

Highway and Transport Committee

4 April 2024

**Wildlife & Countryside Act 1981 –Part III,
Section 53, Application No: MA/5/248:
Application for the Addition of a Public
Restricted Byway / Byway Open to All
Traffic along Teggsnose Lane, Nr
Macclesfield**

Report of: Peter Skates, Acting Executive Director of Place

Report Reference No: HTC/11/24-25

Ward(s) Affected: Macclesfield East

Purpose of Report

1. This report outlines the investigation into the application made by Mr C Eagles to amend the Definitive Map and Statement to add a Public Restricted Byway / Byway Open to All Traffic between Buxton Old Road along Teggsnose Lane to join existing Public Footpaths no's: 4 & 5 near Teggsnose Farm and also a second connecting route to the east of Teggsnose Lane to join existing Public Footpath no: 3 as shown on the plan ref: WCA/343/039 from A-B-C-D (**see Appendix 1**).
2. This report includes a discussion of the consultations carried out in respect of the claim, historical documentary 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 add a Restricted Byway or Byway Open to All Traffic to the Definitive Map and Statement.
3. 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

4. The report considers the evidence submitted and researched in the application to add a Public Restricted Byway / Byway Open to All Traffic in the Town of Macclesfield. The evidence consists of use on foot by individual witnesses over a period of over twenty years and historical documents that demonstrate the existence/status of a physical track feature for the whole claimed route for well in excess of 30 years. The report determines whether on the balance of probabilities the status of Public Restricted Byway / Byway Open to All Traffic has been acquired. The reputation of the route as a thoroughfare linking the Old Buxton Road with Teggsnose Farm and also to the northwest in the direction of Tegg's Nose Country Park is demonstrated through the Tithe Map and Ordnance Survey maps and others and provides good reputational evidence of a route with rights of footpath status at least. The user evidence, recent site visit and interviews with current and past rangers investigated and discussed provides evidence of use by those on foot over a relevant 20-year period leading to the assertion that at least Public Footpath rights have been acquired over time.

RECOMMENDATIONS

The Highways and Transport Committee:

1. Decide that a Definitive Map Modification Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 adding a Public Footpath as shown on Plan No WCA/343/039.
2. Decide that public notice of the making of the Order be given and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
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.

Background

5. The Application was made to Cheshire East Council on 27th September 2012 by Mr C Eagles to add a Public Restricted Byway / Byway Open to All Traffic off the Buxton Old Road leading along known as Teggs nose Lane in the parish of Macclesfield East plus a short connecting route off in a northwest direction. The application consisted of 6 user evidence forms and some photographs.

6. The claimed route commences at Point A (Grid Ref: SJ 94454,73116) off the Buxton Old Road and then proceeds along Teggsnose Lane to Point B (Grid Ref: SJ 94411,72807) where there is a wider area before continuing south just north of Teggsnose Farm to meet Public Footpaths 4 & 5 at Point C (Grid Ref: SJ94408,72723). In addition, there is also a short connecting route of a second claimed route from Point B off Teggsnose Lane leading in a north easterly direction to Point D (Grid Ref: SJ 94571, 72914) where it joins existing Public Footpath no:3.
7. The width of the route varies along its length but is approximately 5 metres wide between boundaries and is a physical track like feature for much of its length. It is bounded by stone wall and stock fences as a clear bounded feature.
8. Photographs of the claimed route can be seen at **Appendix 4** and includes photographs of the existing barrier with interrogated sign just slightly south of Point B of the claimed route.
9. There is only one registered landowner on the claimed route. Landowner 1 owns from Point A-B of the claimed route and half of the route between Point B-D leading from Point B. Section B-C of the claimed route is un-registered along with the other section of route between B&D. There are various abutting landowners including Cheshire East Council, the owner of Teggsnose Farm and a few others.

Legal matters

10. 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:-
11. Section 53(3)(c)(i) is relevant where
“(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-
 - (i) that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subsection to section 54A, a byway open to all traffic.
12. 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.

13. 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.”

14. 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”.

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”.

15. 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.
16. 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 was the date of the application being 27th September 2012.

17. The Natural Environment and Rural Communities Act 2006 Section 67 (1) extinguished existing motor propelled vehicular rights where they were not recorded on the Definitive Map and Statement (DMS) at commencement (ie 2006) although there are a few exceptions to this outlined in subsections S67(2) & (3) of the Act.

Consultation and Engagement

18. Only a few responses were received during consultation.
19. The water company United Utilities responded to state none of its apparatus would be affected by the claimed route.
20. Natural England responded to state they had no objections as the location of the claimed route was far enough away to having any measurable effect on Goyt Valley SSSI and association Special Protection Area (SPA) and Special Area of Conservation (SAC).
21. Cheshire East Ramblers responded to state they had checked their files going back to the early 2000's and had no information on this specific route.
22. Interviews were also carried out during November 2023 with just a few of the users who had originally submitted evidence forms although unfortunately not all were available or contactable.
23. Landowner 1 who owns most of the claimed route (A-B) and first half of route (B-D) from Point B was interviewed and stated he clearly does not think the route is a public footpath. He did mention that he had put up "no footpath" signs up over the years but they had been ripped down but unfortunately had no evidence of this. He stated that there had also been a long-standing issue with parking off the Buxton Old Road and was aware of Teggsnose Farm initially putting a barrier at Point A in 2012 briefly on his land before moving to near Point B.
24. The abutting landowner around Point B-D being Cheshire East council was also interviewed (namely the Countryside Ranger at Tegg's Nose Country Park). The Ranger stated that during his approx. 10 years as Ranger the claimed route had always been well used by people on foot especially as a circular route in and out of the Park. It was confirmed that the Park put up a notice after discussing with Teggsnose Farm off Buxton Old Road that says "**no access to Teggs Nose Farm**" to prevent delivery drivers using the lane. Two previous Rangers before the current one was also interviewed and their comments are summarised in the user evidence section of this report but again confirm the route has been well used by the public on foot for a very long time well in excess of 20 years.

25. 3 users who completed user evidence forms that were submitted with the application were interviewed in November 2023. More detail on their comments and our findings can be viewed in Section “user evidence” paragraphs 62-72 of this report.

Reasons for Recommendations

26. An investigation of the available evidence has been undertaken. The documentary evidence that has been examined is referred to below and a list of all the evidence taken into consideration can be found in **Appendix 2**.
27. The user evidence submitted with the application plus information gained from interviews and strava data shows this is a well used route and has been for many years. The predominant use has been on foot. Historical documentation is interesting and varied but ultimately shows that there has been a clear through route for well over 20 years and indeed back to inclosure.

Historical Evidence

Ordnance Survey (O.S.) Records

28. 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.
29. **Ordnance Survey 1: 25 inch (1850's)** map shows Teggsnose Lane as a clear physical feature bounded by solid double lines for the whole claimed route and annotated Teggsnose Lane including the connecting second route to the leading off the Lane to the east. The working quarry to the southeast can also be seen linking to the claimed route.
30. **Ordnance Survey 1st Edition 1:25 inch (c1889)** map shows Teggsnose Lane as a clear physical feature bounded by solid double lines for the whole claimed route and annotated Teggsnose Lane including the connecting second route to the leading off the Lane to the east. The working quarry to the southeast can also be seen linking to the claimed route.
31. **Ordnance Survey 2nd Edition 1:25 inch(c1915)** map shows map shows Teggsnose Lane as a clear physical feature bounded by solid double lines for the whole claimed route and annotated Teggsnose Lane.

It also shows by bounded solid lines the connecting second route leading off the Lane to the east. The working quarry to the southeast can also be seen linking to the claimed route.

32. **Ordnance Survey 3rd Edition 1:25 inch (c1919-1942)** map shows Teggsnose Lane as a clear physical feature bounded by solid double lines for the whole claimed route and annotated Teggsnose Lane. It also shows the connecting second route leading off the Lane to the east. The working quarry to the southeast can also be seen linking to the claimed route.

Old County Commercial maps

33. 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.
34. Burdett map of 1794 is of very limited use as it doesn't show the claimed route only surrounding major roads and routes. By 1830 the Swire and Hutching map does appear to show part of the claimed route off the Buxton Old Road towards Teggsnose Farm but nothing more and no linking second route to the east. However, by the 1831 Bryant map this shows all of the claimed route both the north /south section off the Buxton Old Road plus a clear route to the east towards Tegg's Nose and also a clear route off the claimed route to the quarry to the southeast.

Macclesfield Enclosure Award (1804)

35. The purpose of enclosure was to replace the communal system of open field cultivation and common grazing with a system of land divided into individual plots and fields, redistributed amongst the existing owners. There were three methods of inclosing land: informal enclosure, enclosure by agreement (but often confirmed by a court of law, and enclosure by private or general act of parliament. None of these belong to a strict period in time. By the end of the 18th century all pro-cesses were in use. Non-parliamentary enclosure was nationally the dominant form. Parliamentary enclosure was effectively halted in 1876.
36. Early 18th century enclosure awards were usually the result of private acts of parliament or agreements sponsored by individuals. The General

Enclosure Acts of 1801 and 1845 provided a standard set of clauses, speeding up the procedure and reducing costs.

37. Enclosure Awards are usually in two parts, the handwritten award and the accompanying plan, the Commissioners responsible for producing the document were empowered to stop up, divert and create public highway and private roads through and to enclosed land. Particular attention should be paid to the wording of the award, and whole document should be read in conjunction with the accompanying maps and the relevant Act(s) of parliament. They vary in quality, scale and detail.
38. The copy studied (Macclesfield Enclosure Award, 1804) is not an original but has been transcribed from a (presumably original) copy held by the Town Clerk of Macclesfield. It is signed and certified as a true copy in 1935 by Mr Arthur Smith of Gawsorth, Cheshire. Mr Arthur Smith was an active representative of the Peak District and Northern Counties Footpath Society in the mid twentieth century so was well known and respected for involvement in access.
39. The plan is not entirely a copy of the original, which is incomplete. The area in question has been reconstructed using OS mapping, Tithe Map and the text of the Award. This is explained at the bottom of the plan.
40. The Award was signed and dated on the 9th October 1804, and was preceded by an enabling Act in 1796. This is an interesting situation, since the Award was made after the Inclosure Consolidation Act 1801; but empowered by a private Act preceding the 1801 Act. It certainly has the appearance of a post-1801 Act Award.
41. The important parts of the Award are found on pp.12 &14. With reference to the points marked A, B, C & D on the Teggs Nose Lane plan:
 - (i) the length A-B is referred to as a part of Private Road or Way "R" 24 feet in width.
 - (ii) the length B-D is referred to as a part of Highway or Road "Q" 30 feet in width.
 - (iii) the length B-C is not referred to at all.
42. To make matters more complicated, the length B-D is described as both part of public road Q and private road R.
43. Also, what is currently referred to as "Teggs Nose Lane" (A-B) leading to "Teggs Nose Farm" was not named in 1804, and probably neither existed before Enclosure. Instead "Teggs Nose Road" was some distance to the east leading to what is now "Clough House".
44. In conclusion, the 1804 Award tells us that B-D is likely to be public and may enjoy higher rights than a footpath. It was awarded at a width of 30 feet (9.14 metres) and was to be publicly maintained once the works to

bring it into being were completed. Additionally, it would have originated to the north-east on the Buxton Old Road next to the present Tegg's Nose Country Park.

45. By contrast the 1804 Award sets out A-B "forever hereafter" as a private occupation road.

Tithe Map 1846

46. 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.
47. The Tithe Map dated 1849 very clearly shows all of the claimed route bounded by solid double lines. The section of the claimed route A-B-C is coloured light yellow and the same as the surrounding public roads. Section B-D is outlined in blue similar to the surrounding fields.

Bartholomew's Half Inch to a Mile

48. 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.
49. Two versions of the Bartholomew map were examined (1906 and 1924). Both versions show the whole of the claimed route as a very clear through route bounded by solid lines all the way along the route joining the Buxton Old Road, route to east to Country Park and linking to Teggsnose Farm to south.

Finance Act Map 1910

50. 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.

51. 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.
52. The Finance Map of (Cheshire XXXVII.9) original in The National Archives unfortunately does not exist. The working copy from Cheshire East Archives has the whole of the claimed route bounded by double solid lines. The route is annotated as "Teggsnose Lane" and separate from the surrounding land hereditaments for most of the route heading south towards Teggsnose Farm. The route is white and similar style and annotation to the other existing public roads so some assumption for public status could be drawn. The last bit of the claimed route near Teggsnose Farm and the spur running east is incorporated into a hereditament to the west of Teggsnose Farm and could also be public but this is not as clear.
53. The Valuation Books from Cheshire East Archives under "PROW and User" has a deduction for £30. The Field Books from Kew like the Valuation Book also state, there is a reduction of £30 for PROW or user, but unusually the Field Book breaks this down into £2 for the PROW and £28 for an easement for Tegg's Nose Quarry. It also states that the deduction for PROW is in fields 27 & 31 (as also shown on the OS map 1st edition of the area) and amounts to 166 yards. This deduction could relate to the existing public right of way (Public Footpath No 4) southeast of Teggsnose Farm which the claimed route joins at the south rather than the claimed route itself, but it is unclear. It could also possibly relate to the short second claimed route leading off Teggsnose Lane. In the Definitive Statement for Public Footpath 3 which this second claimed route joins Footpath 3 is described as "167 yards due east of Teggsnose Lane". In summary the Finance Act Map and associated records are too inconclusive to confidently draw anything from in regard to Public Rights of Way.

The Definitive Map records

54. 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.

55. The Definitive Map, Provisional and Draft Map do not show any of the claimed route marked only existing nearby Public Footpaths. The Parish Footpath map does have all of the claimed route marked in blue but then note that the route/s were omitted but no reason why.
56. The Definitive Map Statements accompanying the Definitive Map described the existing public footpaths the claimed route joins to the south and to the east. To the south it joins Public Footpaths no's 4 & 5 which are described on the original survey forms as joining the lane via stone stiles which are in situ today. To the east the claimed route joins Public Footpath no: 3 which is described as "from the Buxton Old Road in a south-westerly direction to a road leading from Teggnose Lane approximately 170 yards east of Teggnose Lane".

Highways Records – List of Streets

57. It appears that in the early 1980's at least part of the route must have been on the list of streets as the schedules then recorded under unsurfaced public roads a route quoted as Tegg's nose Quarry Road which must at least in part refer to the claimed route section off the Buxton Old Road before it turns southeast to the now redundant quarry. By 1989 the schedules referred to route Teggnose Lane off Buxton Old Road as Private and not a public road. Therefore, it appears the route was at least in a large part on the list of streets as a public road maintainable at public expense but was later removed somewhere between the mid 1980's and late 1980's.

Section 31 (6) Deposit, Highways Act 1980

58. Under the above legislation it is possible for landowners to deposit a statutory declaration and map of their land identifying all the legal existing Public Rights of Way but stating they do not wish to dedicate any additional Public Rights of Way on their land. This deposit is lodged with the Local Authority and is a means of protecting themselves from historical use prior to the date they lodge the deposit. It should be submitted at least every 20 years to keep a continuous protection in place. No such deposit has been lodged relating to this claimed route.

Other information – Strava Data

59. There was limited user evidence submitted with the application. However, a site inspection demonstrated frequent use today along with Ranger's awareness of providing knowledge that over many years the route has been very regularly used on foot.
60. In addition, a heat map extracted from Strava shows currently at least that there is regularly public use of the route on foot at least for the sections of the claimed route A-B-D.

User evidence

61. There are 6 user evidence forms supporting the claim. The user evidence forms (UEFs) were completed by local people living in the SK10/11 area (including the applicant), and all giving evidence of at least 20 years use of the claimed route. All users mention use going back to the 1970's. The forms and attached plans have been filled in with some care and most include information about a barrier put up in 2012. Detailed user evidence charts showing year of use can be seen at **Appendix 3**.
62. The route claimed is clearly identified by all users as an enclosed path shown on OS maps and referred to locally as "Teggs Nose Lane"
63. The date when the first challenge to public use was made is clear. Several users refer to a gate/barrier being put up off the Buxton Old Road initially before being moved up nearer Teggsnose Farm end. Interviewing has established the barrier went up in 2012. Therefore, the relevant 20-year period in which deemed dedication may be calculated is **1992-2012**.
64. Within the period 1992-2012, all 6 of the users have used the path throughout the 20 years, with all claiming use over most of that period.
65. The frequency of the claimed route is fairly high with all users using the route at least weekly if not more frequently. It was clear from the site visit undertaken also in November 2023 that the claimed route is in high use as 10 people were seen walking the route some with dogs some without in the time span of about 40 minutes.
66. There is a mixed view from the UEF's as to what status users believe the route to be with many stating they believe the route to be vehicular highway and two saying public footpath and bridleway. There was also a mixed response on their use of route with most saying foot and car and 2 also mentioning horse and bike. On interviewing the few that were contactable most appeared to put vehicular highway because they drove and parked at the bottom of the lane at the Buxton Old Road end and then got out to use route. The predominate use on interviewing though and from viewing the site is overwhelming majority of use on foot.
67. There is no mention by users of any act by a landowner or agent to prevent their use of the path, even temporarily, until December 2012. Even then the barrier installed didn't prevent use of the route on foot as there was and is now a gap to one side wide enough for pedestrians to pass. The barrier when initially installed briefly off the Buxton Old Road did for a few months prevent cars parking to one side as they do now and have done though.

68. The evidence given by the users in their UEFs show that no actions appear to have been taken by the landowner, until December 2012, to challenge the public's belief that the route enjoys public rights.
69. Interviews took place during November 2023 with the applicant, and two other users. Unfortunately, the others have been difficult to contact. All those interviewed remember a clear through route that has been used by people on foot for well in excess of 20 years going back to the 70's. No one interviewed said they had ever asked permission to use the route or been challenged in any clear overt way by landowners.
70. It is noted that the application was for a Restricted Byway / Byway Open to All Traffic. However, during interviewing though it was clear that this may have been due more to the fact vehicles park at the bottom end just off the Buxton Old Road rather than use the route as a through route as members of the public. Also, whilst on form there is also some limited mention of horse and cycle use it is clear on analysis that the predominate use of all of the claimed route including the connecting route to the east has been on foot.
71. Both the current and two previous rangers from Tegg's Nose Country Park have been interviewed and all state the same points (i) that the route has been regularly used for a very long period of time ie over 20 years (ii) users on foot have always been able to practically used the route (ii) apart from recent roadside sign aimed at vehicles and vehicles barrier no other obstacles or signage has been witnessed on the route.
72. The landowner of Teggsnose Farm has also been contacted and asked some questions via e-mail as he lives out of the country. The owner has made a very brief statement that they already believe the route to be a public footpath.

Conclusion on Evidence

73. Whilst only 6 UEF's were submitted with the application with the interviews, a site visit and talking to the current and previous rangers at Tegg's Nose Country Park abutting it is clear usage of the claimed route has been evidenced to be very extensive by users on foot for a very long period of time going back to the 1970's. Current usage is also evidence from Strava data. Even when the barrier was installed in 2012 users have continued to use the route on foot by using the bypass gap.
74. Documentary evidence from old ordnance survey maps and the tithe map and other old county maps shows all of the claimed route has been a clear physically defined feature back to the 18th century. The finance act map and inclosure award are rather ambiguous in some regard

although they do indicate some public status along at least part of the routes but not enough to draw clear higher rights for the whole claimed route. It is interesting that the claimed route at least leading to the quarry was a public road in the past but has been removed but again this is not unusual and ties up with the multi-purpose element of the route of the public using it historically and it being in part a route to a quarry.

75. The key piece of case law mentioned at the start of this report at Godmanchester 2007 is particularly relevant and states where at least 20 years evidenced use claim will be successful:

“...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 (which in this case is 1992-2012).

76. Whilst there is some contradiction in what Landowner 1 stated about having put up notices in the past to say “no footpath” none of the users have mentioned this or remember any such notices. Without such evidence of such notices to back up the opposite the application therefore meets the 20-year test.
77. Given that higher rights of vehicular access have not been demonstrated on the claimed route as a through route from use or documentary evidence from highway to highway the effect of NERC Act as outlined in the Legal Matters section of this report are not relevant.

Recommendation

78. It is recommended that the council make a Legal Order to add a Public Footpath to the Definitive Map and Statement. For the reasons explained in this report there is not sufficient evidence to support any higher status of the claimed route even though the application was for Restricted Byway / Byway Open to All Traffic. Sufficient use of the route for 20 years has been satisfied to meet the legal tests and make an Order.

Council Policies

79. 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.

Other Options Considered

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

Implications and Comments

Monitoring Officer/Legal

81. The legal implications in relation to highways law are set out in the Legal matters section of this report (paragraph 10).

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 would usually hold a Public Inquiry before deciding upon whether or not to confirm the Modification Order.

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.

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.

Section 151 Officer/Finance

82. 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.

There are no financial implications.

Policy

83. 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.

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

84. 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

85. There are no direct implications for Human Resources.

Risk Management

8. There are no direct implications for risk management.

Rural Communities

87. 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)

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

Public Health

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

Climate Change

90. 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 – Plan no: WCA/343/039 Appendix 2 – Archive List Appendix 3 – User Evidence Chart & Usage Type Chart Appendix 4 – Photographs of claimed route (Nov'23)
Background Papers:	File no: MA/5/248