

## **Officer Delegated Decision**

Application for Definitive Map Modification Order to Upgrade Public Footpath, Firbeck No 4 to Bridleway

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

No, but it has been included on the Forward Plan

## **Assistant Director Approving Submission of the Report**

Sam Barstow, Assistant Director, Community Safety and Street Scene

## **Report Author(s)**

Richard Pett, Rights of Way Officer, Highways - 01709 254481 or [richard.pett@rotherham.gov.uk](mailto:richard.pett@rotherham.gov.uk)

## **Ward(s) Affected**

Dinnington

## **Report Summary**

The Council has received an application asserting that a public footpath is incorrectly recorded on the Definitive Map and that the route should be recorded as public bridleway. The Council has a statutory duty to assess the claims 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 proposed bridleway in question is shown on the attached plan (Appendix B). At the time of the submission of the claim the post of Definitive Map Review Officer was vacant and to ensure the matter was dealt with a specialist consultant was asked to

investigate the claim. The consultant's report is attached as Appendix A and the plan as Appendix B - it recommends that the Council should make a DMMO in respect of the claimed bridleway.

### **Recommendations**

That the Assistant Director for Community Safety and Street Scene exercises their delegated powers and:

1. Requests that Legal Services make a Definitive Map Modification Order (DMMO) to classify the public footpath shown as public bridleway.
2. That the statutory consultation takes place for at least 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.

### **List of Appendices Included**

Appendix A Application for Definitive Map Modification Order to Upgrade Public Footpath, Firbeck No 4 to Bridleway– Robin Carr, Consultant.

Appendix B Application for Definitive Map Modification Order to Upgrade Public Footpath, Firbeck No 4 to Bridleway– Plan.

User Evidence Forms and Landowner Submissions summarised in the consultant's report are large files, access can be arranged on request.

### **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

## Application for Definitive Map Modification Order to Upgrade Public Footpath, Firbeck No 4 to Bridleway

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| <b>1.</b> | <b>Background</b>  |
| 1.1       | The Application Route is currently recorded on the Definitive Map and Statement for the Rotherham Metropolitan Borough Council area as Public Footpath, Firbeck No 4.  |
| 1.2       | In 2017 a locked vehicle barrier/gate, with an unlocked pedestrian barrier/gate to its side was placed across the Application Route at Point B on the plan (Appendix B). It is understood that this structure was placed across the Application Route to prevent unlawful vehicular access, whilst still allowing pedestrian access to the footpath. The installation of the structure also had the effect of preventing use of the Application Route by horse-riders. |
| 1.3       | In September 2019 the Council received an application for a Definitive Map Modification Order seeking to amend the status of the Application Route from Public Footpath to Public Bridleway, on the grounds of long continuous use by the public.  |
| 1.4       | The Council is under a statutory duty to assess the evidence that such rights exist and reach a conclusion under due process.  |
| <b>2.</b> | <b>Key Issues</b>  |
| 2.1       | The Council has a duty to assess the evidence and make a recommendation concerning the claim for higher rights.  |
| 2.2       | The Application was supported by 22 user evidence forms claiming equestrian use from 1977 to 2017 (40 years).  |
| 2.3       | As the post of Definitive Map Review Officer was vacant at the time, the Authority subsequently instructed independent specialist consultants (Robin Carr Associates) to investigate the matters raised within the Application and to produce this advisory report to assist the Authority in the decision-making process.   |
| 2.4       | The report is attached as Appendix A and the plan as Appendix B.   |
| <b>3.</b> | <b>Options considered and recommended proposal</b>   |
| 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 length of time (usually 20 years) in which 'as of right' can be reasonably alleged. The assessment of this guidance in relation to this site is detailed in the attached report in Appendix A.   |
| 3.4       | The findings of the independent report show that bridleway rights 'subsists or [is] reasonably alleged to subsist.'  |
| 3.5       | 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.  |
| 3.6       | 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  |

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|            | expertise. If the Council chose to ignore this advice they could be accused of misuse of public funds and risk reputational issues in the future.   |
| 3.7        | If the Council chooses to make the DMMO as recommended, officer experience points to the potential for conflict between users and landowner. The resolution of this claim will clarify what rights exist for all parties.   |
| 3.8        | The confirmation of a DMMO can only take place after a minimum 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 approval.  |
| <b>4.</b>  | <b>Consultation on proposal</b>   |
| 4.1        | Consultations have been undertaken with a range of user and local interested parties, elected members and user groups, 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 and copies of the order available at Riverside House and online.   |
| <b>5.</b>  | <b>Timetable and Accountability for Implementing this Decision</b>  |
| 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.  |
| <b>6.</b>  | <b>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)</b>  |
| 6.1        | There are no direct procurement implications arising from this report.  |
| <b>7.</b>  | <b>Legal Advice and Implications (to be written by Legal Officer on behalf of Assistant Director Legal Services)</b>  |
| 7.1        | The basis on which the application needs to be determined together with an explanation of the relevant legal provisions is contained in the Report. The only alternative would be to decline to make the Order. This would mean that the Council was in breach of its duty and would entitle the applicant to appeal to the Secretary of State under paragraph 4 of Schedule 14 of the Wildlife and Countryside Act 1981. |
| <b>8.</b>  | <b>Human Resources Advice and Implications</b>  |
| 8.1        | The Definitive Map Modification Order will be made using existing staff. Specialist consultants will be used if required. No further comments.  |
| <b>9.</b>  | <b>Implications for Children and Young People and Vulnerable Adults</b>   |
| 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.  |
| <b>10.</b> | <b>Equalities and Human Rights Advice and Implications</b>  |
| 10.1       | An Initial Equality Screening has been undertaken.  |

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| 10.2       | The rights of way network are 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.  |
| <b>11.</b> | <b>Implications for Ward Priorities</b>   |
| 11.1       | None  |
| <b>12.</b> | <b>Implications for Partners</b>  |
| 12.1       | As part of the order making process statutory consultees (utilities, emergency services etc) are consulted on the order.  |
| <b>13.</b> | <b>Risks and Mitigation</b>   |
| 13.1.      | The rights of way network are 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       | If objections are received that cannot be resolved, the Council must pass the unconfirmed order to the Planning Inspectorate who will take the matter forward independently and may convene a public inquiry. If held, the Council will be required to pay to host the inquiry and any reasonable costs associated with it. |
| <b>14.</b> | <b>Accountable Officers</b>   |
| 14.1       | Richard Jackson – Head of Service, Highways – Ext 23895 or <a href="mailto:richard.jackson@rotherham.gov.uk">richard.jackson@rotherham.gov.uk</a>   |
| 14.2       | Richard Pett, Rights of Way Officer<br>Ext: 54481<br>Email: <a href="mailto:richard.pett@rotherham.gov.uk">richard.pett@rotherham.gov.uk</a>  |

Approvals obtained on behalf of Statutory Officers:-

|   | <b>Named Officer</b> | <b>Date</b>                 |
|---|----------------------|-----------------------------|
| Chief Executive   | Sharon Kemp          | Click here to enter a date. |
| Strategic Director of Finance & Customer Services (S.151 Officer) | Graham Saxton        | Click here to enter a date. |
| Head of Legal Services (Monitoring Officer)                       | Stuart Fletcher      | Click here to enter a date. |

*Report Author:* **Error! Reference source not found.**

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