

Highways and Transport Committee

4 April 2024

**Wildlife & Countryside Act 1981 – Part III,
Section 53, Application No. MA/5/256:
Application for the Addition of a Public
Footpath from the east end of existing Public
Footpath No. 6 near Toft Church to join Public
Footpath No. 4 in Windmill Wood in the Parish
of Toft.**

Report of: Peter Skates, Acting Executive Director, Place

Report Reference No: HTC/34/23-24

Ward(s) Affected: Plumley with Toft and Bexton

Purpose of Report

1. This report outlines the investigation into the application made by Mr Brian Chaplin (representing the South Knutsford Residents' Group) to amend the Definitive Map and Statement to add a Public Footpath between existing Public Footpath No. 6 near Toft Church to join existing Public Footpath No. 4 in Windmill Wood as shown on Plan No. WCA/037 from A-B-C (see Appendix 4). 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 Public Footpath to the Definitive Map and Statement.
2. 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.

Executive Summary

3. The report considers the evidence submitted and researched in the application to add a Public Footpath in the Parish of Plumley with Toft and Bexton. The evidence consists of use on foot by individual witnesses over a period of over twenty years and historical documents that demonstrate the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 it can be reasonably alleged that public footpath rights have been acquired. The reputation of the route as a thoroughfare linking the church to the western side of Windmill Wood 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 investigated and discussed provides evidence of use by those on foot over a relevant 20 year period leading to the assertion that Public Footpath rights have been acquired over time.

RECOMMENDATIONS

The Highways and Transport Committee is recommended to:

1. Decide that a Definitive Map Modification be 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 037.
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

The Application

4. The Application was made to Cheshire East Council on 26th February 2019 by Mr Brian Chaplin on behalf of the South Knutsford Residents' Group to add a Public Footpath between Toft Church and the western side of Windmill Wood in the Parish of Plumley with Toft and Bexton. The application consisted of user evidence forms and a few letters. A total of 16 user evidence forms were submitted demonstrating use on foot. This application has been investigated and researched by an external consultant.
5. The claimed route commences at Point A on Plan No. WCA/037 (Ordnance Survey grid ref. SJ 7591 7660) off existing Public Footpath No: 6 and proceeds in an easterly direction across farmland but on a defined physical feature bounded on both sides by hedge/fence to Point B (grid ref. SJ 7915 7663) where it enters Windmill Wood via a culvert/bridge. It then proceeds in an easterly direction through Windmill Wood along a woodland path to join existing Public Footpath No.4 at Point C (grid ref. SJ 7637 7664).

6. The width of the route varies along its length but is approximately 3 metres wide and is a physical track feature for much of its length.
7. Photographs of the claimed route can be seen at Appendix 3 and includes photographs of the existing signs up at both ends of the claimed route.
8. There are 2 landowners along the claimed route. Landowner 1 (Toft Estate) owns the land covering the route from Point A near Toft Church to Point B where the claimed route enters Windmill Wood. Landowner 2 owns from Point B on the western edge of Windmill Wood to Point C where the claimed route joins Public Footpath No. 4.

Legal matters

9. 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:-

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, subject to section 54A, a byway open to all traffic.

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 can be reasonably alleged to subsist. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.

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

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

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

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

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

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

For public rights to have come into being through long use, as stated above, a twenty-year period must be identified during which time use can be established. Where no challenge to the use has occurred, this period can be taken as the twenty years immediately prior to the date of the application. In this case the date of challenge can be identified just before the application was submitted when the claimed route was stopped up in various ways on 12th December 2018 (date route was obstructed).

Consultation and Engagement

10. A mixture of responses was received during the consultation. North and Mid Cheshire Ramblers and the Open Spaces Society responded in full support of the application. The Ramblers’ Footpath Secretary stated they themselves had used the claimed route on several occasions including in 2016 when they led a Ramblers guided walk along the route. They noted from their archive

records at least 3 occasions that the Ramblers had led walks along the claimed route. The Open Spaces Society stated they were aware of the application long before it was submitted and believed it to be extraordinarily well founded. They mention they were aware that Windmill Wood had been subject to extensive recreational use since WW1 with access from Toft Church. They also commented that the community had recently attempted to buy the woods

11. The Toft Estate, being Landowner 1, responded with various objections to the claimed route. They mention over the years they have had increasing amounts of issues with people trespassing on the Estate to access neighbouring Windmill Wood. They state that the claimed route formed part of the original drive to Toft Hall from Chelford Road and people used to walk from the church car park to the wood. However, the estate also became aware of people wandering off the claimed route into neighbouring fields and utilising the private church car park for parking. They mention damage done to crops and fences and that people had been challenged and there are visible signs in the car park saying for church visitors only. They understand signs have been erected by the Estate in various locations but did not state exactly where, saying "*Toft Estate – Private Land-No Right of Public Access*". They mention the legal tests for claims set out in Section 31 of the Highways Act 1980 and their belief the claim should fail because the use has been by force and not "as of right" and they do not believe there is full use of a 20 year period by users. They again mention signage has been erected within the 20 year period to indicate private land and adjoining landowners and the church have approached people asking them to leave. They also believe others would oppose the application.
12. No response was received from Plumley with Toft and Bexton Parish Council and also no response was received from Knutsford Town Council who were also consulted. Ollerton with Marshall Parish Council abutting the location asked to be consulted and were but then decided to make no comments. It is noted however that in 2019 a previous councillor at the time did email the council to state they supported the landowners in closing the route and thought it was a shame that a few unruly dog owners had led to the closure of the route.
13. Interviews were carried out during November 2023 with both Landowner 1 (Toft Estate), Toft Church, Landowner 2 (a recent new landowner of Windmill Wood) and numerous users who had completed user evidence forms and this is discussed in the user evidence section of this report.
14. Landowner 1 (Toft Estate) during interview explained the long history of the Estate dating back 600 years and that parts of the Estate had been sold off in sections over the years. The Estate used to also own Windmill Wood but this was sold off in the 1960s. Historically the owner of the Estate explained the whole of the claimed route was a permissive path on a hearsay local basis and there were never any issues until about the 1990s / 2000 onwards when dog fouling and non-church parking started to cause issues as well as other anti-social behaviour such as trespassing off the route into adjoining fields.

Due to the issues the Estate arranged for a contractor to install high green wire mesh fence on the route in 2018 and also the same year a notice was put in the church car park to clearly state use for church goers only. The Estate also stated they understood there had been a sign up at the Windmill Wood end of the claimed route along the lines of “no public access” facing both directions along with fencing but had no photographic evidence of this nor detail of where the fencing was located.

15. Landowner 2 (Windmill Wood) has only just purchased the woodland in the last few months. The landowner was interviewed as they had a fair amount of knowledge passed to them from the previous landowner who had owned the woodland from 1978 until recently. The main points that were mentioned were that they were aware that the previous owner had had numerous issues with the public walking all over the woods and had struggled to control them. The previous owner had apparently made numerous verbal attempts to see people out of the woodland and erected numerous signs on the land along the lines of “ Private Woodland – keep to the Footpath, shooting in progress” (mostly next to existing Footpath No. 11 near the northern edge of the woodland). The current owner also understands some other notices put up were ripped down. Contact has been made with the previous owner to establish whether they have any photographic evidence of signage they erected around Point B of the claimed route where it enters the woodland via a bridge / culvert. No such photographic evidence has come to light to date.
16. The previous landowners of Windmill Wood have also been contacted directly and the couple have both each signed and submitted statutory declarations about their knowledge of use of the woodland whilst it was in their ownership. They have made it clear that, having owned the woods from 1978 until 2023 when they were sold, , they made extensive attempts to make it clear to the public that, apart from the legal existing public rights of way, the woods were private, and they did not agree to people wandering all over the woods or ever intend to dedicate any additional access. In the detailed signed statutory declaration provided by one of the couple, they refer to signage erected high on trees stating, ‘private woodland’ and refer to a public inquiry dealing with the addition of Public Footpath No. 11, Toft and No. 27, Knutsford in 1989. They attached the Planning Inspectorate’s decision and their own proof of evidence from when the Inquiry was held. The proof relating to the footpaths claimed at that time (not the current claimed route) states that “*After all the vandalism I decided that steel signs were needed instead of wooden ones on the trees and from 1979 onwards I erected steel signs on the trees*” but also goes on to mention “*Further there have been similar signs at each end of the path running from Chelford Road through Windmill Wood to the church*” and thereby makes some reference to the claimed route. They go on to detail in their recent statement that signs were put up along the route of the claimed footpath at the woodland edge on a tree by a gate that was facing Toft Church to deter trespassers coming onto the land, but the signs were constantly removed or vandalised. They continually put up signs to tell people to keep off

the land stating it was private. They also mention that from time to time a gate was left open by trespassers and that when that happened, they would simply close it.

17. Further to the interview with Landowner 2, the background documents to the application have been supplied to them. Subsequently they have sought a barrister's opinion (KC), who have submitted 'Interim Representations', this document is appended to the report as Document 1. The content forms the basis of their objection to the proposal.

Historical Evidence

18. An investigation of the available evidence has been undertaken. The documentary evidence that has been examined is referred to below and a list of all the evidence taken into consideration can be found in Appendix 1.

Ordnance Survey (O.S.) Records

19. 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.
20. **Ordnance Survey 1 inch to 1mile (1848)** map shows a very clear through route along the claimed route all the way from the A50 past the church and right through Windmill Wood.
21. **Ordnance Survey 1st Edition 1:25 inch (c1871)** map shows a clear track like through route feature depicted by double pecked lines incorporating the claimed route all the way from the A50 (Holmes Chapel Road) then running past St John's Church through fields and entering Windmill Wood and continuing through the middle of Windmill Wood. There also appears to be a line across the entrance to the wood, possibly indicative of a gate.
22. **Ordnance Survey 2nd Edition 1:25 inch (c1898)** map shows the same as the 1871 one with a clear track feature through route from the A50 past the church, across fields and continuing on through Windmill Wood. There is now also clear access to the church marked by pecked lines. The solid line is in evidence at the entrance to Windmill Wood.
23. **Ordnance Survey 3rd Edition 1:25 inch (c1909)** map shows the same as the 1898 map with a clear track feature through route from the A50 past the church, across fields braced to adjoining land and continuing on through Windmill Wood. There is now also clear access to the church marked by

pecked lines. Also, there is the solid line across entrance to wood suggesting a gate at this location and at the road junction end too.

24. **Ordnance Survey 1inch Old County Series maps (1887-1972).** The published editions from 1887 - 1953 all show the claimed route as a clear physical through route from incorporating the claimed route but running all the way from the A50 to the west of Toft Church and through middle of Windmill Wood to the Chelford Road. The later 1972 version shows the same but the route is just depicted as a single pecked line along this route.

County Maps 18th/19th century

25. 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. The maps do not provide conclusive evidence of public status, although they may provide supporting evidence of the existence of a route.
26. Of the maps that were available to view, Burdett 1794, Bryants 1819 and Swire and Hutchings 1830, all show that the claimed route was depicted as a distinct through route between two main roads. It is shown bounded on Burdett's map and edged with dotted lines on Bryant's and Swire and Hutchings suggesting an open, unfenced edge to the track. It is shown running off the A50 to the west of the church and running all the way through Windmill Wood to exit onto the Chelford Road near Toft Lodge. Historically the claimed route was clearly part of a longer route running as far as from Toft Hall to the west of the A50 and linking to the Lodge to the east.

Tithe Map 1846

27. 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.

28. The Tithe Map of 1848 in the Township of Over Knutsford shows the route as a clear physical track feature from the A50 and through Windmill Wood to the Chelford Road similar to the Ordnance Survey maps of this time. The route on this map is uncoloured.

Bartholomew's Half Inch to a Mile

29. 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.
30. Several versions of the Bartholomew map were examined (1902, 1923, 1941 and 1943). All versions show the whole of the claimed route as a very clear through route bounded by solid lines all the way along the route and as an uncoloured lane ("other road").

Finance Act Map 1910

31. 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.
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. Both the working plans from Cheshire Archives (ref: NVB XXXV) and the original valuation plan from Kew show the claimed route marked as a physical track feature from Toft Church then running right through Windmill Wood. The claimed route runs through and is incorporated into 2 different fairly large hereditament land parcels on both maps. Unfortunately, the valuation book to accompany the working map copy for the area it falls in (Altrincham District) does not exist and the Field Book to accompany the original valuation map is on order from Kew. However, if the valuation book did exist any deductions for Public Rights of Way are likely to be difficult to pin down to the claimed route given the large hereditaments the claimed route lies in.

Aerial photos

34. Aerial photos of the claimed route have been examined from 1971 to 2023. In 1971 only really the church and the woodland can be seen, with no clear aerial evidence of the route, although this may be due to ploughing which appears on some fields in the area. From 1999 all the way through to the present day, the claimed route can be seen as a clear physical feature from Toft Church heading east across fields bounded by hedges and continuing as a track feature in Windmill Wood.

The Definitive Map records

35. 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.
36. These are interesting for this case as the Definitive Map, Provisional and Draft Map and Parish Footpath map do not show the claimed route marked. Only existing Public Footpath No. 6 leading to Toft Church in the east and Public Footpath No. 4 running north/south across Windmill Wood are shown.
37. However, the Footpath Preservation Society map of 1952 shows the claimed route clearly marked all the way from the A50 past the church and running right through the middle of Windmill Wood and exiting on the Chelford Road to the east. The path schedule referring to Public Footpath No. 6 that ends by the church states "No road beyond church". Some notes attached to schedules from the Society mention some additional footpaths including the claimed route described as "Continuation of route eastwards from St. John's Church to Windmill Wood to Parish Boundary" but then later at the bottom of the pages it says "No information, Omit" for this route but with no reasoning as to why.

Section 31 (6) Deposit, Highways Act 1980

38. Under the above legislation it is possible for landowners to deposit and 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 or Windmill Wood in its entirety.

Planning Inspectorate Decision (1989)

39. In 1989 a Planning Inspectorate Inquiry was held regarding the addition of Public Footpaths No. 11, Toft and No. 27, Knutsford, which was confirmed by the Inspector and resulted in the addition of those footpaths to the Definitive Map and Statement. Whilst this concentrates on another route in Windmill Wood it is interesting and related to the current claim as it demonstrates the large volume of usage of the woodland going back to before the 1960s. The Inspector concluded that prior to the 1960s there had been no clear challenge by the historical landowners even though from 1978 the then landowner did make attempts with signage and fencing. However, in the 1989 case, that did not overturn the extensive historical usage that had previously been unchallenged.

User evidence

40. There are 16 user evidence forms supporting the claim. The user evidence forms completed by local people, all living within the WA16 post code area, and all giving evidence of at least 20 years' use of the claimed route. In one instance use is attested since about 1951. The forms and attached plans have been filled in with some care and most include quite a lot of information and details about old gates, signs, and recent obstructions. Detailed user evidence charts showing the years of use can be seen at Appendix 2.
41. The route claimed is clearly identified by all users as the enclosed path shown on O.S. maps leading generally east/west between St. John's Church and Windmill Wood, continuing into the wood to meet Footpath No. 4, which runs generally north/south.
42. The date when the first challenge to public use was made is clear. Several users refer to the obstructing fence being erected some 20m to the east of the church car park across the claimed route in December 2018, with user No.16 stating precisely that it was on December 12th 2018. Therefore, the relevant 20 year period in which deemed dedication may be calculated is 1998-2018.
43. Within the period 1998-2018, 14 of the users have used the path throughout the 20 years, with 2 more claiming use over most of that period. User No. 5 had 2 short breaks in use in 2000 and 2007, while user No. 6 had not used the path since 2010. There is a substantial body of user evidence within the period 1998-2018, with as many as 15 people claiming use within any single year, and at least 14 every year. This is ample use in terms of numbers to allege deemed dedication has occurred.
44. A normal pattern of use is seen, with some users saying only 3 or 4 times a year at one extreme, to others claiming daily use or 3 to 4 times a week at the other extreme. A minimum of 10 users claim use at least once a week. The

significance of this is that the frequency of use is sufficient to ensure that the landowner (or agent) is very likely to observe public use of the path, and if wished, to show their non-intention to dedicate by taking action to prevent it. 90% of users stated they never had permission to use the route or met the landowner or agent whilst user the route.

45. Although the users all live in a relatively small area (the WA16 postcode), they can clearly be regarded as “the public”. There are no obvious family connections between them, or multiple users from the same address; but they have come together as the South Knutsford Residential Group in order to make this application.
46. User No.13 is an exception amongst the 16 users. They have used the expression “concessionary path” in their description of the route. This might suggest that they believe it not to be an unrecorded public right of way but a permissive path. Unfortunately, it was not possible to interview this witness. Otherwise, all the other users believe that they are exercising a public right, rather than one being granted to them.
47. 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 2018. As described above, the users claim that they have been using the path throughout the full period 1998-2018. During the foot and mouth epidemic in 2001, many public paths were closed, but this period is allowed to be discounted from the calculation.
48. The evidence given by the users in their evidence forms show that no actions appear to have been taken by the landowner, until December 2018, to challenge the public’s belief that the route enjoys public rights. The landowners are stating that there were notices at the Windmill Wood end but have provided only some evidence of this in their recent statutory declaration. This contradicts all the users who were interviewed who clearly stated they saw no notices as they entered the wood from the church by the bridge/culvert to where they joined Public Footpath No. 4.
49. Interviews took place during November 2023 with seven witnesses, and it was overwhelmingly clear from those interviewed that the claimed route has been extensively used and enjoyed by not just these users but many more. This is emphasised by a press cutting provided from the Knutsford Guardian in 2018 which highlighted the outrage when the route was closed off in 2018. Numerous people also have provided photographs of the route overtime to show how much more open and obvious the route was. The route until 2018 had no gate or barriers at the church end and led along an open grassy track; at the Windmill Wood end where all users said there was an old metal gate on a bridge that was always open, and that they never saw any signs on this bridge entering the woodland for over 20 years. Photos taken in 1978 also demonstrate how open the route was, with defined features.

50. Many of the users were interviewed in detail about signage and as stated above none of them had ever seen any signs on the claimed route and made this very clear. They did however acknowledge that they used other public rights of way in Windmill Wood such as Public Footpath No. 11 near the northern edge of the wood and Public Footpath No. 19 (Knutsford) leading northwest out of the woodland. A few users did say they saw signs along Public Footpath No. 11 regarding keeping to the footpath and also a sign just off Public Footpath No.19 of a similar nature to deter people wandering into the woodland. However, no one remembers ever seeing any notices along the short section of the claimed route in the woods from the bridge entrance into Windmill Wood and to where it joins Public Footpath No. 4 (Point B).
51. During a recent site visit one notice high up on a tree as the claimed route approaches Public Footpath No. 4 between Point B and C was seen reading: “ Private Woodland – keep to the Footpath, shooting in progress” although no users mentioned this sign specifically and it is unclear how long this has been in-situ. Interestingly this sign was not that close to a recorded Public Footpath, there being only the claimed route in the vicinity, and consequently could be interrupted in a different way. It could indicate that the nearby claimed footpath was the referred ‘footpath’ in the sign and consequently an accepted route.
52. All those interviewed remember a clear through route that has been used by people on foot for well in excess of 20 years and going back to the 1970s. No one interviewed said they had ever asked permission to use the route or been challenged in any clear overt way by landowners.

Conclusion on the Evidence

53. Usage of the claimed route has been evidenced to be very extensive dating back to 1950s but predominately from 1970 until 2018 when the route was blocked off at both ends. The key piece of case law mentioned at the start of this report, 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 1998-2018). The use was also in daytime and not in secret and there were no gates forced by users.

54. The previous landowners of Windmill Wood have made some strong statements in their recent statutory declarations about their attempts to keep

people out of the woodland with signage over many many years and signs being taken down and vandalised. There is a clear contradiction in what the previous landowner of Windmill Wood and Toft Estate are saying about signage rebuttal and no intention to dedicate the route with what the users have been clear and unanimous in stating that they never saw any signage of any sort on the claimed route and have signed statements to say so. It is clear that there are strong contradictions between what the users and the landowners are stating regarding the claimed route. However, taking into account the legal tests, with the lack of evidence of signs or historical locked gates on the claimed route i.e., photographic evidence to support the text in the statutory declarations, it would appear on the balance of probabilities that the claimed route could still be deemed to reasonably be alleged to exist and meet the 20 year test.

Reasons for Recommendations

55. The evidence in support of this claim must show, on the balance of probabilities, that public footpath rights are reasonably alleged to subsist along the claimed route. It is considered there is sufficient use of the claimed route without force, secrecy, or permission, that is without interruption and as of right that in conjunction with the historical documentary evidence discovered demonstrates a physical clear through route that has been in existence and used for well over 20 years. Thus supporting the test of being reasonably alleged to exist in relation to public footpath rights between points A-B-C as shown on Plan No. WCA/037.
56. 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

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

Implications and Comments

Monitoring Officer/Legal

58. The Council is complying with its legal duties as stated in paragraph 9.

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 the 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.

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

59. 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.

Policy

60. 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.

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

61. 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

62. There are no direct implications for Human Resources.

Risk Management

63. There are no direct implications for risk management.

Rural Communities

64. 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)

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

Public Health

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

Climate Change

67. 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	
Contact Officer:	Clare Hibbert Clare.Hibbert@cheshireeast.gov.uk
Appendices:	Appendix 1 – Archive List Appendix 2 – User Evidence Chart & Usage Type Chart Appendix 3 – Photographs of claimed route (Nov'23) Appendix 4 – Plan No: WCA/037 Appendix 5 - Interim Representations
Background Papers:	File no: MA/5/256