

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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| <b>Date of Meeting:</b> | 13 <sup>th</sup> June 2016  |
| <b>Report of:</b>       | Public Rights of Way Manager  |
| <b>Subject/Title:</b>   | Wildlife and Countryside Act– Part III, Section 53<br>Application to Upgrade Public Footpaths Nos. 8 Marbury<br>cum Quoisley and no. 3 Wirswall to Bridleways |

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### 1.0 Report Summary

- 1.1 The report outlines the investigation of an application made by Miss B. Hardern and Mrs A. Williams to amend the Definitive Map and Statement by upgrading footpaths in Marbury cum Quoisley and Wirswall to bridleways. This includes a discussion of the consultations carried out in respect of the claim, the historical 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 upgrade these footpaths to bridleways.

### 2.0 Recommendation

- 2.1 An Order be made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by upgrading Public Footpaths nos. 8 Marbury cum Quoisley and 3, Wirswall to bridleway along the route shown between points A-B-C-D-E on plan number WCA/012.
- 2.2 Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Acts.
- 2.3 In the event of objections to the Orders being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

### 3.0 Reasons for Recommendations

- 3.1 The evidence in support of this claim must show, on the balance of probabilities that public bridleway rights subsist along the existing public footpaths. It is considered that there is sufficient historical evidence to support the existence of public bridleway rights along the route A-B-C-D-E on plan no. WCA/012. It is considered that the requirements of Section 53(3)(c)(ii) have been met in relation to bridleway rights and it is recommended that the Definitive Map and Statement should be modified to show the route A-B-C-D-E as a Public Bridleway.

## **4.0 Wards Affected**

4.1 Wrenbury

## **5.0 Local Ward Members**

5.1 Councillor Stan Davies

## **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.

8.2 Upon determination of this application, the authority must serve notice on the applicant to inform them of the decision. Under Schedule 14 of the WCA, if the authority decides not to make an order, the applicant may, at any time within 28 days after service of the notice, appeal against the decision on the Secretary of State and the authority. The Secretary of State will then consider the application to determine whether an order should be made and may give the authority directions in relation to the same.

8.3 The legal implications are contained within the report.

## **9.0 Risk Management**

9.1 None

## **10.0 Background and Options**

10.1 *Introduction*

10.1.1 This application was registered in May 2005 and made by Miss B. Hardern and Mrs A. Williams to modify the Definitive Map and Statement by upgrading two footpaths to bridleways along the route A-B-C-D-E (on plan no.WCA/012) in the parishes of Marbury cum Quoisley and Wirswall. The route applied for is currently recorded as public footpath no. 8, Marbury between points A-B-C-D; and public footpath no. 3, Wirswall between points D-E.

10.1.2 The applicant supplied a considerable amount of historical evidence with the application. Included were a diversion order from the 1812 Quarter Session files; extracts from the Marbury and Wirswall Tithe Maps; the Finance Act; the Pre- Definitive Map 'Green Book'; and the 1950's Parish Survey. There is no witness evidence in this case; the application was made solely on the historical evidence discovered.

## 10.2 *Description of the Claimed Bridleway.*

10.2.1 The claimed route comprises of Marbury cum Quoisley footpath no. 8 and Wirswall footpath no. 3. It runs from Hollins Lane Marbury, road no. C532, (point A on plan no. WCA/012) just to the south of St. Michael's Church, in a generally south-westerly direction. Part of the route between points A and B runs adjacent to the edge of the lake known as 'Big Mere'. Between points B and C the route runs along a field edge; it then crosses two fields to the parish boundary with Wirswall at point D. Footpath no.3 Wirswall is a continuation of the route, from point D it continues in a south-westerly direction to point E where it meets Wirswall Road (road no. UX768) near to Wicksted Hall.

10.2.2 There are currently a number of stiles and field gates along the route. Part of the claimed route, between points A and C, forms part of the long distance route The South Cheshire Way.

## 10.3 *The Main Issues*

10.3.1 Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Cheshire East Borough 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.

10.3.2 The event relevant to this application is section 53(3)(c)(ii), this requires modification of the status of a right of way in the Map and Statement. The relevant section is quoted below:

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;"

10.3.3 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 alleged 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.

10.3.4 In this case the application is based solely on historical evidence dating from 1812 to 1954; there is no evidence of any use on horseback or bicycle.

#### 10.4 *Consultations*

10.4.1 When the application was submitted in 2005 notice was served on four landowners/occupiers, Mr & Mrs Paton-Smith of Marbury Hall; Mr Maddocks of Deemster Manor Farm; the occupier of The Knowles and the owner/occupier of Wicksted Hall. Subsequently two letters were received in May 2005, one from Major W.R. Paton-Smith stating he would not be in a position to agree with the proposal for two reasons; because two of the fields were used for the grazing of thoroughbred racehorses and also because the Prince Albert Angling Club used the path bordering the mere and he understood there to be a health and safety risk. The other letter received was from J.P Maddocks of Deemster Manor, Wirswall. The letter states they object to the application as the route is very popular with walkers and they see no benefit to them having the path churned with horses hooves. They state they have owned the land since 1986 and the route has been marked as a footpath since that time. They also mention they have stock in the fields which would be affected.

10.4.2 When investigations began into the application consultation letters were sent to the local Councillor, Marbury and District Parish Council and landowners, user groups and statutory consultees in January 2016.

10.4.3 No response was received from Councillor Davies, the local member. Marbury and District Parish Council have responded and state that the public footpaths should remain as at present and not revert back to the previous status of horsecart track/bridleway. They state that Parish Council minutes supported this view when rights of way surveys had taken place. They further comment that *'when the character of the landscape is viewed and considered the proposal is obviously not viable'*.

10.4.4 Electricity North West responded to say that the application has no impact on the electricity distribution system infrastructure or other ENW assets.

10.4.5 The landowners of the southern section of the claimed route between points D and E on plan no. WCA/12 are Sheila Maddocks and Edward Maddocks. Officers had a telephone conversation with Mrs Maddocks, she did not object to the application, she did however raise a number of concerns which she followed up with a letter dated 15<sup>th</sup> February 2016. Mrs Maddocks' states that there is stock in the field all year round, her main concerns are if gates are left open the stock would escape onto the road or become mixed with the neighbours stock in the next field. Mrs Maddocks' questions what type of gates are proposed as she states the current ones are unsuitable; she also insists that the three stiles remain in place for walkers to use. She also mentions that on the plan it appears that the claimed bridleway is on a different alignment to the current footpath. One further concern is that as the claimed bridleway goes across the middle of one of the fields it will be difficult to keep to the path and the ground will become trampled especially in wet weather. Officers have responded and explained that a decision on this

application will be made on the historical evidence. Her concerns regarding the furniture and surface of the route would be assessed by Officers if the route were upgraded to a bridleway. It is also explained that the route of the claimed bridleway is on the legal line of the current public footpath.

- 10.4.6 The landowners for the northern part of the claimed bridleway, between points A and D on plan no.WCA/012 are Mr and Mrs Paton-Smith of Marbury Hall. Officers met with Mr Harry Paton-Smith, his wife Sophie and mother Caroline Paton-Smith at their request in January 2016. We walked the claimed route from point A to almost to point C on plan WCA/012. The landowners wanted to point out the physical characteristics of the route and the condition of the land; they believe it is unsuitable and, in parts, dangerous for use as a bridleway. It was explained that a decision on the application would need to be made on the evidence and issues of safety and suitability could not be taken into account.
- 10.4.7 Mr and Mrs Paton-Smith have also submitted written comments on the application. They refer to the first field at the northern end of the route which is used for the annual village fete, 'Merry Days'. They state the money raised from this is crucial in keeping the vicarage and the church going, they claim if the field is used by horses it will be churned up and could lead to a cancellation of the event. The field is also used for other planned events. They also state after several incidents of theft the church insurance is very high, it is part of the insurance that the field has a secure and locked gate, without this the cost of insurance would likely go up again.
- 10.4.8 Further Mr and Mrs Paton-Smith comment that members of the fishing club, who use the mere, would not feel safe with horses going by, they fear the consequences if a horse was spooked and claim that horses would ruin the path. The landowners refer to the field to the south of Big Mere as 'the yield', this field is very wet as the water collects there from the surrounding fields, they describe the conditions as 'lethal' and are extremely worried that a horse would sink and become stuck. They describe how their shepherdess has been stuck on three occasions in the last year when riding her quadbike across the field. Near to point C on plan no. WCA/012 there is a track which is used as access to their tenant's residence The Knowles; the landowners claim this section is also very wet and their tenant would struggle if it was churned up. The final field to the parish boundary is referred to as the 'Wirswall field'; this is where the landowners' shepherdess has yews and lambs. They state she has had multiple incidents of loose dogs chasing the yews; they are concerned that this problem would increase if the route were a bridleway. Finally they state that there are thoroughbred horses present on site and use of the route as a bridleway would pose a serious risk to them.
- 10.4.9 Officers have received comments from the Secretary of the Prince Albert Angling Society. He states that they have had the fishing rights on Marbury Mere for over 30 years; during this time there has never been a right of way for horses along the side of the Mere nor would they want to see such rights if at all possible. He does note that safety and security matters are not relevant to the decision but states it is difficult to comprehend how such old documents

can form the basis of a decision over and above current standards of environmental issues and safety. He goes on to say that horses on the path adjacent to the Mere are an accident waiting to happen as horses are bound to startle when they meet children, dogs and walkers.

10.4.10 A letter has been received from the Secretary of the Friends of Marbury Church Trust which expresses their deep concern regarding the application to upgrade the existing footpaths to a bridleway. They believe a bridleway would result in the ground being churned up and making it unsuitable for walkers. As mentioned above, they also refer to the annual two day event 'Marbury Merry Days' which raises vital money for the church. They state that the presence of a bridleway with the frequent passage of horses and riders would severely restrict, if not prevent the event taking place. They list all the events and activities which take place and claim that they are all capable of causing horses to panic and bolt. Also the main vehicle access to the church field is the same access proposed for the bridleway. They believe the bridleway would make the continued running of the Marbury Merry Days virtually impossible and urge the application be refused.

10.4.11 A letter has also been received from the church warden of St Michael & All Angels Church, Marbury. He raises concerns regarding the security of the church, stating that in recent years there have been incidents of theft of lead from the church roof. He states that the thieves gained access to the church through a gate leading on to the road from the Church Field, the gate is now kept locked. (Point A on plan no.WCA/012) He believes that open access from the road on to the field through the bridleway entrance would make it easier for thieves to target the church again. On behalf of the Parochial Church Council he requests that the application be refused. Councillors are reminded that issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision, see paragraph 10.3.3 above.

## 10.5 *Investigation of the Claim*

10.5.1 A detailed investigation of the evidence submitted with the application has been undertaken, together with additional research. The application was made on the basis of historical evidence. Copies of the following documents were supplied by the applicant; Marbury and Wirswall Tithe Maps and Apportionments (1837-1840); the Finance Act Plan, Field Book entries (1910, 1913); the National Parks and Access to the Countryside Act Parish Survey for Wirswall (1954); and copies of a diversion of part of the claimed route made through the Quarter Sessions dated 1812.

10.5.2 In addition to the submitted evidence a detailed investigation of the available historical documentation has been undertaken to try and establish the history and original status of the claimed route. The standard reference documents have been consulted; details of all the evidence taken into consideration can be found in **Appendix 1**.

## 10.6 *Documentary Evidence*

The documents referred to are considered by collective groupings.

### *County Maps 18<sup>th</sup>-19<sup>th</sup> Century*

- 10.6.1 These are small scale maps made by commercial map-makers, 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 map-makers checked the status of routes, or had the same sense of status of routes that exist today. There are known errors on many map-makers' 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.
- 10.6.2 The route is not shown on *Burdett's Map (1777)* or *Greenwood's Map (1819)*. It is however shown on *Bryant's Map (1831)* the full length of the claimed route is shown on the correct alignment. It is not labelled but the dashed line is referred to in the key as '*Lanes & Bridle Ways*'.
- 10.6.3 *Quarter Sessions – Record of Diversion 1812*
- Prior to the creation of County Councils, the administration of roads and bridges was the responsibility of the judiciary and diversions and extinguishments were dealt with at the Quarter Sessions. Records were kept of legal events associated with highways. Up to the creation of the Crown Court copies of all the "stopping -up" orders made by Magistrates Courts were deposited at the Quarter Sessions.
- 10.6.4 As part of the claim the applicant has submitted copies of diversion records from the Quarter Sessions relating to the claimed route; Officers have viewed the original documents at the County Records Office. There are two copies of the diversion order, they are not identical but very similar, both are signed by the landowner Domville Poole and the two Justices of the Peace William Wicksted and Edward Tomkinson; both orders have plans attached, are sealed and dated 31<sup>st</sup> March 1812.
- 10.6.5 The documents refer to Mr Poole giving his consent to a diversion on his land; the route is described as a '*public bridle and footway*' lying between the Township of Wirswall and the village of Marbury. One of the documents also refers to a Cartway to the Knowles Estate belonging to William Watson Esq. The maps show the northern section of the claimed route between points A and C on plan no. WCA/012. Both maps show this part of the claimed route, which forms part of the diversion, in the same way and with the annotation '*Bridle and footway*'. One plan at point C says '*to the Knowles farm house*' where the other at this point states '*Road to Wirswall*'. The second plan covers a slightly larger area and includes an additional route to be stopped up that is not shown on the other plan. The second plan is also annotated with

the letters A-B-C-D-E and the distances between each are recorded in the top left corner of the plan. The width of the section of the claimed route is also stated on this plan as being 20ft. This diversion order is regarded as significant evidence, it is a legal document signed and sealed by the court and shows that the landowner at that time believed the route to be a 'bridle and footway'.

#### 10.6.6 *Marbury Tithe Map and Apportionment 1840*

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.

10.6.7 The Tithe Map of Marbury dated 1838-9, shows the full extent of Footpath no. 8, as far as the parish boundary. The route is shown partly between two pecked lines and partly between a solid and pecked line. The route runs through five numbered plots. The apportionment shows that all are owned by Domville Poole and are described as either 'pasture' or 'meadows'.

#### 10.6.8 *Tithe Map and Apportionment of Wirswall 1840*

On the Wirswall Map the route of Footpath No. 3 is shown as a double pecked line and it is annotated '*Bridle Road*'. At the edge of the map where the route crosses the parish boundary, it is annotated '*to Marbury*'. The route runs through plot number 186; the apportionment does state an owner for this plot and refers to it as '*Dovecote field*'. On the applicant's poor copy it is difficult to read but the description does have a word before the description of 'pasture', there is a possibility it reads 'Road and Pasture' although it is not clear. However the annotations on the map are clear and this is very good evidence that it was considered as a bridle road at that time.

#### *Ordnance Survey*

10.6.9 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 or way is not evidence of the existence of a right of way. It can be presumed

that this caveat applies to earlier maps also. These documents must therefore be read alongside the other evidence.

10.6.10 *The Ordnance Survey First Series 1 inch to 1 mile 1833*

The full length of the route is shown between solid boundaries; it appears as a route of some significance at this time.

10.6.11 *O.S. 1<sup>st</sup> Edition County Series 25" to 1 mile c.1872*

The full length of the route is shown on this map; for the most part it is depicted as a double pecked line, with just the final section of the southern end of the route shown between two solid lines. The route itself is numbered 154, where it runs adjacent to the mere; unfortunately the corresponding Book of Reference was not available in the County Records Office.

10.6.12 *O.S 2nd Edition County Series 1896-1898*

The route is shown exactly the same as the 1<sup>st</sup> edition; one significant difference is that on the Marbury side of the route, at the southern end of the mere where the route enters the field, it is annotated B.R (approximately where point B is on plan no. WCA/012). Although the Ordnance Survey maps at this time did carry the disclaimer, referred to in paragraph 10.6.9 above, officers believe the reference to B.R meaning 'Bridle Road', indicates that the surveyor at the time must have found evidence of use by horse riders.

10.6.13 *O.S. 3<sup>rd</sup> Edition County Series 1909*

The route is shown the same as the 2nd edition with one further addition, there is also now a B.R. annotation on the Wirswall side of the route. This is just to the south of the parish boundary (just south of point D on plan no. WCA/012). The property known as 'Wicksted Hall' adjacent to the route at the southern end, also now appears on this edition.

10.6.14 *Estate Plans and Sale Particulars*

*Map of an Estate in Marbury the inheritance of Domville Poole Esq 1783*

A small section of the route from the start of the northern end is shown on this plan. It is not given a plot number.

*Wicksted Estate, Wirswall Sales Particulars & Plans 1917*

The claimed route is outside of the Lots that were for sale; however on the plan the first section of the southern end of the route (from point E on plan WCA/012) is shown between solid boundaries. Then into the next field the route becomes double dashed lines which then end half way across the field.

#### 10.6.15 *Finance Act 1910*

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.

Two sets of plans were produced: the working plans for the original valuation and the record plans once the valuation was complete. Two sets of books were produced to accompany the maps; the field books, which record what the surveyor found at each property and the so-called 'Domesday Book', which was the complete register of properties and valuations.

10.6.16 Officers have viewed the working plans at the County Records Office. The working plans are on Ordnance Survey 3<sup>rd</sup> edition base maps; the claimed route covers two separate sheets. The one covering the northern end of the route does not have many hereditaments marked on it and the route is not included in any numbered plots. The other sheet shows the route; from the field boundary to the north of 'Big Wood', just south of the property known as 'The Knowles', to the parish boundary is included in plot no. 437. The remainder of the route from the parish boundary to its termination, where it meets Wirswall Road, (between points D-E on plan no. WCA/012) is included in plot no.585.

10.6.17 The two plot numbers were checked in the 'Domesday Book' however no deductions were made. The applicant submitted a copy of a plan believed to be the Record Plan, showing the claimed route going through the same two plot numbers. A copy of the field book for plot 585 (Wicksted New Hall) which is held at The National Archives in Kew was enclosed with the application. This field book has a deduction of £30 made for a 'Bridle Road', 392yds long. It is believed this correlates to this section of the claimed route. The Finance Act plans were prepared according to a statutory process and are generally regarded as good evidence of public rights; in this case the surveyor specifically recorded 'Bridle Road' in the field book rather than just stating 'right of way'.

#### 10.6.18 *Marbury Parish Council Minutes*

Officers have viewed parish council minutes held at the County Records Office and also those from the period 1952-1990 which are held with the clerk of the parish council. There is reference to the claimed bridleway at a meeting held on 29<sup>th</sup> September 1910 which refers to "*the bad state of the gateplaces on the Bridleroad leading from Marbury to Wirswall, via the Knolls*". It is believed this description is the claimed bridleway and 'the Knolls' is a spelling mistake of 'the Knowles'. It was resolved that the clerk see Mr Poole, the owner, personally, asking him would he kindly put it in good order.

10.6.19 Later minutes from between 1970-1974 refer to the survey of rights of way. In August 1973 it is stated there was a discussion about footpaths and the clerk said there was no objections received to the footpaths shown on the provisional maps.

10.6.20 *Pre-Definitive Map "Green Book" Index*

This is a Cheshire County Council internal document from before the time of the Definitive Map process referred to below. The plan has the claimed bridleway marked for its full length and numbered 72. In the notes there are two references for no.72, it reads "See 5/712 Bridle Road and FP...Repaired by CCC Sept '45 est. cost £30. Also 5/781 O?/S instructed to make BR usable by public 1946".

10.6.21 *Cheshire County Council Roads & Bridges Committee Minutes*

Following the indication in the 'Green Book' (see paragraph 10.6.20 above) a reference has been discovered in the minutes of the Roads & Bridges Committee dated 6<sup>th</sup> September 1945. At that meeting there was a report from a meeting of the Nantwich Roads Area Advisory Sub-Committee on 5<sup>th</sup> July 1945 which states "Application by the Agent of the Marbury Estate for repairs to Bridle road and footpath leading from Marbury to Wirswall". It was resolved that the necessary repairs be carried out at an estimated cost of £30. This correlates with the notes in the Green Book. No minute could be found for the other reference '5/781' in 1946.

10.6.22 *Definitive Map Process - National Parks & Access to the Countryside Act 1949*

The Definitive Map and Statement is based on surveys and plans carried out 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. The survey for parish of Marbury cum Quoisley is missing. The plan for the survey of the parish of Wirswall shows the route from its junction with Wirswall Road next to Wicksted Hall in a north-easterly direction to the parish boundary, it is annotated number 3. The schedule information for path no.3 is dated 6<sup>th</sup> September 1954 and refers to it as a 'bridleway'. In the description three field gates are recorded; under the third one there is a note stating posts at the side of this gate indicate the existence at one time of a bridle gate adjacent to the field gate. There are also further details noted; that this is indicated as a Bridle Road on the 1910 edition of the Ordnance Survey map; also that this path is shown on the Mid-Cheshire (Area No.2) Regional Planning Scheme as an existing highway over which the public have a right of way (other than main roads and streets repairable by the inhabitants at large). The Mid-Cheshire (Area No.2) Regional Planning Scheme map was unavailable to view at the County Record Office.

10.6.23 The Draft Map was the first step towards compiling the survey information into what would become the Definitive Map. On this map the route for Wirswall is shown in the same way as on the survey map and annotated the same with

the three field gates; it is however coloured pink for a footpath. The route on the Marbury Draft map is also coloured pink for a footpath, there are six wicket gates annotated on the route, next to wicket gate no.6 there is also a stile, and a field gate is marked on the parish boundary. There are no Draft Statements records available for the routes. The subsequent provisional and definitive maps show the routes as footpaths.

## 10.7 *Conclusion*

- 10.7.1 Once public rights of way have been created, they remain in existence unless legally changed by order. So where historical evidence shows that a public right of way came into being in the past, the rights will still exist even if the route is no longer suitable for the purpose for which it was created, or is no longer passable. How much a document will influence the determination of a route's status depends on the nature of the document, the information it contains, the purpose for which it was produced, and for whom.
- 10.7.2 The claimed route has appeared on a number of historical documents of good provenance. The Quarter Session diversion record (1812) is a significant piece of evidence as it is a legal document and is signed and sealed by the court; although it does not show the full length of the route, it clearly shows that the route continued and indicates a status of 'bridle and footway'. The Tithe Maps (1838-40) show a consistent alignment corresponding to footpath no.8 Marbury and footpath no.3 Wirswall with the route shown between double pecked lines or one pecked and one solid line. It is annotated as 'Bridle Road' on the Wirswall map and states 'to Marbury' at the edge of the map indicating a continuing route. The full length of the route appears on Bryant's map dated 1831 and is depicted as 'Lanes and Bridleways'. These early records raise a reasonable presumption that the route is a through route and of a higher status than footpath.
- 10.7.3 The Ordnance Survey First series from 1833 is consistent with the Tithe and Bryant's County map clearly depicting a through route from Marbury to Wirswall. The County series O.S. maps from around 1872 to 1910 consistently show a pecked double line for the route. The 25" first edition gives the route a number but unfortunately the book of reference was unavailable. On the 2<sup>nd</sup> and 3<sup>rd</sup> editions the route is annotated with B.R.
- 10.7.4 The documents from the Finance Act 1910 can be considered to be good supporting evidence of the existence of a public right of way dependent upon what is recorded. In this case the route is shown included within a hereditament for the Wirswall part of the route and the field book records an exemption for 'Bridle Road'. This is considered to be good evidence. The Marbury Parish Council minute from 1910 specifically refers to the route as a 'Bridleroad' and therefore confirms that the full length of the route was considered to have bridle rights at this time.
- 10.7.5 The minutes of the County Council Roads & Bridges Committee in 1945 suggest that the route was still considered a bridleway and was publicly repairable.

- 10.7.6 There is additional evidence of a presumption of the use of the route as a bridleway in the original survey report for Wirswall which led to the compilation of the Definitive Map. These were written by local people with knowledge of the local area and they indicate that the path was capable of being used by horseriders even if it was recorded as a footpath at the next stages of the Definitive Map process.
- 10.7.7 The evidence in support of this application must show, on the balance of probabilities that public bridleway rights subsist along the claimed route. The balance of evidence supports the allegation that a bridleway subsists along the route A-B-C-D-E (Plan no. WCA/012). Therefore it is considered that the requirements of Section 53(3)(c)(ii) have been met and it is recommended that a Definitive Map Modification Order is made to upgrade footpaths nos. 8, Marbury cum Quoisley and no.3 Wirswall to bridleway and thus amend the Definitive Map and Statement.

## **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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