

CHESHIRE EAST COUNCIL

Public Rights of Way Committee

Date of Meeting: 4th December 2017
Report of: Public Rights of Way Manager
Subject/Title: Wildlife & Countryside Act 1981– Part III, Section 53
Appeal Outcome for Application No. MA/5/251: Application for the Addition of a Public Footpath between no. 95 and 97 King Street to Old Market Place, Knutsford

1.0 Report Summary

1.1 This report is an informative to brief members on the outcome of a recent appeal made by the applicant following this committee's refusal of a Definitive Map Modification Order application.

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 Knutsford.

5.0 Local Ward Members

5.1 Councillor Dean; Councillor Gardiner; Councillor Wells-Bradshaw..

6.0 Policy Implications

6.1 Not Applicable

7.0 Financial Implications

7.1 Not Applicable

8.0 Legal Implications

8.1 When an order is made it is advertised and may be subject to objections. If objections are not withdrawn the Council cannot then confirm the order itself and must submit the order to the Secretary of State (Planning Inspectorate) for determination. Where a Parish/Town Council objects to an order it is policy for

a local public inquiry to be held. The Council must provide a suitable venue and legal support to facilitate an inquiry.

9.0 Risk Management

9.1 None

10.0 Background and Options

10.1 An application was submitted in May 2016 by Knutsford Town Council to modify the Definitive Map and Statement for the parish of Knutsford by adding a currently unrecorded route as a Public Footpath. The route applied for ran from King Street between numbers 95 and 97 to Old Market Place (shown on Plan No. WCA/013).

10.2 Members will recall the application was based on user evidence; a total of 14 user evidence forms were submitted. The application was submitted following the blocking of the claimed footpath with a fence in 2015 making it inaccessible to the public. In August 2016 a planning application was given approval for an outdoor ground level dining area (planning application no. 16/1717M). The area to be used as an outdoor dining area would affect the claimed footpath.

10.3 Following an investigation by Officers, the Public Rights of Way Committee considered the application at a meeting on 13th March 2017. Officer's believed there was sufficient user evidence to support the existence of footpath rights over the claimed route. However the Committee, by majority, resolved that no order be made and the application was refused. During the investigation it had come to light that a sign had been present on the side wall of number 97 King Street, the sign stated that pedestrian access was by permission. There was another sign underneath which also indicated use was by permission. The Officer's report stated that the majority of witnesses had not seen any signs or notices. There is photographic evidence which shows that the gable wall of number 97 King Street has previously been covered in Ivy. There was some discussion at the Committee meeting regarding the signs. It was clear that the signs have been in situ for a number of years, however, it was unclear for how long and the degree to which the sign was obscured by the ivy; the Committee therefore decided to refuse the application. The Committee concluded that the requirements of section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 had not been met.

10.4 On 27th April 2017 officers were notified by The Planning Inspectorate that Knutsford Town Council had submitted an appeal against the authority's decision not to make an order. Officer's were required to write to all the interested parties to inform them they may submit evidence in respect of the appeal, and give details of when and where they could view the appeal documentation. The Planning Inspectorate required an appeal file from the authority; this included a statement setting out the authority's reasons for refusing the application and all the documents/evidence that were accessed to make the decision.

- 10.5 The Inspector issued a decision on the appeal on 21st July 2017 and allowed the appeal. The appeal decision paper is attached as Appendix A. With regard to the signs he indicates that to bring public use of a path into question and/or indicate a lack of intention on the part of the landowner to dedicate it for public use, would be dependent on the signs being placed in a visible location to members of the public using the path. He states that in this case only one user of the path specifically recalled seeing a sign. Many users referred to the florist stall alongside the gable wall of no.97 King Street and there is a photograph showing an awning covering much of the gable wall. He also refers to the photographic evidence which shows that during some periods there was considerable growth of ivy on the gable wall which might have obscured the signs. In light of this the Inspector states it seems possible that the signs were not visible to users of the claimed route for some or all of the 20 year period before 2015.
- 10.6 Overall the Inspector states it is his view that the available evidence of public use of the claimed route on foot, in the period 1995 to 2015, could raise a presumption in accordance with the provisions of the 1980 Act, that it has been dedicated as a public footpath. However he states there appears to be some doubt as to whether the presence of signs during this period might have brought the public use into question and/or indicated the landowner's lack of intention to dedicate a public right of way. He concludes that it is his view that on the balance of probabilities it is reasonable to allege that the claimed route is a public footpath.
- 10.7 The appeal was therefore allowed and Cheshire East Council is directed to make an order under section 53(2) and schedule 15 of the Act to modify the Definitive Map and Statement to add a public footpath, as shown on plan WCA/013.

11.0 Access to Information

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

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