

Investigation Report into options that add the right of way footpath, at the rear of Lord's Hill District Centre, to the Definitive Map and Statement.



**Purpose of Report:** To comply with a directive from the Planning & Rights of Way Panel at its meeting 23<sup>rd</sup> November 2010

**SCC Officer:** Dave Blakeway: Rights of Way Officer (Tel. 023 8083 3987)

**Date of Report:** January 2011

**Aim:** To present collated information relating to the most feasible option that adds the right of way footpath to the Definitive Map & Statement.

**Objective:** To inform the Planning & Rights of Way Panel of options available and to seek authorisation to make the relevant Order and undertake the associated tasks as contained in the recommendation below.

**Summary:** The method, and thereby the relevant Order required that adds the right of way to the Definitive Map & Statement, relies on which alternative course of action is considered to be the most feasible way of addressing the user safety issue that prompted the action taken in September 2009.

Discussions have taken place with Highways Officers, the Highways Planning Officer, SCC Legal Officers and the Legal Representative of both the land owner and land occupier.

A Draft copy of this report is now being circulated to all interested parties and comments received will be addressed.

**Conclusions:** There are two alternative courses of action which would result in adding the right of way to the Definitive Map, but by differing types of legal Order. Both address the issue of user safety; one involving the creation of a new diverted footpath as illustrated on Plan 1 appended to this report. The second being the re-instatement of the original footpath and continuous but improved use of the concrete concourse that is the vehicular access to the Delivery Service Area of the Lord's Hill District Centre, illustrated on Plan 2.

Option One: To create a footpath that lies parallel to and alongside the southern side of the entrance and to be bounded by safety fencing. The diverted right of way to be added to the Definitive Map & Statement by means of a Combined Public Path Diversion Order.

Option Two: To re-establish the original route to a standard that was recorded in October 2009, but with additional improvements, including the re-siting of the brick storage compound that lies just inside the entrance. The original alignment of the right of way to be added to the Definitive Map & Statement by means of a Definitive Map Modification Order.

## **Recommendation:**

That the original route, now designated a public right of way footpath, be diverted to an alignment as illustrated on Plan 1 appended to this report by means of a Combined Public Path Diversion Order.

### **1. Introduction**

- 1.1 An application was made to record a route as a public footpath on Southampton's Definitive Map and Statement – the legal record of public rights of way. The application and its supporting evidence were presented to Panel on 23<sup>rd</sup> November 2010.
- 1.2 At that meeting, the recommendation contained in the Panel Report was accepted, being that, on the balance of probability, a public right subsists, or is reasonably alleged to subsist, over the route and that it should be added to the Definitive Map & Statement.
- 1.3 In furtherance of that, Panel sought further information, being a report on the options available that would facilitate both the inclusion of the right of way on the Definitive Map and also address the safety issue that had initially prompted the action of obstructing the route.
- 1.4 In support of this, Panel also requested that a Safety Report be submitted.

### **2. Background**

- 2.1 When investigating an application to modify the Definitive Map & Statement by adding a route, such matters as safety, anti-social activity, maintenance and liability etc are not considered.
- 2.2 The only facts considered are those pertaining to the use by members of the public and whether or not the route has been either expressly dedicated as a right of way or that it can be reasonably alleged that public rights have accrued because of relevant factors. In this case; continual use for a period in excess of 20 years retrospectively from when use was brought into question, (The Highways Act 1980, section 31(1) refers).

### **3. Description of the options available**

- 3.1 In consultation with the Highways Planning Officer, and taking into account previous representations made by the representative of both the land owner and land occupier, it was determined that there were two alternatives that met both aims of addressing pedestrian safety and adding the right of way to the Definitive Map & Statement.
- 3.2 One: To create a footpath that lies parallel to the southern side of the entrance which would be formed from a 1.5 metre-wide strip of the existing concrete concourse; the width of the latter to be maintained by the removal of a 'crescent' of grass verge from the opposite side of the entrance . The diverted right of way being

added to the Definitive Map & Statement by means of a Combined Public Path Diversion Order, (Plan 1 at page 7).

- 3.3 Two: To re-establish the original route to a standard that was recorded in October 2009, but with additional improvements, including the re-siting of the brick storage compound that lies just inside the entrance. The original alignment of the right of way being added to the Definitive Map & Statement by means of a Definitive Map Modification Order. (Plan 2 at page 8).

#### **4. Option One**

- 4.1 The normal course of events following an application to have a right of way added to the Definitive Map would be to make a Definitive Map Modification Order, (DMMO), which would go for a 6-week period of public notification.
- 4.2 During this period, objections could be made to the making of the Order, which if not withdrawn, results in the Order being submitted to the Secretary of State which in turn involves the Planning Inspectorate to determine the case, which could be by means of a Public Inquiry that would be costly in terms of money and time.
- 4.3 If no objections are received during that 6-week period, or that any objections received were withdrawn within that same period, the Council could confirm the Order as unopposed.
- 4.4 It is understood however, that if a DMMO had been made immediately following the Panel Meeting 23<sup>rd</sup> November, objections would have been received by the Land Owner and Land Occupier, their objections being based on the issue of pedestrian safety.
- 4.5 During dialogue leading up to Panel's Meeting 23<sup>rd</sup> November, the land owner proposed that, should Panel determine the route as being a public right of way, then it would be the subject of a public path diversion order; the new route being parallel to and along but outside the southern boundary of the Delivery Service Area.
- 4.6 This proposal was brought to the attention of Panel, 23<sup>rd</sup> November, as paragraph 9.7 of the Investigation Report, (Appendix 1 to the Panel report), and pages 45 to 47 of the Documentary Evidence File, (Appendix 2 to the Panel Report).
- 4.7 Since Panel, 23<sup>rd</sup> November, the proposal by the land owner has been modified and offers a more feasible alternative in forming a new footpath alongside the southern perimeter fence utilising a 1.5 metre strip of the concrete concourse which would be fenced along the side of the Delivery Area entrance and with a low-level handrail on the opposite side, (Plan 1, page 7).

#### **5. Option One in Practice**

- 5.1 The creation of a new footpath along an alternative route such as that proposed would be the result of this Council making a Combined Public Path Diversion Order, under the relevant section of the Highways Act 1980.

- 5.2 Once confirmed, the Order diverts the footpath onto a new alignment which only then can be created, with the 'old' footpath remaining "in use" until such times as the new route has been certified as operational and usable.
- 5.3 It is appreciated that in this case, with the 'old' route having been obstructed, the Council has a choice of action. Either;
- ◆ Enforce the reopening of the old route until such times as the Diversion Order has been confirmed and the new footpath created and usable; or
  - ◆ Accepting an application, (to be made by the land owner), for a Temporary Traffic Regulation Order to close the 'old' public right of way for the necessary period so that works associated with the creation of the new footpath can be undertaken.
- 5.4 The costs of design and creation would be met by the land owner and/or the land occupier. The costs of making the Combined Public Path Diversion Order to be met by the Council.

## **6. Option Two**

- 6.1 The second option entails complying with normal procedure and making a Definitive Map Modification Order, (DMMO), which would go for a 6-week period of public notification; the general procedure and consequences being outlined above, 4.1 to 4.6.
- 6.2 Irrespective of whether the Order was opposed and that it would then have to be submitted to the Planning Inspectorate, it is assumed that at some point in the future, the Order would be confirmed. This would mean that the original route, as detailed in the original application, would need to be reinstated to at least the standard and quality that it was in at the time of the application.
- 6.3 This on its own is costly and only meets the aim of adding the route to the Definitive Map. It does not address public safety.

## **7. Option Two in Practice**

- 7.1 Enhancements could be made to better identify the footpath, (a "Zebra Crossing" over the concrete concourse) and possibly flashing Amber Warning Lights either side of the concourse; activated by sensors set back into the Delivery Area that react to traffic movement.
- 7.2 More importantly, in order to address the inter-visibility between drivers and pedestrians, the brick-built storage compound would need to be relocated further north-westwards towards the main building structure, but remaining within the verge area. Such works may negate the need for warning devices as outlined in 7.1
- 7.3 Relocation of the storage compound would create open space that would greatly improve clear visibility between vehicles and pedestrians.

- 7.4 The compound is presently owned / administered by this Council's Corporate Portfolio; therefore to relocate will need the additional consideration of officers with relevant responsibilities and the consent of land owner / occupier.
- 7.5 It has been confirmed that the storage compound is still used on a daily basis by an SCC street cleaning operative who stores equipment enabling the maintenance of the Lordshill area.
- 7.6 The question as to who would fund the relocation has not been addressed, however, costs associated with the making of the Order and the improvements required to re-open the footpath would have to be met by the land owner / occupier.
- 7.7 Should the Order have to be submitted to the Planning Inspectorate, the land owner and Southampton City Council would have to bear their own costs.

## **8. Conclusions on Pedestrian Safety**

- 8.1 As detailed within the Safety Report that accompanied this investigation, the installation of the railings that instigated the Schedule 14 Application, appear to have been the result of one minor incident in March 2009.
- 8.2 Prior to that, the route had been in existence for at least 25 years and had been accepted by the public who, by using the route, accepted the inherent risk of crossing the concrete concourse of the Service Delivery Area.
- 8.3 The statistical evidence provided by this Council's Highways Partners, Balfour Beatty, does not include any record of other instances that were facilitated by use of the original footpath.
- 8.4 Therefore, provided enhancements are carried out to the original route which open up sight lines and provides demarcations as to where the public may actual cross the concourse, such measures might satisfy the minimum requirement for user safety, but would not entirely negate risk.

## **9. Conclusions on Options**

- 9.1 It is appreciated that many users have been disenfranchised of access to the Lord's Hill Shopping Centre, in that use of the only available alternative route entails steep inclines that either they or their mobility aids cannot cope with, certainly in adverse weather, and that therefore time is an essential factor in concluding the matter.
- 9.2 Whilst both options entail legal processes that will take time, the main obstacle to option 2 is considered to be the added time and costs associated with the relocation of the Storage Compound.
- 9.3 Accounting for the additional works that option 2 involves, there is absolutely no guarantee that such measures would negate all risks associated with crossing the entrance to the Delivery Service Area.
- 9.4 The land owner and occupier are adamant that public safety should be paramount and therefore the making of a DMMO would attract their objection, resulting in

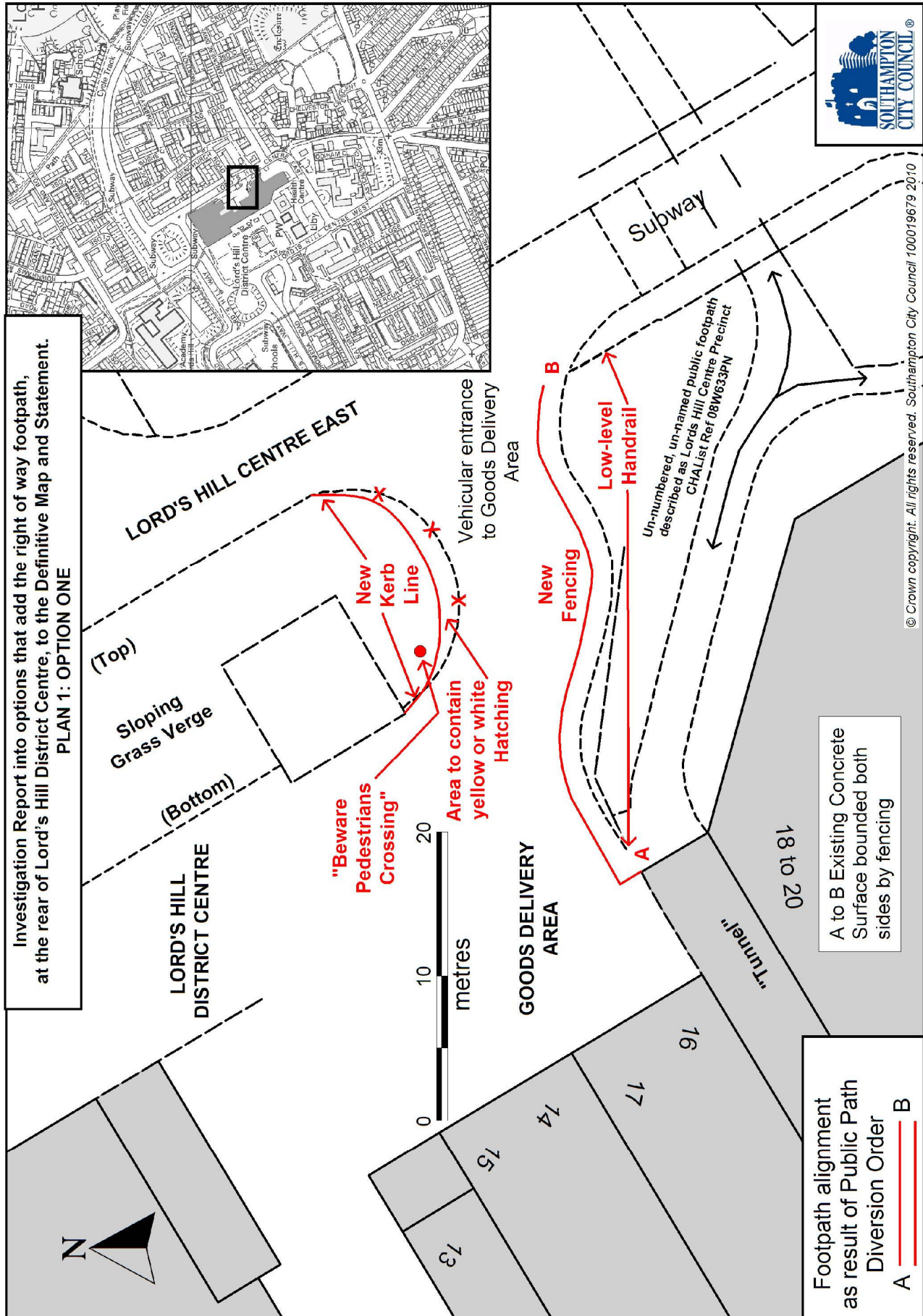
protracted timescales in having to submit the opposed Order to the Planning Inspectorate for determination.

- 9.5 Option 1, with optimum cost, ensures the safety of users by taking them off the concrete concourse and closer to the “table” crossing area above the underpass on Lord’s Hill Centre East carriageway; it allows retention of the amenity land occupied by young trees and maintains a wide egress at the Delivery Service Area for vehicular movement .

## **10. Recommendation**

That the original route, now designated a public right of way footpath, be diverted to an alignment as illustrated on Plan 1 appended to this report, by means of a Combined Public Path Diversion Order under the relevant section of the Highways Act 1980.

PLAN 1





**PLAN 2**

