

CHESHIRE WEST AND CHESTER BOROUGH COUNCIL

OFFICER DELEGATED DECISION REPORT

Application Number	CWAC010/DMMO
Description	Wildlife and Countryside Act 1981 – Section 53 Upgrade Footpath No 52A Neston to bridleway on the Definitive Map of Public Rights of Way
Location	Between Flashes Lane (UV1118) and Bridleway No 52B, Neston between points A & B on Drawing No. MO/564A.
Applicant Name	L Mayhew, Neston
Ward	Little Neston and Burton
Ward Members	Councillors Louise Gittins and Nigel Jones
Case Officer	Adele Mayer, PROW Asset Management Officer PublicRightOfWay@cheshirewestandchester.gov.uk
Date	29 November 2018

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 by the upgrade to Bridleway of Public Footpath no 52A, Neston as shown between Points A-B on drawing No. MO/564A and the addition of a bridleway between Points C-A on drawing No MO/564A and that the requisite notice of the making of an Order be given.
- (2) That the Highways 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 June 2016 Cheshire West and Chester Borough 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 52A, Neston (“path 52A”) 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 attached plan, Drawing No. MO/564A (“the Plan”).
2. Evidence has been submitted in support of the application including witness statements and documentary evidence. There were eleven user evidence forms submitted together with an Ordnance Survey (“OS”) map extract showing the definitive line of the footpath and a copy map of the one inch OS map of Great Britain dated 1952 sheet 109.
3. The applicant claims that the route was obstructed by the installation of a kissing gate in 2016 which was the challenge to the right of horse riders to use the route.
4. The DM currently records the public right of way between Flashes Lane and Haddon Lane as “Commencing at Flashes Lane (UV118/B) and running in a southerly direction terminating at the junction with Bridleway No 52B and Haddon Lane (UV 1165)” “Minimum width 2 metres” (as modified by a 1991 Order the “91 Order” see Appendix C)
5. The route is unregistered land. Notice of the application to “unknown” landowners was posted at either end of path 52A between 8 July 2016 and 9 August 2016. Notice was also posted at the end of the surfaced length of Flashes Lane and the commencement of path 52A between 24 August 2018 and 20 September 2018. No one has come forward to claim ownership, however, during the investigation other information was discovered regarding ownership and is described at para 51.
6. If the Order sought is made and confirmed, the effect will be to upgrade the status of path 52A to a bridleway between Flashes Lane OSGR SJ 3074 7620 to Haddon Lane at OSGR SJ 3077 7567 (point A-B on the Plan).

7. The recorded width of the footpath is a “minimum of 2 metres”. The width was added in the 91 Order but after investigation of the files and committee report for making that Order it was found that the Order was made without reference to evidence to support the width. The width therefore has also been under review during this investigation.
8. There are no limitations recorded on the Definitive Statement, however a kissing gate was installed by the council at the Haddon Lane junction in 2016. If higher rights are established the kissing gate will be removed.
9. During the investigation of the application, it was discovered that the route connected with an “unadopted” section of Flashes Lane. In this case the term “adopted” is used to denote the section of road that is recorded on the list of streets (see para 22) Flashes Lane is adopted highway between Mill Lane and the end of residential housing demarcated on the ground by the end of the asphalt surface. The continuance of Flashes Lane between the end of the adopted highway at OSGR SJ 3069 7621 and the commencement of path 52A is not recorded on the List of Streets or the DM. The investigation of this claim has therefore included the unrecorded section of Flashes Lane with regard to noting existing but unrecorded public rights of way and with the view that public rights should be recorded.
10. A few comments have been made not just from users but also from representations against the claim that riders had also used the “common”. The “common” is an area of private land located between path 52A and Hill Top Lane. This is described in para 54 but does not form part of this investigation.
11. The 91 Order for the addition of a bridleway at Haddon Woods including the upgrade of footpaths to bridleway was determined by a Planning Inspector under decision reference FPS/NO600/7/23 (dated 15 June 1993). More detail regarding the Order can be found at para 46 below.

THE LEGAL TESTS

12. 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:-

12.1. “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”

13. 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.

14. In addition, section 53(3)(c)(i) provides that a route should be added to the DM when:-

14.1. “the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:- that a right of way which is not shown in the map and statement subsists or is reasonably alleged to 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 or subject to section 54A, a byway open to all traffic”

15. The evidence referred to can include the expiration of a period during which the public have enjoyed a public right of way and the presumption arises that the way has been dedicated as a public path. 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. Firstly, this can be achieved by meeting the requirements set out in Section 31 of the Highways Act 1980 (“the 1980 Act”). Additionally, or in the alternative, the requisite “period of enjoyment” can be demonstrated by satisfying the requirements of common law.

16. 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.

17. The trigger for the application was that a kissing gate and fencing had been installed in March/April 2016 and prevented the use of the track with horses. The period of twenty years would, therefore extend back from the date of challenge for the requisite period of 20 years or more (ie 1996 to 2016).

18. 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.

19. 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 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”.

20. The rules relating to presumed dedication under common law dedication differ slightly from the rules under S31. A dedication may be inferred by the actions of a landowner. The public must show their acceptance of this dedication of a route by using the way and there is no defined minimum period of user, although s31 of the HA80 suggests a period of 20 years user, it can be less. The burden of proof is to show that there was intention by the landowner to dedicate. 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.

21. Whilst user evidence was primarily with a horse, there are a few claims of use with a bicycle. The Countryside Act 1968 introduced the right for cyclists to use bridleways provided they give way to walkers and horse-riders. For the purposes of this report, unless documentary evidence is found that shows a higher class of user, the cycle use dating after 1968 will be included with user evidence from horse-riders in support of the claim of bridleway.
22. The Council highway records consist of a collection of maps, which were handed over from the District Authorities in 1974, and the “List of Streets” compiled to record the publicly maintainable highways as required by section 36(6) of the Highways Act 1980. The list of streets is not a complete record of public rights because there is no requirement to list highways that are not publicly maintained but have public rights. The records that have been successively transferred from parish to district councils to county councils have survived in some cases as ad hoc registers, plans and notations.

USER EVIDENCE

23. The application for the Order was accompanied by witness evidence forms from eleven persons who have claimed to use the way with a horse or leading a horse. This user is summarised in the chart at Appendix A. Eight of those witnesses were available for interviewing. Two witnesses also claimed used of the way with a pedal cycle. One witness claimed daily use with a horse and (alternatively) a cycle between 2008 and 2016; eight people claimed weekly or more frequent use with a horse during the period 1988 to 2016, two of this group of people claimed use commenced in the 1960's. Two people claimed monthly use or less frequent use and one person hasn't made clear on the form the frequency of use. The user evidence submitted collectively covers a period of continuous use from the 1960's to 2016. Although the claim was for rights over path 52A, it was noted during the investigation that there is an anomaly of absence of records between the footpath and the adopted section of Flashes Lane and so note was made if the use included the unrecorded section of Flashes Lane.

24. Witnesses claimed that the way was used openly with a horse or a cycle. None of the witnesses report any attempt to prevent or dissuade them from using the way until a kissing gate was inserted at the junction with Haddon Lane in 2016. A complaint was made and subsequent schedule 14 application to claim higher rights submitted.
25. The users claim the route was mainly recreational although the route was used in a functional way to get to and from the stables on Haddon Lane with either a horse or by cycle. There are stables and livery yard on Haddon Lane, so that some people have at various times stabled horses at the livery yard and rode their horse from there to the "Wirral Way" (a linear country park) or, as one person said, it was possible to ride to the Dee coast. Generally there is a mix of using the route as part of a circular ride or, for some users they went up and down the track to exercise the horse and to avoid the vehicular carriageways.
26. A few witnesses had their horses stabled on Mill Lane and would ride to the stables on Haddon Lane to make use of the facilities, for example, an indoor arena or lessons. Other users said in the 1970's they travelled to the riding school on Haddon Lane when the Wirral Riding Centre was known as "Dodds" after the school's owners.
27. A few users had their horses stabled at the riding school and from there rode out towards Woodfall Lane, travelling by way of path 52A then Flashes Lane and then crossed Mill Lane. One user had, it was said, in an earlier period rode out and around Burton Wood. Some cycled to the stables from home over Flashes Lane and path 52A.
28. One user comments that before the foot and mouth disease outbreak in 2001 (when paths were forcibly closed with legal powers to reduce the potential spread of disease), it seems that there were more horseriders so that more recently it has become unusual to meet another rider on the track.
29. Most users commented on the narrow width available along the route, particularly, one person remarked in the middle area. Or made observations that they had cut

back foliage themselves. In the summer it was remarked the flies along the track are numerous. There were also comments that the surface of the path deteriorates in the winter and is not good to use. One person remarked that the surface of the path has continued to be as muddy in the last few winters when horseriders have been obstructed from using the route.

30. The witness evidence submitted with the application is sufficient to make a reasonable allegation that the public had enjoyed use of the way on horseback and that they did so “as of right” with uninterrupted use between 1996 and 2016. User has been claimed for a longer period than the twenty years. 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.

FURTHER INVESTIGATIONS

31. Further documentary investigations were undertaken. Details of all evidence taken into consideration is summarised in Appendix B. The standard reference documents comprising historical maps and records have been consulted in connection with this application.

32. 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 the late eighteenth century fairly accurate mapping was being produced. The purpose for which the map was published is taken into account, for example whether the information that was mapped was to provide a travel map or for other reasons.

33. Path 52A is shown on earlier county commercial maps, Greenwoods map published 1819, Swire and Hutchings’ map dated 1830 and Bryants map of 1831. On Greenwoods map of 1819, the route is shown as a route connecting directly between Mill Lane and Haddon Lane, where Haddon Lane terminates at the

“Friends meeting house”. The Swire and Hutchings map shows the route connecting between Flashes Lane and Haddon Lane and in the key the style of cartography is equivalent to “crossroads”. The route is shown on Bryant’s map of 1831 running between “Flashes Lane” and connects with what is depicted for Haddon Lane. The style of depiction of the lane is listed in the key as “lanes and Bridle Ways”.

34. OS mapping developed from the need to provide mapping for military purposes. The first surveys were published at one inch scale. 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. 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.

35. The claimed route is depicted on OS plans which are 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 solid black lines running between Flashes Lane and Haddon Lane. The 1:2500 OS Book of reference first edition, numbers the route “86” and the OS book of reference remarks this is a “road”. This is good information indicating a track was physically located on the ground and the use but does not describe the status of whether the route was public.

36. From 1938 a “New” “Popular” 1” map series was started, incorporating the then new metric National Grid. The popular series retrieved the market for small scale commercial maps. Roads were classified and coloured, identifying routes for motorists with colour classifications. The classifications changed with each publication from the late nineteenth century first publication to the early modern era. The instructions for classification derived from the data returned by the surveyor of each rural district council as main or district road, excluding from this class unmetalled roads and bridleways etc. (“Popular Maps” Y Hodson, 1999, Charles Close Society). The New Popular map edition 1947 sheet 109 shows Flashes Lane,

path 52A and Haddon Lane as uncoloured. The 1952 sheet 109, also shows part of Flashes Lane connecting Mill Lane with path 52A and running towards Haddon Lane uncoloured (and also Flashes Lane has become a cul de sac). The maps do not help to define if use of the way was public or private.

37. The publishers, Bartholomew were an independent publisher and created a popular series of maps based on the Ordnance Survey mapping. They were remarkable for using coloured layers on their half inch map series. The maps were revised based on the original Ordnance Survey one inch mapping. The maps were designed particularly for cyclists and users were encouraged to contact the map makers with errors and updates. The 2 miles to an inch, 1902-6 series map shows path 52A uncoloured and unclassified so does not help determination of public or private status.
38. Taken together, the commercial and OS maps are good evidence that the lane was physically on the ground from the early nineteenth century and suggests that it could be used with the local highway network.
39. 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, the production of a map was part of a statutory process under the Tithe Commutation Act of 1836 and the evidence of public rights they contained must be given appropriate weight. The map for Ness parish is dated 1845. The known roads are depicted as unbroken double lines and coloured. The claim route is shown on the tithe map running between Flashes Lane and Haddon Lane in the same style as roads. Flashes Lane is also shown in the style of (known) road. Roads on the map are unnumbered and not attributed in the apportionment even as a summary of roads. There is no explanatory key to the colouring of the roads.
40. There are three exceptions where hereditaments are described as a road or a lane; hereditament 218 is listed as "lane" owned by Rowland Errington and on the map this is the track from Neston Road to "Friends Hall"; hereditament 27 "road to Cross's Green" crosses land which was subsequently crossed over by a rail line; hereditament 130 is described as "road", owned by John Lloyd and crosses land now incorporated with The Old Bake House on the corner of Well lane and Neston

Road. It is likely that these “lanes” and “road” were recorded because it had been possible to tithe a crop from the land, suggesting that on this apportionment anything like a road which did not enclose titheable land was not numbered.

41. The Tithe map supports the case that the claimed route was physically available at this date. Non apportionment of the track suggests this was a used road or track and indicates the full width between boundaries was available. However, this does not provide evidence if the route was public.

42. 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 first survey of public rights of way was the parish survey. The parish survey map shows a footpath (first claimed as “old roadway” but then erased) from Mill lane to “Erringtons plantation” (east of the claim route and not shown on the report plan). On the survey map the ink line between the point at FP52A to the plantation has been erased. The County Surveyor writes to the Surveyor for Neston Urban District Council (UDC), Jan 1955, with comments on the submitted plans; “Should Path No 52 (at Erringtons Plantation) and Path No 32 (at the east end) continue in an easterly direction? The notation is “32 shown as FP” and second ink notation “[omit] [no] 52 “Flashes to Errington Plantation”. A second memorandum between the county surveyor and UDC surveyor states “Further to yesterday’s discussion...in the absence of evidence to establish as a right of way the part of path No 52 between “The Flashes and “Erringtons Plantation” and as this has no through connection I am proposing to omit same from the Draft Map”.

43. The parish survey schedule includes a penciled note of 2’20” walls along the claim route, and at the northern corner junction (with Flashes Lane) note of an obstruction “though open for many years a local farmer has erected an obstruction at this point”. The general description on the schedule relates to the path through Haddon Wood making note “.this has been an old road to Burton before the cutting through of the main road [Neston Road], which as the rock cutting near Mickwell Brow shows is more recent”. Mickwell Brow (Neston Gardens) is opposite the entrance to Haddon Lane on Neston Road

44. The Draft Map showed FP52 commencing from Flashes Lane through to Dunstan Lane in Burton. A successful objection to the Draft Map deleted the middle section of FP52, so that the northern part of the footpath was re-numbered FP52A and the southern end remained FP52. An updated statement was prepared for FP52A.
45. There were no objections to the Provisional Definitive Map and the published Definitive Map is the current legal document.
46. The County Heritage and Recreation Officer committee reported on an application to upgrade and add a bridleway through Haddon Woods. It was presented to the Rights of Way Specialised subcommittee meeting dated 18 March 1991. A search through this application does not reveal any information that could support or rebut the claims for an upgrade of the section of footpath between Flashes Lane and Haddon Lane. The report also does not refer to the section of the footpath between Flashes and Haddon Lane although there was existing information about the use of the footpath by horse riders (see para 49,50). An Order was made in 1991 to upgrade part of the existing public footpath(s) to bridleway and with the addition of a bridleway; "The Cheshire County Council (Definitive Map and Statement for the Borough of Ellesmere Port and Neston) (Footpaths Nos 52 and 52A (part) Neston and Bridleway No 52C Neston) Modification Order 1991" (Appendix C).
47. There is no evidence in the report for the addition of the width to the particulars for the footpath between Flashes Lane and Haddon Lane. The particulars also describe the commencement of the footpath from Flashes Lane, however there is no OS grid reference to establish the point at which the footpath joined Flashes Lane and the accompanying plan has the junction obscured by the position of the explanatory key. There is nothing related to this Order that could prevent the upgrade of Footpath 52A to bridleway or add additional width.
48. Part of Flashes Lane was "adopted" as a consequence of planning consent under application reference 3/1797 in 1976 for a housing development (Hill Top Road). The part that was adopted is where the lane has been surfaced.

49. Archived council correspondence shows that since at least the 1970's there had been complaints about and volunteer help with the maintenance of the path 52A. The Ramblers Association in 1975 arranged for the clearance of FPs 53 and 52A. Correspondence to the Borough in the summer of 1987 indicates that complaint had been made about the poor surface of the footpath. "With the assistance of labour employed by the Royal British Legion" maintenance was carried out including cutting back of the hedges and laying of "chippings where it had been badly cut up and churned by the passage of horse riders making passage very unpleasant for walkers"(letter 29 July 1987 Borough Engineer to Mrs Vickers). And in 1999 when there is a letter on file from a resident that the footpath [path 52A] was "being used by horses and is becoming churned up muddy and very difficult to walk on."
50. In 1977 enquiries were made with the local riding school regarding erosion of the footpath consequent from the use by horse riders; The County Council gave advice that it was not illegal to ride a horse on a footpath and "only the landowner has the authority to order the rider off or where appropriate sue for damage and/or trespass. Again in September and December 1980 complaint was made that horse riders were using the footpath. The contemporaneous response from the Borough Engineer to the resident was that "the landowner may restrict the use of a public footpath to pedestrians only by the erection of stiles and notices. The owner of the above path [path 52A] has been approached and made aware of your complaint but is unwilling to do anything to alter the present situation."
51. At the same date, complaint was made by a local horse rider asking that no stiles are installed. The Borough Engineer confirmed discussing installation of stiles with the adjacent farmer, Mr Argyle, "he seemed not to object to horse-riders passing over his land". In fact on 20 November 1987 the council served notice under section 16 of the Local Government (Miscellaneous Provisions) Act 1976 to furnish in writing the information regarding ownership of the Footpath track. Mr Argyle responded to claim ownership.
52. "Adopt the path" reports for 17 October 1992 states for path 52A "signs in order at both ends. Definitive route overgrown from end Hilltop Rd to field boundary at NGR [SJ] 767 307. There is a de factor path which is used by walkers and horses". Another report for 23 January 1994 states "sign broken at Orchard House end path muddy due to use by horses"

53. An Officer from the Council undertook a site visit on 5 May 2016 and 2 May and 27 July, 2018 and physical conditions and signs were noted (see Appendix D). The track surfacing is earth but there are areas which have gritstone, cobbles or gravel surfacing. The boundaries of the route are stone walled, with broad verge and hedgerow so that the width is variable. The walls of the track are overgrown with vegetation. The footpath was completely overgrown by bracken on a site visit made on 8 July 2016 when posting notification of the application to the unknown landowner(s). The width between boundaries shown on the Ordnance Survey map (1st ed 25") measures between 5.5 and 9.6 metres (measured on the electronic map system relating to the current boundaries the width measures between 5.3 and 11.1 metres). The overgrowth however reduces this significantly. A survey after the vegetation was cut back suggests the usual available width would vary between 1.5 and up to 3 metres.
54. On the western boundary towards the northern end of the path, the boundary walling it was noted is extremely overgrown and partly broken down leaving access across private open "common" land. A sign between the track and this "common" reads "Permissive Access Only. Access is by kind consent of the owner. Please keep all dogs on leads and remove any litter". On the site visits hoof marks and cycle tread marks were visible along the path. The path at the southern end has a kissing gate which was installed in 2016 by the council. There is no furniture at the northern end of the path.
55. At this end the path connects Flashes Lane and is also crossed by the entrance to a field. Flashes Lane is unsurfaced stone, gravel and earth up to the asphalt surface of the adopted highway. The width between boundaries shown on the OS map (1st ed 25") and the width of the part of Flashes Lane between adopted and the path is variable, the width approximates between 5.6 and 8.3 metres (measured on the electronic map system relating to the current boundaries). The stoney track is less than the full width.
56. Field gates are inserted in the boundaries on both sides of path 52A for field access, at approximately OSGR SJ 3076 7583.

Consultation

57. Neston Town Council reported a site visit by one of their members. The report comments on the path “found it be in a poor state of repair”. The comments described the width of the path as being narrow and insufficient for two horses being ridden in opposite directions to pass each other. That is, it is claimed, evidence there had been no bridleway usage. There was some evidence of what may have been hoof prints and several instances of tyre prints from cycles. The kissing gate, the council state, was evidence that the highway authority considered it could be lawfully installed without interfering with the existing rights of way.
58. The ward councillors for Little Neston and Burton do not support the claim because of safety concerns arising from the width of the footpath and the effect on the surface of shared use. It is recommended that if the claim is successful the path should be maintained to a minimum 3 metres width and have a more sustainable surface laid.
59. The owner/occupier at Orchard House has lived there for 11 years and has seen horseriders. She comments that the path is narrow and recently seems to have got narrower. She has used the path frequently, says it is a popular footpath and has never challenged any horserider. She notes that there has been a sign for a footpath which may have been a wooden post sign replaced with a metal post since damaged by a vehicle.
60. The owner/occupier at Mill Lodge has lived there for 2 years, the previous owner had said the route was used by horseriders. She does not see walkers using the path a lot and has never met anyone on the path when she has used it.
61. There were a number of objections submitted by local residents. The comments made include observations on the lack of maintenance on the path and the consequent impact of shared use with horseriders . A resident said the surface of the path had improved since horseriders had been unable to use the path following installation of a kissing gate. No one says that they had never seen horseriders use the path. A resident, however, comments that use by horseriders until recently had

not been often and the [local] stables were not as busy as they seem to be more recently.

62. A representative of the Wirral Footpaths and Open Spaces Preservation Society made comments, no objection was made to the principle of the application providing sufficient evidence supported the claim. Concerns were raised about the safety of use of the path as a bridleway. They recommend the widening of the path by cutting back vegetation and improvement of the surface with suitable material as has proved successful on other paths. The Cestrian Footpaths Group made no objection.

63. In 2016 the British Horse Society wrote in support of the claim. The letter describes regular use of the path by horseriders for over 50 years and states the path enables riders to avoid a dangerous and fast road [Neston Road] in order to access the "Wirral Way". The observation is made that there is a high density of horses within the local area.

Conclusion

64. An application was duly made and registered in 2016 requesting that an Order be made to upgrade a public footpath (path 52A) between Flashes Lane to Haddon Lane, Ness, to a bridleway based on the evidence of user statements and maps.

65. It also became apparent during investigation that public rights exist and should be recorded between the end of the adopted highway "Flashes Lane" and the commencement of path 52A.

66. Investigation of the application revealed documentary evidence showing the route was established in the early nineteenth century. The route is shown on nineteenth century county maps, on the Tithe map it is excluded from tithed areas and OS mapping depicts the path from the 1840's through to the current mapping.

67. The original survey of the parish under the 1949 Act initially described the route as an “old roadway” before revising the description to footpath. This may be indicative of the character of the route rather than the contemporary belief regarding usage. The comments regarding the deletion of the length of Flashes Lane to “Erringtons Plantation” suggests the surveyors were being cautious with the routes they were claiming as public rights of way.
68. The user evidence covers a period from the 1960’s to 2016. The witnesses had used the end of the adopted part of Flashes Lane to Haddon Lane via path 52A. The witness evidence claimed use of the route as a recreational route to travel from where the riders stabled their horses, or they rode to stables located on Haddon Lane which have been open from the 1970’s. The archived council correspondence and consultation responses, although in objection, corroborates use of the way was made by horseriders
69. There was a little evidence of use on a bicycle and the use dated after 1968 when it became lawful to cycle on a bridleway.
70. No records were discovered where the use of the route by horseriders was obstructed or prevented by landowners. The council archive indicates that following complaints in the 1980’s the council pursued evidence for a landowner specifically to identify if there was an objection to horseriders using the route. A landowner was identified and use of the route by horses drawn to his attention. The subsequent apparent acceptance of use by horseriders is strongly suggestive that use of the route by horseriders would pass the test of common law.
71. There is a question over the extent of the width of the route that should be recorded for path 52A. A width of 2 metres is recorded on the Definitive Statement, however the basis for this width is not known. The archives suggest that at different times in the 1970’s and 1980’s voluntary maintenance was carried out on site. The evidence weighs on the indication of the Tithe Map, Ordnance Survey and other maps that the route was established with solid boundaries with the indication the route had been dedicated for use between those boundaries. In more recent history it seems the full width wasn’t maintained, however, it also seems the complaints were being made that a greater width needed to be maintained and for this purpose in the 1970’s and 80’s volunteers cleared the route cutting back the hedges.

72. It is concluded that historically the width available to the public would have been all that between boundaries. The boundaries are marked by stone walling, so it is recommended that the full width between boundaries as shown on the first edition OS 1:2500 should be recorded with public rights. It is recommended that the full width between boundaries of that length of Flashes Lane is also recorded.
73. For the purposes of this report, it is recommended that the length of Flashes Lane between the adopted part and terminus of path 52A is accepted as publicly maintainable and be recorded with the public status of bridleway. The recommended status does not prevent anyone claiming higher rights exist, for example, over Flashes Lane and any existing private rights for use with a mpv, for example, will be unaffected by the Order.
74. It is recommended that in the event of confirmation of an Order to upgrade the path to bridleway that this should initiate a revision of the level of maintenance. Issues have been raised during this investigation that the council will have to consider and these will need to be balanced with the ecological desirability of retaining some floral features along the route.
75. It is concluded therefore, that on account of the expiry of the duration of a period of 20 years user, between 1996 and 2016 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.
76. It is however the case in this application that the evidence available is considered to satisfy the statutory test, and in so doing that it also satisfies the common law requirements. There is, therefore, for the purposes of this report no need to distinguish between the two tests for the purposes of the conclusions drawn.

77. 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 A-B on the plan MO/564A by a green line. It is also recommended that there is an addition of a bridleway over land between the end of the adopted length of Flashes Lane and the footpath to be upgraded to bridleway as shown between A -C on the plan MO/564A by a green line.

Appendix A User Summary2

name	use	frequency	2018	2015	2010	2005	2000	1995	1990	1985	1980	1975	1970	1965
					shading indicative of frequency of use									
C Graham (I)	horse	weekly+		2016	2010									
D Clegg (I)	horse	weekly +		2016		2009			March/April					
E Potter (I)	horse	weekly +		2015				1999						
P Jones (I)	horse	daily		2016		2008								
	cycle	daily		2016		2008								
L Mayhew (I)	horse	occasionally to monthly		2016	2012		2001			1986			1974	
	cycle	?		2016					1991					
J Hopson (I)	horse	weekly		2016					1993		1981-1984			1966-1968
V Tolfrey (I)	horse	monthly/weekly		2016		2007	2001							
G Crone	horse	weekly		2016										1967
L Davies	horse	weekly		2016						1988				
	foot	weekly		2016						1988				
L Long (I)	horse	weekly		2016	2012			1998		1989				
	foot	weekly		2016						1987				
J May	horse	?		2016		2007								

graded dark to light for decreasing usage

cycle use

vehicular use

Appendix B

1. Communications Received

Application No.CWAC010/DMMO made by L Mayhew
Email complaint 6 April 2016 and following emails P Atkinson;

2. Witness Evidence

C Graham form/interview notes; D Clegg form/interview note; E Potter form/interview note; P Jones form/interview note; L Mayhew form/interview note; J Hopson form/interview note; V Tolfrey form/interview; L Long form/interview note;G Crone form; L Davies form; J May form

3. Other Evidence taken into consideration

Notes and photographs of site visit made by A Mayer
“Popular Maps” Y Hodson, 1999, Charles Close Society

4. Documentary Evidence

CRO= Cheshire Record Office, CWAC= internal records, SL = National Library of Scotland

Date	Ref	Description
1831		CRO M/5/2 Bryant county map
1787		CRO PM3/5 Cary county map
1819		CRO PM 13 Swire & Hutchings county map
1777		CRO PM 12/10 Burdett Map
1845		CRO EDT 286/1 Ness Tithe Award
1910		NVA1/NVB Finance Act,
1840		CWAC 1” series Ordnance Survey
1947		CWAC 1” Popular series Ordnance Survey
1874		CRO 25” 1st series Ordnance Survey
**		CRO 203959 Book of Reference
1898		CRO 25” 2nd ed Ordnance Survey
1910		CRO 25” Ordnance Survey
1902		SL Bartholomew
1952		SL 1” Popular series Ordnance Survey
1940		CWAC Aerial photograph
1970’s		CWAC Correspondence and Definitive Map records

Appendix C
1991 Order

Fps 52 & 52A (Part) & Br 52C Neston

CHESHIRE COUNTY COUNCIL

924

WILDLIFE AND COUNTRYSIDE ACT 1981

DEFINITIVE MAP AND STATEMENT FOR THE BOROUGH OF ELLESMERE PORT & NESTON

THE CHESHIRE COUNTY COUNCIL (DEFINITIVE MAP AND STATEMENT FOR THE BOROUGH OF ELLESMERE PORT AND NESTON) (FOOTPATHS NOS 52 AND 52A (PART) NESTON AND BRIDLEWAY NO 52C NESTON) MODIFICATION ORDER 1991

Whereas pursuant to Section 53(2)(b) of the Wildlife and Countryside Act 1981 (hereinafter called "the Act") it appears to the Cheshire County Council (hereinafter called "the surveying authority") that the Definitive Map and Statement for the Borough of Ellesmere Port and Neston require modification in consequence of the occurrence of an event specified in Section 53(3)(c)(ii), namely, the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) 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;

And whereas pursuant to Section 53(2)(b) of the Wildlife and Countryside Act 1981 (hereinafter called "the Act") it appears to the Cheshire County Council (hereinafter called "the surveying authority") that the Definitive Map and Statement for the Borough of Ellesmere Port and Neston require modification in consequence of the occurrence of an event specified in Section 53(3)(c)(i), namely, 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 to which Part III of the Act applies;

And whereas the surveying authority have consulted with every local authority whose area includes the land to which the order relates;

Now, therefore, the surveying authority, in exercise of the power conferred by Section 53(2)(b) of the Act, hereby make the following Order:-

1. The relevant date for the purposes of this Order shall be 26 June 1991.
2. The Definitive Map and Statement for the Borough of Ellesmere Port and Neston shall be modified as described in Part I and Part II of the Schedule hereto and shown on the map annexed hereto.
3. This Order shall have effect on the date it is confirmed.
4. This Order may be cited as "The Cheshire County Council (Definitive Map and Statement for the Borough of Ellesmere Port and Neston) (Footpaths Nos 52 and 52A (Part) Neston and Bridleway No 52C Neston) Modification Order 1991".

THE COMMON SEAL OF CHESHIRE)
COUNTY COUNCIL was hereunto)
affixed this 26th day of June)
One thousand nine hundred)
and ninety one in the)
presence of:-)



Authorized Signatory

B.K25C07

The Secretary of State for the Environment hereby confirms the foregoing order subject to the modifications shown in red ink thereon.

P.C. Stoble
Signed by authority of the Secretary
of State for the Environment
4 March 1991

An Assistant Secretary
Government Office for
the North West

SCHEDULE

PART 1

MODIFICATION OF DEFINITIVE MAP

Description of path or way to be upgraded to bridleway

- (a) That footpath known as Footpath No 52 Neston to be upgraded to Bridleway in the Borough of Ellesmere Port and Neston, commencing at the road known as The Village (UV 1492) at OS grid reference SJ 3190 7444 (point D on the annexed map) and running along Vicarage Lane in a north westerly direction for a distance of approximately 255 metres to connect with the new Bridleway No 52C Neston (described below) and Footpath No 40 Neston at OS grid reference SJ 3166 7453 (point C on the annexed map).
- (b) That part of the footpath known as Footpath No 52A Neston to be upgraded to bridleway in the Borough of Ellesmere Port and Neston, commencing at the junction of Haddon Lane (County Road UV 1165) and Footpath No 52A Neston at OS grid reference SJ 3078 7567 (point A on the annexed map) and running in a southerly then generally easterly direction for a distance of approximately 755 metres to connect with the new Bridleway No 52C Neston (described below) at OS grid reference SJ 3140 7567 (point B on the annexed map).

Description of path or way to be added

A bridleway in the Borough of Ellesmere Port and Neston, commencing on the ~~junction of Haddon Lane and Footpath No 52A Neston~~ at OS grid reference SJ ~~3078 7567~~^{3140 7567} (point B on the annexed map) and running in a generally south, ~~southerly~~^{easterly} direction for a distance of ~~1475~~¹⁴⁷⁵ metres to connect with Footpath No 52 Neston and Footpath No 40 Neston at OS grid reference SJ 3166 7453 (point C on the annexed map).

BJK2SC07

SCHEDULE

PART II

MODIFICATION OF DEFINITIVE STATEMENT

Variation of particulars of path or way
Borough of Ellesmere Port and Neston

<u>Number</u>	<u>Commencement and termination of Path or Way</u>	<u>Particulars with regard to width and any limitations and conditions relating to the Path or Way</u>
Bridleway No 52 Length: 255 metres	Commencing on The Village (UV 1492) at Burton and running in a north westerly direction along Vicarage Lane to connect with Bridleway No 52C and Footpath No 40	Minimum width 3 metres
Footpath No 52A Length: 534 metres	Commencing at Flashes Lane (UV 1118/B) and running in a southerly direction terminating at the junction with Bridleway No 52B and Haddon Lane (UV 1165)	Minimum width 2 metres
Bridleway No 52B Length: 755 metres	Commencing at the junction with Footpath No 52 and Haddon Lane (UV 1165) and running in a southerly then generally easterly direction to connect with terminating Bridleway No 52B at the drive leading to Haddon Hall Farm	Minimum width 3 metres
Bridleway No 52C Length: 1278 metres	Commencing on Bridleway No 52B at the drive leading to Haddon Hall Farm and running in a generally south easterly direction to connect with Bridleway No 52 on Vicarage Lane at the junction with Footpath No 40	Variable width minimum 5 metres

BJK28C07

Bridleway No 52C Length: 652 metres	Commencing on Bridleway No 52 on Vicarage Lane at the junction with Footpath No 40 and running in a generally north westerly direction to terminate at the southern boundary gateway of Haddon Wood
--	---

MODIFICATION ORDER
WILDLIFE AND COUNTRYSIDE ACT 1981 (Part III)

COUNTY OF CHESHIRE DEFINITIVE MAP
BOROUGH OF ELLESMERE PORT AND NESTON
HADDON LANE, NESS & VICARAGE LANE, BURTON

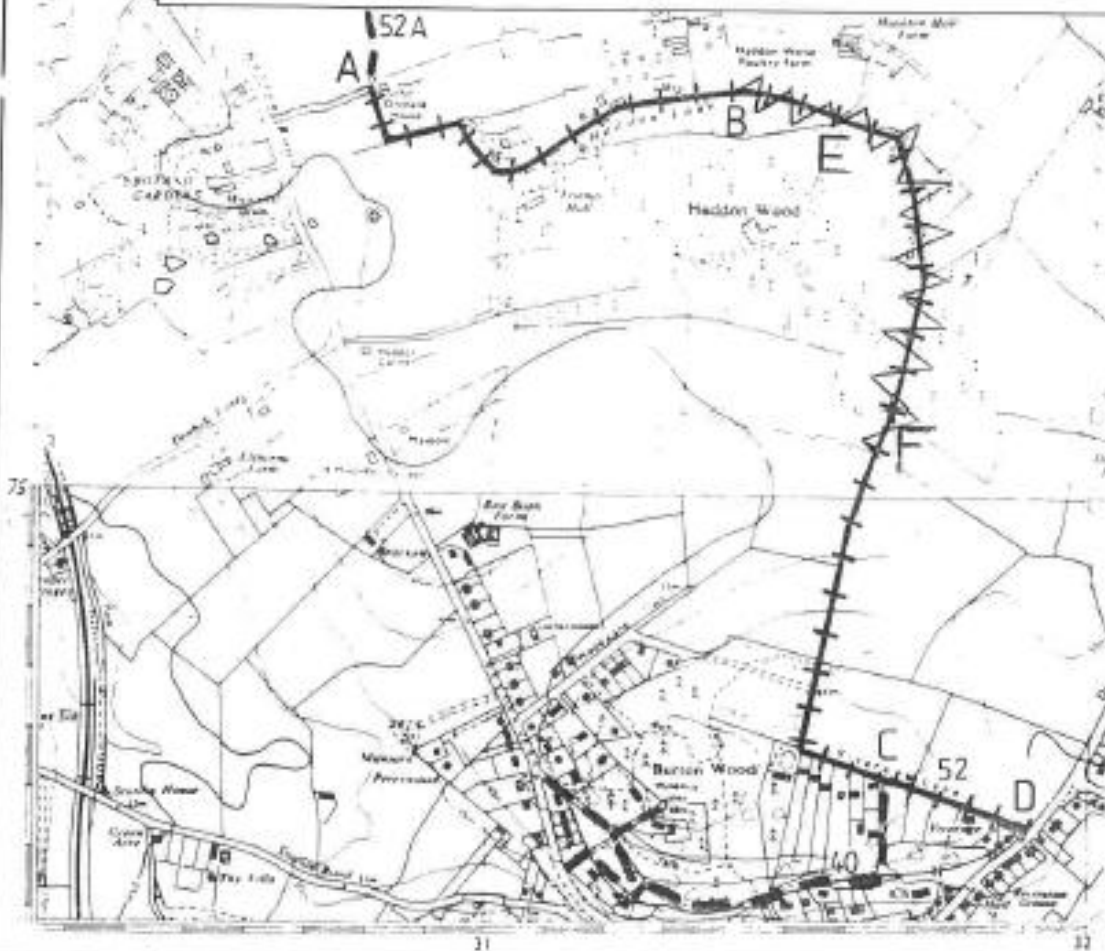


PROPOSED UPGRADING OF FPS 52, 52A (PART) TO BRIDLEWAY
PROPOSED ADDITION OF BR 52C

ROUTES TO BE UPGRADED A + + + + B C + + + + D
ROUTE TO BE ADDED F + + + + C
EXISTING PUBLIC FOOTPATHS - - - - -

SCALE 1 : 10 000

REPRODUCED FROM THE ORDNANCE SURVEY MAP WITH THE
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Cheshire County Council
Information and Leisure Services

Heritage and Recreation
Public Works Unit
Cottonville House
Huntley Street
Crewe
CH1 2QP

Drawing No.
MO/36B
Date
JUNE 91

Notes 13033 28

Appendix D Route image

Haddon Lane
Junction with
Path 532A







Cross
path
Field
gates





approach to
area called
"common"



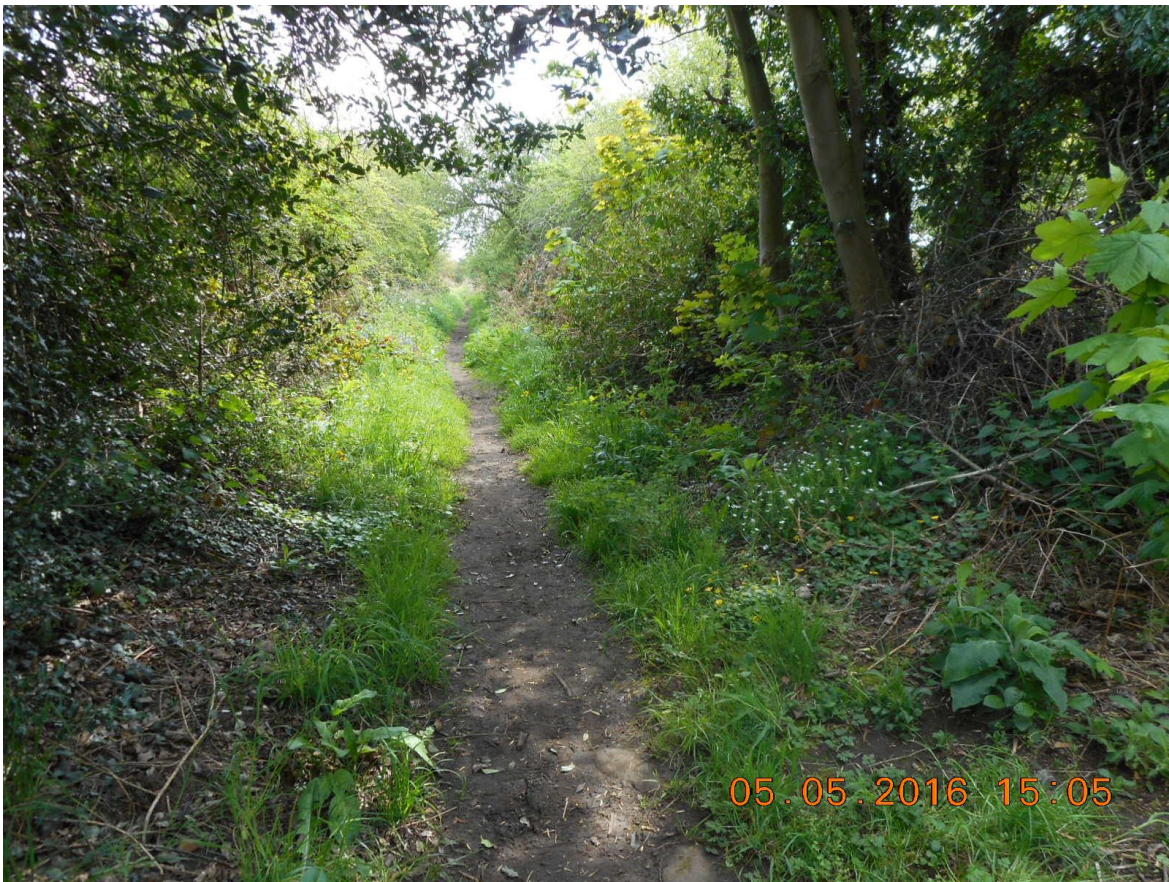


05.05.2016 14:49



05.05.2016 14:50







Junction
path 52A
and Flashes
Lane

Path 52A
junction right
side of the
image



End of
asphalt
surface



