

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting:	16 th June 2014
Report of:	Rights of Way Manager
Subject/Title:	Wildlife and Countryside Act 1981 – Part III, Section 53: Application to Upgrade Public Footpaths Nos.6 & 7(pt) Arclid and No.16 Smallwood to Bridleways.

1.0 Report Summary

- 1.1 The report outlines the investigation of an application made by Mrs P Amies of Home Farm, Hulme Walfield to amend the Definitive Map and Statement by upgrading footpaths in Arclid and Smallwood to bridleways. This includes a discussion of the consultations carried out in respect of the claim, the historical 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 upgrade these footpaths to bridleways.

2.0 Recommendation

- 2.1 The application to modify the Definitive Map and Statement to record a bridleway between points D-F-G as shown on plan number WCA/007 be refused on the grounds that there is insufficient evidence to show the existence of Public Bridleway rights;
- 2.2 An Order be made under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by upgrading Public Footpaths nos. 7(pt) and 6, Arclid to bridleway along the route shown between points A-B-C-D-E on plan number WCA/007.
- 2.3 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be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Orders be confirmed in exercise of the power conferred on the Council by the said Acts.
- 2.4 In the event of objections to the Orders being received, Cheshire East Borough Council be responsible for the conduct of any hearing or public inquiry.

3.0 Reasons for Recommendations

- 3.1 The evidence in support of this claim must show, on the balance of probabilities that public bridleway rights subsist along the existing public footpaths. It is considered that there is insufficient user and historical evidence to support the existence of public bridleway rights along the route D-F-G on plan no. WCA/007. It is considered that the requirements of Section

53(3)(c)(ii) have not been met in relation to bridleway rights and it is recommended that this part of the application be refused.

- 3.2 However it is considered that on the balance of probabilities, there is sufficient evidence to support the requirements of Section 53(3)(c)(ii) and it is recommended that the Definitive Map and Statement should be modified to show the route A-B-C-D-E as a Public Bridleway.

4.0 Wards Affected

- 4.1 Brereton Rural

5.0 Local Ward Members

- 5.1 Councillor J Wray

6.0 Policy Implications

- 6.1 Not Applicable

7.0 Financial Implications

- 7.1 Not Applicable

8.0 Legal Implications

- 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 Upon determination of this application, the authority must serve notice on the applicant to inform them of the decision. Under Schedule 14 of the WCA, if the authority decides not to make an order, the applicant may, at any time within 28 days after service of the notice, appeal against the decision on the Secretary of State and the authority. The Secretary of State will then consider the application to determine whether an order should be made and may give the authority directions in relation to the same.

- 8.3 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 This application was registered in January 2005 and made by Mrs P Amies on behalf of the Border Bridleways Association to modify the Definitive Map and Statement by upgrading three footpaths to bridleways along the routes A-B-C-D-F-G and D-E in the parishes of Arclid and Smallwood. The route applied for is currently recorded as public footpath no. 7(pt), Arclid between points A-B-C-D-F; public footpath no, 6, Arclid between points D-E and public footpath no. 16, Smallwood between points F-G.
- 10.1.2 The applicant supplied a considerable amount of historical evidence with the application with an assessment of each of the documents and its relevance. Included were extracts from County Maps; Tithe Maps; Ordnance Survey Maps; the Finance Act; the 1950's Parish Survey and several Road and motoring maps. Also submitted were six user evidence forms from individuals who claim use of the route or part of it on horseback, one also claims cycle use and another vehicular use. The periods of use vary between 9 years and 57 years and were stated to be frequently, weekly or monthly. The earliest use was from 1918 and it extended until 1997. Three of the forms were completed in 1997, two in 2000 and one in 2004. One of the witnesses has since died, one stated that they no longer wanted to be involved and three didn't return contact after they were written to.
- 10.1.3 An application made in 1995 to amend the Definitive Map and Statement to record the connecting route to the west in Sandbach Parish led to the addition of a Byway Open to all Traffic, Sandbach no. 44. Some of the same evidence considered in that case is relevant to the current one.

10.2 Description of the Claimed Bridleway.

- 10.2.1 The claimed route comprises part of Arclid footpath no. 7 and runs from the parish boundary with Sandbach and its junction with Byway no. 44, to the west of Arclid Cottage Farm (point A on plan no. WCA/007) in an easterly direction to point B (plan no. WCA/007) it then runs in a southerly direction to point C (plan no. WCA/007) before curving easterly again to point D (plan no. WCA/007) and its junction with Footpath no. 6, Arclid, north of Hood Lane, and continues generally easterly to the Smallwood parish boundary at point F (plan no. WCA/007) and its junction with Smallwood footpath no.16. Arclid footpath no. 6 runs from point D (plan no. WCA/007) in a southerly direction to its junction with Hood Lane (UY1128) at the Betchton Parish boundary. Smallwood footpath no. 16 is the continuation of Arclid Footpath no. 7 running from point F (plan no. WCA/007) in an easterly direction to its junction with the A50 Newcastle Road at point G (plan no. WCA/007). The application is based on historical evidence and six evidence of use forms.
- 10.2.2 There are six field gates along the route up to point D, several of which are mostly left open, all of which have long latches. There is a further field gate at point E with a latch and also a stile. Along the route D-F-G there are two

stiles one with apparently a horse jump beside and the other with an open gateway. There is a further field gate with an overgrown stile to the side then an open track continuing to the A50. The fields through which the route runs are agricultural at present with some grazing however there is planning permission to undertake sand extraction which would affect the fields including the route from just before point B to point E and F. There are proposals to divert the paths affected as part of the restoration scheme. The company Archibald Bathgate Group Ltd. and the landowners D.M. Beresford & Partners Ltd currently object to the application. The land between points F and G is owned by a different landowner, Mr Bracegirdle from Smallwood who has submitted a landowner evidence form and has also lodged an objection to this application.

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 The event relevant to this application is section 53(3)(c)(ii), this requires modification of the map by the addition of a right of way. The relevant section is quoted below:

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;”

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

10.3.4 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”.

- 10.3.5 The only apparent challenge to use refers to a sign put up in 1993 at the start of what is now Sandbach Byway no. 44. This action led to the application to add that route up to the Arclid parish boundary (point A on plan no. WCA/007) which resulted in the addition of the Byway. The signs were put up at each end of Byway no. 44 and stated ‘Private Road, No Footpath, No Bridleway’ This would not have challenged users approaching from the east along Arclid Footpath no.7 but may have done so for those approaching from Sandbach. In which case the relevant twenty year period would be 1973 to 1993. Of the six evidence of use forms, three were completed in 1997, two in 2000 and one in 2004. This seems to suggest that it was the investigation of the status of the connecting route in Sandbach which led to witnesses stating their use of the connecting footpath network. Alternatively if we consider that in this case there has been no specific challenge to use; that the matter of status has arisen following the application to upgrade the route under the Wildlife and Countryside Act 1981 made in 2005; then there is no date of challenge and the date that the application was made can be taken as the date from which the 20 year period can be retrospectively calculated. Therefore in this case the relevant period would be 1985 to 2005.
- 10.3.6 In this case there is some evidence of use on horseback prior to 1993; three witnesses entire period of use was before this time and three claim use up to 1997 when they filled in the form. It has been stated that the evidence of use either side of the 20 year period being relied upon buttresses the use made during the 20 year period and can reinforce the conclusion that there was sufficient use during the core period as confirmed by *Rowley v. Secretary of State for Transport, Local Government and the Regions (2002)*.
- 10.3.7 In the case of *Godmanchester Town Council, R (on the application of) 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 user, 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. None of the witness evidence indicates that they have been challenged or been made aware that the route was a footpath only. One witness who also rode along the continuation of FP 9, Arclid to the north was challenged by the landowner Mr Beresford, but this witness did not come forward for interview so we do not know where along the route or when this occurred. It may have been in closer proximity to Arclid Hall Farm where Mr Beresford resided.

10.3.8 If for some reason the statutory test fails, the issue of common law dedication can be considered; that is whether the available evidence shows that the owner of the land over which the way passes has dedicated it to the public. An implication of dedication may be shown at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. There are currently long latches on some of the field gates between points A and D on Plan no. WCA/007 and it was noted that some of the field gates were propped open on the occasions of site visits. Two witnesses recall there being 'claphatches' or field gates that were accessible for horseriders throughout the claimed route. There are currently stiles alongside several of the gates apart from one at point F on plan no. WCA/007 where there is a wooden removable pole/barrier to the side, which could be a horse jump. The landowner at this location is Mr Bracegirdle and his solicitor has stated that the owner has given permission for a few individuals and the hunt to use this route on occasion.

10.4 *Consultations*

10.4.1 Consultation letters were sent to the local Councillor, Arclid, Betchton and Smallwood Parish Councils and landowners, tenants, user groups and statutory consultees in November 2012.

10.4.2 No response was received from Councillor Wray, the local member, or from any of the three Parish Councils

10.4.3 The landowners for the area in Arclid, D.M Beresford and Partners contacted this office and Mr D Beresford and his mother Mrs Beresford came in to view the application file. They then responded to object to the application and to request more time to present further evidence. They have lived at Arclid Hall Farm since 1968 and believe that the evidence submitted is not sufficient to support the upgrading to bridleways. No further information has been received from them.

10.4.4 A letter was received from Poole Alcock Solicitors who responded on behalf of the landowner, Mr Bracegirdle, for the area in Smallwood that Footpath 16 runs across, lodging an objection to the proposal. They responded that they did not feel the Council could rely on an application lodged over 6 years ago and supported by 6 witnesses. Their client has been in possession of the land since 1923 and believes the route is a footpath only and has never been used as a bridleway. He has given consent to a number of people to ride

down footpath no. 16, notably his granddaughter, but anyone else riding along it has been doing so without consent and committing an act of trespass. He has also authorised use of the route by the hunt.

- 10.4.5 As previously mentioned a large area of land covering footpaths nos. 6 & 7 in the ownership of Mr Beresford is subject to a long lease to the sand extraction company Archibald Bathgate Ltd, which has secured planning permission to work the site. Sloane Mead consultants acting on behalf of the lessees responded to formally object to the proposal. Their clients are fully aware of the existence of the footpaths and have put in place arrangements to have the paths diverted under the provisions of section 261 of the Town & Country Planning Act 1990 (for mineral extraction purposes). The objection is made on the grounds that upgrading the footpaths to bridleways could introduce new objectors to these proposals to divert the paths increasing the risk of delays to securing the legal orders and consequently having an adverse impact on the phasing of the sand extraction process and their clients business. Arclid Quarry, of which this is an extension, is of national significance to the economy in supplying silica sand and foundry sand to the building industry.

It is also stated that given that this application was made in 2005, it should have been dealt with much sooner and that it is premature and inappropriate to upgrade these footpaths at this time. They also believe that the upgrade would serve no useful purpose as it does not link to a route that can be used by horseriders and cyclists beyond Arclid Cottage Farm.

- 10.4.6 An adjacent landowner Mr Wetherby from Betchton made contact to say that his land was not affected by the proposal but he would like to be kept informed of progress.
- 10.4.7 Matthias Bunte from the Cyclists Touring Club made contact to support the proposed upgrades although as the routes are across open fields they are not necessarily suitable for cycling use.

10.6 *Investigation of the Claim*

- 10.6.1 A detailed investigation of the evidence submitted with the application has been undertaken, together with additional research. The application was made on the basis of historical evidence and user evidence from 6 witnesses. Copies of the following documents were supplied with a typed submission setting out their significance as considered by the applicant; the County Maps of Greenwood (1819), Swire and Hutchings (1830) and Bryant (1831); the Arclid, Betchton and Smallwood Tithe Maps and Apportionments (1840 and 1841); the Ordnance Survey 1" to 1 mile (1842) , O.S. 6" to 1 mile and 25" to 1 mile 1st edition Maps (1872) ; the O.S. 25" to 1 mile 3rd edition Map (1909); O.S. sheets 25" to 1 mile (1969); the Finance Act Plan, Book of Reference and Field Book entries (1910, 1913 & 1914); the National Parks and Access to the Countryside Act Parish Surveys, Arclid and Smallwood (1952) and Bartholomew's Road Map (1937) and Road Atlas Extracts (1957, 1961 & 1977).

10.6.2 In addition to the submitted evidence a detailed investigation of the available historical documentation has been undertaken to try and establish the history and original status of the claimed route. The standard reference documents have been consulted; details of all the evidence taken into consideration can be found in **Appendix 1**.

10.7 *Documentary Evidence*

The documents referred to are considered by collective groupings.

County Maps 18th-19th Century

10.7.1 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.

10.7.2 The route is shown on *Greenwood's Map (1819)* continuing from Sandbach Byway no. 44 to approximately the junction of Footpaths nos. 6 & 7 (point D on plan no. WCA/007). The route is shown bounded on both sides and this is indicated as a 'cross road – through route' on the key but it appears to have no connection going easterly. *Swire and Hutching's Map (1830)* shows the route as far as a collection of buildings, presumably Arclid Cottage Farm, but no further. On *Bryant's Map (1831)* the claimed route is shown throughout and labeled 'Bridle Road'. However the section running easterly from approximately just beyond point D (on plan no. WCA/007) is not on the same alignment as the current Footpath no. 16 but runs more to the north to join the current A50. The section to the south, Footpath no. 6, that joins Hood Lane is also shown and labeled Bridle Road.

10.7.3 *Arclid Tithe Map and Apportionment 1840*

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.

10.7.4 The Tithe Map of Arclid dated 1840, sealed as a first class map, shows the full extent of Footpath no. 7, coloured ochre. The route runs from the Sandbach Parish boundary bounded and numbered as a separate apportionment; initially as number 136 then no. 137. Both apportionments are owned by John Barrington and are described in the apportionment as 'Road'. There is no connection to Footpath no. 6 and Hood Lane on this map. The route to the east of point D (plan no. WCA/007) doesn't concur with the current route of Footpath no. 16 but instead mirrors the way it is shown on Bryant's Map, as previously discussed.

10.7.5 *Tithe Map and Apportionment of Smallwood 1840*

On the Smallwood Map the specific route of Footpath No. 16 is not shown. A route that matches it the most closely is shown as a pecked line, double pecked line, then bounded on one side and the final section bounded on both sides to its junction with the current A50. It runs across Flag Moss which is listed as Open Waste in the Apportionment. The route is entirely within separate apportionments belonging to several different landowners listed under Freeholders of Smallwood Township. None of these refer to a road of any description or through route. An enclosed route further to the north of Hood Lane is shown on this map, it is not coloured nor does it have a separate apportionment number. It is open throughout and follows the same alignment as the route shown on Bryant's Map.

10.7.6 *Tithe Map and Apportionment of Betchton 1841*

The Betchton Tithe Map is coloured and shows the length of Hood Lane running from Dean Hill in the south in a northerly direction along the current alignment. It is excluded from adjacent apportionments and does not have an apportionment number of its own; it is also open at the parish boundary leading into Arclid. A branch running off it to the west is also coloured and is a cul de sac. It is numbered and recorded as an occupation road.

Ordnance Survey

10.7.7 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.

10.7.8 *Ordnance Survey Hill Drawings 2 inches to 1 mile*

These are sketches that formed the basis of the 1 inch to 1 mile maps published a few years later. The sketches show an enclosed route from point A (Plan no. WCA/007) with several solid lines across the route possibly indicating gates and largely in the same locations as the present ones; the route continues to the south to join Hood Lane which is named, this section is unbounded to the east. The route continuing easterly again follows the more northerly route depicted in the Tithe Maps and Bryant's Maps. The route that is Footpath 16 is not shown across the first field in an easterly direction, after which there appears to be a track unbounded to the south and then enclosed to its junction with the A50. This is the same route shown across Flag Moss on the Smallwood Tithe.

10.7.9 *The Ordnance Survey 1 inch to 1 mile 1842*

The route is shown practically identically to the sketch maps with the solid lines across the route, mostly gone apart from the one at the parish boundary on Hood Lane between Arclid and Betchton.

10.7.10 *O.S. 1st Edition County Series 25" to 1 mile 1872*

The route is shown on this map the same as its present day alignment. In Arclid parish the route is numbered 126 which is identified as 'Road' in the corresponding Book of Reference. Hood Lane in Betchton Parish is numbered 202 and referenced 'Road' and in Smallwood the eastern end of the route is numbered 448 and identified as 'Road'. The central section of the route in Smallwood is not referenced separately but runs through fields described as Arable.

10.7.11 *O.S 2nd Edition County Series 1898*

The route is shown almost exactly the same as the 1st edition; one difference is that the cross field part of the northern section of footpath no. 6 now has a field boundary to its western side.

10.7.12 *O.S. 3rd Edition County Series 1909*

The route is shown in a similar way to the previous editions. The applicant refers to the spot heights that are marked along footpath no. 6 and the relevant section of footpath no. 7 and then footpath no. 16 running easterly. In an Ordnance Survey manual dated 1975 (a copy was included with the application) it is stated 'as a by product of cyclic levelling, the 1:1250 and 1:2500 series have spot heights printed along selected roads....'

10.7.13 *O.S. revised New Series 1: 63,360 (1 inch: 1 mile) 1902-3*

On this map footpath no. 7 up to the junction with footpath no. 6 and footpath no. 6 to the Betchton boundary is shown as 3rd class metalled road. For the purposes of the Discovering Lost Ways project, the Research Handbook

volume 2, considers this depiction to be neutral evidence of the status of public rights of way.

10.7.14 *Estate Sale Plans*

Betchton Cottage Sale Details and Plan 1904

These sale plans and particulars are from the disposal of part of the Crewe Hall Estate. In the description of the lot to be sold it describes the farm as situate on the highway leading from Betchton to Arclid; this does not refer to the claimed route however on the Sale Plan the eastern edge of the land included in the lot to be sold abuts a section of footpath no. 7 which is shown coloured and labelled 'road' and also annotated 'from Smallwood'.

Arclid Cottage Farm Sales Plan and Schedule 1905

This sale plan covers an area of land that incorporates the majority of the claimed route, from points A to D and E and across to F (on plan no. WCA/007). On the plan the route of footpath no. 7 to its junction with footpath no 6 (point D) is indicated on the schedule as 'roadway' using three different plot nos. The link of footpath no. 6 to join Hood Lane is not shown at all, although the continuation beyond the parish boundary with Betchton and outside the area of sale is shown in a like manner to the roadway. The continuation of footpath no. 7 (point D to F) is annotated as Footpath.

10.7.15 *Congleton Rural District Council Minutes 1897 - 1945*

Between 1894 and 1929, Rural District Councils were responsible for highway maintenance in their respective areas so any issues or problems during that time could be recorded in the Council minutes.

There are a few references to what might be this route and some clear references to Hood Lane in Betchton. The latter specifically from a series of minutes in 1902/3 following a letter from a number of ratepayers bringing attention to the bad state of repair of the road called Hood lane leading from Dean Hill to Arclid. A committee appointed to inspect this road 'found that it was not a thoroughfare and were told that local persons had carted stone in times gone by and the workmen of the Highway Board had put them on the road. They did not recommend the Council to repair the road'. The Clerk was requested to report upon the legal position of the Council with reference to the road and subsequently it was minuted that the Clerk did not think the lane was a public carriageway repairable by the Council but that it was a bridle path and footpath and the extent of the liability of the Council was to keep it in repair as such. The minutes continue to state that the original complainants can refer the matter to the Parish Council who may choose to repair it under provisions contained in the Local Government Act 1894. The next entry on this matter is a letter from the County Council advising that they had received a letter from the clerk of Betchton Parish Council complaining of the Rural District Council's failure to maintain the road and asking for comments. A committee from the County is then appointed to meet on site and consider the matter after which they serve an order on the District Council stating ' this

road to be put in such repair as the County Surveyor may, having regard to the nature of the traffic along the road and to all the circumstances of the case, consider sufficient'. The final entry on this subject is a minute saying that the County Council Surveyor had inspected Hood Lane and approved of the work done.

A separate minute from 1901 refers to a letter from Smallwood parish Council complaining of the dangerous state of the pit against the footpath in the field occupied by Mr Marrow in Arclid. By reference to the Finance Act Field Book record of 1910, you can deduce that Mr Marrow occupied plot 35 which was most of the fields between points A and F (on plan no. WCA/007) north and south of the route. So it is likely that the claimed route is the footpath referred to.

A later entry in 1933 refers to a letter received from J. Thorley at Arclid Cottage Farm stating that the claphatches on this footpath are in a bad condition and he believed that they had been provided by the Council. The minutes state that Mr Thorley be informed that the Council disclaim all responsibility for the repair of the claphatches on the path referred to. This cross references with one of the witness statements which refers to the claphatches along the route that made it useable on horseback.

10.7.16 *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.

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.

The claimed route covers three separate sheets. Apart from the most easterly section which is excluded from hereditaments, the rest of the route is included in several hereditament numbers. From the field books held at Kew and viewed by the applicant, copies enclosed with the application, it can be seen that from the Arclid Cottage end the lot is numbered 35 and has a deduction of £30 made for 2 footpaths, 4700ft long. This plot goes as far as the Smallwood Parish boundary. This length correlates to the claimed section of Footpath no. 7 and the length of footpath no. 6. Plot number 715(pt) which encompasses the claimed route across the two fields to the east of the Arclid/ Smallwood parish boundary; has a deduction of £18 for footpath across arable land 1330 ft long. This correlates to the claimed route, Smallwood footpath 16 where it runs through these fields. The eastern

section of this route up to its junction with the A50 is excluded from hereditaments. Plot number 719 encompasses the eastern section of the northern route shown on the Smallwood Tithe Map; there is a deduction for public user of £19 and on the working copy of the plan, written in pencil, is 'Right of Way'. This route is not the line of footpath 16, Smallwood.

The Finance Act plans were prepared according to a statutory process and are generally regarded as good evidence of public rights; although not necessarily status in some circumstances. Planning Inspectorate Consistency Guidelines state that exclusion from hereditaments is generally considered as an indication of public rights higher than footpath. (Section 11 Planning Inspectorate Consistency Guidelines April 2010).

10.7.20 *Footpath Map – Congleton – Internal Document not dated presumed date 1930's*

This is a bound map the provenance of which is not entirely known. It is presumed to be an internal reference document possibly belonging to the District Council. On this map only part of the route is shown which is from point D easterly to the end of the second field boundary. It is shown by a red line which is referenced as 'Footpaths which if repaired at all, have been done by the owners or occupiers of the land through which the footpaths run'. This would correlate with a minute of the Rural District Council from 1909 that states since the passing of the 1894 Act (Local Government as referred to in 10.7.15) the District Council has declined to repair footpaths not by the side of highways.

10.7.21 *Definitive Map Process - National Parks & Access to the Countryside Act 1949*

The Definitive Map and Statement is based on surveys and plans carried out 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.

The survey for footpath nos. 6 & 7, Arclid, are recorded on one sheet and the route is identified as footpath however the details in the general description describe field gates, bridle gates, a gap as well as one stile at each junction. There is a field gate wired up at the junction with Hood lane. The route is described as a cinder road then a cinder and earth track and where it runs along the field edge there is a strip left unploughed. Annexed on the map submitted by the local footpath society, who also contributed to the survey, is CRB which is generally accepted to mean Cart Road used as Bridleway. Smallwood footpath no. 16 is described as Bridleway on the survey report and lists three Bridle gates at each field boundary. In the description it also states: 'Path is used mainly by horses as a short way to Sandbach Heath'. The applicant considers that there would have been no reason to put in bridle gates or to leave a 5ft gap at one point if the track was merely used as a footpath.

The Draft Map was the first step towards compiling the survey information into what would become the Definitive Map. On this map the route is shown in the same way as on the survey maps and annotated the same with field gates, bridle gates etc. The route on the Smallwood Draft map is also shown the same as the survey map; the Draft Statements record both routes as footpath. The subsequent provisional and definitive maps show the routes as footpaths.

10.7.22 *Road Atlas Maps* *Bartholomew's Road Map 1937*

The applicant also submitted several extracts from Road Maps as evidence. This edition which was supported by the Cyclist's Touring Club so generally believed to show routes open to cyclists, shows a continuous route from point A (plan no. WCA/007) to point E and continuing southerly down Hood Lane. This is depicted as 'Other Road'. There is no route shown easterly into Smallwood to the A 50.

Road Atlas of Great Britain 1957

All of claimed route is shown as an uncoloured road on this map. The key states that uncoloured roads do not necessarily imply that these are suitable for wheeled traffic. The applicant states that the majority of surrounding uncoloured roads are now bridleways, byways or minor roads. The 1961 and 1977 versions are supplied showing exactly the same depiction. They are all reprints of the original from 1940.

10.7.23 *1996 Definitive Map Modification Application*

The application to modify the Definitive Map to record Sandbach Byway no. 44 as mentioned in paragraph 10.1.3 was determined by Cheshire County Council's Rights of Way Committee in 1996. As part of the evidence supporting the application in the report, reference was made to a conveyance held in the deeds of Reynold's Farm dated 1937. This farm owned land bordering the claimed route, now Byway no. 44, which was described as 'the highway leading from Sandbach to Smallwood'.

10.8 *Witness evidence*

10.8.1 Six user evidence forms were submitted in total on standard user evidence forms, one of these was interviewed, one has since passed away, another one made contact to say they no longer wanted to be involved and nothing was heard after trying to contact the other three. Given the period of time that has expired since they completed their forms it is quite likely that they have moved from the addresses given. A chart illustrating the user evidence is attached as **Appendix 2**

10.8.2 In order to show that public equestrian rights have been acquired along the length of the claimed route through usage, a twenty year period must be identified during which use of the route by horseriders has been established.

This period is usually taken as the twenty years immediately prior to a challenge to that use. In section 10.3.5 it is discussed that this case may rely on the challenge made to use on a connecting route Byway no. 44, Sandbach. As the witness forms were completed in 1997 and 2000 the indications are that they were in response to the challenge made in 1993 and the subsequent application to register Byway no. 44 as a public right of way. Taking this to be the case, the relevant period would be 1973 to 1993. This would make more sense of the witness evidence as only one form dated 2004 is close to the application date of 2005.

- 10.8.3 Of the six user evidence forms submitted, all six claim to have ridden the route with a horse, one has also cycled and another used the route with a vehicle. Different routes have been used by the witnesses; two have used the whole of the claimed route, three have used a route incorporating A-B-C-D to E and the sixth one has used the route from Hood lane and then E-D-F-G. Use of the route varies from 9 years to 57 years. Three of the user's period of use falls within 1973 to 1993. Frequency varies between 2/3 times per week to monthly.

The witness who has since died claimed use of the route from 1918 to 1975.

10.8.4 *Witness Interviews*

Only one witness was interviewed for this claim; Mr J Singer. His knowledge of the route and the local area is quite extensive and it was his father who had used the route since a child in 1918. Mr Singer has considerable memories of using the route with his father. His grandfather had moved to the area from Leek in 1906 and they had moved their animals and carts along the claimed route from Smallwood. He was also aware that Jackson's, a building firm from Smallwood who built the chapel in Sandbach Heath pre First World War had used this route to travel and transport supplies during construction. His uncle worked for this same firm and cycled from Sandbach Heath to Smallwood via the claimed route on a daily basis. He recalls days when they rode across this way as part of their journey to visit relatives in Astbury. Mr Singer senior kept horses all his life and would ride and take a cart across this route up until about 1975. In 1955 Mr Singer was called away from the area to do National Service and didn't return to live here again until 1992.

- 10.8.5 The evidence supplied above is very detailed and specific to the claimed route however it doesn't cover the period between 1973 and 1993. The use that does cover some of this period i.e. from the early 1980's to 1997 does not refer to the whole of the claimed route but incorporates the section between A-B-C-D-E, footpaths nos. 6 & 7, Arclid. Use of the section covering footpath 16, Smallwood is from an earlier time period, concentrated around the 1940's and 1950's.

10.9 *Conclusion*

- 10.9.1 The claimed route has appeared on a number of historical documents of good provenance. The Tithe Maps for Arclid and Betchton show a consistent alignment corresponding to footpaths 6 & 7, Arclid with the route shown coloured and bounded on both maps. It is recorded as 'road' on the Arclid map. The route on the Smallwood Tithe map is not the exact alignment of footpath no. 16 and is not separately described but included in surrounding hereditaments. The route appears in a similar way on three of the County Maps and on Bryant's map footpaths 6 & 7 Arclid are annotated Bridle Road. The route easterly is not clearly depicted. These early records raise a reasonable presumption that at least part of the route is a through route and of a higher status than footpath.
- 10.9.2 The 1st Edition Ordnance Survey from the 1840's is consistent with the Tithe and County maps clearly depicting a bounded lane along the line of footpaths 6 & 7 with the continuation easterly not shown across the first field. The County series O.S. maps from 1872 begins to show a pecked double line for the easterly extension along the route of what is now footpath no. 16. The alignment of the Arclid section is mostly shown as a bounded lane and described as road in the book of reference.
- 10.9.3 Evidence from sales catalogues from neighbouring properties in the early 1900's provides evidence of the believed status of the adjoining route. It is annotated road along the section of footpath no. 7 and the continuation along Smallwood no. 16 is annotated as footpath on one of the sales plans.
- 10.9.4 The Finance Act can be considered to be good supporting evidence of the existence of a public right of way dependent upon what is recorded. The route is shown included in surrounding hereditaments and the field books record exemptions for footpaths.
- 10.9.5 The minutes of the Rural District Council suggest that the route between Dean Hill and Arclid was considered to be a road. Whilst the detail of the minutes relates to Hood Lane and it is not known to what condition the road was repaired; it was accepted that it was at least a bridleway and was publicly repairable.
- 10.9.6 There is additional evidence of a presumption of the use of the route as a bridleway in the original survey reports which led to the compilation of the Definitive Map. These were written by local people with knowledge of the local area and they indicate that the path was capable of being used by horseriders even if it was recorded as a footpath at the next stages of the Definitive Map process.
- 10.9.7 The evidence in support of this application must show, on the balance of probabilities that public bridleway rights subsist along the claimed route. The balance of evidence supports the allegation that a bridleway subsists along the route A-B-C-D-E (Plan no. WCA/007) however it is considered that there is insufficient historical and user evidence to support the existence of

bridleway rights along D-F-G (on plan no. WCA/007). Therefore it is considered that the requirements of Section 53(3)(c)(ii) have been met for that part of the claimed route described and it is recommended that this section should be the subject of a Definitive Map Modification Order to upgrade footpaths nos. 6 & 7(pt), Arclid to bridleway and thus amend the Definitive Map and Statement.

11.0 Access to Information

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

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