

DECISION-MAKER:	PLANNING AND RIGHTS OF WAY PANEL
SUBJECT:	APPLICATION TO MODIFY THE DEFINITIVE MAP AND STATEMENT BY ADDING A FOOTPATH
DATE OF DECISION:	23 NOVEMBER 2010
REPORT OF:	HEAD OF PLANNING AND SUSTAINABILITY
STATEMENT OF CONFIDENTIALITY: NOT APPLICABLE	

BRIEF SUMMARY

As a consequence of an application, under Section 53 and Schedule 14 of the Wildlife and Countryside Act 1981, (“the 1981 Act”), to amend the Definitive Map and Statement, an investigation has taken place into the evidence submitted pertaining to it.

Based on the evidence, the Panel is asked to determine whether or not the claimed path has accrued public right of way status by presumed dedication, as defined in Section 31 of the Highways Act 1980 (“the 1980 Act”).

If considered that the evidence shows that a public right subsists, or is reasonably alleged to subsist, then it is to be recorded on the Definitive Map and Statement of Rights of Way, as directed by section 53 of the 1981 Act, which specifies a duty to keep such documents under constant review.

Following the Consultation on the Investigation Report, 4th to 22nd October, the land owner, (whose primary concern is for the safety of persons using this access to the shopping complex), has considered and would be willing to support an alternative course of action to that of making a Definitive Map Modification Order, and which is outlined in the Investigation Report (Appendix 1).

RECOMMENDATIONS:

- (i) That the Panel determines that on the balance of probability, a public right of way subsists or is reasonably alleged to subsist, over the route described and that it should be added to the Definitive Map and Statement.

REASONS FOR REPORT RECOMMENDATIONS

1. The evidence shows that the route has been used for such a period to raise a presumption that it has been dedicated as a public right of way (footpath) and that it should be classed as such.

DETAIL (Including consultation carried out)

Consultations

2. This report has been sent to officers within Legal, Finance, Travel and Transport Policy and the Cabinet Member with Portfolio for Environment and Transport.
3. An Investigation Report, (Appendix 1), was started just prior to an informal, (non-statutory) 4-week consultation, 18th January to 12th February 2010, (Notices being placed on site) and on completion was then consulted on with all known interested parties including land owners, land occupiers, neighbouring residents, Ward Councillors, applicants and witnesses, 4th to 22nd October 2010.

4. It has been noted that through internal consultation with Planning, the route falls within the Lord's Hill Master Plan (currently being prepared for the development of the District Centre).

Alternative Options

5. There are no alternatives regarding the acceptance of the application and the inherent investigation being in accordance with Schedule 14 of the 1981 Act that places a statutory duty to investigate and determine the application.

Background

6. The claimed public footpath runs from a point on Lord's Hill Centre East (in the vicinity and generally opposite the junction with Hornchurch Road) to the adopted public (un-numbered, un-named) footpath that connects Lord's Hill Centre East Underpass to the tunnel within and commencing at the building structure of the Lord's Hill District Shopping Centre, as shown on page 15 of the Investigation Report (Appendix 1).
7. In September 2009, the management of J Sainsbury's authorised the installation of metal railings across a gap in a fence that prevented use of the claimed path.
8. This resulted in an application dated 14 November 2009 (received by this Authority 22nd December 2009) being to record the route as a public footpath, the statutory notices required under schedule 14 being duly served.
9. The applicant, Mr J Sillence of 24 Kinloss Court, Northolt Gardens, Lordshill, has the support of 25 other witnesses.

Investigation

10. The alignment of the claimed public footpath has been the same since at least 1984, with inference that it may have been in existence since the Centre was initially completed circa 1977.
11. A detailed account of the application, the results of the investigation and the conclusions of the rights of way section, are contained within the Investigation Report and its supplementary paper; "Documentary Evidence", (at Appendices 1 and 2) the main points being summarised in the following paragraphs.
12. There are 26 witnesses comprising: - 14 User Evidence Forms and 12 written representations. Of these, 18 provide statements that they have used the route for and beyond, the 20 years required under the 1980 Act. The majority state that use has been to access the shops and other immediate facilities within the complex. 5 of the 26 witnesses were interviewed about the evidence they had supplied.
13. Those Statements of User that have had to be discounted are 2 non-users writing on behalf of two Associations in support of local residents.
14. None of the 24 witnesses claim to have ever known any form of obstruction, such as gates or barriers. All have stated that they have never been challenged, obtained permission or seen any signing that forbid use.
15. The claimed footpath is owned by one landowner, British Land Capita Trust (BLCT) (38775) Limited, a company based in London, which leases the buildings to those 7 businesses that occupy the majority of the site; primarily J. Sainsbury's.

16. Legal Representatives acting on behalf of the land owners and Sainsbury's have refuted the application, believing that their clients can rebut any such presumption by demonstrating that there was no intention to dedicate.
17. During or before the period of 20 years that has to be accounted for under section 31 of the 1980 Act, enhancements were made to the route that included tactile paving, dropped kerbs and hard-core surfacing. Such works were allegedly undertaken to improve access to and from the small brick-built compound that lies just to the northwest of the entrance to the Service Area, being a storage area for wheeled cleaning apparatus used by this Authority's Street Cleaners.

Role of the Panel

18. The Panel, in determining the application, must initially concern themselves with the period of twenty years proceeding the date on which the use of the route by the public was first brought into question, (section 31(2) of the 1980 Act refers).
19. The date on which use was first brought into question is deemed to be 24th September 2009, with the installation of the railings across the gap.
20. The Panel need to consider a 2-stage test:
 - (i) has the public actually enjoyed the use of the route, using it as of right and that such use was without interruption; and
 - (ii) is there sufficient evidence by the landowner that there was no intention to dedicate the footpath for public use during the 20 year period?

RESOURCE IMPLICATIONS

Capital/Revenue

Capital:

21. None

Revenue:

22. In considering this report and the application to which it refers, any financial implications are not taken into account, as the Council has a statutory duty to determine the application.
23. Funding for the rights of way service is currently contained within the Environment and Transport Revenue Estimates, under the Planning and Sustainability Division.

Property/Other

24. None

LEGAL IMPLICATIONS

Statutory Power to undertake the proposals in the report:

25.
 - ◆ Section 53(5) of the Wildlife and Countryside Act 1981
 - ◆ Sections 53(2) and (3) of the Wildlife and Countryside Act 1981
 - ◆ Schedules 14 and 15 of the Wildlife and Countryside Act 1981
 - ◆ Section 31 of the Highways Act 1980
 - ◆ Sections 130 and 131A of the Highways Act 1980

Other Legal Implications:

26. None

POLICY FRAMEWORK IMPLICATIONS

27. The continuous review of a Definitive Map and Statement is a statutory duty; the application by members of the public to modify them fulfils criteria within:

- ◆ The City of Southampton strategy: A 20-year vision;
- ◆ Corporate Improvement Plan 2007-08;
- ◆ City of Southampton Local Plan Review 2006;
- ◆ City of Southampton Local Transport Plan 2006-2011;
- ◆ Rights of Way Improvement Plan 2007-2017 and
- ◆ Green Spaces Strategy.

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SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Investigation Report dated October 2010
2.	Documentary Evidence, (supplementary to the Investigation Report)

Documents In Members' Rooms

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Integrated Impact Assessment

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out.	NO
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Other Background Documents

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	<u>User Evidence</u> : Interview Summaries and allied correspondence; User Evidence Forms	
2.	<u>Correspondence</u> : Internal; Landowners; Councillors; Public	
3.	<u>Evidence</u> : Photographs; Maps and Plans; Notices Served; Investigation Report; Consultation; Good Practice Procedure Check	
4.	<u>Land Registry Document</u>	

Integrated Impact Assessment and Other Background documents available for inspection at: RIGHTS OF WAY SECTION, ONE GUILDHALL SQUARE

WARDS/COMMUNITIES AFFECTED:	COXFORD
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