

## **Public Rights of Way Sub Committee**

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<b>Date of Meeting:</b>	6 <sup>th</sup> December 2021
<b>Report Title:</b>	Wildlife & Countryside Act 1981– Part III, Section 53 Ref. No. MA/5/267, to amend the alignment of FP15 in the Parish of Disley as shown on the Definitive Map.
<b>Report of:</b>	Jayne Traverse, Executive Director Place
<b>Ward(s) Affected:</b>	Disley

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### **1. Executive Summary**

- 1.1.** This report outlines the investigation of a case, instigated by Cheshire East Council, to amend the Definitive Map and Statement by modifying the alignment of Public Footpath No.15 in the Parish of Disley. This report includes a discussion of the consultations carried out, 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 amend the alignment of the public footpath.
- 1.2.** The work of the Public Rights of Way team contributes to the three Corporate Plan aims “We will provide strong community leadership and work transparently with our residents, businesses and partners to deliver our ambition in Cheshire East”, “We aim to reduce inequalities, promote fairness and opportunity for all and support our most vulnerable residents” and “We will lead our communities to protect and enhance our environment, tackle the climate emergency and drive sustainable development”.

### **2. Recommendations**

- 2.1.** An Order be made under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by amending the alignment of Public Footpath No.15 Disley, from the current route as shown between points A-B on Plan No. WCA/024, to its correct alignment between points C-D on Plan No. WCA/024;

- 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be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Act.
- 2.3. In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

### 3. Reasons for Recommendations

- 3.1. The evidence in support of this case must show, on the balance of probabilities, that the particulars proposed to be amended will be a correct record of the public's rights. It is considered there is sufficient evidence to show that the correct alignment of Public Footpath No.15 Disley is along the proposed route shown between points C-D on Plan No. WCA/024.

### 4. Other Options Considered

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

### 5. Background

#### 5.1. *Introduction*

5.1.1. This case is instigated by Cheshire East Council Public Rights of Way team. The team keep an 'anomaly list', a list of known errors or discrepancies with routes shown on the Definitive Map and Statement, which may require further investigation. An entry was added to the anomaly list on 18<sup>th</sup> June 2007 regarding Public Footpath No. 15 Disley ("FP15 Disley") after it was surveyed by an Officer on that date. The entry states "Possible mapping error, path goes between houses on the ground". It is accompanied by a map showing the Definitive alignment, in addition the route on the ground is highlighted and annotated. This report follows an investigation into the supposition that the path is incorrectly recorded and a possible mapping error occurred during the preparation of the Definitive Map.

#### 5.2. *Description of the Route*

5.2.1. The route of FP15 Disley as it is currently shown on the Definitive Map runs from Buxton Road West (point A on Plan No. WCA/024) it follows a north-easterly direction for 77 metres then turns in a generally easterly direction for 38 metres to meet Light Alders Lane, which was previously known as 'Woodbank Lane' (point B on Plan No. WCA/024), an approximate total length of 115 metres. An extract from the original Definitive Map, which has a relevant date of 1<sup>st</sup> November 1954, can be seen at **Appendix 1**.

5.2.2. As can be seen from Plan No. WCA/024 the Definitive alignment of FP15 Disley is not available for use on the ground; it goes through two properties, a property known as 'Pemberley' which is 30 Buxton Road

West, and a property known as 'Kelsey House' on Light Alders Lane. The footpath which is available on the ground and which, the evidence shows, has been in existence on the ground since around 1929/30 is shown between points C-D on Plan No. WCA/024. It runs in a slightly more easterly north-easterly direction for approximately 110 metres. It too links Buxton Road West and Light Alders Lane, the path runs between fences between the two properties known as 'Pemberley' and 'Wynley' on Buxton Road West; and between the boundaries of 'Kelsey House' and 'Aldersyde' on Light Alders Lane.

### **5.3. The Main Issues**

**5.3.1.** Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the 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:-

**5.3.2.** One such event, (section 53(3)(c)(iii)) is where

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

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

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 particulars proposed to be amended will be a correct record of the public's rights. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.

**5.3.3.** Paragraph 37 of the case of Marlene Peggy Masters and Secretary of State for the Environment, Transport and the Regions 2000 makes it clear that the second limb of Section 53(3)(c)(iii), namely that “*any other particulars contained in the map and statement require modification*”, does not relate to the deletion of a right of way from the definitive map and statement. It relates to matters such as the position and width of the right of way.

### **5.4. Investigation of the evidence**

**5.4.1.** An investigation of the available evidence has been undertaken. The documentary evidence that has been examined is referred to below and a list of all the evidence taken into consideration can be found in **Appendix 2**.

### **5.5. Documentary Evidence**

### *Tithe Maps and Apportionment*

- 5.5.1.** 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.
- 5.5.2.** The Disley Tithe Map of 1851 does not show any feature of a footpath in this area. The only building nearby is a building shown at the position of Light Alders Farm, which is just to the north of Kelsey House on Light Alders Lane. The area of FP15 Disley is included in plot number 83, which is described as 'Lower Meadow' and the owner is listed as Thomas Legh.

### *Ordnance Survey Maps*

- 5.5.3.** 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.

### *O.S. County Series 25" to 1 mile, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Editions*

- 5.5.4.** On the first edition there is a double dashed line on an alignment similar to the Definitive Map, but rather than turning easterly the route turns more northerly and continues to the farm and then into the next field. The second and third editions show a double dashed line, the alignment is very similar to the Definitive Map where the path turns easterly to Light Alders Lane. Only the third edition annotates the path with 'F.P.' The footpath is not affected by any buildings at this time.

### *Conveyance from the Deeds to the property 'Pemberley' 1920, 1934*

- 5.5.5.** The current owners of the property 'Pemberley' on Buxton Road West have submitted extracts from their deeds. They state the property was

built in 1929. One conveyance dated November 1920 relates to the sale of the land, there is a plan with a rough square marked in pencil indicating the area of land. There is a double dashed line to the south eastern edge of the square. This follows a straight line from Buxton Road to Light Alders Farm in a north north easterly direction, similar to the 1<sup>st</sup> Edition O.S. map. The conveyance dated May 1934 has a plan indicating the plot with a red line boundary with measurements. To the immediate south eastern edge, outside of the red line boundary, is a line running the length of the plot, it is annotated 'public footpath'. This shows that the footpath was in existence in this location in 1934, and most likely since 1929 if that is when the property was built.

*National Parks and Access to the Countryside Act 1949*

- 5.5.6.** 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.
- 5.5.7.** The Disley walking survey schedule states their survey was carried out between 1<sup>st</sup> June 1952 and 30<sup>th</sup> November 1952. Due to the small scale of the map, the base map shows the houses on Buxton Road West as a block rather than individual houses, FP15 is shown on an alignment similar to C-D on Plan No. WCA/024 and is shown as going through the block of houses. 'WG1' is annotated on the map to indicate a wicket gate at the Buxton Road West end of the path.
- 5.5.8.** The walking survey schedule describes FP15 as commencing at Buxton Road north side, runs north east and terminates at Light Alders Lane (Woodbank Lane). It is very clear with its description of the path and states, "*Narrow path up four stone steps between wooden fences and ascends fairly steeply to Light Alders Lane. Path commences between two houses off Buxton Road (Pemberley and Wynley) Rough path but well defined 4' 6" wide.*" It also indicates the length is approximately 120yds. This is roughly 110 metres which is the length of the path between points C-D on Plan No. WCA/024.
- 5.5.9.** The Draft Definitive Map for Disley shows the alignment of FP15 as a straight line in an east north easterly direction between the two roads. No houses are shown on the base map, this alignment appears to be a similar line to C-D on Plan No. WCA/024. The Draft Definitive Map was published in December 1954. The Draft Definitive Statement describes the path as "From Buxton Road (A6 TR12) in a North Easterly direction to Woodbank Lane (UC/4/214)". It states the length as 110 metres and the width as 1.5 metres.
- 5.5.10.** The Provisional Definitive Map was published in May 1968 and shows the line of the footpath following the alignment A-B as shown on Plan No. WCA/024. There are four square blocks on the base map, indicating the

houses on Buxton Road West, the line of the footpath goes between two of the houses in a north easterly direction to the boundary with the farm, it then turns easterly to join Light Alders Lane. 'F.P.' is printed on the base map below the line indicating the footpath.

- 5.5.11.** The Definitive Map shows FP15 the same as the Provisional Map with the alignment between A-B as it is shown on Plan No. WCA/024. There seems to be a discrepancy between the Definitive Map and the Definitive Statement. The Definitive Statement is the same as the Draft Statement "*From Buxton Road (A6 TR12) in a North Easterly direction to Woodbank Lane (UC/4/214)*". It again states the length as 120yds (110 metres) and the width as 4' 6" (1.5 metres). The statement is consistent with the route on the ground between point C-D on Plan No. WCA/024.
- 5.5.12.** There is no evidence of any objections or representations being made regarding this path during the Definitive Map process at either the draft or provisional stage.
- 5.5.13.** There is an entry in an Officer's notebook dated 21<sup>st</sup> March 1955, which would have been between the Draft and Provisional Maps being published. The note refers to FP15 and states "WG at start going NE ~ 4 stone steps. 4' 6" between fences". This description clearly relates to the position of the path being between points C-D on Plan No. WCA/024 and is consistent with the parish walking survey documents and the Draft Definitive Map

#### *Correspondence relating to maintenance*

- 5.5.14.** Correspondence has been found in the public rights of way records. A letter dated 11<sup>th</sup> June 1962 from the owner of the property 'Aldersyde' on Light Alders Lane, he refers to the footpath at the side of his property and states it is used by local residents as access to the bus stop. He complains that the footpath is thick with mud and also refers to a dangerous raised manhole cover, broken steps and overhanging hedgerows. He states locals have advised him that, as far as they are aware, no repairs have been carried out on this footpath in thirty years. This corroborates other evidence which would suggest the footpath has been in existence in this location since around 1930.
- 5.5.15.** Following investigation, the Council then appeared to agree to carry out repairs. A minute from the Macclesfield Roads Area Advisory Sub-Committee dated 18<sup>th</sup> January 1963 states it was "*Resolved – That repairs be carried out to this footpath at an estimated cost of £65*". This was subsequently approved by the County Roads and Bridges Committee.

#### *Land Registry Search*

**5.5.16.** A search of the Index Map at the Land Registry reveals that the width of the footpath between points C-D on Plan No. WCA/024 is unregistered. As there is no registered owner of this land that could suggest that the route is public.

## **5.6. Conclusions**

**5.6.1.** The evidence shows that a route has been in existence on the alignment C-D on Plan No. WCA/024 since around 1930 when the houses were built on Buxton Road West. This is clear from the plan accompanying the conveyance dated 1934 contained in the deeds to the property 'Pemberley'. The property 'Kelsey House' was built later in 1970. All the evidence from the early stages of the Definitive Map process clearly describe the footpath as it is on the ground today. The officer's notebook from 1955, correspondence from the owner of 'Aldersyde' in 1962 and the Committee minute confirming that repairs were to be carried out; all refer to the position of the footpath as C-D. The Definitive Statement is also consistent with the route as it is on the ground, including the length and width described.

**5.6.2.** It is unknown why the alignment was changed on the Provisional Map and subsequently the Definitive Map. It may have been that a dashed line on the base map caused confusion for the draftsman, or that they were simply following the line of the earlier O.S. maps. The scale of these maps made it difficult in some circumstances to be completely accurate with a narrow path between houses such as this.

**5.6.3.** The evidence in support of this case must show, on the balance of probabilities, that the particulars proposed to be amended will be a correct record of the public's rights. It is considered there is sufficient evidence to show that the correct alignment of Public Footpath No.15 Disley is along the route shown between points C-D on Plan No. WCA/024. On the balance of probabilities, the requirements of Section 53(3)(c)(iii) have been met and it is recommended that the Definitive Map and Statement should be modified to amend the position of Public Footpath No.15 Disley from A-B to C-D as shown on Plan No. WCA/024.

## **6. Consultation and Engagement**

**6.1.** The affected landowners, Ward Councillor, Parish Council and user groups have been consulted.

**6.2.** Disley Parish Council, East Cheshire Ramblers and Disley Footpath Society have all responded and state that they have no objection to an Order being made.

**6.3.** Councillor Murphy has not commented at the time of writing.

**6.4.** The owner of the property 'Pemberley' on Buxton Road West has responded and states that there certainly appears to have been a serious mistake. The consequences could be very distressing. He states the path

between C-D on the map is accurate. He states *“We bought the house number 30 in 1983 and would not have done so had it been that A-B was the footpath. The documents that we possess and were sent to you clearly show the correct footpath. It runs between 28 and 30. We implore you to correct the anomaly as our houses would be unsalable.”*

- 6.5.** The owner of the property ‘Kelsey House’ on Light Alders Lane states *“on the map it is shown as running through the middle of both my house and neighbouring 30 Buxton Rd. In reality it runs alongside and outside the southerly boundaries of both properties as is clearly promoted by Cheshire East on the ground. I believe there has been overwhelming evidence produced to show that the line of FP 15 is as it is on the ground and has been so for at least 100years. The Council have known about this and the situation is marked in the Council's records as “an anomaly”.”*

## **7. Implications**

### **7.1. Legal**

**7.1.1.** 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.

**7.1.2.** The legal implications are contained within the report.

### **7.2. Finance**

**7.2.1.** 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.

**7.2.2.** Were the anomaly to remain the Council may be open to claims for financial compensation should landholdings be adversely affected by the anomaly.

### **7.3. Policy**

**7.3.1.** There are no direct policy implications.

### **7.4. Equality**

**7.4.1.** 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.

### **7.5. Human Resources**

**7.5.1.** There are no direct implications for human resources.

### **7.6. Risk Management**



7.6.1. There are no direct implications for risk management.

**7.7. Rural Communities**

7.7.1. There are no direct implications for rural communities.

**7.8. Children and Young People/Cared for Children**

7.8.1. There are no direct implications for children and young people/cared for children.

**7.9. Public Health**

7.9.1. There are no direct implications for public health.

**7.10. Climate Change**

7.10.1. 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.

7.10.2. The work of the 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.

<b>Access to Information</b>	
Contact Officer:	Jennifer Ingram Definitive Map Officer jennifer.ingram@cheshireeast.gov.uk
Appendices:	Appendix 1 – Extract from The Definitive Map Appendix 2 – Documentary Evidence List
Background Papers:	The background papers/information relevant to this report are contained in file MA/5/267 and can be inspected by contacting the Officer above.