

## Cheshire West and Chester Borough Council

### Officer Delegated Decision Report

<b>Application Number</b>	CWAC016/DM&SMO
<b>Description</b>	Wildlife and Countryside Act 1981 – Section 53 Application for a Definitive Map Modification Order
<b>Location</b>	Public Footpath 7 Cuddington (Malpas)
<b>Wards</b>	Malpas Ward
<b>Ward Member</b>	Councillor Rachel Williams
<b>Case Officer</b>	Adele Mayer, Public Rights of Way Officer (publicrightofway@cheshirewestandchester.gov.uk)
<b>Date</b>	28 September 2021

Recommendation that:-

(1) The application made to Cheshire West and Chester Borough Council (“the Council”) to modify the Definitive Map and Statement (“the DM&S”) be accepted in part on the grounds of discovery of evidence that a section of the line of Public Footpath 7 Cuddington (Malpas) (“FP7”) was incorrectly recorded on the DM&S. The proposed line of the footpath between B to C on Plan number MO568A (“the Plan”) is refused for a recommended line shown between points D to E on the Plan.

(2) An Order be made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) to modify the DM&S by the extinguishment of part FP7 as shown between points A to D on the Plan and the subsequent addition of a footpath to the DM&S for FP7 as shown between Points D to E on the Plan and that the requisite notice of the making of an Order be given.

(3) The Highway Commissioner be authorised to take any action considered necessary in respect of the confirmation of the Order hereby authorised to be made.

### Background

1. Mrs Susan Rumfitt was appointed to act on behalf of the Council in respect of the application and investigate and make recommendation on the application to modify the Councils DM&S for FP7 (“the Report”). A summary of the Report can be found at Appendix A.

2. Section 53(2)(b) of the 1981 Act imposes a duty on the Council to keep the DM&S 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 Sections 53(3)(c) and 53(3)(c)(iii) 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..... any other particulars contained in the map and statement require modification.”

### **Definitive Map and Statement**

3. The National Parks and Access to the Countryside Act 1949 required Surveying Authorities to draw up a DM&S. At the time Cheshire County Council (“the County Council”) was the Surveying Authority and as such asked all Parishes to provide a map and schedule showing all public rights of way (“the Parish Survey”). The Parish Surveys were checked by the County Council officers and a draft DM&S for each Parish was published. Representations and objections to the draft DM&S were dealt with by the County Council and then a provisional DM&S was published. Representations and objections to the provisional DM&S were dealt with by the Courts and following subsequent hearings the DM&S was completed, sealed and published by the County Council. The Surveying Authority was required by the legislation to keep the map and statement under review with 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 February 2007 (annexed at Appendix B) 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 Council in its capacity as Order Making Authority (“OMA”) should include a width that appears appropriate having regard to relevant factors which may include type of user (in respect of FP7 walkers), nature of the surface (in respect of FP7grass) and any other physical feature. The documentary evidence indicates in relation to FP 7 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 administrative area 2 metres is the most appropriate width.

## **Conclusion**

5. The investigation of the application finds there is no dispute that there is a public footpath but the discovery of evidence as shown in the Report lead to the recommendation for an Order to delete part of FP7 and add FP on a different line.
6. The Report proceeds to demonstrate that the depiction of part of FP7 should be deleted as it is currently shown on the DM&S shown running on the south side of the current boundary and with the boundary as shown as a solid black line between points A-D on the Plan.
7. The Report recommends that the correct line of FP7 should be shown on the DM&S as shown on the OS 1911 edition 25" on the north side of the current boundary and shown by a broken black line between points D-E on the Plan.

## **Associated documents**

8. Application file CWAC/016/DM&SMO

Plan MO/569 and MO/568A.

Appendix A site photographs

Appendix B Consultants summary report and recommendation not including documents and images.

Appendix C DEFRA guidance on widths 2007

## Appendix A Site photographs

Crabtree Lane and commencement at point A on the Plan



Farm yard entrance field gate and hedge boundary on left side



From point D on the Plan, facing west. Farm yard on left.

