

## **Public Rights of Way Committee**

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**Date of Meeting:** 02 December 2019

**Report Title:** Wildlife & Countryside Act 1981– Part III, Section 53: Appeal Decision for Application No. CO/8/34: Claimed Footpath from Byley Lane to Carver Avenue, Parish of Cranage.

**Senior Officer:** Frank Jordan, Executive Director Place

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### **1. Report Summary**

- 1.1. This report is an informative to brief Members on the outcome of a recent appeal made by the applicant to the Secretary of State following this committee's refusal of a Definitive Map Modification Order application.

### **2. Recommendation**

- 2.1. No decision is required by Committee.

### **3. Reasons for Recommendation**

- 3.1. N/A

### **4. Other Options Considered**

- 4.1. Not applicable – this is a non-executive matter.

### **5. Background**

- 5.1. An application for a Definitive Map Modification Order was submitted in March 2007 by Cranage Parish Council to modify the Definitive Map and Statement by adding several footpaths between Byley Lane, Crescent Road and Carver Avenue in the Parish of Cranage as shown on the attached Plan No. WCA/ 016.
- 5.2. The applicant appealed the lack of determination of this application in October 2017 and in March 2018, Cheshire East Council received a direction to determine the application from the Secretary of State.

- 5.3. A report considering this matter was brought to this Committee in December last year. A detailed investigation had been undertaken by a consultant appointed by the Council which considered all the evidence that had been submitted by the applicant and also any additional evidence that came to light through the consultation period.
- 5.4. The user evidence consisted of 19 people claiming use of the routes, 4 of these were minors at the time of the application. Of the 19, 9 completed standard user evidence forms. 6 users submitted unsigned statements in October 2017. 7 of the witnesses were interviewed.
- 5.5. The use was considered under Common Law as the land had been in the ownership of the Secretary of State for Health up until 2001 and as such was considered to be Crown Land. There cannot be a presumption of dedication of a public right of way over Crown Land under Section 31 of the Highways Act 1980.
- 5.6. The report concluded that although public rights can be deemed to exist under Common Law, where the actions (or inaction) of a landowner are such that it can be inferred that they intended a way to be dedicated and where the public have accepted it; that there was no evidence that the Health Authority as landowner was aware that the land was being used by the public for the purposes of establishing a right of way. The Committee decision was to refuse the application on these grounds.
- 5.7. This decision relating to one of the claimed paths A-B-C-D on Plan No. WCA/016 was appealed by the applicant in January 2019 and following further submissions of comments by all affected parties, the Secretary of State issued a letter directing the Council to make an Order on the 13<sup>th</sup> September.
- 5.8. Consequently the Authority has made an Order to add Footpath A-B-C-D, as shown on the Order Plan No. WCA/016A, to the Definitive Map and Statement as directed because it appears to the Secretary of State for Environment, Food and Rural Affairs that the Definitive Map and Statement for Cheshire East requires modification in consequence of the occurrence of an event specified in:

*Section 53 (3) (c) (i), namely, the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies.*

## **6. Implications of the Recommendations**

### **6.1. Legal Implications**

6.1.1. 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 Council objects to an order it is policy for a local public inquiry to be held. It is also likely that where the evidence in support of an Order is based on use, an Inquiry will also be held so that the evidence can be tested in a public forum. The Council must provide a suitable venue and legal support to facilitate an inquiry although in this instance the Council would take a neutral stance at any possible forthcoming inquiry and neither support nor oppose the Order; therefore the level of legal support required would be less onerous.

### **6.2. Finance Implications**

6.1.2 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.

### **6.3. Policy Implications**

6.3.1. There are no direct policy implications.

### **6.4. Equality Implications**

6.4.1. 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.

### **6.5. Human Resources Implications**

6.5.1. There are no direct implications for Human Resources.

### **6.6. Risk Management Implications**

6.6.1. There are no direct implications for risk management.

### **6.7. Rural Communities Implications**

6.7.1. There are no direct implications for rural communities.

### **6.8. Implications for Children & Young People/Cared for Children**

6.8.1. There are no direct implications for children and young people.

## **6.9. Public Health Implications**

6.9.1. There are no direct implications for public health.

## **6.10. Climate Change Implications**

6.10.1. The Council has committed to becoming carbon neutral by 2025 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint.

6.10.2. The addition of a footpath to the Definitive Map represents the formal recognition of pedestrian rights creating more opportunities for travel/leisure on foot and potentially reducing the use of cars for short local journeys and therefore energy consumption. It also has the potential for the improvement/promotion of healthy lifestyles.

## **7. Ward Members Affected**

7.1. Dane Valley Ward: Councillors L Gilbert and A Kolker have received copies of the Order and Explanatory Statement.

## **8. Consultation & Engagement**

8.1. This is an Informative report so no further consultation has been undertaken. All relevant parties have been served with a copy of the Order and Explanatory Statement.

## **9. Access to Information**

9.1. The background papers relating to this report can be inspected by contacting the Officer below.

## **10. Contact Information**

10.1. Any questions relating to this report should be directed to the following officer:

Name: Clare Hibbert

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