

Public Report

Officer Delegated Decision

Report Title

Claim to add public footpaths to the Definitive Map at Kimberworth.

Is this a Key Decision and has it been included on the Forward Plan?

No

Strategic Director Approving Submission of the Report

Paul Woodcock, Strategic Director of Regeneration and Environment

Report Author(s)

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Ward(s) Affected

Keppel

Report Summary

The Council has received an application asserting that a number of public footpaths exist at an area of land off Droppingwell Road, Kimberworth. These routes are currently not recorded as rights of way on the Definitive Map. The Council has a statutory duty to assess the claims within 12 months of receipt through due process.

The Council must determine the claims under the Wildlife and Countryside Act 1981. Section 53(3)(c)(i) of that act provides that an Order should be made upon the discovery of evidence which (when considered with all other relevant evidence) shows that a right of way which is not shown in the map and statement subsists or is reasonable alleged to subsist.

If, based on evidence, the Council feels this case has been met, they should make a Definitive Map Modification Order (DMMO) under the Wildlife and Countryside Act 1981 to assert such rights exist. As part of the subsequent legal process a widespread consultation is then held which is open to objection. If objections are received that cannot be resolved, the Order must be submitted to the Secretary of State for confirmation, which will usually involve a public inquiry to decide if such rights exist or not.

If the Council does not consider such rights exist they must inform the claimants, who then have 28 days to appeal the decision to the Secretary of State.

The site crossed by many claimed routes has recently re-commenced operations as a tip and local opinion is strongly opposed to this occurring. In light of the contentious nature of the site, officers recommended that an independent consultant carry out the assessment of the claims. The consultant's report is attached as Appendix 1, which recommends that the Council should make a DMMO in respect of some of the claimed footpaths.

Recommendations

That the Strategic Director for Regeneration and Environment exercises their delegated powers and:

1. Requests that Legal Services make a Definitive Map Modification Order (DMMO) to add routes detailed in the attached report to the Definitive Map as public footpaths.
2. That the statutory consultation takes place for the required 6 week period.
3. In the event of no objections being received, or if such objections are received, they are subsequently withdrawn, the Order be confirmed.
4. In the event of objections being received, and not subsequently withdrawn, the Order be referred to the Secretary of State for determination.
5. That officers then work with media outlets, local interested parties and through site signage to ensure that the public at large are aware of the situation relating to public access to the site until the matter is formally resolved.

List of Appendices Included

Appendix 1 Watsons Tip Report – Robin Carr, Consultant.

Appendix 2 Watsons Tip Report – Plan.

Appendix 3 Equality Impact Screening

Background Papers

Rights of Way Improvement Plan 2

[Public rights of way – Rotherham Metropolitan Borough Council](#)

Statutory Guidance Relating to Public Path Claims

<https://www.rotherham.gov.uk/rights-way>

Consideration by any other Council Committee, Scrutiny or Advisory Panel

Name of Committee – Click here to enter a date.

Name of Committee – Click here to enter a date.

Council Approval Required

No

Exempt from the Press and Public

No

Claim to add public footpaths to the Definitive Map at Kimberworth.

1.	Background
1.1	In 2018 owners of the land off Droppingwell Road, Kimberworth, secured their site boundaries with the intention of re-commencing tipping operations.
1.2	As a consequence of this the Council subsequently received a claim made under the Wildlife and Countryside Act 1981 asserting that a number of paths across the site had acquired public rights and should be recorded as public footpaths.
1.3	The Council is under a statutory duty to assess the evidence that such rights exist and reach a conclusion under due process.
2.	Key Issues
2.1	The Council and other interested public bodies, such as the Environment Agency have been involved in ongoing discussions relating to the legality of the re-commencement of tipping operations on site.
2.2	In light of the operations re-commencing an action group (Droppingwell Action Group) has been opposing the site operations.
2.3	Regardless of issues relating to the use of the site and safety considerations, the Council must investigate the claims for asserted rights, fairly assessing the evidence.
2.4	In light of the contentious nature of the works, officers recommended that an independent consultant carry out those investigations and report accordingly. Robin Carr Associates, a respected consultant, was appointed following assessment of similar consultants advertising through the Institute of Public Rights of Way and Access Management.
2.5	Robin Carr Associates were subsequently appointed to carry out those investigations, the report of which is attached as Appendix 1.
3.	Options considered and recommended proposal
3.1	The Council has a statutory duty to assess claims made under the Wildlife and Countryside Act 1981 section 53(3).
3.2	Section 53(3)(c)(i) provides that an Order should be made upon the discovery of evidence which (when considered with all other relevant evidence) shows that a right of way, which is not shown on the map and statement, subsists or is reasonably alleged to subsist.
3.3	Section 31 of the Highways Act 1980 and Common Law lay out guidance relating to this presumption, and in particular the period of time (usually 20 years) in which this 'right' can be reasonably alleged. The assessment of this guidance in relation to the Droppingwell site is detailed in the attached

	report in Appendix 1.
3.4	The site has recently re-commenced tipping operations and an action group (Droppingwell Action Group) has been formed to raise concerns about these works. The Council and the Environment Agency have, amongst others, been involved in wider implications of the site. In light of the contentious nature of the site officers recommended that an independent consultant be employed to assess the claims.
3.5	A respected consultant – Robin Carr Associates – has been appointed to extensively investigate the claims and a report has been prepared. This is attached as Appendix 1.
3.6	The findings of the independent report show that many, but not all, of the claimed routes ‘subsists or [are] reasonably alleged to subsist.’
3.7	Officers have carefully studied the report, its evidential based investigations and conclusions, and are happy that it represents a fair and comprehensive assessment of the claims.
3.8	The Council could, on reflection and further investigation, choose to ignore the report or open further investigations of their own. However, the report has been undertaken by a consultant of considerable experience and expertise.
3.9	If the Council chooses to make the DMMO as recommended, officer experience points to the potential for serious conflict between users and landowner. Users have, in the past, assumed a DMMO is proof of a right to use a route(s). In this case, with tipping operations ongoing there are potentially very serious health and safety implications if such use occurs; however, such implications are not a consideration when deciding on whether to make the DMMO.
3.10	Should a DMMO be made, then it will not take effect until it is confirmed. The confirmation of a DMMO can only take place after a period of 6 weeks consultation. If there are no objections, then the Council must proceed to confirm the DMMO; however, if such objections are received and not withdrawn, then the Council is required to submit the Order to the Secretary of State for confirmation.
3.11	If approved, the making of a DMMO is certain to cause the belief in some residents that rights are proved and immediately available. Officers will, in that eventuality, ensure in the widest possible communication that until confirmed the claimed routes are still not available for public use. Such promotion will take place on site through notice, through media and via local interested parties.
3.12	There is an inevitable risk that through potential misunderstanding, such use still occurs, however, officers will take every reasonable step to ensure a clear and simple message is communicated to the public.

4.	Consultation on proposal
4.1	Consultations have been undertaken with a range of user and local interested parties, elected members, user groups and utility companies, as well as the landowners. Any evidence arising from the consultation exercise has been incorporated into the body of the report.
4.2	If the decision is made to make a DMMO, due process requires the Council to consult with a wide range of interested parties including local councillors and user groups. Notices are published in local papers and on site. Ordinarily such notices are also available for public inspection at Council Offices, however, in light of current office closures due to Covid-19, advice from Government is to clearly make such orders available for free download and that copies are available free on request by post.
5.	Timetable and Accountability for Implementing this Decision
5.1	The Head of Highway Services is accountable for the development of the Highway Policy, Strategy and Plan and for ensuring the Definitive Map is kept up to date. The Head of Legal Services is responsible for the formal making of any orders relating to public paths.
5.2	The Council is under a statutory duty to respond to the claimant(s) with 12 months of a claim for rights of way being lodged, the revised claim was submitted in August 2020. Due process requires the Council to widely consult interested parties and if any objections are received that cannot be resolved an independent inspector will be appointed to assess the Order. Potentially, with a considerable backlog of such orders nationally, and in light of delays in holding such enquiries due to Covid-19, the delay in hosting such an inquiry could be considerable.
6.	Financial and Procurement Advice and Implications (to be written by the relevant Head of Finance and the Head of Procurement on behalf of s151 Officer)
6.1	The exercise of the delegated powers to make the order does not commit the Council to financial resources other than those already covered by approved budgets this includes the consultant's costs.
7.	Legal Advice and Implications (to be written by Legal Officer on behalf of Assistant Director Legal Services)
7.1	The legal implications are addressed within the main body of the report.
8.	Human Resources Advice and Implications
8.1	The Definitive Map Modification Order will be made using existing staff. Specialist consultants will be used if required.
9.	Implications for Children and Young People and Vulnerable Adults

9.1	A key element of the Highway Asset Management Plan is to improve the condition of the highway network – of which the rights of way network is a key part – to enable accessibility and pedestrian safety for young and vulnerable road users.
9.2	Ensuring the Definitive Map is up to date and clearly available to the public forms an important part of this element.
10.	Equalities and Human Rights Advice and Implications
10.1	An Initial Equality Screening has been undertaken and is included at Appendix 3.
10.2	The rights of way network is available for all residents, businesses and visitors to the Borough. The Council make positive changes to the highway network to provide any disadvantaged groups with equal opportunity to access all aspects of the network.
10.3	Until, and if, any Definitive Map Modification Order is confirmed, the public do not have a right to use the claimed routes. The Council will liaise with interested parties to ensure that this message is clearly understood to avoid confusion and potential health and safety implications.
10.4	Council will work with partners to provide appropriate information on site.
10.4	If rights are proved to exist at the site the Council will work with partners, including the landowner, to ensure that any reasonable measures to enhance access are installed.
11.	Implications for Ward Priorities
11.1	None.
12.	Implications for Partners
12.1	As part of the order making process statutory consultees (utilities, emergency services etc) are consulted on the order.
13.	Risks and Mitigation
13.1.	The rights of way network is accessed by residents, businesses and visitors to the Borough and the condition of the network influences resident's opinion of Rotherham and the confidence of businesses to invest in the Borough.
13.2	The Council is under a statutory requirement to investigate all claims for public rights of way within statutory timeframe of 12 months. The claimants have a right to approach the Secretary of State when any such timescale is not met.
14.	Accountable Officers

14.1	Colin Knight – Head of Service, Highways - 01709 822828 or colin.knight@rotherham.gov.uk
14.2	Richard Pett, Rights of Way Officer Ext: 54481 Email: richard.pett@rotherham.gov.uk

Approvals obtained on behalf of Statutory Officers:-

	Named Officer	Date
Chief Executive	Sharon Kemp	Click here to enter a date.
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	Click here to enter a date.
Head of Legal Services (Monitoring Officer)	Bal Nahal	Click here to enter a date.

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