

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 12 December 2011
Report of: Greenspaces Manager
Subject/Title: Public Inquiry to Determine Definitive Map Modification Order
Upgrading of Public Footpaths Nos 29, 15 (part), 14, 10
(part), 9 (part) and 27 Parish of Chorley & Nos 40 (part) and
42 Parish of Wilmslow to Bridleway

1.0 Report Summary

1.1 This report is an informative item to brief members 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 Wilmslow West & Chorley; and Mobberley.

5.0 Local Ward Members

5.1 Councillors G Barton and W Fitzgerald
Councillor J Macrae.

6.0 Policy Implications including – Carbon Reduction - 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 If objections are not withdrawn the Council cannot then confirm the order itself and must submit the order to the Secretary of State (Planning Inspectorate) for determination.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 Two applications were made to Cheshire County Council in 2008 to amend the Definitive Map and Statement by upgrading a number of public footpaths to public bridleways. The first application (application no. 1) concerned a route from Knutsford Road to Moor Lane. The second application (application no.2) concerned footpath no. 42 in the parish of Wilmslow, known as 'Filter Bed Lane' this footpath runs between Upcast Lane and Clay Lane. They are shown on the Plan No. MO/001.
- 10.2 Cheshire East Borough Council considered this application in a report put before the Rights of Way Committee in March 2010. The making of an order was approved with the exception of the part of Clay Lane marked H-F on Plan No. MO/001. A Modification Order to upgrade the remainder of the route was made on the 29 April 2010. Eight formal objections (14 people) were submitted to the order which were not withdrawn.
- 10.3 The objections were based on various reasons; in summary the main points were, the route is too narrow; concern over the conflict between walkers and horses; surfacing issues; some of the use has been 'permissive'; there have been notices stating the route is a footpath; the user evidence is exaggerated; some landowners stated to have challenged horse riders and question the period and frequency of use.
- 10.4 As the objections were not withdrawn consequently a file of the relevant information was submitted to the Planning Inspectorate in January 2011.
- 10.5 A public inquiry was held on 6 and 7 September 2011 at the Wilmslow Parish Hall, which continued on 8 September 2011 at the Chorley Village Hall. The Council were represented by a barrister, Estelle Dehon from chambers in London and the objectors were represented by Mr Nigel Farthing Solicitor of Birketts LLP. The appointed Inspector was Mark Yates.
- 10.6 The inquiry heard evidence from the Council's Definitive Map Officer - Jennifer Tench, and from fourteen witnesses in support of the order and from

six in opposition. The basis of the evidence in support was that under section 31 of the Highways Act 1980, the ways had been used on horseback 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 ways are deemed to have been dedicated as bridleways. The relevant 20 year period was taken as being from 1986 to 2006 (when a locked gate was erected preventing use on horseback).

- 10.7 The evidence in opposition to the order was that there was not sufficient evidence of use on horseback during the relevant period and that landowners Mr Morris and Mr Clayton had challenged horse riders. The evidence of the users indicated that most of them were challenged or were aware of horse riders being challenged, in the immediate locality of Lea Farm. These challenges were the reason why the section of route H-F on Plan No. MO/001 was not included in the order.
- 10.8 Mr Morris claimed to own the land between points G and H on the order plan (Plan No. WCA/002), however no proof of title in relation to any of the land crossed by the order route was presented at the inquiry. The users at the inquiry were unaware that Mr Morris owned land crossed by the order route. There was no evidence to suggest that challenges were issued by, or on behalf of, Mr Morris between points G and H.
- 10.9 The inquiry was closed and concluded on 8 September 2011. The Inspector issued a decision letter on the 26 October 2011 in which he confirmed the order. The balance of the argument weighed in favour of the footpaths having been deemed to have been dedicated as bridleways. There was insufficient evidence to show a lack of intention, by any of the landowners to dedicate the route as a bridleway, 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 22 December 2011. A challenge can only be made on the basis that the Inspector in reaching his 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:

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