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| **Order Decision** |
| Papers of File |
| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 16 October 2024** |

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| **Order Ref: ROW/3327832** |
| * This Order is made under section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as the Cheshire East Borough Council Definitive Map and Statement (Addition of Public Footpath No. 45, Parish of Lyme Handley) Modification Order 2022. |
| * The Order is dated 17 February 2022 and proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown in the Order Plan and described in the Order Schedule. |
| * There were eight objections outstanding when the Cheshire East Borough 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. The objections concern issues of suitability and desirability such as the impact on farming, availability of other routes, the expense of maintaining two routes, public and livestock safety, and use of public funds. These are issues that cannot legally be taken into consideration when determining the Order, therefore I have not addressed them in my decision.
2. Because no relevant matters are raised in the objections, the Order is being determined based on the papers on file. I still need to consider the merits of the Order and make a decision on the evidence before me. I have not visited the site, but I am satisfied I can make my decision without the need to do so.
3. I will refer to various points shown on the Order plan in my decision. A copy of the Order Plan is appended to the end of my decision for ease of reference.

The Main Issues

1. The Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of the occurrence of an event specified in section 53(3)(c)(i). This requires me to consider if, on the balance of probabilities, the evidence shows a public footpath subsists along the Order route. This is a higher standard of proof than the reasonably alleged to subsist test to determine if an Order should be made.
2. The evidence submitted in support of the Order relies on the presumption of dedication arising from tests laid out in section 31 of the Highways Act 1980 (the 1980 Act). This requires me to consider if the public have used the route as of right and without interruption, for a period of twenty years immediately prior to its status being brought into question. I must establish the date when the public’s right to use the Order route was brought into question and determine if use by the public occurred for a twenty year period prior to this that is sufficient to raise a presumption of dedication. If this is the case, I must then consider if there is sufficient evidence there was no intention on the part of the landowner to dedicate a public footpath during this period.
3. Documentary evidence has also been submitted in support of the Order. Section 32 of the 1980 Act requires me to take into consideration any map, plan, or history of the locality, or other relevant document provided, giving it such weight as is appropriate, before determining if a way has been dedicated as a highway.

Reasons

***Documentary Evidence***

1. The Lyme Handley Tithe map 1850 shows section A to B of the Order route with double dashed lines. A route then continues along the line of Lyme Handley Footpath No. 13 (FP13). This indicates this section existed in 1850 but it is not possible to determine its status or if there were public or private rights over it.
2. On the Walking Survey produced by the Parish of Lyme Handley, the Order route is shown between A to B, then almost to point C as a public footpath. The Walking Survey produced by the Footpath Society shows section A-B-C as a public footpath. Field gates are marked at points B, D and E, and stiles at points D and E. Both maps show the footpath continuing along the line of FP13. These surveys suggest part of the Order route was being used and was considered to carry public rights in the late 1940s and early 1950s.
3. A worn line along the Order route can be seen on the 1999-2003 aerial photograph. A worn line is also visible on the 2010 and 2015-2017 aerial photographs between points A and D. However, it is not possible to tell it the worn line was made by, or if it was caused by public or private use.
4. The Parish Surveys suggest use of part of the Order route and indicate its reputation as a public footpath. However, I am not satisfied the documentary evidence is sufficient to show, on the balance of probabilities, the existence of public rights. However, it does add weight to the user evidence considered below.

***User Evidence***

*Bringing into question*

1. To bring into question the right of the public to use the Order route some actions or events must have occurred that brought home to at least some of those using it that their right to do so was being challenged. These must have been sufficiently overt to bring that challenge to the attention of the public using the route.
2. The user evidence indicates use of the Order route was challenged in November or December 2014 when a kissing gate at point B was removed and the Order route was fenced off in several places. One person also states he was challenged by someone on a quad bike when the Order route was first obstructed. No other dates of challenge are indicated. Therefore, I consider November 2014 to be the date use of the Order route was brought into question and the relevant 20 year period is November 1994 to November 2014.

*Analysis of use*

1. To satisfy the requirements of section 31, use must be by those who can be regarded as the public. For use to be as of right it must be without force, secrecy, or permission. Use should be without interruption, and to be effective, any interruption must be by the landowner, or someone acting on their behalf. The interruption should be with the intention of preventing use of the way by the public and not for other purposes such as car parking or building works.
2. I must also be satisfied there was sufficient use by the public to raise a presumption of dedication.
3. Sixteen user evidence forms show use of the Order route by 17 people between 1932 and 2014. One additional person was interviewed about their use of the Order route. Fifteen people used it for the full twenty year period, with two others using it for 17 or 18 years. One person used it between 1932 and 1957. The landowner of section A to B used the Order route. Their use of that section would have been private, not public use. They did not object to the Order.
4. Most people used it with friends or family and some people refer to using it with walking groups. Most people used it at least once a month. Use is largely for leisure or recreational purposes such as dog walking, visiting friends or family, leisure, and exercise.
5. None of the path users recall any challenges, obstructions, or interruptions until November 2014. Use appears to be open and without permission or force.
6. I consider there is sufficient evidence of uninterrupted use of the Order route during the relevant twenty year period without permission, force, or secrecy to demonstrate a presumption of dedication over the Order route.

*Lack of intention to dedicate*

1. To demonstrate a lack of intention to dedicate, a landowner must take action to make the public aware they have no intention of dedicating a public right of way. There are various ways of demonstrating this, but the most common ways are erecting notices denying public rights or granting permission, physical obstructions, or verbal challenges.
2. The tenant states the landowners of section B to C had asked people not to wander across their land on numerous occasions during the relevant 20 year period. However, none of the path users recall any challenges from the landowners or anyone else. One person refers to meeting and talking to a landowner when using the Order route, but they were not told it was not a public right of way.
3. Path users refer to stiles along the Order route which were replaced with kissing gates and one person thought this happened in 2012. Path users also state the Order route was waymarked or signed. This would suggest the landowners and tenants were aware of use of the Order route and made provisions for it.
4. I do not find there is sufficient evidence to demonstrate a lack of intention to dedicate a public footpath over the Order route during the relevant twenty year period.

*Conclusions on section 31*

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2. und there is sufficient evidence of use of the Order route on foot, as of right and without interruption between November 1994 and November 2014. I do not consider there is sufficient evidence of challenges, permission, or other action by the landowners to demonstrate they had no intention of dedicating a public footpath over the Order route during the relevant twenty year period.
3. I am satisfied the evidence before me is sufficient to show, on the balance of probabilities, that a public footpath subsists over the Order route.

Conclusions

1. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed.

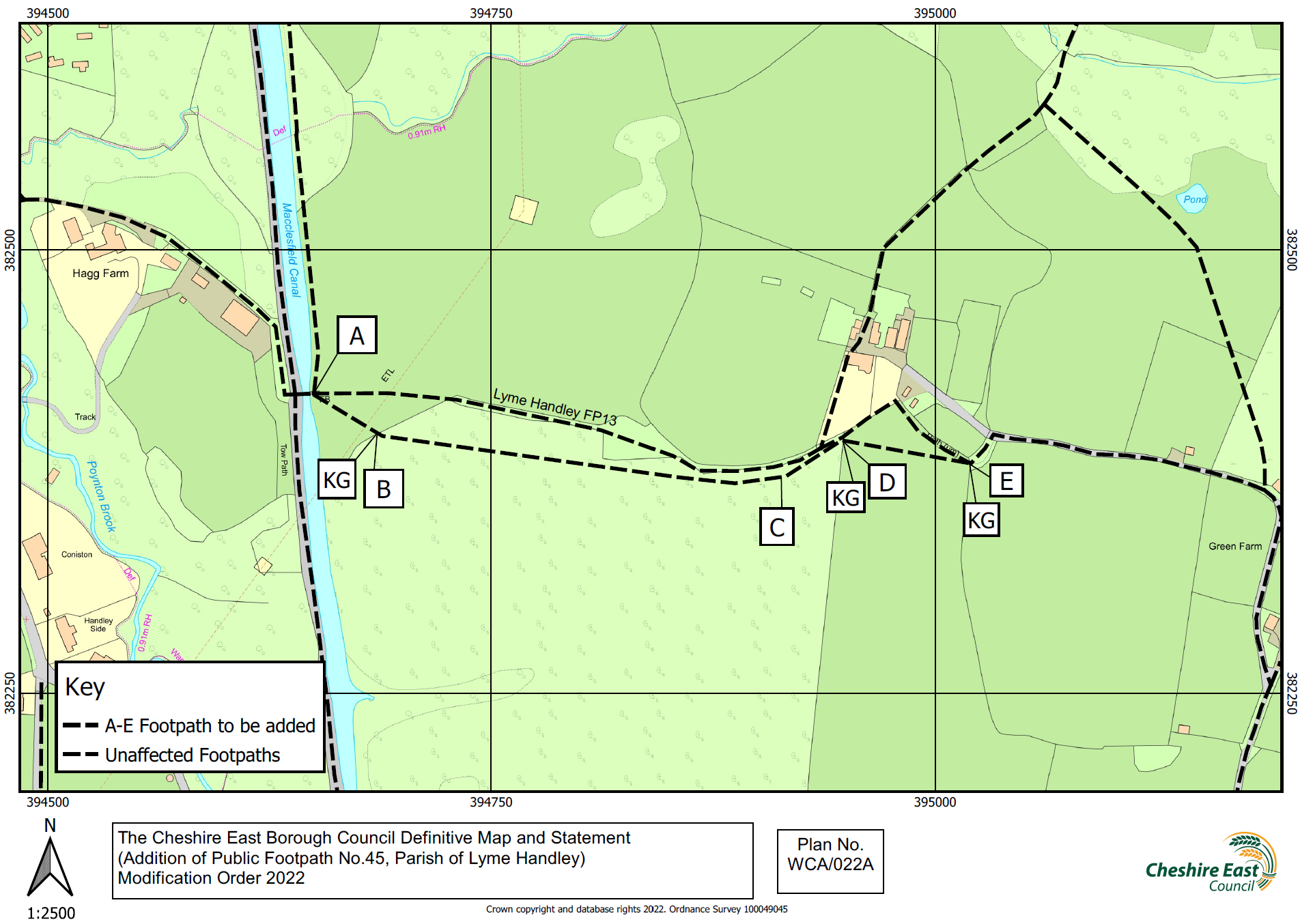
Formal Decision

1. I confirm the Order.

Claire Tregembo

INSPECTOR

**Order Plan**

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