requirement for a period of twenty years. Establishing rights under common law relies on there being an owner with capacity to dedicate. In the absence of knowing who the owner was, satisfactory evidence of user by the public would establish rights in the face of an objector proving that there was no one who could have dedicated.

The Investigation

- 16 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 3.

County Maps 18th/19th Century

- 17 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.

- 18 None of the paths forming part of the application are shown on the P.P. Burdett 1777 map nor the Swire and Hutching's map of 1829. There is shown a short bounded lane at the location of the path claimed from Whitchurch Road on A Bryant's Map of 1831.

Tithe Map

- 19 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. The 1836 Act relieved the Tithe Commissioners of the need to certify all maps.
- 20 It was not the purpose of the Awards to record public highways. Although depiction of both private occupation and public roads may provide good supporting evidence of the existence of a route, especially since they were implemented as part of a statutory process. 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.
- 21 There is a short, bounded lane shown at the location of the path claimed from Whitchurch Road terminating at enclosure 592; this is located between point D & G on plan reference WCA-032 in appendix 1. Enclosure 592 is described as meadow and in the ownership of G Haughton. The ownership around this short track is comprised of different names.
- 22 No other path or route coinciding with the application is shown.

Ordnance Survey Records (OS)

- 23 OS 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 is argued that this disclaimer was solely to avoid potential litigation. Recent

research into the instructions given to the field surveyors and the development of the OS shows they appear to have tried to depict all routes, paths and ways that were physical features and if observed to be used by the public. However, there is no documentation to show the OS went through a statutory process of checking with the local authorities to establish the status of a way or path. Research by Yolande Hodson indicates there was tension in the modern era within the OS to agree what would be shown on the maps, who were their audience and how to depict the condition and status and at the published scales, what should be omitted. The maps are good evidence of the existence of a way or path and can support any other evidence claiming public rights of way.

24 O.S. 1st Edition County Series 6" to 1 mile

Short bounded track shown at the location of the path claimed from Whitchurch Road. Continues as a double pecked line to the now disused railway line where it appears to terminate. No other path or route coinciding with the application is shown.

25 O.S. 1st Edition County Series 1" to 1 mile 1887

A short bounded lane shown at the location of the path claimed from Whitchurch Road. Continues as a bounded lane until it turns into a double pecked path just before it reaches the now disused railway line where it appears to terminate. No other path or route coinciding with the application is shown.

26 O.S. 2nd Edition 6" to 1 mile 1889

Short bounded lane shown at the location of the path claimed from Whitchurch Road; it does not continue to the now disused railway line. No other path or route coinciding with the application is shown.

27 OS 2nd Edition County Series 6" to 1 mile 1903

Short bounded lane shown at the location of the path claimed from Whitchurch Road. It does not continue to the now disused railway line. No other path or route coinciding with the application is shown.

28 OS 1912 Edition County Series 6" to 1 mile 1912

Short bounded lane shown at the location of the path claimed from Whitchurch Road. It does not continue to the now disused railway line. No other path or route coinciding with the application is shown.

Bartholomew's Half Inch to a Mile

- 29 Bartholomew was a Scottish company with a good reputation of publishing maps from the late 19th century. Between c1911 and 1928 there was an arrangement with the Cyclists Touring Club for their members to send in revisions and their logo was shown on the maps where this arrangement was in place. The maps were based on OS base maps. The maps set out a classification of use, although there is a caveat that the depiction of any route was not evidence of a public right of way and background to the maps indicates that they relied on user reviews to make any corrections. Comparison of map publication dates may show any consistent depiction of a particular route.
- 30 Bartholomew's half inch 1902 new series, revised half inch 1923 new series and revised half inch 1940-47 were available for the location which is under investigation. The 1902 maps shows a short orange line near the path from Whitchurch Road but in a different location to the claimed path and is believed to be an indication of gradient.

Finance Act 1910

- 31 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. It is thought that exclusion of highways on the maps came under S35(1) of the Act not to charge on land or an interest in land held by a rating authority. 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.
- 32 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.
- 33 No path or route coinciding with the application is shown on the Finance Act Map and the hereditament in which the paths run (numbered 175/2) have no deductions for public right of way.

Pre DM Records

- 34 The Public Rights of Way team hold records that pre-existed the DM process. The paths are not shown on any of these maps.

DM Process – National Parks and Access to the Countryside Act 1949

- 35 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.
- 36 Draft Definitive Map extract (1950's); - No path or route coinciding with the application is shown.
- 37 Provisional Definitive Map extract (1950's); - No path or route coinciding with the application is shown.
- 38 Definitive Map extract (1950's) ;- No path or route coinciding with the application is shown

Land Registry information

- 39 In the main the land is included in the land register and contact was made with owner and their agent; however a short section where the paths leaves Whitchurch Road is unregistered. A notice of the 2012 application was placed on the land from January to February 2024. No new owner came forward to claim ownership.

Aerial Images

- 40 A number of aerial images were available for the location spanning the period from 1979 through to 2015

- 41 Black and white image 1979.

Short bounded lane shown at the location of the path claimed from Whitchurch Road. Tollgate Drive is the first area to be developed and appears to be complete by this time. No other houses have been built on the land at this time and the field layouts remain as shown on the OS maps.

- 42 Aerial image (colour) 1985

The 1985 image (colour) shows that the majority of the development of the estates has now been completed, including Moorsfield Avenue, Oak tree Gate and Hayfields Grove

There are houses abutting the route from Whitchurch road, from where it immediately leaves Whitchurch Road and travels west. There appears to be a double sided hedge at this location indicating access into the field further on. There are no discernible trod routes that coincide with any of the claimed routes. There are signs of trod routes down toward the disused railway line but these look likely to be agricultural in nature. It is clear from discussion with the witnesses and the landowner that livestock were kept in the fields at certain times of the year. There are vehicle access marks visible at the point the route leaves Moorsfield Avenue through the gateway.

43 Aerial image (colour) 1992-1995

The 1992/95 image (colour) shows a few more trod routes down towards the railway line with a number of them approaching diagonally. There appears to be some demarcation of a route in the field immediately adjacent to Moorsfield Avenue running north to a gate in top north eastern corner of the field. This trod alignment aligns with the claimed route running from Moorsfield Avenue towards Tollgate Drive; this could be indicative of public and/or private use. Once through gate there is no discernible route in the field beyond towards Tollgate Drive, which probably supports this being private and emanating from agricultural/private use. The double sided hedge along a short section where the claimed route from Whitchurch Road leaves the road heading west remains.

44 Aerial image (colour) 1999/2000

The 1999/2000 image shows a similar picture to the 1992/95 image. The demarcation running adjacent to Moorsfield Avenue is more clearly shown as vehicle tracks with a parallel line shown more clearly in this image. Again, there is no discernible route in the field beyond towards Tollgate Drive. The double sided hedge along a short section where the claimed route from Whitchurch Road leaves the road heading west remains.

45 Aerial image (colour) 2005

The 2005/06 image shows more trod routes throughout the fields directly west of Moorsfield Avenue. There again appears to be little if anything that indicates trod lines along the claimed routes. There is trod activity down towards the disused railway line, which appears to be concentrated in an east-west direction from the gate on Moorsfield Avenue. There appears to be trod routes around the perimeter of the fields between Moorsfield Avenue and the disused railway line. There does not appear to be any trod routes heading towards the canal nor following the alignment of the claimed route to Tollgate Drive.

46 Aerial image (colour) 2010

The 2010 image is the first that shows consistent trod route along the claimed routes. There is now a fairly clear trod route between Tollgate Drive where it enters the field and travels west and south towards Moorsfield Avenue. There is a trod route adjacent to Moorsfield Avenue, which continues towards Whitchurch Road in a southerly direction.

47 Aerial image (colour) 2015

This image is taken 3 years after the use was challenged and the gates were locked. The 2015 image continues to show a trod route in the field towards Tollgate Drive. There now appears to be a well trodden route from the gateway in the most north easterly corner of the field adjacent to Moorsfield Avenue heading diagonally in a south westerly direction down towards the railway line. Starting from the same gateway there now appears to be a well trodden route heading north, in the field off Tollgate Drive, heading down towards the canal. The trodden route that was shown leading along the claimed route towards Whitchurch Road in the 2010 image is less visible and quite faint. There are a number of mature trees now that tend to obscure the view of the access from Moorsfield Avenue. The grass in all field appears to have been recently mown, which probably helps in identifying the trod routes.

Witness evidence

48 There were thirteen user evidence forms (UEF) submitted with the application, all of which stated they had used the route on foot only. Most of those who submitted an UEF lived within the adjoining estates or near to them. A chart illustrating the users who supported the original application can be found at Appendix 4

49 The date when the first challenge to public use was made is clear. Several users refer to the locking of gates and the erection of signs in 2012, albeit it is not clear what months this occurred. Therefore, the relevant 20 year period in which statutory dedication may be calculated is 1992-2012.

50 Seven of those who submitted evidence forms were interviewed as part of the investigation (UEF 2 ,6, 7, 8, 10, 12 & 13). UEF's 2 and 8 were submitted by couples and are signed by both parties. The individual submitting evidence in UEF 13 subsequently changed their mind following the interview explaining they were no longer willing to provide evidence in support of the application. The remaining users (UEF1, 3, 4, 9, & 11) were unavailable for interview.

Witnesses interviewed

- 51 Apart from one user, all others indicated that they used the paths on foot and that they were there to exercise their dogs. There was a high frequency of use with two indicating weekly use, two indicating daily use and the other two indicating twice daily usage. Four had used the paths in excess of twenty years with the other two indicating three and six years respectively.
- 52 In terms of route alignment, the application route between point B and point C indicates that the route is slightly further west, however the only logical alignment is somewhat closer to Moorsfield Avenue. This is endorsed by the interviews which indicates that those walking in the fields were passing through the gap at point B; see plan reference WCA-038 in Appendix 1.
- 53 There is some inconsistency around the presence of an unusable gate at the entrance from Tollgate Drive. One user (UEF2) indicated that the gate was only installed in the late 1990's and that they recall this well, as prior to this they would have had to walk all the way around from Whitchurch Road up Moorsfield Avenue to access the fields. Others who were interviewed did not recall this to be the case and always remember a gate being in place. One witness appears to suggest that the gate was locked and people had to climb over, although they couldn't be certain as they would not use the route themselves.
- 54 One user (UEF2) indicated that they had sought permission on their user evidence form but in the interview indicated that they had not explicitly asked anyone for permission, rather they felt it was implied as they often saw the tenant who would never stop them from using the land. Otherwise, all indicated that they had used the land freely and openly and were never challenged until the gates were locked and signs erected in 2012.
- 55 None of those interviewed indicated that they had forcibly entered the land, stating that the gates were either open or in some cases as at Moorsfield Avenue, were in such a state of disrepair that they were left lying on the ground. Prior to 2012 nobody recalls the existence of any signs stating that the land was not be used. Up until 2012 none of the users recall ever being challenged nor told paths were not public with many indicating that they would see the tenant on a regular basis and there was never any animosity, nor were they told not to enter the land.
- 56 What arises from the interviews is that very few individuals actually walked the paths as indicated on the application map. Out of the six who were interviewed only one appeared to have used the paths to any extent as indicated on the application map (UEF 7) and that would relate to the

path from Tollgate Drive to Moorsfield Avenue. They would use this as a shorter loop when short on time. All six indicated that they had used the gates to access the land via Moorsfield Avenue. One indicated that they had accessed the paths from Whitchurch Road (via a gate) and five had entered from Tollgate Drive, albeit some on an infrequent basis.

- 57 What is also evident is that all six used the various access points as a means of accessing the land and would then follow a variety of different routes, mostly circular in nature albeit three indicated that they also used the fields to gain access to the canal where they would then cross the lock gates and return via the towpath. One user mentions that they exited onto Whitchurch Road having walked past the water treatment works near Browns Bank.
- 58 There appears to be a variety of circular options used, usually circumnavigating the perimeter of the various fields or walking along the disused railway track and then returning to the same entry point. There appears to be some commonality in the paths being used but in general there doesn't appear to be one common path or paths used by all.
- 59 All indicate that the paths are of an open aspect with no physical boundaries. Two individuals indicate that there may have been some interruption of use when livestock were kept in the fields, when people would stay away from those fields or the owner/tenant would erect electric fencing

Witnesses not interviewed

- 60 It can be difficult to evaluate evidence when individuals are not available for interview. This is particularly true in cases such as this, where there is more than one path being used, all of which are of an open aspect and not defined by boundaries or other distinguishing features. The interviewing of the available witnesses has identified that there were a number of paths used, from different start and end points. What can be deduced from the maps included with UEF's of those not interviewed is that the use seems consistent with that of the individuals that were interviewed.
- 61 Four out of the six UEF's indicate that they have used the paths in a variety of circular loops, with some indicating a number of circulars and others indicating just the one circular used. The one person who was available on the phone confirmed that their use was largely from Tollgate Drive, walking a number of circulars loops around the perimeter and through the fields.
- 62 Two out of the seven indicate on their plans that they may have used something similar to the paths included in the application map i.e. from

Tollgate Drive to Moorsfield Avenue and onto Whitchurch Road. Both of these indicating use on a weekly basis ranging from 1981 to 2012 and 1998 and 2012 respectively. The maps provided however are of such a low quality it is difficult to provide certainty as to the routes being used.

Conclusion on the evidence

- 63 In conclusion there is evidence of regular use of the land by a small number of individuals and that this has been seemingly with the acquiescence of the owner(s) and seemingly without challenge from the tenant(s) or those with management of the land over a period of 20 years and more.
- 64 The use being made of the paths as identified in the application is however very limited, with only three UEF's identifying that they used the paths as indicated, with only one of these available for interview and able to corroborate the use.

This level of use is not considered to be sufficient to show that public rights have become established under S.31(1) of the Highways Act 1980.

Other routes

- 65 The application and map indicates the location of the paths being walked as leading in a linear manner to and from Tollgate Drive, Moorsfield Avenue and Whitchurch Road, however the evidence borne out of the maps in the UEF's and subsequent interviews depicts a different picture.
- 66 As mentioned above, only three UEF's indicate that they used the paths in this nature, with just the one being available for interview. The investigation of the application should also consider the evidence submitted as a whole and not be limited to what is included in the application and application map.
- 67 Eight of the UEF's indicate that they have used a variety of circular loops within the fields, usually walking around the perimeter of the various fields.
- 68 All six of the witnesses who were interviewed confirmed that there were a variety of circular loops used and there were a number of variations depending on where someone would access the land and where they might exit. In essence there didn't seem to be a common route or routes in use.
- 69 With regards to the UEF's submitted by witnesses who weren't available for interview it is impossible to tell exactly where they have walked. The lack of clarity on the maps makes it impossible to decipher if users have

used the same paths or a slightly different variants and whether they entered and exited at the same points.

- 70 Given the number of circular loops available and the number of different entry/exist points into the fields, it has not been possible to identify a common path or paths that have been used.
- 71 In conclusion it is not possible to make a case currently to show that public rights have been reasonably alleged to subsist on any of the “other” paths that were used.

Consultation and engagement

- 72 Consultation documentation was sent to owners and occupiers on the 9th January 2024 and acknowledgement of the consultation was received from the landowner and the agent instructed to deal with the matter. Further details about the application and evidence submitted in support was shared with the agent on request. A site visit was arranged with the owner and agent of the registered land and a landowner/occupier questionnaire was sent for completion. The owner and their agent indicated that they would be maintaining the objection made when they received notification of the original application in 2012.
- 73 In addition to the owners and occupiers, a consultation was sent on 9th January 2024 to the Audlem Ward Member, the Audlem Parish Council and local user groups. No response was received from Audlem Parish Council.
- 74 The Peak & Northern Footpath Society confirmed that they support the application and that their local representative had been to the site and that the paths looked well used by walkers. They offered no further evidence.

Landowners

- 75 The current owners submitted an objection to the application when it was first submitted in 2012; this was submitted by their solicitor. They have owned the land since 2002. Previous owners and/or tenants are all believed to be deceased. A site visit to survey the routes was undertaken on the 15th February 2024, with the owner and their agent in attendance. They identified new measures that had been introduced, such as new hanging posts for padlocked gates, new signs and new fencing. There was electric fencing in place in the field immediately west of Tollgate Drive with both the owner and the agent indicating that this has always been fairly standard practice as a means of controlling livestock.
- 76 The agent working on behalf of the owners submitted a landowner statement along with 4 accompanying appendices with supporting

evidence of their rebuttal of public rights. They indicate that there has never been any intention to dedicate any public rights of way on the land citing that leading up to 2013 (and beyond) the land has been securely fenced and that anyone entering the land would have been doing so forcibly, with the owner having to repair vandalised gates and signs on numerous occasions. No evidence has been provided as to the repair of gates and signs.

- 77 There is reference to the inconsistent use identified in support of the claim and that there is no one clear route that can be shown to have been used. In addition, they identify that only seven of the users indicate they used the routes in excess of twenty years.
- 78 They make reference to the fact that permission has been sought by some of the users, which would then lead to the use being “by right” rather than “as of right” and that due to agricultural practices such as cropping and grazing by means of electric fencing etc, that there would have been considerable interruption of use during the claim period.

Reasons for Recommendations

- 79 Under Section 53 of the 1981 Act, the Council has a duty as the Surveying Authority to keep the DM under continuous review. Section 53(3) (c) allows for an authority to act on the “discovery of evidence” that suggests that the DM needs to be amended. The authority must investigate and determine that evidence and decide on the outcome whether to make a DMMO or not.
- 80 The Council investigated the evidence and it is concluded that the evidence was insufficient to demonstrate the expiration of a period such that the enjoyment by the public of the ways during that period raised a presumption that the ways have been dedicated as public paths.
- 81 It is therefore recommended that the application is refused and the Council declines to make an Order to add footpaths to the Definitive Map in the parish of Audlem.

Implications and Comments

Monitoring Officer/Legal

- 82 The Council is complying with its legal duties as stated in paragraphs 10-16.
- 83 The Human Rights Act is also of relevance. Whilst article 1 to the first protocol (peaceful enjoyment of property) and article 8 (right to respect for family, private life and home) are engaged, it is important to note that these rights are qualified, not absolute, which means that they can be

interfered with in so far as such interference is in accordance with domestic law and is necessary in a democratic society for the protection of the rights and freedoms of others. It is considered that any interference occasioned by the making of a Modification Order is both in accordance with domestic law (the Wildlife and Countryside Act 1981) and is in the public interest as it is necessary in a democratic society for the protection of the rights and freedoms of others, namely the public who wish to use the way

- 84 Should Members resolve that a Modification Order be made in accordance with highways legislation, this is merely the start of the legal process. Once a Modification Order is made, it must be publicised, and any person will have an opportunity to formally object to it. Should objections be received, the Modification Order would have to be referred to the Secretary of State who would usually hold a Public Inquiry before deciding upon whether or not to confirm the Modification Order.
- 85 Please note that the Council will not disclose the user evidence forms that form part of the background documentation at this stage in the process. The Council considers that the information provided within the user evidence documentation is exempt information under s1&2 Schedule 12A Local Government Act 1972, as amended
- 86 Under the Wildlife and Countryside Act 1981, there is no such statutory right prior to an Order having been made - persons affected are entitled to the information in the event that an Order is made following the Committee decision

Section 151 Officer/Finance

- 87 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.

Policy

- 88 The work of the Public Rights of Way Team contributes to the Green aim of the Corporate Plan, the “thriving and sustainable place” priority, 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 2027

Equality, Diversity and Inclusion

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

Human Resources

90 There are no direct implications for Human Resources

Risk Management

91 There are no direct implications for risk management

Rural Communities

92 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)

93 There are no direct implications for Children and Young People

Public Health

94 *There are no direct implications for Public Health*

Climate Change

95 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.

96 The addition of public footpaths to the Definitive Map represents the formal recognition of pedestrian rights, creating more opportunities for leisure and the potential for the improvement/promotion of healthy lifestyles as part of a recognised recreational route.

Access to Information

Contact Officer:	Adele Mayer, Definitive Map Officer adele.mayer@cheshireeast.gov.uk
Appendices:	Appendix 1 – map of claimed route Appendix 2 – Site photos Appendix 3 – archive documents Appendix 4 - user evidence chart
Background Papers:	Case File CN-7- Application to add a public footpath in the parish of Audlem. The background information may be requested by contacting the report author.