

## **Highways and Transport Committee**

**18<sup>th</sup> September 2025**

**DMMO Application MA-5-259 - For the  
addition of two footpaths between  
Bexton Lane and Knutsford Footpath 6  
and Bexton Footpath 1**

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**Report of: Philip Cresswell, Executive Director of Place**

**Report Reference No: HTC/16/25-26 – DLT BH 049497**

**Wards Affected: Knutsford and Chelford**

### **For Decision**

#### **Purpose of Report**

1. Under Section 53 of the Wildlife and Countryside Act 1981 (“the 1981 Act”), Cheshire East Council has a statutory duty as the Surveying Authority to keep the Definitive Map (“the DM”) and Statement of Public Rights of Way for Cheshire East Borough Council (“the Council”) under continuous review. Section 53 (3) (c) (i) permits the authority to act on the “discovery of evidence” that suggests the map needs to be amended. The authority must investigate and determine that evidence and decide whether or not to make a Definitive Map Modification Order (“DMMO”).
2. The evidence in support of the application may consist of documentary/historical records, user evidence or a mixture of both. All evidence must be evaluated and weighed against the legal tests, and a conclusion reached on the ‘balance of probabilities’ as to whether public rights subsist. Other issues, such as safety, security, suitability, desirability or the impact on property or the environment, are not relevant to the legal test. The appendices set out the context for understanding the documents that have been consulted.

## Executive Summary

3. An application was made in September 2020 for an order to add two footpaths to the DM shown between points A-B-C and B-D on Plan WCA/MO048A (“the Plan”) (Appendix 1). This report assesses the submitted evidence and makes a recommendation in accordance with the duty set out under Section 53 (2) (b) of the 1981 Act, following the occurrence of an event under Section 53(3)(c)(i), namely the discovery of evidence that a public footpath subsists. This is set out in detail at Appendix 2.
4. The evidence in support of the application consisted primarily of user evidence forms from 15 people, 14 of which provided relevant information. Route A-B-C on the Plan is alleged to have been used by the public within periods from 1982-2002 and also a period from 1987-2007. This could meet the test for a reasonable allegation of public rights under Section 53 (3)(c)(i). However, the evidence for route B-D over the period 1987-2007 is insufficient to meet that threshold.
5. The investigation also considered maps and plans from the nineteenth century, the records of the DM and a paths leaflet submitted by the applicant. While these documents were not conclusive in establishing additional rights of way, they do suggest that there had been a longstanding reputation of a public path crossing prior to the construction of the rail line.
6. The evidence was assessed against the statutory tests set out under the 1981 Act and the Highways Act 1980 (“the 1980 Act”). Submissions from landowners relate to a later period than the claimed use. Nevertheless, based on the user evidence covering a twenty-year period prior to 2002 and 2007, it is considered on the balance of probabilities, that a public footpath subsists between points A-B-C on the Plan. The evidence relating to route B-D is insufficient to support a similar finding. There is no clear basis to suggest that public rights have arisen over that section of the route.

### RECOMMENDATIONS

The Highways & Transport Committee is recommended to:

1. Approve a Definitive Map Modification Order under Section 53(2)(b) on the basis of evidence under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, for the route **A to B to C** on Plan WCA/MO048A.
2. Refuse to make a Definitive Map Modification Order for the route **B to D** on Plan WCA/MO048A
3. Approve that public notice of the making of the Order be given and in the event of there being no objections within the period specified, that the Order be

confirmed in the exercise of the powers conferred on the Council by the said Act.

4. Note that in the event of objections being received, Cheshire East Borough Council will be responsible for the conduct of any Hearing or Public Inquiry relating to the Order.

## Background

7. The application route commences from Bexton Lane, at the junction between the adopted highway and the commencement of Public Footpath 2 Bexton (Point A on the Plan at OSGR SJ7469 7720). From there, the claimed route runs in a northwest direction to a railway bridge. After crossing the bridge, the application plan shows that the route splits into two from this point (Point B on the Plan at OSGR SJ 7445 7751). One route proceeds in a north westerly direction at the east side of a field boundary and terminates on Knutsford Public Footpath 6 (Point C on the Plan at OSGR SJ7436 7763). The second route runs in a south westerly direction alongside a field edge on the west side of the rail line towards the M6 and terminates on Bexton Public Footpath 1 (Point D on the Plan at OSGR SJ7390 7684).
8. From Bexton Lane the route runs over an unmetalled surface with cobbles for approximately 356 metres along the side of an agricultural field to a railway bridge. The railway bridge is approximately 30m in length and has been recently surfaced, graffiti has been drawn on the parapets. Running towards Knutsford Footpath 6 for 194m the path is a trodden earth path, as is the second path running for 830m towards the junction with Bexton Footpath 1. After recent works on the railway bridge carried out by Network Rail, a field gate was fitted across the southern end of the bridge. The gate was initially locked but has since been unlocked.
9. The evidence from documents and photographs has been considered and found inconclusive of a public footpath(s) (Appendix 3).
10. The user evidence supports a case to satisfy the test under S31(1) of the Highways Act 1980 for the route from A-B-C across the railway bridge (Appendix 4). The evidence to support the case for the claim B - D along the railway line was insufficient to satisfy the test. Use of the second path appeared to be occasional and did not demonstrate sustained use over the twenty-year period.

## **Consultation and Engagement**

11. Consultations were sent out in February 2025 to the Toft and Bexton with Plumley Parish Council and the Knutsford Town Council as well as the Ward Councillors for Chelford Ward and Knutsford Ward, as the application route crosses the administrative boundaries of these parish and town councils and the Ward boundaries. The two affected landowners and local user groups were also consulted. There were no comments submitted by the user groups.
12. The Toft and Bexton with Plumley Parish Council wrote to say that they had received a presentation in 2021 on behalf of the tenant farmer against the application, and they had agreed to support the representation. They were asked about the parish paths map from 2000/2002 but have said they could not find any records. Knutsford Town Council wrote to say that they had no evidence in relation to this application. The Ward Councillors Dean and Gardiner commented that they did not have information on the paths claimed and had no objections.
13. The land affected by the claim forms part of the Tabley Estate in the ownership of Landowner 1. The Estate changed ownership in 2007. Evidence was shared with the agents acting for the current estate owners. A representation has been received which is a statement of their belief that the evidence does not meet the tests. The evidence submitted in rebuttal of the claim is a statement from the tenant farmer who manages the land on an unfettered lease. The response also claims that the S31(6) deposit made in 2007 under the 1980 Act was the complete deposit. There is no indication that an accompanying statutory declaration (Part 2) was submitted before the land was sold; making it ineffective.
14. Landowner 1 states that there was very little use of the routes made before the “covid period”. They report that the tenant farmer verbally challenged walkers although this is not corroborated by the witness evidence.
15. Landowner 2 has not responded.

## **Reasons for Recommendations**

16. Where uninterrupted use “as of right” over a twenty-year period can be shown, Section 31(1) of the 1980 Act provides that a public right of way has been dedicated, unless there is sufficient evidence to show the landowner did not intend to dedicate the route as a public right of way. The date when the path(s) seem to have been brought into question is 2002 when the publication of the application route A to C on a parish map leaflet was questioned and the error was acknowledged and

brought to the attention of the Parish Council; bringing into question the path in order to satisfy the provision in S31 of the 1980 Act of a period between 1982-2002.

17. The evidence from users supports a case to satisfy the test under S31 of the 1980 Act for the route from A-B-C across the railway bridge that there is a reasonable allegation of public rights. The evidence to support the case for the claim B-D along the railway line is considered insufficient to satisfy the test. The evidence for use of this path was very occasional and does not appear to have been sustained for the twenty-year period.

### **Other Options Considered**

18. 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*

19. The legal implications in relation to highways law are set out in the Legal matters section of this report (Appendix 2).

#### *Section 151 Officer/Finance*

20. 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 associated costs would be borne within existing Public Rights of Way revenue budgets. The maintenance of the Public Right of Way, if added to the Definitive Map and Statement, would, by reference to post-1959 legislation, not be maintainable at the public expense.

#### *Human Resources*

21. There are no direct implications for Human Resources.

#### *Risk Management*

22. There are no direct implications for risk management

#### *Impact on other Committees*

23. There are no direct implications on other Committees

## *Policy*

24. The work of the Public Rights of Way team contributes to the Corporate Plan vision of Enabling prosperity and wellbeing for all in Cheshire East, with the commitments of Unlocking prosperity for all and Improving health and wellbeing, and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

### **Corporate Plan 2025-2029**

**Vision:** Enabling prosperity and wellbeing for all in Cheshire East

#### **Commitments –**

- Unlocking prosperity for all
- Improving health & wellbeing

## *Equality, Diversity and Inclusion*

25. 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.

## *Other Implications*

26. *Rural Communities* - 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)-*  
There are no direct implications for Children and Young People.

### *Public Health*

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

### *Climate Change*

The work of Public Rights of Way team encourages a reduction in carbon emissions and increased environmental sustainability by reducing energy consumption and promoting healthy lifestyles through active travel and leisure.

Name of Consultee	Post held	Date sent	Date returned
<i>Statutory Officer (or deputy) :</i>			
Ashley Hughes	S151 Officer	09/09/25	10/09/25
Kevin O'Keefe	Interim Director of Law & Governance (Monitoring Officer)	09/09/25	09/09/25
<i>Legal and Finance</i>			
Bethany Hill	Solicitor	28/07/25	31/07/25
Wendy Broadhurst	Principal Accountant (Lead Business Partner)	28/7/25	28/7/25
<i>Other Consultees:</i>			
<i>Executive Directors/Directors</i>	At DLT		14/08/2025

<b>Access to Information</b>	
Contact Officer:	Adele Mayer <a href="mailto:adele.mayer@cheshireeast.gov.uk">adele.mayer@cheshireeast.gov.uk</a>
Appendices:	Appendix 1 Plan Appendix 2 Legal Background Appendix 3 Documentary list and background Appendix 4 User evidence
Background Papers:	The background papers and files relating to this report can be inspected by contacting the report writer.