



Report to Team Leader – Definitive Map and Highway Searches

Date: TBC

Title: Claimed public footpath from the rear of 10 Carter Walk and running to the junction with Public Footpath No. 15, Parish of Chepping Wycombe

Relevant councillor(s): Councillor Steven Barrett, Councillor Nathan Thomas and Councillor Katrina Wood

Author and/or contact officer: Helen Francis, Senior Definitive Map Officer

Ward(s) affected: Tylers Green and Loudwater

Recommendations: **The application is REJECTED because the route has already been created and added to the Definitive Map and Statement by a Deed of Dedication**

Reason for decision: **The decision is based on the available evidence in consideration with relevant legislation.**

Executive summary

1.1 The purpose of this report is to determine an application for a Definitive Map Modification Order to add a route from the rear of 10 Carter Walk and running to the junction with Public Footpath No. 15, Parish of Chepping Wycombe [Appendix 1].

1.2 On the 15 September 2015 an application was made to modify the Definitive Map and Statement by adding the route described in paragraph 1.1 [Background Papers; pages 10 - 17]. The application was made by Mr R Collard on behalf of Sandpits Lane Owners Preservation Society. The contact for the application later changed to Mr Bill Sadler when Mr Collard moved away from the area.

Legal Background

1.3 The Council as the Surveying Authority has a duty under section 53(2)(b) of the Wildlife and Countryside Act 1981 (WCA 81) to keep the Definitive Map and Statement under continuous review and to make such modifications to the Definitive Map and

Statement that appear to be requisite in consequence of events described in section 53(3).

Section 53(3) events

1.4 The relevant events referred to in section 53(3) which are applicable in the context of the present application are:

“(3)(b) the expiration in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway.”
[Referred to below as test (a)]

and/or

(3)(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or subject to 54A, a byway open to all traffic.” [Referred to below as test (b)]

1.5 In relation to section 53(3)(b) the decision maker must consider whether, on the balance of probabilities, enjoyment by the public of the way over a period raises a presumption that the way has been dedicated as a public footpath.

1.6 In relation to section 53(3)(c)(i) the decision maker must consider whether the evidence produced by the applicant, together with all the other evidence available, show that either (a) a right of way subsists or (b) that it is reasonable to allege that a right of way subsists. These tests were considered in *R v Secretary of State for the Environment ex p. Bagshaw and Norton* and *R v Secretary of State for Wales ex p. Emery* in the context of section 31 of the HA 1980.

Role of decision maker in determining the application

1.7 In determining the rights of way application, the decision maker must act in accordance with the following overriding principles set out in *R v Isle of Wight County Council, ex p O'Keefe* [1989] JPL 934.

- a. The decision maker must make a careful and properly informed decision as to whether all the evidence shows that a right of way subsists or is reasonably alleged to subsist.

- b. The decision maker must determine the application with a proper appreciation and weighing of the available evidence and any legal principle which might have to be applied.
- c. The decision maker must arrive at their own conclusion on the evidence and whilst the decision maker may have regard to the recommendation of the relevant Officer they must determine the application for themselves and not simply adopt the view of the relevant Officer without analysing the evidence.
- d. The decision maker must actually make a decision on the application in light of the relevant evidence and legal principles and must not rely upon the possibility of an appeal or an inquiry at a later date.

1.8 All the relevant statutory provisions and competing rights and interests have been considered in making this report. The recommendation is in accordance with the law and proportionate, having regard to individuals' rights and the public interest.

Deed of Dedication

1.9 Buckinghamshire Council are the owners of the land and have agreed to dedicate the claimed route as a public footpath as detailed in the Deed of Dedication [Background Papers; pages 2 - 9].

Other options considered

1.10 The pros and cons should not be considered when determining the application based on the available evidence.

Legal and financial implications

1.11 Financial implications should not be considered when determining these applications as the Council has a statutory duty to make an Order if it believes that there is sufficient evidence to support it. Officer time is involved in investigating the applications and dealing with a public inquiry if an Order is made and there are objections to it.

Corporate implications

1.12 Corporate implications should not be considered when determining these applications for the same reasons detailed in 1.11.

Conclusion

1.13 Since the application for a Definitive Map Modification Order was made by the applicant, the Council have created a public footpath along the route walked by members of the public. Therefore the application for a claimed route is no longer necessary because a route already exists along the same route.

1.14 Officers recommend that the application be rejected on the basis that the route already exists on the Definitive Map and Statement and, therefore the application is redundant.

Next steps and review

1.15 If the application is accepted an Order to modify the Definitive Map and Statement will be made and open to objections. If objections are received the Order and the objections will be sent to the Planning Inspectorate for determination. If the application is rejected the applicant can appeal the decision to the Planning Inspectorate.

Appendices

Appendix 1 – plan of route

Background papers

2 - 9 Deed of Dedication; 30 August 2023

10 - 17 Application for Definitive Map Modification Order; 15 September 2015

Your questions and views

For further information please contact Mrs Helen Francis

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