

**18 March 2024****TITLE OF REPORT:** **Claimed Public Right of Way: Low Spen Woods, Rowlands Gill, Gateshead****REPORT OF:** **Strategic Director of Corporate Services and Governance and Strategic Director of Housing, Environment and Healthy Communities**

## **1. Summary**

This report to Committee relates to an application to make a definitive map modification order to add a footpath at Low Spen Woods, Rowlands Gill, Gateshead to the definitive map and statement of public rights of way.

## **2. Purpose of the report**

To provide the Rights of Way Committee with details of the claimed route and to recommend to the Committee that a precise defined route from the claim should be investigated before a recommendation is made as to whether a public footpath should be added to the definitive map and statement.

## **3. Background**

3.1 The Council received an application dated 20 December 2020 to add a footpath onto the definitive map and statement of public rights of way.

3.2 A plan showing the route of the alleged footpath claimed is at Appendix 2 to the report. It forms a circular route over the Woods.

3.3 The Applicant describes the route in the application form as, "*Paths leading to field (known locally as Rabbit Field) east of Hookergate School and paths in field and woods*".

3.4 The application is made on the basis of user evidence. The application relies on the claimed path having been allegedly dedicated as a public footpath due to long use. Such dedication can arise pursuant to section 31 of the Highways Act 1980 or at common law.

## **4. The claimed route**

4.1 The route which is subject to the claim is indicated on the plan at Appendix 2. The plan shows various routes across open land.

4.2 The claimed route has five entrances and exits to and from the woodland and field.

4.3 The claimed route is accessed via Dene View and Barkwood Road.

4.4 Once in the woodland, the field is accessed by either walking through the stream or by using the footbridge.

## **5. Land ownership**

5.1 Land Registry documents show there are several different Landowners for the claimed route.

5.2 The Applicant served Notice of the application for a definitive map modification order on each individual Landowner.

5.3 On 27 April 2023, the Council received notification of an objection from Forestry England in their capacity as one of the Landowners.

5.4 Forestry England objected to the Applicant's Notice and the proposal stating the plan was not clear and did not adequately indicate the proposed footpath. In addition, it was stated that they could not determine whether the claimed route was on land owned by Forestry England.

## **6. The statutory requirements to add a public footpath to the definitive map of public rights of way**

6.1 The process of adding a public right of way to the definitive map and statement of public rights of way is set out in the Highways Act 1980, and the Wildlife and Countryside Act 1981. The Highways Act deals with the type and character of the evidence put forward to 'claim' the right of way in question, whilst the Wildlife and Countryside Act sets out the way in which this evidence becomes part of, in turn, an 'application', and then – if the Committee so decides – an 'order'.

6.2 Section 31(1) of the Highways Act 1980 provides: "Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."

6.3 The application is made under section 53(2) of the Wildlife and Countryside Act 1981. Section 53(2)(a) requires the Council to keep its definitive map and statement under continuous review and to make modifications as soon as reasonably practicable after the occurrence of any of the events specified in section 53(3). The relevant event is contained in s.53(3)(c)(i), namely, "The discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a

right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over the land to which the map relates, being a public path, restricted byway or a byway open to all traffic”.

## **7. User evidence**

7.1 The user evidence forms which have plans attached to them show the same claimed route as the plan attached at Appendix 2 to the report.

7.2 User evidence forms should have a plan attached with the extent of the route used clearly indicated.

7.3 The precise route walked is not defined by users and there are references to “circular walks” and “walking all routes” on the plan.

7.4 The user evidence therefore does not relate, refer or clearly show a defined route of a footpath.

7.5 The evidence in the 17 user evidence forms has been formulated into a table, which is attached at Appendix 3 to the report.

## **8. Use of defined route over land**

8.1 There is a general principle that the public cannot claim a right to wander over land.

8.2 Both under section 31 of the Highways Act 1980 and at common law, any long use resulting in dedication can only occur over a defined route on the ground. That is a fundamental characteristic of any highway which must follow a known and defined line in contrast, for example, to recreational use of a village green.

8.3 In the case of R (on the application of Pereira) v Environment and Traffic Adjudicators [2020] EWHC 811 (Admin), having reviewed the legal authorities, Fordham J. stated:

*“It is, in my judgement, an error of law to allow fluctuation in the course of passage across land to constitute the maintenance of ‘a course of passage’, so as to support a conclusion of uninterrupted enjoyment by the public of ‘a way’ over land. What is needed is greater precision, the identification of what the uninterrupted ‘way’ is, and an analysis of whether the location in question falls within that uninterrupted ‘way’.”*

8.4 Therefore, a precise defined route must be identified in order to comprise a “way” and it is that specific route which must be assessed to establish whether a public right of way subsists or is reasonably alleged to subsist.

## **9. Proposed defined route**

9.1 The user evidence suggests that public rights may exist over the land in question.

9.2 A site visit and consideration of the claimed footpath has reduced the circular claimed route to a defined route.

9.3 The proposed defined route of the footpath is from the entrance to the woodland at the existing access alongside 66 Barkwood Road, continuing along the existing path towards the footbridge, over the burn in a northerly direction towards definitive Bridleway Blaydon 120/2. From here, there is an option to walk in a north westerly direction along the edge of the field to access Bridleway Blaydon 120/2 or alternatively, in a northerly direction to also access Bridleway Blaydon 120/2.

9.4 A plan of the proposed defined route is shown with a red line and attached at Appendix 4 to the report.

9.5 An extract from the definitive map is attached at Appendix 5 to the report indicating the location of the other definitive public rights of way in the area.

## **10. Conclusion**

A claim for a definitive map modification order must follow a particular line and public use must be over a defined route. Members of the public walking across open land and taking a number of different routes does not establish a public right of way.

## **11. Recommendation**

Approval is sought from the Public Rights of Way Committee for the following:

- 1) To investigate and carry out informal consultation regarding the proposed defined route of the footpath as indicated on the plan at Appendix 4.
- 2) To report back to Committee with a recommendation as to whether there is sufficient evidence to make a definitive map modification order to add a footpath at Low Spen Woods onto the definitive map and statement of public rights of way.

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**1 FINANCIAL IMPLICATIONS**

None

**2 EQUAL OPPORTUNITIES IMPLICATIONS**

None

**3 STAFFING IMPLICATIONS**

None

**4 ACCOMMODATION IMPLICATIONS**

None

**5 CRIME & DISORDER IMPLICATIONS**

None

**6 ENVIRONMENTAL IMPLICATIONS**

None

**7 HUMAN RIGHTS IMPLICATIONS**

The applicable rights to be considered are the right to protection of property, right to a fair trial and right to respect for private life. However the Wildlife and Countryside Act 1981 and the Highways Act 1980 provides a legal basis for interference with these rights and the risk of these rights being infringed is addressed via the fact that any orders made are subject to an objection period and the statutory legal process.

**8 WARD IMPLICATIONS**

Chopwell and Rowlands Gill

**9 BACKGROUND INFORMATION**

- Appendix 2 – Plan of alleged footpath
- Appendix 3 – User evidence table
- Appendix 4 – Plan of proposed defined route
- Appendix 5 – Extract from definitive map

