

# CHESHIRE EAST COUNCIL

## Public Rights of Way Committee

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**Date of Meeting:** 8<sup>th</sup> December 2014  
**Report of:** Public Rights of Way Manager  
**Subject/Title:** Public Hearing to Determine Definitive Map Modification Order  
Upgrading of Public Footpath No.9 (part) to Bridleway and addition of Public Bridleway No 12, Parish of Higher Hurdsfield and addition of Public Bridleway No 98, Parish of Macclesfield

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### **1.0 Report Summary**

- 1.1 This report is an informative item to brief members on a recent public hearing and the outcome.

### **2.0 Recommendation**

- 2.1 No decision is required by Committee.

### **3.0 Reasons for Recommendations**

- 3.1 N/A

### **4.0 Wards Affected**

- 4.1 Bollington and Macclesfield East.

### **5.0 Local Ward Members**

- 5.1 Councillors P Hayes, Councillor B Livesley and Councillor D Neilson

### **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.

## **9.0 Risk Management**

9.1 None

## **10.0 Background and Options**

- 10.1 An application was made to Cheshire County Council in 2003 to amend the Definitive Map and Statement by upgrading Public Footpath No.9 in the parish of Higher Hurdsfield to a Public Bridleway.
- 10.2 Cheshire East Borough Council considered this application in a report put before the Rights of Way Committee on 24<sup>th</sup> September 2012. The making of an order was approved with the exception of the part of Footpath No. 9 marked C-H-I-D on Plan No. WCA/004. The section C-H-I-D was refused on the grounds that there was insufficient evidence to show the existence of bridleway rights. Approval was also given for the making of an order for the addition of two further sections of bridleway between points C-G-D and E-F on Plan No. WCA/004. Section E-F is in the parish of Macclesfield. A Modification Order was made on the 17th January 2013 and advertised on 6<sup>th</sup> February 2013.
- 10.3 Four formal objections were submitted to the order which were not withdrawn. In addition a representation was made by Mr Broadbent of Close House Farm. Three of the objections were based on the fact that the Council had omitted the section C-H-I-D (past Close House Farm) from the Order; they believed the full length of Footpath No.9 Higher Hurdsfield should be upgraded to bridleway. There was also concern over the conflict between walkers and horses on the section C-G-D, it was stated by the objectors that the route is unsuitable for mixed use. The fourth objector did not oppose the recording of a bridleway along the Order route, his objection related to the way in which the Order schedule records the width of the bridleway at a point where a large oak tree narrows the path.
- 10.4 Mr Broadbent made a representation, he was not objecting to the Order but would object if the Order were modified to include the section past Close House Farm (section C-H-I-D).
- 10.5 As the objections were not withdrawn consequently a file of the relevant information was submitted to the Planning Inspectorate in January 2014.
- 10.6 A public hearing was held on 9<sup>th</sup> September 2014 at Macclesfield Town Hall. Mr Spoors (applicant and objector) was present; he was also representing two other statutory objectors. Mr Broadbent who had submitted a representation was also present. Cheshire East Council was represented by Jennifer Tench

(Definitive Map Officer) and Mike Taylor (Rights of Way Manager). The appointed Inspector was Sue Arnott.

- 10.7 The hearing heard evidence from the Council's Definitive Map Officer, Jennifer Tench and from the Rights of Way Manager. It was the Council's approach that the evidence was sufficient to justify making an Order to record the claimed bridleway, but not over the entire length of the route, as claimed by Mr Spoors. The historical evidence was not strong enough to support the existence of a status higher than that of footpath, which is already recorded on the definitive map. Therefore the basis of the evidence in support of the Order route was that of user evidence. It was the Council's case that under section 31 of the Highways Act 1980, the way had been used on horseback for a full period of 20 years without force, secrecy or permission and without sufficient evidence to indicate that there had been no intention to dedicate during that period. If these criteria are fulfilled then the way is deemed to have been dedicated as a bridleway. At the hearing various dates were discussed as to when the status of the route was 'brought into question'. The relevant 20 year period to be considered is taken back from this date.
- 10.8 It was Mr Spoors' case that the historical documents show dedication of the full length of footpath no.9 as a bridleway (at least). The Inspector addressed the historical evidence that was submitted by Mr Spoors with his application, as well as additional evidence gathered by officers during the investigation.
- 10.9 The Inspector also addressed the user evidence; she looked at the use on horseback for both the Order route and that of route C-H-I-D (past Close House Farm). She also examined the landowner's intentions and whether there was any evidence to show a lack of intention to dedicate a public right of way for horses.
- 10.10 The hearing was closed and concluded on 9<sup>th</sup> September 2014 following an accompanied site visit. The Inspector issued a decision letter on the 14<sup>th</sup> November 2014 (Appendix 1) in which she confirmed the order, with no modifications. The balance of the argument weighed in favour of the Order route having been deemed to have been dedicated as a bridleway.
- 10.11 With regard to the documentary evidence the Inspector found the southern half of the route to be shown consistently different than the northern half. She found the southern half could be interpreted as acknowledging a public interest or at least not precluding that conclusion; at best the northern part is consistently neutral but with a tendency to weigh against the route being a highway. She concludes that the historical documents do not support the claimed route ever being acknowledged as a highway (beyond the footpath now recorded on the definitive map).
- 10.11 With regard to the user evidence the Inspector considered various possible dates as the 'bringing into question', but concluded that 1995 and 1991 were the most significant requiring examination. In 1995 Mrs Broadbent lodged a statutory declaration with the Council. Under section 31(6) of the Highways Act 1980 any landowner can deposit with the appropriate Council a map of

their land with a statement indicating the ways (if any) they admit to have been dedicated as highways. The Inspector accepts the date of Mrs Broadbent's declaration as one point at which the public's rights came into question. The other date of 1991 is the date a public path diversion order was advertised, proposing diverting the footpath from C-H-I-D to C-G-D. When the order was publicised in 1991 this would have brought into question the rights of horse riders as well as walkers. Also around this time a stile was installed to the north of point D, which was a very clear obstruction to horse riders. Therefore the Inspector considered two relevant twenty year periods, 1975-1995 and 1971-1991.

- 10.12 For a presumed dedication of the order route to have occurred the use by the public, during the relevant period, must be shown to have been actually enjoyed as of right, without interruption, and to have continued throughout the full twenty years. The Inspector concluded that she was satisfied that there was sufficient use of the Order route as a bridleway during the two relevant periods. In relation to the landowners' intention there was insufficient evidence (during either relevant period) that the landowners made clear to the public a lack of intention to dedicate a right of way for horses along the Order route via points C-G-D.
- 10.13 Although the route C-H-I-D was not part of the Order route, as it was the subject of Mr Spoors' objection, the Inspector also considered the evidence in relation to the possibility of statutory dedication of this path as a bridleway. In short the Inspector found rather little evidence of use by local riders and concluded it was insufficient to raise a presumption of dedication.
- 10.14 Finally the Inspector considered the objection in relation to the stated width of the bridleway between points C and G. The Order schedule states the bridleway will vary between 1.4 metres and 3.2 metres except at one particular point where it is restricted to 1.1 metres by a large tree. The objector submits that the initial presumption should be that the whole of the track has been dedicated except for a reservation of the right to keep the tree. The objector further argues that the dedication of a way as narrow as 1.4 metres raises a fundamental question over its intended status. In response Cheshire East Council argued that the tree had been in place throughout the relevant 20 year period and therefore the public (including horse riders) have acquired the right of way subject to the restricted width beside the tree. It was also a matter of fact that horse riders used this route with the restriction and this use was known to the landowner who did not challenge it. The Inspector, whilst acknowledging the validity of the objector's argument, agreed with the Council on this point, she saw no reason why the use of this narrow path could not give rise to a bridleway in these circumstances. The Inspector did not therefore amend the width in the Order and concluded that the Order should be confirmed.
- 10.15 The Council will now arrange advertisement the confirmation of the order, 42 days is allowed for a High Court challenge to be made. A challenge can only be made on the basis that the Inspector in reaching her decision has wrongly applied the relevant law.

## **11.0 Access to Information**

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

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