

15 July 2024

TITLE OF REPORT: **Application for a Definitive Map Modification Order to claim a Footpath at Low Spen Woods, Rowlands Gill, Gateshead**

REPORT OF: **Strategic Director of Corporate Services and Governance and Strategic Director of Housing, Environment and Healthy Communities**

Summary

This report to Committee sets out, summarises and evaluates the evidence gathered and submitted to the Council regarding an application made under section 53 of the Wildlife and Countryside Act 1981 for modification of the Definitive Map and Statement by adding to it a Footpath at Low Spen Woods, Rowlands Gill, Gateshead.

Purpose of the report

- 1) To investigate an application and evidence for a definitive map modification order to add a Footpath at Low Spen Woods onto the Definitive Map and Statement of public rights of way.

Background

- 2) The Council received an application dated 20 December 2020 to add a footpath onto the definitive map and statement of public rights of way. The original application was brought before the Public Rights of Way Committee in March 2024 and approval was sought from the Committee to investigate a defined route of the initial circular route claimed, as shown from Points A-B and Points A-C on the Plan at Appendix 2 to the report.

The Application

- 3) The application is for a Footpath to be added to the Definitive Map and Statement. The statutory definition of a Footpath is set out at section 66(1) of the Wildlife and Countryside Act 1981, namely:

"A highway over which the public have a right of way on foot only, other than such a highway at the side of the public road".
- 4) The application is made on the basis of user evidence and relies on the claimed right of way 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.

- 5) The claimed right of way 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.
- 6) During the Council's investigation into the claim, notices were displayed along the claimed right of way inviting anyone who use it to complete a user evidence form. The Council also wrote to the local user groups to determine if any of their members used the claimed right of way and wanted to submit user evidence.
- 7) During this informal consultation, one further user evidence form was submitted and a response was also received from a local consultee representing local user groups the Byways and Bridleways Trust and Bridleways and Riders Action Group. The consultee submitted comments that in their opinion Points A-C on the plan attached at Appendix 2 could be considered to carry higher rights. All the user evidence forms that have been submitted claim that the route had been used on foot only. It was noted by Officers that the claimed route is narrow and there is a bridge across the stream.
- 8) In addition to the above, the Landowners of the claimed right of way were invited to submit evidence to determine whether they recognised the claimed right of way as a public right of way or whether they had done anything to rebut any presumption of dedication of the claimed right of way. A response was received from one of the Landowners who confirmed that Forestry England already welcomes access through the woodland and commented that the path claimed was unnecessary due to the existence of Bridleway Blaydon/120.

The Legislation

- 9) 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'.
- 10) 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 event relevant to this application is set out at section 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”.

11) 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.”

12) In this case, the two important issues in this section are, i) the need for a period of 20 years public use without interruption, and, ii) absence of evidence that the landowner(s) had no intention to dedicate the right of way.

13) Section 31(2) provides:

“The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question ...”

14) The Committee are therefore asked to determine:

- a) Was there an ‘event’ that brought the claimed right of way into question and, if there was, when was it?
- b) Is there a full 20 years of evidence of public use of the claimed right of way, ‘as of right’, stretching back from that date? And, if yes,
- c) Is there any evidence that the landowner has given sufficient evidence of their intention not to dedicate the claimed right of way to the public?

The Facts According to the User Evidence

(a) The Date of a ‘Bringing Into Question’.

15) In order to determine whether the claimed right of way has been dedicated in accordance with section 31 of the Highways Act 1980, it first needs to be determined how the use was brought into question. The period of 20 years is counted back from the date on which the public's right was first brought into question.

16) An event which can bring a claimed right of way into question can consist of:

- Locked gates being put up on the right of way;
- Notices being erected along the claimed right of way to deny it is a public right of way;
- Landowners stopping or challenging the use of the claimed right of way;
- Notices stating that the claimed right of way can only be used with the permission of the landowner, and
- The lodging of an application for a Definitive Map Modification Order.

17) If the public's use has not been brought into question, the date of an application for a definitive map modification order can be taken as the end-date for the 20-year period.

18) In light of the above, the relevant period can be considered as being 20 years back from the date of the definitive map modification order application, that being from 2000 until 2020.

(b) Is there 20 years public use of the route during the relevant period of 2000-2020?

19) The evidence in the 17 user evidence forms have been formulated into a table, which is attached at Appendix 3.

20) In assessing the evidence that has been submitted, it is necessary to consider whether there is sufficient evidence that the public has used the claimed route for 20 years or more. The relevant period of 20 years public use must be continuous for that relevant period of 20 years. If periods of use of less than 20 years by different users total a continuous period of 20 years or more then that usage can also be taken into account. In determining that use, it also has to have been used by the public, which indicates the community in general or at large.

21) From those user evidence forms, seven people confirm they have used the claimed right of way regularly for at least 20 years during the relevant period of 2000-2020; two people had used the route for 19 years; three people had used the route for 15 years; one person had used the route for five years; one person had used the route for three years; two people had used the route for two years and one person had used the route since 2001. The frequency of use for each person varies from daily to weekly and monthly.

22) When assessing the user evidence, it appears that the claimed right of way has been used mainly for recreational purposes such as dog walking. All of the 17 user evidence forms confirm that people have used the claimed right of way on foot and the user evidence indicates that the claimed right of way is enjoyed by the public at large as a footpath.

Is the claimed public use 'as of right' and uninterrupted?

- 23) In order to satisfy this element of the test within section 31 of the Highways Act 1980, the claimed route must be as of right and the term 'as of right' in this context means without force (for example, breaking a lock on a gate to gain access), without secrecy (for example, the landowner must have been in a position to object to the use of his land as a right of way, so the public's use must not be in secrecy); and finally the public's use must have been without the permission of the landowner. For example, where the landowner gives express consent by erecting a sign stating "Permissive Path". Furthermore, use of the claimed right of way cannot be across common or access land as that use would be with permission (by right and not as of right). Also any permission granted or access denied, must be by the landowner or by someone authorised by the landowner.
- 24) From the user evidence, all 17 people confirmed that they did not ask permission of the landowner before using the claimed right of way and when the user evidence form asked if anyone had been stopped from using the claimed right of way, all 17 people stated that they had not been stopped from using it.
- 25) The final element of the 'as of right' test is whether the use of the claimed right of way was by force. The user evidence confirms that there are no obstructions. This means that no force has been used to access the claimed right of way therefore use of it by the public has been 'as of right'.

Landowner Evidence

(c) Is there any evidence of the Landowner having an 'intention not to dedicate' the route during the statutory 20-year relevant period?

- 26) A landowner is able to evidence his or her 'intention not to dedicate' a public right of way in a number of ways. The action that a landowner takes to do this must make it clear to users that they did not intend to dedicate a public right of way. The most effective way to achieve that is to have lodged with this Council (or a previous Council) a statutory declaration under the provisions of section 31(6) of the Highways Act 1980. The Council has not received any such declaration from the Landowner.
- 27) Other ways in which a landowner can rebut a presumption of dedication could include erecting clear and unequivocal notices, erecting locked gates or challenging people using the claimed right of way. All of the user evidence confirms that no one had asked permission or been stopped from using the claimed right of way and further, the user evidence forms state there are no signs erected along the claimed right of way.

28) It appears from the evidence that no signs were or have been erected along the claimed route. The response from one of the Landowners also confirmed that the claimed right of way is reasonably well trodden, the Landowner has never turned back or stopped anyone from using the route, there have never been any stiles or gates on the route and notices and signs have not been erected.

29) Taking the above into account it is the view of Officers that there is sufficient user evidence from the public claiming to have walked the claimed right of way for at least 20 years and continuously throughout the relevant period from 2000 to 2020, to satisfy the requirements of section 31(1) of the Highways Act 1980.

Conclusion

30) In light of the user evidence and submission from one of the Landowners, Officers would recommend that there is sufficient evidence of use by the public as of right of the claimed right of way as a footpath, in order to make a definitive map modification order.

Recommendation

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

i) To make a definitive map modification order to add the claimed footpath as shown from Point A to Point B and Point A to Point C on the plan at Appendix 2 onto the Definitive Map and Statement of public rights of way.

ii) Grant delegated authority to the Strategic Director of Corporate Services and Governance, to undertake the following:

(a) To consult statutory consultees and make a definitive map modification order to add the footpaths as shown on the plan at Appendix 2, and

(b) If no objections are received to confirm the order or if objections are received and not subsequently withdrawn, to send the order to the Secretary of State for determination as an opposed order.

Contact: Sonya McCool Ext. 3862 Craig Johnson Ext. 3115

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 claimed route

Appendix 3 – User evidence table

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