

Report Title

Claim for Public Footpath – Roundwood Grove, Parish of Rawmarsh

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

No

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

Philippa Stone, Definitive Map Review Officer, Highways
philippa.stone@rotherham.gov.uk

Ward(s) Affected

Rawmarsh East

Report Summary

The Council has received an application asserting that a public footpath not presently recorded on the Definitive Map at Roundwood Grove Rawmarsh should be recorded as a public right of way. 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.

Officers have carried out an extensive investigation of any relevant archive material and the claims submitted by the public and this is attached as Appendix A, a plan showing the route in question is attached as Appendix B.

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 add the route detailed in the attached report to the Definitive Map as public footpath.
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.

List of Appendices Included

Appendix A Claim for Public Footpath – Roundwood Grove, Parish of Rawmarsh
Officer Report

Appendix B Claim for Public Footpath – Roundwood Grove, Parish of Rawmarsh –
Plan.

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 for Public Footpath – Roundwood Grove, Parish of Rawmarsh

1.	Background
1.1	On 25 January 2022 the Council received a claim made under the Wildlife and Countryside Act 1981 asserting that a path at Rawmarsh had acquired public rights and should be recorded as public footpath.
1.2	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	Officers are required by legislation to investigate any claims submitted to the Council requesting a modification of the Definitive Map. Due process requires the Council to thoroughly investigate any evidence that may be of relevance to the claims, including archive research and assessing the evidence submitted by the public in support of the claim.
2.5	The report assessing this research is attached as Appendix A.
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 claimed path is detailed in the attached report in Appendix A.
3.4	The findings of the report show that in officers’ view the route should be recorded as a public footpath.
4.	Consultation on proposal
4.1	Consultations have been undertaken with a range of user and local interested parties, elected members, 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.
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	If an order is made, 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.
5.3	Legally, if the Council chooses not to make an order adding the route onto the Definitive Map as public footpath, they must inform the claimant(s) who have 28 days to appeal the decision with the Secretary of State, who may decide to require the Council to make an order, may choose to suggest

	another alternative (such as different status) or agree with the Council's assertion. In this case if the order is approved the claimant(s) will be informed of this decision directly by officers and due process will be carried forward.
6.	Financial and Procurement Advice and Implications
6.1	There are no direct procurement implications within this report.
6.2	The costs associated with the implementation of this officer decision, including the costs of consultation and any internal legal costs, will be contained within the approved revenue budget for this Service. In the event of any objections be received and not withdrawn, and the matter being referred to the Secretary of State, a further report will be required, to determine how any costs resulting from the referral will be funded.
7.	Legal Advice and Implications
7.1	The legal requirements for dealing with a claim for dealing with an application for a public footpath have been addressed within the report and further advice (as necessary) will be provided as required throughout the process.
8.	Human Resources Advice and Implications
8.1	There are no human resources implications arising from this report.
9.	Implications for Children and Young People and Vulnerable Adults
9.1	This is very important to encourage children and young people to take as much free exercise as possible and we would support public rights of ways for children and young people to take advantage of all green spaces in Rotherham.
10.	Equalities and Human Rights Advice and Implications
10.1	The equality screening is logged.
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 about 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	Richard Jackson – Head of Highways and Flood Risk Ext. 23895 Email: richard.jackson@rotherham.gov.uk
14.2	Richard Pett, Rights of Way Officer Ext: 54481 Email: richard.pett@rotherham.gov.uk

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