

Cheshire West and Chester Borough Council

Officer Delegated Decision Report

Application Number	CWAC021- Littleton/Christleton
Description	Wildlife and Countryside Act 1981 – Section 53 Application for a Definitive Map Modification Order 4 application routes listed as A, B, C, D,E on the application plans
Location	Between Littleton Public Footpath 6 and Christleton Public Footpath 13
Ward	Christleton and Huntington Ward
Ward Member	Councillors Mark Williams and Stuart Parker
Case Officer	Michael Goan Public Rights of Way Officer publicrightofwaywest@cheshirewestandchester.gov.uk
Date	11/4/2024

Recommendation that:-

- (1) 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 addition of footpaths to the Definitive Map and Statement as shown between Points A to B, C to D, E to F, G to H and I to J on Plan MO575 DMMO (Appendix E and that the requisite notice of the making of an Order be given.
- (3) The Head of Planning and Place Making be authorised to take any action considered necessary in respect of the confirmation of the Order hereby authorised to be made.

Background

1. Robin Carr Associates was appointed to act on the Councils behalf and investigate and make recommendation on an application to modify the Definitive Map and Statement of Public Rights of Way (the “DM”) for an Order to record 4 public footpaths (subsequently on naming route C being split to make 5) listed as A, B, C, D and E on the application plan (Appendix E), running north to south over land between Public Footpath 6 Littleton and Public Footpath 13 Christleton. The final reports can be found at Appendix A, B, C and D and the plan at Appendix F (“the Plan”) and images of the routes at Appendix I below.

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. The 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 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 rights 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 Definitive Map and Statement of Public Rights of Way. 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 (“the parish survey”). The 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, following which Hearings, the DM was completed, sealed and published. The Surveying Authority was required by the legislation to keep the map and statement 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 and according to current guidance. Non statutory guidance on width was issued by DEFRA in 2007 expanding on guidance issued under Advice Note 16 “Widths on Orders” (Appendix G). 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, the OMA, it is advised should include a width that appears appropriate having regard to relevant factors which may include type of user (walkers), nature of the surface (grass) and any other physical feature. OMAs should use a width necessary for two users to pass in comfort. Generally, in the Councils area we use 2 metres as the most appropriate width for a footpath.

Conclusion

5. The investigation of the applications identified that many of the registered public footpaths run in a generally east/west direction broadly parallel to Tarvin Road (A51). This means that anyone wishing to carry out a circular walk would have to use north/south link roads without adjoining footways. As a result, and in preference to using these roads it has been alleged that over many years several north/south footpath links have been used and established. Four routes are claimed and shown on the application Plan (Appendix F) as route A, B, C and D. The application routes do not appear on any documents or maps for routes A, B and D and these documents are therefore of no assistance in determining any historic rights. The 1847 Littleton Tithe map shows a route that broadly follows the line of the alleged Route C.
6. The applications were made jointly under Christleton and Littleton parish councils to support 4 alleged paths shown on the application Plan. A total of 62 user evidence forms were submitted in support of path A (Appendix H); 51 user evidence forms with use from 1970-2020 for route B; 57 applications for route C and 56 user evidence forms for route D (much of the witness evidence is not exclusive to one route). These forms provide evidence of public use over a period exceeding 20 years, from circa 1970 to 2020 when the Application Routes were blocked. The landowner in September 2020, erected fencing alongside some of the recorded public footpaths and in doing so fenced off the routes claimed.
7. The owners have held the land since 2014 and state that they have challenged people using the application routes and had installed various signs. It is alleged that under the covid restrictions there was a general increase in the use of the path network which resulted in increased trespass and damage to crops etc. In September 2020 in response to the alleged increase in use, the owner erected fencing alongside some of the existing registered public footpaths and also fenced off the routes claimed. The landowners state former landowners also challenged use of the application routes. Without submission of that evidence, it is therefore not considered to be sufficient to overturn any initial presumption of favour of dedication within the meaning of section 31 of the Highways Act 1980.
8. And there is sufficient evidence to support any inference of dedication under the Common Law. The above reasonably alleged presumption of dedication can be overturned if there is sufficient evidence of a landowner's lack of intention to dedicate public rights over the Application Routes.
9. The initial, and lowest, trigger test (a reasonable allegation) is a relatively low evidential threshold, and even when there is a conflict of credible evidence on both sides, the Surveying Authority is obliged to make an Order to allow it to be tested through the full order process.

10. It is concluded therefore that on account of the expiry of the duration of a period of 20 years user, between 2000-2020, of the way by the public “as of right”, and in the absence of any cogent evidence of a lack of intention to dedicate in that period, the requirements of section 53 3 (c) (i) of the 1981 Act are, on the balance of probabilities, satisfied as reasonably alleged, and the requirements for the making of the Order sought would appear to have been met.

Associated documents

11. Application file CWAC/021/DMMO.

Appendix A Consultants report for route A and recommendation not including images.

Appendix B Consultants report for route B and recommendation not including images.

Appendix C Consultants report for route C and recommendation not including images.

Appendix D Consultants report for route E and recommendation not including images.

Appendix E The Plan

Appendix F The applications plan

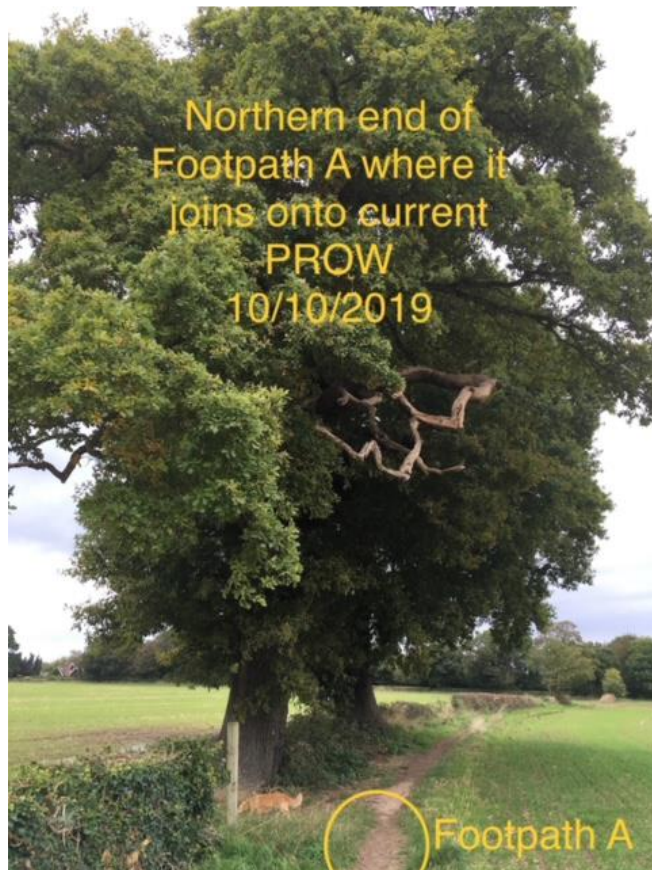
Appendix G Guidance on widths

Appendix H User Evidence Graph (redacted)

Appendix I Images of the sites

Appendix J The application and plan

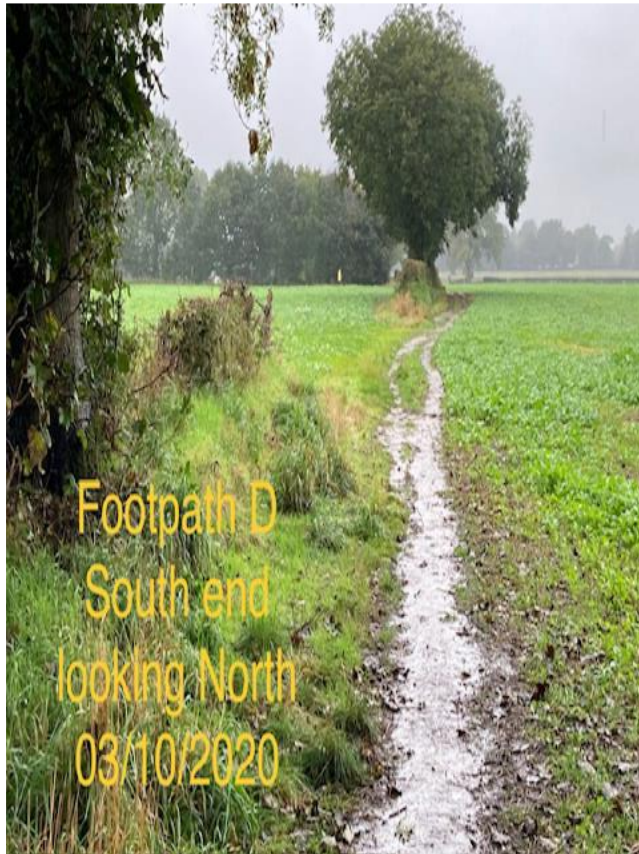
Appendix I Images of the sites



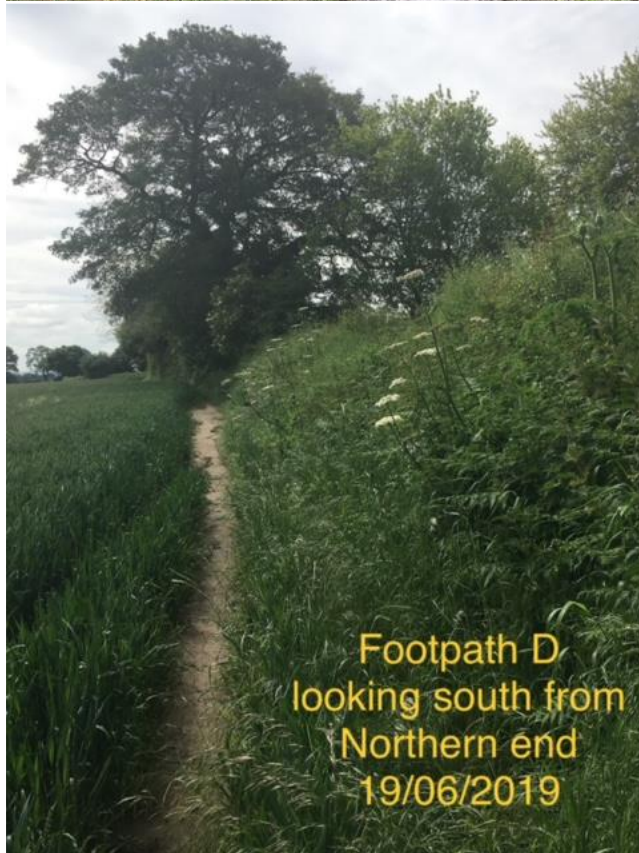


FOOTPATH C





Footpath D
South end
looking North
03/10/2020



Footpath D
looking south from
Northern end
19/06/2019

Footpath D
Northern end
18/09/2020

