

CHESHIRE WEST AND CHESTER BOROUGH COUNCIL

OFFICER DELEGATED DECISION REPORT

Application Number **6-31**

Description **Wildlife and Countryside Act 1981 – Section 53
Upgrade Footpath No 2 Bradley to bridleway on the
Definitive Map of Public Rights of Way**

Location **Between Bradley Lane (UX1224) and Bradley Farm
Lane (UX1207), Bradley between points A & B on
Drawing No. MO/552.**

Applicant Name **P Adams and L A Whitby, Bickley Wood, Malpas**

Ward **Malpas Ward**

Ward Members **Councillor Ann Wright**

Case Officer **Adele Mayer, Public Rights of Way Officer
adele.mayer@cheshirewestandchester.gov.uk**

Date **22nd August 2014**

Recommendation:-

- (1)** That an Order be made under section 53(2)(b) of the Wildlife and Countryside Act 1981 to modify the Definitive map and Statement (“the DM”) by the upgrade to bridleway of Footpath No 2, Bradley as shown between points A and B on the Drawing No MO/552 (“The Plan”) and that the requisite notice of the making of an Order be given

- (2) That the Development Planning Manager be authorised to take any action considered necessary in respect of the confirmation of the Order hereby authorised to be made.
-

1. BACKGROUND

- 1.1** In July 2006 the former Cheshire County Council received an application under Section 53(5) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) requesting that a Definitive Map Modification Order be made to upgrade Public Footpath No 2, Bradley on the Definitive Map and Statement (“the DM”) to a bridleway. The application seeks the upgrade to bridleway along the route shown between points A and B on the Plan.
- 1.2** Evidence has been submitted in support of the application including witness statements and documentary evidence. There were nine statements initially submitted and in the process of the investigation a further eight witnesses came forward. Two maps showing the definitive line of the footpath were submitted; a copy map of a plan said to be part of the deeds of Meadowhouse Farm which shows the path as” public road to Tushingam”; a copy of a letter signed by Mr Henry Wycherely, former occupant of Yew Tree Farm, with statements regarding use of the route.
- 1.3** The applicant claims that the route was obstructed years prior to making the application in 2006 but a delay in submitting the application was made as the second landowner affected by a claim was elderly and ill (deceased in 2002). It is also believed by the applicant that the Parish Meeting had agreed that the route was to be designated as a signed bridleway which meant they did not think there was a need to make this application. Council correspondence confirms an enquiry was made for an application in 2002.
- 1.4** The route is divided into two land titles. The eastern end of the route runs over land registered at HM Land Registry under title number CH555219 (Yew Tree Farm) and

was owned by Mr H Wycherely from 1979 following the death of his father who had been in occupation since 1914. The property then was sold in 1986 to Major and Mrs Lockhart. The western end of the path runs over land registered with HM Land registry under title number CH503464 (The Spinney). This property had been held by the Griffiths family from the nineteenth century and on the death of the Mrs Lawrence, in 2002, was sold to the current owners, Mr and Mrs Young, in 2003.

- 1.5** If the Order sought is made and confirmed, the effect will be to upgrade the status of path No 2 Bradley to a bridleway between Bradley Green, OSGR SJ5117 4568 to Bell O The Hill at OSGR SJ5204 4544 (point A-B on the Plan). The surface is pasture and part cindered/metalled. There are field gates at either end and also a field gate between fields at the ownership boundary OSGR SJ5157 4565.

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 make any modifications to it that are necessary as a result of the occurrence of certain events. Section 53 (3)(c)(ii) provides that a route should be modified on the DM where the discovery of evidence by the Council, when considered with all other relevant evidence available shows:-

“that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description”

- 2.2** The available evidence must be evaluated and weighed and a conclusion reached as to whether on the balance of the probabilities the public rights subsist or are reasonably alleged to subsist and any other issues such as safety, suitability, desirability or the effects on property or the environment are not relevant to the decision.

- 2.3** In addition, section 53(3)(b) provides that a route should be added to the DM when:-

“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...”

2.4 There are two ways in which a sufficient period of “enjoyment” can be demonstrated 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 1980 Act. Additionally, or in the alternative, the requisite “period of enjoyment” can be demonstrated by satisfying the requirements of common law.

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

3.1 In order to satisfy the requirements of S31, use of the way by the public must have been for a period of at least 20 years. 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 The application to modify the DM which was made in September 2006. Section 31 (7A) of the 1980 Act (as amended by section 69 of the Natural Environment and Rural Communities Act 2006) provides in England where the matter bringing the right of way into question is an application, the date that application is made will be the date of bringing into question. The application was registered on the 28th of July 2006 and failing any other event that brought the use of the route by the public into question it would be that date that determines the period of 20 years use. Some of the witnesses, however, attest to certain events taking place in either 1991 or 1995 with the obstruction of a gate by an agricultural roller. An agricultural roller was placed across a field gate obstructing use of the way by anything other than pedestrians. Some witnesses say this was an event in 1991 and one witness recalls it was an event in 1995. It is considered that the obstruction of the route in this way is an action that has brought the right of the public to use the route as a bridleway into question. The period of 20 years use is therefore presumed to be between 1971 and 1991 or 1975 and 1995. The obstruction did not stop all users as some attest to having used the route after that period. The explanation given by

witnesses is that the gap made available for the public to pass through the gate on foot, exercising the recorded right of the public footpath, also enabled some horseriders to pass through the gap whilst stopping some horses that were too large or nervous to pass through.

- 3.3** In *Fairey v Southampton County Council* [1956] 2 QB 439 at 456 Lord Justice Denning set out that for the right of the public to be "brought into question" the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use a way, so that they may be apprised of the challenge and have a reasonable opportunity of meeting it.

In *R v Secretary of State for the Environment, Transport and the Regions Ex Parte Dorset County Council* [1999] N.P.C 72 Mr Justice Dyson further considered Lord Denning's approach in *Fairey* and stated that the test:

"clearly does not require that every user should be told by the owner of the challenge, or even that it be shown that every user has been made aware of the challenge by other means, for example by reading a notice in a local newspaper. But whatever means are employed, they must be sufficient to make it likely that some of the users are made aware that the owner has challenged their right to use the highway. Anything less will not satisfy the need identified by Denning L.J. to bring home to the users the owner's challenge, so that they are given the opportunity to meet it."

- 3.4** S31 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", that is to say without secrecy or force, and without the permission of the landowner.
- 3.5** If uninterrupted user, "as of right", for the 20 year period can be demonstrated, then it is presumed that a public right of way has been deemed 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 will typically be of steps undertaken by the landowner in relation to the period of time in question to prevent use by the public or to disabuse the public of the notion that their use of the way was "as of right".

3.6 The owners of Yew Tree Farm have taken advantage of the provision in section 31(6) of the 1980 Act and deposited a plan and statement and statutory declaration showing public lack of intent to dedicate any public rights by user. The effect is that any user dated after 18th May 2006 could not be taken into account under this claim. However, as the period under consideration pre-dates the initial deposit and the deposit does not have retrospective effect it cannot have the legal effect of being evidence of a lack of intention to dedicate for the 20 year period 1971-1991 or 1975-1995.

4. COMMON LAW

4.1 The rules relating to presumed dedication under common law dedication differ slightly from the rules under S31. The differences are, however, only material when presumed dedication under S31 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 the evidence available is considered to satisfy the statutory test, there is, therefore, for the purposes of this report no need to distinguish between the two tests for the purposes of the conclusions drawn.

5. USER EVIDENCE

5.1 The application for the Order was accompanied by witness evidence forms from nine persons who have claimed to use the way. This user is summarised in the chart at Appendix A. Three of those witnesses were available for interviewing. A further eight witnesses came forward who were interviewed. Thirteen witnesses claimed used of the way by horse. One witness claimed daily use, four people weekly or more often, four people monthly or less often and four people have not supplied evidence of frequency of use. The user evidence submitted collectively covers a period of continuous use from the 1940's to a date in the 2000's.

5.2 The majority of witnesses claimed that the way was used openly. Three witnesses were unclear about the nature of the use of the route over land at Yew Tree Farm. The three witnesses ticked on the evidence forms that permission had been sought and given, however, the witnesses who were available for interview explained that they had made a courtesy of acknowledgement to Mr Henry Wycherely when they were riding in the vicinity. Additionally, the witnesses had not applied for “permission” from the former owner, Mr Wycherelys late father, which suggests they had not sought permission to use the route at the outset. No witness claimed to have sought the permission of the second landowner. This was a small community illustrated by witnesses who claim both landowners are said to have greeted users of the way, opened gates, chatted and in particular, Mrs Lawrence, the pervious owner of the Spinney, is said to have offered users “lemonade and eggs”. It is not therefore surprising that there had been communication between users and the landowners.

5.3 None of the witnesses report any attempt by the landowners to prevent or dissuade them from using the way until the Yew Tree Farm field gate was obstructed by an agricultural roller in c1991 and at times after that date. These obstructions were not completely obstructive as a few witnesses state they were still able to use the path on horseback.

5.4 It is claimed by users that the route was used for recreational purposes, hacking with a horse, point to point, some used the route as a convenient access to friends, and also to travel to pony club events that were held at High Ash. A number of witnesses recall using the route over a 10 year period c1980-1990 when the Hunt ran what were called “donation rides”. These events raised money for charity and usually enabled wider countryside access. Specifically one witness acted as a guide for other horseriders in the locality. Another witness assisted 3 children on ponies for a short period.

5.5 Witnesses have stated that up until at least 20 years ago (i.e. 1980’s) the main road, A49, was not as busy as it is now and it was possible to ride for a long distance in a circular route “we are very limited for safe places to hack as the roads

have become so much busier and cars much faster in recent years“(letter 20.05.12 KD). Preference was given to riding the cross route from Bradley to the Bell as described by another witness “before the Bishop Bennett Way was invented, nobody ever used that bridlepath to reach this side (Bradley Common), in fact he didn’t even know (as many locals didn’t too) that it was even a bridlepath; everyone rode down our track [the claim] as a matter of course...” (e-mail 16.5.12 PA).

5.6 None of the witnesses recalled there ever being any signs indicating that the route was not a public right of way for other than on foot. The applicant suggested the Parish Meeting had agreed to sign the route as a bridleway but there is no evidence that has been brought forward.

5.7 The claimed use on a bicycle was for a short period from circa 1985-2005 and was weekly use. The witness has not been available for interviewing. Whilst requisite use by bicycle can give rise to a claim for a restricted byway, the necessary circumstances for such a claim to arise are not present in the current case.

5.8 The claimed use in a vehicle was weekly use by one witness between 1995 and 2001 and daily use by another witness between 1988 and 1989. Neither of these witnesses has been available for interviewing. Whilst requisite use by motor vehicle could not give rise only with exception for a Byway Open to All Traffic, the necessary circumstances for such a claim to arise are considered not to be present in the current case.

5.9 The witness evidence submitted with the application is sufficient to show that the public enjoyed use of the way on foot and on horseback that they did so “as of right” uninterrupted over the 20 year period in question. 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 as a bridleway.

6. FURTHER INVESTIGATIONS

- 6.1** To corroborate the witness evidence submitted, further investigations were undertaken. Details of all evidence taken into consideration is summarised in Appendix B
- 6.2** The standard reference documents comprising historical maps and records have been consulted in connection with this application. The earliest map and document being a plan drawn up for a proposed Ellesmere Canal which was not built. The plan was surveyed by Sir William Junior, Whitchurch Engineer and deposited with the County in September 1795. The map depicts the route as a double parallel line, at one end labelled “Bradley Green” and the other “To Tushingam”. In the map schedule the road is listed as “Road to Bellowshill”, a distance of 30’ would be affected should the canal be built. In comparison, the road from Bradley Green to Macefen is described as ”Lane to Malpas, Macefen Moor”. The canal was not built but this document provides some evidence that supports the reputation of the route as a thoroughfare.
- 6.3** The claimed route is depicted on OS plans which provide good documentary evidence of the physical record of the existence of the route. It is shown on the 1:63.360 (one inch to one mile) scale map of 1842 and subsequent editions at the 1:2500 scale shows the route between broken black lines across open ground. This is good information which indicates that a track was physically located on the ground.
- 6.4** The route is shown on earlier county commercial maps, Burdett’s map of 1777, Cary’s map of 1787, Greenwoods’ map of 1819 and Swire and Hutchings’ map dated 1830. Where a key is available, the route is depicted as a “cross road”, comparable to other routes which are public highways. Taken together, the maps are good evidence that the lane was physically on the ground and suggests that it was reputed to be part of the local highway network.
- 6.5** County commercial maps were drawn up for a variety of reasons driven by the needs of the time for accurate mapping to facilitate movement at a time when canals, roads and railways were being improved in a general national economic boom. Surveying as a science had been in development since the sixteenth century and at the time of

Burdett's published map fairly accurate mapping was being produced. The purpose for which the map was published is taken into account, as relevant to the information that is depicted, for example whether the information that was mapped was to provide a travel map or other reasons. There is brevity of the landscape detail shown on Burdett's map that would suggest the map was published to facilitate public travel. The roads that are shown are the major roads and cross roads. The route under investigation is included in this network, strongly suggesting public road rather than a private road.

6.6 By the date of publication of Bryant's map of 1831, whilst the claimed route is again depicted as cross road, smaller roads were being included, of particular note are two "bridle" roads drawn between Bell of the Hill and Agden Hall and Agden to Wigland. In labelling these two routes as bridle roads, it suggests that there was an intention for this portion of the map to differentiate the status of routes, thus suggesting that where other routes are drawn on the map such as the claim, it was with intention to depict a road for all types of traffic.

6.7 In 1865 plans were deposited with the county for a proposal to build the Whitchurch to Tattenhall railway (London and North Western Railway). The railway was built. Therefore these plans were part of the statutory scheme for the building of the railway and the evidence of public rights that they contained must be given appropriate weight. The section of road affected by the rail line is numbered 56, described as "Public Road" and is that most westerly section from the A49 at Bradley Green then running east. The cartography is comparable to Burdett's and Bryant's maps of 1777 and 1831 respectively. On plan the property now known as Holly Cottage is shown which is useful to locate the claim route. On the plan the claim route runs in an easterly direction with bounded lines suggesting it was enclosed to beyond the limit of deviation of the rail line, then dotted parallel lines labelled as "Fm Bellorth Hill". It is suggested that that "Fm" was shorthand for "from" and indicates this was reputed to be a through route.

6.8 Tithe maps were prepared as part of the process of commutation of the tithe to a monetary payment. The purpose of the mapping was not to record public highways, however, as the production of a map was part of a statutory process under the

Tithe Commutation Act of 1836, the evidence of public rights they contained must be given appropriate weight . The map for Bradley parish is dated 1840. The claimed route is shown on the tithe map as a double broken line running alongside field boundaries or across fields. Running in an easterly direction, starting at plot number 180, Bradley Green road was described in the Tithe Award as “road”; “thoroughfare” in no ownership. Continuing in an easterly direction, the track is listed under plot numbers 187, 188, 192, 195, 197, 201 all of which are described as “road” “thoroughfare”. Sections numbered 187-188 were owned by Peter Brown and 192-201 by Peter Barlow (Yew Tree Farm today). The Tithe Map shows Bradley Green before the railway divided the parish in two and it is therefore possible to see that the continuation of this route west crossing Bradley Common towards the road to Malpas. The property The Spinney had not yet been built at this date.

- 6.9** Where it is possible to show by reference to other routes that the Tithe Map cartographer used colouring to show the public status of routes it is possible to give weight to the evidence of shading. In this case, there are few other roads on the Tithe Map to draw a comparison. The road to Malpas is unlabelled, the road north from Bradley Common to Macefen is also unlabelled. The Tithe Map, whilst not drawn up for the purposes of identifying public roads, is a strong piece of evidence with the labels of road and thoroughfare, supporting the claim for a thoroughfare of higher public status than footpath.
- 6.10** The Finance Act (1909-1910) 1910, repealed 1920, required the valuation of all land at 30 April 1909. Landowners would be taxed on the incremental value on the future sale (or other conveyance) of land. The valuation was also to be used as a basis for inheritance tax. Landowners were able to apply for a deduction for public rights of way crossing their land. Even where a public right of way was not claimed Valuers were supposed to allow for rights that they considered to exist when valuing the land. Where linear routes are shown on the maps prepared for the valuation as apparently external to the land being valued this has been regarded as evidence that the route was a public highway, usually, but not always vehicular. Only one of the two relevant working map sheets and the valuation book is available to view at the local record office. Map sheet LX15 shows the route included within hereditament 64 (ie The Spinney). No deduction is recorded in the relevant column in the Valuation Book.

This document is a neutral source of evidence providing neither positive or negative support for the existence of public rights over the order route.

- 6.11** The records relating to the survey and drafting of the Definitive Map and Statement as required by the National Parks and Access to the Countryside Act 1949 (“1949 Act”) are retained by the Council. The original parish survey shows that the route was described as “cart road mainly used as footpath”. The route was described as cindered from Bradley Chapel to run over pasture and finally running between fences and a muddy lane, with 6 field gates crossing the route. At the time, the definitions of public rights of way open to the Council to be recorded included Footpath, Bridleway and Road Used as Public Path (RUPP). The definition in the 1949 Act for a RUPP is “highway other than a public path used by the public mainly for the purposes for which footpaths or bridleways are so used” suggests that the route may have had higher rights at the time although pedestrian rights were recorded.
- 6.12** The Council holds its own internal records including correspondence relating to complaints. A letter sent by Mrs Lawrence of The Spinney, received 19th July 1976 requests help to control the field gate “leading from Chapel Lane, to our fields, which is being continually left opened or left open after we close it...it is a through road to the Blue Bell”. This evidence indicating the former owner believed the route was a road concurs with other evidence that Mrs Lawrence’s daughter has brought forward and is discussed elsewhere. A letter dated 22nd November 2002 from Cheshire County Council to Mrs P Adams confirms a telephone conversation acknowledging the desire to make a claim for a modification order.
- 6.13** A letter dated 12th March 2003, was sent by the Cheshire County Council to Hatcher Rogerson Solicitors, who were acting for the sale of The Spinney. The letter explained the implications of the pending application for a modification order. Major C A R Lockhart of High Ash Farm, made a letter of protest dated 22nd October 2003 to any claim to upgrade the footpath to bridleway. A file note is on record regarding a telephone conversation on 24th October 2003 with Mrs Stafford of Bradley and an Officer of Cheshire County

Council. The note suggests that Mrs Stafford was not willing to make a modification order application at that time in order not to upset their neighbours, in addition stating it used to be called Bradley Farm Road, and was used by cyclists tractors horse and cart, but “only horses in the last 10 years”. The relevant Officer is no longer with the Council (for the purpose of interviewing) and Mrs Stafford has not been contacted.

- 6.14 An Officer from the Council undertook a site visit on 17th January 2012 and physical conditions and signs were noted. Running from Bradley Green in an easterly direction, the path was partly metalled. At The Spinney, the surface was gravel and the width of the footpath partly obstructed by garden features and an electric fence. A raised and rutted trackway was visible along the line of the footpath between The Spinney and the field gate on the boundary of the two properties. The continuation of the route was grass and at the farm yard was part surfaced. There were field gates between fields, and at the entry into the yard to Yew Tree Farm.
- 6.15 Both landowners were served notice of the application in 2006. Solicitors acting for Mr and Mrs Young submitted a letter of objection. Solicitors acting for Major Lockhart also submitted a letter of objection and the opportunity to view the application was taken on 8th September 2006. Copies of the application and supporting evidence were made available and were also sent, by request, to the solicitors for Mr and Mrs Young. A further letter of objection was sent by Major Lockhart dated 10th April 2008. The Solicitors for Major Lockhart made comments on the witness evidence. The landowners, from 1974, already owned an adjoining property, High Ash Farm, prior to buying Yew Tree Farm and have knowledge of the area. The solicitor states Yew Tree Farm was purchased from the two sons of the late Mr N Wycherley who had owned the property since 1941 “beneficially”. It is stated that on sale the purchasers were aware that Mr Wycherley allowed the hunt over the farm and the farm track. The owners continued to allow the hunt access to the farm and track. They state there was a change in land use and a shepherd/farm employee had been in residence at Yew Tree for 13 years.

- 6.16 Solicitors for Mr and Mrs Young submitted supporting evidence of an objection. There are statements from 3 witnesses and comments on the witness evidence in support of the claim. Mrs Marris, who used to live with the family at High Ash Farm until about 1990, states that she has only ever used the tracks with permission, when Mr Wycherley was a neighbour. She had been a member of the Pony Club and rode with the Wynnstay Hunt. Her mother ran many events for the local branch of the club. It is stated that these events were run with permission from Mr Wycherley. She states she has no recall of other people riding over Mr Wycherley's land except at events and hunt days.
- 6.17 There are two additional issues arising from this investigation which need further clarification. The first of those matters is that one of the supporting pieces of documentation submitted with the application is also a plan forming part of the bundle for land title CH 503464. Whilst the plan was primarily concerned with depicting the boundaries of the title, it also clearly describes a route from the railway line in an easterly direction as "Public Road to Tushingam". The Highways Encyclopaedia notes that "where the recognition of the public right of way operated against the interest of the person or body on whose behalf it is prepared" a document will have significance. The statement submitted by the current occupant at Yew Tree Farm house states he had lived at the property since 1999 and during that time, he states that he has not seen anyone using the track through the yard on horseback except by the current owners and hunt. Mrs Young also submitted a letter of statement. In regard to evidence of use, she states that she lives mainly at home and "the path has only ever been used by walkers." She says some time ago the hunt had permission to ride through and had permission to ride over neighbouring land.
- 6.17 Members of the Birche family of Meadow House submitted a letter to the Council, via the solicitor, dated 20th April 2012, addressed "to whom it may concern", stating that the family had lived at Meadow House since 1940. They state that "In all the time that we have lived here we have only known

the route to be used on horseback by Mr Wycherely himself, prior to 1986 by Mrs Joy Sherwin who was a friend of Mr Wycherley, and therefore with Mr Wycherley's consent, and by Mrs Lockhart who rode through with the permission of Mr Wycherely until they bought Yew Tree Farm from him in 1986. The hunt used to have permission to ride over all of Mr Wycherely's land and until recently over the Lockharts' lands, so they occasionally came through too." They state they used the footpath most days. They have not responded to a letter asking for more information about their evidence. A plan forming part of the title to The Spinney indicates that there was a private right of way from the Spinney to Hillside Farm. Without further correspondence the third party evidence may be discounted as unsubstantiated.

6.18 The owners of Holly Cottage, a property adjacent to Bradley Green on the west side of the route, submitted a letter of evidence stating that they had lived at Holly Cottage for 13 years having bought the house in 1999. They state that they are regular walkers of the path and "apart from Mrs Lockhart and occasionally the hunt, we have no knowledge of anyone riding horses or cycling past our house." The evidence overlaps with the period when some witnesses say they were obstructed from using the path with a horse.

6.19 Mary Davies, daughter of the previous owner of the Spinney, Mrs Lawrence, has been interviewed and provided evidence which supports the claim for an upgrade. She says that the family had lived at the property since 1882, having bought the land from Vawdrey of Tushingham Hall. She says that the family always considered the route to be a bridlepath. Photographs were submitted showing the family in the field where the route runs and aerial photographs that show the farm as it appeared prior to the 2004 re-modelling. She believes that the hunt did not ask permission to cross the land, and recalled one incident when the field had become very muddy after the hounds had been. The fields were used mainly for hay and for 3 months when cattle were released. Her mother, Mrs Lawrence, was very friendly and would give directions to anyone lost and was known to offer drinks. She did recall a roller that was placed across the field gate between the two properties thinking this occurred in 1995.

6.20 Mr Henry Wycherley was interviewed and has signed a statement. He says that “we never took any notice of the people going through”. The field gate was left shut and they found that if the bikes and cars and horses were left to use the route they respected the gates and would close them. They needed to keep the gate shut because of the cattle. Some people reported when there was a problem with the cattle such as calving. They maintained the road, because they used it for taking hay and manure. The ground “never trod up”; his father Norman put gravel on the wet patches and over the years it built up and became a “tidy” road. Henry concreted the cow road at the farm. They kept the gates “right” to make them easy to open. Mr Wycherley explained that when the pony club had an event, he was asked to create a ring using rails and posts, to make a jump arena for the “little uns”. The jumps were only erected when an event was on.

6.21 The ward councillor for Malpas supports the claim.

6.22 The Tushingham, Macefen and Bradley Parish Meeting have made no comments.

6.23 The Peak and Northern Footpath Society stated that the route was used frequently. The notes that were available related to obstructions across the route of approximately 2004 possibly because there had been building work carried out at the Spinney in that year.

7. Conclusion

7.1 An application was duly made and registered in 2006 requesting that an order be made to upgrade a footpath to a bridleway from Bradley Green to Bell O The Hill, based on documentary evidence and witness evidence. The evidence of the documents is considered, on the balance of probabilities to show a highway of a greater status than footpath and the evidence of witnesses is considered sufficient to raise a presumption of dedication in law of a right of way greater than footpath, and it is considered that there is insufficient evidence of any acts or intention which would negate that presumption during the relevant period.

- 7.2** Investigation of the application revealed documentary evidence showing for the route as a thoroughfare. The route is shown on county maps of the early nineteenth century as cross road, on the Tithe Map from that period as road and Ordnance Survey mapping shows the lane from the 1840's through to the current mapping. In addition a plan included with the deeds for the western part of the route denotes the route as a public road. The original survey of the parish under the 1949 Act describes the route as a cart road mainly used as a footpath, which suggests that the route had a reputation of a higher status. The documentary evidence when considered with all other available evidence is considered to be sufficient to reasonably allege that higher rights than on foot subsist.
- 7.3** The correspondence from the former Cheshire County Council public rights of way unit indicates that at the point of purchase the current landowners were made aware of the potential claim for an upgrade. The inclusion of a plan with the title deeds for the Spinney stating the route was a public road to Tushingam is strong indication that it formerly had that reputation and was accepted as such by the former owners. In addition in speaking to the former owner of Yew Tree Farm the route was maintained by the Wycherley family and that anyone was permitted to use the route without restriction or permission
- 7.4** The accounts of the witnesses cover a period from the 1940's to the 2000's. Clarification has been sought over the reference on the evidence forms that some witnesses claimed they had permission. Permission it had been claimed, was sought from Henry Wycherley, in contradiction, Henry Wycherley has said anyone was allowed to use the track. In addition, no witness either in support of the application or rebutting the application have acknowledged that in order to fully use the route it was necessary to cross land in title of Mrs Lawrence. No one states they sought permission from Mrs Lawrence or states they were given permission by Mrs Lawrence. Her daughter indicates that Mrs Lawrence also welcomed anyone to use the track and in a letter to the Council, Mrs Lawrence described the track as a "road to the Blue Bell". There is strong indication from the testimony from relatives and landowners from this period that the route had been dedicated with higher rights than pedestrian and may have satisfied the common law test of dedication.

- 7.5** Some users attest to the obstruction of the route by an agricultural roller placed across the field gate between the properties. The date has been determined by interview as an event in either 1991 and/or 1995. User evidence falls therefore between 1971-1991 or 1975-1995. The evidence of user indicates that there was use of the way by horseriders during those periods.
- 7.6** It is concluded therefore, that on account of the expiry of the duration of a period of 20 years user, between 1971 and 1991 of the way by the public with a horse “as of right”, and in the absence of any evidence of a lack of intention to dedicate during the period of user, together with the documentary evidence, the requirements of section 53 of the 1981 Act are, on the balance of probabilities, satisfied and the requirements for the making and confirmation of the order sought would appear to have been met.
- 7.7** Accordingly, it is considered that the Definitive Map and Statement for Cheshire West and Chester Council should be modified by the upgrade to public bridleway of a footpath as shown between points A and B on the Plan .

8. Associated documents

Application file CH-6-31. Appendix A user summary. Appendix B relevant documentary evidence

Appendix B
Documentary Evidence

1. Communications Received

Application No. 6/31 made by P Adams & L Whitby and registered 28th July 2006. Tel file note P Adams 26.3.12, email P Adams 28.3.12; Letter & response Walker Smith Way LLP, 13.3.12, 23.5.12; Letter MFG LLP, 23.4.12; e-mail Cestrian Ramblers 22.3.12; email C Tucker, 15.4.12, letter 19.4.12;

2. Witness Evidence

J Thelwall form; C Arlington form; M Davies form; T Madeley form; R Hughes form; M Huxley form; J Sherwin form/interview; R Williamson form; J Jennings form; H Wycherely tel file note, statement 3.7.14;

3. Other Evidence taken into consideration

Notes and photographs of site visit made by A Mayer,

4. Documentary Evidence

CRO= Cheshire Record Office, CWAC= internal records

Date	Ref	Description	
1795	CRO QDP 10	Chester to Ellesmere Canal	Not built. W Turner engineer. Route described as "road to Bellowshill"
1831		Bryant county map	Pre-railway. Shows route unlabelled. Cross Road, part enclosed line
1823	CRO PM4/15	Cary county map	Track or road partly unbounded cross fields. No key.
1819	CRO PM 13	Swire & Hutchings county map	Cross Road.
1777	CRO PM 12/10	Burdett Map	Main carriageways only appear to be shown, including claim

			route.
1840	CRO EDT 60/1	Tithe Award Bradley	Track shown and hereditaments list it as "road"
1865	CRO QDP 447	LNWR Whitchurch and Tattenhall railway	William Barker Engineer. Bradley Green Road shown to "Fm. Belloth Hill",
1910	NVA1/18 NVB LX15 & 16	Finance Act, Bradley	Part documents not available. Not excluded on map. LX16 not available.
1840	CWAC 1" series	Thin casement lines whole route	
1874	CRO OS 25" 1 st series	Double broken line crossing open ground. The Spinney and Meadow House not built	
1898	CRO OS 25" 2nd edition	Double broken line crossing open ground. Spinney and Meadow House built.	
1910	CRO OS 25"	Double broken line crossing open ground.	
1940	CWAC	Aerial photograph	
1970's	CWAC	Correspondence and Definitive Map records	
	Land registry	Title register CH 555219 and CH 503464	