

Public Rights of Way Committee

Date of Meeting: 09 March 2020

Report Title: Wildlife & Countryside Act 1981 – Part III, Section 53: Application no. CO/8/52: Application for the Addition of a Public Right of Way along a route known as Manor Drive between Nantwich Road (A530) and Kerridge Close, Parish of Middlewich

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1. Report Summary

- 1.1. The report outlines the investigation of an application made by Mr John Bayley on behalf of The Middlewich Public Rights of Way Group to amend the Definitive Map and Statement by adding a public right of way along a route known as Manor Drive, between Nantwich Road (A530) and Kerridge Close, in the parish of Middlewich. The report includes a discussion of the consultations carried out in respect of the application, the historical evidence, witness evidence and the legal tests for a Definitive Map Modification Order (DMMO) 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 route to the Definitive Map.
- 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 Restricted Byways the routes shown between points A-B-C and B-D on plan number WCA/021.

- 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be given and, in the event of there being no objections within the specified period, or any objections received being withdrawn, the Order be confirmed in exercise of the power conferred on the Council by the said Acts.
- 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 Recommendations

- 3.1. The evidence in support of this claim must show, on the balance of probabilities, that public rights subsist along the claimed routes. It is considered that there is sufficient user evidence to support the existence of public restricted byway rights along the routes A-B-C and B-D on plan no. WCA/021. It is considered that the requirements of Section 53(3)(c)(i) have been met in relation to restricted byway rights and it is recommended that the Definitive Map and Statement should be modified to show the routes as Restricted Byways.

4. Other Options Considered

- 4.1. Not Applicable – this is a non-executive matter.

5. Background

5.1. *Introduction*

- 5.1.1 The application was made by Mr Bayley, on behalf of The Middlewich Public Rights of Way Group, on 22nd November 2017. The application was registered and assessed under the Council's adopted policy for prioritising such applications, known as the DMMO Statement of Priorities. The application was for the addition of a bridleway along a route known as Manor Drive, in the parish of Middlewich. The application is based on user evidence. 10 user evidence forms were submitted with the application; 2 further forms have since been submitted. Although the application stated it was for the addition of a bridleway, Officers consider that the evidence suggests the status should be that of Restricted Byway; the reason for this is explained in section 5.3 below.
- 5.1.2 The application form describes the route 'from the corner of the rear garden of 5 Buckley Close Middlewich down Manor Drive through to Nantwich Road (A530) passing Manor Lodge'. This is the route between points B and A on plan no. WCA/021. It is believed the applicant did not include the section from point B through to Kerridge Close, point C, as this land is

mainly owned by Cheshire East Council and public use of that section has not been disputed. However, for the purpose of investigating the claimed public rights, the full length of the route has been considered. This is because the witnesses stated they used the full length of the route; and also if the route were to be added to the Definitive Map it would need to link to a recorded public highway. Therefore the full, currently unrecorded, length of the route from Nantwich Road to Kerridge Close has been considered, as shown between points A-B-C on plan no. WCA/021.

- 5.1.3 During the investigation it has come to light that the route from Buckley Close to Manor Drive (between points B and D on plan no. WCA/021) is not recorded on the Definitive Map. This is land in the ownership of Cheshire East Council. A small section of this route is recorded as an adopted footway, this is approximately the first 17 metres from Buckley Close, the adopted footway then continues in a southerly direction to link with Brynlow Drive. Therefore this route, between points B and D, has also been considered as part of the application as some witnesses stated they also used this route.
- 5.1.4 The reason for the application was an article, that was printed in the Middlewich Guardian newspaper dated 24th August 2017, that stated the owners of a property on Nantwich Road planned *“to gate the driveway to stop residents from using it as a thoroughfare into Middlewich or on to the canal”*. The article was reporting on the problem of HGVs using Nantwich Road (A530) and being unaware of the low headroom at the aqueduct. Despite signage being in place warning of the low headroom, it was claimed this was not clear enough. This, it was reported, was causing problems as the HGVs then block the road as they attempt to turn around. The property owners stated they were aware of the problem before they moved in, but now substantial damage was being caused and their only option was to narrow the frontage to their house to deter HGV movements. Local residents saw this article in the newspaper and were concerned they would be prevented from using Manor Drive. Consequently this led to the application to record the route as a public bridleway being submitted.
- 5.1.5 In December 2018 the Applicant sought a direction from the Secretary of State for a decision to be made on the application as it was still awaiting investigation. A direction decision dated 31st January 2019 was received from an Inspector representing the Secretary of State. The decision, pursuant to paragraph 3(2) of Schedule 14 of the Wildlife and Countryside Act 1981, directed the Council to determine the application no later than 12 months from the date of the direction.

- 5.1.6 In August 2019 the owners of Manor Lodge built a wall, four pillars and a raised kerbed grass verge on unregistered land to the front of their property, immediately adjacent to Nantwich Road (point A on plan no. WCA/021). This is on the claimed public right of way. The owners have since applied for retrospective planning permission for change of use of the land to allow them to encompass the land within their residential curtilage. The planning application has yet to be decided; the reference number is 19/4060N.

5.2. ***Description of the Investigated Route***

- 5.2.1 The investigated route begins at point A (on plan no. WCA/021) on Nantwich Road (A530) and follows a generally southerly direction to Kerridge Close at point C. The route is mostly enclosed between boundaries. The section at the start and adjacent to Manor Lodge has a stone surface, further along around point B the surface is earth. The section nearer to point C at the Kerridge Close end has a sealed tarmac surface. There are retractable bollards at points B and C to prevent vehicle access. It is believed these were installed by Congleton Borough Council in the 1990s.

- 5.2.2 The route from Manor Drive to Buckley Close between points B-D has an approximate varying width of between 2.5 and 3.5 metres, it is narrower than Manor Drive and has a sealed tarmac surface. It is bounded on one side by a wall, which forms the adjacent property boundary.

5.3. ***The Main Issues***

- 5.3.1 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.

- 5.3.2 The event relevant to this application is section 53(3)(c)(i), 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:-

(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...;

5.3.3 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.

5.3.4 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”.

5.3.5 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 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.

- 5.3.6 For public rights to have come into being through long use, as stated above, 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 twenty years immediately prior to the date of the application. In this case that would be 1997 to 2017. The newspaper article, referred to above in paragraph 5.1.4, shows an intention to challenge the public use, that was dated 2017. The current owners of Manor Lodge moved into the property in 2016, although some witnesses stated they have heard of others who have been stopped/challenged, none had been personally challenged themselves when using the route on foot/cycle. There was some evidence of challenges however; this was when vehicles were attempting to use the route for access, so it was not a challenge to the public use but rather their private access. Therefore, the twenty year period to be considered could be 1996-2016, if the current owners of Manor Lodge had challenged anyone from when they moved to the property, otherwise it would be 1997-2017. For the route B-D on plan no. WCA/021, no challenge has taken place so the 20 year period to be considered for that route is 1997-2017.
- 5.3.7 In this case there is evidence of use on pedal cycle but no evidence of equestrian use. The status applied for was that of bridleway; however, Officers have considered the relevant legislation, guidance and a similar case decided by The Planning Inspectorate; and believe that the routes should be recorded as Restricted Byways.
- 5.3.8 The Planning Inspectorate guidelines state, "Section 31, Highways Act 1980, as amended by section 68 of Natural Environment and Rural Communities Act (NERC) 2006, provides that use of a way by non-mechanically propelled vehicles (such as a pedal cycle) can give rise to a restricted byway.
- 5.3.9 The case of *Whitworth v Secretary of State for the Environment, Food and Rural Affairs (2010)* is often quoted where there is evidence of use on horseback and pedal cycle. Section 30 of the Countryside Act 1968 gave pedal cyclists the right to ride on a bridleway; therefore any use from 1968 onwards is said to be "by right". In *Whitworth* the route was found to have pre-existing bridleway status, i.e. it was decided the status was a bridleway prior to 1968. It was suggested that subsequent use by cyclists of an accepted, but unrecorded, bridleway, where use of the bridleway would have been permitted by virtue of section 30 of the Countryside Act 1968, could not give rise to anything other than a bridleway.
- 5.3.10 The judge in the *Whitworth* case, Carnwath LJ, went on to discuss what the outcome would have been had there been no pre-existing bridleway status.

His view is predicted on user evidence dominated by equestrians, a ratio of 8 equestrians to 2 cyclists (8 v 2). He accepted that regular use by horse riders and cyclists might be consistent with dedication as a restricted byway, it was also consistent with dedication as a bridleway. In such an instance of statutory interference with private property rights, he determined, it was reasonable to infer the dedication “least burdensome to the owner”.

5.3.11 In these circumstances Carnwath LJ could equally have decided bridleway or restricted byway status, but opted for bridleway as equestrian was the dominant user evidence and he did not want to inflict a more burdensome way on the landowner.

5.3.12 When determining whether the status should be bridleway or restricted byway, consideration needs to be given to the dominant user between cyclists and equestrians. In this case, the predominant users are cyclists, as there are no equestrians at all; this distinguishes the current application from the *Whitworth* case. A more comparable case to the current application is a decision of the Planning Inspectorate dated 6th April 2017; this concerned a Definitive Map Modification Order made by East Riding of Yorkshire Council. The Order was for the addition of a Restricted Byway. In that case no pre-existing bridleway status was found, the Order route was created as a private road; however, from the 1950s there was evidence of use by the public. The dominant user was pedal cyclists (19 claimed use with a cycle and 3 on horseback). The Inspector determined that the facts were different to the facts in *Whitworth*; that the evidence of use by cyclists supports the establishment of a restricted byway and concluded that there is no basis from which a less burdensome bridleway can be inferred.

5.3.13 It is Officers’ opinion with the present case, that where the predominant user is cyclist (as in the East Riding case above) it is appropriate to record the status as a restricted byway. Unlike the *Whitworth* case there is no need to be cautious and record the least burdensome way for the landowner; there is clear dominance by cyclists in this case, with no equestrian use, therefore the appropriate status is that of restricted byway.

5.4. ***Investigation of the Claim***

5.4.1 An investigation of the evidence submitted with the application (CO/8/52) has been undertaken, together with some additional research. The application was made on the basis of user evidence from ten witnesses; two further forms have since been received, 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 3**.

5.5. Documentary Evidence

5.5.1 There was no documentary evidence submitted with the application. It is clear from viewing historical Ordnance Survey maps that the route was historically used as the access to Manor Hall, or 'Manor House' as it is named on some maps. The route appears to have been gated at the Manor Lodge in the past. The Hall itself was built between 1800-1830 and is a grade II listed building; it is believed to have been a private residential house until it became a residential care home for the elderly in 2011. The housing estate to the south of the claimed route, Manor Park, was built in the late 1960s/early 1970s; the houses to the east, that back onto the route were built in the 1980s. It is most likely that the route was used as private access only until the area changed considerably with the construction of the residential developments. Therefore limited historical research has been completed as it is clear that if public rights have come into being this would have been through evidence of use of the route. The documents that have been considered are listed in **Appendix 3**.

Middlewich & Newton Tithe Map c1848

5.5.2 Tithe maps and the written document which accompanied them, (the apportionment) were produced between 1837 and the early 1850s in response to the Tithe Commutation Act 1836, to show which landowner owned which pieces of land and as a result how much they owed in monetary terms.

5.5.3 A map was produced by the Tithe Commissioners which showed parcels of land with unique reference numbers, and these were referred to in the apportionment document, which contained details of the land including its ownership, occupation and use. Public roads which generated no titheable produce were not given a tithe number. Some private roads, due to use could be equally not liable to a tithe. However, public and private roads could be subject to a tithe, if for instance, they produced a crop – grazing or hay cut from the verges. The Map and Apportionment must be considered together. Roads were listed at the end of the apportionment; there was often a separate list for private roads. Tithe maps and apportionments were not prepared for the purpose of distinguishing between public and private rights; they were intended to apportion a monetary rent in lieu of

tithe payments in kind. Tithe maps provide good topographical evidence that a route physically existed and can be used to interpret other contemporary documents. If a route is not marked on a tithe map that does not mean it is not a public right of way.

- 5.5.4 In this case a route is shown for the full length of the claimed route between points A-C, on plan no. WCA/021. It is shown coloured the same as the other highways and does not show a line across the route, which may indicate that it was not gated at the time. The alignment is shown as bearing more southerly rather than south south westerly. No tithe number is given to the route and therefore no landowner is listed in the apportionment. However as stated above this does not necessarily mean it was public, just that the route generated no titheable produce.

Ordnance Survey Maps

- 5.5.5 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.

O.S. 1 inch to 1 mile Revised New Series 1897

- 5.5.6 On this edition the full length of the claimed route is shown between solid boundaries from Nantwich Road before continuing further south as double dashed lines to 'Newton Manor'. There is no building shown where the Manor Lodge is now and there appears to be no line across the route, which may indicate that it was not gated at the time.

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

- 5.5.7 On this edition of the map, Manor Drive between points A and C on plan no. WCA/021 is shown as a route with solid line boundaries each side. There does appear to be a line across the route near to the Manor Lodge, indicating there were gates at that time. An unnamed building is shown where Manor Lodge is now. Further south the route continues as double dashed lines with trees lined on both sides all the way to the entrance to 'Newton Manor' as it is named on this edition.

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

- 5.5.8 On this edition the route is depicted in the same way as the previous map. Manor Lodge is named as 'Lodge' and again there is a line across the route near to the Lodge, indicating that it was gated. The Hall is referred to as 'Manor House' on this edition.

Ordnance Survey Six-inch 2nd and 3rd Editions

- 5.5.9 These two editions depict the claimed route in the same way as the 25 inch versions.

Ordnance Survey Six-inch Sheet XLI.SE 1938

- 5.5.10 This edition depicts the claimed route and names the buildings in the same way as the 3rd Edition 25 inch map.

Photographs c.1910-15 and c1974

- 5.5.11 A photograph of what appears to be a painting of Manor Lodge, possibly around the period 1910-15, shows that the route was gated at that time. A photograph from around 1974 shows the original gates posts in place but no gates.

National Parks and Access to the Countryside Act 1949

- 5.5.12 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. Middleswich Urban 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.

Housing Estate Adoption Plans

- 5.5.13 The adoption plan for the Manor Park estate, which includes Kerridge Close, has the building contractor 'McLean' stated in the top right hand corner and is dated March 1978. The extent of Kerridge Close is shown and then at the head of the cul-de-sac, on the edge of the plan, is an annotation stating 'existing private road to Nantwich Road'. The extent of the claimed route is not shown on this plan.
- 5.5.14 The Norbury Drive adoption plan shows the extent of Buckley Close and other roads in the immediate area coloured pink. The adopted footway extending from Buckley Close (point D on plan no. WCA/021) is shown pink; this however does not continue to point B but turns in a southerly

direction to join Brynlow Drive. This plan is undated, but it is thought to be from around the late 1980s.

Land Registry Information

5.5.15 The area of land at the northern end of the claimed route, from Nantwich Road (point A on plan no. WCA/021) to where the original gate posts were on Manor Drive, adjacent to the Manor Lodge building, is unregistered land. This is the area of land that is the subject of the current planning permission application by the owners of Manor Lodge. From a point adjacent to Manor Lodge southerly to point B on plan no. WCA/021, the land is owned by Jones Homes (North West) Limited. The land between point B and C; and between points B and D is owned by Cheshire East Council, apart from one very small section approximately 2-3 metres at point C, which remains registered to the original developer McLean Homes. McLean Homes were taken over by Taylor Wimpey, Officers have consulted Taylor Wimpey Homes but have had no response.

5.6. Witness Evidence

5.6.1 The application was made in 2017 and contained 10 user evidence forms. Two of the forms contained evidence from two witnesses on the same form, who lived at the same address (e.g. husband/wife); therefore, there was evidence from 12 witnesses. A further three forms were submitted in 2019, giving a total of 15 witnesses.

5.6.2 All 15 witnesses have used the routes on foot; in addition to using it on foot, nine witnesses have also used the routes on a bicycle. The witnesses were contacted with a view to being interviewed; subsequently eight witnesses were interviewed, seven in person and one by telephone interview. Statements have been signed by the eight witnesses who were interviewed, the statements are a summary of their evidence as set out during their interview. A chart illustrating the user evidence from all 15 witnesses is attached as **Appendix 1**. A separate chart illustrating the use on a bicycle is attached as **Appendix 2**.

5.6.3 For public 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 for the route B-D (on plan no. WCA/021) that would be 1997 to 2017. Although none of the witnesses state they were stopped or challenged when using the route A-B-C (on plan no. WCA/021) on foot/cycle; a few did say they had heard of others that had been stopped. The newspaper article referred to above in paragraph 5.1.4, shows an intention to prevent use by the

public. The current owners of Manor Lodge purchased the property in 2016; therefore it would seem challenges may have occurred from that time. Therefore the twenty year period to be considered for the route A-B-C (on plan no. WCA/021) is 1996-2016.

- 5.6.4 Use of the route has been largely for functional purposes, but it has also been used for leisure/dog walking. It forms a link between the housing estate and Nantwich Road and onwards to the town for shopping; visiting the doctors; the pub; the cemetery and other services offered by the town centre in Middlewich. Some witnesses also used it to gain access onto the canal; some said that school children use it. Witnesses stated that they use this route because an alternative route from the estate into town is not safe. That route is from the western extent of Brynlow Drive along the Nantwich Road (A530), which has no pavement.
- 5.6.5 The route was used frequently; weekly and for some people nearly daily. Some witnesses have used the route on a pedal cycle weekly, monthly or occasionally. One witness walked and cycled the route from her childhood in the 1970s and then since moving closer to the route in 1999 has used the route on a weekly basis to visit relatives and also for dog walking. Another witness who moved to the area in 1986 used the route on a daily basis from that time for dog walking and going into town until 2012, he then continued to use it 2-3 times a week. He also used it on a bicycle up to 2-3 times a week at one time.
- 5.6.6 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 5.3.4. Of the remaining six witnesses, one has used the route for 17/18 of the 20 years and another for 11/12 years. The earliest use stems from 1970 and continues to the present day.
- 5.6.7 Of the 15 witnesses, 9 have used the route on a bicycle, of these 9 witnesses 4 have used the route for the full 20 years, and one other witness for 17/18 of the 20 years.
- 5.6.8 None of the witnesses had ever been challenged or prevented from using the route on foot or bicycle. 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 on foot and bicycle. The documentary evidence shows that the route of Manor Drive has been in existence for over a hundred years, most likely since the Manor Hall was built. It is

Officers' opinion that the conclusion of the historical documents is that the route A-B-C (on plan no. WCA/021) was historically used as private access to the Hall. The nature and purpose of the use of the route then changed with the development of the area from the 1970s onwards.

5.7.2 Under section 31(1) of the Highways Act 1980 public rights can come into existence by prescription unless there is evidence to the contrary. The user evidence shows that use, on both foot and bicycle, has been uninterrupted for a full twenty year period between 1996 and 2016 in the case of route A-B-C on plan no. WCA/021, without challenge, permission or secrecy; and in the case of the route B-D on the same plan between 1997 and 2017.

5.7.3 The evidence in support of this application must show, on the balance of probabilities, that restricted byway 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 restricted byway subsists along the routes A-B-C and B-D (Plan No. WCA/021). 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 the two restricted byways in the Parish of Middlewich 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 and 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 the determination of the case leads 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 s.53 of the Wildlife and 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/Cared for Children

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 The Council has committed to becoming carbon neutral by 2025 and to encourage all businesses, residents and organisations in Cheshire East to reduce their carbon footprint.

6.10.2 The addition of a restricted byway to the Definitive Map represents the formal recognition of pedestrian/equestrian/cycle rights, creating more opportunities for travel/leisure on foot/horseback/cycle and potentially reducing the use of cars for short local journeys and therefore energy consumption. It also has the potential for the improvement/promotion of healthy lifestyles.

7. Ward Members Affected

- 7.1. The Ward Members for Middlewich, Councillor Bulman; Councillor Hunter and Councillor Parry have been consulted on the application, no comments have been received.

8. Consultation & Engagement

- 8.1. Consultation letters including a map showing the route A-B-C (on plan no. WCA/021) were sent to the Ward Members; Middlewich Town Council; User Groups/Organisations; statutory undertakers and the landowners in October 2019. Further letters/emails were sent to all consultees to inform them of the additional route being considered, route B-D (on plan no. WCA/021), and further comments were invited.
- 8.2. Middlewich Town Council have responded and state “the Town Council has considered this matter and the Council supports the retention of the public right of way”.
- 8.3. Cheshire East Council Assets Management Service have been consulted as Cheshire East Council own part of the affected land between points B-C and B-D. The Service responded and stated they have no comments to make.
- 8.4. Jones Homes (North West) Limited own part of the claimed bridleway, from a point adjacent to Manor Lodge southerly to point B on plan no. WCA/021, they have not responded to correspondence.
- 8.5. The owners of Manor Lodge, although they do not own the affected land, are immediately adjacent to it and have recently applied to incorporate part of the claimed route within their curtilage. They were notified of the application in 2017 and have also been consulted in October 2019. On 30th November 2017 Officers received an email from the owners of Manor Lodge acknowledging that they had received notification of the application. The email stated they would be objecting to the application and asked about the procedure for objecting. Officers responded and included information on the Definitive Map Modification Order process.
- 8.6. Following the consultation letter the owners of Manor Lodge made contact and Officers met with them on site on 9th October 2019. Once again details of the application process were discussed. Officers viewed the wall and pillars that had been built on the claimed route. The owners of Manor Lodge explained the problems they had with the drivers of HGVs, when they realise they are unable to continue along Nantwich Road (A530) because of the low aqueduct, they then attempt to turn around. This has caused damage to their property in the past and has now led to them

building the wall/pillars to prevent HGVs from turning there. They did acknowledge to Officers that they realise that people use the path and they did not wish to stop them; for that reason, they have left a gap to the side of one of the pillars. Officers measured the gap between the wall and the pillar, which was 88cm. Following the meeting, no further comments have been received from the owners of Manor Lodge. The gap of 88cm would be insufficient for a right of way; if an Order is made to add the route to the Definitive Map, the recorded width would include the full width between the boundaries as that is what the public have customarily used. That would be between approximately 4.5m and 6m.

- 8.7. United Utilities state there are water mains in close proximity. However they are located outside of the boundary of the claimed right of way and as no works disturbing the surface would be required as a result of any Order, it is believed that the apparatus would not be affected.
- 8.8. Cadent/National Grid have responded and state they have no objection.
- 8.9. A resident of Nantwich Road, Middlewich has submitted comments. He states he has lived on Nantwich Road for over 30 years, he considers the potential closure of Manor Drive a great loss. He states he and his late father used the route when visiting each other, and he has also used it for many years to visit a cousin who lived locally. He uses it currently to visit friends and states it is not feasible to go along the A530 or along the canal for safety reasons. He comments on the issue of HGVs reversing back along Nantwich Road when they miss the warning signs for the low bridge; he states he too has had the inconvenience of this and his gate pillars (and those of his neighbours) have been damaged by vehicles trying to turn around. He states Manor Lodge is not a special case as many other local residents have similar problems. He comments that the owners of Manor Lodge have no right to block off Manor Drive, it has been a right of way as long as he can remember; he is 83 years old.

9. Access to Information

- 9.1. The background papers relating to this report can be inspected by contacting the report writer below.

10. Contact Information

10.1. Any questions relating to this report should be directed to the following officer:

Name: Jennifer Miller

Job Title: Definitive Map Officer

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