

Public Rights of Way Committee

Date of Meeting:	09 September 2019
Report Title:	Wildlife & Countryside Act 1981– Part III, Section 53 Application No.5/235, for the Addition of a Public Footpath between Meadow Lane and Dryhurst Lane, in Disley
Senior Officer:	Frank Jordan, Executive Director Place

1. Report Summary

- 1.1 This report outlines the investigation of an application made by Mr J P Bell on behalf of Disley Footpaths Society to amend the Definitive Map and Statement by adding a public footpath. This report 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 add the public footpath.
- 1.2 The proposal contributes to the Corporate Plan Outcomes 4 “Cheshire East is a green and sustainable place” and 5 “People live well and for longer”, and the policies and objectives of the Council’s statutory Rights of Way Improvement Plan.

2. Recommendations

- 2.1 An Order be made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding as a Public Footpath, the route shown between points A-B on Plan No. WCA/020;
- 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be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Act.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. Reasons for Recommendation/s

3.1 The evidence in support of this claim must show, on the balance of probabilities, that public rights subsist or are reasonably alleged to subsist along the claimed route. It is considered there is sufficient use of the route without force, secrecy or permission that is without interruption and as of right; to support the existence of footpath rights along the route shown on Plan No. WCA/020.

Other Options Considered

4.1. Not applicable – this is a non executive matter.

5. Background

5.1 Introduction

5.1.1 The application was submitted in July 2007 by Mr J Bell on behalf of Disley Footpaths Society to modify the Definitive Map and Statement for the Parish of Disley by adding a footpath. The application was supported by user evidence. A total of five witnesses submitted evidence initially with the application in 2007, further witnesses were requested to substantiate the claim. Another five evidence forms were then submitted. Since 2007, three of the original witnesses have died, so a further four names were put forward as potential witnesses at the start of the consultation process in March this year.

5.2 Description of the Application Route

5.2.1 The claimed route runs in a generally westerly direction from the cul de sac end of Meadow Lane (UW 3054), adjacent to No. 61, to Dryhurst Lane (UW 2656), between Nos. 6 and 8, in the parish of Disley. It forms a short link of approximately 21 metres in length. There is rough tarmac surface of approximately 1.5 metres width within a wider corridor of grass, earth and stone. There are six bollards at the head of the cul de sac. It is believed that the route was surfaced at some point in the past possibly by Macclesfield Borough Council and there are minutes from Disley Parish Council referring to the path being requested to be 'tidied up' in 1990 and 1991.

5.3 The Main Issues

5.3.1 Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the 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:-

5.3.2. One such event, (section 53(3)(c)(i)) is where

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

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic

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

5.3.3 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”.

5.3.4 In the case of, *R (on the application of Godmanchester Town Council) 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 use, 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.

5.4 *Investigation of the Claim*

5.4.1 An investigation of the evidence submitted with the application (MA/5/235) has been undertaken, together with some additional research. The application was made on the basis of user evidence from ten witnesses; with a further four names being put forward as potential witnesses, one of whom was subsequently interviewed and made a statement. In addition to the user evidence submitted an investigation of any available historical documentation was also undertaken to establish whether the claimed route had an historical origin. The documentary evidence that has been examined is referred to below and a list of all the evidence taken into consideration can be found in **Appendix 2**.

5.5 *Documentary Evidence*

There was no documentary evidence submitted with the application. Due to the age of the properties on Meadow Street it was clear that there would not be any historical evidence dating from before approximately 1900. Therefore only documents of a relevant age have been considered. The documents referred to are considered by collective groupings. The documents that have been considered are listed in **Appendix 2**.

Ordnance Survey Maps

5.5.1 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.

5.5.2 *O.S 2nd Edition County Series 1897 – 25 inch*

On this edition of the map, Meadow Lane is not yet constructed and the area appears as open land behind properties fronting Buxton Road (A6) to the south and the Goods sheds/yard beside the Stockport- Buxton railway to the north. The westerly end where the claimed path lies is also open land to Dryhurst Lane.

5.5.8 *O.S. 3rd Edition County Series 1909- 25 inch*

On this edition most of the houses on the southern side of Meadow Lane are now shown excepting the final block of six houses at the westerly end nearest to the claimed footpath. The northern side of the road is undeveloped and the road itself is not defined but the land remains open through to Dryhurst Lane

5.5.9 *Ordnance Survey Six-inch 2nd and 3rd Editions*

These two editions depict Meadow Lane in the same way as the 25 inch versions.

5.5.10 *Ordnance Survey 1:2500 1936*

This map shows the southern extent of Meadow Lane fully built up to and including No.61, the northern side shows properties along approximately a third of its length with the westerly end fully open through to Dryhurst Lane.

5.5.11 *Ordnance Survey One-inch to 1 Mile New Popular Edition 1947*

This shows the southern side of Meadow Lane fully built and the eastern third of the north side constructed too. The westerly end of the Lane remains open through to Dryhurst Lane.

5.5.12 *Ordnance Survey 1:2500 1972*

Meadow Lane is depicted in the same way as on the previous map, development to the rest of the northern side of the route not having occurred. The route to the west remains open through to Dryhurst Lane. An aerial photograph dated approximately 1970 shows clearly the area of undeveloped land at the north western end of Meadow Lane which had been the goods yard adjacent to the railway and also that the end of the Lane is open through to Dryhurst Lane.

National Parks and Access to the Countryside Act 1949

5.5.13 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. Disley Rural District Council completed the survey

for this area at the time and did not claim the route in question as a right of way; the route was subsequently omitted from the published Definitive Map.

Disley Rural District Council Minutes 1899-1906

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

The main purpose of looking through these minutes was to determine when Meadow Lane was constructed. There were two entries that were helpful. In 1904 plans were submitted for six cottages in Meadow Lane and in 1906 plans were submitted for a further nine cottages. There was reference to development at 'Dryhurst' in 1898. It appears development was more piecemeal and the houses were constructed over a period of years or a decade. There was no reference to the claimed route.

Disley Parish Council Minutes June 1989 – December 1992

5.5.15 Parish Councils have sometimes undertaken minor works on public footpaths in their areas and a witness who had previously been a Parish Councillor had indicated that the Council had employed a handyman for a period and recalled that some works had taken place on the path.

A minute of the 9th October 1990 meeting, referenced as 'Meadow Lane path', reported that the handyman had cleared the path. A subsequent minute dated 19th February 1991, referenced 'Path - Meadow Lane', resolved the Clerk to ask the handyman to tidy up the path.

These indicate that the Parish considered this path to be a route open to the public and that they had probably received requests from members of the public to undertake clearance works to allow clear passage.

Land Registry Information

5.5.16 The land forming the path and an area to each side is unregistered. Adjacent landowners have not indicated any interest in the route and local knowledge supports the lack of ownership.

5.6 Witness Evidence

5.6.1. The application was made in 2007 and contained user evidence forms from 5 individuals initially with a further 5 being submitted soon after, when additional evidence was requested. Of these 10 witnesses, it was found that 3 had since deceased and consequently a further 4 names were put forward as potential witnesses. These 11 witnesses were all contacted with a view to being interviewed. Of the 7 original witnesses, 5 responded and were

subsequently interviewed and 1 of the additional 4 names responded and was interviewed. The 6 who were interviewed have each signed statements of a summary of their evidence as set out during their interview. A chart illustrating the user evidence from the 10 original witnesses and the 1 additional interviewee is attached as **Appendix 1**.

5.6.2 For public pedestrian rights to have come into being through long use, a twenty year period must be identified during which time use can be established. Where no challenge to the use has occurred, this period can be taken as the 20 years immediately prior to the date of the application. In this case that would be 1987 to 2007.

5.6.3 Use of the route has been largely for functional purposes. It forms a short link between two roads and enables pedestrian access to link to Buxton Road and onwards to the village for shopping; visiting the doctors; going to the library; bus stops and other services offered by the village centre in Disley. Witnesses stated that they use this route for preference as it keeps them away from the busy Buxton Road (A6) for longer than the alternative up to the top of Redhouse Lane. The route is used frequently; weekly and for some people nearly daily. Witnesses have used the route several times a day when their children were young and they walked them to the local primary school on Buxton Road. One witness regularly walked the route from her childhood and since 1991 has used the route on a practically daily basis on an electric scooter. A couple of the witnesses refer to having seen cyclists using the route and one mentioned that occasionally a car has parked on the path at the Dryhurst Lane end.

5.6.4 All the users who were interviewed attest to meeting other people using the route. One witness who moved to the area in 1964 recalls older residents in the street saying the route had been available since the houses were built which might have been in the early 1900s. This evidence is supported by the Ordnance Survey maps and the Rural District Council minutes. Several users refer to Meadow Lane being originally a dirt road. One witness says that they recall the road being made up to adoptable standards when all the adjacent householders contributed to the cost under a Private Street Works scheme. It became an adopted road in 1979. The road adoption plan shows the land comprising the footpath open to Dryhurst Lane.

5.6.5 Of the witnesses represented in the bar chart in Appendix 1, 9 have used the route for the full 20 years required under s.31 (6) of the Highways Act, as set out in paragraph 5.3.3. Of the remaining 2 witnesses, one has used the route for 18 of the 20 years and the other for 15 years. The earliest use stems from 1945 and continues to the present day. It was stated by several interviewees that with the construction and part occupation of new

developments on Redhouse Lane they had noticed an increase in the numbers of people using this route as a cut through.

5.6.6 None of the witnesses had ever been challenged or prevented from using the route. They have never seen signs or barriers to suggest that the route was not open to public use.

5.7 *Conclusion*

5.7.1 The user evidence submitted demonstrates regular, continuous and long term use of the claimed route. The documentary evidence supports the contention that the route has been open and available for over a hundred years.

5.7.2 Under section 31(1) of the Highways Act 1980 public footpath rights can come into existence by prescription unless there is evidence to the contrary. The use has been uninterrupted for a full twenty year period between 1987 and 2007 without challenge, permission or secrecy.

5.7.3 The evidence in support of this application must show, on the balance of probabilities, that public footpath rights subsist or are reasonably alleged to subsist, along the claimed route. The balance of user evidence supports the case that there is a reasonable allegation that a footpath subsists along the route A-B (Plan No. WCA/020). Therefore it is considered that the requirements of Section 53(3)(c)(i) have been met and it is recommended that a Definitive Map Modification Order is made to add a footpath in the Parish of Disley and thus amend the Definitive Map and Statement.

6. Implications of the Recommendations

6.1 Legal Implications

6.1.1 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.

6.1.2 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 to the Secretary of State. 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.

6.1.3 The legal implications are contained within the report.

6.2 Finance Implications

6.2.1 If objections to an Order lead to a subsequent hearing/inquiry, the Council would be responsible for any costs involved in the preparation and conducting of such.

6.3 Policy Implications

6.3.1 There are no direct policy implications.

6.4 Equality Implications

6.4.1 The legal tests under section 53 of the Wildlife & Countryside Act 1981 do not include an assessment of the effects under the Equality Act 2010.

6.5 Human Resources Implications

6.5.1 There are no direct implications for human resources.

6.6 Risk Management Implications

6.6.1 There are no direct implications for risk management.

6.7 Rural Communities Implications

6.7.1 There are no direct implications for rural communities.

6.8 Implications for Children & Young People

6.8.1 There are no direct implications for children and young people.

6.9 Public Health Implications

6.9.1 There are no direct implications for public health.

6.10 Climate Change Implications

6.10.1 There are no direct implications for climate change.

7 Ward Members Affected

7.1 The Councillor in office at the time of the consultation, Councillor Harold Davenport representing Disley Ward, was consulted. No comments were received.

7.2 The new elected Councillor from May 2019, Councillor Brendan Murphy, has been sent a copy of the report. Any comments will be reported verbally.

8 Consultation & Engagement

8.1 The user groups, neighbouring landowners and statutory undertakers have been consulted.

8.2 Disley Parish Council responded to say that the Council had debated the application and voted unanimously in support of it. They added that *'this footpath has been a well-used and highly convenient route connecting areas to the north of the A6 for a long period and would benefit from the protection afforded by a DMMO'*.

8.3 The Peak and Northern Footpath Society responded that they had no additional user information in support of this claim. Their inspector commented that it would be beneficial to have it added to the network.

9 Access to Information

12.1 The background papers relating to this report can be inspected by contacting the Officer below.

Contact Information

Any questions relating to this report should be directed to the following Officer:

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