

## **Public Rights of Way sub-Committee**

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<b>Date of Meeting:</b>	14 <sup>th</sup> March 2022
<b>Report Title:</b>	Wildlife & Countryside Act 1981 – Part III, Section 53. Application No. CN/7/27: Application for the Upgrading of Public Footpath no.15 Peckforton to a Restricted Byway.
<b>Report of:</b>	Jayne Traverse, Executive Director Place
<b>Ward(s) Affected:</b>	Wrenbury

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### **1. Purpose of Report**

- 1.1. This report outlines the investigation into an application made by Peter Williams to amend the Definitive Map and Statement to upgrade public footpath Peckforton no.15 to a Restricted Byway. This report includes a discussion of the consultations carried out in respect of the claim, the historical evidence, witness 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 the public footpath to a restricted byway.
- 1.2. The work of the Public Rights of Way team contributes to the Corporate Plan priority “A thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

### **2. Executive Summary**

- 2.1 The report considers the evidence submitted and researched in the application to upgrade Public Footpath no.15, Peckforton. The evidence consists of use on bicycle by individual witnesses over a period of over eighty years and historical documents that demonstrate the existence/status of the route over a period of over 200 years. The report determines whether on the balance of probabilities the status of the footpath has acquired and/or already has higher rights. The reputation of the route as a thoroughfare linking two adopted roads is demonstrated through the County Maps, Tithe Map, Estate Map, Ordnance Survey maps and others and provides good reputational evidence of a route with

rights higher than footpath. The user evidence investigated and discussed provides evidence of use by cyclists over a relevant 20 year period leading to the assertion that Restricted Byway rights have been acquired.

### 3. Recommendations

- 3.1 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 footpath Peckforton no.15 to a restricted byway as shown on Plan No. WCA/023.
- 3.2 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.
- 3.3 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.

### 4. Reasons for Recommendations

- 4.1 The evidence in support of this claim must show, on the balance of probabilities, that public non-motorised vehicular rights subsist along the claimed route. It is considered there is sufficient use of the route without force, secrecy, or permission, that is without interruption and as of right; to support the existence of restricted byway rights along the route shown between points A - B on Plan No. WCA/023. It is also considered that the historical evidence discovered demonstrates the existence of higher rights than footpath along the route consistent with a restricted byway.
- 4.2 It is considered that the requirements of Section 53(3)(c)(ii) have been met in relation to restricted byway rights and it is recommended that the Definitive Map and Statement should be modified to show Public Footpath no.15, Peckforton as a Restricted Byway.

### 5. Other Options Considered

- 5.1. Not applicable.

Option	Impact	Risk
N/A	N/A	N/A

## **6. Background**

### **6.1. Introduction**

**6.1.1** The Application was made to Cheshire East Council in January 2012 by Peter Williams as a representative of the Chester and North Wales Cyclists' Touring Club (now Cycling UK), to upgrade public footpath no.15, Peckforton to a Restricted Byway. The application consisted of user evidence and maps and photographs. A total of 12 user evidence forms were submitted demonstrating use on a bicycle. A further 4 forms were submitted after the consultation process commenced.

**6.1.2** Further evidence was also submitted in the form of photographs, extracts from the Anfield Circular (Journal of the Anfield Bicycle Club), copies of county maps, Ordnance Survey maps and a Tithe map extract.

### **6.2. Description of the Application Route**

**6.2.1** Peckforton Footpath no. 15 commences on Hill Lane approximately 40 metres south west of the adopted section of Hill Lane (UX 781) and runs in a generally south westerly and westerly direction to its junction with the Cheshire West and Chester Borough and the Burwardsley parish boundaries. It connects here with the continuation of Hill Lane in Burwardsley (UX 1848). The route therefore links two ends of adopted highway. It is formed partly of a bounded lane between sandstone block walls and then between hedges and vegetation before opening out with verges of lower lying vegetation until meeting a field gate with adjacent bridle gate with bridle latch, just to the east of Hill Farm. The land is then wider where it passes the farm up to the Borough boundary. The sandstone walls are intermittently visible at different stages along the more vegetated sections suggesting it was once fully enclosed in this way. There is no visible landmark at the Borough boundary except the start of a tarmacked surface. The surface of the route at its start is tarmacked up to the junction with Pheasantry Cottage then consists of well-worn sandstone setts. A metal vehicular barrier exists shortly after with a metal pedestrian gate to the north side and a gap to the south. Along the route there are a number of sandstone mounting blocks. The sandstone setts are badly damaged in parts and eventually disappear under a stone and earth surface shortly after passing under a bridge.

A feature of significant note on the route is this bridge, often referred to as the 'Haunted Bridge'. It is a large sandstone structure carrying a track within the adjacent Peckforton Estate across the route, with a headroom of approximately 3.5-4.5 metres.

The width of the whole route is for the most part at least 3 metres wide; the stone sett section is probably slightly less at 2.6 metres but with some additional width to either side.

### 6.3 Main Issues

**6.3.1** 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:-

**6.3.2** One such event, (section 53(3)(c)(ii)) is where

“(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;

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 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.

**6.3.3** Where the evidence in support of the application is user evidence, section 31(1) of the Highways Act 1980 applies. This states; -

“Where a way.....has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”

This requires that the public must have used the way without interruption and as of right; that is without force, secrecy or permission. Section 31(2) states that “the 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question”.

**6.3.4** In the case of, *R (on the application of Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs (2007)*, the House of Lords considered the proviso in section 31(1) of the Highways Act 1980:

*“...unless there is sufficient evidence that there was no intention during that period to dedicate it”.*

The proviso means that presumed dedication of a way can be rebutted if there is sufficient evidence that there was no intention to dedicate the way, during the relevant twenty year period. What is regarded as ‘sufficient evidence’ will vary from case to case. The Lords addressed the issue of whether the “intention” in section 31(1) had to be communicated to those using the way, at the time of use, or whether an intention held by the landowner but not revealed to anybody could constitute “sufficient evidence”. The Lords also considered whether use of the phrase “during that period” in the proviso, meant during the whole of that period. The House of Lords held that a landowner had to communicate his intention to the public in some way to satisfy the requirement of the proviso. It was also held that the lack of intention to dedicate means “at some point during that period”, it does not have to be continuously demonstrated throughout the whole twenty year period.

**6.3.5** For public rights to have come into being through long use, as stated above, a twenty year period must be identified during which time use can be established. Where no challenge to the use has occurred, this period can be taken as the twenty years immediately prior to the date of the application. In this case the date of challenge can be identified as the point at which the signs stating ‘*No Cycling – permissive horse riders only*’ were erected. This is estimated to be about 2010 as this was when a permissive agreement was entered into between Cheshire East Borough Council and parts of the Peckforton Estate. The signage was the event that prompted the making of an application to have the route recorded at a higher status. Consequently, the twenty-year period of use would be 1990 to 2010.

**6.3.6** The Planning Inspectorate guidelines state, “Section 31, Highways Act 1980, as amended by section 68 of Natural Environment and Rural Communities Act (NERC) 2006, provides that use of a way by non-mechanically propelled vehicles (such as a pedal cycle) can give rise to a restricted byway”.

**6.3.7** The case of *Whitworth v Secretary of State for the Environment, Food and Rural Affairs* (2010) is often quoted where there is evidence of use on horseback and pedal cycle. Section 30 of the Countryside Act 1968 gave pedal cyclists the right to ride on a bridleway; consequently, any use from 1968 onwards is said to be “by right”. In *Whitworth* the route was found to have pre-existing bridleway status, i.e., it was decided the status was a bridleway prior to 1968. It was suggested that subsequent use by

cyclists of an accepted, but unrecorded, bridleway, where use of the bridleway would have been permitted by virtue of section 30 of the Countryside Act 1968, could not give rise to anything other than a bridleway.

- 6.3.8** The judge in the Whitworth case, Carnwath LJ, went on to discuss what the outcome would have been had there been no pre-existing bridleway status. His view is predicted on user evidence dominated by equestrians, a ratio of 8 equestrians to 2 cyclists (8 v 2). He accepted that regular use by horse riders and cyclists might be consistent with dedication as a restricted byway, it was also consistent with dedication as a bridleway. In such an instance of statutory interference with private property rights, he determined, it was reasonable to infer the dedication “least burdensome to the owner”.
- 6.3.9** In these circumstances, Carnwath LJ could equally have decided bridleway or restricted byway status but opted for bridleway as equestrian was the dominant user evidence and he did not want to inflict a more burdensome way on the landowner.
- 6.3.10** When determining whether the status should be bridleway or restricted byway, consideration needs to be given to the dominant user between cyclists and equestrians. In this case, the predominant users are cyclists, as there was no equestrian evidence put forward; this distinguishes the current application from the Whitworth case. A more comparable case to the current application is a decision of the Planning Inspectorate dated 6th April 2017; this concerned a Definitive Map Modification Order made by East Riding of Yorkshire Council. The Order was for the addition of a Restricted Byway. In that case no pre-existing bridleway status was found, the Order route was created as a private road; however, from the 1950s there was evidence of use by the public. The dominant user was pedal cyclists (19 claimed use with a cycle and 3 on horseback). The Inspector determined that the facts were different to the facts in Whitworth; that the evidence of use by cyclists supports the establishment of a restricted byway and concluded that there is no basis from which a less burdensome bridleway can be inferred.
- 6.3.11** In the present case, where there is no evidence of equestrian use (probably due to the permissive agreement that they were consulted on providing them with exclusive use) and where all the evidence is cyclist, it is appropriate to record the status as a restricted byway. Unlike the Whitworth case there is no need to be cautious and record the least burdensome way for the landowner; there is clear dominance by cyclists in this case, with

no evidenced equestrian use as of right, therefore the appropriate status is that of restricted byway.

#### 6.4 *Investigation of the Claim*

- 6.4.1 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 1**.

#### 6.5 *Documentary Evidence*

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

- 6.5.1 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 mapmakers 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.
- 6.5.2 "*Among nearly 700 separate printed maps of Cheshire relating to the period from 1577 to 1900 only a handful were based on systematic and first-hand surveys of the countryside.*" (The Historic Society of Lancashire and Cheshire Occasional Series Volume 1 – A survey of the County Palatine of Chester PP Burdett 1777). Aside from the Ordnance Survey maps which are listed later; the ones referenced below are four of a total of five of those based on a first hand survey, excluding Christopher Saxton's map of 1577.
- 6.5.3 *PP Burdett 1777*; this map shows the route of Hill Lane as a continuous route from Stone House Lane in Peckforton to Burwardsley and is depicted as a cross road in the key. On the *Greenwood map of 1819*, the route is also shown as a cross road, connecting Peckforton and Burwardsley. The route is shown in the same way as Stone House Lane and other roads currently recorded as highways. On *Swire & Hutchings map of 1829* the route is again shown as a cross road and depicted in the same way as on the previous maps. *A Bryant's Map 1831* is the first map to show a slightly altered alignment of Hill Lane. There is still a through route and on the coloured version of the map, it is recorded as a good cross and driving road. This is the same depiction as Stone House Lane however the connecting route in

Burwardsley is shown as a Lane or Bridleway. It should be noted though that this route is an adopted highway over the border in the borough of Cheshire West and Chester. The change of alignment occurs in the centre of the route near where they now exists a bridge across the route, known colloquially as the 'haunted bridge'. It could be the case that this difference only shows on this map as it was mapped at a more detailed scale.

*Tollemache Estate Map c 1831*

- 6.5.4** This map was produced for the Estate by the surveyor John Timmis. The route is shown similarly depicted as in Bryant's Map which is consistent with it being produced at a similar time. The route is annotated in pencil 'Hill Lane' and does not have a reference number as the land parcels surrounding it do, consequently it is not recorded in the accompanying book of reference.

*Tithe Records*

- 6.5.5** *Peckforton Tithe Map and Apportionment 1846*

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.

The Tithe Map of Peckforton dated 1846, is a second class map, shows the full extent of Hill Lane linking Stone House Lane to the boundary with Burwardsley in the borough of Cheshire West and Chester. The route is shown largely between solid lines and is excluded from the parcels of land either side and does not have an apportionment number. All surrounding land is shown as belonging to John Tollemache. It is coloured in a similar way to other routes that are now recorded as roads but also the same as some routes that are now recorded as public footpaths. The route has changed in the central section from how it is shown on

Bryant's Map as the bridge is now depicted and Hill Lane is shown running underneath in a more direct alignment. This gives a potential timeline for the construction of the bridge being between 1831 and 1846.

#### **6.5.6** *Quarter Sessions*

The Quarter Sessions index 1762-1967 in the County Record Office was consulted and no evidence for a legal diversion or stopping up of any part of the claimed route was found.

#### **6.5.7** *Ordnance Survey Records*

Ordnance Survey (O.S.) 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 is not evidence of the existence of a right of way. It can be presumed that this caveat applied to earlier maps.

##### *O.S. 1<sup>st</sup> edition 1 inch 1842*

This mapping shows the route throughout and accurately reflects how it is shown on Bryant's Map of 1831. This narrows the timescale within which the alignment was altered, in the central section, by the construction of the bridge over the route. This now puts it between 1842 and 1846 when it is first shown on the Tithe Map.

##### *O.S. 1<sup>st</sup> Edition County Series 25" to 1 mile 1875*

The route is shown on this map in the same alignment as it is in the current day. It has a reference number of 61 which is identified in the corresponding book of reference as 'Road' and applies to the full route from Stone House Lane through to the Borough/Parish boundary. The route is open at the boundary continuing unimpeded through to Burwardsley. The change noted for the first time on Bryant's Map, the inclusion of a bridge over the route, is shown on this map

##### *O.S. 2<sup>nd</sup> Edition County Series 25" to 1 mile 1897*

The route is shown throughout in the same way as on the 1<sup>st</sup> edition.

##### *O.S. 3<sup>rd</sup> Edition County Series 25" to 1 mile 1909*

The route is again shown throughout unchanged from the previous edition.

*O.S. revised New Series 1: 63,360 (1 inch: 1 mile) 1897*

The route is here shown as fenced (bounded) throughout and referred to in the key as a third class metalled road. Again, this is the same as the route it joins across the boundary into Burwardsley.

*O.S. Book of Reference 1875*

The Ordnance Survey Books of Reference record acreages and usually land uses, of each land parcel on the 25 inch maps. The route, Hill Lane, is shown on the 1<sup>st</sup> Edition map as number 61 which equates in the book of reference for the Parish of Bunbury as 'Road' 1.74 acres.

*O.S. Boundary Remarks Book 1892*

The Boundary Remark Books (also called Perambulation Books) in this series are small booklets containing hand-drawn strip maps. They were prepared by the Ordnance Survey to record original information on public boundaries under the provisions of the Ordnance Survey Act 1841. The maps show boundary and related ground features and carry the signatures or marks of the meresmen (local people with knowledge of the parish boundaries) for the parishes on each side of the boundary.

The sketch maps along the boundary of Peckforton township and Burwardsley show the details of anything of note along its length. The survey has an O.S. stamp of 1892 on the front of the book; on the pages relating to this specific township, there is a signature and notes from the individual 'meresman' stating that the survey is verified with a date of 27<sup>th</sup> February 1872 and a signature, W.Cawley. The sketch shows a bounded lane crossing the boundary with a building at each opposite corner on either side of the boundary. These help identify it as Hill Lane as these buildings can be seen on the 1875 O.S. map. From the lane there is written 'to Burwardsley' indicating that the route is a thoroughfare.

**6.5.8** *Bartholomew's Half Inch to a Mile*

These maps were revised for the benefit of tourists and cyclists with help from the Cyclists' Touring Club (CTC). Local CTC members would generally have cycled every available route in their area, and it is subsequently assumed that any route that appeared on these maps had initially at least, been used without hindrance. These maps were well used by cyclists for their outings so the depiction here is likely to have led to it being used.

The 1902 version shows the route as a road classed as 'Indifferent' (passable) in the key. This is the same notation as the continuation in Burwardsley. The 1923 new series shows the

route as a secondary road (motoring roads), as is its continuation into Burwardsley. The 1941 revised edition has downgraded the route to an 'other road', depicted by an uncoloured bounded lane, again with the adjoining section in Burwardsley shown the same.

#### **6.5.9** *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.

The plan for this area was missing in the County Record office so a copy was sourced from the National Archive in Kew. The plan was not however marked up and coloured as is usual therefore it was not possible to cross reference the plan with the Domesday Book.

#### **6.5.10** *Pre Definitive Map Records*

The Public Rights of Way team hold records that pre-existed the Definitive Map process. The route is not shown on any of these maps.

#### **6.5.11** *Definitive Map Process – National Parks and Access to the Countryside Act 1949*

The Definitive Map and Statement is based on surveys and plans produced 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.

There is no survey schedule for Footpath 15, and it is not shown on either the Parish Map or on the Footpath Society Map. The Parish Map is annotated with UC/5/113 near to the end of the extent where the route is currently adopted and there is another

annotation 'see file 5/670' adjacent to the section of route east of the bridge. Included within these survey documents is a 'Rough Draft' map that the Parish produced which then shows part of Hill Lane as an unclassified county road up to its junction with Footpath no. 4, then the continuation to the Burwardsley boundary is shown as Footpath no. 15. This situation is replicated on the official Draft Map and continues through the Provisional Map stage and onto the official Definitive Map.

### *Section 31(6) Highways Act 1980*

Under this provision of the Act, a landowner may submit a Statement and Plan to the local authority, declaring the extent of their landownership and depicting the rights of way that they accept to exist. This and a subsequent statutory declaration, have the effect of asserting that the landowner has no intention of dedicating any further right of way over their land.

The Peckforton Estate is made up of different landowning interests, four in total. In 2008 the Estate submitted Statements and Plans for the each of these landholdings. The route was not included on any of the plans thus indicating that it was land outside the Estate's ownership. This is contrary to the current situation where the lane has been registered as belonging to the Estate. These Statements and Plans apply for a ten year period and need to be renewed within that time to stay active. There was no renewal in this case.

### **6.5.12 Land Registry Information**

The section of Hill Lane between the entrance to Pheasantry Cottage to the east to the approximate position of the field gate to the east of Hill Farm, is registered to members of the Tollemache family as Trustees of the Peckforton Children's Settlement. This land was registered in 2009 and we know from the Section 31 documents that in 2008, this lane was not registered to this landowner and possibly was not registered at all. The land continuing to the west up to the boundary with Burwardsley is also registered to the Honourable Edward Tollemache; this includes Hill Farm and the extent of the lane with land to the north and south of the Lane. This also appears to have been first registered in 2009. There is a short section of Lane between the extent of the recorded highway in Cheshire East and the registered ownership of the Lane, which is not registered. It is possible that the adopted highway should extend further and encompass this stretch as this is also the extent of the tarmacked surface.

### 6.5.13 *Photographs and other evidence*

A number of witnesses submitted photographic evidence of the route including contemporaneous photos of their use of the route. One of these is a small black and white photograph of unknown age but given the clothing being worn and the type of bicycle shown it could be from the late 1930s. The cyclist is opening a field gate across the track which may correspond to the current location of a field gate near to Hill Farm. There is another colour photograph from 1963 of an Anfield Bicycle Club outing. There is also a copy of extracts from the Journal of the Anfield Bicycle Club, which is a very long established organisation dating back to 1879. One extract from 8<sup>th</sup> July 1961 is a write up of a party of cadets from the Cycling Club and describes their return route as 'over the Peckforton Gap' and refers to the 'Haunted Bridge'. Another extract from 23<sup>rd</sup> April 1994 describes the 'steep climb to Burwardsley and the Haunted Bridge – Peckforton gap'. Also submitted was a record of 10 Club outings that referenced usage of Hill Lane. These span between 1961 and 2007 excluding 1967-77.

Several witnesses referred to the signage that advertised the Malpas Loop as part of the National Byway<sup>®</sup>. The National Byway Trust advertises and signs cycling routes and loops that use quieter roads and non-traffic routes to explore places of interest. The Trust played a major role in development of the Government's National Cycle Strategy Maps and routes are available on their website. The Malpas Loop is shown and includes this route.

Witnesses also refer to the current and previous 1:25,000 O.S. maps which depict the route as 'other routes with public access'. The status of routes shown with this notation are not specified but they suggest a status greater than footpath.

One witness refers to anecdotal evidence of a photograph of the celebrity chef/ presenter Lloyd Grossman on the route near the Haunted Bridge which appeared in the journal 'Cycle' in the December edition 2007/08.

## 6.6 *Witness Evidence*

- 6.6.1 The Application, when made in 2012, was accompanied by 11 user evidence forms. Since that time a further 7 have been submitted. Of the original 11, 3 witnesses have since deceased. One of these was 99 in 2015 when he dictated his Statement to the applicant. Another now lives in South Africa so was not

contacted to be interviewed. Further evidence from additional users was offered but not taken up. In total 8 witnesses were contacted to be interviewed by telephone and all but one responded and were subsequently spoken with. Of the 7 who were interviewed, 6 signed and returned their statements. The route was found to be popular with the cycling clubs and so most of the witnesses are based on the Wirral or around Chester, with others being based in North Wales and a few in Cheshire East. A chart illustrating the user evidence from the total number of 18 witnesses is attached as Appendix 2.

- 6.6.2 For restricted byway rights to have come into being through long usage, a twenty year period of use by cyclists must be identified. The date of challenge appears to have been the erection of signs indicating 'permissive bridleway – no bicycles/motorbikes'. In 2010 the Peckforton Estate entered a permissive path agreement with Cheshire East Council to allow the use of the route by horse riders but specifically excluded cyclists. This appears to be the same date that these signs appeared. If 2010 is the date of challenge, then the twenty years leading up to this is the period of use that is significant.
- 6.6.3 The use of the route has been entirely recreational aside from one local witness who claims to have used the route in a vehicle from 1993, on occasions, as a short cut to their property. This happened up to the point when the metal barrier was locked. The route forms a significant link between two sections of adopted road and is the only direct link between the villages of Peckforton and Burwardsley. There was no evidence submitted from horse riders, possibly because they have enjoyed permissive access since 2010 to 2020. The details of any renewal of the permissive agreement are still being reviewed. If the route is found to have higher status than footpath, i.e., restricted byway, then horse riders will have statutory rights of use and a permissive agreement will not be renewed. Cyclists' use has been enjoyed over a long period, from at least 1936 according to one witness. Another witness recalled that their parents had used the route in the 1930s. Another witness was introduced to the route by friends they made whilst on a cycling holiday. These anecdotes demonstrate a wider knowledge and use of the route by cyclists. The use continues to this day.
- 6.6.4 Due to the nature of the evidence, i.e., from cycling club members, the use is regular but infrequent. Most witnesses are members of either the Chester and North Wales Cycling Club or the Anfield Bicycle Club. A number of users claim to have used

the route 2/3 times a year, one 4 times a year, whilst others are more infrequent and may have used the route a dozen or so times over a period of 50 years. Most of the use has been as part of a cycle club outing which would often commence on the Wirral and cycle out to a Cheshire venue undertaking a circuit en route. When cycling this route, the riders would often stop at the Pheasant Inn or the Candle Factory in Burwardsley for refreshments.

6.6.5 None of the witnesses interviewed had been challenged in their use of the route or met anyone claiming to be a tenant or landowner. The first point of challenge were the signs believed to have appeared in 2010. Of those interviewed, a few had seen other users aside from walkers when they were there. The route provides a challenge to the cyclist when approaching from Peckforton given the steepness of the hill, however many witnesses no longer ride the route in this direction due to the deterioration of the surface cobbles. It is believed that this has occurred due to the off road driving training in 4x4 vehicles that is undertaken on the route. There are warning signs on the metal barrier referring to this use. This is private use facilitated by the Peckforton Estate. The route is also an attractive off road lane with added interest provided by the sandstone 'haunted bridge'. It is also referred to as the Elephant Track as there is a stone elephant near the access track to Peckforton Village Hall, which is at the start of Hill Lane off Stonehouse Lane. There is also a cottage at the Burwardsley End of Hill Lane called 'Elephant Track Cottage'. All the witnesses interviewed were of the opinion that the route was a bridleway and had never sought permission as they believed it was not required.

6.6.6 Of the witnesses represented in the user evidence chart at Appendix 2, 10 have acquired use of the route over the full 20 year period as required by s.31 (1) of the Highways Act 1980 as set out in paragraph 5.3.3. Of those 10 witnesses, 6 attest to having use over a period of 50 years or more. A further 6 users claim use of the route for some part of the relevant 20 year period. Use is evidenced as commencing in 1936, with no use demonstrated during the period of the 2<sup>nd</sup> World War when the population would have been occupied in the war effort.

## 6.7 *Conclusion*

6.7.1 The documentary evidence considered in this case demonstrates the existence of the route as a bounded lane of a status higher than footpath from 1777 where it is depicted on Burdett's map as

a cross road. There is a consistency of the depiction of the route as a cross road through the County Map series. These provide evidence of the reputation of the claimed route as a public highway but cannot be considered conclusive as to status. Through the Ordnance Survey and Bartholomew's maps the route is consistently shown as a bounded lane with no restrictions. It is referenced as 'Road' on the O.S. book of reference and shown as useable route on the Bartholomew's maps which were specifically of interest to cyclists. Consequently, there is clear evidence of an unrestricted physical thoroughfare with the capability of accommodating use of a higher status than purely pedestrian.

- 6.7.2 Under s.31(1) of the Highways Act 1980 a right of way can come into being by prescription unless there is evidence to the contrary. The use of the route by cyclists can be demonstrated by the witness evidence over the 20 year period 1990 to 2010. This use can also be supported by the significant length of use up to this period. The use provided is not frequent, but it is regular and as it covers a long time period can be considered suitable for the acquisition of rights to have been demonstrated.
- 6.7.3 The evidence in support of this application must show, on the balance of probabilities, that restricted byway rights subsist along the claimed route. The balance of user evidence supports the case that a restricted byway subsists along the routes A-B (Plan No. WCA/023); 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 Public Footpath, Peckforton no.15 to restricted byway and thus amend the Definitive Map and Statement.

## **7. Consultation and Engagement**

- 7.1 Consultation letters and a plan of the claimed route were sent out to the Ward Member; Parish Council; User Groups/Organisations; statutory undertakers and landowners on the 9<sup>th</sup> March 2020. Further letters were sent to the landowners via the Estate Manager and an email to the Agent, Strutt and Parker, in September 2021 as nothing had been heard.
- 7.2 There were no responses from the consultees.
- 7.3 The Landowners agents were in contact after the second letters were sent, to say that they had no comment to make on the application. Further to this an e-mail with a letter and attachments was received on the 22<sup>nd</sup> of February from the agents. The letter stated that the route has been used from time to time by people on bicycle with the permission of

the Estate. A letter is enclosed from a member of the CTC seeking and being granted permission to use a route through the Estate. However, it should be noted that the letter specifically referred to the Sandstone Trail and a route from Beeston to the Pheasant Inn. This can be identified as Peckforton FP 1. The Estate also requested that we consider the increased burden of responsibility on them if the footpath is upgraded to restricted byway and the likely increase in management difficulties.

## **8. Implications**

### **8.1. Legal**

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 to the Secretary of State. 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 Legal implications are also included within the report.

### **8.2. Finance**

8.2.1 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.

### **8.3. Policy**

8.3.1 There are no direct policy implications of this report.

### **8.4. Equality**

8.4.1 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.

### **8.5. Human Resources**

8.5.1 There are no direct implications for Human Resources

### **8.6. Risk Management**

8.6.1 There are no direct implications for risk management

## 8.7. Rural Communities

8.7.1 There are no direct implications for Rural Communities.

## 8.8. Children and Young People/Cared for Children

8.8.1 There are no direct implications for Children and Young People.

## 8.9. Public Health

8.9.1 There are no direct implications for Public Health.

## 8.10. Climate Change

8.10.1 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.

8.10.2 The addition of a restricted byway to the Definitive Map represents the formal recognition of pedestrian/equestrian/cycle rights, creating more opportunities for travel/leisure on foot/horseback/cycle 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 as part of a recognised recreational route.

<b>Access to Information</b>	
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Appendices:	Appendix 1 – Archive List Appendix 2 – User Evidence Chart Plan no. WCA/023
Background Papers:	File no. CN/7/27