

REPORT TO ENVIRONMENT AND TRANSPORT COMMITTEE

DMMO APPLICATIONS



Report Reference ET-23-22
Meeting Date 15th April 2024
Agenda Item 6
Prepared by Town Clerk

1.0 INTRODUCTION

1.1 BACKGROUND

A gate has recently been installed along a path between Church Hill and King Street, triggering a number of path users to contact the council. This path is not a recorded public right of way. This report is for the committee to consider submitting an application to register it as a public right of way.

It is more common for applications to register public rights of way to follow an incident where usage is obstructed or challenged – this is the case for two previous applications this council has prepared (between 95-97 King Street, and from Beggarmans Lane through Sandfield Wood). The process to have a path registered as a public right of way is to submit a Definitive Map Modification Order (DMMO) application to Cheshire East Council; it can take up to 10 years for an application to be considered. The committee could consider the submission of proactive DMMO applications i.e. for paths which are not currently challenged/under threat, but could be recorded as public rights of way.

There are two main benefits for a route being recorded as a public right of way. The first is that it preserves the public rights to use that path: a PROW is a highway, the obstruction of which is an offence. Secondly, the route ordinarily becomes a highway maintainable at public expense¹ i.e. it becomes the duty of the highway authority to maintain the route to a suitable standard and it also gives the town council express powers of maintenance.

A plan showing the current PROW within/adjacent to Knutsford and routes which have been subject to DMMO applications awaiting determination, is appended to this report.

1.2 DEFINITIVE MAP MODIFICATION ORDER APPLICATIONS

Applications can be based on two legal tests:

Historic evidence

This is evidence that since time immemorial a right of way existed. This is under the legal principle that a highway only stops being a highway if a 'stopping up' order has been made. This can therefore record paths which are no longer in use, but existed historically. The Ramblers Association's *Don't Lose Your Way* project is aiming to record such paths before a statutory registration deadline. Their only map does not indicate any likely paths in Knutsford

¹ A PROW can be established by declaration, where this occurs it does not become a highway maintainable at public expense, but the public rights are established.

based on a community mapping exercise. The only routes it shows have been replaced by development/roads or are over common land.

User Evidence

Under the Highways Act 1980, a right of way can be established by evidencing 20 years of “as of right” usage. The 20 years is calculated back from the point use was challenged (such as the installation of a gate) or an application made. Applications are based on user evidence forms which describe use of the route. “As of right” usage means without permission, secrecy or force i.e. one uses the path as though they have the right to, not because they have a right to. This means any path which is expressly permissive (such as Lime Walk to Booths Hall) could not become a public right of way (as permission has been given, meaning it is used by right) and landowners can prevent rights being established through adequate signage (e.g. “no public right of way”) or by introducing features which prevent access (e.g. a locked gate). Paths over public open space are likewise used by right and not as of right.

DMMO applications are simple to put together, however the process can take several years – this depends on the resources and prioritisation of applications by Cheshire East Council. Decisions on PROW are made by the CEC Highways and Transport Committee. If an Order is approved, there is a right to object which can trigger a public inquiry with the decision then being made by the Planning Inspectorate.

1.3 IMPORTANT CONSIDERATIONS

The establishment of public rights of way is often challenged by the relevant landowner. The process provides opportunity for landowners and other interested parties to object to a proposed route and to adduce evidence to support any contention that no such rights exist. Decisions are quasi-judicial and not subjective – the rights either exist and can be evidenced, or they do not either because there is no evidence or there is contrary evidence that the acquisition of rights has been prevented.

There are some routes within Knutsford which could be PROW but which an application to register a PROW could frustrate the landowner causing them to restrict or prevent access. This could result in 10 years where the public cannot use the route before a PROW is confirmed and the route made to be re-opened which may be counter-productive to the intention to preserve public access. Conversely, a route could be obstructed at some point in the future and an application at that point would be subject to a similar wait.

2.0 SUGGESTED DMMO APPLICATIONS

This section outlines four routes which could likely be evidenced as public rights of way under the 20-year user evidence requirements. Plans showing the routes are contained in the appendix. Routes outlined under 2.2-2.4 are likely to be uncontentious. Route 2.1 may be contentious as the route has been challenged.

2.1 CHURCH HILL TO KING STREET

This route is a tarmac path behind properties on Church Hill, down to King Street. A gate has recently been installed, preventing access – this creates a challenge point and evidence of use from 2004-2024 would need to be established. The council has been contacted by four users of the path who would provide evidence. The suggested value of the path is that it provides a gentler gradient than Church Hill.

Status Challenged
Land Unregistered
Use Foot (footpath)

2.2 STANLEY ROAD TO CRANFORD AVENUE

This route is a semi-made track connecting Cranford Avenue and Stanley Road. Informally known as 'Moody's Cut'. In addition to being an access point to some properties on Stanley Road, it is also a well-used short cut. There has been no challenge to the use of the path.

Status Unchallenged
Land Unregistered
Use Foot (footpath) / cycle (bridleway) / possibly vehicular (byway open to all traffic)

2.3 MOORDALE ROAD TO MIDDLE WALK

This route is a cobbled link route between Moordale Road and Middle Walk. It additionally provides access to the rear alleys between the gardens of the two streets.

Status Unchallenged
Land Unregistered
Use Foot (footpath) / cycle (bridleway)

2.4 MOORSIDE

This is the unadopted section of Moorside, from where the adopted highway ends through to Drury Lane. The condition of the route is varied, but currently poor in places. The land is not registered, and the track is not generally well maintained. Establishment of it as a highway would mean it is required to be maintained to a standard (though notably well below that of a road).

Status Unchallenged
Land Unregistered
Use Vehicular (byway open to all traffic)

3.0 OTHER POTENTIAL ROUTES

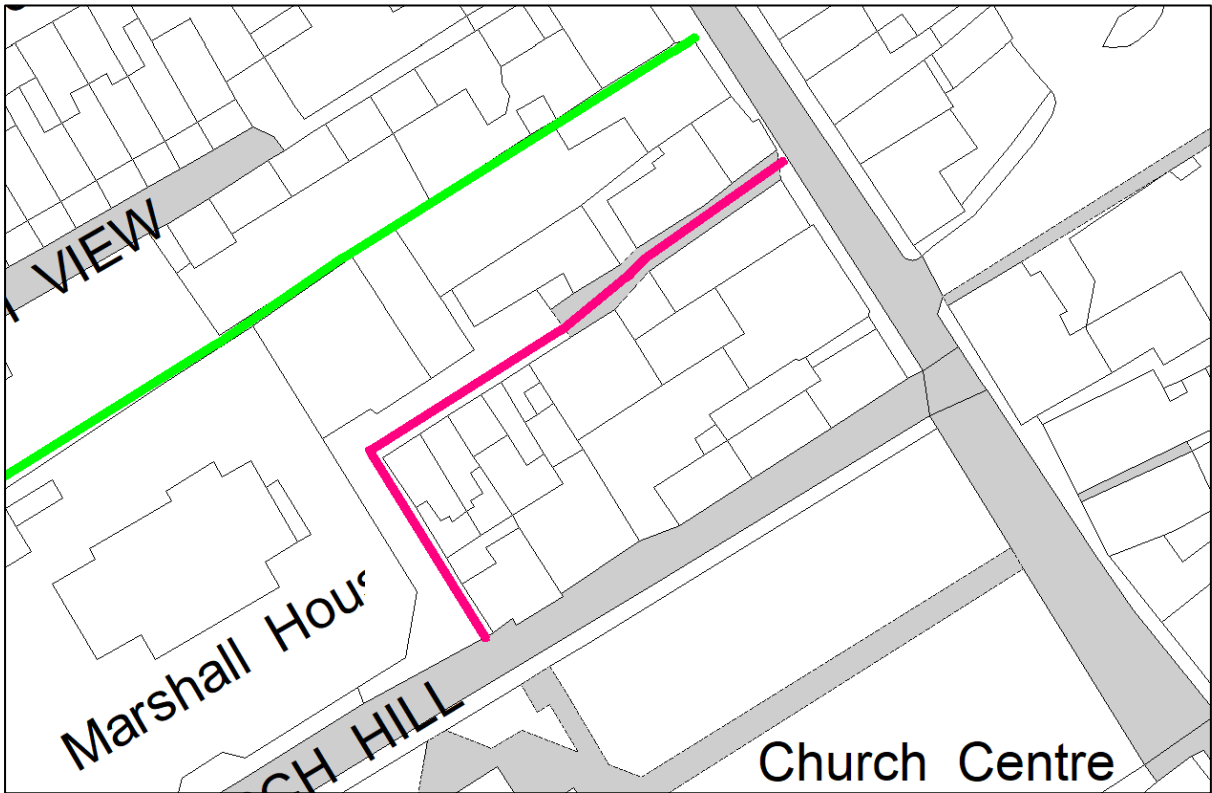
The committee should consider if there are other routes within Knutsford for which public rights of way should be recorded. These routes would then be investigated to ascertain if there is any obvious impediment to the establishment of such rights.

4.0 DECISION REQUIRED

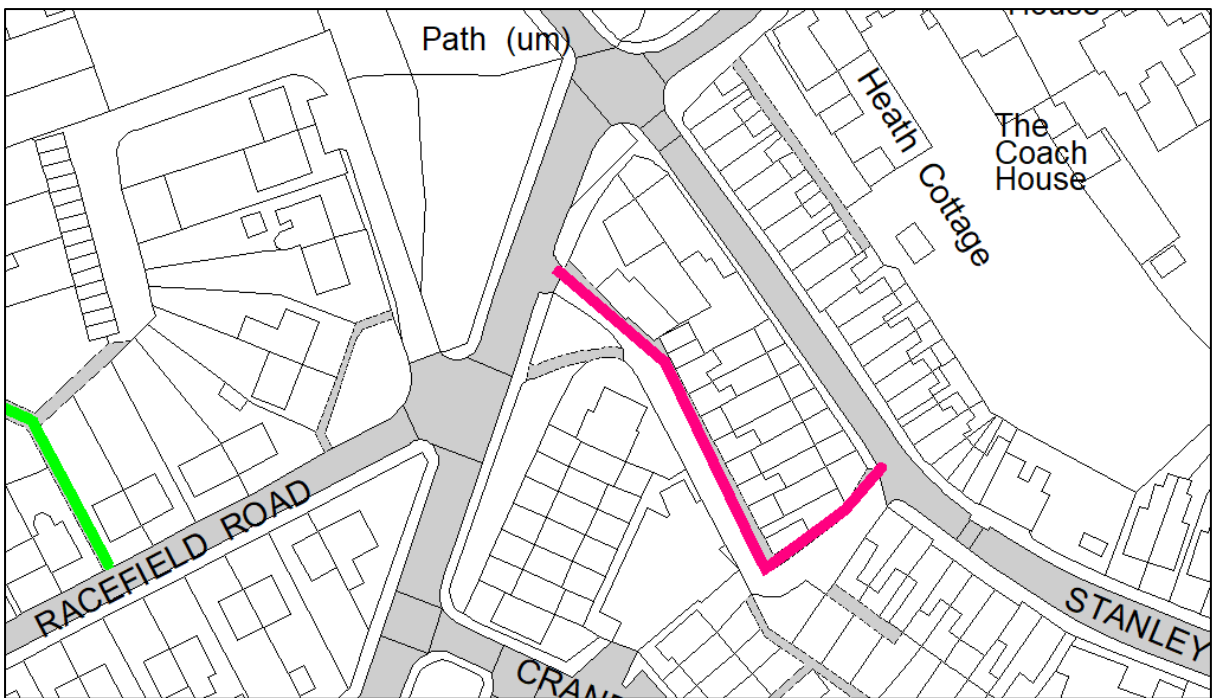
The committee should:

- a) Determine whether it wishes to develop DMMO applications for any of the routes outlined in section two.
- b) Determine if there are any additional routes for which a DMMO application should be explored

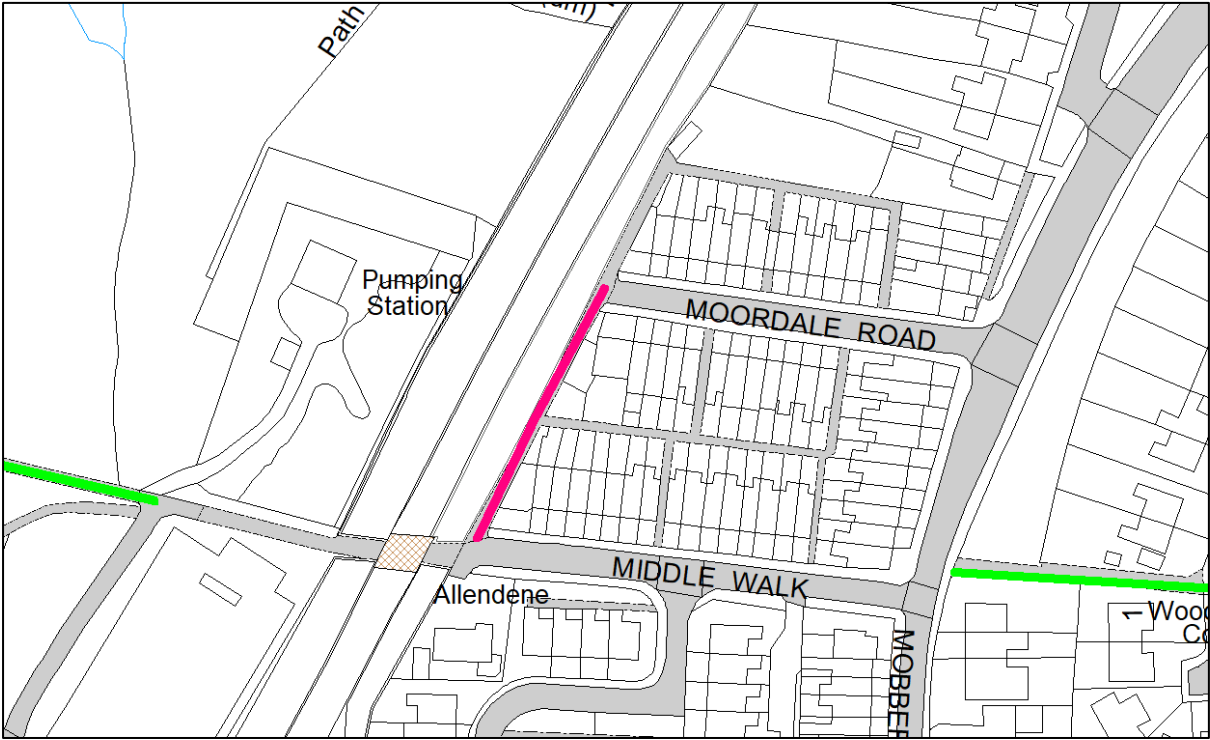
APPENDIX: ROUTE PLANS



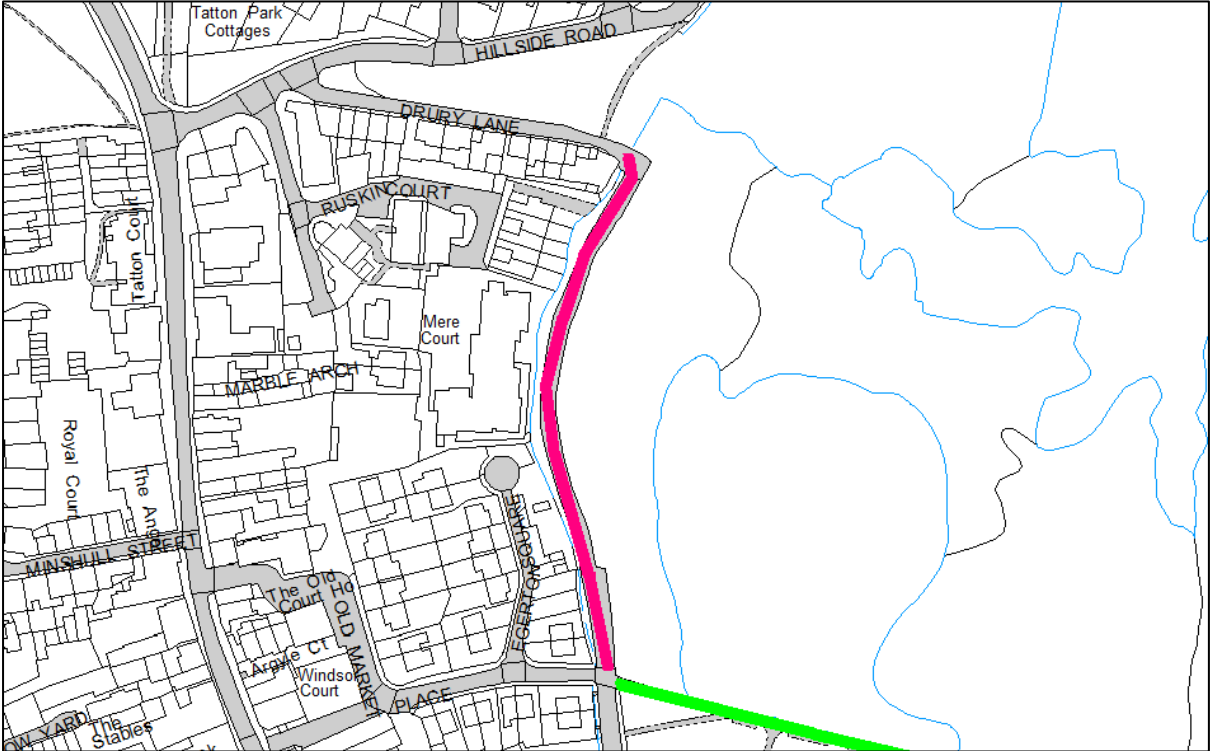
Route 2.1 Church Hill to King Street



Route 2.2 Stanley Road to Cranford Avenue



Route 2.3 Moordale Road to Middle Walk



Route 2.4 Moorside