



## Order Decision

Site visit made on 13 July 2020

**by Alan Beckett BA MSc MIPROW**

**An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 06 August 2020**

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### **Order Ref: ROW/3230217**

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Cheshire East Borough Council Definitive Map and Statement (Upgrading of Public Footpaths No. 8 Parish of Marbury cum Quoisley and No. 3 Parish of Wirswall to Bridleways) Modification Order 2017.
- The Order is dated 12 January 2017 and proposes to modify the Definitive Map and Statement for the area by upgrading two public footpaths to the status of public bridleways as shown in the Order plan and described in the Order Schedule.
- There was 1 objection outstanding when Cheshire East Borough Council ('the Council') submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is confirmed.**

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### **Procedural Matters**

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations forwarded to me. I made an unaccompanied inspection of the paths at issue on Monday 13 July 2020.

### **The Main Issues**

2. The main issue in relation to this Order is the requirements of section 53 (3) (c) (ii) of the 1981 Act namely, whether the evidence discovered, when considered with all other relevant evidence available, shows on the balance of probabilities that a way shown in the map and statement as a highway of one description (namely public footpaths 8 and 3) ought to be there shown as a highway of a different description (namely as a public bridleway).

### **Reasons**

3. As noted above, the Order attracted one objection. The objector questioned the claimed status of the Order routes. Although the objector contended that there were many documentary sources that did not show the Order routes as a bridleway, none of those sources were submitted for consideration.
4. There is no evidence of use of the Order route on horseback by the public. The Council has considered several documentary sources as part of its investigation of the application to upgrade the current footpaths to bridleway. The Council's conclusion from its assessment of those documents was that the Order route is historically a public bridleway and should be recorded as such.

## Documentary evidence

5. The earliest depiction of the Order route is found in the Quarter Sessions records of 1812 as part of the route was the subject of a diversion. Consent to the diversion was given by Domville Poole, the then owner of the land. The diversion order was signed and sealed by two Justices of the Peace and was dated 31 March 1812.
6. The plan attached to the diversion order shows the alignment of the way being diverted and the proposed alternative line adjacent to Marbury Mere. The new route was described on the plan as '*Bridle and Footway to be diverted from Wirswall*' with the former route being described as '*Old road to be stopped up*'. Although the plan only shows that section of the Order route in the immediate vicinity of Marbury Mere, where the route is shown as leaving the extent of the plan the route is annotated as '*Road to Wirswall*'.
7. The Order route is not shown on the 1819 Greenwood map. Bryant's 1831 map of Cheshire shows the whole of the Order route by means of a double peck line. The key shows that the route was considered to be one of the "Lanes and Bridle Ways" in the district.
8. The Order route is shown on the 1839 Marbury tithe map by means of double peck lines and in some sections by means of a solid line and a separate peck line. The route runs through five numbered plots of land which the apportionment describes as 'meadows' or 'pasture'. The Marbury section of the Order route is not specifically mentioned in the tithe documents. In the 1840 tithe documents for Wirswall, the route of footpath 3 is shown by double peck lines and is annotated 'Bridle Road'; where the route is shown crossing the parish boundary, it is annotated 'to Marbury'.
9. The Order route is shown consistently on successive versions of Ordnance Survey mapping published since 1833. On the second edition of the 25-inch to 1-mile map of 1896 the route is annotated 'B.R.' at a point which approximates to point B on the Order plan. This annotation appears on the third edition of the same map published in 1909 together with a further 'B.R.' annotation on the Wirswall side of the parish boundary.
10. The Finance Act 1910 map shows the route in Wirswall as passing through hereditament 585. The Field Book entry for Wicksted New Hall shows that a reduction in site value of £30 was granted on account of a '*Bridle Road 392 yds @1/6yd*' running through the hereditament; this appears to correspond with the Order route on the Wirswall side of the parish boundary. The corresponding entries in the Field Book and Record Book which dealt with deductions for '*Rights of Way or User*' for hereditament 437 (the land in Marbury parish) were not submitted; it is not known whether the land within Marbury was subject to a similar reduction in site value.
11. An entry from 29 September 1910 in the Minutes of Marbury Parish Council refers to "*the bad state of the gateplaces on the Bridleroad leading from Marbury to Wirswall via the Knolls*". That meeting resolved that the Clerk was to see Mr Poole personally to ask that the route be put in good order. The Order route passes an area of land called the Knowles; the Council contend that 'the Knolls' and 'the Knowles' are one and the same.

12. An entry in the records of the Cheshire County Council Roads and Bridges Committee dated 6 September 1945 records an "*Application by the Agent of the Marbury Estate for repairs to Bridle road and footpath leading from Marbury to Wirswall*". It was resolved that repairs should be carried out at an estimated cost of £30.
13. The Council notes that records of the survey of public rights of way conducted in Marbury under the provisions of the National Parks and Access to the Countryside Act 1949 ('the 1949 Act') are missing. The survey notes for Wirswall are extant and show the Order route as number 3 which is referred to as a 'bridleway'. However, on the draft, provisional and definitive maps, both Wirswall 3 and Marbury 8 were shown as public footpaths.

## Conclusions

14. Although the Order route does not appear on small scale commercial mapping before 1831, the Quarter Sessions records demonstrate the existence of the Order route not later than 1812. The Quarter Sessions record of the diversion of the eastern end of the Order route is a significant document as it demonstrates not only the existence of the route but also provides evidence of the status of the route at the date when it was diverted.
15. The Quarter Sessions diversion order was signed and sealed by two Justices with the owner of the land crossed by the diverted route giving his consent. This provides evidence of considerable weight as to the status of the Order route in the early nineteenth century. Although the Quarter Sessions plan does not show the entirety of the Order route, the description of the route as "*Bridle and Footway to be diverted from Wirswall*" and the marginal note on the plan of the continuation being the "*Road to Wirswall*" demonstrates the existence and status of a public through route linking two villages.
16. The tithe maps for the parishes demonstrate the existence of a route on an alignment which is consistent with the current alignment of footpath 3 and footpath 8. On the Wirswall tithe map, the route is described as a '*Bridleroad*' and where the route crosses the parish boundary, the bridleroad is shown to continue '*to Marbury*'. Greenwood's map shows the Order route in its entirety amongst those routes considered to be '*Lanes or Bridleways*'. I consider that the documentary evidence from the first half of the nineteenth century, and in particular the Quarter Sessions records, provide good evidence that the Order route had been dedicated as a public bridleway prior to 1812.
17. Nineteenth and early twentieth century Ordnance Survey mapping is consistent with the Quarter Sessions, tithe and Greenwood's map in that those maps show the continuing availability of a through route between Wirswall and Marbury; the route is annotated '*B.R.*', an indication that Ordnance Survey considered the route was capable of supporting equestrian traffic.
18. The reduction of site value of hereditament 585 because of a '*Bridle road*', the reference to a '*Bridle road*' from Marbury to Wirswall in the September 1910 parish minutes, and the expenditure in 1945 of £30 by the County Council on repairs to a route acknowledged by the then landowner to be a '*Bridleroad and footpath*' are wholly consistent with the nineteenth century evidence and demonstrate that the Order route was considered to be a public equestrian route in the first half of the twentieth century.

19. Although the Order route was recorded as a public footpath under the 1949 Act provisions, this does not serve to negate the evidence of a higher status found in the Quarter Sessions records. Once public rights have come into existence, they remain in existence unless extinguished by due legal process. No evidence has been presented to suggest that the bridleway rights recorded in the 1812 diversion have been subsequently stopped up. Consequently, and despite the Order route having been recorded as a public footpath, those public rights evidenced by the 1812 diversion order remain.
20. I conclude that the documentary evidence adduced is sufficient to demonstrate, on a balance of probabilities, that public bridleway rights subsist over footpath 8 and footpath 3 such that the definitive map and statement require modification. It follows that I also conclude that the Order should be confirmed.

### **Other matters**

21. Concerns have been expressed as to the effect a public bridleway would have on the ability of the organisers of the 'Merry Days' charity fundraising event to continue to run such an event in the fields closest to the village. Concerns were also expressed about the potential disruption to the activities of members of the Prince Albert Angling Society who lease the fishing rights on Marbury Mere. Concerns were also expressed about the risk to horse riders posed by the wet and boggy ground conditions found on part of the route.
22. Whilst I acknowledge that there may be impacts upon current use of the land crossed by the bridleway, the current or potential use of the land is not a matter which I can take into account in reaching my decision. The process under section 53 of the 1981 Act is concerned with the determination of whether public rights of way subsist and not with what may be considered to be preferable or desirable by one party or another.
23. I saw from my site visit that part of the route was wet and founderous underfoot; no doubt this part of the route may be equally founderous for those on horseback. However, the evidence adduced demonstrates that this route was and is subject to a public right of way on horseback and the current ground conditions may not always have been present. The future management of the route for equestrian use will fall to the Council as the Highway Authority.

### **Overall Conclusion**

24. I conclude that the evidence before me is sufficient to show, on a balance of probabilities, that a public right of way on horseback subsists over the Order route.
25. Having regard to these and all other matters raised in the written representations, I conclude that that the Order should be confirmed.

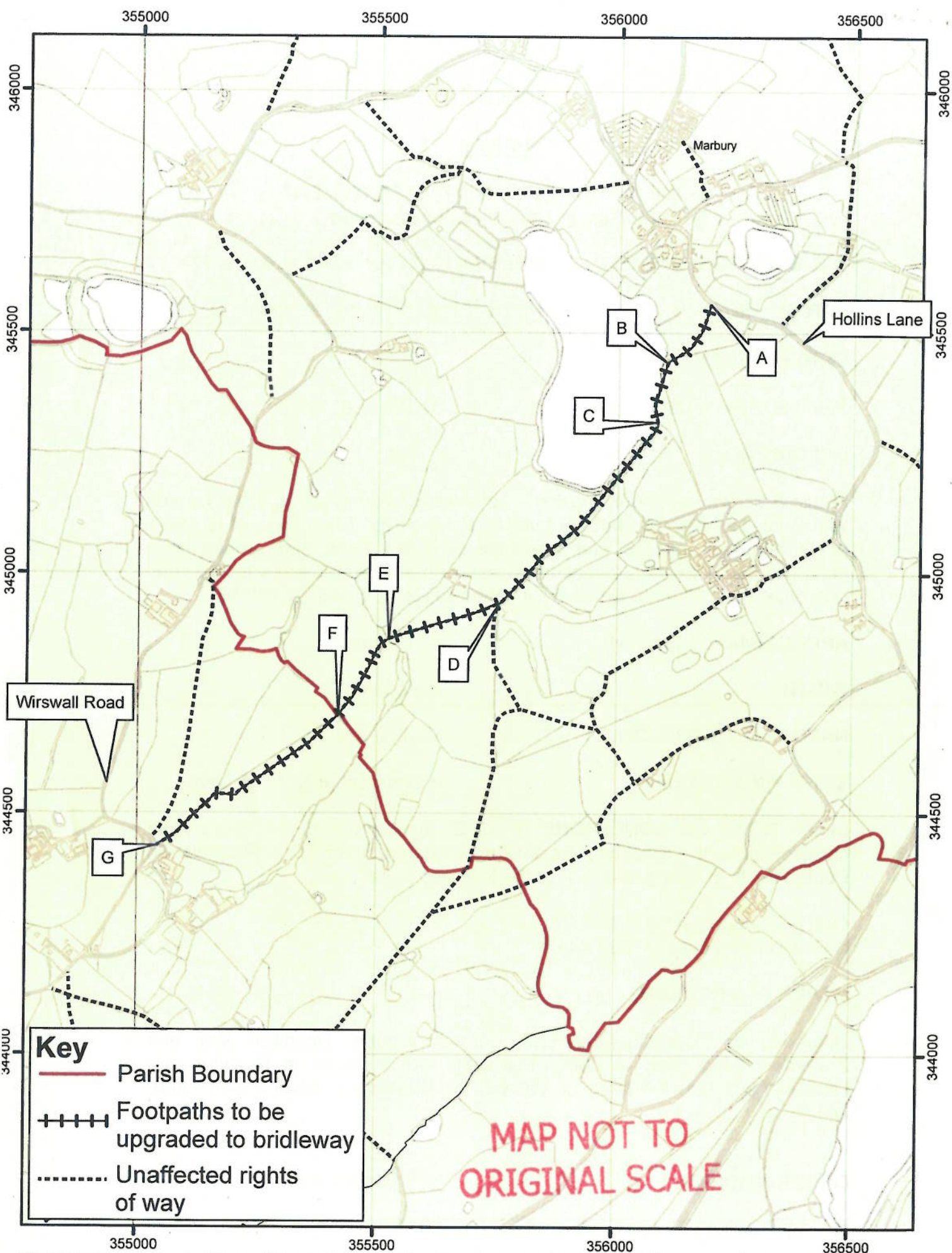
### **Formal Decision**

26. I confirm the Order.

*Alan Beckett*

INSPECTOR





Wildlife & Countryside Act 1981  
 The Cheshire East Borough Council Definitive Map and Statement  
 (Upgrading of Public Footpaths No. 8 Parish of Marbury cum Quoisley  
 and No. 3 Parish of Wirswall to Bridleways) Modification Order 2017

Plan No.  
 WCA/012A



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