

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 24 September 2012
Report of: Greenspaces Manager
Subject/Title: Wildlife & Countryside Act 1981 – Part III, Section 53:
Investigation into the Alignment of Public Footpath No.12,
Parish of Hough.

1.0 Report Summary

- 1.1 The report outlines the investigation of the alignment of a definitive footpath, known as footpath no.12 in the Parish of Hough. As part of an enforcement procedure; the landowners of a field where part of the footpath runs have questioned whether the footpath actually runs on their land as there are discrepancies between the Definitive Map and the early stages of the Definitive Map process. This report includes a discussion of the consultations carried out; the historical evidence and background documents to the production of the Definitive Map. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether an Order should be made to alter the Definitive Map to reflect the correct position of the footpath.

2.0 Recommendation

- 2.1 An Order be made under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by showing Public Footpath no. 12 on the route indicated between points A-B on drawing number WCA/006 and not on the alignment C-D.
- 2.2 Public notice of the making of the Order be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Act.
- 2.3 In the event of objections to the Order being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 Section 53 of the Wildlife & Countryside Act 1981 places a duty on the Borough Council to keep the Definitive Map and Statement under continuous review and to make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of an event. The event in this case is set out in section 53 (3)(c)(iii) which is:-

‘the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that there is no public right of way over land shown in the map and statement as a highway of any description, **or** any other particulars contained in the map and statement require modification.’

In this case the particulars contained in the Map require modification. The requirements of section 53(4)(a) &(b) shall also be taken into account whereby;-

‘The modifications which may be made by an order.....shall include the addition to the statement of particulars as to –

a) the position and width of any public path.....which is to be shown on the map; and

b) any limitation or conditions affecting the public right of way thereover.

On the balance of probabilities, the requirements of Section 53 (3)(c)(iii) have been met and it is recommended that the Definitive Map and Statement should be modified to show the route A-B as public footpath no. 12, Hough and delete the line C-D.

4.0 Wards Affected

4.1 Wybunbury

5.0 Local Ward Members

5.1 Councillor J Clowes

6.0 Policy Implications

6.1 Not Applicable

7.0 Financial Implications

7.1 Not Applicable

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 Under section 53 of the Wildlife & Countryside Act 1981 (WCA), the Council has a duty, as surveying authority, to keep the Definitive Map and Statement under continuous review. Section 53 (3) (c) allows for an authority to act on the discovery of evidence that suggests that the Definitive Map needs to be amended. The authority must investigate and determine that evidence and decide on the outcome whether to make a Definitive Map Modification Order or not.

8.2 The legal implications are contained within the report.

9.0 Risk Management

9.1 None

10.0 Background and Options

10.1 *Introduction*

- 10.1.1 The contention over the existence and exact route of this footpath has been simmering for many years. There are letters on the Parish files within the department indicating that path users have experienced problems using this footpath since the mid 1980's. There are letters on the file from 1993 and 1994 which indicate that the then owners of Hollies Farm, Mr & Mrs Bradley, claimed they were not made aware of the existence of the footpath when they purchased the property, in 1985, and as Cheshire County Council were seeking to enforce the re-opening of the path; this had put them in dispute with Crewe and Nantwich Borough Council who had responded to the search.
- 10.1.2 Further correspondence indicated that local members of the Parish Council had been walking the path at approximately the time when these landowners had first moved there (about 1985), when they were approached by the landowners, who stated that the previous owner had signed an affidavit that the path had not been used for 20 years. This indicates that the owners were aware of the existence of the path.
- 10.1.3 In 1986 planning permission that had been refused by Crewe and Nantwich Borough Council was granted on appeal for Quarantine Kennels at Hollies Farm. The existence of the footpath must not have been disclosed by this process as the kennels were constructed over the footpath, obstructing the route. It was at this point that it came to light that the original path recorded on the Definitive Map was anomalous as there was a gap between the end of the adopted highway and the commencement of the footpath adjacent to Hollies Farm, thus making enforcement to remove the obstruction complicated.
- 10.1.4 In 1994 research was undertaken into this anomaly and a modification order was made and confirmed which recorded an additional length of path (numbered 12A) linking footpath 12 to Birch Lane adjacent to the Hollies Farm. In 1995, the landowners inquired about diverting footpath 12. A consultation was undertaken and the responses from the user groups were negative as they felt a diversion shouldn't be a response to the need for enforcement. A works order was issued for the path to be re-opened by the installation of 3 stiles, signage and waymarking.
- 10.1.5 Further problems were reported in 1996 and 1997 referring to loose dogs on the path and the route not being clearly marked as an existing waymark was on the wrong side of the hedge. Further waymarking work was issued and on inspection the path was useable.

10.1.6 In 1999 there was another complaint about a locked gate and a fence obstructing the footpath. The path was inspected by the maintenance officer and found to be available. The officer then had a discussion with the owners, Mr & Mrs Wight (who are the current landowners) about the possibility of applying for a diversion. A further meeting was held with the Public Path orders officer and at this meeting the discrepancy between the route shown on the Definitive Map and the route that had been made available on the ground was discussed. This refers to the part of the path that runs along the access drive to Yew Tree Farm then crosses the boundary into the adjacent field (owned by Mr & Mrs Wight). The Definitive Map shows the path continuing on the Yew Tree Farm side of the boundary and not entering that particular field at all. This matter was looked at by the Public Path Orders Officer with reference to the internal documents that formed the process of compiling the Definitive Map in the 1950's. She wrote back to Mr & Mrs Wight to say that the preliminary documents record the path in their field and that the Definitive Map is in error.

10.1.7 No application to divert the footpath was forthcoming and problems were reported on the path in successive years mostly relating to route finding problems and the need for waymarking. The maintenance and enforcement officer has been to visit the site on many occasions and has come into conflict with the landowners who believe that the path doesn't run in their field but should be on the southern, Yew Tree Farm, side of the boundary. The latest attempt to enforce the line of the footpath earlier this year has led to this investigation to determine the true line of the path.

10.2 *Description of the Disputed Footpath*

10.2.1 Hough Footpath no. 12A runs from its junction with Birch Lane just to the north west of Hollies Farm for a distance of approximately 40 metres to its junction with Footpath 12. It then runs in a south easterly direction towards the corner of a field. From this point the alignment is disputed. The walking survey records the path crossing into the field but describes a barbed wire obstruction. It then describes the path continuing on the 'right hand side of the hedge for 150 yards to barbed wire and thorn hedge obstructing path, impassable – no detour'. At this point the path joins FP 13 (as initially recorded on the walking survey). The Definitive Statement records Footpath 12 as:-

'Commencing at a point approximately 40 metres south-east of the southerly end of the unclassified county road UY 1379 known as Birch lane and running in a south easterly then south westerly direction north of Yew Tree Farm for a total distance of approximately 282 metres terminating on the County Road C 505 known as Cobbs Lane.'

10.3 *The Main Issues*

10.3.1 Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Cheshire East Borough 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

10.3.2 One such event is 53 (3)(c)(iii) which is:-

‘the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that there is no public right of way over land shown in the map and statement as a highway of any description, **or** any other particulars contained in the map and statement require modification.’

10.3.3 The relevant evidence in this case are the records that were produced by the local Parish Council and the County Council in the process leading up to the production of the Definitive Map. The first stage of this process was for each Parish to survey and record the routes that they believed to be public in their areas. Local user groups also undertook the same process. The maps and descriptions produced are known internally as the ‘walking surveys’. These surveys were then sent to the County Surveyor’s department where they were collated and some re-checked on the ground. Any alterations were made with the agreement of the parishes and recorded on the Draft Map.

10.3.4 The walking surveys record the footpath leaving the track leading to Yew Tree Farm and entering the adjacent field. Barbed wire obstructions are recorded being at the entry and exit to this field. The Draft Map shows the path in this same position. The provisional Map, which is the next stage in this process, shows the path slightly slewed to the south and partly on the southern side of the boundary and partly running along it. The error, or rather inaccuracy, in drafting at this stage probably led to the continuation of the error on the Definitive Map, which compounds the movement of the path in a southerly direction into Yew Tree farm land.

10.4 *Consultations*

10.4.1 Consultation letters were sent to the Ward Member; Hough and Chorlton Parish Council, the landowners at the Hollies and the neighbouring landowner at Yew Tree Farm.

10.4.2 There has been no response from the local member. The Parish Council have contacted this department to say that their own records from the early 1950’s aren’t easily available but they had spoken with a local resident, Mr W Newton, who lived at the Hollies in the 1950’s. Mr Newton was amenable to being contacted and was able to confirm that he had lived at the Hollies from 1946 to 1968. He recalled that the path ran past the Hollies along a cart track but that it didn’t continue into the farmyard at Yew Tree Farm but turned 90 degrees into the adjacent field and continued along the hedge to join the access to Yew Tree farm after the next boundary. Mr Newton also recalled that the path past the Hollies was not much used as there used to be another path that ran to the northwest to join FP 7 in Chorlton and access to more footpaths. This path was not claimed when the Definitive Map was compiled. Mr Newton still lives in close proximity to this Footpath.

10.4.3 Mr E. Mayne-Flower, the landowner at Yew Tree Farm, has contacted this department to express his concern about the suggestion of the path running on the south side of the boundary. He has lived at his property for 15 years and the path has always been on the north side. He has spoken with his next door neighbour who confirms that the path has always run as it currently is on the ground. He also refers to an aerial photograph in his possession from 1967 which doesn't show any sign of a path on the Yew Tree Farm side but does show a gate/stile on the north side of the boundary.

10.4.4 Mr & Mrs Wight, the landowners at The Hollies, have been contacted as they had indicated in a meeting with Rights of Way staff that they had evidence to show that the path ran outside their boundary. However despite a second letter being sent, they have not come forward with any information to substantiate this claim.

10.5 *Investigation of the Claim*

10.5.1 In addition to the documents that form the Definitive Map process, other documents, mostly maps, have been considered to see if they throw any light on where the path should be recorded. These are listed in **Appendix 1**.

10.6 *Documentary Evidence*

County Maps 18th-19th Century

10.6.1 These are small scale maps made by commercial map-makers, some of which are known to have been produced from original surveys and others are believed to be copies of earlier maps. All were essentially topographic maps portraying what the surveyors saw on the ground. They included features of interest, including roads and tracks. It is doubtful whether map-makers checked the status of routes, or had the same sense of status of routes that exist today. There are known errors on many map-makers' work and private estate roads and cul de sac paths are sometimes depicted as 'cross-roads'. The maps do not provide conclusive evidence of public status, although they may provide supporting evidence of the existence of a route.

10.6.2 On Bryant's Map (1831) the route of Birch Lane and FP 12A & 12 are depicted by a lane running to what appears to be Yew Tree Farm. Nothing further is shown running westerly

Tithe Maps & Awards

10.6.3 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.

- 10.6.4 The Tithe Map and Award of Hough dated 1839 shows a route leading out of Hough Heath to Yew Tree Farm and must have been the only access to this property at that time. Again there is no route leading westerly to Cobb's Lane.

Ordnance Survey Maps

- 10.6.5 Ordnance Survey 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 or way is not evidence of the existence of a right of way. It can be presumed that this caveat applies to earlier maps also. These documents must therefore be read alongside the other evidence.

- 10.6.6 *Ordnance Survey Map 1" to 1 mile 1842 'Old Series'*

This shows the route ending at Yew Tree Farm in a similar manner to the Tithe Map.

- 10.6.7 *Ordnance Survey 6" and 25" Maps, 1872 First Edition, 1899 Second Edition and 1909 Third Edition*

The First Edition 25inch map from 1872 shows a double dashed line from Cobb's lane in a north easterly direction to Yew Tree Farm with a second double dashed line branching from the first into the adjacent field and running along the north side of the boundary to its easterly corner, where it meets a track that runs between the Hollies and Yew Tree Farm.

- 10.6.9 The second edition 25 inch map from about 1899 shows a single pecked line in the same position as on the 1st edition i.e. to the north of the boundary between Yew Tree farm and the Hollies. This is replicated on the 3rd Edition map of 1909. These pecked lines indicate a physical feature on the ground and are considered to depict a trodden line.

- 10.6.10 *The Finance Act 1910*

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.

10.6.11 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.

10.6.12 The working plans were based on O.S. third edition 1909 maps. This shows the Hollies and fields around it as being in one plot number. There are no deductions in the Domesday Book for public rights of way however this isn't unusual as often the information collated in the field books (these records are held at the National Archives in Kew) wasn't transferred to the Domesday Book before the scheme was abandoned.

10.6.13 *Internal Pre Definitive Map Records*

Under the 1949 National Parks and Access to the Countryside Act, each surveying authority was under a duty to compile a Definitive Map of public rights of way in their area. The process began with the Parish Councils and local user groups drawing up a map of the Parish with paths marked on that they believed to be rights of way. Each path also had a written statement describing the route and noting details.

10.6.14 These 'walking surveys' are often used in definitive map work to help confirm details about a route and where it runs and what furniture may be recorded along it.

Footpath 12 was surveyed on the 25th February 1951 and commences at 'Hough Coppice' (road no.UC/5/5) and ends at Road no. C 505. The survey describes two field gates and two barbed wire obstructions. The barbed wire is at the points where the path runs in the field to the north of Yewtree Farm. Whilst at the time of the survey the path was obstructed, this is clearly the route that is considered to be the public path.

10.6.15 A second footpath numbered 13 was recorded at this stage. It ran from Cobb's Lane and ended at Yewtree Farm. This path was recorded as:

'Field Gate at Cobb's lane runs north east for 150 yards where it meets path no. 12 on left hand side of Field Gate 2. At this point path turns east and terminates after 50 yards at Yewtree Farm'

This further demonstrates that footpath no. 12 diverged from Yewtree Farm drive into the adjacent field.

10.6.16 The Draft Map was the next stage of the Definitive Map process and was drawn up by the County Council in 1956 following consideration of the submitted walking survey maps and investigation of some of the routes by council officers. The Draft Map depicts Footpath no.12 running from its junction with the unclassified road UC/5/5 (Birch Lane) past the Hollies then turning through 90 degrees to run along the north side of the boundary with

Yewtree Farm, joining the access drive to the Farm after the length of the field and continuing to its junction with Cobb's Lane. Due to the scale of the map (1:10,560) the field boundary is largely obscured by the pen line.

10.6.17 It can be seen at this stage that Footpath no. 13 no longer exists but part of it, the section along the access drive, has been conjoined with Footpath 12. The Draft map was advertised and put on deposit at local Council Offices for anyone to view and register comments or objections to. There are no recorded objections to Footpath 12.

10.6.18 At the next stage of the Map process, the Provisional Map published in 1969, the depiction of Footpath 12 has shifted slightly to the south although there is no catalogued reason for this to have happened. Looking at other paths in the area on this map sheet, there are other slight movements in the positions of the footpaths. These have to be attributed to the drawing process being slightly adrift of true. There was a further opportunity for landowners to object to the recording of rights of way at this stage; Objections being heard through a formal process at the Quarter Sessions. There is no record of objections being made to this footpath.

10.6.19 The Definitive Map for Nantwich area was finally published in 1973. The whole process had taken a lot longer than had been first envisaged. The footpath is shown shifted a little bit further to the south and this is why the discrepancy arises.

The only remedy to the Definitive Map is available through the Wildlife and Countryside Act 1981 in the form of a Definitive Map Modification Order.

10.7 *Conclusion*

10.7.1 The processes outlined above show how the original intention of the surveys recorded by the Parish Council had evolved and become slightly distorted purely by the map drafting process. There is no administrative history to the alignment changes shown.

10.7.2 There is support for the map process provided by a local resident with personal knowledge of the Hollies and the area around during the period when the Definitive Map was being initially drawn up.

10.7.3 The evidence to support this map change must show, on the balance of probabilities that a reasonable allegation has been made that shows that there is no public right of way over land shown in the map and statement as a highway of any description, **or** any other particulars contained in the map and statement require modification.' It is considered that there is sufficient evidence to prove the existence of a public footpath along the route A-B on drawing no WCA/006 and to prove that no public right of way exists on the line C-D. Therefore in line with the requirements of Section 53 (3)(c)(iii), it is recommended that the Definitive Map and Statement should be modified accordingly.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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