

Report to
Planning Committee

4th August 2016

Report of
Executive Director for Place

Title:
Wildlife and Countryside Act 1981 Section 53
Applications to add Public Footpaths:

- 1) from Coundon Wedge Drive to Hollyfast Road;
- 2) from Church Walk to Coundon Wedge Drive;
- 3) from Birmingham Road to Church Walk; and
- 4) from Winsford Avenue to Birmingham Road

Ward affected: Bablake

Is this a key decision? *No*

Executive Summary:

The City Council has received four applications from the Ramblers Association to have a number of routes recorded on the Definitive Map and Statement as public footpaths. Research has shown that the routes are recorded on the Council's List of Streets as public footpaths, but not recorded on the Definitive Map and Statement.

As a result of determining the four applications authorisation is being sort to make six definitive map modifications Orders.

Recommendations:

That Planning Committee are recommended to:

- (1) Authorise the Executive Director of Resources to make the necessary Definitive Map Modification Order for routes from:
 - a. Winford Aveune to Allesley Hall as shown on plan 1
 - b. Allesley Hall to Birmingham Road as shown on plan 2
 - c. Birmingham Road to Church Walk as shown on plan 3
 - d. Stair Case Lane to Church Walk as shown on plan 4
 - e. Church Walk to Coundon Wedge Drive as shown on plan 5
 - f. Hollyfast Road to Coundon Wedge Drive as shown on plan6

in the Parish of Allesley in the City of Coventry pursuant to Section 53 of the Wildlife and Countryside Act 1981 to be recorded as public footpaths.

- (2) Endorse that should objections be received to the making of the Order that cannot be resolved, then the matter be forwarded to the Secretary of State for determination.

List of Appendices included:

Plans showing the locations and routes of the proposed public footpaths

Other useful background papers:

None

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

Report title: - Applications to add a Public Footpaths from Coundon Wedge Drive to Hollyfast Road, from Church Walk to Coundon Wedge Drive, from Birmingham Road to Church Walk and from Winsford Avenue to Birmingham Road

1. Context (or background)

- 1.1 The Council has received four of applications from the Ramblers Association to have public footpaths recorded on the Definitive Map and Statement.
- 1.2 Research has shown that the application routes are recorded on the Councils List of Streets as public footpaths. The List of Streets is conclusive proof that a highway is maintainable at public expense, although it is not conclusive proof of the status of a route. Public rights of way and their status should be recorded on the Definitive Map and Statement.
- 1.3 No evidence, has been submitted to demonstrate that the status of the route should be anything other than public footpath.

2. Options considered and recommended proposal

- 2.1 The options have been considered and the recommended proposal is:-

Make the Order to record the routes as shown on the attached plans, as public footpath.

- 2.2 The routes subject to the proposed Order are all recorded on the List of Streets as highway maintainable at public expense. This is conclusive proof that the Council is required to maintain the routes; it is not proof of status. If no status is recorded on the List of Streets, then there is a presumption that the minimum status of the route public footpath. If the route has a status recorded on the List of Streets it persuasive of that status.
- 2.3 The Council is under an obligation to keep the Definitive Map and Statement under review, public rights of way should be recorded on the Definitive Map and Statement. Public rights of way that are recorded on the List of Streets but not on the Definitive Map will automatically be extinguished in 2026 if the route existed before 1949.
- 2.4 The width of the paths will be 2 metres.

3 Results of consultation undertaken

- 3.1 A pre-Order consultation was carried out on the 10th July 2015

The Ramblers Associations submitted a document citing a number of documents in support of the application, they have not, to date, submitted any copies of these documents. The Council is not able to give the documents any weight as Officers have not had sight of them. The Council has requested that the Rambler's

Association submit the evidence that they have cited in support of the application; they have not submitted anything.

The Council received 2 objections to making the Order; one of those objections has been withdrawn. The remaining objection was from Coundon Court School the school objections were:

- That they did not receive a letter regarding the proposal, they did, however respond to the notice displayed on site.
- The proposed route cuts though the site causing inconvenience and cost to the school.
- That there will be an impact on safeguarding children.
- The school would like the path to be diverted.
- The route is a cause of antisocial behaviour.

Atkins objected on behalf of the Vodafone, they stated that the proposal would interfere with their assets in the area. The objection was subsequently withdrawn.

Response to the Objections.

The Council consulted the landowner as recorded by the Land Registry. As the school were able to respond, because of the site notice; they were not prejudiced by not being consulted directly. Costs, inconvenience, safe guarding, crime and antisocial behaviour are not relevant considerations under Section 53 of the Wildlife and Countryside Act 1981. This means that these issues cannot be considered when determining whether or not a route subsists.

Research has shown that the school's lease with the Council requires the school to keep the public footpath open. The school has therefore acknowledged the existence of the footpath when it signed the lease.

The Council received representations seven further representations that were in support of the proposed Order.

4. Comments from Executive Director, Resources

4.1 Financial implications

The costs of making the Order mainly consist of internal officer time and advertising and will be met from existing budgets. If there is an appeal, the costs would mainly be internal officer time, again met from existing budgets.

4.2 Legal implications

Under the Wildlife and Countryside Act 1981 the Council is obliged to make a Modification Order as soon as reasonably practicable on the occurrence of certain specified 'events'. These events including:

- (i) the discovery by it of evidence which (when considered with all other relevant evidence available) shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over the land in the area to which the map relates (section 53(3)(c)(i); and
- (ii) the discovery by it of evidence which (when considered with all other relevant evidence available) shows on the balance of probability that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description, (section 53(3)(c)(ii)).

Section 31(1) of the Highways Act 1980 provides that where a way over land is enjoyed by the public “as of right” and without interruption for a full period of 20 years the way is presumed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. Enjoyment by the public “as of right” means use by the public without force, without secrecy or permission.

Section 31(2) provides that the 20 year period referred to in section 31(1) is to be calculated retrospectively from the date when the public’s right to use the way is brought into question.

Section 31(3) provides that a notice erected on the site by an owner of the land over which a way passes in a manner visible to person using the way, and maintained by him is, in the absence of proof to a contrary intention, sufficient evidence to negate the intention of the owner or successors in title to dedicate the way as a highway.

Section 31(6) provides that an Owner may provide sufficient evidence to show his lack of intention to dedicate by depositing with the Council a map and statement showing any way over the land he admits to having dedicated as highways and denying the existence of other ways over it and then lodging declarations to deny the addition of ways at intervals of not less than 20 years. This will be in the absence of proof to the contrary intention, sufficient evidence to negate the intention of the owner or his successors in title to dedicate any additional way as a highway.

The House of Lords in a 2007 judgment (the Godmanchester decision [2007] UKHL 28) has clarified what other evidence could be evidence of “no intention to dedicate” for the purpose of section 31(1). The evidence can relate to just one point in time during the period of enjoyment, and ‘during’ in the context of section 31(1) need not be throughout the whole period. ‘Intention’ in this context means what the relevant audience (the users of the way) would reasonably have understood the landowner’s intention to be. A letter from the landowner to his

own solicitor or estate agent would not be enough; some element of communication to users of the way of 'no intention..... to dedicate' is required.

Unless evidence is provided of one or more specific steps having been taken by the landowner within the period to communicate overtly to the public using the route that (s)he does not intend to grant a public right of way over it, the presumption of the dedication will arise under section 31(1) where there is a full period of 20 years uninterrupted public use, calculated retrospectively from the date when the public right to use the way is brought into question.

Where there is insufficient evidence to establish a presumption to dedicate under section 31(1) of the Highways Act 1981, there is sometimes sufficient evidence to establish an inference of dedication by the landowner under common law. In the case of *Nicholson v Secretary of State for the Environment* (2006), Dyson J stated: "*Prima facie the more intensive and open the user and the more compelling the evidence of knowledge and acquiescence, the shorter the period that will be necessary to raise the inference of dedication...*". No minimum period of use is required to raise such an inference, but there must be evidence which is sufficient to infer that there was an intention to dedicate a public right of way.

6 Other implications

6.1 Equalities / EIA

None

6.2 Implications for (or impact on) the environment

None

6.3 Implications for partner organisations?

None

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