

OPEN

Highways and Transport Committee

4 April 2024

Wildlife & Countryside Act 1981 – Part III, Section 53.

Application No. CN/7/34: Applications for the Upgrading to Bridleway of Public Footpaths 21 and 22 Buerton AND in Shropshire, Application 251 for the addition of a Bridleway in Shropshire

Report of: Peter Skates, Acting Executive Director, Place

Report Reference No: HTC/12/24-25

Ward Affected: Audlem

Shropshire Ward Affected: Market Drayton East, Norton in Hales & Woore & Woore Parish

Purpose of Report

- 1 This report outlines the investigation into two applications made by The British Horse Society to Cheshire East Borough Council and Shropshire County Council. The applications seek in Cheshire East to upgrade to a bridleway two Public Footpaths 21 and 22 in the parish of Buerton (“FPs 21 and 22”). A bridleway is a right of way on foot, on a horse and by grant of the Countryside Act 1968, a right to ride a bicycle. The Cheshire East application reference is CN-7-34 and is shown between points A to B to C on the plan WCA/033 (“the plan”)
- 2 This report includes a discussion of the consultations carried out in respect of the claim, the historical evidence and the legal tests for a Definitive Map Modification Order (“DMMO”) 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 footpaths to a bridleway and to add a bridleway in Shropshire.

- 3 In Shropshire the application seeks the addition of a bridleway. Shropshire County Council (“SCC”) registered the application with the reference application 251. The application provides the link between the eastern end point of the claim in Cheshire East to the Audlem Road, A525 and is shown on the plan between points C to D. The SCC Full Council Meeting have delegated the determination of this application to Cheshire East. Their report is available on this link: [Agenda for Council on Thursday, 14th December, 2023, 10.00 am — Shropshire Council](#)
- 4 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.

Executive Summary

- 5 The report considers the evidence submitted and researched in the application to upgrade FP21 and FP22 and the addition of a bridleway in Shropshire. The two footpaths run between the adopted highway known as Hankins Hey Lane then runs east crossing the county boundary before the junction with Audlem Road. The route passes through a farm which is known as College Fields Farm on all of the available maps. The evidence consists solely of historical documents including nineteenth century commercial maps, Ordnance Survey (“OS”) maps and commercial twentieth century maps such as Bartholomews.
- 6 There is currently no public footpath recorded over the land in Shropshire, however it seems reasonable to presume that a footpath over the land is recorded. The landowner has agreed to dedicate a public footpath in recognition of pedestrian rights. Therefore, this report proposes SCC entering into a dedication agreement with Landowner 1 to create a public footpath under Section 26 of the Highways Act 1980.
- 7 Both applications are considered under S53(c)(ii) of the 1981 Act where the discovery of evidence, when considered with all relevant evidence, shows that a highway shown on the Definitive Map (“DM”) as a highway of a particular description ought to be there shown as a highway of a different description. In Shropshire the investigation has looked at whether there are higher rights than footpath pending the dedication of a footpath.
- 8 The maps demonstrate the existence of the route over a period of almost 200 years. The routes are shown over this time with variable width. There is evidence of gates and it being partially bound (eg. by a

hedge). This is shown by solid lines and the unbound section is indicated by broken lines.

- 9 The report determines whether on the balance of probabilities the status of the bridleway should be recorded by showing that the footpaths in Cheshire East and Shropshire have acquired and/or already had higher rights.
- 10 The applications claimed the reputation of the route as a thoroughfare linking two adopted roads. This report concludes that on the analysis of County Maps, Tithe Maps and OS and commercial maps on the balance of probabilities higher rights than a footpath cannot be proven to subsist over the route shown on the plan between points A-B-C-D.

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RECOMMENDATIONS

The Highways and Transport committee is recommended to decide:

1. That the application for the upgrade to bridleway of FP21 and 22 Buerton is to be refused on the grounds that it cannot be demonstrated that higher rights subsist.
2. That SCC enter into a dedication agreement to modify the Definitive Map and Statement for Shropshire by adding a Footpath between the county boundary and Audlem Road, Woore as shown between points C and D on Plan No. WCA/33

Background

Description of Route

- 12 A footpath is a right of way on foot only and a bridleway is a right of way on foot, on a horse or leading a horse and by grant of the Countryside Act 1968, a right to ride a bicycle.
- 13 FP22 commences from the southeast termination of the adopted road Hankins Hey Lane (UY 1437) at OS grid reference ("OSGR") SJ 6945 4237. The footpath runs in a generally south east then east south easterly direction towards the farm called "College Fields" ("the farm") to the junction with FP21 at OSGR SJ 7045 4118. The route then runs in a

north easterly direction to the administrative county boundary at OSGR SJ 7089 4268. The footpath connects with the Shropshire claim for a bridleway running from the county boundary in a north easterly direction to the junction with the A525 Woore Road at OSGR SJ 7101 4276. The application route, including the section in Shropshire therefore links two ends of adopted highway and can be seen on the plan between points A, B, C and D.

- 14 From Hankins Hey Lane, the route veers east over an unsealed surface. The boundary for Three-Wells cottage sitting at the junction with Hankins Hey Lane, includes an area of open scrub land on the north side of FP22. The track continues for approximately 25 metres bounded by hedges on both sides. The track is unmetalled and poorly drained. At approximately 190 metres further east the track is crossed by 2 field gates with pedestrian kissing gates to the side. These gates have been erected fairly recently in 2021, replacing field gates and stiles. The route then crosses a watercourse. The footpath continues east crossing an open field, a field gate gives access to the next field, running in a hollow, to the approach to the boundary of the farm. On the north side is a junction with Footpath 19 Buerton.
- 15 At the approach to the farm, the path runs over a stoney farm track bounded intermittently on one side by a hedge. East of the farm buildings, FP22 terminates at the junction with FP21 which runs on a south to north line. The track remains stoney, is poorly drained and is currently heavily used by farm vehicles. There are currently no gates across the track in this area, although at the farm there is evidence of abandoned gate posts on the west side of the track entrance to the farmyard. On the east side of the yard entrance, an abandoned gate lay on the south side of the track which indicates a second gate which would have crossed the track. At this junction, there is a field gate and an indication of a stile to the side of the gate serving FP22. At approximately 215 metres north from the junction, FP21 connects with Footpath 23 Buerton. The track commences heading in a north east direction along a semi metalled, stoney surface. A hedge runs along one side of the track.
- 16 At the parish and county boundary the track crosses a brook and the track has an open field gate, recorded on the 1950s parish survey. The track continues in Shropshire, as a semi-metalled track between wide verges and hedges to the junction with the A525 Audlem Road.

Legal matters

- 17 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:-

- 18 One such event, (section 53(3)(c)) 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.
- 19 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.
- 20 The applicant relies primarily on documentary evidence and has to show an inference in the evidence that the way was already recognised as being a highway, other than footpath, by the start of the period covered by living memory, coupled with the absence of anything to show that the public recognition was misplaced. In this class of common law, the case recognises that the facts point one way, and it is immaterial if the early owners cannot be identified or a date of dedication cannot be identified. In effect, the applicant either must show the routes were recorded on the DM incorrectly and should have been shown as a bridleway or that bridleway rights have been established since the DM was published. If there is insufficient evidence to show what is claimed, then what is shown on the DM must stay and be treated as definitive and there should be no change.
- 21 In addition, it must be shown that it is new evidence that is being considered other than the evidence that was originally considered before the DM was published. The reasons for this are set out by “Burrows v Secretary of State for Environment, Food and Rural Affairs (2004).”
- 22 An investigation of the available evidence including the applicants submitted 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**.

Documentary Evidence

County Maps eighteenth and nineteenth century

- 23 These are small scale maps made by commercial mapmakers, 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 mapmakers' 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.
- 24 Greenwoods Map of Shropshire dated 1827 is a map that shows the main routes and not much else, and not the claim route. Greenwoods maps were known as being accurate. Swire and Hutchings 1829 Cheshire map indicates Hankins Hey Lane but does not show the application route. The cartography in this area of the map is not very accurate when compared with the near contemporary Bryant's map. Bryant's Map of 1831 shows the route from Hankins Hey lane running east as a solid double line, depicted with sections of broken lines to buildings at the location of the farm. The route continues to the main road in Shropshire. The map suggests the routes were classed as "lanes and bridleways" however this isn't indicative of status.

Buerton Tithe Map and Apportionment certified 1845 and Mucklestone (Woore township) Tithe Map 1838

- 25 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 are 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. In Cheshire there appears to be no tithe map which has produced a map key. Map symbols were already in use on nineteenth century maps and some common symbols appear on the maps which were mostly understood by the people using the maps. On the Buerton map this includes "bracing", a brace is a line indicating that the land and the feature are connected. Non tithed roads and tracks

are quite often separated because they do not deliver a titheable commodity (such as a crop). For this reason, a non-tithed road is indicative of treatment for tithes and not for public highway.

- 26 The Tithe apportionment for Buerton is certified by two commissioners, indicative that the map was to the standard of a first-class map. At the end of the list of apportionments is a line for parcel numbered 750 and described as "Public Road". The "public roads" parcel included Hankins Hey lane, as far south and east past Three- Wells cottage to a point where the track is crossed by a line possibly indicating a gate. This is not shown as a through route. From the east of the end of the "public road", the parcel was owned and occupied by John Brookes, and was inclusive of the track, as far as a field west of the farm. From the farm to Woore Road the track is coloured ochre but incorporated into the adjacent land by brackets, indicating it was not a separate feature. The parcel is owned by John Mason Parsons and occupied by John Miles.
- 27 The small section of the route in Shropshire lies in the tithe apportionment for Woore township in the parish of Mucklestone, the route is drawn in the same style as the main road is drawn and is unnumbered. The main road is sign posted on the map as "from Audlem" indicating a thoroughfare. The claim route is not signed as a through route. The triangle of land between the main road, the route and the parish boundary is listed as plot number 406, the ownership is by G W Kenrick with J Mountford in occupation. The ownership is not the same as that on the Cheshire side of the parish boundary (see above). Although the route is unnumbered and drawn similarly to the main road, it is not signed as a thoroughfare and it cannot be assumed the route is part of the ordinary highway network because the purpose of the map was not to attribute status of highways.

OS maps

- 28 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 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. Dr Yolande Hodson has written widely on the interpretation of the OS map. Dr Hodson was formerly employed by the Military Survey and then by the Map Room of the British Museum. In publication, she has described the tension in the twentieth century within the OS to agree on what would be shown on the maps, at which scale and for which audience and what symbols should be used to depict the condition and status of roads and ways. She has indicated that the OS

are good evidence of the existence of a way or path and can support any other evidence claiming public rights of way, but they are limited in proof of public status.

29 OS 1" edition Sheet LXXIII1833

30 This route is shown as a continuation of Hankins Hey Lane, running between lines solid and infrequently broken lines to the farm. Running in a north easterly direction to the county boundary, the route has variable lines of both solid and broken (solid boundary and unfenced).

31 OS 6" edition 1882 (and Shropshire 1888)

The 6" maps show the route and lines across the track for gates, and broken lines and solid lines as shown on the 25" series. The section in Shropshire is shown with solid double lines.

32 OS 1st Edition County Series 25" to 1 mile 1875

Hankins Hey Lane is shown with running between single weight lines to Three Wells cottage. The route continues as single weight lines and is parcel numbered 414. The end point of 414 isn't clearly shown because the map is littered by tree symbols but appears to end west of a watercourse. At the watercourse the route continues between broken lines, braced to the adjacent land. A field boundary field west of the farm, indicates there was a gate. The track continues enclosed by single weight lines braced to the land on the north side. East of the farm, the track runs north, across a line indicating a gate, between variable broken and solid lines to the county boundary. The broken lines are braced to the adjoining land. Brace joins land together to give a single field parcel number.

33 OS 2nd Edition County Series 25" to 1 mile 1898 Cheshire sheet LXVI.7 1880 Shropshire sheet III.5

The application route crosses 2 map sheets. On the Cheshire sheet, Hankins Hey Lane is depicted running between a double weight line and a single weight line as far as Three-Wells cottage. Beyond Three-Wells cottage the track runs between single weight lines with a gate before reaching the watercourse. Running east beyond the watercourse, the route runs between single weight broken lines depicting an unfenced length. The route is braced to the adjoining land. The route runs up to the first field west of the farm and is gated. On the southern side of the farm, the route is enclosed by single weight lines, gated at the farm itself. East of the farm, the application route is gated on the north side. The route runs between irregular solid and broken lines and the route is braced to the adjoining land. On the Shropshire Sheet, the route is enclosed by single weight lines.

- 34 OS 3rd Edition County Series 25" to 1 mile 1909 Cheshire Sheet LXVI.7
1901 Shropshire Sheet III.15

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

- 35 OS revised New Series 1: 63,360 (1 inch: 1 mile) 1897 on application sheet 123 Stoke Upon Trent.

- 36 The route from Audlem Road to College Fields, is depicted as minor road on the key, with part bounded and part unbound lines. There is an apparent route to the farm Hankins Hey, shown as unbound. At the farm, the route running west to Threewells is marked by a dashed line on the key described as footpath. Since the map includes the caveat that the representation of track etc is no evidence of a right of way, even the depiction of footpath on the line of FP22 is no indication this map is more than background evidence for the route.

- 37 OS 1" popular edition sheet 52 1921/1942

- 38 Hankins Hey Lane is uncoloured, depicted, as the key classes, a bad road under 14" wide. On the key it is also stated that "Private Roads are uncoloured". The route is shown as partly fenced, uncoloured.

- 39 Bartholomews Commercial maps

- 40 Bartholomew was a Scottish company with a good reputation of publishing maps from the late 19th century. Between c1911 and 1928 there was an arrangement with the Cyclists Touring Club for their members to send in revisions and their logo was shown on the maps where this arrangement was in place. The maps were based on OS base maps. The maps set out a classification of use, although there is a caveat that the depiction of any route was not evidence of a public right of way and the known background to the maps indicates that they relied on user reviews to make any corrections. Comparison of maps at successive publication dates may show any consistent depiction of a particular route.

- 41 The 1902 map key does not characterise uncoloured depictions of roads and the route from Audlem Road to the farm and west to Three-Wells Cottage is shown as single weight double lines uncoloured. There is a footnote to the map "The uncoloured roads are inferior and not to be recommended to cyclists". It also includes the disclaimer "the representation of a road or footpath is no evidence of the existence of a right of way". A later map, 1941, depicts the same route, single weight lines and uncoloured. According to the classification the route is not classed at all, it is shown as "other roads" and the caveat as above. As described above, the Bartholomew maps evolved with feedback from

contributors. The later maps are more indicative of public routes if they positively class a route according to the key by usage. That hasn't happened here.

Finance Act 1910-1920

- 42 The Finance Act 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.
- 43 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.
- 44 The map for this area was missing in the Cheshire Record Office. The Book of reference to the map was available and listed College Fields, Three-Wells Cottage and woodland. Of the properties listed and assumed to be the area of interest, none claimed a deduction for public rights of way.

Sales catalogue

- 45 Promotional material for selling a large estate included a sales catalogue produced by a property agent. The description of the property sometimes gives an indication of access and may contain a plan of the area. They are not legal documents but may support the determination of status of access routes across the estate.
- 46 The Sales catalogue was produced by the auctioneers, Messrs Millar, Son and Co of Pall Mall, London. The publication date is 8 May 1911 and the estate was described as freehold dairy and hunting including "College Fields" a "Freehold Dairy Farm and Hunting Establishment". There is a plan with the catalogue based on OS mapping and a caveat that any quantities are not guaranteed to be accurate. The plan indicates access by letter key, but no further detail is included. The catalogue description for College Fields farm, Lot 15, includes plot 191 described as roadway (but is restricted to a small length on the south side of the farm building) and 197 described as pasture but the associated woods and coverts includes plot 197 in Woore township which is described as "roadway". The plot numbers are those shown on

the OS map and none others are listed as “roadway”. Which indicates it is a descriptor not an allocation of status.

DM process

- 47 The Public Rights of Way team hold records that pre-existed the Definitive Map process and date to approximately 1930. This is represented by a District map which recorded “footpaths” and a record of the maintenance issues. The route is shown as footpaths numbered 41 and 42 on the Nantwich footpath map. And a note is made of no record of the footpaths having been repaired. There is a gap in between the east termination of 41 and the south-north line of 42. The gap is the farm and the field west of the farm. The records show that the footpaths were recorded prior to the DM.
- 48 The DM 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 DM and for this area that is 1955 and became the relevant date of the survey. The DM for this area was published 1975 and the claim routes are shown as footpath. The DM is conclusive evidence of the existence of public rights of way shown at the relevant date. Section 56 of the 1981 Act provides that the DM is conclusive evidence of the matters contained within (without prejudice to the outcome of any applications made under Schedule 14)
- 49 A route was not shown on the Shropshire DM.
- 50 The Buerton parish survey map shows the two routes as a footpath. The schedule for this parish has been lost. FP22 is shown running from the southerly termination of Hankins Hey Lane which is coloured yellow on this map. A purple line depicting footpath runs easterly towards the watercourse, annotated with “FB” (footbridge) and F2 (field gate 2). There is a field gate (3) at the boundary between 2 fields to the east, and field gate (4) at the boundary of the field east of the farm and a final field gate (5) at the farm yard. The footpath joins FP21 east of the farmyard. Two field gates (10 and 11) enclose the junction. The application route runs northeast from this point to the annotated field gate (12) and cart bridge at the Shropshire County border. The Footpath Society Map is the same base map, with routes drawn on in red pencil. The relevant footpaths are drawn, more significantly this map connects the Cheshire footpath across the county border in Shropshire to a junction at Audlem Road.

The Draft map shows the footpaths in purple. The field gates and bridges are annotated at the same locations as on the parish survey (above). The Provisional maps shows there were no changes to the

footpaths indicating no successful appeal against the depiction of the routes as footpath. The DM was published 1973 although based on the survey of 1955. There are no objections or representations on record.

Land Registry

- 51 The western end of the claim route at Point A is incorporated with the title held by Landowner 1. The land over which the mid-section of FP22 is incorporated with the ownership of Landowner 2. The owner of the eastern length of FP22 and all of FP21 and across the track in Shropshire is in the ownership of Landowner 3.
- 52 Landowner 2 has provided additional documents. The documents comprise a memorandum on the conveyance dated 1945 and 1960; in which the free right of way for the owner or owners of the road (with specified and any forms of transport) is conveyed as an easement to an adjacent farm. Whilst this document is a private document, it is indicative that rights are granted to a neighbouring property over a way which was not reputed to be an ordinary public road. The land comprising the track in Shropshire is described in a conveyance of the land for College Fields farm dated 1922; "all that strip of land used as a roadway situate in the parish of Woore in the county of Salop ...". In the same conveyance the free right of way passage is granted to the farm over the route leading to Three-Wells Cottage (and known as FP22), indicating that the reputation of this was also as a private route and not part of the ordinary road network.

Photographs of the location

- 53 A site visit was carried out in November 2023 and features noted in addition to use of photographs taken in 2021 and 2022 by the area prowl maintenance officer.

Consultation and Engagement

- 54 Consultation letters and a plan of the claimed route were sent to the registered landowners, ward members, parish councils and user groups. The following responses were received:
- 55 The Shropshire Councillor Roy Aldcroft acknowledged he was not familiar with the route to offer any evidence.
- 56 Buerton parish council made local enquiries but did not identify anyone with regular use of the routes with a horse, or any other parish records of such use. Woore Parish Council responded to say they would support an Order for a bridleway, however this was not supported by evidence of use or otherwise.

- 57 Landowner 1 described how they had challenged the occasional use of the route by the Staffs hunt during the last 30 years of their occupation of the land. For several years and until the last 2 years a rope has been strung across the entrance to the track at the junction with Hankins Hey Lane to prevent access other than pedestrians. Corroboration of the rope was recorded by a photograph taken in 2021 by a prov council officer. Otherwise, they had no knowledge of anyone else on horseback trying to use the route.
- 58 Landowner 2 has confirmed to their knowledge, no horse riders have been seen using the route.
- 59 Landowner 3 has also confirmed that under their ownership they had no knowledge of horse riders using the route. For a short period, they gave permission for a hunt to take place over their land. This has now stopped. They also supplied paperwork relating to footpath furniture repairs in 2021. The documentation confirms that in 2021 a stile and heavy field gate were in place which would have been obstructions to riding a horse.
- 60 The Mid Cheshire Footpath Society responded to say they had no objection to an upgrade. The Peak and Northern Footpath Society after checking their archives responded to say they had no evidence to add to the application. They were able to confirm from local users that no horse riders were known to use the routes. Shropshire Ramblers had no comments to make. Shropshire Open Spaces representative had no objection to the proposal and expressed support for the change.

Reasons for Recommendations

- 61 Under Section 53 of the 1981 Act, the Council has a duty as the Surveying Authority to keep the DM under continuous review. Section 53 (c) allows for an authority to act on the “discovery of evidence” that suggests that the DM needs to be amended. The authority must investigate and determine that evidence and decide on the outcome whether to make a DMMO or not.
- 62 The application for an upgrade to a bridleway status is supported by documentary evidence, extracts from the Tithe Map and OS and commercial maps and other documents. It is likely that the “new evidence” required by the Act to effect a change is constituted by the Bartholomews maps and possibly the Popular OS map editions. The application route runs over recorded public footpaths so the evidence needs to be cogent/strong that higher rights than footpath should be recorded.

- 63 The Tithe Maps suggests the routes were partly non-tithed but mostly were incorporated with the surrounding field and therefore tithed. The nineteenth century and OS maps indicate a route which was partially enclosed, partly gated and nothing that would indicate the status and nature of the status until the OS 3rd edition 25" series which annotates FP22 as "FP" meaning footpath. The application is based on the OS depicting routes as part of the ordinary road network, but further analysis showed this isn't the case. The twentieth century commercial maps are more indicative that the route was not considered as either suitable or available to the public, other than where it is shown as footpath. The earlier nineteenth century maps are indicative the route had no higher public rights, the later OS maps indicate use as a footpath (the one with the dashed line) but there is no conclusive map or collection that could point to higher rights than FP. The maps that have gone through a legal process are indicative that there were no public rights other than a cul-de-sac section from Hankins Hey Lane as far as the watercourse.
- 64 In addition to the cumulative consideration of the available maps, the landowners submitted comments indicating there had been no known use of the routes by horse riders (or cyclists) and title deeds for the main landholding shows that the routes did not have the reputation of a public road and because of this set out private easements of access over land neighbouring land.
- 65 The parish councils and user groups have been supportive or neutral of the claim but had brought forward no other evidence in support.
- 66 Having regard to the totality of the evidence provided by the applicant and of the evidence found during the investigation, there is insufficient cogent evidence to demonstrate on a balance of probabilities that the claim route has the historical status of bridleway or has acquired higher rights by other means.

Other Options Considered

- 67 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

- 68 The Council is complying with its legal duties as stated in paragraphs 17-22).

- 69 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.
- 70 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 would usually hold a Public Inquiry before deciding upon whether to confirm the Modification Order.

Section 151 Officer/Finance

- 71 No impact.

Policy

- 72 The work of the Public Rights of Way Team contributes to the Green aim of the Corporate Plan, the “thriving and sustainable place” propriety, and the policies and objectives of the Councils statutory Rights of Way Improvement Plan.

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 2025

Equality, Diversity and Inclusion

73 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

74 There are no direct implications for Human Resources.

Risk Management

75 There are no direct implications for risk management.

Rural Communities

76 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)

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

Public Health

78 There are no direct implications for Public Health.

79 *Climate Change*

80 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.

81 The addition of a public bridleway to the Definitive Map represents the formal recognition of pedestrian, horseriding and cyclists rights, creating more opportunities for leisure and the potential for the improvement/promotion of healthy lifestyles as part of a recognised recreational route.

Access to Information

Contact Officer:	Adele Mayer, Definitive Map Officer adele.mayer@cheshireeast.gov.uk
Appendices:	Appendix 1 documentary Appendix 2 Plan No WCA/033 Appendix 3 Site Image
Background Papers:	Case File CN-7- Application to upgrade a footpath to a bridleway in the parish of Buerton . The background information may be requested by contacting the report author SCC Application 251

Appendix 1

OPEN

List of Archive Documents –

Application No. CN/ Application to upgrade

PROW = Public Rights of Way CE

CRO = Cheshire Record Office

TNA = The National Archives, Kew

SML = Scottish Map Library

Shropshire PROW

Primary Sources	Date	Site Shown/Mentioned	Reference Number/Source
County Maps			
Bryant	1831	Yes broken lines, indication of unbound and gated. Key suggests these are “lanes and bridleways”	SML
C and J Greenwood	1827	Not shown	Shropshire PROW
Swire And Hutchings	1829	Not shown	SML
Tithe Records			
Tithe Map Buerton township parish of Audlem	1844	yes	CRO EDT 74/2
Tithe Map Mucklestone parish, Woore township	1838	yes	Staffordshire Past Track website www.search.staffspastrack.org.uk
Ordnance Survey Maps			
OS 1” to 1 mile 1 st Edition	1833	Route of FP21 shown part fenced to farms: FP22 shown as part fenced but mid section dashed line	PROW caveat. PROW/Cheshire East Council

OS 1" to 1 mile Popular Edition Sheet 52 Stoke On Trent.	1921/1940 Both publications depict routes the same	Route shown double lines, part broken lines. key indicates FP22 classed as "other road". FP21 shown south of farm as FP/BW. Difference of the 2 not differentiated.	SML prow caveat.
OS 1" New series revised. Sheet 123 Stoke Upon Trent	1897	FP21 is shown as a partly bounded track; FP22 is shown as one dashed line = FP, between the farm and the watercourse.	SML Prow caveat
OS 1st Edition 1:25 inch	1875/Shropshire 1879	Shropshire Sheet, Main road is coloured. Claim route is uncoloured.	PROW/SML
OS 2 nd Edition 1:25 inch Cheshire sheet LXVI.7 Shropshire sheet III.15	1898 Cheshire /1901	yes	PROW/SML
OS 3 rd Edition 1:25inch	1909/	. 1909 Cheshire Sheet LXVI.7 1901 Shropshire Sheet III.15	PROW/SML
OS 6" edition	1882 (and Shropshire 1888)		PROW/SML
Bartholomew's Maps	1902 scale 1" 2 miles/1941	Shows as double line, no colouring ; the later map as before	SML key on map: line across route at farm (compared across map, few routes show line across, this is thought to be deliberate).CTC revised logo on map. Route not in the classification. 1941 key on map and note reduced by permission from OS with local revision. Acknowledgement of users corrections. Shows routes unmarked, line across at farm.
Finance Act			

Working Copy Book of Reference	1910		CRO NVA2/10 Audlem NVA2/50 Buerton
Local Authority Records			
Walking Survey Schedules and Maps	1955	Routes shown as FP	PROW
Draft Map	1956	Routes shown as FP	PROW
Provisional Map	1969	Routes shown as FP	PROW
Definitive Map & Statement	1973	Routes shown as FP	PROW
Additional records			
Photos	2021/22/23	Site photos taken in 2022 of claimed route	PROW
Estate Sales Catalogue	1911	No description of routes	Shropshire Archives 1096/57