

Highway and Transport Committee

[19th September 2024]

**Wildlife & Countryside Act 1981 –Part III,
Section 53, Application No: CO/8/48:
Application for the Addition of a Public
Footpath from Mill Lane to the Junction
with Footpath No8 Hassall, Hassall.**

Report of: Peter Skates, Acting Executive Director of Places

Report Reference No: HTC/29/24-25

Ward(s) Affected: Hassall.

Purpose of Report

1. This report outlines the investigation into the application was made by Mr Meewezen on the 25 August 2015 to amend the Definitive Map and Statement to add a Public Footpath between Mill Lane (UY1177) to junction with Footpath No.8 Hassall from A-B-C-D-E (**see Appendix 1**).
2. This report includes a discussion of the consultations carried out in respect of the claim, historical documentary 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 Footpath to the Definitive Map and Statement.
3. The work of the Public Rights of Way team contributes to the Corporate Plan aim of “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

Executive Summary

4. The report considers the evidence submitted and researched in the application to add a Public Footpath in the Parish of Hassall. The evidence consists of five historical ordnance survey maps that demonstrate the existence of a physical feature for the part of the claimed route for more than 30 years. The report determines whether on the balance of probabilities the status of Public Footpath has been acquired.

RECOMMENDATIONS

The Highways & Transport Committee is recommended to:

1. Decide that the application to add a footpath as shown between points A-B-C-D-E on Plan No. WCA/043 at **Appendix 1** is refused on the grounds that there is not any robust evidence to overturn the legal presumption that the Definitive Map and Statement are correct.

Background

5. The application that was initially made by Mr Meewezen on the 25 August 2015 to amend the Definitive Map and Statement to add a Public Footpath between Mill Lane (UY1177) to junction with Footpath No.8 Hassall from A-B-C-D-E (**see Appendix 1**). The application consisted of a number of five ordnance survey maps and no user evidence forms.
6. The claimed route commences at point A (Grid Ref: SJ 76490,58527) Mill Lane (UY1177) and then proceeds along track in a southerly direction to point B (Grid Ref: SJ 76497,58445). It then continues in a easterly direction along a track through a farm yard to point C (Grid Ref: SJ 76589, 58408), then continuing in a southerly direction along a field boundary to point D, (Grid Ref: SJ 76629, 58245), continuing in a southerly direction along a field boundary to its termination with junction with Footpath No.8 Hassall, (Grid Ref: SJ 76603,58122).
7. The width of the route from Points A-B-C is approximately 3 metres wide between boundaries and is a physical track like feature for its length. It is bounded by stone wall and boundary hedge and is a clear bounded feature. From Points C-D-E the route continues along a field boundary approximately 2 metres wide (as per guidance).
8. There is only one registered landowner for the entire claimed route.

Legal matters

9. 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:-
10. Section 53(3)(c)(i) is relevant were
“(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.
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 subsist. 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”.
- 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”.
14. 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.

15. 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 was the date of the application being 16th May 2007.

Consultation and Engagement

16. On the 29 February 2024, consultation with all the statutory consultee’s landowners, parish councils and local councillors.
17. Hassall Parish Council was contacted on two occasions and at the time of writing this report failed to respond. There was no response from any of the user groups and none from the landowner.
18. There was only one response from the consultation and that was from Ward Councillor, who stated ‘*I have no objection to the proposal*’.

Historical Evidence

Ordnance Survey Records

19. 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.
20. **Ordnance Survey 1 inch to a mile, 1842.** The map shows Mill Lane but doesn’t show the claimed route.
21. **Ordnance Survey 1st Edition 1:25 inch, c1875.** The map does show the claimed route. It’s shown as double dashed lines A-B, leading to a farm building and part C leading from the farmyard to the adjacent fields. Then annotated as a single dashed line along the field boundary C-D-E.
22. **Ordnance Survey 1:25 inch c1898.** The map does show the claimed route. It’s shown as double dashed lines A-B, leading to a farm building and part C leading from the farmyard to the adjacent fields. Then annotated as a single dashed line along the field boundary C-D-E.
23. **Ordnance Survey 1:25 inch c1910.** The map does show the claimed route. It’s shown as double dashed lines A-B, leading to a farm building

and part C leading from the farmyard to the adjacent fields. Then annotated as a single dashed line along the field boundary C-D-E.

Old County Commercial maps

24. These are small scale maps made 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 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 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 public status, although they may provide supporting evidence of the existence of a route.
25. Burdett map of 1794, the Swire and Hutching map 1830 and the 1831 Bryant map are of very limited use as it doesn't show the claimed route only surrounding major roads.

Tithe Map 1841

26. 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.
27. The Tithe Map, Township: Hassall dated 1841, reference EDT 190/2, does not show the claimed route.

Finance Act Map 1910

30. 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.

31. The valuation book from Cheshire East Archives, reference NVA 2/9, for the Sandbach, Wheelock was reviewed and there was no entry for the claim route.

Deposit Plans

32. These relate to turnpike, railways, and canals, each of which required an Act of Parliament to authorise construction. Detailed plans were submitted showing the effect on the land, highways, and private accesses crossed by the proposed route. The Acts, plans and accompanying books of reference should be considered together.
33. Railway and Canal developments from 1794 onwards it was a requirement for detailed plans of the proposed development to be drawn up and placed on deposit for public consultation. Plans were accompanied by a book of reference which itemised fields, houses, roads etc. on the line of the utility and identified owners and occupiers. These documents are generally regarded as strong evidence however, many proposed lines were never constructed, some proposals could have failed or been rejected because of poor and inaccurate plans.
34. Plan of the Proposed Turnpike Road from Wheelock Wharf in Sandbach and Book of Reference, 1834, ref QDP 115, the claimed route is outside of the area shown on the plan and there is no entry within the Book of Reference for the plan.
35. Section of intended Railway plan from Warrington and Newton, county palatine of Chester 1829, and Book of Reference, ref QDP 88. The claimed route is outside of the area shown on the plan and there is no entry within the Book of Reference for the plan. The railway was never built.
36. The North Staffordshire Railway, Trent & Mersey Navigation: plans and sections, and book of reference, 1890, ref QDP 667. The claimed route is outside of the area shown on the plan and there is no entry within the book of reference for the plan. The railway was never built.
37. Congleton and Crewe Railway: Plan & Book of Reference to plans of lands in Hassall and Wheelock, 1845, ref QDP 217. The plan shows part of the claim route, and where the route is not shown the parcel of land is numbered "23a & 24a". The railway was never built.
38. The Book of Reference entry for numbers "23a & 24a" describes this parcel of land as "**Public footpath, Field and footpath**" this I believe is

reference to an annotated footpath running along the adjacent field boundary and not for the full length of the claimed route.

39. The Railway Clearing House plan dated 1913, does not show the claimed route.

The Definitive Map records.

40. 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.
41. The Definitive Map, Provisional and Draft Map do not show any of the claimed route marked and only existing nearby Public Footpaths.

Aerial Imagery

42. Aerial Imagery from 1971 to 2015 was consulted with to see if there are indicators that the route has been used, reviewing the five aerial photographs Mill Lane and the entrance to Hassall House Farm and through the farmyard, points A-B-C can be clearly seen. Although once the claimed route goes onto the adjacent fields C-D-E the claimed route isn't shown

Strava details

43. Strava data shows that the route has been used, but very infrequent. While the Strava data shows use it doesn't distinguish between the general public or the local residents, making this data source unreliable.

User evidence

44. There are no user evidence forms submitted in support of this application.

Conclusion on Evidence

45. Documentary evidence for the claim was old Ordnance Survey (OS) maps, part show the claimed route has been a physically defined feature back to the 18th century. The OS maps do not alone prove the case that a public footpath exists with only part of the route being shown. The other documents either show part of the route or not at all and does not provide evidence that support the OS maps that a public footpath subsists along the route.
46. The Congleton and Crewe Railway: Plan & Book of Reference to plans of lands in Hassall and Wheelock, 1845, shows part of the route and describes in parcel no. 23a & 24a as 'Public footpath, field and footpath'.

Whilst, this would be good evidence if showing the entire route, it misses a large section in the north.

47. There was no user evidence to consider with this application.
48. While the local councillor had no objections to make to the proposal, the user groups and the landowner made no response to the consultation.
49. The Balance of documentary evidence does not support the case that a public footpath subsists along the route between points A-B-C-D-E as shown on plan No. WCA/043 at **Appendix 1**.

Recommendation

50. It is therefore considered that the requirements of Section 53(3)(c)(i) have not been met and it's recommended that the application is refused on the grounds that there is insufficient evidence to make a Definitive Map Modification Order to record a public footpath between Mill Lane & footpath No.8 Hassall. For the reasons explained in this report has not been satisfied to meet the legal tests and make an Order.

Council Policies

51. The work of the Public Rights of Way team contributes to the Corporate Plan aim of "A thriving and sustainable place", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

Other Options Considered

52. Not applicable – this is a non-executive matter.

Implications and Comments

Monitoring Officer/Legal

53. The legal implications in relation to highways law are set out in the Legal matters section of this report (paragraphs 9-15).

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.

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.

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.

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

54. 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.

There are no financial implications.

Policy

55. The work of the Public Rights of Way team contributes to the Vision of the Corporate Plan of a greener Cheshire East, with the aim of “thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan

Vision – An open, fairer, greener Cheshire East

Aim - 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

56. 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

57. There are no direct implications for Human Resources.

Risk Management

58. There are no direct implications for risk management.

Rural Communities

59. 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)

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

Public Health

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

Climate Change

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

Access to Information	
Contact Officer:	John Lindsay john.lindsay@cheshireeast.gov.uk
Appendices:	Appendix 1 – Plan no: WCA/043 Appendix 2 – Archive List
Background Papers:	File no: CO/8/48