

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	17 March 2011
Report of:	Greenspaces Manager
Subject/Title:	Public Inquiry to Determine Definitive Map Modification Order - Poynton with Worth Footpath Nos 92, 93 and 94

1.0 Report Summary

- 1.1 This report is an informative item to brief the Committee on a recent public inquiry and the outcome.

2.0 Recommendation

- 2.1 No decision is required by Committee.

3.0 Reasons for Recommendations

- 3.1 N/A

4.0 Wards Affected

- 4.1 Poynton

5.0 Local Ward Members

- 5.1 Councillor C Beard, Councillor H Murray and Councillor R West

6.0 Policy Implications including - Climate change - Health

- 6.1 Not Applicable

7.0 Financial Implications

- 7.1 Not Applicable

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 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. Under schedule 14 of the WCA, applications can be made to the authority submitting 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. When an order is made it is advertised and may be subject to objections. If objections are not withdrawn the Council cannot then confirm the order itself and must submit the order to the Secretary of State (Planning Inspectorate) for determination. Where a Parish/Town Council objects to an order it is policy for a local public inquiry to be held. The Council must provide a suitable venue and legal support to facilitate an inquiry.

9.0 Risk Management

9.1 None

10.0 Background and Options

- 10.1 An application was made to Cheshire County Council in 2002 for three footpaths to be added to the Definitive Map across land constituting a recreation ground called Brecon Park in Poynton and partly owned by Cheshire East Council (then Macclesfield Borough Council) and partly owned by Poynton Town Council.
- 10.2 The footpaths run between Park Lane in Poynton, Oakland's Road and Public Footpath no. 87 (Lady's Incline). They are shown on the Plan No. MO/536A.
- 10.3 Cheshire County Council considered this application in a report put before the Rights of Way Committee in July 2007. The making of an order was approved and a Modification Order to add these footpaths was made on the 23 October 2007. Poynton with Worth Town Council had indicated their opposition to the addition of the footpaths and submitted a formal objection to the order which was not withdrawn.
- 10.4 The objection was based on the fact that there was no physical evidence of use of the paths across the grassed fields and that bye laws renewed in 2006 implemented opening times to the Park.
- 10.5 Since the order was made Local Government Reorganisation transferred responsibility for seeking a resolution to this order to Cheshire East Council. Consequently a file of the relevant information was submitted to the Planning Inspectorate in May 2010.
- 10.6 The public inquiry was held in Poynton Civic Hall on Tuesday 25 January. The Council were represented by a barrister, Estelle Dehon from chambers in London and the Town Council were represented by Councillor Howard Murray acting in his capacity as a Town Councillor. The appointed Inspector was Helen Slade.
- 10.7 The inquiry heard evidence from the Council's Definitive Map Officer, Clare Hibbert and from nine witnesses and the applicant in support of the order and from Councillor Murray in opposition. The basis of the evidence in support was that under section 31 of the Highways Act 1980, the ways had been used for a full period of 20 years without force, secrecy or permission and without sufficient evidence to indicate that there has been no intention to dedicate during that period. If these criteria are fulfilled then the way is deemed to have been

dedicated. The relevant 20 year period was taken as being from 1982 to 2002 (when the application was made).

- 10.8 The evidence in opposition to the order was that there was not sufficient evidence of use as there was no physical line of tread on the ground to indicate a used line and that the Bye laws restricted the times of entry to the ground. During the course of questioning Councillor Murray accepted that, as far as he was aware, access to Brecon Park had never been subject to closing times. These times had also never been made public on notices or signs around the park. Reference was made to aerial photographs of various ages indicating that there was no visible line of tread recorded.
- 10.9 The inquiry was closed and concluded the same day. The Inspector issued a decision letter on the 4 February in which she confirmed the order. The balance of the argument weighed in favour of the paths having been deemed to have been dedicated. There was insufficient evidence to show a lack of intention on the part of the landowners to dedicate to satisfy the requirements of section 31 of the Highways Act 1980.
- 10.10 The Council has now advertised the confirmation of the order and allowed 42 days for a High Court challenge to be made. This period expires on the 8 April 2011. A challenge can only be made on the basis that the Inspector in reaching her decision has wrongly applied the relevant law.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Clare Hibbert
Designation: Definitive Map Officer
Tel No: 01606 271823
Email: clare.hibbert@cheshireeast.gov.uk