

CHESHIRE WEST AND CHESTER BOROUGH COUNCIL

OFFICER DELEGATED DECISION REPORT

Application Number	CWAC/15/DMMO
Description	Wildlife and Countryside Act 1981 – Section 53 Addition of a footpath to the Definitive Map of Public Rights of Way
Location	From Keepers Lane, via woodland to Wallerscote Road, Weaverham
Ward	Weaver and Cuddington
Ward Members	Councillors Paul Williams, Charles Fifield and Gillian Edwards
Case Officer	Adele Mayer, PROW Asset Management Officer
Date	27 July 2020

Recommendation:-

(1) That an Order be made under section 53(2) and 53(3)(b) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of a footpath as shown between Points A-C-D-B on drawing No. MO/565 and that the requisite notice of the making of an Order be given.

(2) That the Highway Commissioner be authorised to take any action considered necessary in respect of the confirmation of the Order hereby authorised to be made.

BACKGROUND

1. In May 2018 Cheshire West and Chester Borough Council received an application under Section 53(5) the Wildlife and Countryside Act 1981 (“the 1981 Act”) requesting that a Definitive Map Modification Order (“DMMO”) be made to add a footpath to the Definitive Map and Statement (“the DM”). The application seeks the addition of a footpath along the route shown by a broken black line between the points A and B on Plan MO565 (“the plan”).
2. It is claimed that a public right of way on foot exists and should be recorded between Keepers Lane, Weaverham (Point A on the Plan) and then running along the drive to St Bedes Primary School as far as a short length of path on the north side of the drive (between point C and D on the Plan), and which leads into Beech Wood. It is claimed that a path was walked along the east side of a stream; the stream runs from high ground by the school and runs down to Wallerscote Lane (point B on the Plan). It is claimed that the public were stopped from using this path because a gate was erected at point C in 2008 and subsequently locked. This was the challenge to the use by the public of a path, which triggered enquiries and a subsequent application for a DMMO.

Landownership and land transfers

3. There is a short history of the ownership of the land over which the claim route runs. The land was historically held within the estate of the Smith Barry family of Marbury (Lord Barrymore) and the relevant land was sold in 1932 to Imperial Chemical Industries Ltd (“ICI”).
4. ICI built workers housing in Weaverham in the 1920’s. This was followed by the development of social housing in Weaverham by Northwich Rural District Council (“NoRDC”) who acquired land from ICI for this purpose. The land on which Keepers Lane was constructed was bought by NoRDC in 1949. This did not include the land on which St Bedes School was built. The school was opened in 1964.
5. Vale Royal Borough Council (“VRBC”) was the successor authority to NoRDC and a piece of land between Keepers Lane and the primary school was transferred to Cheshire County Council in its capacity as Local Education Authority in 1962, “for educational purposes” under the Education Act 1944. The plan that should be with the transfer is missing but in the agreement the land is described as 404 square yards and can be calculated to be the area used for the access drive and visibility splays to the school from Keepers Lane. The land was transferred to the school, according to the Council records, in 1971. This land then became the liability of the

Catholic Diocese (correspondence suggests that the actual transfer of documents may not have taken place until much later).

6. On either side of the land given to the school for a driveway, garages had been built. The land on which the garages had been built was re-developed for social housing in 1995 and the land transferred to the “Family Housing Group” (superseded by “ADACTUS”) in 1996. The transfer plan shows all but a small strip of land between the housing and school (a strip of land between the school drive and Beech Wood) was not transferred with the housing, and therefore was retained and will be in the ownership of the successor authority to VRBC (ie CWAC). It should be noted that under Local Government Reorganisation in 2009 the assets of the former District including VRBC) and County Councils were transferred and became the assets of the Cheshire West and Chester Council
7. ICI also owned the woodland, except for a strip of land between the woodland and the Wallerscote Road which appears from the available documents and maps to be unregistered land (although part of the Barry estate on the Inland Revenue maps of 1910). The woodland has since sold to a Pension Trust Fund.
8. Notice of the application was posted on the site of the unregistered area of land on 8 November 2019 for 28 days and no one came forward to lay claim to ownership.

The Legal Tests

9. Section 53(2)(b) of the Wildlife and Countryside Act 1981 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) sets out the events in question. Section 53(3)(c)(i) provides that a route should be added to the DM when:-
 - 9.1. The discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-
 - 9.2. 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, being a right of way such that the land over which the right subsists is a public path, a restricted byway”
10. This will include evidence which can satisfy a sufficient “period of enjoyment” of a way in order to raise a presumption or inference that the way has been dedicated for the purposes of Section 31 of the Highways Act 1980. Additionally, or in the alternative, 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 decided by the courts.

Section 31 Highways Act 1980 (“S31”)

11. 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. The way in question as applied by section 31(6) of the 1980 Act was challenged at a date in 2008 (or arguably in 2007) when the school erected a gate across the path junction between the woodland and the driveway to the school and locked it. The period between 1987/8 and 2007/8, would therefore constitute the period of user under section 31.
12. ICI owned significant areas of land including the Beech Woods, was bought in 1932 and almost immediately deposited a map and plan under the Rights of Way Act 1932. For the purposes of a claim based on user evidence the period of 6 years, and subsequent 6 years, from the date of the deposit together with a statutory declaration will have prevented user rights arising. However, it seems the land was transferred in 1949 to NoRDC and the effect of the deposit was nullified. There have been no subsequent deposits made under the similar provision of section 31(6) of the 1980 Act or under the previous Highways Act of 1959.
13. 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 force or secrecy, and without the permission of the landowner.
 - 13.1. For this purpose use “without interruption” would exclude for example the locking of a gate for a period that stops public access. Examples of “force” would be breaking locks or using any other sort of force to create a passage. “Without secrecy” requires that the use be exercised openly would be a user exercising a right openly and not at times when it would not be noticed by the landowner.
 - 13.2. Use “without permission” requires that it not be pursuant to either an express permission such as a notice informing the public that the landowner is allowing access or not an implied permission whereby the landowner permits 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

14. The legal capacity of a landowner to dedicate a right of way is not relevant to S31, however a presumption of dedication under section 31 may not be made against a landowner if the landowner is a statutory corporation and the dedication would be inconsistent with the landowner's statutory objects. The law is unclear in respect of other types of landowners, for example charities, where the charitable objects of the owner may be incompatible with dedication.
15. If uninterrupted user, "as of right", for the 20 year period can be shown, 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 will typically be of steps undertaken by the landowner during the relevant 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".

Common Law

16. 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.
17. For common law to apply, the evidence must demonstrate two conditions: the dedication by the landowner of a public right of way across his land and acceptance by the public of that right of way. A landowner can dedicate a highway which is already subject to other easements, the highway does not extinguish the private rights that may exist. The behaviour of the landowner overall is relevant in interpreting whether there had been common law dedication.
18. In this case it is important to look at the powers the bodies had who were in possession of the title. A dedication is in perpetuity and should not, for the public body, fetter "unlawfully" the future exercise of their executive decisions. At common Law it also relevant to look at the legal capacity of the landowner to dedicate a right of way over the land.

User Evidence

19. The application for the Order was accompanied by witness evidence forms from 8 persons and further evidence from 4 users was given to the Council by telephone or emails. This user is summarised in the chart at Appendix A. Four of the witnesses have been interviewed, one witness by telephone; and a further two witnesses responded to email interviews. All witnesses claimed use on foot. The user evidence submitted collectively covers a period of use from 1963 to 2010 although part of the route continued to be walked after that date until the date of submission of the application in 2018.
20. The original application plan showed a path which is shown running through the woodland along the west side of the stream. When the investigation commenced, the applicant claimed a drafting error had been made and supplied a corrected plan to show a path on the east side of the stream. Witnesses have been asked which route they had used.
21. The trigger for the application was the installation of a metal gate that obstructed use of the path between the rear of housing and the woodland. The gate was installed in 2008, seemingly at the same time as the approved erection of a school perimeter fencing. The gate was locked, although keys were distributed on an ad hoc basis. It is alleged, by the witnesses, that the lock was changed and keys withdrawn in about 2010. Correspondence between the school and one witness in 2010 confirms the school had for a short period permitted access through the gate and then withdrew access completely. The gate had not been included in planning approval for the school perimeter fencing and a retrospective application was made in 2010 and was approved.
22. The witness use predating 1995/6 appear to have generally used a different point of access between Keepers Lane and the woodland. A route predating 1995/6 ran over land now occupied by housing. Before the housing, there were garages on the site and the witness evidence from 7 people describes walking across the site of the garages and entering the woodland from behind the garages. This route to the woodland is not claimed, but the evidence is used to substantiate the claim of presumption of a right of way to the woodland
23. Of those who have supplied evidence from this first period (up to 1995/6), which would generally be for a through the garages and into the woodland, there are four who say they have used the route frequently if not daily. Three people say they occasionally used the route. One witness leased one of the garages and has

described the setting at the rear of the garages, as being unfenced and open to the woodland. He says that people walked through into the woods past the garage, or walked along the drive to the school into the woods. He says sometimes rubbish was dumped by the garages and people would use the school drive route.

24. Of those who have supplied evidence after the 1995/6 date, six people say they used a route from Keepers Lane along the school drive and into the woodland at the rear of the houses the path regularly or weekly. Once the houses were built, one witness recalls that a fence was built around the houses access was only along the school drive.
25. One person has claimed he used a path crossing the land with garages and then after the houses were built, used a path along the school drive to the woodland. For some users who were interviewed, they were not able to recall if they had entered woodland by way of a path crossing land on which the garages sat, or by the path leading to the school.
26. The users said they had used the path openly and without permission and the use was for recreational purposes, such as walking a dog, or taking children for a walk.
27. Users said they would only use the path for part of the year, when they were children and went through the woods in the school holidays. For other users, there was no seasonal change affecting use of the path.
28. Most users saw other people when they were walking the path. They also used the path with family and friends at different times. One witness recalls that they had a dog in 2002 and from then started using the path. She recalls that the path between the school drive and the woodland was open access. Another witness recalls a broken down chain-link fence pre 1995/6.
29. Users recall the route with the stream on the left-hand side (if walking from Keepers Lane) and at the point where there was a tributary on the right-hand side, they would cross the brook by stepping over it [where it is narrow]. Some users would continue on an undulating path to Wallerscote Road and walk back to Keepers Lane along the Road. At other times, users would follow the right-hand tributary to the stream and do a walk to Winnington, Hartford or south to Northwich Road. The user evidence for the northern end of the application route is not as strong as it is for the southern end of the route, because some users took alternative routes once in the woodland.

30. No one recalls the stream flooding at any time. They have said that during the period of use, the woodland “did not get overgrown” and paths were well used. At the northern end of the path near to Wallerscote Road, the sort of vegetation that grew is described by one user as “rhubarb leaves”. And this area was recalled as being “boggy”. One user said that they could use the path in the woodland in 1972 with a pram. Another user has said that in the 1990’s when they were going into the wood, it was fairly overgrown but with “three distinct paths”.
31. No one can recall any signage, such as no entry or private. One witness says that they made enquiries with the owners about the access to the woodland at the date when the fencing and gate obstructing use had been installed. She says that there was agreement that there was existing public access to the woodland.

Further Investigations

32. To verify the witness evidence submitted, further investigations were undertaken. Details of all other evidence taken into consideration is summarised in Appendix B.

Maps

33. The Tithe Map is a good documentary source when tracing the historic ownership of the field over which the footpath claims runs and any historic public rights. 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.
34. The relevant Tithe Apportionment is of the township of Weaverham and is dated 1838. The map shows Wallerscote and Northwich Roads. Both being uncoloured. The outline of the woods hasn’t changed significantly from then to now. There is a hand sketched line for a stream running centrally through the woodland, issuing from much the same place as it is mapped today. At this date, the land was in the ownership of the family named “Smith Barry” (of Marbury).
35. 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 surveyors made fiscal discounts for rights that they considered to exist that may devalue the land. Where linear routes are shown on the maps prepared for the valuation this has been regarded as evidence that the route was a public highway, usually, but not always vehicular.

36. The working copy map for the area lists the woodland as hereditament 573 and the adjacent fields on which the housing estate around Keepers Lane was built as hereditament 417. The numbers are listed in the book of reference and the woodland and fields were in the ownership of "Lord Barymore" with fields occupied by John Moss. There was no discount recorded against the hereditaments for a public right of way. The map adds to the history of the ownership.
37. Ordnance Survey (OS) mapping developed from the need to provide mapping for military purposes. The first surveys were published at one inch scale. In the mid nineteenth century, various instructions were issued to the OS on the scale of measuring. In Cheshire, mapping at a larger scale than the one inch series was available from 1870-5 at 1:2500 scale, followed by various revisions. OS maps are good evidence of the physical existence of routes, but not necessarily of status (unless there is a clear description in the Book of Reference). The Book of Reference recorded the acreage and the land use when the maps were first drawn up. They usually accompanied the first edition maps published at 1:2500 scale before c1878. It was up to the skills of the individual inspector to classify the land-use, and for this reason is not always a reliable piece of evidence. From 1938 a 'New Popular' edition began, incorporating the then new metric National Grid. Since the second edition, 1889, the OS 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. This is generally understood to refer also to first edition maps
38. The pre-war series of OS maps are not of use to the current claim since usage seems only to have commenced post war after housing had been constructed in the 1950's. The 1250 scale National Grid OS map series start from 1946 onward. The 1965 1250 series map shows Northwich Road and Keepers Lane and the driveway into the school, with garages flanking the drive on the south side (but not the north side). The map shows the woodland with a stream issuing from the southern end by the school and running down to Wallerscote Road on much the same course as it is mapped today. The map also shows the rail line cutting across the woodland east of the school. The OS map does not show a footpath running through the woodland.

Deposited plans.

39. In 1950, Imperial Chemical Industries Limited (ICI) obtained an Act of Parliament under the Light Railways Act (1896 and 1912) to construct a railway line from the LNWR main line to the works at Wallerscote. The plans show the proposed rail line bisects the woodland. As a consequence of the construction, an existing public footpath (FP25 Weaverham) that linked Northwich Road to Wallerscote Road on the west side of the woodland was diverted. At the time there were no other acknowledged footpaths.
40. The now disused rail line is outside of the area of investigation but is evidence of a change in ownership at this location of woodland. The location of the rail line is useful corroboration of the descriptions of the walk through the woodland which has been given by witnesses.

Planning Documents

41. The planning documents for the original 1950's housing estate have not been located but papers relating to the 1995 planning application for the demolition of garages and replacement with housing have been located under planning application reference "VRBC 4-30181".
42. The 1995 application sought to develop the redundant brownfield sites, either side of the access to the school, with two houses and five bungalows. The papers show that the planning service consultation on the proposal was sent out to neighbouring properties including the school.
43. Planning correspondence shows that a request was made by the VRBC Councillor for a footpath to be laid out across the northern boundary of the plot, between the boundary and the substation. Weaverham Parish Council (the "Parish Council") responded to the consultation saying that they considered "access to Beech Wood to be important..". The correspondence shows that there was a subsequent design compromise taking account of the constraints of the dimensions of the site and the 1996 plan by the architect showed "sufficient land to form a path to the adjacent woodland. We understand that the path is a Member requirement.." This was accepted by the planning authority in the recommendation dated 3 March 1996 "The development does not raise highway safety objections while it specifically makes allowance for the provision of a footpath to the woodland situated to the south east as requested by the Parish Council" . Work on the development had started by September 1996.

44. The school received planning approval for a perimeter palisade fencing on 19 December 2008 under VRBC planning reference 08-2438-FUL. The fencing approval did not include plans for or approval for a gate across the adjacent path into the woodland.
45. Retrospective planning approval from the Council was made by the school in 2010 for the installation of a gate across the woodland path. Approval was granted by the Council under planning reference V/10/02561/FUL. The planning application form gives the date of the installation of the gate in June 2007. Since the approval for the perimeter fencing is dated December 2008 and the 2010 retrospective application states the gate was erected to match the perimeter fencing, it seems more likely the gate, was at the earliest, erected in 2008.

Photographs

46. The Council holds sets of commercial aerial photographs which record a snapshot of the site between the years 1970 to 2010.
47. The 1970 aerial photograph is a black and white photograph with good quality definition. The photograph clearly shows the woodland was less covered in trees at this date and trodden footpaths can be seen through the woodland. The garages on Keepers Lane are clearly visible, and two trodden paths diverting around the garages are very clear. The paths led into the woodland and paths at the boundary are contiguous. The tree cover is thin and it is possible to see the lines of paths and stream running to Wallerscote Road. The photograph establishes the connection between access from Keepers Lane, and tracks running through the woodland at this date.
48. A 1985 aerial image is colour, is of a good quality although not sharp when enlarged. The photograph shows a trodden path running around the garages and quite clearly leading into the woodland. A couple of paths leading through the wood can be seen until the tree cover engulfs the lines. The stream is not visible, but the valley, because of the change in the shadows, can be presumed. The paths at the south end do not correspond with the claimed route, it is evidence of repute that there was a well-used track into the woodland. The 1985 image indicates by shadows of posts, that the drive leading into the school had a pedestrian gate at the junction with Keepers Lane adjacent to a wider vehicular gate. There is a lack of shadow on the boundary between footway and garage site suggesting there was no fence line between the two.

49. An aerial image circa 1992-3 is also in colour but the photograph is less sharp in detail. The time of year is summer and shows the trees in full leaf so obscuring any paths through the woodland. There is a trodden path which enters the woodland and follows the line of the claim path for a short distance before running under the tree line. There is the shadow of gate posts for a pedestrian gate across the drive to the school, and shadow suggests a fence line between the footway and the garage site.
50. A series of colour aerial photographs from circa 1999-2000 are not sharp, but show the houses had been built. The fence lines around the rear of the housing for an open pathway and tracks leading into the woodland can be seen. The shadow of posts at the drive entrance is not present. The trees are in full leaf and no path can be seen through the woodland. The watercourse cannot be seen either.
51. An aerial photograph circa 2005-6 is in colour and is quite clear and sharp. The housing has been built on the former garage site. A fence line boundary lies between the houses and the footway to the school. At the rear of the houses, between the houses and the school there is an unobstructed path leading between the house and the school boundaries into the woodland. In the woodland the trees are in full leaf but shadows indicate pathways leading around the trees and into the woodland. The trees obscure any paths that may run through the woodland to Wallerscote Road.
52. An aerial image circa 2010 is in colour and with quite sharp detail. The woodland is in full leaf and obscures any ground features. The shadows indicate the path between the school and house and running between the woodland and the school driveway. The image confirms the newly erected gate across the path.
53. The aerial photographs are indicative evidence that the school had a possibility of a pedestrian gate at the junction with Keepers Lane until a date between 1992/3 and 1999.
54. There is poor aerial imagery for the northern line of the claim path because the tree cover obscures features on the ground. "Google" street view images dating from March 2009 shows a track, on the line of the claim, leading into the woodland from Wallerscote Road.
55. In 1993 the Parish Council made a photographic record of Weaverham which is held at the Cheshire Records Office. One of the photographs takes a long distance

oblique view of the garage site and the school access. Access is open and there is no visible school signage.

56. A Council Officer undertook a site visit on 29 and 31 October 2019 and noted features visible from existing highways, such as areas where the ground has been trodden, fence breaks and gaps and gates. There is correlation of features on the ground with the claim route, the woodland path is barely visible in places as reflected in the photographs at Appendix C.

Consultation

57. The Parish Council has provided some information regarding the minutes and the Council support for a path to the woodland during consultation on the 1995 housing application. They have confirmed that the parish minutes state that the access to Beech Wood to be important. There was no other clarification of the reasons for the request for access to the woodland. The Parish Council had no other information which would support or not support the claim application.

58. Ward Councillors support the application

59. The school has responded to the consultation and have stated that it is their position that the drive is a private drive to the school. The main concern is the safeguarding of the school pupils. The school has supplied confirmation of ownership. They have supplied copy correspondence from the 2000's with the Council Planning Authority with which there were exchanges of correspondence over the status of the drive and the path into the woodland. The school provides an explanation for installation of the gate across the path, which was for reasons of security concerns over anti-social behaviour happening in the woods, and for anti-social behaviour with dogs over the driveway. The school, however has not provided any response made to the 1995 housing application or evidence that could be demonstrated as a challenge to users prior to the installation of a gate in 2008.

60. There have been no other responses from affected landowners.

61. A neighbour on the north side of the path has said the access [at Wallerscote Road] was "never much" of an access and people would use a path leading on to the old rail line. Another neighbour made comments that there was a small path walked by local people from Wallerscote Road to the old railway line on the east side of the wood and that it was a steep gully up to the school.

62. Local user groups have been consulted and of those, none have returned any comments or evidence in support or against the application.

Assessment

63. The application path runs from Keepers Lane, along the drive to the school and over a narrow path which runs between the school boundary and the rear boundary of 2 Keepers Walk. In the woodland, the path runs on the east side of a stream, crosses a tributary then continues north to the junction with Wallerscote Road.

64. The investigation found two routes had been used between Keepers Lane and Beech Wood. One route was an alternative to a route running along the school drive and ran from Keepers Lane then cut across land that was occupied by garages and went straight into the woodland. Evidence of this was found in the witness statements and aerial photographs. The period of use for this path was up to a period ending in 1995/6 when a planning application was made to redevelop the land for housing.

65. The second route ran from Keepers Lane along the school drive turning in a north direction into the woodland, before the line of the school boundary fence. The evidence for this path is in the witness evidence and the 1995/6 planning application for housing and aerial photographs.

66. There appears to be no acts or evidence of signage to prevent the public from using either of these routes and the route as it passed through the woodland until a gate was erected at the junction with the school drive in c2007/8 and then locked in 2010.

67. The documentary evidence does not show that an historic right of way was documented for the application route. Aerial photographs do provide some supporting evidence that paths in the woodland were in use, as is claimed by users. However, whilst this is supporting evidence it is not direct evidence of public use as of right.

68. The application therefore falls to be determined on the evidence of use by the public as of right. Turning first to Section 31 of the 1980 Act; the action that seems to have brought into question the right of the public to use the route was the 2007/8 erection of a gate across the path created under the 1995 planning application and then the subsequent locking of that gate by the school in 2010. The period of twenty years prior to 2007/8 (1987/8-2007/8) is therefore relevant. Only one user gives evidence

of continuous regular and frequent use of the application route for the twenty year period, others use is variable.

Conclusion

69. An application was duly made and registered at 10 May 2018 with supporting documents of plans and 7 user evidence forms.
70. Any changes to the DM must reflect public rights that already exist. It follows that changes to the DM must not be made simply because such a change would be desirable or instrumental in achieving another objective. Therefore, before an Order which changes the DM is made, it must be demonstrated that public rights have come in to being at some time in the past. This may be proved by historic and documentary evidence and, or by evidence of user in the recent past.
71. Historic documentary evidence has been examined to see whether the past history and use of the route point to it having public rights as a result of dedication in the near or distant past. Rights are not lost merely through disuse. Unless stopped up by due process of law, any rights previously dedicated will still exist even if they are now neither used nor needed. This evidence must be looked at as a whole, it being unlikely that a single document or map will provide sufficient cogent evidence to justify a change to the DM.
72. The witness evidence submitted with the application together with the aerial photographs and planning documents is sufficient to show a reasonable allegation that the public enjoyed use of the way on foot and 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. The evidence of the witnesses is considered sufficient to raise a presumption of dedication in law, and it is considered that there is insufficient evidence of any acts or intention which would negate that presumption. The balance of probabilities is therefore weighted towards the presumption of public rights.
73. It is concluded therefore that on account of the expiry of the duration of a period of 20 years user, between 1988 to 2008, of the way by the public “as of right”, and in the absence of any evidence of a lack of intention to dedicate in that period, the requirements of section 53 (c) (i) 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.

74. It is also argued that by the act or neglect of not securing fences and boundaries or erecting signage prior to the 2008 date, to make it clear to the public that use by the public was not intended, that use by the public has de facto been dedicated under common law.

75. Accordingly, it is considered that the Definitive Map and Statement for Cheshire West and Chester Borough Council should be modified by the addition of a public footpath as shown by a broken black line between A-C-D-B on the plan.

Associated documents

Application file CWAC 015/DMMO

Appendix A witness evidence summary

name	use	frequency	2018	2015	2010	2005	2000	1995	1990	1985	1980	1975	1970	1965
Witness 10	foot	daily				2007/8						1976/7		
Witness 7	foot	3 x week			2010		2002							
Witness 6	foot	4 x week			2010		2000							
Witness 4	foot	daily				2007-2008								
Witness 3	foot	daily				2007-2008				1986	1983			
Witness 2	foot	daily				2007-2008				1986	1982			
Witness 1	foot	daily		2018	2014						1984			1963
Witness 11	foot	4 or 5 times						94/97						
witness 12	foot	school hols												up to 69
Witness 9	foot	v occasionally							1993-1995					
Witness 8	foot	daily dates nk												
Witness 5	foot	week dates nk												

graded dark to light for decreasing usage

note - UEF state 2008 fence and gate erected

Appendix B

1. Communications Received

Application No. CWAC015/DMMO made by P Whyte, Weaverham registered 10 May 2018; Appeal for direction documents; 3.07.2019: supporting documents – plans and Photographs, email 06.06.2018

Witness 1 UEF and interview note 12.12.2019 ; Witness 2 UEF, file note 6.02.2018; Witness 3 UEF and interview note 12.12.2019; Witness 4 UEF; Witness 5 UEF; Witness 6 UEF; Witness 7 UEF and interview note 27.01.2020; Witness 8 UEF; Witness 9 email 6.02.2020; Witness 10 interview note 20.11.2019; Witness 11 email 21.11.2019; Witness 12 Email 19.11.2019;

Landowner's and Occupiers communications; Diocese letter 14.05.2018, email 12.11.2019; St Bede's Primary school email 11.02.2020; Neighbour 1 telephone note 14.02.2019; Neighbour 2 telephone note 05.06.2018 and 06.06.2018; J W email 05.06.2018

Consultee: Ward Councillors email 13.02.2020; Weaverham History Society email 09.01.2020; CWAC Estate Manager email 30.09.2019

2. Other Evidence taken into consideration

Notes and photographs of site visit made by A Mayer, 29.10.2019

3. Documentary Evidence

Land Registry; property register CH402206 ; CH573727 ; CH504774

Cheshire West and Chester records

CWAC Title Deeds and Transfers : ref H83 10.10.1949 Land at Weaverham

Ordnance Survey Maps 25" 3rd edition, 1909

Aerial photographs 1970 – 2010

Planning Application: file documents 4/301811995/6; file documents 10/02561/FUL

DM documents : Stopping up and creation Order plan 1951; extract "Green Book" showing extent of 1932 deposit ICI (original in archives not available); Draft Map and Parish Survey 1952.

Cheshire Record Office

LDV 2179 Property Register

LRNo 4/19 to 22 Northwich Rural District Council minutes 1942- 1953

LRNo 28/28 no

P78 Weaverham PC book of photographs of Weaverham 1993

QDP 953 (plan and book of reference) Wallerscote Light Railway 1948

Inland revenue NVB XXXIII.12 and NVA 2/2

Cheshire Tithe Maps online Weaverham Township EDT 416/2

Ordnance Survey Post War 1965 1250 sheet SJ 3965

Appendix C

Site visit photographs



School Drive from keepers Lane. Gate to path to woodland at Point C



School
fence line
at southern
end of
woods

(no access
through
vegetation
to Point D)



Stream

Path beyond the tributary junction



Middle part of path north of tributary junction looking south





Path from Wallerscote Road looking south

Path close to Point B Wallerscote Road looking south





Path
entering
woodland
from Point B
Walerscote
Road





Point B at Wallerscote Road

