

Cheshire West and Chester Borough Council

Officer Delegated Decision Report

Application Number: CWAC/004 Tarvin

Description: Wildlife and Countryside Act 1981 – Section 53
Application for a Definitive Map Modification Order

Location: Land between Church Street to Cross Lane

Wards: Tarvin and Kelsall Ward

Ward Members: Councillors Tom Cooper and Ted Lush

Case Officer: Michael Goan (Public Rights of Way Officer)

Date: 31 July 2025

Recommendation that:-

1. The application by Tarvin Parish Council to modify the Definitive Map and Statement (“the DM”) be refused on the grounds that insufficient evidence has been submitted to show the expiration of a period such that the enjoyment by the public of the ways during that period raises a presumption that the ways have been dedicated as public paths on land between Church Street and Cross Lane in the Parish of Tarvin. This is shown on Plan NO MO/572 which is annexed hereto at Appendix 1.

Background

1. Robin Carr Associates was appointed to act on behalf of Cheshire West and Chester Borough Council (“the Council”) to investigate and make a recommendation on an application by Tarvin Parish Council to modify the DM with the addition of a public footpath running over land between Church Street and Cross Lane, in the Parish of Tarvin. The consultant’s report is annexed hereto and can be found at Appendix 6.
2. Section 53(2)(b) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) imposes a duty on the Council to keep the DM under continuous review and by order make any modifications to it that are requisite in consequence of the occurrence of certain events. This application was made on the basis provided for in Section 53(3)(c)(i) of the 1981 Act, namely: *“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 on the map and statement subsists or is reasonably alleged to subsists 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..."

Definitive Map and Statement

3. The National Parks and Access to the Countryside Act 1949 required surveying authorities to draw up a DM. At the time, Cheshire County Council ("CCC") was the surveying authority and asked all parishes to provide a map and schedule showing all public rights of way. These parish surveys were checked by CCC officers and a draft DM for each parish was published. Representations and objections to the draft DM were dealt with by CCC and then a provisional DM was published. Representations and objections to the provisional DM were dealt with by the courts and following hearings the DM was completed, sealed and published. Subsequently CCC was required by legislation to keep the DM under review, the responsibility being commuted by the 1981 Act to one of a continuous review. The Council is empowered to make Orders under the 1981 Act when it is required by a decision to make an Order.
4. Orders are made in prescribed form in accordance with legislation. Non statutory guidance on width was issued by DEFRA in 2007 expanding on guidance issued under Advice Note 16 "Widths on Orders". A Definitive Map Modification Order records rights and there is advice how those rights may be recorded where the evidential source is vague or approximate. Where there is little or no evidence to show a width it is advised that an order should include a width that appears appropriate in having regard to relevant factors which may include type of user (walkers), nature of the surface (grass) and any other physical features. The documentary evidence indicates that there was no physical feature preventing access. It is considered that a necessary width for two users to pass in comfort is 2 metres. Generally the Council adopts this approach.

Conclusion

5. The investigation of this application identified no evidence of assistance from historical documentary records.
6. A total of 19 user evidence forms were submitted in support of the application. These forms provided evidence of public use over a period approximately 58 years from circa 1955 to 2013. The forms provide evidence of occasional use by the majority of witnesses claiming weekly and daily use over a period of time. The

date when that use was challenged is not identified by any particular action or event so use is made of the statutory provision of use of the date of the submission of the application which is June 2013. The period of user is therefore 1993-2013. These forms are annexed here at Appendix 3.

7. The owners of the land crossed by the application route have made submissions in objection to the application. These submissions contain evidence relating to the use of the application route for farming operations; the locking and fastening of gates and granting of permission to use the application route. This counted as 9 people across 5 households who were granted permission so use was therefore not “as of right”.
8. It is concluded that the date of challenge to the period of use would be 1993-2013. The user evidence indicated public use extended over the full twenty year period but it is questionable whether there is sufficient use to meet legislative requirements. While some use was both as of right and without interruption, there is evidence submitted from the landowners of a significant number of permissions and various periods when the route was not available to be used. Application of the evidence under Common Law has also been considered and found insufficient.
9. Taking all matters into account it may be considered reasonable to conclude that there is insufficient evidence to give rise to a “reasonable allegation” in favour of presumption of dedication. The application should be refused.

Associated documents

Application Ref: CWAC/004/DMMO.

Appendix 1	The Plan MO/572
Appendix 2	DMMO Application
Appendix 3	Redacted User Evidence Forms
Appendix 4	User Evidence Summary Graph
Appendix 5	Consultant’s report and recommendation not including images