

Highway and Transport Committee

21 November 2024

**Application MA-5-246 for an Order to
add a footpath between Market Street
(A6) and the Community Centre Car
Park, Disley**

Report of: Peter Skates, Acting Executive Director of Place

Report Reference No: HTC/37/24-25

Ward(s) Affected: Disley

Purpose of Report

- 1 This report outlines the consideration of an application, reference MA-5-246 (“the Application”) made in 2010 by the Disley Parish Council under the provisions of schedule 14 of the Wildlife and Countryside Act 1981 (the “1981 Act”). The application seeks to add a public footpath to the Definitive Map and Statement of Public Rights of Way (the “DM”). The route commences on Market Road (A6) leading to the boundary of land owned by Cheshire East Borough Council (“CEC”) and currently used as the Disley Community Centre Car Park. It is shown between points A and B on the report plan WCA/047 (Appendix 1)
2. 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

1. The investigation of the application discovered an existing Creation Agreement (“the Agreement”), dated 18 December 1985, made between the Macclesfield Borough Council and the landowners of the land shown between points A and B on the report plan WCA/047 (Appendix 1), which dedicated a footpath on the claim route. The principle of a creation agreement applies whereby the landowner retains

ownership of the land but the public are given a right to use the way, it can also be called a “dedication” of the land for public use.

2. An agreement creating public rights must also be accepted by the public, which can be demonstrated if the route is in use. The application MA-5-246 is evidence of the public using the route and therefore is proof that the creation has been accepted by the public. The creation and acceptance are considered to be a “legal event”, qualifying under Section 53(3)(a) of the 1981 Act, explained in more detail in paragraphs 8-10 below.
3. There being a duty to determine the Application, this report sets out the background of the application, the effect of the Agreement and the recommended decision on the Application claim.
4. The Agreement on its own does not modify the DM and therefore does not provide conclusive evidence of the creation of a public footpath. The Authority has a duty to make modifications to the DM as appear necessary as a consequence of a “legal event” as soon as practicable after the occurrence of an event. An administrative Modification Order is the way in which an event can be added to the DM. An administrative order is prepared under delegated powers on an annual basis.

RECOMMENDATIONS

The Highways & Transport Committee is recommended to:

1. Decide to refuse the Application MA-5-246 on the basis that public rights are already recognised over the route shown between points A and B on plan WCA/047
2. Decide that a “Legal Event” Modification Order be made under section 53 (2) (a) of the 1981 Act

Background

5. The Application is supported by a map showing the route claimed and 12 user evidence forms and having been duly registered the Application must be determined. The investigation includes a look at the evidence that has been examined and is referred to below and listed at Appendix 1.
6. The application route runs from between numbers 4 and 6 Market Street, Disley. From the street, the footpath runs in a south easterly direction over a sealed surface sloping south with a handrail on the west side. The path runs at a width between approximately 2.6 and 1.4

metres to the junction of the land held by the CEC and currently used as a community centre car park with permissive access.

7. There is a continuation of the application footpath from the boundary of the car park to the community centre. This runs over land held by CEC and under which runs a brook. The section of path from the junction with the footpath to the car parking area is facilitated by a sealed surface path, and railings on both sides. It is lit by street lighting and a notice refers to the regulations for the car park.

Legal Matters

8. 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.
9. Such events comprise of the coming into operation of any enactment or instrument or any other event, whereby: “a new right of way has been created 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.”
10. A modification order has to be made and this is provided for within Section 53(2)(a) of the 1981 Act. The order would modify the DM by the events that have taken place. This is known as a “Legal Event Modification Order” (“LEMO”). A LEMO takes immediate effect because the legal event has already completed a process of public consultation. The order is purely administrative being only the means by which the DM is modified.
11. A Local Authority has the power under s25 of the Highways Act 1980 to enter into a creation agreement with any person having the capacity to dedicate a footpath, bridleway or restricted byway in its area. An Authority must consult any other authority in its area but does not need to consult the parish council. The 1980 Act requires the authority to have regards to the needs of agriculture and forestry and to conserving flora, fauna, geographical and physiographical features. The agreement may provide for compensation and may provide for limitations and conditions. Any provisions are dealt with at the time of signing the agreement.
12. The Authority must ensure that the path is created physically and must give notice in at least one local newspaper. The path automatically becomes maintainable at public expense. With regard to the Disley Agreement, the footpath has been made up and has been in regular use.

13. With regard to the status of the connecting land, in the ownership of CEC, there is public entitlement to use the land crossed from the footpath to the area where cars are parked, amounting to implied license. There appears to be no contradictory evidence that the public would use this path “by right” and would not therefore qualify for a statutory path “as of right”. This path did not form part of the Application, but a question has been raised during consultation about the status of the connecting path which needed an explanation.
14. The Agreement describes the path that is to be created. At the date on which the Agreement was entered into on 18 December 1985, the land adjacent to 6 Market Street was in shared ownership. The owners entered into an agreement with the Macclesfield Borough Council under powers of section 25 of the Highways Act 1980 for a dedication of land in order to create a public footpath.
15. The making up of the path with flags and the ongoing maintenance was covenanted to be carried out by the Council.

Photographs of the Location

16. A site visit was made in September 2024 and images from that visit can be found at Appendix 2.

Consultation and Engagement

17. The Disley Parish Council was consulted on the provision provided for in the Agreement. They subsequently raised a query over the connecting path from the junction with the footpath and the car park which status is discussed at paragraph 13 above. As the Application is not necessary to prove public rights established by the Agreement, a general consultation was not required.

Reasons for Recommendation

18. 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 (2) 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.
19. The Council discovered the Agreement which resolved the issue of the status of the path claimed in the Application to be a public footpath. An administrative procedure will add the footpath to the DM and therefore prove conclusively the rights of the public. There is no further requirement to investigate the application. The Application, however, has to be determined as required by the regulations.

20. 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.

Other Options Considered

21. If the authority was to do nothing it would not comply with Section 53 of the Wildlife and Countryside Act 1981, which requires the Council to keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as required

Implications and Comments

Monitoring Officer/Legal

22. The legal implications in relation to highways law are set out in the Legal matters section of this report (paragraph 8-14).
23. 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.
24. 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 may hold a Public Inquiry before deciding upon whether or not to confirm the Modification Order.
25. 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.
26. 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.

27. Once an Order is made it may be the subject of objections (not the administrative order referred to above). 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

28. 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

29. 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 “a 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 and Diversity and Inclusion

30. 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

31. There are no direct implications for Human Resources

Risk Management

32. There are no direct implications for risk Management

Rural Communities

33. There are no direct implications for Rural Communities

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

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

Public Health

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

Climate Change

36. 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:	Adele Mayer Adele.mayer@cheshireeast.gov.uk
Appendices:	Plan No. WCA/047 Images from site visit September 2024
Background Papers:	File MA-5-246 Disley Ordnance Survey Map SJ 98SE 1954 6":1mile Memorandum of Agreement between Macclesfield Borough Council and the landowners 18 December 1985