



# Planning Inspectorate

## Appeal Decision

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector on direction of the Secretary of State for Environment, Food and Rural Affairs

Decision date: 07 November 2025

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### Appeal Ref: ROW/3356152

- This appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) against the decision of Cheshire West and Chester Council not to make an order under Section 53(2) of that Act.
- By application dated 22 December 2014, the Wirral Footpaths and Open Spaces Preservation Society claimed that a footpath along Ness Acre Lane should be added to the definitive map and statement for the area.
- The application was refused by Cheshire West and Chester Council and the appellant was formally notified of the decision by email dated 7 November 2024.

**Summary of Decision: The appeal is allowed and Cheshire West and Chester Council directed to make the Order**

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### Procedural matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine this appeal under section 53(5) and Paragraph 4(1) of Schedule 14 of the 1981 Act.
2. The appeal has been determined on the papers submitted. I have not visited the site, but I am satisfied that I can make my decision without the need to do so.
3. The route to which the appeal relates also runs in a generally north-south direction from Neston Road, Willaston to Public Footpath 32 Ellesmere Port and Neston.

### Main issues

4. The application was made under section 53(2) of the 1981 Act which requires the surveying authority to keep their definitive map and statement under continuous review, and to modify them upon occurrence of specific events cited in section 53(3)
5. The need for an Order to be considered when evidence is submitted in support of a claim that a public right of way which is not shown in the definitive map subsists is dealt with under section 53 of the 1981 Act. Section 53 (3)(c)(i) of the 1981 Act

provides that a modification order should be made on the discovery of evidence which, when considered with all other relevant evidence available, shows that a right of way which is not shown subsists or is reasonably alleged to subsist over land in the area to which the map relates.

6. In arriving at my conclusions, I have taken account of the evidence submitted by the parties, the relevant part of the 1981 Act and the findings of the Courts in the cases of *Secretary of State for the Environment ex parte Bagshaw and Norton* (QBD) [1994] 68 P & CR 402 [1995] (*Bagshaw and Norton*) and *R v Secretary of State for Wales ex parte Emery* [1996] 4 All ER 367 (*Emery*).
7. As made clear by the High Court in *Bagshaw and Norton* this involves two tests:  
  
Test A - Does a right of way subsist on the balance of probabilities?  
  
Test B - Is it reasonable to allege that a right of way subsists? For this possibility to exist, it will be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege that a right of way subsists.
8. In relation to Test B, the Court of Appeal recognised in the *Emery* case that there may be instances where conflicting evidence was presented at the schedule 14 stage. In *Emery*, Roche LJ held that “... *The problem arises where there is conflicting evidence...In approaching such cases, the authority and the Secretary of State must bear in mind that an order...made following a Schedule 14 procedure still leaves both the applicant and objectors with the ability to object to the order under Schedule 15 when conflicting evidence can be heard and those issues determined following a public inquiry.*”
9. Roche LJ also held that “*Where the applicant for a modification order produces credible evidence of actual enjoyment of a way as a public right of way over a full period of 20 years, and there is a conflict of apparently credible evidence in relation to one of the other issues which arises under s31, then the allegation that the right of way subsists is reasonable and the Secretary of State should so find, unless there is documentary evidence which must inevitably defeat the claim for example by establishing incontrovertibly that the landowner had no intention to dedicate or that the way was of such a character that use of it could not give rise at common law to any presumption of dedication.*”

## **Reasons**

10. The evidence submitted with the application and appeal is a combination of documentary evidence and user evidence. Section 32 of the Highways Act 1980 requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as appropriate, before determining whether or not the claimed route should be added the definitive map and statement.

### *The Documentary Evidence*

11. The route follows the alignment of an old lane (Ness Acre lane) that is shown on the Samuel Ryder Estate Map (1774). The Council therefore acknowledges that the route has physically existed for some 250 years. The Council also acknowledges

that the claimed route is a through route and is coloured in the same manner as recognised highways in the area.

12. The Swire and Hutchings map (1830) shows the northern part of the claimed route as a cul-de-sac of indeterminate status. The Hayes Lyon Willaston Estate Map (1834) similarly depicts the northern part of the route as cul-de-sac of indeterminate status, then as a dashed line further south. Bryant's Map (1829-321) shows the claimed route as a through route to Fearn Heath Lane under the annotation "Lanes and Bridleway".
13. In his representation, Dr Annakin-Smith explains that he is a historical researcher with a background in historical landscapes and has studied the landscape of Willaston. He is of the view that Nest Acre Lane is very definitely not 'a route to nowhere' and connected with a five-way junction in the Hadlow area and to a strategic routeway to the waste of medieval Willaston and a through route to the county town of Chester.
14. The Tithe Map for Willaston in the Parish of Neston (1848) shows the cul-de-sac section of the application route being un-numbered. The Apportionment identifies this a "Lane in Ness Acre" and land as being in private ownership.
15. The deposited plans for the Chester Birkenhead Railway Branch to Kings Ferry Neston Hoylake and New Brighton show parts of the application route numbered plots 69 and 69a respectively. The corresponding entries in the accompanying Book of Reference identifies plot 69 as an "Occupation Road" and 69a as "Public Footpath".
16. The deposited plans for the Liverpool Birkenhead and Holyhead Railway from Hooton to Parkgate (1861) show part of the claimed route numbered as 277, with the corresponding Book of Reference identifying it a "Occupation Road".
17. The 1878 six-inch County Series Ordnance Survey Map shows part of the claimed route as an enclosed cul-de-sac and which appears to be gated at two points. No continuation of the route is shown.
18. The 1899 six-inch County Series Ordnance Survey Map shows the first section of the claimed route as an enclosed cul-de-sac, which again appears to be gated at two points. The continuation of the route is then shown as a single pecked line.
19. The 1912 twenty-five-inch County Series Ordnance Survey map shows the whole of the claimed route, with the first section shown as an enclosed cul-de-sac and which appears to be gated at two points. The continuation of the route is then shown as a single pecked line and annotated "F.P.".
20. The 1947 six-inch County Series Ordnance Survey Map also shows the whole of the claimed route. The first section of the claimed route is shown as an enclosed cul-de-sac, which again appears to be gated at two points. The continuation of the route is then shown as a single pecked line and annotated "F.P.".
21. The Deed dated 9 November 1979 for the plot of land known as Hardman's Little Field coveys in terms:

*members of the public full right and liberty from time to time and at all times hereafter and for all purposes to pass and repass with or without vehicles animals farm machinery and horseboxes*

22. Whilst this is clearly is supportive of the proposition that public rights may subsist, any rights granted by this deed would be permissive rights insofar as they are granted to the public by the owner of the land in question. The use pursuant to that Deed is therefore 'by right' as opposed to being 'as of right'.

#### *User Evidence*

23. In this case, there is no specific event or action on the part of any person that called the right to use the way into question until the submission of the application subject to this appeal on 22 December 2014. Accordingly, the submission of that application could be taken as calling the use of the way into question. In that scenario, the relevant period for the purposes of the 1981 Act would therefore be 22 December 1994 to 22 December 2014. However, for the reasons set out below, it is possible that an earlier date could be taken as calling the use of the way into question if, on further examination, the evidence pointed to that.
24. A total of thirteen User Evidence Forms (UEFs) were submitted with the application. There is some question around the sufficiency of this evidence not least because in some cases the evidence may have been obtained under duress. However, some further UEFs were submitted as part of the appeal process. Whilst these additional UEFs do not show continuous use by any one individual, they collectively show use of the route for sustained periods over the 1950s through the 1990s.
25. Some of these UEFs record that the respondent was given permission to use the route by the landowner, such that the use was by right and not as of right. In some cases, the UEFs are clear in recording that the respondent was challenged when on the route and that respondent continued to use the land regardless.
26. In other cases, it is not so clear cut: for example, one UEF records that the respondent was made aware that the land was privately owned but does not explicitly state that they were stopped from using it. In another case, the respondent clearly states that she was given permission to use the route but only in 1980, despite having previously used the route for a period in the 1950s and 1960s. Another describes how he was only told by Mr Kameen not to use the route in the mid-1980s, having claimed to have used the route from 1946 onwards. Yet another was told that it was private land and no children were allowed, albeit this UEF is silent as to use by adults.
27. The UEFs submitted with the original application cover a period of some fifty-five years between 1946 and 2001. The corollary is that there is a substantial gap of some thirteen years between the last date for which there is user evidence and the end of the relevant period. Further evidence of use has been submitted as part of this appeal, but that evidence similarly relates to the period prior to the early 1980s.
28. However, the user evidence is consistent in claiming that the route was used along its full length prior to the early 1980s. Until that time, the UEFs are consistent in

describing that any gates were unlocked. The UEFs are also consistent in confirming that one section of the route only became overgrown and impassable once the gates started to be locked in or around the early 1980s. Prior to that date, the evidence in some UEFs is that the route was available and passable from the junction with Neston Road right through the Footpath 32 and then to the Wirral Way.

29. This is also consistent with the evidence of the landowner, Mr Charles Kameen. In his Statement of Case, Mr Kameen explains that there was originally a set of wooden gates at the northern end of the route, close to the junction with Neston Road (Position 1 on the plan attached to Mr Kameen's Statement of Case). These were replaced in 1974 with a metal gate, which was itself replaced in or around 2000 with a similar gate. The latter (existing) gate is operated by a key fob and cannot be opened by members of the public, but it is not clear whether the previous gate was similarly equipped.
30. The salient point is that, as Mr Kameen explains, since 1990 there was second set of gates slightly to the south (Position 2 on the plan attached to Mr Kameen's Statement of Case). These were originally wooden gates which, until 2011, were often kept closed (which implies that they were sometimes left open). These gates were replaced in that year with metal gates. These gates are operated by a fob, and are always kept closed and locked when not in use. On my reading of Mr Kameen's evidence, it was not until 1990 that there was a gate in this position and even then it was sometimes left open until replaced by the fob-operated metal gates in 2011. That is consistent with the evidence in the UEFs.
31. It is Mr Kameen's evidence that there is another gate further along the route (Position 3 on the plan attached to Mr Kameen's Statement of Case), with two more gates to the south of that (Positions 4 and 5 on the plan attached to Mr Kameen's Statement of Case). There is no detail in Mr Kameen's evidence as to when those gates were installed or if they are routinely locked.
32. It is also Mr Kameen's evidence that Positions 4 and 5 on the plan attached his Statement of Case were the locations of two cattle runs that crossed the route. It is explained that these cattle runs were delineated by fences that completely blocked the route. The most northerly of these cattle runs remained in place until 1983 but the more southerly cattle run remained in place until around 2025.
33. In his Statement of Case, Mr Kameen confirms that there is a section of the route that is currently impassable. This is supported by photographic evidence, including aerial photographs taken in 1945, 2003 and 2005. The latter are of no evidential value given that they only show a line of trees and do not show the conditions on the ground. It is also suggested that people using the route could have trespassed onto the field adjoining the claimed route in order to circumvent the impassable section.
34. There is a significant body of evidence that there was a sign at the junction of Ness Acre Lane and Neston Road indicating that Ness Acre Lane was a public footpath. Whilst some witnesses have no recollection of any such sign being in position, a total of 16 individuals do have a recollection of a sign in this location. In some cases, the individual has a particular reason for recalling the presence of this sign: for example, one individual was a delivery driver at the time and recalls his concern

that he would be blamed when the sign was damaged one occasion. Personal recollections such as this add to the weight that be afforded to the evidence.

35. The sign is described as being a post with black and white stripes, identical to that found elsewhere in the locality (photographs provided). A photograph purporting to be of the sign at Ness Acre Lane has also been provided. Whilst the sign itself is not readable in this photograph, it can be discerned from the photograph that the post features black and white stripes. I am therefore satisfied that more likely than not the sign in the photograph is the sign referred to in the UEFs and in other evidence. There is reference to the sign being replaced at some point by a green footpath sign that was subsequently removed in unknown circumstances.

### ***Assessment of the evidence***

36. The documentary evidence is inconclusive, with the Tithe Map (1848) indicating that the route was in private ownership but at least one railway plan suggesting it was a public footpath. I am mindful that the claimed route is shown as a cul-de-sac on the Tithe Map and also on the earlier Ordnance Survey Maps, it being only on the later Ordnance Survey maps that the continuation of the route is depicted. It is widely accepted that Ordnance Survey maps are good evidence of the physical presence of a route on that date but do not provide any indication of the status of the route. Accordingly, I do not place any weight on the "F.P." annotation on the later maps. Nevertheless, the fact that the route is shown as being continuous on these later maps is good evidence that the route existed up to at least 1947.
37. The overriding picture that emerges from the user evidence is that prior to the early 1980s the route was used without force or secrecy. Indeed, this is expressly stated in later UEFs. The evidence before me is that there was only one gate on the route at that time, and that this was not always locked.
38. The two cattle runs described by Mr Kameen are a bit of an anomaly. It is striking that there is no mention of these cattle runs in any of the UEFs with some describing the route as being fully accessible between Neston Road and the Wirral Way. I would have expected that these cattle runs would have featured prominently in the UEFs as being a physical obstruction of the route, but they do not.
39. There is some reference in the UEFs to use of the field adjoining the route once one section of the route became impassable. Other UEFs clearly state that there was only a single route. However, on balance the evidence suggests that this one section of the route only became impassable in the early 1980s. I recognise that Mr Kameen has provided photographic evidence that clearly shows the route to be impassable at the current time and that the route was cleared in or around 1978, the clear inference being that the route was blocked before that. However, I have no photographic or documentary evidence to support that.
40. There is then the sign at the junction of Ness Acre Lane and Neston Road indicating that Ness Acre Lane was a public footpath. I am satisfied on the balance of probability that this sign existed and may even have been replaced at some point. This then raises the spectre as to why this sign was installed in the first place (and then possibly replaced) and on the basis of what information. It is reasonable to conclude that the sign was erected by the Council or a predecessor County Council, such that the 'presumption of regularity' arises. The presence of this sign

would also be consistent with the use of the route as a footpath prior to the early 1980's and the belief expressed in some UEFs that the route was a public footpath.

### ***Conclusions on the evidence***

41. The evidence provided is not sufficient to show on the balance of probability that the claimed footpath subsists. has been used continuously for a period of 20 years. Accordingly, Test A is not met.
42. However, at this stage I need only to be satisfied that the evidence meets test B, the lesser test. There is no incontrovertible documentary evidence to indicate that the claimed route was not a public right of way: indeed, at least one of the railway plans refers to the land being a public footpath and there is some evidence to suggest that Ness Acre Lane at one time formed part of an important strategic network of routes.
43. There is evidence to show that the route was used as a footpath prior to the early 1980s which, whilst not voluminous in quantity, is entirely consistent in stating that the route was passable along its entire length and that any gates present were not routinely locked. Moreover, the evidence is consistent in showing that the users were advised not to use the route only from the early 1980s onwards. In the absence of a precise date on which the use of the way was brought into question whether that use subsisted for a period of twenty years. Nevertheless, with the addition of the later UEFs submitted with the appeal, there is now sufficient evidence to warrant further investigation and to potentially be tested through cross-examination.
44. Overarching all of this is the sign at a sign at the junction of Ness Acre Lane and Neston Road indicating that Ness Acre Lane was a public footpath. There must have been a good reason why this sign was put in place (and then possibly replaced). At the very least, this requires further investigation and together with the user evidence potentially tested through cross-examination.
45. In his Statement of Case, Mr Kameen contends that his actions demonstrate a lack of intention to dedicate the route. This includes the installation of Barn Owl boxes on his land which, Mr Kameen explains, he would not have done if the route is a public footpath. There is reference in some UEFs (but by no means all of them) to being stopped or challenged when on the route but then carrying on regardless. Others describe encounters with Mr Kameen as being more akin to exchanging pleasantries. The salient point, it seems to me, is that the UEF evidence points to users being stopped and/or challenged mostly from the early 1980s onwards. There is little evidence to show that this routinely occurred prior to that.
46. Consequently, on the balance of probability all the relevant evidence available is not sufficient to show that a footpath subsists on the claimed route but that a public footpath can be reasonably alleged to subsist. Accordingly, the lower threshold for evidence under Test B is met.

### **Conclusion**

47. I conclude that a public right of way along the full length of the appeal route has not been shown to subsist on the balance of probability but can be reasonably alleged

to subsist. Accordingly, I conclude that the appeal should be allowed and Cheshire West and Chester Council directed to make the Order.

48. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with his powers under Schedule 15 of the 1981 Act.

**Formal Decision**

49. The appeal is allowed and Cheshire West and Chester Council is directed to make the Order within 3 months of the date of this Decision.

*Paul Freer*  
INSPECTOR