

Cheshire West and Chester Borough Council

Officer Delegated Decision Report

Application Number	CWAC020-Farndon
Description	Wildlife and Countryside Act 1981 – Section 53 Application for a Definitive Map Modification Order
Location	Between Chester Road and Public Footpath 8 Farndon opposite Brewery Lane
Ward	Farndon Ward
Ward Member	Councillor Adrian Waddelove
Case Officer	Adele Mayer Public Rights of Way Officer publicrightofwaywest@cheshirewestandchester.gov.uk
Date	20 July 2023

Recommendation that:-

(1) An Order be made under section 53(2)(b) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of a footpath to the Definitive Map and Statement as shown between Points A-B on the Plan and that the requisite notice of the making of an Order be given.

(3) The Head of Planning and Place Making be authorised to take any action considered necessary in respect of the confirmation of the Order hereby authorised to be made.

Background

1. Robin Carr Associates was appointed to act on the Councils behalf and investigate and make recommendation on an application to modify the Definitive Map and Statement of Public Rights of Way (the “DM”) for an Order to record a public footpath running over land between Churton Road and Public Footpath 8 Farndon. The final report can be found at Appendix A , the plan at Appendix B.

2. Section 53(2)(b) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) imposes a duty on the Council to keep the DM under continuous review and by order make any modifications to it that are requisite in consequence of the

occurrence of certain events. The application was made on the basis provided for in Section 53(3)(c)(i) of the 1981 Act, namely “the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows 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 rights subsists is a public path...”

Definitive Map and Statement

3. The National Parks and Access to the Countryside Act 1949, required Surveying Authorities to draw up a Definitive Map and Statement of Public Rights of Way. At the time Cheshire County Council (CCC) was the Surveying Authority and asked all parishes to provide a map and schedule showing all public rights of way (“the parish survey”). The parish surveys were checked by CCC officers and a Draft DM for each parish was published. Representations and objections to the Draft DM were dealt with by CCC and then a Provisional DM was published. Representations and objections to the Provisional DM were dealt with by the Courts, following which Hearings, the DM was completed, sealed and published. The Surveying Authority was required by the legislation to keep the map and statement under review, the responsibility being commuted by the 1981 Act to one of a continuous review. The Council is empowered to make Orders under the 1981 Act when it is required by a decision to make an Order.
4. Orders are made in prescribed form and according to current guidance. Non statutory guidance on width was issued by DEFRA in 2007 expanding on guidance issued under Advice Note 16 “Widths on Orders”. A Definitive Map Modification Order records rights and there is advice how those rights may be recorded where the evidential source is vague or approximate. Where there is little or no evidence to show a width, the OMA, it is advised should include a width that appears appropriate having regard to relevant factors which may include type of user (walkers), nature of the surface (grass) and any other physical feature. The documentary evidence indicates that there was no physical feature preventing access. OMAs should use a width necessary for two users to pass in comfort. Generally, in the Councils area we use 2 metres as the most appropriate width for a footpath.

Conclusion

5. The investigation of the application identified the Application route runs along the alignment of an old lane which, by reference to the 1840 Tithe Map for the area,

is shown to have physically existed for at least the last 180 years. Other documentary evidence is limited, but Ordnance Survey Maps show its continued existence and the 1910 Finance Act Index Plan suggests, by way of its inclusion in the adjoining land holding, that it was not considered, at that time, to be a public highway of any description.

6. A total of 63 user evidence forms were submitted in support of the Application. These forms provide evidence of public use over a period of approximately 51 years, from circa 1969 to 2020 when the Application Route was blocked. The Objectors do however suggest that the Application Route was blocked off for a four-year period between 2014/15 and 2018/9 when the adjacent housing development was undertaken. This is not referred to by any of the user witnesses. If this is the case, then it may shift the twenty-year period to 1994-2014.
7. The owners of a property adjoining the Application Route (the Objectors) have made substantial submissions to the Consultants [App 11 pg. 614-668] in objection to the Application. These include the submission of a number of letters/statements from local people who believe that the Application Route is private [App 12 pg. 669-689]. For completeness a copy of all submissions, made direct to the Council, in objection to the application is also appended at Appendix 13 [pg. 690-768] and the Council's Case file on this application is appended at Appendix 14 [pg. 769-857]. Overall, these documents do not provide any evidence of a lack of intention to dedicate on the part of anyone with a landowning interest/capacity to dedicate.
8. And there is sufficient evidence to support any inference of dedication under the common Law. The above reasonably alleged presumption of dedication can be overturned if there is sufficient evidence of a landowner's lack of intention to dedicate public rights over the Application Route. The Objectors have made lengthy submissions [App 11-13 pg. 614-768], but they do not contain any evidence which would constitute a lack of intention to dedicate within the meaning of section 31 of the Highways Act 1980.
9. It is concluded therefore that on account of the expiry of the duration of a period of 20 years user, between 1999/2000 to 2019/2020, of the way by the public "as of right", and in the absence of any evidence of a lack of intention to dedicate in that period, the requirements of section 53 3 (c) (i) of the 1981 Act are, on the balance of probabilities, satisfied as reasonably alleged, and the requirements for the making and confirmation of the Order sought would appear to have been met

Associated documents

10. Application file CWAC/020/DMMO.

Appendix A	Consultants report and recommendation
Appendix B	Redacted User Evidence Summary
Appendix C	Images, site location and aerial
Appendix D	The Plan
Appendix E	Guidance on widths

Appendix C Site images (included with Application)

IMAGE 10: TRACK – View from Churton Road up Existing Track Febr



IMAGE 11: TRACK – View from Churton Road February 2020

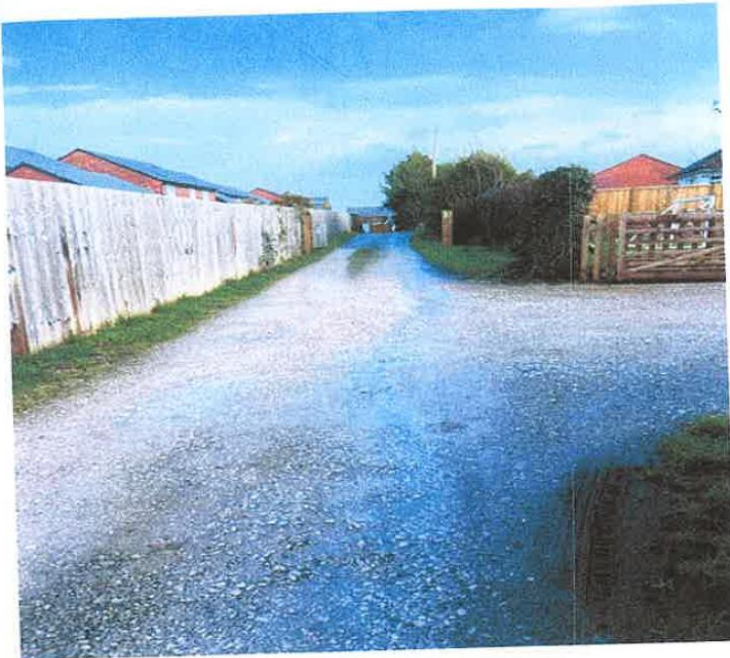


IMAGE 12: TRACK – View from Churton Road February 2020



IMAGE 14: TRACK – Viewed from behind Substation (ESS) on Shearwater road looking towards Churton Road and erected fence. Photograph shows recent access on foot evident February 2020



IMAGE 15: TRACK – Viewed from behind Substation (ESS) on Shearwater road looking towards Churton Road. Photograph shows new erected fence and recent access on foot evident February 2020



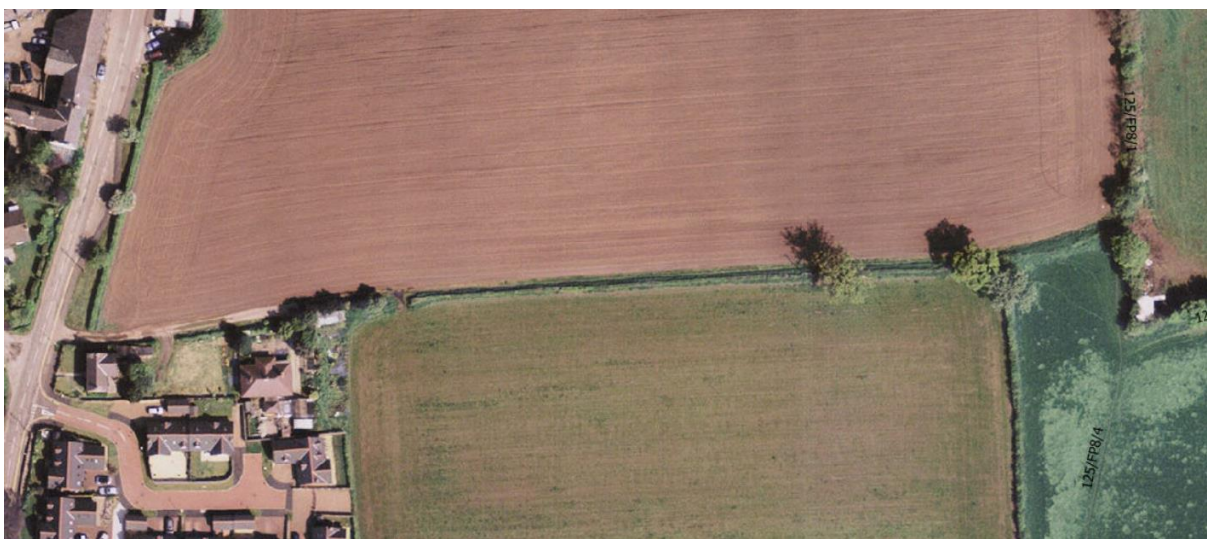
Aerial Images



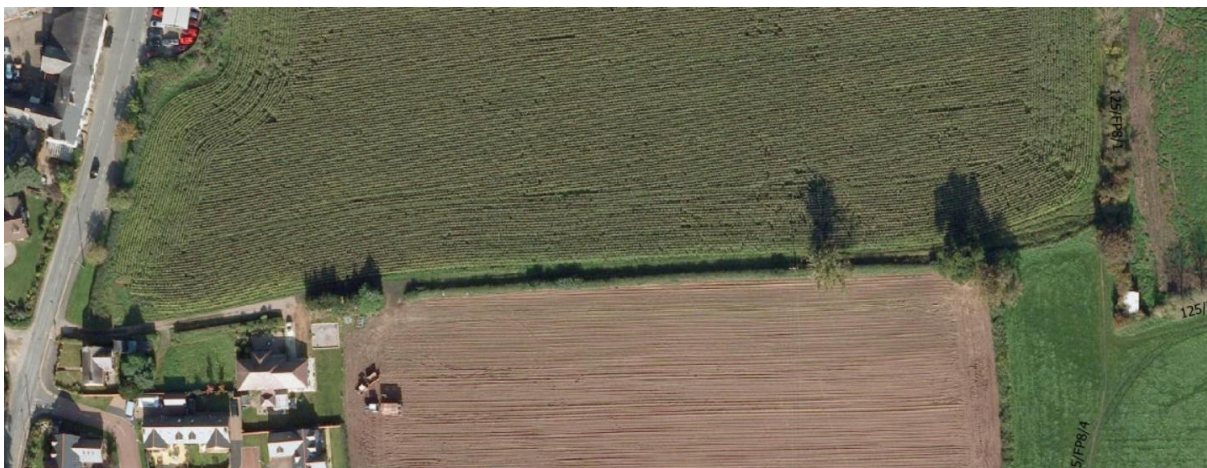
Google aerial image 2023



CWAC Cutlines aerial image 1983-1985



Bluesky aerial image 2002-2005



Bluesky aerial image 2010



Aerial Imagery 2015-2017