

## **Officer Delegated Decision**

**Application for a Definitive Map Modification Order - Claim for Public Footpath at Brookhouse, Parish of Laughton-en-le-Morthen.**

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

No, but it has been included on the Forward Plan

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

Paul Woodcock, Strategic Director of Regeneration and Environment

## **Report Author(s)**

Richard Pett, Rights of Way Officer, Highways - 01709 254481 or

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## **Ward(s) Affected**

Dinnington

## **Report Summary**

The Council has received an application asserting that a public footpath should be recorded on the Definitive Map. 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.

Case law states that this involves two tests: Test A. Does a right of way subsist on a balance of probabilities? This requires clear evidence in favour of the Appellant and no credible evidence to the contrary. Test B. Is it reasonable to allege on the balance of probabilities that a right of way subsists? If there is a conflict of credible evidence, and no incontrovertible evidence that a way cannot be reasonably alleged to subsist, then the answer must be that it is reasonable to allege that one does 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 path in question is shown on the attached plan (Appendix B).

The officer's report (Appendix A) is a result of extensive investigation and consultation, and details all the pertinent information officers found. The report concludes that using case law identified above that a Definitive Map Modification Order should be made adding the path to the Definitive Map following due process.

### **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). The claimed path is separated by a highway and would be recorded on the DMMO (and Definitive Map) as two separate numbered public footpaths with a recorded width of 1.5 metres.
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 and 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 Brookhouse Decision Report and Appendices.

Appendix B Brookhouse – Parish of Laughton-en-le-Morthen 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

## **Application for a Definitive Map Modification Order - Claim for Public Footpath at Brookhouse, Parish of Laughton-en-le-Morthen.**

<b>1.</b>	<b>Background</b>
1.1	The Application Route is not currently recorded on the Definitive Map and Statement for the Rotherham Metropolitan Borough Council area.
1.2	In 2020 building works commenced at the site of route B-C-D in line with an approved planning application (RB2018/1715) to demolish a former public house and build new properties at the location. The works are believed to have triggered a claim for public rights at the site and as shown on the plan (Appendix B).
1.3	In May 2021 the Council received a duly made application for a Definitive Map Modification Order seeking to add the Application Route as Public Footpath, 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 public rights.
2.2	The Application was supported by 21 user evidence forms claiming use on foot from 1942 to 2021 (79 years).
2.3	Due process requires the council to undertake detailed research, assessing all aspects of the claim including the views of claimants, landowners and other interested parties as well as a search of all relevant archive material. This information has been detailed in a separate report which is attached as Appendix A.
<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 officer's report indicate a public right 'subsists or [is] reasonably alleged to subsist' for both parts of the claimed route.
3.5	If the Council chooses to make the DMMO as recommended, officer experience points to the potential for conflict between users and landowners. The resolution of this claim will clarify what rights exist for all parties.
3.6	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, landowners 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 within this report.
6.2	The costs associated with the making of the DMMO will be met from within existing budgets.
<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 legal requirements for dealing with a claim for a public footpath have been addressed within the report and Appendix A. Any further advice (as necessary) will be provided as required throughout the process.
<b>8.</b>	<b>Human Resources Advice and Implications</b>
8.1	There are no HR implications in this issue.
<b>9.</b>	<b>Implications for Children and Young People and Vulnerable Adults</b>
9.1	None.
<b>10.</b>	<b>Equalities and Human Rights Advice and Implications</b>
10.1	An Initial Equality Screening has been undertaken and is noted.
<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 (including utility companies) are consulted on the order.
<b>13.</b>	<b>Risks and Mitigation</b>
13.1.	The rights of way network is accessed by residents, businesses and visitors to the Borough and the condition of the network influences residents' 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 Ext: 54481 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	<a href="#">Click here to enter a date.</a>
Strategic Director of Finance & Customer Services (S.151 Officer)	Graham Saxton	<a href="#">Click here to enter a date.</a>
Head of Legal Services (Monitoring Officer)	Stuart Fletcher	<a href="#">Click here to enter a date.</a>

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

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