

Cheshire West and Chester Borough Council

Officer Delegated Decision Report

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| Application Number | CWAC007 Willaston, Neston |
| Description | Wildlife and Countryside Act 1981 – Section 53 Application for a Definitive Map Modification Order |
| Location | Neston Road to Public Footpath 32 Ellesmere Port |
| Applicants Name | Wirral Footpaths and Open Spaces Preservation Society |
| Wards | Willaston and Thornton Ward |
| Ward Members | Councillor Myles Hogg |
| Case Officer | Michael Goan Public Rights of Way Officer publicrightofway@cheshirewestandchester.gov.uk |
| Date | 30 September 2024 |

Recommendation that:-

(1) The application to modify the Definitive Map and Statement be refused on the grounds that insufficient evidence has been submitted to show the expiration of a period such that the enjoyment by the public of the ways during that period raises a presumption that the ways have been dedicated as public paths on land between Neston Road to Public Footpath 32 Ellesmere Port as shown on Plan NO MO/570

Background

1. Mr Robin Carr of 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 the addition of a public footpath running between Neston Road and Public Footpath 32 Ellesmere Port. The final report can be found at Appendix A.
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 subsists 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”

3. The Application Route runs along the alignment of an old lane (Ness Acre Lane) which, by reference to the Samuel Ryder Estate Map (1774) [App 5 pg. 74], is shown to have physically existed for at least the last 250 years. It is suggested that the lane became overgrown and eventually impassable by the later 1990's and that gates and fences were subsequently erected across the lane. There is therefore no suggestion of public use in more recent (post 2000) times.

Definitive Map and Statement

4. 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.
5. 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.

Conclusion

6. In December 2014 that the Wirral Footpaths and Open Spaces Society (the Applicants) submitted an application [App 2] for a Definitive Map Modification Order to record the Application Route on the Definitive Map as a public bridleway. The Application [App 2 2-5] was supported by 13 public rights of way user evidence forms [App 3] claiming evidence of use for the period 1946 - 2001 (55 years). The Application was also supported by a range of historic documentary evidence [App 5-13]
7. Six of the witness claim weekly use, with the remainder claiming only occasional use. Two users state they were given permission to use the Application Route, one of which was in the 1980's and six witnesses provide evidence of challenges to use in the 1970's, 1980's and 1990's. A summary of the user evidence is attached to this report under Appendix 4.
8. There is no clear evidence of any event which brought into question the existence of public rights, and there is a significant gap between the end of the period of use (2001) and the date of the Application (December 2014). As a result, the provisions of Section 31 of the Highways Act 1980 would appear not to have been triggered.
9. In view of the above, any user evidence-based case would have to rely upon dedication being inferred under the Common Law, which requires evidence of an intention to dedicate by the landowner. Given the evidence of challenges and permissions provided by eight of the thirteen witnesses over the period 1970's, 1980's and 1990's, it is unlikely that any intention to dedicate can be inferred on the part of the landowner.
10. Notwithstanding the above, the user evidence must still be considered alongside the historic documentary evidence in terms of the historic reputation of the way as a public right of way. As part of the investigations, searches have been conducted via both the local and national archives, along with other online resources and documents provided within the case file.
11. It would appear, by reference to the Samuel Ryder Estate Map (1774) [App 5] and Bryant's Map (1829-31) [App 8] that the Application Route physically existed as part of a longer through route, which was subsequently severed by the building of the railway. The deposited plans for the railway schemes [App 9-10] provide the first direct evidence of the actual status of the Application Route,

indicating that it was an “Occupation Road”. Such roads would usually be considered to be private in nature, serving as an access to land and property.

12. Whilst the Tithe Map and Apportionment [App 12] indicate that the northern section of the Application Route (A-B-C on Plan 1 [App1]) was not subject to tithe payments, it also shows the land over which the route runs to be in private ownership, as opposed to being listed as in the ownership of the Surveyor Highways, which might be expected if the route had any public status. Turning then to the Ordnance Survey mapping [App 13] these maps consistently depict a solid line across the Application Route at Points B and C (on Plan 1 [App1 pg. 1]) and this would normally be interpreted as being indicative that the lane was gated at these locations. Whilst the existence of such gates does not preclude the existence of public rights of way, their existence in this case is entirely consistent with the “Occupation Road” status defined within the deposited railway plans [App 9-10], and the evidence of private ownership in the Tithe Map and Apportionment [App 12].
13. Taking the evidence discussed above in the whole it does, with a reasonable degree of consistency point toward the Application Route being private in nature, and not subject to any public right of way. The position is not improved by throwing the evidence of public use [App 3] into the balance. The infrequency of evidenced public use combined with the evidence of challenges and permissions provided by eight of the thirteen witnesses over the period 1970’s, 1980’s and 1990’s, would not give rise to any inference of dedication on the landowner, or acceptance by the public.
14. In Conclusion whilst it is evident that the Application Route has physically existed for over 250 years, there is a consistency of evidence pointing towards it not being subject to any public right of way. Furthermore, the user evidence is insufficient to give rise to any presumption of dedication either under the common law or Section 31 of the Highways Act 1980
15. Accordingly, it is considered that the Definitive Map and Statement for Cheshire West and Chester should not be modified by addition of public paths as shown between A-B on the plan MO/570

Associated documents

Application file CWAC/007/DMMO.

Appendix 1 The Plan

Appendix 2 DMMO Application

Appendix 3 User Evidence (available on request)

Appendix 4 User Evidence Graph (redacted)

Appendix 5 Samuel Ryder Estate Map (1774)

Appendix 6 Hayes Lyon Estate Map (1834)
Appendix 7 Swire and Hutchins Map (1830)
Appendix 8 Bryant's Map (1829/1830)
Appendix 9 Chester Birkenhead Railway Branch (1845)
Appendix 10 Liverpool Birkenhead and Holyhead (1845)
Appendix 11 Birkenhead Railway Hooton Parkgate (1861)
Appendix 12 Willaston Tithe Map (1848)
Appendix 13 OS Maps
Appendix 14 Landowner Submissions (available on request)
Appendix 15 Consultants report and recommendation not including images.