

COMMITTEE PAPERS SUBMISSION LIST

Would authors please complete the following details before distributing this paper.

System Title
Draft Number > Final (Y/N)

Author > Miss Hayley Oakes
Designation > Public Rights of Way Officer
Telephone number > 01606 541832

If Different:

Contact Officer
Designation
Telephone number

Meeting Rights of Way Committee

Meeting Date > 3rd April 2006

Title of Report > Wildlife and Countryside Act 1981 - part III,
Section 53: Application 6/18 - 6/22: Application for
the Addition of 6 Footpaths on Land at Chester
Golf Club, Chester City.

Part 1/2 item Part 1
Part 2 reason (s)

No. Appendices > 2
No Plans > 1
Method of transport >

* Background Documents Public Rights of Way Files
Inspection Locations(s) PROW Unit, Phoenix House

Area Cttee Dimension Y/N
** Other Meeting Dimensions Y/N =

Local Member(s) Cllr S Mosley

Keywords

Distribution

Return Date

* The author is required by Law to declare such documents.

** Eg. Scrutiny Committee; Cabinet; Regulatory; etc.

MEETING : **RIGHTS OF WAY COMMITTEE**
DATE : **3rd April 2006**

REPORT OF : **JULIAN PELLATT, COUNTY RURAL AND RECREATION OFFICER**
Contact : Hayley Oakes, Rights of Way Officer
Officer : Tel: (01606) 541832 Email: hayley.oakes@cheshire.gov.uk

WILDLIFE AND COUNTRYSIDE ACT 1981 – PART III, SECTION 53:
APPLICATION 6/18 - 6/22: APPLICATION FOR THE ADDITION OF 6
FOOTPATHS ON LAND AT CHESTER GOLF CLUB, CHESTER CITY.

INTRODUCTION

1 An application was submitted in February 2000 by Mr D Fallon on behalf of the Ramblers' Association, to modify the Definitive Map and Statement by the addition of 6 footpaths over land at Chester Golf Club, Chester City owned by the Brewer's Hall Estate Company Ltd. Drawing No MO/523 shows the claimed routes at the following locations; route A-B: OS grid references SJ3905 6533 to SJ3898 6539, route C-F: SJ3896 6541 to SJ3875 6552, route D-X: SJ3893 6541 to SJ3861 6531, routes E-G SJ3859 6529 to SJ3874 6554 and route G-H SJ3874 6554 to SJ3959 6579.

2 The application was made following an application for planning permission being made by Brewer's Hall Estate Co Ltd. (to Chester City Council in October 1999) for the land over which route D-X is claimed. 30 user evidence forms were submitted with the application, together with a petition of 84 names of people claiming use, four letters from footpath users, and also railway plans and other historical documents. Of those people contacted two had died, one was no longer interested due to her age, two letters were returned and seventeen people did not respond. Fifteen people have been interviewed and have made statements; one of these people did not originally fill in an evidence form.

DESCRIPTION OF THE CLAIMED ROUTES

3 **Route A-B** runs from Mount Pleasant in a generally north-westerly direction, down a steep railway embankment following a clear line on the ground through low vegetation, it continues along the edge of a grassed playing field and under railway bridge number twelve, where there is a rough metalled surface, a total distance of approximately 120 metres.

4 **Route C-F** continues in a generally north-westerly direction from railway bridge number twelve along what is known locally as Cuckoo's Entry, a route which is hedged on both sides and has a natural surface. This path joins the route that is being claimed along the river bank and is approximately 250 metres in length. At point C there is a metal palisade fence which accommodates the use of pedestrians as a gap has been left to permit passage.

5 **Route D-X** runs from the eastern end of Cuckoo's Entry in a generally west-south-westerly direction, across a grassy field for approximately 315 metres to its junction with the route leading from River Lane. An old gate and post can still be seen at point D, though they are now very overgrown.

6 Both north and south **routes E-G** are on grassy tracks running from River Lane to the north-western end of Cuckoo's Entry. The southernmost route runs alongside the hedgerow between the disused quarry and the field through which route D-X is claimed and the northernmost route runs along the top of the embankment. Both routes are approximately 300 metres in length. At or close to point E there is a metal palisade fence which accommodates the use of pedestrians as a gap has been left to permit passage.

7 For approximately the first kilometre, **Route G-H** runs alongside the River Dee on the top of the river embankment, it then turns in a generally south-easterly direction for approximately 200 metres then in a generally south-westerly direction for approximately 150 metres to the former site of Brewer's Hall. The path then leads in a generally southerly direction down to the golf club maintenance area on a grassy and earthy track, from there it follows a made up track to the golf club, through the tarmacadam car park and over Railway bridge number 10 to join Curzon Park North. This route is just over 2 kilometres in length. There is a structure at each entrance to the golf club car park - at the railway bridge end there is a lockable metal structure and at the course end of the car park is a metal field gate that can be locked to a post at one side; there is a gap to the side of this gate that people can get through. Together the 6 claimed routes total about 3 kilometres in length.

THE MAIN ISSUES

8 Section 23(2)(b) of the Wildlife and Countryside Act 1981 imposes a duty on the County Council to 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. One such event (section 53(3)(c)(i)) requiring modification of the map by the addition of a right of way is the discovery of evidence by the council which, when considered with all other relevant evidence available, 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”

and that as a consequence the Definitive Map and Statement require modification. All the evidence in support of this application must be evaluated and weighed and a conclusion reached whether on the balance of probabilities either the alleged rights subsist or are reasonably alleged to subsist. Any other factors such as safety, suitability, security, desirability, privacy or the effects on property or the environment are not relevant to the decision.

THE LEGAL BACKGROUND

9 Where the main body of evidence in support of the application is user evidence, section 31 of the Highways Act 1980 states;

“Where a way...has been enjoyed by the public as of right and without interruption for a full period of 20 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 secrecy, force or permission. The 20 year period of use must be calculated retrospectively from the date when the right of the public to use the way is brought into question

10 Dedication can also occur be inferred in accordance with common law rules. The same factors discussed at paragraph 9 above in relation to s31 apply to inferring dedication at common law, however the period of use required by a common law test is not fixed at 20 years and has been as little as eight, six and even three years. Evidence of use raises a presumption at common law that the landowner intended to dedicate the way. The burden of proof is on the applicant to show that the facts, taken as whole, indicated this intention to dedicate.

CONSULTATIONS

11 Chester City Council and the Local Member were consulted and no responses were received there is no parish council for Chester City. Letters were also sent to the landowners, occupiers and other people who had expressed an interest in this application.

LANDOWNERS/OCCUPIERS

12 Land Registry documents reveal that the land over which the routes run is in the ownership of two bodies: Brewer's Hall Estate Co. Ltd. who own the golf course and the field through which route D-X is claimed and Cheshire County Council who own the land directly adjacent to River Lane.

OBJECTIONS

13 Brewer's Hall Estate Company and their tenants Chester Golf Club have both objected to the application. Brewer's Hall Estate Company is effectively a property company that leases the land that it owns to the Golf Club; the Golf Club members are the only shareholders of that company.

14 In 1999 Brewer's Hall Estate put up notices to the effect that use of this route was on a permissive basis and also deposited with the County Council a map and statement under section 31(6) of the Highways Act 1980 as evidence of their lack of intention to dedicate any public rights of way.

15 The objections of the Golf Club were initially raised (on 27th January 2000) before the application was received by the County Council, there had previously been discussions between Chester Golf Club and the local representative of the Ramblers, which subsequently broke down, partly due to the amount of local interest in this case. The Golf Club management were amenable to allowing some access on a concessionary bases, but disputed any claims for rights of way over land that they tenanted. In a letter dated 9th February 2000 the Golf Club objected on 3 grounds:

15.1 That the application was premature.

15.2 That no rights of way had been established (notably near the clubhouse) as the paths have been gated and locked for many years at night, weekends and all day on Christmas Day.

15.3 That some of the paths have been formed by recent trespass and unauthorised use.

The Golf Club management expressed a willingness to negotiate and reach a mutual agreement with the Ramblers. (Letter of 17th February 2000) their main concerns were with the internal paths on the River Lane land to the south-west of the site.

16 In a further letter (of 18th May 2000) the Golf Club were informing the County Council that they had declined an offer from the Rambler's to discuss diverting the footpaths on Golf Club land - this was because the status and line of any footpaths was yet to be determined. Following a meeting (in October 2005) with the County Council, the Golf Club management expressed the concerns that they still had. It was emphasised that due to the lack of clarity as to the exact routes of the paths being claimed the objection was in principle. However they also expressed several other points, which were;

- 16.1 That they have no fundamental objection to the route from Curzon Park North to the river bank and along River Lane (route E-G-H), but precision is required.
- 16.2 That they have no objection to the application for the route known as Cuckoo's Entry (C-F); although there are reservations as to how it would affect the Golf Clubs plans to extend the course beyond this route. Safety concerns were raised at the meeting about the possibility of balls crossing the route; security issues were also raised, because if both areas were to be played separately then entry to both sections of the course would need to be open.
- 16.3 Providing that the position of both routes E-G are on the river side of the embankment then the Golf Club may accept although they do not understand the need for two parallel routes; and finally,
- 16.4 The Golf Club steadfastly object to route D-X, which runs diagonally across the field to the south-east of the golf course, the Golf Club bought the extra field from British Rail in 1984, previous to which it was let by them for cattle grazing. It was totally secure with fencing at that time and for several years afterwards.

17 The grounds of the objection were that rights of way cannot be acquired on railway land and that access to this area has only been gained by the destruction of fences and other barriers since around 1990 therefore walking has been a trespass. In 1999 when the Club put up notices granting permissive access on the routes claimed, no permission was given for use of the field where route D-X is situated. It was observed that there could not be 20 years use on that particular route between the land being sold in 1984 and their deposit under s31(6) of the Highways Act in 1999.

INVESTIGATION

18 This application was supported by user evidence from 30 witnesses. Attempts were made to contact all witnesses, but only fourteen people replied and were willing to be interviewed. Three further evidence forms were received on commencement of the investigation and one other person was interviewed by telephone. Some documentary research was undertaken to establish whether any of the claimed routes had any historic foundation.

Documentary Evidence

19 Details of all the documentary evidence taken into consideration can be found in **Appendix 2**. The standard reference documents have been consulted in respect of this application. There is no Enclosure Award for this area and no reference to the route in the Quarter Sessions records. There is no parish council for Chester City and therefore no parish records available to consult.

County Maps

20 These are small scale maps made by commercial map-makers, some of which are known to have been produced from original surveys and others are believed to be copies of earlier maps. Although they do not provide conclusive evidence of public status, they can provide supporting evidence of the existence of a route.

21 Swire and Hutching produced an independent survey of Cheshire which was published in 1830. On this map there is a route depicted by two solid parallel lines in the approximate position of part of the claimed route G-H. This symbol is not defined in the key. A route located in a similar position as part of the claimed G-H is depicted with double pecked lines on Bryant's map of 1831; this symbol is not defined in the key. The claimed routes are not shown on the other maps purporting to be independent surveys; Burdett (1777) and Greenwood (1819).

Tithe Award

22 Tithes were a local payment 'in kind' of one tenth of the produce of the land which was originally levied to maintain the incumbent of the parish church. Tithe Maps and Apportionments were prepared under the Tithe Commutation Act of 1835, the purpose being to record productive land for which an annual monetary charge could be made in lieu of the payment in kind. Although it was not the purpose of an award to record public highways, they can provide good supporting evidence of the existence of a route, however the omission of a route is not evidence that it did not exist.

23 The St Mary on the Hill (part 1) tithe map covers the area where the claimed routes are situated. A route running parallel to the river (part of G-H) is coloured brown between two double pecked lines it is given the number 30, in the apportionment this is described as "Cop" and is owned by the mayor and citizens of Chester, with the occupants being the guardians of the poor. This part of the route ends on the river meander, north of Brewer's Hall there is no continuation to the buildings at Brewer's Hall. From the south of Brewer's Hall there is a route coloured pale yellow which runs alongside plots 5, 9 and 11 also following the line of part of route G-H, it is numbered 10. This is owned by the River Dee Company and the Right Honourable Lord Howe and continues to the tip of plot 23. Route E-G can also be seen as part of area 30. Routes A-B, C-F and D-X cannot be identified on the tithe map.

Ordnance Survey Maps

24 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 applied to earlier maps also.

25 The 2nd edition 6" map of 1899/1900 has two sheets relevant to the claimed routes. On sheet 38 SW route A-B is shown as fenced or having a physical boundary on the north side, and is open on the southern side. From under the railway bridge route C-F is shown as an enclosed route to meet with route E-G. Route E-G can be seen as double pecked lines, closer to the most southerly route of the two claimed, stopping where it joins route C-F.

Route G-H is not illustrated, but has the notation “FP” on the canalised section until the river meander where double pecked lines lead south to Brewer’s Hall and from there further south as an enclosed route and further as double pecked lines to the railway bridge.

26 The 1913 edition 6” map shows route A-B as the 2nd edition does. Route C-F is shown as an enclosed route and is annotated “FP”. Route E-G is shown as on the 2nd edition, though running a little further north to the end of the railway tracks. Route G-H is shown with a boundary on the southern side and open on the northern side marked “FP” alongside the river. Round the meander is shown as double pecked lines, also denoted “FP”, and south of Brewer’s Hall as an enclosed route leading to double pecked lines continuing south to the railway bridge.

27 The 1st edition 25” map of 1872 has three sheets relevant to the claimed routes, the sheet showing the south-western section (routes A-B, C-F and E-G) is missing. The position of route G-H is shown almost entirely on the other two sheets by the embankment markings, it is difficult to say whether or not there are double pecked lines denoted as well. The embankment continues around the meander. South of this there is no indication of a route. South of Brewer’s Hall an enclosed track illustrated with parallel solid lines runs to the southern edge of the wood. Thereafter an unenclosed track shown by parallel pecked lines can be seen leading almost to the railway, at the bottom of the map sheet.

28 The 2nd edition 25” map of 1899 also has three sheets relevant to the claimed routes. Route A-B is shown as parallel pecked lines and continues east where it is denoted “FP”. Route C-F is shown as an enclosed route continuing to join route E-G, which is shown as parallel broken lines on the alignment of the southern route. Route G-H is again recognised by the embankment markings, and annotated “FP”, this continues to the meander. From there the route continues as parallel pecked lines to Brewer’s Hall, and then continues south as an enclosed route and further as parallel pecked lines towards the railway bridge at the bottom of the map sheet.

29 The 3rd edition 25” map of 1910 also has three sheets relevant to the claimed routes. One of which (that showing the north-eastern section) is missing. Route G-H is shown running alongside the embankment enclosed on one side, annotated “FP”. From south of Brewer’s Hall the route is enclosed down to the southern tip of the wood and then continuing as parallel pecked lines to the railway bridge. The southern route E-G is shown with parallel pecked lines meeting Cuckoo’s Entry, which is shown as an enclosed route to the railway bridge. Route A-B is shown as parallel pecked lines and annotated “FP” further to the east.

1910 Finance Act

30 The Finance Act of 1910 involved a national survey of land by the Inland Revenue so that an incremental value duty could be levied when ownership was transferred. Landowners could claim tax relief where a highway crossed their land. Although the existence of a public right of way may be admitted, it is not usually described or shown as a route on the plan.

31 Two sets of plans were produced; the working plans for the original valuation and the record plans once the valuation was complete. These were made on OS 25” to the mile 3rd series 1909/1910 base maps. Two sets of books were produced to accompany the maps; the field books, which record what the surveyor found at each property and the so-called ‘Domesday Book’ which was the complete register of properties and valuations.

32 The claimed routes extend over two map sheets; both were available in the county record office. The OS base information shows routes G-H, A-B, C-F and E-G. On sheet 38.14 there are several hereditaments outlined in red, and given individual numbers, three of these (10174, 10760 and 10761) are areas that have the claimed routes A-B, C-F, E-G and G-H in them, the hereditaments were owned by Earl Howe and the Great Western Railway Company. If a route is contained within a hereditament the inference is that it is viewed as private, there were no deductions made for public rights of way across these areas. Sheet 38.10 has no shading on it and is therefore of no evidential value. Route D-X is not shown on the OS base mapping.

Railway Plans

33 Railway plans had to be produced prior to a railway company obtaining an Act of Parliament authorising the construction of their intended railway. The maps covered the limit of deviation to either side of the intended railway with plot numbers for the land and public and private routes, which are referred to in a book of reference, which can be used to identify land use and reputed owners and occupiers. The plans were placed on deposit for public consultation. As these documents were produced under an Act of Parliament they are generally good evidence, but lack of construction does not necessarily reduce the value of the document.

34 **Twenty eight** railway plans were consulted in all, four provided evidence of parts of the claimed routes. The earliest plan showing any of the routes is the Chester and Holyhead Railway 1843 (QDP/176), which shows part of route G-H on the embankment of the River Dee as being owned by the company of proprietors of the navigation of the River Dee. The part of G-H south of what was Brewer's Hall is described in the book of reference as an "occupation road owned by Earl Howe". Part of this proposed railway was built.

35 The Birkenhead Railway plan of 1852 (QDP/316) shows a route going under the Chester & Holyhead railway (route C-F), which is shown within the limit of deviation of this plan, this goes through plot 14, 15 and 16 which are described as "field and footpaths" or "fields" in the book of reference, all owned by Earl Howe, the route continues unnumbered in the position of route A-B. The southern part of route G-H is also shown and described in the book of reference as an "occupation road", owned by Earl Howe. This line was not built.

36 In 1893 the London and North Western and Great Western Railway Company drew up plans to widen the Chester and Holyhead Railway - Saltney Junction to Chester (QDP/678). The southern section of route G-H appears to be shown as part of plot 10, described in the reference book as "occupation road, grassland and public footpath", owned by Earl Howe. The line of claimed routes A-B and C-F can be seen on this plan, but are outside the area proposed for widening, and therefore do not have reference numbers attributed to them and are of no evidence of status.

37 The 1898 London and North Western Railway (Wales) (plans and sections of additional lands and buildings) Parish of Saltney shows plot 2, the west end of Cuckoo's Entry as an enclosed route with solid lines on both sides, it is described in the reference book as an "occupation road and public footpath", owned by Earl Howe and the Mayor, Aldermen and Citizens of the City and County Borough of Chester. Plot 3, the remainder of Cuckoo's Entry, is shown as a route bounded with solid black lines with a pecked line down the centre; it is described in the reference book as a "public footpath" and is also owned by the Mayor, Aldermen and Citizens of the City and County Borough of Chester.

This document provides strong evidence of the existence of a public right of way for the claimed route C-F.

River Dee Survey Plan (QDP/164)

38 This document shows a survey of the River Dee in 1839, a route coloured yellow is shown and numbered 76b running alongside the river from the county boundary to the north side of Brewer's Hall (part of G-H). It is described in the book of reference as "Road or Pasture Land" and is owned by Lord Howe. The route continuing just south of Brewer's Hall is coloured orange/brown and has no number assigned to it.

Local Authority Records

39 The National Parks and Access to the Countryside Act 1949 parish survey was undertaken in 1953 and submitted to the County Council for inclusion in the Draft map stage of the Definitive Map process. Chester was excluded from the Definitive Map process as it was designated a 'fully-developed area' under section 35 of the Act. A Definitive Map & Statement for the excluded area has since been produced with a relevant date of 21st March 1996.

USER EVIDENCE

40 The user evidence from the witnesses is summarised in **Appendices 1a - 1e**. There were initially thirty interested witnesses, but only fourteen of these were inclined to be interviewed, one over the telephone, three further forms were received once the investigation was commenced.

Route A-B

41 Eighteen people had used this route, all on foot except one who had used the route with a vehicle. Of those, twelve were interviewed; no information relating to the claimed vehicular use could be obtained. Eight of the witnesses used the route at least daily, some twice daily as this is a popular dog walking route. Five people used the route less than monthly and considered their use irregular. The other witnesses used the route monthly or weekly. Together with the other claimed routes this forms a circular route that is used for leisure and dog walking.

42 If 1999 is taken as the critical date, 20 years user without force, secrecy or permission is required prior to this date. Eleven users have the full 20 year period prior to 1999, eight of whom were interviewed, three other users who were also interviewed have 13, 14 and 19 years of use respectively. Nobody using this route has been given, or asked for permission and their use was not challenged prior to the erecting of the notices, use continues.

Route C-F

43 This route has been used by 28 people, all of whom used it on foot apart from one claiming to have used it with a vehicle. Fifteen of those people using the route were interviewed. Fourteen people have used the claimed route for the full 20 year period, with seven more having between 13 and 19 years continuous use. Use has been on a daily basis for fourteen of the witnesses, four have used the route weekly and seven have used it monthly or less frequently. According to witness recollections a metal fence has been erected at or near point C at an unspecified date (but within the last 20 years), this did not prevent pedestrian access. In 1999 notices were erected at the beginning and end of this claimed route by the Brewer's Hall Estate Company, so this date is taken as the challenge date.

In the past eighteen months the users themselves have surfaced the route apparently without reference to the landowner.

44 If 1999 is taken as the critical date, 20 years use before that date is required. None of the users were ever given nor did they ask for permission to use it and their use was not challenged until the signs were erected. Several of the witnesses do recall structures including gates and ladder stiles at both ends of this route. Use of the route has generally been part of a circular dog walking route, though some has also been for recreation.

Route D-X

45 This route has been used by eight people on foot, seven users have been interviewed. When the golf club bought the land in 1984 it was fenced and remained so for several years, as described in paragraph 16.4, this date is therefore taken to be the initial challenge to use. One user recalls cows grazing in Shaw's field until about 30 years ago, and an occasion when they escaped and were seen in Mount Pleasant. Actions described by users in their witness statements include the golf club dumping rubble and mounds of dirt in the ditch along the edge of Shaw's field adjacent to Cuckoo's Entry, which lead to people walking around the piles of soil and making more routes in the field. A failure by the landowner to remove a fallen tree caused the users to take action to remove it.

46 If 1984 is to be taken as the initial challenge date then 20 years use back to 1964 is required. There are three people that claim to have used this route for the full 20 year period and one other who claims 16 years of use during this period, all four were interviewed. Only one user claims daily use, another describes at least part of their use to be for work purposes when he was a signalman and then only monthly use afterwards and the other person describes use on a weekly basis. Three of the witnesses recall a gate or stile at or near point D. People have used the whole of Shaw's Field as a recreational space.

Route E-G

47 There are ten people who have used this route on foot; all the users have been interviewed. The applicant claims two routes between points E and G that run almost parallel, witnesses were asked to specify which of the two routes they had used. Eight out of ten had used both routes, one person did not respond and one person was unsure as to the alignment they had walked. Use was on a daily or more frequent basis for seven people, two of the witnesses use it weekly and one only monthly. A lot of the most frequent use was for dog walking, some was also for recreation and pleasure.

48 A metal fence was erected at or near point E at an unspecified date, within the last 20 years according to witness recollections, though this did allow pedestrian access to continue. Notices were erected at the ends of this route in 1999 by the landowners; this date therefore becomes the date of challenge. Seven of the ten users used the route for the full 20 year period back to 1979; the other three people have used the route for 14, 15 and 19 years within that period. None of the users have been challenged, nor have they asked for or been given permission to use the route, most of the use is daily as it is a popular dog walking route, other use is on a weekly basis for pleasure.

Route G-H

49 This route has been used by twenty one people, twenty of whom used it on foot with one person claiming to have used it with a vehicle. Of those people who provided evidence of use 15 have been interviewed. Brewer's Hall Estate Company put up notices at both ends of this route in 1999, and this is taken to be the date of challenge, meaning 20 years continuous use back to 1979 is required. The route is used as a dog walking route and is also walked for pleasure and recreation.

50 Eleven of the people providing evidence have used the route for the full 20 year period and of these, nine have been interviewed. Another six people have used the route for more than 14 years and four of these people have also been interviewed, the remaining four witnesses have used it for less than 5 years within that period. Twelve people have used the route on a daily basis, three have used it weekly and five people have used it monthly or less frequently.

Several of the people providing evidence for this route recalled various structures about halfway along the length of the cop; these include iron gates and post and wire fences. One witness recalls that the barrier at the golf club car park was put in at the same time that the metal fences were erected at River Lane and at the railway bridge, she says that this was around 5 years ago (2000). Users have not been challenged and they have never asked or been given permission to use this route.

CONCLUSIONS

Route A-B

51 There is some documentary evidence to show that a route physically existed in this location, the earliest evidence being the Birkenhead Railway Plan of 1852, followed by a range of OS maps between 1872 and 1913. The user evidence submitted shows that the majority of public use by pedestrians has been since the mid 1960s to the present day, a period of over 40 years. The required twenty years user can therefore be shown to have occurred from 1979 to 1999, at which point use was brought into question by the erecting of notices on site by the landowner. When all the evidence is considered it is sufficient to show that on the balance of probabilities a public footpath may presume to have been dedicated through use by the public for a period of twenty years.

Route C-F

52 There is some documentary evidence to show that a route physically existed in this location. The Birkenhead Railway Plan of 1852 and the London and North Western Railway (Wales) plan for the additional lands and buildings in Saltney of 1898 show the claimed route recorded as a public footpath. The OS maps from 1872 to 1913 show the physical existence of a route at these times. The user evidence shows that the majority of use by pedestrians has been since the mid 1970s, and that pedestrian access was not prevented by the erecting of fencing, use continues today. Twenty years use between 1979 and 1999 when notices were erected can therefore be shown, thus raising the presumption that a dedication of the route as a public footpath has occurred.

Route D-X

53 One map purporting to be the 1st edition 25" OS was provided by a witness, which showed a physical route on the ground in 1878. No further historical evidence for this route was found. The user evidence shows that only four people had used a route within the specified twenty year period, between 1964 and 1984; it was not possible to define one route that witnesses had used as the whole of the field had been used for recreation and dog walking. The fencing allowing pedestrian access together with the evidence of use could be argued as a common law dedication.

However in the light of the Golf Clubs' efforts to prevent use of this route which was viewed as a trespass it cannot be concluded that the route has been dedicated under common law and there is insufficient evidence to show that on the balance of probabilities a route subsists or is reasonably alleged to subsist in this location.

Route E-G

54 There is some documentary evidence to suggest that a route existed equating to the southern route claimed between points E and G, the St Mary on the Hill Tithe of 1842 describes this route as "the cop", which is in public ownership. The OS records between 1872 and 1913 generally show the physical existence of the southern route throughout this time. The northern route is in the approximate position of the Shrewsbury & Chester railway branch line that ran to the Saltney Wharf, this railway disappeared between the 1925 and the 1961 OS revisions of this area. The route was not physically in evidence on any of the other historical documents researched. The user evidence shows that six people used both the north and south routes for the full 20 year period, one other used both routes for 15 of those years, one person has used a route between the two points for the full 20 years but cannot specify which one and the last person who has used a route for 19 years did not reply to the question of which route they had used. The strong user evidence for both these routes, coupled with the supporting evidence for the southern route has lead to the presumed dedication of two public footpaths between points E and G as illustrated on plan MO/523.

Route G-H

55 Documentary evidence suggests that a route existed on the ground on this alignment, as far back as 1830 where the route is shown on two of the county maps, but not as a category recognised in the key. The tithe map also shows the route being partly in public and partly in private ownership, the enclosed section south of Brewer's Hall being privately owned. The OS maps show the physical existence of the route, and in some instances it is marked FP. The railway plans of 1843 and 1852 describe G-H south of Brewer's Hall as an "occupation road" in private ownership, in the 1893 plan this same section is described as "occupation road, grassland and public footpath", also in private ownership. The user evidence shows that there are 17 people who have used the route for more than 14 years within the 20 year critical period. This user evidence together with the supporting historical evidence is sufficient to show that the route has been presumed to have been dedicated as a public footpath.

SUMMARY CONCLUSION

56 The evidence in respect of Routes A-B, C-F, E-G and G-H is sufficient to show that, on the balance of probabilities, public footpaths are reasonably alleged to subsist along those routes and therefore the legal test contained in s31 of the Highways Act 1980 is satisfied. The evidence in respect of route D-X is not sufficient to show that the alleged public footpath subsists or is reasonably alleged to subsist and therefore the application in respect of that route should be refused.

RECOMMENDED that:

1) An Order be made under Section 53(3)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement to show the claimed routes A-B, C-F, E-G (north and south) and G-H as public footpaths, as shown on Drawing No MO/523.

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 powers conferred on the County Council by the said Act.

3) That the application for route D-E be refused on the grounds that insufficient evidence has been submitted to show that public footpath rights subsist or are reasonably alleged to subsist on the route shown on Drawing No MO/523.

Local Member	Cllr S Mosley
Background Documents	Public Rights of Way Files
Available for Inspection at	PROW Unit, Phoenix House, Winsford