

Public Rights of Way sub committee

Date of Meeting: 5th December 2022

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

Report of: Jayne Traverse, Executive Director Place

Ward(s) Affected: Dane Valley Ward

1. Purpose of Report

- 1.1. This report is an informative to brief Members on the decision made by the Planning Inspectorate on the Order made by the Council to modify the Definitive Map and Statement by adding a footpath in Cranage.
- 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 informs Members that following the referral of this Order to the Planning Inspectorate following an objection; a site meeting was held with an appointed Inspector. Along with consideration of the submitted evidence and correspondence with the affected parties, the Inspector determined that the Order not be confirmed. The report also sets out the background to this application and the various stages of its progress.

3. Recommendations

- 3.1.** No decision is required by Committee

4. Reasons for Recommendations

- 4.1.** Not Applicable and other options are therefore not relevant.

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 2018. 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, 7 of the witnesses were interviewed. 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.
- 5.5.** 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 in this instance 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.
- 5.6.** This decision relating to one of the claimed paths A-B-C-D on Plan No. WCA/016A 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 13th September 2019.

- 5.7. Consequently, the Authority 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.
- 5.8. The Order was advertised between the 14th and 31st December 2019 and drew two objections which were not withdrawn.
- 5.9. When objections are received that are not subsequently withdrawn, an Authority must refer the contested order to the Secretary of State for an independent Inspector to determine whether to confirm the Order or not.
- 5.10. This matter was referred to the Secretary of State on the 9th March 2020. The progress was then severely impacted upon by the Covid pandemic and lockdown, and it was not until January 2022 that the official start date to the formal process began.
- 5.11. It was agreed that the outcome would be decided by written representations with an accompanied site visit once the correspondence was concluded. The site visit was eventually held on the 2nd August 2022.
- 5.12. The Inspector's decision was received on the 25th August 2022. The Inspector determined that the Order **not** be confirmed. In confirming an Order, the Inspector must consider a higher test than that required to make an Order. They must consider whether a right of way subsists according to the user evidence and the tests under Common Law. Section 31 of the Highways Act 1980 does not apply in this case as the land was held by the Health Authority until 2000 which constitutes Crown Land. Section 31 does not apply to Crown Land.
- 5.13. The Inspector considered whether the user evidence was sufficient, on the balance of probabilities, to demonstrate an inference of dedication under Common Law. They concluded, due to the various inconsistencies and omissions from the evidence provided, that there had not.
- 5.14. The Inspector was also not satisfied that there was sufficient evidence to determine the alignment of the claimed route between points A and B on the order Plan No. WCA/016A and also across the small field south of B.
- 5.15. Finally, the Inspector determined that there was no evidence to indicate that the landowner took any action to dedicate a right of way or to prevent the dedication of one prior to 2006 or 2007. And that they were not satisfied that the level of use would have been sufficient for a landowner to realise that they needed to take action to prevent a public right of way being established over their land.

6. Consultation and Engagement

- 6.1.** This is an Informative report, so no further consultation has been undertaken. All relevant parties were provided with a copy of the Inspector's decision letter.

7. Implications

7.1. Legal

- 7.1.1.** There are no further legal implications for the Authority.

7.2. Finance

- 7.2.1.** There are no potential further financial implications.

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

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 decision taken by the Inspector not to add this footpath to The Definitive Map and Statement does not contribute to this commitment.

Access to Information	
Contact Officer:	Clare Hibbert clare.hibbert@cheshireeast.gov.uk 01270 686063
Appendices:	Appendix 1 – Map WCA/016A
Background Papers:	Case file CO/8/34