

## **Highways and Transport Committee**

**19 June 2025**

**Wildlife and Countryside Act 1981 Part III Section 53; Application MA/5/250 for the addition of two public footpaths between Public Footpaths 13 and 21 in the Parish of Mobberley.**

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**Report of: Philip Cresswell, Executive Director of Place**

**Report Reference No: HTC/47/24-25**

**Ward(s) Affected: Mobberley**

### **Decision**

### **Purpose of Report**

1. This report concerns an application submitted on behalf of Mobberley Parish Council, seeking to amend the Definitive Map and Statement for Cheshire East Borough Council. The application requests the addition of two public footpaths between Public Footpaths 13 and 21 in the Parish of Mobberley ("FP13" and "FP21") under Section 53 of the Wildlife and Countryside Act 1981 (the "81 Act"). The report includes an analysis of the claim, comprising of a review of user evidence, an assessment of historical information and consideration of the relevant legal context. It also outlines the legal tests required for a Definitive Map Modification Order ("DMMO") to be made. Based on this evidence, the report makes a recommendation for a quasi-judicial decision by Members, as to whether a DMMO should be made to add two public footpaths to the Definitive Map and Statement.
2. The work of the Public Rights of Way team contributes to the Corporate Plan vision of Enabling prosperity and wellbeing for all in Cheshire East, with the commitments of Unlocking prosperity for all and Improving health and wellbeing, and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

## Executive Summary

3. This report outlines the investigation into an application made in July 2015 by Mr David Swan on behalf of Mobberley Parish Council. The application seeks to add two public footpaths between FP13 and FP21 as shown on Plan No. WCA/051 ("The Plan"). This report analyses consultations carried out in respect of the claim, historical evidence, witness evidence and highlights the legal tests for a DMMO to be made. Based on this information the report makes a recommendation for a quasi-judicial decision by Members on whether or not an Order should be made.
4. The evidence consists of the application accompanied by user evidence from fourteen individuals and photographs of the application routes. The documentary evidence that has been examined includes the Mobberley Tithe and Apportionment Map, Ordnance Survey maps and aerial photographs. The user evidence is consistent in describing the two routes crossing fields, unobstructed and in regular use for a period of twenty years or more. The claimed use is said to have occurred without force, secrecy or permission, during a period likely satisfying the statutory test for the presumed dedication of a public right of way; namely continuous use from approximately 1995 to 2015.
5. Section 53(2)(b) of the Wildlife and Countryside Act 1981 places a duty on the Council to keep the Definitive Map and Statement under continuous review and to make such modifications as appear requisite. One such circumstance is outlined in section 53(3)(c)(i). This is where the discovery by the Authority of evidence shows that two public footpaths claimed should be recorded on the Definitive Map and Statement. The report concludes on the balance of probabilities that there is sufficient evidence that there is a reasonable allegation that public rights should be recorded and that a DMMO should be made to add the two footpaths between FP13 and FP21.

### RECOMMENDATIONS

The Highways & Transport Committee is recommended to:

1. Decide that a Definitive Map Modification Order is made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of a public footpath between Point A-C-D on Plan WCA/051 and a public footpath between Point B-C on Plan WCA/051.
2. Note that in the event of objections being received, Cheshire East Borough Council will be responsible for the conduct of any hearing or public inquiry.

## Background

6. The application was registered by Cheshire East Borough Council on 7<sup>th</sup> July 2015 on behalf of Mobberley Parish Council ("the Applicant") to add two Public Footpaths between FP13 and FP21. The application consisted of ten completed user forms. An additional four completed user evidence forms were submitted during the investigation.

### Description of the application routes

7. The first application path starts from FP13 at Point A on the Plan (OSGR SJ 7827 8012) and runs for approximately 7 metres in an easterly direction crossing a strip of land not registered with the Land Registry but forming the access drive to the United Utilities Sewage Plant. On the eastern side of the access drive the route runs through a gap in fencing and continues in an easterly direction following the northern edge of a field for approximately 233 metres to a break in a hedged field boundary at OSGR SJ 7850 8008. The route continues running in an easterly direction along the edge of a pasture field for approximately 135 metres to the junction with the second path at Point C on the Plan (OSGR SJ 7863 8005). From Point C the route continues running in an easterly direction for approximately 6 metres to a break in a hedge boundary at OSGR SJ 7864 80005. A pedestrian gate has been recently installed at this point by persons unknown. It is not installed during the relevant period of use. The route then continues in an easterly direction for approximately 113 metres to a break in a hedge boundary at OSGR SJ 7875 8002. It then continues for approximately 100 metres to a termination on FP21 at Point D on the Plan at OSGR SJ 7882 7996.
8. The second application route commences on FP13 at Point B on the Plan (OSGR SJ 7825,7984). Here, there had been a gap in the hedge on the east side of the access drive although a second point of access has been identified during the investigation which runs from FP13 for approximately 9 metres across an unregistered piece of land and runs through a gap to the east side of a field gate at OSGR SJ 7826 7984. The route at Point B is the application point of entry. The route continues in a north easterly direction crossing fields currently under pasture for approximately 239 metres to a gap in a hedge field boundary at OSGR SJ 7848 7992 . At this point the ground is muddy and crosses the hedge boundary covering land owned between Landowner 2 and Landowner 3. The route then continues in a north easterly direction for approximately 202 metres to terminate at the junction on the first route at Point C on the Plan.
9. The claimed footpaths are well-trodden routes across agricultural land, with the exception of the section that follows the access drive to the treatment plant. The access drive is surfaced with a sealed material. Both routes have a variable and undefined width, except at the boundary crossings. In line

with current guidance on footpath widths, it appears that a width of at least 2 metres has been established through use.

### **Legal Matters**

10. Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the “81 Act”) places a duty on the Council to 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. One such event is set out in Section 53(3)(c)(i) which provides that a modification is required where:
  - a. “(c) the discovery by the authority of evidence” which (when considered with all other relevant evidence available to them) shows:-
  - b. “(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.”
12. The evidence supporting such a claim may consist of historical evidence or user evidence or a combination of both. All of the relevant evidence must be evaluated and weighed to determine whether, on the ‘balance of probabilities’ the claimed public rights can be shown to exist. Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to this legal test and must not be taken into account.
13. Where the evidence in support of the application includes or consists of user evidence, section 31(1) of the Highways Act 1980 (the “1980 Act”) is applicable. It provides that:
  - a. “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”. This is often referred to as the “date of challenge.”

15. For public rights to be established through long use, as stated above, a twenty-year period must be identified during which time, use can be demonstrated. Where no challenge to the use of a claimed route has occurred, the relevant twenty-year period for presumed dedication under Section 31 of the Highways Act 1980 may be taken as the twenty years immediately preceding the date of the application. In this case, a challenge to the use of Route B- C appears to have arisen in 2014, when the land was sold and subsequently fenced. The fencing affected part of the claimed route, which was reportedly in use by the public at the time. Accordingly, the relevant 20 year period for assement of this route is form 1994 to 2014. For the route A-C-D, no earlier challenge was identified. Therefore, the relevant 20 year period is taken to be the twenty years immediately prior to the date of the application being registered, which is 7th July 2015. The applicable period is therefore 1995 to 2015.
16. Fencing has been mentioned at Point A by Landowner 1 during consultation who informed us that they had erected fencing at Point A for a brief time but at an unknown date before it was torn down. Aerial photographs suggest that fencing was in place in 1992/3. However, it has been clarified from interviewing path users that the date of the fencing is unknown and it seems that there was no obstruction to use as a gap remained and walkers continued to use the route without interruption. Fencing was erected after the application was made demonstrated by the closure of a gap at Point B.
17. 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 1980 Act, which states:

*...unless there is sufficient evidence that there was no intention during that period to dedicate it”.*
18. The ruling clarified that presumed dedication of a way can be rebutted if there is sufficient evidence that there was no intention by the landowner 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.

19. In addition to the above, under Section 31 (6) of 1980 Act there is provision for a landowner to deposit a statement and plan of the land they own and a declaration in subsequent periods to negate the intention to dedicate public rights of way over that land. This deposit is registered with the Authority and is a means of protecting the land from public rights being established by use from the date of the declaration. As a consequence of the enactment of the Growth and Restructure Act 2013 a declaration should be submitted every twenty years to keep a continuous negation of intention in place.
20. A Statement and Declaration dated 18 March 2016 was submitted by Gateley PLC on behalf of the former landowner of land covered by Point A-C and B-C on the Plan. The Statement and Declaration has been submitted in the format of the form set out in Schedule 1 Commons (Registration of town or Village Greens) and Dedicated Highways (Landowner Statement and Declaration) (England) Regulations 2013. The landowner, acknowledges under Part B of the Statement that there is a public footpath coloured purple, which forms part of the Definitive Map already. The landowner also acknowledges that there is a public footpath coloured blue (not yet on the Definitive Map.) Although the landowner acknowledges that this path is not on the map the landowner also acknowledges (under Part E) that the public footpath coloured blue is the subject of a Definitive Map Modification Order (“DMMO”) application from Mobberley Parish Council. The deposit is protection for the succeeding landowner from any other public rights of way arising from use from the date of the deposit.
21. Public rights of way may also be established under common law based on evidence of public use. Unlike under statutory provision (such as Section 31 of the Highways Act 1980), common law does not require a specific duration of use, such as twenty years. Instead, it relies on the principle that public use, together with evidence of an implied or express intention by the landowner to dedicate the route, can establish a public right of way.

To establish a right of way under common law, it must be shown that:

- The landowner had the capacity to dedicate the land as a public right of way,
- or
- There is evidence that no such capacity existed (for example, if the land was held by a statutory body with no power to dedicate).

Where the identity of the landowner is unknown or unclear, consistent and

credible evidence of public use, without challenge or obstruction, may be sufficient to infer dedication.

In this case it seems that prior to the application being made, fencing appears to have been constructed. Aerial photography from 1992/3 appears to show fencing across unregistered land alongside FP13 at Point A. At point B there are remnants of a field boundary alongside the access drive. There appears to have been no challenge to user at the field hedge boundaries. The use appears to have continued without interruption or objection from the landowners, further supporting the potential establishment of public rights, particularly over unregistered land, through presumed dedication under common law principles.

## **The Investigation**

### The documentary evidence

22. Various historical documentary sources have been examined. The documentary evidence that has been examined is described below and a list of the evidence can be found at Appendix 2.

### Tithe Map Mobberley Parish or Township 1838

23. 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.
24. In this case the Tithe map for Mobberley shows a field layout that largely corresponds with the present configuration, excluding areas that have since been developed for housing. It clearly shows the field boundaries over which the claimed route passes and shows Mobberley brook running east to west and Mobberley village to the south which is much smaller than it is today. The fields on the west are described as being in the ownership of Ralph Gerard Leyster the second field described as the "old meadow" is under the

ownership of Barratt and Irlam. The third field is shown split into two and under Peter Legh holding the “smithy meadow” and Joseph Watkinson also holding “meadow”. The eastern field is owned by Ralph Gerard Leycester and is described as the “bridge meadow”. A mill is shown on the Tithe Map close to the location of Point C on the plan. Whilst the Tithe Map indicates a footpath which would be identified as FP13 before it was diverted, there are no indications of a path on the application routes.

#### Ordnance Survey (“OS”) Maps scale 6”: 1 mile

25. 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.
26. OS mapping from 1882 has been examined and they show similar field patterns that exist now where the claimed route runs, with Mobberley brook running west to east on the north side of the fields. The claimed routes are not marked on the 6 inch to 1 mile series OS maps examined. FP21 is consistently shown on all the maps by double pecked lines and annotated with the words “F.P”. Housing around Oldfield Drive and Carlisle Close was developed from the 1970’s.
27. OS map sheet XXVII, 6 Inch to 1 mile, published 1882 and 1899, 1911, and 1946 shows open fields, a similar layout except the second field to the east of Point A is split into 2 fields. Mobberley Brook runs to the north and FP21 runs south to north and crosses the brook at a location on the Plan close to Point D. The map shows a cul de sac track as double solid lines running from Town Lane in a northerly direction and which is now incorporated into FP13 and crossing Oldfield Lane. The track terminates south of Point B on the Plan.
28. OS map sheet XXVII, 6 Inch to 1 mile, 1971 shows the layout described above and by this date housing has been developed around Oldfield Drive. The cul de sac track is shown extended to “sewage works” and also shows the effect of a diversion of FP13 further north along this extension of the track. There are no paths showing where the claim routes run.



### Aerial Photos 1971/3 to 2010

29. Various aerial photographs have been consulted dating from a series 1971/3 to 2010. The black and white 1971/3 series and a colour 1982/5 series show no easily visible signs of trodden paths on the application routes. Housing around Oldfield Drive can be seen. There appears to be no fencing along the access to the sewage treatment plant only the remnant field boundary hedge on the west side of the drive.
30. The colour 1992/3 series aerial photography shows housing around Carlisle Close is largely complete. There is a visible hedge or fenceline and vegetation along both sides of the access drive to the sewage plant. Point B is obscured by vegetation but a track which may be a vehicle track can be seen leading from Point B in a north east direction across the field. There are no generally visible trodden paths.
31. The series 1999/2003 aerial photography visibly shows the application path from Point B running north-east but it is not clear if this is an animal or human trodden path. There appear to be trodden paths running west-east from Point A. The quality of image is not enough to determine if the hedge and fenceline along the access track is intact or broken. The following series 2005/6 does indicate visible trodden paths on the application route from Point A on the Plan and running easterly along the north boundary of the field, partially hidden on the photography by the treeline. From Point B on the Plan a trodden path is visible running towards Point C on the Plan. A 2010 series is better quality and shows a very clear image of a trodden path from Point A on the Plan. Shadows indicate fencing was in place alongside the access drive, although a trodden route also crosses the line. The path runs in an easterly direction along the north boundary of the field partly hidden by the tree line. Point B on the plan is partially hidden by the tree line but a trodden path is visible leading north east to Point C on the Plan.
32. The series of aerial photographs are good evidence for viewing the development of housing south of the application area, evidence for the fencing which ran alongside the access drive to the sewage plant and evidence of paths that are showing as trodden across pasture grass on all the series of photographs.
33. Site visit, 25.02.2025
34. A site visit of the two fields of the eastern part of the claim incorporating FP21 and east of Point C on the plan and the visible structures that could be viewed from FP13 was undertaken on 25th February 2025 and a copy of the

photographs of the claimed routes can be viewed at **Appendix 3**. Photographs taken in 2015 were submitted with the application and a selection are included in this appendix.

### The Definitive Map Process

35. The Definitive Map and Statement is based on surveys and plans produced in the early 1950's by each parish in Cheshire and was a requirement of the National Parks and Countryside Act 1949. It was a survey; of all the ways they considered to be public at that time via production of a map and associated statement of each route. A Draft and Provisional Map were produced for consideration before a final Definitive Map and Statement came into being. The surveys were used as the basis for the Draft Map and for the Mobberley area the date of the survey is 1 June 1953 which is referred to as the "relevant date".

36. All three stages of the Definitive Map process, the Draft, Provisional and Definitive Map show FP13 and FP21. FP13 was diverted twice in 1957 and 1978 and the current line is reflecting those diversions. The claimed routes are not claimed on the parish survey or at the Draft Stage of the Definitive Map stages.

### 37. Land Registry Information

38. The application routes cross land in the ownership of four different landowners in addition to some unregistered land. Landowner 1 owns a small area of land to the north of Point A and have registered an interest in the track leading to the sewage plant. Landowner 2 took on the ownership in 2017 and owns the 2 fields on the western part of the application area that is where the paths run between Points A-C and B-C. Landowner 3 owns the first field east of Point C and Landowner 4 owns the eastern field incorporating Point D on the Plan. Landowner 5 owns land which was taken on after the applications for footpaths to be recorded were made. The application route cuts through a corner of the land. There is also a very small triangle of unregistered land off the lane where footpath 13 runs from near Point B to a few metres where the field gate is found and a second unregistered piece of land runs between FP13 and the access drive to the sewage plant. Notice of the Application was served on this land from 19 March 2025 to 16 April 2025

## User Evidence

39. Ten user evidence forms were submitted with the application in 2015. A further four user evidence forms have been submitted during the investigation. This is a total of 14 completed user evidence forms. An analysis of the user evidence can be viewed at Appendix 4.
40. Out of the original ten-user evidence forms it has been found during investigations that one person has deceased and five could not be contacted. However, their evidence is included in the summary at Appendix 4. Interviews with seven of the users were taken in February 2025.
41. No witnesses have been challenged whilst using the route or knows of anyone else who has been challenged whilst using the route. Only a few people remembered a brief time (although not when this occurred) of fencing being erected across Point A. Access was not impeded during this time as there was still a gap at Point A. No obstructions are mentioned either in the absence of a challenge to public use, the date of the application is taken as the date to calculate the retrospective 20-year period of deemed dedication – i.e. 1995-2015 for the first path and 1994-2014 for path 2 which was crossed by a new boundary enclosing an extended garden area. Although usage does go back much further than this to at least 50's/60's.
42. The user evidence indicates that the claimed routes were used frequently, with individuals reporting use on a weekly or monthly basis. All user evidence forms assert that the routes were used on foot and that their belief in the public footpath status is based on personal experience and their observation of other local people walking the same routes. Each user submitted a marked plan identifying the claimed paths they walked, all of which align with the application plan (Plan reference WCA/051). Of the users, seven individuals were interviewed in more detail. Each described using the route regularly, often in the company of others. Several witnesses were able to name additional people with whom they had walked the route and reported seeing many other walkers using the same paths. This suggests that the application routes were widely and consistently used by the public over a long period, even though this level of use may not be fully reflected in the number of individual user forms or on the usage graph compiled as part of the application.
43. During a site inspection in February 2025, it is clear that in the present day the route is well walked as there are visible wear marks on the ground and two dog walkers were witnessed using the route at the time of inspection.
44. No witnesses report having sought or been granted permission to use the claimed routes. While several witnesses acknowledged knowing the

landowners (reflecting the close-knit nature of the community) they stated that use of the routes occurred without express permission and was assumed to be accepted or unchallenged. One witness recalled, during childhood, being shouted at by a landowner adjoining the land north of the A-C-D route. However, no formal action was taken to prevent use and the witness and others continued to walk the route without interruption. This suggests that any objection was isolated and did not amount to a clear or sustained challenge to public use.

45. All users say that they were undertaking a variety of activities including dog walking, taking exercise, going to church, school or pub, or just out with their family and friends. Many have lived a long time or had connections in the village going back 50 plus years and have experience of walking the route from childhood onwards.
46. In terms of furniture on the claimed routes all users confirm that they have always been able to pass the claimed routes. Today the application point at B is fenced although there was an alternative access at the date of the application submission; a gap adjacent to a field gate east of Point B and shown in photographs taken in 2016. There is also a gap at the field boundary between points B and C and a 2.5m modern wooden pedestrian gate at Point D (although no one is sure who installed it). The application photographs indicate this gate was inserted at a much later date. At Point A there is a wide gap in a post and wire fencing.
47. During interviews most people do not remember seeing any signs on the claimed routes and certainly never any prohibitive signs. A minority of users stated they remember some sort of sign high up on a tree that had wording similar to ***“no fishing no shooting”*** approximately somewhere near Point C. Nevertheless, users made it clear that there were no signs prohibiting people from walking across the fields. .
48. During interviewing it has also been a consensus that at Point A there was a through route, although fencing was acknowledged to have been erected at some date. Two of the users interviewed clarified the point and said that they remembered this fencing across the route being in place for a very brief period of approximately 6 months. They were not able to recall the dates and confirmed that even when it was fenced there was still a gap at Point A that users could get through to continue usage. .
49. A few of the witnesses were actually surprised during interviews that the routes weren't already public rights of way on the Definitive Map and

Ordnance Survey maps as they had always believed them to be so from childhood.

50. The evidence from users provides the evidence of use for the relevant 20 years or more prior to 2014/2015. The use had been overt, and without permission from any of the 4 surrounding landowners. There is no known exact date when fencing appeared across Point A, however fencing is shown to appear on the 1992/3 aerial photography so it could have been approximately around this date. During interviewing the users do not recall fencing preventing use of the paths and whilst a few remember a brief spell of the fencing across Point A they said it didn't impede their onward journey as even then there was still a gap to one side of Point A.

## **Consultation and Engagement**

51. Consultations were sent out in November 2024 which included the Mobberley Parish Council (they are also the applicant), Ward Councillor, user groups and affected and neighbouring landowners.
52. Ward Councillor Hannah Moss, provided a brief response in support of the application.
53. Mobberley Parish Council responded to say they fully support the application and that the claimed routes had been used by walkers, school children, people exercising their dogs and more and commented that it would be good to have the paths official and maintained.
54. Landowner 1 owns the water sewage treatment site just north of Point A and sent a detailed response to say that they had various concerns relating to health and safety which had been previously expressed in planning applications dating from 2011 and 2015. They stated that they had noted the user evidence with this case and had no comments to make on the claimed route B-C-D however they object and dispute the claimed footpath A-C-D due to health and safety concerns. In particular they expressed concerns about vehicles and pedestrians mixing as there is no pavement along the edge of the lane and lorry drivers visibility splay is very restricted on the lane leading to the water sewage site. They also claim that at Point A they had blocked up a gap but it had been forced open by the public. No dates were given as to when this action was taken and it seems that evidence cannot be provided. The title documents for this landowner indicates that the company were not in possession of the access track during the relevant period although any actions could be a challenge to the use.

55. Landowner 2 over which runs the application routes A-C and B-C initially wanted to know the basis of the application. A subsequent response stated that, as they had only purchased the land in 2017, they had limited knowledge of the history of the site. They stated that they were not currently aware of the public gaining access into the fields and made an objection to the addition of the application routes. They also noted from the consultation plan crossed gardens of houses on Carlisle Close and queried how these paths could be used if gardens were in the way of passage.
56. Landowner 3 was met on site and proposed no objection in principle to the application route C-D.
57. Landowner 4 suggested that they have no objection to the application route C-D.
58. A local resident expressed concern that there could be some level of disruption for the residents of Carlisle Close from the application route B-C and suggested only one path A-C-D would be better for anyone wanting to get across the fields.
59. The Green Lane Association sent a response with no evidence for the application routes. An additional comment related to the status of FP13 and FP21 which is not relevant to the current application.

### **Reasons for Recommendations**

60. Under Section 53 of the 1981 Act, the Council has a duty as the Surveying Authority to keep the Definitive Map and Statement under continuous review. Section 53 (c) allows for an authority to act on the “discovery of evidence” this suggests that the DM needs to be amended. The authority must investigate the evidence and decide on the outcome as to whether or not to make a DMMO. Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the “81 Act”) 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.
61. Witness evidence from before 1994 and since then shows regular and uncontested use by walkers. There are fourteen user evidence forms with 7 interviews having been undertaken and the evidence indicates a greater number of people having used the application routes. Interviews with users indicate the paths have a strong reputation as being public paths. There appears to have been no interruption in use for users going back to at least the 1950s.

62. 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 registered on 7th July 2015 and therefore the period that satisfies the legal test is the period from 1995 to 2015 except for the path Points B to C which investigation has established crossed land which was fenced in 2014. The relevant period for these points is 1994-2014.
63. The documentary evidence has shown that there was no supporting map or plan to support the claim. Aerial photographs have been consulted and in a small part indicate trodden paths during the relevant period which support the claims made.
64. Landowners in part have not rebutted the claim. One landowner has raised issues of safety and security which are not relevant to the decision to be made here. If an Order was made and was confirmed, these are matters that could be addressed. The same landowner claims fencing was erected but no date or proof of date is available and witness evidence is consistent in stating that a gap has always been present in the relevant period. The witness of users suggests that fencing was not an obstruction to use. Fencing can be seen to have been erected after 2015 across the former gap at Point B, however the gap at Point A appears to look the same now as it did in 2015. One landowner has expressed concern that the successful confirmation would have an impact on their land and has requested only one path is taken forward.
65. Under section 31(1) of the Highways Act 1980 public footpath rights can come into existence by prescription unless there is evidence to the contrary. Therefore the landowners must provide evidence to that effect, which is normally evidence of a challenge or notices being put up during the relevant twenty year period. Whilst there is a claim that fencing was erected to prevent use, it is contradicted by the user evidence stating that there has always been a gap. Landowner 3 and 4 agree in principle to the public footpaths.
66. The primary commencement point of usage from the village of Mobberley at Point B is shown on the application plan and runs from what had been a gap in hedging alongside the access track. Whilst a gap to the side of a field gate may now be more frequently used, any use since 2015 is negated from public rights arising by the S31(6) deposit described above at paragraph 19.
67. The evidence in support of this application must show, on the balance of probabilities that public footpath rights subsist or are reasonably alleged to subsist along the claimed route. It is considered that there is sufficient user evidence to support an allegation of the existence of footpath rights. It is also

considered that there is a lack of evidence of rebuttal of the claim by landowners. On the balance of probabilities, the requirements of Section 53(3)(c)(i) have been met and it is recommended that the Definitive Map and Statement should be modified by the addition at public footpaths shown on Plan WCA/051 between points A-C-D and B-C.

68. 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**

58. If the Council were to take no action in response to the application, it would fail to 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 to be modified where appropriate, based on the discovery of relevant evidence.

### **Implications and Comments**

#### *Monitoring Officer/Legal*

59. The council is fulfilling its statutory obligations under the Wildlife and Countryside Act 1981 as outlined in the Legal Matters section of this report.
60. The Human Rights Act is also of relevance. Whilst article 1 to the first protocol (peaceful enjoyment of property) and article 8 (right to respect for family, private life and home) are engaged, it is important to note that these rights are qualified, not absolute, which means that they can be interfered with in so far as such interference is in accordance with domestic law and is necessary in a democratic society for the protection of the rights and freedoms of others. It is considered that any interference occasioned by the making of a Modification Order is both in accordance with domestic law (the Wildlife and Countryside Act 1981) and is in the public interest as it is necessary in a democratic society for the protection of the rights and freedoms of others, namely the public who wish to use the way. Should Members resolve that a Modification Order be made in accordance with highways legislation, this is merely the start of the legal process. Once a Modification Order is made, it must be publicised, and any person will have an opportunity to formally object to it. Should objections be received, the Modification Order would have to be referred to the Secretary of State who may hold a Public Inquiry before deciding upon whether or not to confirm the Modification Order.
61. 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.

62. 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*

63. 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*

64. The work of the Public Rights of Way team contributes to the Corporate Plan vision of Enabling prosperity and wellbeing for all in Cheshire East, with the commitments of Unlocking prosperity for all and Improving health and wellbeing, and the policies and objectives of the Council's statutory Rights of Way Improvement Plan.

#### **Corporate Plan 2025-2029**

**Vision:** Enabling prosperity and wellbeing for all in Cheshire East

#### **Commitments –**

- Unlocking prosperity for all
- Improving health & wellbeing

#### *Equality, Diversity and Inclusion*

The legal tests under section 53 of the Wildlife & Countryside Act 1981 do not include an assessment of the effects under the Equality Act 2010.

#### *Human Resources*

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

#### *Risk Management*

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

*Rural Communities*

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

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

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

*Public Health*

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

*Climate Change*

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

Access to Information	
Contact Officer:	Adele Mayer <a href="mailto:adele.mayer@cheshireeast.gov.uk">adele.mayer@cheshireeast.gov.uk</a>
Appendices:	Appendix 1: Application Plan WCA/051 Appendix 2: Historical document list Appendix 3: Photographs of claimed route. Appendix 4: User evidence analysis chart
Background Papers:	The background papers and files relating to this report can be inspected by contacting the report writer.