

Highway and Transport Committee

3rd April 2025

**Report Title: Wildlife & Countryside
Act 1981 – Part III, Section 53.**

**Application No CN-7-24: Application to
delete Public Footpath 19 in the Parish
of Audlem**

Report of: Philip Cresswell, Executive Director of Place

Report Reference No: HTC /46/24-25

Ward Affected: Audlem

For Decision or Scrutiny: Decision

Purpose of Report

- 1 The report outlines the investigation of an application to amend the Definitive Map and Statement of Public Rights of Way by deleting Public Footpath 19 Audlem and shown on Plan WCA/40 between points 1 and 6 ("The Plan"). This 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 this information for quasi-judicial decision by members as to whether an order should be made to delete a footpath.
- 2 The work of the Public Rights of Way team contributes to the Corporate Plan aim of "A thriving and sustainable place", and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

Executive Summary

- 3 The report considers the evidence submitted and researched in the application to amend the Definitive Map and Statement by deleting Public Footpath 19 in the parish of Audlem. This 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 delete a public footpath.
- 4 The evidence consists of the application from the landowner, supporting statements from two neighbours and documentary evidence in the form of letters, maps and photos sent to the Council.
- 5 Various historical documents have been viewed including maps such as County Maps and Ordnance Survey maps, Tithe Map and Finance Act plans and valuation book.
- 6 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. One such event, section 53(3)(c)(iii) is where the discovery by the Authority of evidence shows that there is no public right of way over land shown in the map and statement as a highway of any description. Section 56 of the Wildlife and Countryside Act 1981 establishes that the Definitive Map and Statement are conclusive evidence as to the particulars contained therein. The report concludes whether on the balance of probabilities the Public Footpath was registered on the Definitive Map and Statement in error.
- 7 The evidence that has been submitted with this application and that considered during the subsequent consultation and investigation is considered insufficient in showing that the details contained in the Definitive Map and Statement should be modified.

RECOMMENDATIONS

The Highways & Transport Committee is recommended to:

1. Decide that a Modification Order **not** be made under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to delete Footpath 19 as shown on Plan No. WCA/40 at Appendix 1.
2. The application be refused on the grounds that there is insufficient evidence to overturn the legal presumption that the Definitive Map and Statement are correct.

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| 3. Note that in the event of objections being received, Cheshire East Borough Council be responsible for the conduct of any hearing or Public Inquiry. |
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Background

- 8 The application was submitted by Mr Lawrence, owner and occupier of Meadows Farm, Audlem on the 20th October 2005. The application consisted of an application form (Form D), maps showing the area in contention; Interim Memorandum Divisional Engineer East Map dated 27th April 1984, Public Rights of Way Unit map dated October 1996, map supplied by the Public Rights of Way Officer in August 2000, evidence of use forms (Form F) signed by witnesses and maps or sketch plans from each witness. The application was submitted by Mr Lawrence; however, due to his unavailability further supporting evidence was provided by the family.

Description of the application route

- 9 Commencing from Point 1 on the Plan at the junction with Footpath 31 the path leads into the field through a metal kissing gate, with a dilapidated old timber field gate to the side. There is an official signpost from the roadside with additional way marker discs on it. There are a number of home-made signs on the kissing gate requesting that walkers keep dogs on leads to avoid disturbing ground nesting birds and requesting that people “pick up” after their dog. At Point 2 the path continues past a small “hollow” and the ground becomes a little wet underfoot. The path proceeds in a south easterly direction towards the centre of the field, is well trodden and easy to follow. At Point 3 just off the alignment of the Footpath there is a clear “hollow” in the ground, which is difficult to see on the photograph in appendix 2 but quite clear on site. At Point 4 it passes through a gap in the hedge line; there is a slight depression in the ground indicative of a stream or open drain, and it is clear the ground can be wet here at times. There are signs of an old fence and timber structure in the undergrowth with an official Cheshire East Council way marker on it. Heading towards Point 5 the path follows the hedge line in a south easterly direction along a well-trodden route, which is easily followed. It continues along the hedge line until it reaches a metal kissing gate at Point 6 which is the junction with Bridleway 31. Alongside the kissing gate is an older timber field-gate that has fallen into disrepair.

Photographs

- 10 Photographs of the Footpath can be seen at Appendix 2

Main Issues

- 11 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:-
- 12 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.
- 13 There has to be a discovery of evidence and this evidence can consist of documentary/historical evidence or witness evidence or a mixture of both. All the evidence must be evaluated and weighed, and a conclusion reached whether, the evidence outweighs the conclusivity of the Definitive Map and Statement. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.
- 14 The Planning Inspectorate’s Consistency Guidelines (Wildlife and Countryside Act 1981 - Definitive Map Orders) indicates that a proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a Definitive Map has been marked there by mistake.”
- 15 The case of *Trevelyan v Secretary of State For Environment, Transport & Regions* [2001] EWCA Civ 266 is of particular relevance in applications to delete Public Rights of Way. Lord Phillips stated at paragraph 38 that:

“Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a Definitive Map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive

evidence that is necessary to establish that a right of way that has been marked on a Definitive Map has been marked there by mistake.”

The investigation

- 16 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 3.

County Maps 18th/19th Century

- 17 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.
- 18 The Footpath which is subject to the application is not shown on the P.P. Burdett 1777 map nor the Swire and Hutchings' map of 1829 nor A Bryant's Map of 1831.

Tithe Map

- 19 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. The 1836 Act relieved the Tithe Commissioners of the need to certify all maps.
- 20 It was not the purpose of the Awards to record public highways. Although depiction of both private occupation and public roads may provide good supporting evidence of the existence of a route, especially since they were implemented as part of a statutory process. 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.
- 21 The Tithe Commutation Act 1836 (as amended by the Tithe Act Amendment Act, 1837) established two classes of tithe map. First class

maps had the Commissioners' seal attached, showing them to be reliable as a true record of matters relating to the purposes for which the map was designed. However, second class maps, which failed in some, often minor, way to meet the stringent test for first class status, are not necessarily inferior from a cartographic point of view. Both first and second class maps have been accepted by the courts as evidence.

- 22 The Tithe map for the Township of Audlem produced c.1842 is a second class map. The Footpath is not shown on the map. The Footpath as registered on the Definitive Map appears to run through plots number 437 (pasture), 434 (arable), 418 (pasture), 422 (meadow) and possibly 435 (mill fields). All the plots apart from plot 435 were all registered to the same owner.

Ordnance Survey Records (OS)

- 23 OS 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 is argued that this disclaimer was solely to avoid potential litigation. Recent research into the instructions given to the field surveyors and the development of the OS shows they appear to have tried to depict all routes, paths and ways that were physical features and if observed to be used by the public. However, there is no documentation to show the OS went through a statutory process of checking with the local authorities to establish the status of a way or path. Research by Yolande Hodson indicates there was tension in the modern era within the OS to agree what would be shown on the maps, who were their audience and how to depict the condition and status and at the published scales, what should be omitted. The maps are good evidence of the existence of a way or path and can support any other evidence claiming public rights of way.

- 24 O.S. 1st Edition County Series 6" to 1 mile 1882

A double pecked line is shown following more or less along public Footpath 19 as recorded on the Definitive Map. Some field boundaries have changed since this map was produced. On the map, comparative with the path between Point 1 and point 2 on The Plan there is a small pond just to the south the path; the path is shown skirting its edge.

- 25 O.S 2nd Edition 25" to 1 mile 1898

There are no physical indications of Footpath 19 on this map. A double pecked line commences at the northern end near where the Footpath 19

commences, however it runs over to the nearby farm (currently known as "Meadows Farm").

- 26 O.S. 2nd Edition County Series 6" to 1 mile 1899

There are no physical indications of Footpath 19 on this map. A double pecked line commences at the northern end near where the Footpath 19 commences, however it heads over to the nearby farm ("Meadows Farm").

- 27 O.S. 2nd Edition 6" to 1 mile 1903

There are no physical indications of Footpath 19 on this map. A double pecked line commences at the northern end near where the Footpath 19 commences, however it heads over to the nearby farm ("Meadows Farm")

- 28 OS 2nd Edition County Series 6" to 1 mile 1912

There are no physical indications of Footpath 19 on this map. A double pecked line commences at the northern end near where the Footpath 19 commences, however it heads over to the nearby farm ("Meadows Farm"). The letters FP are shown by the double pecked lines.

- 29 OS 2 ½" to 1 mile 1963

There are no physical indications of Footpath 19 on this map.

Finance Act 1910

- 30 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. It is thought that exclusion of highways on the maps came under S35(1) of the Act not to charge on land or an interest in land held by a rating authority.
- 31 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.
- 32 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.

- 33 Hereditament number 205 includes all fields through which the entire length of public Footpath 19 runs, passing through OS field numbers 464, 478 and 481.
- 34 The valuation book lists “1 Footpath” under fixed charges, easements, common rights and restrictions. It identifies a deduction of £33.00 for public rights way or user. There is no consistent approach to value of deduction in relation to the length of path however it is highly likely that the public right of way being referred to is Footpath 19 as no other public right of way exists or is otherwise recorded in the hereditament number for which Meadows Farm is located. No other public rights of way recorded on the Definitive Map and Statement exist within hereditament 205.

Pre Definitive Map records

- 35 The Public Rights of Way team hold records that pre-existed the Definitive Map process.
- 36 The “Nantwich Footpath map” (circa 1930) identifies Footpaths which existed in the Rural District of Nantwich and are categorised as: Footpaths that simply exist and which no repair appear to have been carried out shown coloured red. Footpaths previously repaired by the Rural District Council shown coloured blue. Footpaths previously repaired by the Parish Councils shown coloured green. Each Footpath is numbered to correspond with schedule on file: G.M. 180. Footpath 19 is shown coloured red and numbered as path number 308 indicating that it was a Footpath that existed but no repairs had been undertaken.

Definitive map process – National Parks and Access to the Countryside Act 1949

- 37 The Definitive Map and statement is based on surveys and plans produced in the early 1950’s 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.

Audlem Parish Survey Schedule and Map (1951)

- 38 On page 1 of the parish schedule the Footpath is numbered as 19 and described as commencing at Monks Lane opposite what appears to say Mill Lane Farm. There are hand drawn arrows on the page that indicate that the commencement point and termination point of the path should be read the other way around from how it is written on the page.
- 39 The length shows 100yds struck out and replaced by 555yds. The lettering (stile)S.1, F.2, (Field gate) FG.3 (Field Gate) and Gap 4 are included in the general description; these correspond to those included

in the draft Definitive Map. The general description identifies that S.I is now part of the hedge/fencing and “no” use as a stile. The path is described as across meadowland and not defined.

- 40 On page 2, under details of any old maps, diversion orders, dedication agreements, parish minutes etc there is a faint text stating “see file 5/680”, which is also the reference number on the Audlem Parish Survey extract. There is other text which is difficult to decipher but could be read as “G.M 1150 GEN. Closed under Defence Regs. Order” followed by a word that is unclear followed by the year 1946. Under the section relating to whether any part of the path has been disputed this is left blank. The names of those carrying out the survey have been included and is dated Sept 1951.
- 41 The parish survey makes reference to the path being closed under the “Defence Regs”. It is known that some public rights of way throughout the country would have been closed during the War periods, for various reasons including food production/agricultural purposes and that these were on a temporary basis, revoked at the end of the war. It is understood that County executive committees would have had a role in these but that they were largely undocumented.
- 42 For the closures to take permanent effect it would have required further orders as indicated by the Planning Inspectorate’s Consistency Guidelines (Wildlife and Countryside Act 1981 - Definitive Map Orders), which confirms that any temporary closures of rights of way made under emergency powers during the First or Second World Wars would have ceased to have effect on 28 June 1920 or 31 December 1958 as appropriate. There is no evidence that any subsequent order was made in this instance.
- 43 The position regarding the Defence Regulations is outlined in a letter from Cheshire East to the applicant on the 26th June 1995.
- 44 On the parish survey map Footpath 19 is shown broadly following the alignment on the Definitive Map. It is a red broken line commencing from the unclassified road (UC/5/68) and leading in a generally south easterly direction. File 5/680 is written on the map pointing to Footpath 19. Just due west of Meadows Farm an unbroken red line has been drawn running roughly east-west crossing Footpath 19 and ending at Meadows Farm. Footpath 19 continues south to meet Mill Lane.

Draft Definitive Map (Published 6th February 1956)

- 45 Footpath 19 is shown commencing at a stile (S.1) to the west of Meadows Farm, at the unclassified road (UC/5/68). It is shown passing through a field boundary, referenced as F.2 on the map. It heads south for a short

distance through what appears to be an open field before reaching a field gate (FG.3) at Mill Lane. The path is shown continuing along and what will eventually be registered as path number 30 (Mill Lane) before arriving at a point referenced as Gap.4 on a bend in the unclassified road (UC/5/68). Paths number 30 and 31 are not shown on the map.

Provisional Definitive Map (Published 2nd December 1969)

- 46 Footpath 19 is shown commencing to the west of Meadows Farm, at the junction with Footpath 31 at the unclassified road (UC/5/68). It heads through what appears to be an open field before heading in a more southerly direction to meet Bridleway 30 at Mill Lane.

Definitive Map (Published 21st December 1973)

- 47 Footpath 19 is shown commencing to the west of Meadows Farm, at the junction with Footpath 31 at the unclassified road (UC/5/68). It heads through what appears to be an open field before heading in a more southerly direction to meet Bridleway 30 at Mill Lane.

Aerial Images

- 48 A number of aerial images were available for the location spanning the period from the 1940's through to 2024

- 49 Black and white image 1940's

The fields through which the Footpath runs are largely over exposed and its impossible to see if there are any walked routes shown on the ground along Footpath 19. There is a circular shadow in the field just due east of where it meets the unclassified road (UC/5/68); it is unclear what this is but it looks most like a mark or stain on the photo.

- 50 Black and white image (colour) 1970's

The field layout is very similar to the 1940's map with the exception of the removal of some of the smaller enclosures. The picture quality is greater than for the 1940's image. It is not possible make out any walked alignment along the route of Footpath 19.

- 51 Aerial image (colour) 1980's

The field layout has changed very little. There is a large grey/brown "scar" in the field just beneath where Footpath 19 runs due west of Meadows Farm; it is unclear what this but is just south of the alignment of the Footpath. It is not possible make out any walked alignment along the route of Footpath 19.

52 Aerial image (colour) 2024

The field layout is largely unchanged. There is no indication of a walked line in the field immediately off Bridleway 30 (Mill Lane) however where it leads north westerly in the adjoining field there is a very distinct line along route of Footpath 19.

Applicants case

- 53 There is one owner who is also the applicant and they included evidence from two other individuals in their application to corroborate that the path had not been used historically. The application was submitted by Mr Lawrence; however due to his unavailability, further supporting evidence was provided by the family. A signed statement identifies a number of issues that they believe supports their case that Footpath 19 has been incorrectly registered.
- 54 The Footpath was not identified in the deeds to the property when it was purchased in 1953 and as such that they did not know that a public right way existed until 1995, when they were contacted by Cheshire East Council. They cite that as an operational dairy farm they would have undoubtedly seen people using the Footpath and that any gates either end of the path would have been for agricultural purposes rather than for public access.
- 55 They are of the belief that there is no historical evidence which would corroborate the need for a Public Footpath at this location and reference how sparsely populated Little Heath would have been. They are of the view that the logical way to have travelled to the nearby mill would have been via Mill Lane (Bridleway 30) and that any rights of access would have been a private right for the miller who previously lived at Meadows Farm. They refer to the previous entrance to Meadows Farm coinciding with where Footpath 19 leave Monks Lane, prior to the new entrance being installed at a later date.
- 56 They submit a number of aerial images including one from 1932 which indicates a hedge running between Monks Lane and the “front field”, with a second parallel internal field hedge, which they argue would make pedestrian access impassable. They are keen to stress that the post 2005 aerial images which show a well-trodden route along the alignment of Footpath 19 are in contrast to the older aerial images dated 1932, 1971-73, 1983 and 1999-2003 which do not show any such indication of use.
- 57 Seven maps were also submitted as part of the application, titled maps A, B, C, D, E and enclosures 211, 212 and 213; map A appears to replicate the map in enclosure 211.

- 58 Map A is also included as part of enclosure 211, which accompanies a memorandum to the Divisional Engineer on the 27th April 1984 with a request to deliver two stiles for installation on a nearby path. Footpath 19 is not shown on this map, however the purpose of the map is to depict the location of the Footpath where the stiles are required rather than to show any other public rights of way.
- 59 Map B relates to Road Used as Public Path (RUPP) 30 Audlem dated October 1996. Footpath 19 is not shown on this map, however the purpose of the map is to depict the location of RUPP 30 and land owned alongside the RUPP, rather than to show any other public rights of way.
- 60 Map C is a copy the OS map, 6" to 1-mile 1912 Edition Cheshire Sheet LXVI N.W. There are no physical indications of Footpath 19 on this map. A double pecked line commences at the northern end near where the Footpath 19 commences, however it heads over to the nearby farm (what is modern day Meadows Farm). The letters FP are shown by the double pecked lines. OS maps are a good indication of the physical existence of a route on the ground however they were not created to record public rights of way and the inclusion or otherwise of a route is not conclusive evidence of the existence or lack of existence of public rights of way.
- 61 Map D is an extract of an OS map, which is not titled, but is likely to be the 2nd Edition 25" to 1 mile Cheshire LXVI.2 map 1898. The map is enlarged to show Meadows Farm and there are no physical indications of Footpath 19 on this map. A double pecked line commences at the northern end near where the Footpath 19 commences, however it heads over to Meadows Farm. OS maps are a good indication of the physical existence of a route on the ground however they were not created to record public rights of way and the inclusion or otherwise of a route is not conclusive evidence of the existence or lack of existence of public rights of way.
- 62 Map E appears to be a reproduction of the 1" to 1 mile OS map which, is not titled; however in the submission statement as part of the application it is referenced as Combermere Estates (Sales particulars 1917) showing Footpath 17 and 18 but not Footpath 19. The scale means it is difficult to decipher the detail, but it does not appear to show any route in the vicinity of Footpath 19. As with Map C and D above, OS maps are a good indication of the physical existence of a route on the ground however they were not created to record public rights of way and the inclusion or otherwise of a route is not conclusive evidence of the existence or lack of existence of public rights of way.
- 63 Enclosure 212 is a map relating to the reclassification of Road Used as Public Path (RUPP) 30 under the Definitive Map and Statement for the Borough of Crewe and Nantwich (Reclassification of Roads Used as

Public Paths) Order 1996. Footpath 19 is not shown on this map; however the purpose of the map is to depict the location of RUPP 30, which is subject to the order being made rather than to show any other public rights of way.

- 64 Enclosure 213 is a map which was shared by Cheshire East Council with the applicant is the appears to be an extract of a working copy of the Definitive Map. It appears to depict Footpath 19 in the location where it is currently registered on the Definitive Map.

Witnesses evidence

- 65 There were two witness statements included in the application; one of whom is now deceased and the other unavailable to provide further detail.
- 66 One witness who lives near where Footpath 19 leaves Monks Lane indicated that in 18 years of living at the property, he had not seen anyone using the Footpath. The other witness indicated that a section of hedge was removed, and a gate installed near where Footpath 19 leaves Monks Lane. There is no indication of how long this witness knew the path or the area.

Consultation and Engagement

- 67 Consultation documentation was sent on 7th October 2024 to interested parties including the owners/occupier, Audlem Ward Member, the Audlem Parish Council and local user groups. Audlem Parish Council were unable to issue a formal response.
- 68 The Peak & Northern Footpath Society confirmed that they had no evidence with regards to the footpath. South Cheshire Ramblers responded indicating that the path looked well used and does not appear to affect the privacy of the farmhouse, which is shielded by trees and a hedge. The Open Spaces Society provided no evidence but were confident that the application was without merit and that publicly available data contradicts the Applicant's claims.
- 69 User evidence forms indicating use of the public Footpath was submitted by five individuals, with earliest use dating back to 1984. This use is not relevant in concluding this case as it post-dates the registration of the Footpath on the Definitive Map.

Reasons for Recommendations

- 70 Under Section 53 of the 1981 Act, the Council has a duty as the Surveying Authority to keep the Definitive Map and Statement under continuous review. Section 53 (c) allows for an authority to act on the “discovery of evidence” that suggests that the Definitive Map and Statement needs to

be amended. The authority must investigate and determine that evidence and decide on the outcome whether to make a DMMO or not.

- 71 The Finance Act map and valuation books are of particular relevance in this instance in that they identify a deduction for a public right of way, thus reinforcing the existence of a public right of way. There is no consistent approach to value of deduction in relation to the length of path however it is highly likely that the public right of way being referred to is Footpath 19 as no other public right of way exists or is otherwise recorded in the hereditament number for which meadows Farm is located.
- 72 The route of Footpath 19 is depicted in its entirety on the OS map 1st Edition County Series 6" to 1 mile 1882, which is an indication that there was a physical route visible on the ground at the time of survey. The later OS maps do not depict Footpath 19 along its current alignment, rather showing a route running towards Meadows Farm. OS maps were originally prepared for defence purposes and with the intention of providing a definitive or conclusive depiction of public rights of way. OS maps are a good indication of the physical existence of a route on the ground however they are not conclusive evidence of the existence or location of public rights of way. Similarly, the lack of a route depicted on the OS maps or that a route is shown in a different location is not conclusive of there being an error in the Definitive Map and Statement
- 73 The Nantwich Footpath Map c1930 includes Footpath 19 along its alignment as shown in the Definitive Map and Statement. This is considered good supporting evidence of the existence and location of Footpath 19 as it was a document produced and used by the Cheshire County Council as a record of the existence of public Footpaths and their maintenance.
- 74 With regards to the landowners statement, there is no doubt that it is an honestly held belief that the path has been registered in error, however the evidence submitted holds insufficient weight to prove that public Footpath 19 should be deleted. There are clearly some practical issues related to management of the farm that caused difficulty when it was fully operational; however, these issues of convenience and safety cannot be considered as part of the evidence to delete the path.
- 75 The applicant submitted seven maps with their application as supporting evidence; maps A, B, C, D, E and enclosures 212 and 213. Maps C, D and E are various editions and scales of OS maps and as identified above, the lack of a route depicted on these maps or that a route is shown in a different location is not conclusive of there being an error in the Definitive Map and Statement.

- 76 It is considered that the evidence that has been submitted with the application and during the subsequent consultation is insufficient in showing that the details Definitive Map and Statement needs modifying by deleting Public Footpath 19.
- 77 The work of the Public Rights of Way team contributes to the Green aim of the Corporate Plan, the “thriving and sustainable place” priority, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

Other Options Considered

- 78 If the authority was to do nothing it would not comply with Section 53 of the Wildlife and Countryside Act 1981, which requires the Council to keep the Definitive Map and statement under continuous review and make such modifications to the Map and Statement as required.

Implications and Comments

Monitoring Officer/Legal

- 79 The legal implications in relation to highways law are set out in the Legal matters section of this report (paragraph 11-15).
- 80 The Human Rights Act is also of relevance. Whilst article 1 to the first protocol (peaceful enjoyment of property) and article 8 (right to respect for family, private life and home) are engaged, it is important to note that these rights are qualified, not absolute, which means that they can be interfered with in so far as such interference is in accordance with domestic law and is necessary in a democratic society for the protection of the rights and freedoms of others. It is considered that any interference occasioned by the making of a Modification Order is both in accordance with domestic law (the Wildlife and Countryside Act 1981) and is in the public interest as it is necessary in a democratic society for the protection of the rights and freedoms of others, namely the public who wish to use the way. Should Members resolve that a Modification Order be made in accordance with highways legislation, this is merely the start of the legal process. Once a Modification Order is made, it must be publicised, and any person will have an opportunity to formally object to it. Should objections be received, the Modification Order would have to be referred to the Secretary of State who may hold a Public Inquiry before deciding upon whether or not to confirm the Modification Order.
- 81 Please note that the Council will not disclose the user evidence forms that form part of the background documentation at this stage in the process. The Council considers that the information provided within the user evidence documentation is exempt information under s1&2 Schedule 12A Local Government Act 1972, as amended.

- 82 Under the Wildlife and Countryside Act 1981, there is no such statutory right prior to an Order having been made - persons affected are entitled to the information in the event that an Order is made following the Committee decision.
- 83 Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the Local Authority to confirm the Order itself and may lead to a hearing or Public Inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.

Section 151 Officer/Finance

- 84 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. The maintenance of the Public Right of Way would continue to be the responsibility of the landowner and Council in line with legislation. The associated costs would be borne within existing Public Rights of Way revenue and capital budgets.
- 85 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. The maintenance of the Public Right of Way, if added to the Definitive Map and statement, would fall to the landowner and Council in line with legislation. The associated costs would be borne within existing Public Rights of Way revenue and capital budgets.
- 86 There are no financial implications.

Policy

- 87 The work of the Public Rights of Way team contributes to the Vision of the Corporate Plan of a greener Cheshire East, with the aim of “a thriving and sustainable place”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

Vision - An open, fairer, greener Cheshire East

Aim - A thriving and sustainable place

- A great place for people to live, work and visit
- Welcoming, safe and clean neighbourhoods
- Reduce impact on the environment
- A transport network that is safe and promotes active travel
- Thriving urban and rural economies with opportunities for all
- Be a carbon neutral council by 2027

Equality, Diversity and Inclusion

- 88 An assessment in relation to the Equality Act 2010 has been carried out by the Public Rights of Way Network Management and Enforcement Officer for the area and it is considered that the proposed diversion would be no less convenient to use than the current one.

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.

Human Resources

- (a) There are no direct implications for Human Resources.

Risk Management

- (b) There are no direct implications for risk management.

Rural Communities

- (c) There are no direct implications for Rural Communities.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

- (d) There are no direct implications for Children and Young People

Public Health

- (e) The recommendations are anticipated to offer a positive overall impact on the health and wellbeing of Cheshire East residents.

Climate Change

- (f) The recommendations will help the Council to reduce its carbon footprint and achieve environmental sustainability by reducing energy consumption and promoting healthy lifestyles.

Access to Information	
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Appendices:	Appendix 1 Report Plan Appendix 2 Images Appendix 3 Reference List

Background Papers:	The background papers and files relating to this report can be inspected by contacting the report writer.
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