

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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**Date of Meeting:** 16<sup>th</sup> March 2015  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Public Inquiry to Determine Definitive Map Modification Order  
Addition of Public Footpath No 15, Parish of Wybunbury  
Modification Order 2013

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### **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 Wybunbury.

### **5.0 Local Ward Members**

5.1 Councillors J Clowes.

### **6.0 Policy Implications**

6.1 Not Applicable

### **7.0 Financial Implications**

7.1 Not Applicable

### **8.0 Legal Implications**

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. Section 53 (3) (c) allows for an authority to act on the discovery of 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.

## **9.0 Risk Management**

9.1 None

## **10.0 Background and Options**

- 10.1 An application was made to Cheshire County Council in 2007 to amend the Definitive Map and Statement by adding a Public Footpath in the parish of Wybunbury. The claimed path formed a link between footpath no.4 at Kiln Lane and footpath no.11. As shown between points A-F-H on plan no. WCA/005A.
- 10.2 Cheshire East Borough Council considered this application in a report put before the Rights of Way Committee on 17<sup>th</sup> December 2012. The making of an order was approved as it was considered the user evidence was sufficient to support the existence of a public footpath. A Modification Order was made on the 21<sup>st</sup> February 2013 and advertised on 4<sup>th</sup> April 2013.
- 10.3 Nine formal objections were submitted to the order, one of which was later withdrawn. The objections were not challenging the duration or frequency of use by the public, but were mostly concerns over the recorded width of one section of the footpath. Some objectors also referred to an addition path, which went diagonally across the field owned by Natural England (from point F on the Order plan in a north-easterly direction); those objectors claimed the Order route should follow this line rather than along the field edge.
- 10.4 As the remaining eight objections were not withdrawn consequently a file of the relevant information was submitted to the Planning Inspectorate in March 2014.
- 10.5 A public inquiry was held on 4<sup>th</sup> November 2014 at Wybunbury Village Hall. Of the eight objectors only Mrs B Colbert and her son Mr P Colbert were present, representing themselves. Cheshire East Council was represented by Miss Ruth Stockley of Counsel (Kings Chambers, Manchester). The appointed Inspector was Mr Alan Beckett.
- 10.6 The inquiry heard evidence from the Council's Definitive Map Officer, Jennifer Tench and from 6 witnesses, all local people who had used the route. It was the Council's approach that the evidence was sufficient to justify making an Order to record the claimed route as a public footpath. The basis of the evidence in support of the Order route was that of user evidence. It was the Council's case that under section 31 of the Highways Act 1980, the way had been used on foot for a full period of 20 years without force, secrecy or permission and without sufficient evidence to indicate that there had been no intention to dedicate during that period. If these criteria are fulfilled then the way is deemed to have been dedicated as a public footpath.

- 10.7 At the inquiry two dates were discussed as possible dates when the status of the route was 'brought into question'; these being 31<sup>st</sup> December 1990 or 2007. The relevant 20 year period to be considered is taken back from this date. The earlier date was considered as there had been a reference in the diary of the late Mr Colbert. For that date he noted "repaired barbed wire closed footpath all day". The later date of 2007 was when scaffolding was erected around the barn which blocked the access along the footpath; there were also notices at the ends of the path which stated 'footpath closed'. It was this action that prompted the application to be made to record the footpath in the Definitive Map and Statement.
- 10.8 The inquiry was closed and concluded on 4<sup>th</sup> November 2014 following an accompanied site visit. The Inspector issued a decision letter on the 26<sup>th</sup> November 2014 (Appendix 1) in which he confirmed the order with one modification. That was to record a stile at SJ 6991 4995, this has been inserted into Part II of the Schedule under the heading 'Limitations or Conditions of Use'. The Inspector concluded that he was satisfied that the evidence was sufficient to show, on the balance of probabilities that a public footpath subsists over the Order route.
- 10.9 With regard to the user evidence the Inspector considered the two possible dates as the 'bringing into question'. He concluded that because the diaries did not give an indication as to the duration of the closures and none of the witnesses recalled the path being closed, other than when the scaffolding was erected; the closures referred to in the diary entries had little effect upon the public. Therefore he did not consider them as events which brought the right to use the path into question. In contrast the prolonged closure by the physical obstruction of the path with scaffolding and notices in 2007 did have an effect on the public, as it prompted the application to be made. Therefore the Inspector considered the relevant twenty year period to be 1987-2007.
- 10.10 For a presumed dedication of the order route to have occurred the use by the public, during the relevant period, must be shown to have been actually enjoyed as of right, without interruption, and to have continued throughout the full twenty years. The Inspector concluded that he was satisfied that there was sufficient use of the Order route, during the relevant period, to raise a presumption that the path had been dedicated as a public right of way.
- 10.11 In relation to the landowners' intention, the objectors acknowledged that they had not taken any steps to prevent the public from walking along the path or to communicate to the public that there was no intention on their part to dedicate a public right of way. Therefore the Inspector concluded there was insufficient evidence of a lack of intention to dedicate and the landowners had not rebutted the presumed dedication raised by the user evidence.
- 10.12 The Inspector considered the objection in relation to the stated width of 2.3 metres. This was for the section of path between the edge of the barn, on its eastern side, and point F. Officers had derived the proposed width from a measurement taken on site between a holly tree on the southern side of the path and a Sycamore on the northern side. In addition Ordnance Survey

mapping also showed the width between the boundaries to be 2.3 metres. Mrs Colbert contended that for this section the width of the path should be recorded as being between 1.3 metres and the maximum width suggested by the evidence.

- 10.13 Mrs Colbert stated that some wooden buildings, which had formed part of the southern boundary of the path, had previously narrowed the route. She had these buildings demolished in 1988, and submitted photographs showing the demolition. The Inspector concluded that even if the buildings had formed part of the southern boundary, the Ordnance Survey map evidence showed the path to be a uniform width and that the buildings did not unduly constrain the width. The photographs submitted did not assist in determining the width as they were taken from within the garden and did not show the path.
- 10.14 It was also submitted by the objectors that where the path dog-legged around the eastern end of the barn the path would not have been 2.3 metres as a field gate had stood in the centre of the end of the barn to control the movement of livestock. On the site visit the Inspector measured the width from the centre of the barn, where the gate had stood, to the field boundary to the north and he found this to be 3.6 metres. From this the Inspector concludes there would have been sufficient width for the path to have been 2.3 metres by the end of the barn.
- 10.15 Mrs Colbert also stated at the inquiry that in 1988 she erected a wicket gate to the east of the gable end of the barn to prevent her geese from making their way along the footpath. This gate was 0.90 metres in width and was said to constrain the width. The Inspector concludes that this may well have been the case but as the gate was erected after the commencement of the relevant 20 year period (1987-2007) it has no effect upon the width of the path that would have been available at the start of that period. At the site visit the Inspector also measured the width of the path at this point and found it to be 3.4 metres. Again he concludes that there would have been sufficient width for the path to have been 2.3 metres at this point.
- 10.16 Having considered the evidence in relation to the width, the Inspector concludes that he does not consider it necessary to propose any modification to the width to be recorded for footpath no.15 Wybunbury.
- 10.17 The other matter for consideration by the Inspector was the use by the public of an alternative path from point F to Wybunbury Moss, which was raised by some objectors. The Inspector concludes that although there was some evidence of such use presented at the Inquiry, he did not consider it to be sufficient to warrant the modification of the order to include the alternative path.
- 10.18 The Inspectors overall conclusion was that the evidence is sufficient to show that, on a balance of probabilities a public footpath subsists over the Order route. He confirmed the Order with one modification, referred to in paragraph 10.8 above.

10.19 The Council has now advertised the confirmation of the order, 42 days was allowed for a High Court challenge to be made. 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:

Name: Jennifer Tench

Designation: Definitive Map Officer

Tel No: 01270 686158

Email: [jennifer.tench@cheshireeast.gov.uk](mailto:jennifer.tench@cheshireeast.gov.uk)