

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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<b>Date of Meeting:</b>	16 <sup>th</sup> September 2013
<b>Report of:</b>	Public Rights of Way Manager
<b>Subject/Title:</b>	Highways Act 1980 Section 25: Proposed Dedication of Public Bridleway No 83, along Graveyard Lane, between Newton Hall Lane and Moss Lane, in the Parish of Mobberley.

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### 1.0 Report Summary

- 1.1 An application was submitted in May 2003 by the Alderley Edge, Wilmslow and District Footpaths Preservation Society ("the Society"), to modify the Definitive Map and Statement by the addition of a Bridleway along Graveyard Lane in the parish of Mobberley. The application was made under the Wildlife and Countryside Act 1981 for a Definitive Map Modification Order.
- 1.2 Agreements in principle have been reached with a number of landowners and adjacent landowners to dedicate Graveyard Lane as a Public Bridleway under section 25 of the Highways Act 1980. If the route is dedicated as a public bridleway this would negate the need for a Definitive Map Modification Order and the Society as the applicant has agreed to withdraw the application.

### 2.0 Recommendation

- 2.1 Creation Agreements be entered into with the landowners and adjacent landowners under Section 25 of the Highways Act and under such terms as may be agreed by the Public Rights of Way Manager to create a new bridleway, to be known as Bridleway No. 83 Mobberley, as illustrated on plan no. HA/081 between points A to D; and public notice be given of these agreements.

### 3.0 Reasons for Recommendations

- 3.1 Under section 25 of the Highways Act 1980 a local authority may enter into an agreement with any person having the capacity to dedicate a public footpath or bridleway.
- 3.2 Creation agreements have been sought because the lane has been diverted on the ground at its eastern end to a point on Moss Lane almost 20 metres north of the original alignment. By entering into agreements with the landowners rather than making a Definitive Map Modification Order, this could avoid potentially complicated legal Orders and processes and amount to a cost saving to Cheshire East Council.

- 3.3 Due to the diversion of the route and the lengthy and costly timescales involved when dealing with Definitive Map Modification Orders a dedication agreement is considered the most efficient and cost effective way to proceed with this proposal.
- 3.4 In considering this proposal regard has been given to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features and it is considered that there will be no adverse affects on these.

#### **4.0 Wards Affected**

- 4.1 Mobberley.

#### **5.0 Local Ward Members**

- 5.1 Councillor J Macrae.

#### **6.0 Policy Implications**

- 6.1 The proposal supports the following policies and initiatives of the Cheshire East Rights of Way Improvement Plan 2011-2026:
- Policy H3: Public rights of way and green infrastructure: Protect and enhance our public rights of way and green infrastructure and endeavour to create new links where beneficial for health, safety or access to green spaces. Initiative: 'Leisure routes for cyclists, horse riders and walkers'
  - Policy H2: Promotion of active travel and healthy activities: Work in partnership to promote walking, cycling and horse riding as active travel options and healthy activities. Initiative 'Public information on the public rights of way network'
- 6.2 The development of new walking, cycling and horse riding routes for local residents and visitors alike is aligned with the Council's objectives and priorities of the Council as stated in the Corporate Plan (2.1.1 Encouraging healthier lifestyles) and the Council's commitment to the Change4Life initiative.

#### **7.0 Financial Implications**

- 7.1 There are currently no required works to be carried out on the ground by the Borough Council. Any future maintenance works required will be resourced by the Public Rights of Way team. The proposed bridleway is not a route which will require regular or extensive maintenance works.
- 7.2 No issue of compensation arises as the adjoining landowners' consent to the Bridleway creation. It should be noted that with some of these consent is on the basis of the '*Ad Medium Filum Via*' doctrine, where the owners of the land adjacent to the lane are assumed to own up to the centre line of the lane.

## **8.0 Legal Implications**

- 8.1 Under section 25 of the Highways Act 1980 a local authority may enter into an agreement with any person having the capacity to dedicate a public footpath or bridleway.
- 8.2 The path will become a public bridleway and maintainable at the public expense on the date that the Dedication Agreement is sealed.
- 8.3 Under section 25 of the Highways Act 1980 there is no statutory right for objection to the proposal.

## **9.0 Risk Management**

- 9.1 Not applicable.

## **10.0 Background and Options**

- 10.1 An application was submitted in May 2003 by the Society, to modify the Definitive Map and Statement by the addition of a Bridleway along Graveyard Lane in the parish of Mobberley. The application was made under the Wildlife and Countryside Act 1981 for a Definitive Map Modification Order.
- 10.2 Graveyard Lane as illustrated between points A and D on plan no. HA/081, is an enclosed stone track, it is signposted as a bridleway at both ends, where the lane meets the public highway and is also waymarked along its length as a bridleway. Graveyard Lane runs between Newton Hall Lane and Moss Lane (OS grid references SJ 8048 8029 to SJ 8110 8000). Documentary evidence suggests that the route may have been signposted and waymarked by Cheshire County Council in approximately 1992 or 1993. Three public footpaths join Graveyard Lane, namely Footpath no's 42, 44 and 45 in the parish of Mobberley.
- 10.3 In 2007 an Officer began investigations into the application. It was discovered that the lane had been diverted on the ground at its eastern end; because of this Creation Agreements were sought with the landowners to avoid potentially complicated legal orders. Also it was considered that if the landowners entered into Dedication Agreements it would negate the need for the Modification Order, which would amount to a cost saving for the Council.
- 10.4 Ownership of the whole of the lane was not established, therefore the Creation Agreements were taking into account the provisions of the '*Ad Medium Filum Via*' doctrine, that is that owners of land adjacent to the lane own up to the centre line of the lane. There are 8 ownership parcels involved and initial agreement was reached with all of these owners for their section or sections of the lane as a Public Bridleway.
- 10.5 In April 2007 a report was presented to the Cheshire County Council Rights of Way Committee seeking approval to enter into Creation Agreements with the landowners under section 25 of the Highways Act 1980, for the dedication of Graveyard Lane as Public Bridleway no. 83, Mobberley. The Committee

approved this recommendation, the Officer's report and minutes of the meeting are attached as Appendix 1.

- 10.6 Following the Committee's decision Agreements were drafted with each landowner and sent to them for signing. Unfortunately the Officer who was dealing with this then left the authority before the process was completed. There were also staff changes within the legal department who were assisting with this and regrettably the case was not concluded.
- 10.7 The Creation Agreements that were signed and returned have been located. It would appear that all but one landowner returned their Agreements and they were waiting to be sealed. However, the documents were not sealed and the process not completed.
- 10.8 Since 2007 the County has been divided administratively and Cheshire East Borough Council is now the surveying authority for the area. There has also been one change in landowner, at Graveyard Farm. With the passage of time and the change in Local Authority it is considered appropriate that new agreements are drafted. All of the 8 landowners have been contacted and have signed a certificate to say they agree to enter into a Creation Agreement with respect to Bridleway No. 83. The new Creation Agreements would once again take into account the provisions of the '*Ad Medium Filum Via*' doctrine as mentioned above in paragraph 10.4.
- 10.9 No physical changes are planned for Graveyard Lane, the condition of the path is considered acceptable as a Public Bridleway. Paragraphs 12 and 13 of the previous report (Appendix 1) mention vehicular rights and maintenance issues; there has been no change with regard to these issues. The Borough Council would become responsible for the surface of the route to Public Bridleway standard once the agreements are finalised. The landowners will be responsible for the adjoining hedges. The two gates mentioned in paragraph 13 (Appendix 1) will remain and will be included in the agreements. As stated above at paragraph 7.2, no issue of compensation arises as the landowners' consent to the Bridleway creation.
- 10.10 Mobberley Parish Council and the local Councillor have been consulted on the proposal. Mobberley Parish Council has no objection to the addition of the route as a Public Bridleway. No comment has been received from the local Councillor.
- 10.11 The Alderley Edge, Wilmslow and District Footpaths Preservation Society have again been contacted as the applicant of the Definitive Map Modification Order application. They remain content to withdraw their application should the Bridleway be created by Agreement.

## **11.0 Access to Information**

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

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