

# CHESHIRE WEST AND CHESTER BOROUGH COUNCIL

## OFFICER DELEGATED DECISION REPORT

<b>Application Number</b>	<b>CWAC 005/DMMO</b>
<b>Description</b>	<b>Wildlife and Countryside Act 1981 – Section 53 Application for a Definitive Map Modification Order Addition of footpaths to the Definitive Map of Public Rights of Way</b>
<b>Location</b>	<b>From Parkgate Road, Mollington and Shelly Road to Browning Close, Blacon as shown on Plan No. MO/558.</b>
<b>Applicant Name</b>	<b>G Emery, Chester</b>
<b>Ward</b>	<b>Saughall and Mollington</b>
<b>Ward Members</b>	<b>Councillor Brian Crowe</b>
<b>Case Officer</b>	<b>Adele Mayer, Public Rights of Way Officer tel: 01606 271822</b>
<b>Date</b>	<b>30 August 2016</b>

### **Recommendation:-**

That 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 Parkgate Road, Shelley Road, and Browning Close as shown on Plan NO MO/558

### **1. BACKGROUND**

1.1. On 13<sup>th</sup> September 2013 Cheshire West and Chester Borough Council received an application in accordance with Section 53(5) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) seeking the addition of multiple footpaths along the routes shown on the application plan between points A to N (see Appendix C) transcribed with additional lettering on the attached report plan No. MO/558 (“the Plan”). The Council as Surveying Authority has the power to add footpaths to the Definitive Map and Statement (“the DM”).

- 1.2. The application was submitted under Section 53(3)(b) of the 1981 Act; that a sufficient period of time has elapsed during which the public has used the claimed routes, such that it can be presumed that the routes have been dedicated as public rights of way.
- 1.3. The land in question is owned by Mrs S Cadwaladr of Chester (previously this included Mr Cadwaladr), Mr S Boyling of Mollington, and Trustees of the Canal and River Trust (formerly British Waterways Board). Historically, the majority of the land in question formed part of Crabwall Hall Farm, Mollington. Also, a small parcel of the land adjacent to Parkgate Road had for a short time been previously in the ownership of the Council. Currently the land is occupied by a tenant farmer, Mr Wyatt of Burton.
- 1.4. Notice of the application had been served on the landowners by the Applicant. However, when investigated further, it was apparent that not all of the landowners had been served with the requisite Notice. This point does not in itself nullify the application; as it had been submitted correctly under paragraph 1 of Schedule 14 of the 1981 Act. Paragraph 2 of Schedule 14 refers to the service of notice, which when correctly implemented will trigger a 12 month period within which time the Authority must determine the outcome of the application. With any application, the evidence that has been submitted means that at some point the Authority must make a decision under its duty to act on the “discovery of evidence”.
- 1.5. It is relevant to note that a large housing estate lies over fields to the south of the area of the application site. The estate was constructed largely by Chester City Council during the period 1950 to 1960 with further development taking place in the 1960’s and 1980’s and re-furbishment in the 1990’s.
- 1.6. It is understood by the Applicant that in 2013 a new fence was constructed that obstructed access from Parkgate Road which prevented the right of the public to use some of the pathways. This obstruction provided the trigger point for this application. As a consequence, a date in 2013 is when the right to use the pathways was “brought into question.”

## **2. THE LEGAL TESTS**

- 2.1. Section 53(2)(b) of 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. Section 53(3) sets out the events in question. Section 53(3)(b) provides that a route should be added to the DM on:-

- 2.2. “the expiration...of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path...”
- 2.3. There are two ways in which a sufficient “period of enjoyment” can be established in order to raise a presumption or inference that the way has been dedicated for the purposes of Section 53(3)(b). Firstly, this can be achieved by meeting the requirements set out in Section 31 of the Highways Act 1980 (“the 1980 Act”). The requisite “period of enjoyment” can be demonstrated by satisfying the requirements of “common law”, or law established through a series of cases that have been determined by the courts.
- 2.4. If it were a recognised public right of way the route has to be “actually enjoyed” and therefore it would be reasonable to expect that a claimed route of way in an urban area has a far greater use than in a remote rural area. A common law case claim has to satisfy a higher test in that the overall circumstances must show that the landowner has consented to the use.

### **3. SECTION 31 HIGHWAYS ACT 1980 (“S31”)**

- 3.1. In order to satisfy the requirements of Section 31, use of the way by the public must have been for at least 20 years and the use must have been uninterrupted. Section 31(2) provides that the 20 year period is to be calculated retrospectively from the date upon which the right of the public to use the way is brought into question.
- 3.2. Section 31 (7A) of the 1980 Act (as amended by section 69 of the Natural England and Rural Communities Act 2006) provides for the application to apply as the matter bringing the right of public to use the way into question. The period of twenty years is calculated retrospectively from September 1993 to the receipt of the application in September 2013.
- 3.3. Section 31 also requires that the public use made of the route during that 20 year period, was uninterrupted, and that the use was made “as of right”, i.e. without secrecy or force or the permission of the landowner.
- 3.4. There must be sufficient use by the “public at large” who have actually enjoyed the route for the required period. There is no prescriptive number of people who should represent the “public at large”, however it should be enough to represent the public in the context of the claim. One or two people may be said to be exercising a private right, however three or more unrelated people may be said to be representative of the public. This

application is for deemed rights adjacent to a suburban area and it would be anticipated that there would be more than a handful of people that would support application and be representative of the public at large. In this particular application and for some of the pathways there are only 1 or 2 witness claims. Evidence for those paths has been evaluated and considered to be insufficient to represent the public at large.

- 3.5. **Without interruption**; where it is intended to prevent the public use of a way. This would include the locking of a gate.
- 3.6. **User “as of right”** would be a user exercising a right without force, such as breaking locks or using any other sort of force to create a passage
- 3.7. **User “as of right”** would be a user exercising a right without secrecy so that the owner must have been able to object if they wish to do so.
- 3.8. **User “as of right”** would be a user exercising a right without permission, either expressly such as a notice or impliedly for example by permitting the public to walk at will over an area of land. Use by permission by some users will not prevent use by the public in general.
- 3.9. If uninterrupted user, “as of right”, for the 20 year period can be clearly demonstrated , then it is presumed that a public right of way has been dedicated unless there is sufficient evidence to show that the landowner did not intend to dedicate the route as a public right of way. Evidence of this nature (to demonstrate the contrary intention) will typically be of steps undertaken by the landowner during the period of time in question to prevent use by the public or to disabuse the public of the notion that their user of the way was “as of right”.

#### **4. COMMON LAW**

- 4.1. The rules relating to presumed dedication under common law dedication differ slightly from the rules under Section 31. The differences are however only material when presumed dedication under Section 31 cannot be demonstrated. If, for example, reliance was required on some period of use less than 20 years duration, or if reliance was placed on a period of user expiring at some point before an identifiable act which brings into question the public’s right to use the way, then resort to the common law rules of dedication may be necessary.
- 4.2. It is however the case in this application that there is insufficient evidence of a common law dedication of rights over and above that which meets the statutory test. Therefore, for the purposes of this report there is no need to

distinguish between the two tests for the purposes of the conclusions drawn.

## **5. Witness EVIDENCE**

5.1. The application for the Order was accompanied by seventeen witnesses who have claimed to use some or all of the ways and one other person came forward during the investigation. Five of the witnesses have been interviewed. All of the witnesses claimed use on foot. The user evidence submitted collectively covers a period of use dating back from 1976 to the date of submission of the application in 2013. The user evidence is summarised in the chart at Appendix A.

5.2. The paths claimed have been divided into segments that connect as linear routes in order to quantify and assess the user evidence. The “relevant claim” period referred to in the following text is considered to be September 1993 to September 2013. The points referred to in the text are all referenced on the plan.

5.3. The claimed routes are as labelled on plan MO/558 attached.

### **5.4. Route A/A2-C: From Parkgate Road, Chester to field pond.**

Eight people have claimed the use of this route. Use is variable dating from 1977 to 2013. Of those users, there are four people who state that they have used the route during the whole of the relevant period (i.e. September 1993 to September 2013). One person claimed daily use, whereas other use was either on a weekly or more occasionally monthly basis. The route was primarily used for dog walking. One person records a sign stating that “trespassers will be prosecuted”. As this witness was not interviewed, the exact location and date of the sign cannot be identified. The access at point “A” is described as a one bar fence with a steep and dangerous access which later moved to another point. One witness who did not date the event on the witness form referred to 2 planks of wood being placed across the route at point “A2”.

### **5.5. Route L-A: From Mollington Banastre, Parkgate Road to the canal bridge, Parkgate Road.**

The claim is for a right of way that runs within and along the field although some users have stated that they only walked along the footway on Parkgate Road. There is a field gate with the road at point L. Witness evidence from eight individuals claim variable use of this route from 1976 to 2013, with only 5 of the 8 witnesses covering the relevant user period. Two witnesses have stated they used the route daily or more frequently but generally the use revealed on the forms is 3 times or more a month. Use was not always to access or exit at point L but the corner at L was part

- of a longer walk around the field. Two witnesses sometimes used the footway on the road rather than the field path, using the exit at point L. Use was generally for leisure purposes, for either access to one of the public houses situated on Parkgate Road or dog walking. One witness noted that the access at point L had been obstructed by a mound of earth deposited in 2012. Two witnesses noted that a sandstone wall boundary along the Parkgate Road had been removed many years ago and had not been replaced. One other witness stated that they had met with the landowner and had been granted permission to walk along the route.
- 5.6. **Route K-L The route follows the field edge and at point K there is a broken metal field gate.** One witness claimed that there was sufficient space to the side of the gate to get past. Ten witnesses claim variable use of this path since 1976; only six of these witnesses cover the relevant user period. Use is often daily or more frequently. Two witnesses suggest that they are more likely to walk in the summer whilst the other user is weekly or less often. Use is for leisure purposes i.e. going to the public houses or dog walking.
- 5.7. **Route G2-K west side:** At point G2 there is a broken metal fence. This fence delineates the boundary between fields. Six witnesses claim use of the route with four covering the start of the relevant period. Use is claimed on a daily basis or more by two witnesses and less frequently by the other 4 witnesses. Use was for leisure purposes i.e. to access the public houses on the Parkgate Road and for dog walking or fruit picking.
- 5.8. **Route G-K east side:** At point G there is a gap in the hedge line between fields. 5 witnesses claim use of the path at variable times over the relevant period. Use is twice daily by two users and less frequently by three. Use is for leisure purposes with the family or dog walking.
- 5.9. **Route M-G:** Nine witnesses claim use of the path, five during the relevant period in question. Use is once or twice a day by two witnesses less frequently by the remainder. Use is for leisure purposes, i.e. walking with the family, dog working or for access to public houses on Parkgate Road
- 5.10. **Route J-M2:** At point J there is a gap in a metal palisade fence line implied by the thin vertical rails which have been distorted to allow egress. A second fence line runs within the field along a steep bank. One witness described the remnants of the second field fence and said there used to be a stile but currently there is a gap. There are seven users, three of whom cover the relevant period. Use is daily or less frequent, primarily for dog walking, leisure and exercise (running).
- 5.11. **Route H-G:** At point H there is a gap in the metal boundary fencing indicated by missing vertical rails. One user stated that there had been welded bars over the access at point H although no date for this is known or stated. Two witnesses claimed the access point had previously been wider, one saying it had been located at a different point than where it is currently. Five witnesses claim use, all of whom cover the relevant period.

- One witness used the route daily or more often otherwise use was less frequent. Use was for leisure purposes and dog walking.
- 5.12. **Route E-M:** There is a gap at point E in the metal fence line. One witness recalled that 15 years ago part of the fence had been removed by firemen when someone was impaled on the fence spikes. The metal railings have been bent to allow egress. Five witnesses claimed use of this route and cover the relevant period. Of the five witnesses only two claim having used the access point at E once or twice. Generally the access was not at point E but the route was part of a longer walk from Parkgate Road. Only one witness claimed use on a daily basis but generally use was less frequent. Between M and M2 there is a metal fence line with a metal field gate and any access is now overgrown.
- 5.13. **Route E-G:** Six witnesses claim use of the path and three cover the relevant period. Daily or weekly use is for dog walking or leisure.
- 5.14. **Route E-D:** There is a wide gap in the hedge/fencing at point D where a ditch runs within the hedge boundary on the field side. This appears as a well-trodden path between metal railings, with large concrete boulders on one side. One witness claims use of this access point but use does not cover the full relevant period.
- 5.15. **Route E-C:** As above, gap in the metal railings at point E. One witness refers to the gap in the railings and walking under a pipe. The user evidence forms are not sufficiently detailed to show whether all users went under the pipe as shown on the map with the application. This route is part of a continuous line to point A on the Plan. Nine witnesses claim use of the route of which five cover the relevant period. The use is claimed for recreational or dog walking purposes either daily or more frequent to seasonal use in the summer months to use that is less than weekly.
- 5.16. **Route C-D:** Two witnesses claim use of this route, although cumulatively their period of use does not cover the relevant period, leaving a gap between the years 2003 to 2005. Mention is made that the gap at point D had been welded across (undated but since 2005). Use was for dog walking.
- 5.17. **Route A-P:** Two witnesses claim use of this route, one of whom claims it was with permission; evidence from the second witness does not cover the relevant period. One witness does not recall any wooden fence at point A.
- 5.18. **Route P-B:** One witness claimed use of this path with permission from 1991 to 1992.
- 5.19. **Route P-N:** Two witnesses claimed use of this route. Combined use covers the relevant user period. Use was daily or up to twice a month. Use was recreational.
- 5.20. One witness describes a request made in 1991 or 1992 to Mr Cadwaladr, for a stile (at point B on the Plan) and permission to use the

fields. The request coincided with the refurbishment of housing in Blacon village. The witness states that they were involved in the refurbishment of housing at Poets Corner, Blacon in the late 1980's-90 and "on at least two occasions during the last phase of the re-development of this estate. The farmer Mr Cadwalader [sic] had been approached by myself, two councillors and the architects involved in the re-development project asked for permission to erect a wooden stile [sic] over to his land as he recognised that the path was well used by walkers.." "The stile was erected in 1991/1992 and remained in place till this last winter". "Mr Cadwalader was approached on another occasion and asked if he would be willing to contribute towards the repair of the fencing, which had been erected some years earlier when the estate was built by the council...he flatly refused to contribute".

5.21. The general pattern of use described by the witnesses is a walk between Blacon poets corner via points J H and E to L on the Plan to the public houses located on Parkgate Road. An alternative circular walk from Parkgate Road around the fields was described that may break at the Mollington Banastre Inn on Parkgate Road. Regular shorter circular walks used for daily dog walking are described.

5.22. A number of witnesses refer to occasional obstructions: one witness makes reference to a partly illegible sign "trespassers will be prosecuted" from "years ago". One witness states that their daughter was challenged by letter circa 2013. One witness states they were informed about 5-6 years ago (around 2006-7) that the land was in private ownership. One witness recalls that there was an obstruction of a mound of earth laid at the exit near to the Mollington Banastre. One witness states that the entrance at point A by the canal bridge had changed, initially being very steep and dangerous until a less steep route at a different point was developed. Another witness states that the entrance at point H used to be 50 metres to the west and was also wider. One witness said that they had been granted permission by the landowner to install a stile and for walkers to use that stile. It is understood this is the stile at point B (metal bar to get over railings).

5.23. Some witnesses point to the existence of a pond that has since dried up which was located alongside the route points A to E. A few witnesses recall that for a short period, approximately 10-15 years ago (i.e. a date between 1998 and 2003) motorbikes were illegally using the field which the police investigated. The effect of this activity, it was claimed, was that the ploughed field was flattened, making it easier to walk. It was also stated that sometimes the field was either ploughed or left fallow until recently it was possible to walk around the edge of the ploughed field.



- 5.24. It is claimed that the routes were used regularly for recreational walking, viewing the local wildlife in the area, exercise such as jogging but mostly for walking the dog(s). It is also claimed that use was with family and friends and in some cases used as a leisure route to one of three nearby public houses (The “Good Intent” (now closed) Mollington Banastre and the “Wheatsheaf”). A witness observed people walking to work at Mollington Banastre or Crabwall Hall Farm using the path. Although there is witness comment that people had been seen to cross the fields from Blacon towards Parkgate Road for work purposes, none of the witnesses who support the claim used the routes to get to work at any of these venues. All witnesses state they had frequently seen other people using the way.
- 5.25. There is variable use of the routes as shown in the table at Appendix B. It would appear from the evidence of the way the paths are utilised that people walk from Parkgate Road on the north side, access the land at point A, walk across the field but stay within the fields and walk around the fields then returning towards point L and then either exiting to walk along the Parkgate Road footway or visit the Mollington Banastre or return back within the line of the field. From the Blacon village on the south side, walkers entered the field for leisure purposes and walked around the periphery, in a combination of alternating routes, walking either to Parkgate Road and the Mollington Banastre or straight across to Point A on the canal and make a circular walk back into Blacon on the roadway.
- 5.26. One of the witness states that there was once a stone wall situated on the boundary alongside the Parkgate Road which was suddenly removed many years ago and not replaced. One witness recalls that the landowner, Mr Cadwaladr was asked to contribute to the repair of boundary fencing on the Blacon side of the fields in the early 1980’s after cattle from the fields had escaped. He is stated as refusing and subsequently cattle were removed from the land. One witness states that at point N the Council installed a gate in approximately 2011 and that the section of path between points F and N has been surfaced recently. This information has not been verified with the witnesses. One witness recalled that a section of fence was removed 15 years ago by firemen when someone fell out of a tree onto the spikes.

## **6. Consultation**

- 6.1. The fields crossed by the claim lies in Mollington Parish and the Parish Council has recently been consulted on this application. They have confirmed that they agree

with previous comments written in support of the application stating, “These paths have been well used for work and recreation for many years.”

- 6.2. The Ward Councillor supports the application. He has personal knowledge that paths running between Parkgate Road and Blacon village had been used for a number of years stating that, “workers used them every day year in year out getting from Blacon village... to work on the local farms and two hotels.”
- 6.3. The Council’s asset team has been consulted and have confirmed that they carried out routine maintenance work to the fencing. Works were carried out “on an ad hoc basis” by the “in house blacksmith” when the responsibility rested with the former Chester City Council. There are no written records available of these works being completed.
- 6.4. A Council Officer undertook a site visit on 23<sup>rd</sup> September 2014 and 25<sup>th</sup> September 2015 and noted features visible from existing highways, such as metal fencing, stiles and gates and the boundaries. The positions of the structures generally agree with those described by the witnesses.
- 6.5. Mr Boyling the owner of land to the west of the site has objected to the application. An objection has been raised that the application was being treated as correctly made (discussed at paragraph 1.4 of the report above).
- 6.6. Mr Boyling has declared he has carried out repairs to his fencing, particularly for stock control. He has also stated that he has made attempts to prevent members of the public from walking across his land. He states that he has no physical documentation of the works that have been carried out, such as an invoice, because he used his own labour and materials.
- 6.7. Mrs Cadwaladr also objects to the application. Evidence in the form of newspaper articles, photographs and a statement has been submitted in rebuttal of the claims for the addition of footpaths. The newspaper articles relate to the response to a planning application on the land in 2013 and adds no new information as it coincides with when the claim application was made. Mrs Cadwaladr’s statement discloses previous ownership of land at Point A on the plan held by the Cheshire County Council from 1994 to 2005. In addition, land at J & M2 and G2 and K was sold in 1987. It is stated that throughout the family ownership up until 1988, the fields were populated with dairy cattle through the spring and summer months and were milked daily. During the winter months the fields held bullock herds and “no pedestrians or dog walkers would enter such fields as bullocks are notoriously unpredictable”.

- 6.8. It is claimed by Mrs Cadwaladr that the relevant Council at the time (the former Chester City Council) installed the metal fencing which separates the fields from the Blacon village housing development. It is stated that the metal fencing was “vandalised regularly”. Photographs taken by Mrs Cadwaladr in 2011 have also been submitted. These photographs display signs stating “Private Land Access Prohibited” adjacent to Point H, on a gate on Parkgate Road; and on railings along open land near Shelley Avenue.
- 6.9. In addition to this, there is an email on file dated 29th April 2013 from a local resident who describes the pathways that are being claimed. One route described is from a culvert off Shelley Road which is “maintained by Welsh Water” to the A540 bridge “at this point there is an old stile which is overgrown, therefore walkers go around it to access the main road”. A second route follows a hedgeline towards Mollington Banastre “The exit has been blocked by a mound of turf but there was a clear entrance here”. Reference is made to a gap on Milton Close “I believe the Council left the gap in the fence some years ago as it was recognised there was constant access”. There is a “metal stile” from Browning Close.

## **7. Assessment of evidence**

- 7.1. In order to demonstrate that the public had been using the paths claimed the evidence would need to show use was “as of right” without force, secrecy or permission. The test has not been met as there is evidence of forced access by the public through metal fencing separating the fields from the housing at points J, H and E. It is considered that where use was by way of these points that use was not “as of right”
- 7.2. At points G2 and K there are gates which were closed and the available user evidence suggests that the gates were by-passed by gaps to the side. There is a gate located at point L which, it is said, was either open or closed but not locked. Where use was by way of by-passing the gates at points G2 and K it is considered that use was not “as of right”
- 7.3. A stile arrangement was found at point B which straddled metal fencing. It is considered that this was installed with permission as suggested by the one user. It is considered from this evidence that the landowner viewed the use by the public was with permission. As this one individual has stated that they used the paths with permission this point of access and route points A to P to B is considered use was not “as of right”.
- 7.4. Points A2 and A at the canal bridge appears to have had no fencing or gates installed until recently. There is a significant gap in the fencing at point D. There is a gap between fields at point G. It is considered that use at these points may be

considered to be “as of right”, however, use at these points is inconsistent with access points considered to have been forced.

- 7.5. Use was made by two witnesses from point A without exiting at points J, H or E and continued along a route to G and K to L and returned back to point A either using the footway or occasionally within the field. It is reasonable to suggest from the evidence that they do not represent the public at large, and questionable if a circular route round fields could be considered to be representative of a public right of way of a highway with a right to pass and re-pass or whether the public had been exercising a right for leisure purposes.
- 7.6. Did the landowners do anything to stop use or to disabuse the public of the notion of a public right of way? The user evidence suggests that Mr Cadwalladr had been aware of the public crossing the fields; cattle had escaped and fence and gates are reported to have been repaired and that complaint had been made to the adjoining landowner (the Council) to repair fences. The users have talked with Mr Cadwalladr. Action appears to have been made in 2011 by posting notices against trespass around the fields and one witness referred to an old sign warning trespassers. The evidence is ambiguous about whether Mr Cadwalladr had consented to the public use.

## **8. Conclusion**

- 8.1. The application was duly made and registered in 2013 requesting that an order be made to add footpaths to the Definitive Map and Statement as shown on the Plan between points A and P. It is considered that the application was correctly made and has not been refused on the grounds of being incorrectly made because of a question over the service of notice of the application on all landowners.
- 8.2. The evidence of users supports the claim that the public at large are using the routes claimed regularly and have done so over a period of time. However, it is considered that the use was largely with force or with permission of the landowners and not “as of right” and therefore the criteria for an order to be made to add these paths connecting with these points is not satisfied.
- 8.3. In addition, Section 31 of the Highways Act 1980 provides that the route claimed has to be “actually enjoyed” and therefore it would be reasonable to expect that a claimed route of way in an urban area should have much more use than in a remote rural area. If this were a recognised public right of way what would the use be expected to be? The Authority would anticipate more users to have come forward in support of the claim and therefore the evidence submitted is not representative of the public at large.

8.4. It is considered that, whilst there is minimal documentary evidence of overt action on behalf of the landowners to dedicate any land to the public use, until more recent times, with the exception being in 2011, the balance of the probabilities of the evidence is weighed in favour of the landowners.

8.5. In conclusion, the witness evidence accompanying the application is insufficient to demonstrate that the public “at large” enjoyed use of the way on foot and that they did so “as of right”, without force secrecy or permission uninterrupted over the 20 year period in question. Therefore, the statutory tests have not been satisfied. Furthermore, the user evidence submitted discloses no basis upon which to assert that there was, during that period any evidence that there was no intention on behalf of the landowner to dedicate the way and there is sufficient evidence to demonstrate a lack of intention to expressly dedicate a right of way .

## **9. Associated documents**

Application file CWAC005/DMMO

Appendix A - Witness evidence

Appendix B - Communications

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name	use	frequency	2013	2010	2005	2000	1995: 1993 commencement	1990	1985	1980	1975	1970	1965	1960
<b>Path Route A-C</b>														
J Gidman	foot	school holidays in first period; monthly later	2013			2002						1972		1962
D Watson	foot	daily	2013								1977			
K Draper	foot	weekly				2002			1987					
M Draper	foot	2-3monthly					1995		1987					
R Symonds	foot	2xdaily	2013				1998							
B Sullivan (Int)	foot	3xweeksummer or weekly winter	2013					1990						
L Sullivan	foot	monthly or more then later monthly				2003		1990						
A W Jones	foot	4xweek	2013		2005									
J Jones	foot	2xweekly	2013		2005									
<b>Path Route L-A</b>														
L Rowlands (int)	foot	4xweek	2013		2007		1995							
M Draper	foot	2-3monthly					1995		1987					
K Draper	foot	weekly				2002			1987					
N Baker (Int)	foot	30-40xyear		2012							1976			
L Baker (int)	foot	30+xyear		2012							1976			
G Jones	foot	Daily	2013							1980				
B Sullivan (Int)	foot	3xweeksummer or weekly winter	2013					1990						
R Symonds	foot	2xdaily	2013				1998							
<b>Path Route K-L</b>														
L Rowlands (int)	foot	26xyear	2013				1995							
M Draper	foot	2-3monthly					1995		1987					
K Draper	foot	Weekly				2002			1987					
N Baker (Int)	foot	30-40xyear		2012							1976			
L Baker (int)	foot	30+year		2012							1976			
B Sullivan (Int)	foot	3xweeksummer or weekly winter	2013					1990						
F M Bradsell	foot	Daily in summer	2013				1999							
R Symonds	foot	2xdaily	2013				1998							
P Armstrong	foot	2xweekuntil 2003 then monthly	2013			2003								
<b>Path Route G-K west side</b>														
B Sullivan (Int)	foot	3xweeksummer or weekly winter	2013					1990						
F M Bradsell	foot	2xweek	2013				1999							
L Rowlands (int)	foot	4xweek	2013		2007		1995							
L Baker (int)	foot	30+year		2012							1976			
N Baker (Int)	foot	30-40xyear		2012							1976			
D Watson	foot	Daily	2013								1977			
<b>Path Route G-K east side</b>														

R Symonds	foot	2xdaily	2013				1998												
F M Bradsell	foot	2xweek	2013				1999												
K Draper	foot	daily	2013							1987									
M Draper	foot	3or4xmonth	2013							1987									
P Armstrong	foot	3xdaily	2013			2003													
<b>Path Route M-G</b>																			
L Rowlands (int)	foot	4xweek	2013		2007		1995												
P Armstrong	foot	3xdaily	2013			2003													
M Draper	foot	3or4xmonth	2013							1987									
K Draper	foot	Daily	2013							1987									
D Watson	foot	Daily	2013															1977	
N Baker (Int)	foot	30-40xyear until 2003 then less often			2012														1976
L Baker (int)	foot	30+year less often recently			2012														1976
F M Bradsell	foot	2xweek	2013				1999												
B Sullivan (Int)	foot	3xweeksummer or weekly winter	2013							1990									
<b>Path Route J-M</b>																			
L Rowlands (int)	foot	4xweek	2013		2007		1995												
P Armstrong	foot	3xdaily	2013			2003													
M Draper	foot	3or4xmonth	2013																1987
K Draper	foot	Daily	2013																1987
D Watson	foot	Daily	2013																1977
F M Bradsell	foot	2xweek	2013				1999												
J Middleton	foot	2xmonthly or less	2013																1989
<b>Path Route H-G</b>																			
F M Bradsell	foot	daily in summer	2013				1999												
P Armstrong	foot	3x daily	2013			2003													
M Draper	foot	2-3xmonthly					1995			1987									
K Draper	foot	weekly				2002				1987									
A Jones	foot	4-5xweekly	2013			2001													
<b>Path Route E-M</b>																			
J Middleton	foot	2monthly or less until 2003 then less often	2013																1989
B Sullivan (Int)	foot	3xweeksummer or weekly winter	2013							1990									
L Baker (int)	foot	30+year			2012														1976
N Baker (Int)	foot	30-40xyear			2012														1976
D Watson	foot	Daily	2013																1977
<b>Path Route E-G</b>																			
R Symonds	foot	2xdaily	2013				1998												
D Watson	foot	Daily	2013																1977
A W Jones	foot	4xweek	2013		2005														
K Draper	foot	Daily up to 2002	2013																1987
M Draper	foot	3or4mxmonth	2013																1987
P Armstrong	foot	3xdaily	2013			2003													
A Jones	foot	4-5xweekly	2013			2001													

<b>Path Route E-D</b>													
L Sullivan	foot	Monthly + then monthly after 2008	2013		2008	2003		1990					
<b>Path Route E-C</b>													
A W Jones	foot	4xweek	2013		2005								
J Jones	foot	2xweek	2013		2005								
M Draper	foot	2-3xmonthly					1995	1987					
K Draper	foot	daily	2013					1987					
D Watson	foot	daily	2013							1977			
N Baker (Int)	foot	30-40xyear		2012						1976			
J Gidman	foot	Summer									1972	1968	
B Sullivan (Int)	foot	3xweeksummer or weekly winter	2013					1990					
R Symonds	foot	2xdaily	2013				1998						
<b>Path Route C-D</b>													
J Jones	foot	Weekly	2013		2005								
J Gidman	foot	School holidays in first period monthly later	2013			2003					1972		1962
L Sullivan	foot	Monthly + then monthly after 2008	2013		2008	2003		1990					
<b>Path Route A-P</b>													
G Jones	foot	daily	2013							1980			
A Scargill	foot	20x year	2013				1995						
<b>Path Route P-B</b>													
G Jones	foot	Daily	2013							1980			
<b>Path Route P-N</b>													
G Jones	foot	Daily	2013							1980			
A Scargill	foot	20xyear	2013				1995						

**APPENDIX A  
WITNESS EVIDENCE (PRINTS AT A3)**



**1. Communications Received**

Application No. CWAC005/DMMO made by Gordon Emery, Chester registered on 13.09.2013; Appeal for non-determination correspondence 19.09.2014

Landowner's and Occupiers communications; Allington Hughes Solicitors, letter 07.10.2013, email 08.02.2016 with attachments; Rostons Solicitors correspondence email 30.10.2015, 09.11.2015, 24.11.2015 with attachment; Canal and River Trust email 03.03.2016

Ward Councillor Brian Crowe email 17.09.2015, notes 05.11.2015

Mollington Parish Council letter 07.11.2013 and email 24.07.2016

Cheshire West and Chester Borough Council internal correspondence email 04.11.2015, 03.03.2016

**2. Witness Evidence**

N Baker form & interview 30.09.2015; L Baker form & interview 30.09.2015; L Rowlands form & interview 05.10.2015; B Sullivan form & interview 05.10.2015  
L Sullivan form 13.09.13; J Gidman form 13.09.13; J Jones form 13.09.13; M Draper form 13.09.13 & photo; R Symonds form 13.09.13; J Middleton form 13.09.13; A Scargill form 03.09.13; F Bradsell form 13.09.13; P Armstrong form 13.09.13 & photo; G Jones form 13.09.13; D Watson form 13.09.13; A Jones form 13.09.13; K Draper form 13.09.13; A W Jones form 13.09.13;

**3. Other Evidence taken into consideration**

Notes and photographs of site visit made by Adele Mayer, Public Rights of Way Officer (Cheshire West and Chester Borough Council) on 23rd September 2014 and 25th September 2015

**4. Documentary Evidence**

Land Registry; property register CH374673, CH297151, CH366327, CH570103  
CWAC aerial photographs 1940s and 1970s  
Blacon Within Living Memory 2004 Cheshire Record Office  
Blacon Past and Present 1990 Cheshire Record Office

Image of application plan

