
Report to
Planning Committee

19th December 2019

Report of
Deputy Chief Executive for Place

Title:
Wildlife and Countryside Act 1981 Section 53
Application to record a public footpath from Ten Shilling Drive to Guinea Close
Ward affected: Westwood

Is this a key decision? *No*

Executive Summary:

The City Council has received an application from the Ramblers Association dated 24th September 2006 for a public footpath to be recorded on the Definitive Map and Statement from Ten Shilling Drive to Guinea Close.

Recommendations:

That Planning Committee are recommended to:

- (1) Authorise the City Solicitor to make the necessary Definitive Map Modification Order for the route from Ten Shilling Drive to Guinea Close in the City of Coventry as shown in appendix A, 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:

Plan showing the location and route of the public footpath to be recorded from Ten Shilling Drive to Guinea Close
Responses to the Consultation
Stopping up Order
Planning Committee report

Planning Decision Notice
Sales Document
Sales Tender document
Sales Agreement
Section 38 Agreement

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: - Application to record a public footpath from Ten Shilling Drive to Guinea Close

1. Context (or background)

- 1.1 The Council has received an application from the Ramblers Association to have the public footpath mentioned above recorded on the Definitive Map and Statement. The application was made under section 53 of the Wildlife and Countryside Act 1981 ('the 1981 Act').
- 1.2 In 2018 the route was obstructed by two freeholders. The Council wrote to both freeholders requesting that they remove the obstructions and they complied. Earlier this year the route was again obstructed and as a result, the Council started investigating whether a Definitive Map Modification Order ('DMMO') should be made.

2. Description of the Route

- 2.1 The claimed route runs from Guinea Close to the rear and east of No. 2 Guinea Close it continues south to the east of Nos. 31, 29, 27 and 25 meeting Ten Shilling Drive at the entrance to the E-On site. The length of the route is 129 metres or thereabouts the route is bordered on the eastern side by a mature hedge and on the western side by fences separating the claimed route from the neighbouring gardens. The width of the route is 7 metres. The route is currently obstructed where the path meets Ten Shilling Drive by a fencing and hard standing for motor vehicles which extends over the line of the route. The claimed route is on the attached plan indicated by a bold dashed line marked **A-B-C-D**

3. The Main Issues

- 3.1 Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Coventry City Council shall keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events.
- 3.2 One such event (section 53(3)(c)(i)) requires modification of the map by the addition of a right of way.

“(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates...;

The evidence can consist of either documentary/historical evidence or user evidence or a combination of this evidence. All of the evidence must be evaluated and weighed so that a conclusion can be reached as to whether, on the 'balance of probabilities' the alleged rights subsist or are reasonably alleged to subsist. Any other issues, such as safety, security, suitability, desirability or the effects on

property or the environment, are not a consideration or relevant in determining the decision.

- 3.3 Where the evidence in support of the application is user evidence, section 31(1) of the Highways Act 1980 applies, this states;-

“Where a way.....has been actually enjoyed by the public as of right and without interruption for a full period of twenty 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.”

- 3.4 This requires that the public must have used the way without interruption and as of right; that is without force, secrecy or permission. Section 31(2) states that “the 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question”.

- 3.5 A route can be presumed to have been dedicated under section 31(1) of the Highways Act if a route has been used by the public for 20 or more years. When calculating the 20 year period there must be a clear event that made the public realise that their rights are being challenged; referred to as calling into question. Events that can call a route into question include blocking the route, a notice, telling people not to use the route or submitting a definitive map modification Order to the Council.

- 3.6 In this case there are a number of events that can be regarded as a calling into question:-

- 3.7 Firstly, the application submitted by the Rambler’s Association in 2006 can be considered the trigger date, making the period for consideration as the relevant 20 years use from 1986 to 2006

Secondly the obstruction of the route in 2017 and thirdly the obstruction of the route in 2019.

- 3.8 In light of the above there are three dates that can be used for calling the route into question; 2019, 2017 or 1986. Having considered all evidence and callings into question, it is recommended that the calling into question date should be 1986 using the DMMO application as this was the first calling into question and therefore is considered by officers to be the most appropriate date.

4. Results of consultation undertaken

- 4.1 A pre-Order consultation was carried out on the 8th April 2019.

The Open Spaces Society submitted a number of documents in support of the application; following the consultation they submitted copies of the referred to documents. The historic documentary evidence is evaluated below in section 5.

A number of representations were received from one of the houses adjacent to the route complaining that the route was attracting crime and anti-social behaviour.

Issues of crime and anti-social behaviour are not a relevant consideration when determining whether or not a public right of way subsists.

Objections by residents were raised stating that the route was not required because there is a footway close by which could be used instead. The objectors thought that it would be unreasonable in planning law for the route to be recorded on the Definitive Map, as they believe the route to be redundant and therefore should not be recorded over their freehold.

One objector, states that '[i]t's clear that whilst a Public Right of Way was rightly put in place when the Westwood Business Park was created...' this does show that there was an intent to accommodate the path when development was taking place.

The Local Residents Association commented stating that '[w]e cannot comment as to whether or not it is a recorded right of way...' they went on to provide some mapping evidence that is discussed below and stated 'Our associated History Group believes this may be part of a medieval route between Bockendon Grange and Fletchamstead Hall, which may not be relevant but is certainly interesting.'

Two emails email were received in support of the route being recorded on the definitive plan.

None of the statutory undertakers objected to the proposed Order.

A response was received from a solicitor representing one of the residents affected. The points raised are summarised below.

- There is a lack of evidence to support/demonstrate that the route is a public footpath.
- The residents' have security concerns and that Council should consider draft Government guidance when considering the application.
- That it would be an inappropriate use of limited public resources to determine the application by accepting that the route is a public footpath.

The evidence is discussed in the body of the report below. Security concerns are not a relevant consideration under section 53 of the 1981 Act. The draft guidance is not in force nor is the law to which it refers, the draft guidance relates to an amendment to the Highways Act 1980 and does not relate in any way to the 1981 Act. The draft guidance has no relevance to the current matter and cannot be considered.

Lack of resources within the public sector is not a relevant consideration under section 53 of the 1981 Act.

4.2 User Evidence

Two responses were received from members of the public stating that they had used the route. One response stated that they had used the route with their children before the houses were built. They continued to use the route after the houses were built and would clear the route of overgrowth as they used it. The other response stated that they and their family had used the route from 1995 onwards.

Following the consultation two user evidence forms were submitted, the users claimed to have used the route from 2010 to 2019 They have stated that their usage was less than monthly and was part of a longer route.

5. Documentary Evidence

Extinguishment Order

- 5.1 To the south of the route being considered is a route now recorded on the working copy of the definitive map, public footpath No. 245. The original DMMO application includes the route that is now public footpath No. 245; the evidence related to this public footpath should also be considered for the route to be determined by the committee. The route to the south was originally part of the route under consideration, it is separated only by adopted highway. If the adopted highway had not been built and accepted by the Council both routes would still be connected hence why the extinguishment Order is relevant.
- 5.2 In 1996 an Extinguishment Order was made by the City Council to extinguish what is now public footpath No. 245. For the Council to make this Order the freehold owner would have to expressly accept that the route subject to the extinguishment was a public highway. The Council would not have been able to make the Order unless it had been accepted by all parties that the route was public highway.
- 5.3 The Extinguishment Order was not confirmed following an objection to the making of it being submitted by the Ramblers Association. It is considered that the making of the Order is conclusive evidence that public highway rights subsisted over the way, a public footpath. The reason[s] for the application to extinguish the route or the reasoning for the decision to make the Order is not relevant to whether the highway rights subsists.

Planning History

- 5.4 The planning consent for the estate that is now Ten Shilling Drive was considered by the Council's Planning Committee on the 31st January 2001. Within the report the 'Description of the Application Site' at bullet point 5 states the following :-

'A loose surfaced public footpath runs along the eastern boundary of the site.'

- 5.5 Within the same report in a passage titled 'Relevant Planning History' it states that the 'Planning Policy Team considered and approved a development brief for the site at their meeting on 11th February 1999.' It goes on to say 'The defining statement from the development brief relevant to the application site are' and at bullet point 2 it states :-

'A public footpath runs alongside the eastern boundary hedgerow. This to be maintained within an adequate reservation and the layout and design of the adjoining housing must take in to account the requirements of natural surveillance.'

- 5.6 The report continues to summarise the comments from Statutory Consultees. At the first bullet point it states :-

‘The Ramblers Association have no objection in principle to the proposed development, however they are concerned that the 7 metre wide footpath reservation indicated may be eroded and encroached upon by adjacent dwellings. They therefore requested that a condition is attached to any permission protecting the footpath’

- 5.7 In the summary of the responses to the Public Consultation the report states at bullet point 5:-

‘One letter of comment from the occupier of 32 Whitefield Close expressing concern about the potential loss of the public footpath and mature hedgerow along the eastern boundary of the site, and suggesting that conditions regarding their retention are attached to the permission.

- 5.8 It is noted that no objections were raised by the Highway Authority nor the Land Owner to the assertion that there was a public footpath over the site. If there were not a public footpath it would be expected that the land owner would query this, as should the Highway Authority.

- 5.9 Delegated decision 28th March 2002 p115

- 5.10 Planning condition 13. in the decision notice states :-

‘The existing reservation located adjacent to the eastern boundary of the site shall be retained at a width of 7 metres in full accordance with the details indicated on the approved plan No. SA-3B, and shall not be removed or altered in any way without the prior written approval of the local planning authority.’

- 5.11 Plan no. SA-3B is shown with a City Council Approved Stamp and states that it was despatched on the 28th March 2002. The route in the plan is referred to as a footpath link on both sides of Ten Shilling Drive access to the E-On site. The drawing states:

‘The existing footpath that runs along the eastern boundary is retained as a rural footpath within a 7m reservation.....’

- 5.12 The objectors submit that the planning conditions demonstrate that the route was not public highway when these conditions were made as had the route been highway the condition would not have been required. This cannot be the case and is not supported by the evidence, public footpath No. 245 is subject to the same conditions. Public footpath No. 245 was recognised as a public footpath from 1996 when the Extinguishment Order was made and not confirmed, this is years before the planning consent and conditions were drafted.

- 5.13 There is nothing within the planning conditions that expressly state that the route subject to planning condition was not already public highway. There is nothing to show that the condition would not have been required if the route was already highway.
- 5.14 It appears that the Planning Authority intended for the route to have extra protection and used planning legislation to do so. The condition was considered by the Council's Planning Committee who approved It is highly unlikely that the applicant would have accepted this planning condition had they not believed that the route already had some public rights over it. It is not unusual for extra protection to be given to public rights of way via planning conditions, the condition demonstrates that the claimed route was regarded as a public right of way at the time of the condition being imposed.

Sale of Land by Coventry City Council

- 5.15 The land was owned by Coventry City Council following the granting of the planning consent. A sales tender document was drafted by the Council and sent to interested parties the closing date for tenders was 12 noon on the 19th November 2004.
- 5.16 Within the document entitled Supplementary Planning Guidance at paragraph 2.7 the public footpath is expressly mentioned it states:-
- ‘A public footpath runs alongside the eastern boundary hedgerow. This is to be maintained with an adequate reservation and the layout and design of adjoining housing must take into account the requirements of natural surveillance.’
- 5.17 There is a plan within the documents that refers to an ‘existing footpath’ which is on the line of the current route under consideration. The footpath is shown with a hatched pattern.
- 5.18 This document clearly shows that the City Council, as the freehold land owner, had accepted that there was a public footpath running across the site. The land owner also made this clear, and expressly stated, to anyone considering purchasing the land that a public footpath subsisted over the site.
- 5.19 The line of that public footpath is the same as the claimed route.
- 5.20 Sales particulars, as opposed to the actual conveyance document, should be treated with special caution. If a public right of way were admitted, a convincing reason for disregarding the entry would need to be provided before it could be entirely discounted.
- 5.21 The objectors have failed to submit any evidence to demonstrate a convincing reason why this information should be disregarded.
- 5.22 The Sales Agreement between the Council and Westbury Homes (Holding) Ltd clearly references the footpath in the Sales Agreement. It defines the footpath as:-

- “Rural Footpath” means the rural footpath running through the Footpath Reservation Strip
- “Footpath Reservation Strip” means a seven metre wide forming a part of the Property shown hatched-black on the Plan
- “Plan” means drawing number LPR-232-2001 attached

The plan clearly shows a hatched black line on the eastern edge of the site on the line of the claimed route.

Restrictive Covenant

5.23 When the City Council sold the land it put a restrictive covenant to protect the footpath and to ensure that the path would stay open and available for use.

5.24 All the properties that have the claimed route within their freehold have a restrictive covenant which states the following:-

‘Not to do or permit anything to be done on the Footpath Reservation Strip which will obstruct or in any way interfere with the use of the Rural Footpath and in particular not to erect or permit to be erected on any Footpath Reservation Strip whether temporary or permanently any building fence wall or other structure and not grow or permit to be grown on any part of the Footpath Reservation Strip any hedge or shrubbery’

5.25 This clearly shows that the route although within the freehold of the properties, must be kept clear as it is considered to be a public footpath. Nothing has revoked this restrictive Covenant. By obstructing the route, the freehold owner is in breach of this obligation.

5.26 By purchasing a freehold title with a restrictive covenant the purchaser has accepted that they have a legal obligation to keep the route open and available for use.

5.27 Both the covenant and the planning condition are silent on the class of person that the can use the route. The objector contends that the route was to be private, if this was the case the Council believes both documents would have expressly stated who could use the route. In the absence of any expressed person or class of persons allowed to use the route it is reasonable to imply that the public at large can use the route.

5.28 The objector’s solicitor submits that the actions of the Council as land owner demonstrate that the route was not highway at the time of the sale. They have failed to submit any evidence to support this assertion, none of the actions by the land owner can be interpreted as an intention not to dedicate. They have failed to adduce any evidence to support their position that the route was not highway at the time of the sale of the land.

5.29 The evidence is clear that the Council as land owner acted to protect the routes. These actions cannot be interpreted as an intention not to dedicate nor as a demonstration that the route at this point had not acquired highway rights.

Width of the Route

- 5.30 The planning document makes reference to the footpath and a footpath reservation strip of 7 metres from the eastern boundary. This is the current boundary to boundary width along most of the length of the route, except where the route has been incorporated into a garden.
- 5.31 This is also the width recorded in the planning consent, including the footpath reservation strip.

Unrecorded public footpath

- 5.32 Part of the application route is recorded on the Council's List of Streets as highway maintainable at public expense lines **A – C** and **B – D** on the attached plan. The status of the route on the List of Streets is public footpath. The Council entered into an agreement made under Section 38 of the Highways Act 1980 ('the agreement'), the effect of the agreement, amongst other things, was to create a section of public footpath. The agreement is dated 25th November 2009, the route was adopted by the Council on the 13th June 2013.
- 5.33 The agreement created a footpath from Guinea Crescent to the rear of No. 2 Guinea Crescent. The path terminates at the boundary to No. 31 Ten Shilling Drive, the path is shown coloured yellow in the plan attached to the agreement shown as lines **A – C** and **B – D** on the attached plan.
- 5.34 The Council is under a duty to have this route added to the definitive map and statement as the agreement is a legal event for the purposes of the 1981 Act. This can be completed either by a Legal Event Modification Order or a Definitive Map Modification Order.
- 5.35 The agreement cannot be regarded as evidence that public rights did not subsist prior to the agreement coming into effect. It is possible for pre-existing rights to be subsumed into a route subject to a section 38 agreement.

Cul-de-Sac

- 5.36 The unrecorded public footpath to the north of the route, line **B – D** on the attached plan, is currently a cul-de-sac, this part of the route will form part of the Order to ensure that it is added to the Definitive Map. The courts have long recognised that, in certain circumstances, cul-de-sac in rural areas can be highways. (e.g. *Eyre v New Forest Highways Board* 1892, *Moser v Ambleside* 1925, *A-G and Newton Abbott v Dyer* 1947 and *Roberts v Webster* 1967). Most frequently, such a situation arises where a cul-de-sac is the only way to or from a place of public interest or where changes to the highways network have turned what was part of a through road into a cul-de-sac. Before recognising a cul-de-sac as a highway, the Council will need to be persuaded that special circumstances exists.
- 5.37 In *Eyre v New Forest Highway Board* 1892 Wills J also covers the situation in which two apparent culs-de-sac are created by reason of uncertainty over the status of a short, linking section (in that case a track over a common). He held that, where a

short section of uncertain status exists it can be presumed that its status is that of the two highways linked by it.

- 5.38 The northern footpath terminates behind houses, which cannot be considered a site of public amenity, there is no reason for the path not to continue through to another highway as no special circumstances exist. The logical point for this termination point would be on Ten Shilling Drive opposite the point where Public Footpath No. 245 terminates. The length of the route from the highway to the rear of No. 2 Guinea Close to the south of Ten Shilling Drive is 73 metres.
- 5.39 It is reasonable to state that the 73 metres is the status of a public footpath as this would resolve the cul-de-sac issues at the northern end of the route. There is no reason for that part of the route to be a cul-de-sac as it does not terminate at a site of public interest.
- 5.40 It is also clear that the changes to the highway network in the area have contributed to the route becoming a cul-de-sac. Public footpath No. 245 is on the Council's working copy of the definitive map, had the highway known as Ten Shilling Drive not been dedicated as a public carriageway, FP No. 245 would have linked to the route under consideration.

Acquiescence

- 5.41 The evidence is clear that the Council as land owner acted to protect the routes and keep them open and available to the public to use. This could be regarded as acquiescence by the landowner, it is clear that the landowner knew the route was being used by the public and did nothing to stop it. The landowner continues this acquiescence when the Planning Authority puts a planning condition in place to ensure that the public footpath is protected. At no point in this process did the landowner challenge or refuse to accept this condition, had the landowner believed that the route was not public it would have challenged this condition.
- 5.42 The only action that could be considered as an action to stop the public from using the route was the application for an Extinguishment Order (as discussed above). This application recognised and accepted that the route was being used as a public footpath.

Lack of Intention to dedicate

- 5.43 There is no evidence to show that the landowner had any intention not to dedicate the route as a public right of way prior to the route being called into question.

Aerial Photos

- 5.44 The route under consideration is clearly visible on the aerial photography taken in 2005. The estate is still being constructed but the houses that abut the route have been completed. It is clear from the photos that a fence has been installed to ensure gardens are separated from the path. There also appears to be a worn track through the vegetation.

- 5.45 In the aerial photo from 2007 the route is again clearly shown segregated from the adjacent properties by a fence. There appears to be a narrow line that could be a walked line. In the 2010 photos the tarmac of the unrecorded route is clearly visible, the tarmac route meets an overgrown section on the route. The photos from 2010 to 2015 continue to show the route clearly segregated from the adjacent gardens, throughout this time the route looks to be overgrown.
- 5.46 In 2017 the route appears to be less overgrown although there are some obstructing features. The route is segregated from all of the gardens except at the southern end, where it is clear that there has been an attempt to incorporate the route into the garden.
- 5.47 The aerial photographs provide evidence that the path existed as a physical entity and shows that the estate was built and laid out taking into account the planning conditions. The photos demonstrate that the path was open and available and could be used without obstruction. It also provides evidence that the route was being used although it is not possible to say by whom.

6. Historic Mapping Evidence

The Tithe Map

- 6.1 The Council was not able to find a Tithe map for the area.

Finance Act 1910

- 6.2 The Council was not able to find any information for the area.

County Series Ordnance Survey Map

- 6.3 The claimed route appears to be recorded on the map at the southern end of the route and is shown leaving what is now the Westwood Heath Road opposite the junction of what is now Bockendon Road. The southern end of the route is shown running parallel to a field boundary on the western side marked by a single pecked line running in a generally northern direction. It then enters a field and another field changes direction slight to the east and is shown by a parallel pecked lines into an area marked as Park Wood.
- 6.4 The claimed route is shown on the 1st Edition 1888, 2nd Edition 1903, 3rd Edition 1925 and 4th Edition 1936 in the same manner described above.
- 6.5 The Ordnance Survey would record any physical feature on the ground, a route being recorded on the map is not an indication of status it is an indication that the route was physically on the ground when the map was compiled.

National Library of Scotland Mapping Information

- 6.6 The National Library of Scotland holds a large number of OS maps and it has been possible for to look the following maps: OS Six Inch 1888-1913, OS 25 inch, 1892-1914, OS 1:25,000 1937 to 61, OS 1:1Million-1:10K 1900s, OS 1:1m to 1:63K 1920s-1940, OS 1:10,560 1949-1968, OS One Inch 7th series 1955-1961.

- 6.7 All the maps show the claimed route running from Westwood Heath Road opposite the junction with Bockendon Road through to Park Wood. The claimed route is shown as a pecked line.
- 6.8 The Ordnance Survey would record any physical feature on the ground, a route being recorded on the map is not an indication of status it is an indication that the route was physically on the ground when the map was compiled.

Ramblers Association Map 1937

- 6.9 A map which was first published in 1937 by the Ramblers Association clearly shows the route. While it is accepted that this is not a legal document, it is highly significant. The Ramblers Association were and are a leading access organisation and would not have added the route to their map without believing that the route was public.
- 6.10 It is noted that there is disclaimer on the map that states:
- ‘Although great care has been taken in the preparation of this map to include those tracks, which, from the best information, are understood to be reputed public ways, no guarantee is given that any indicated track is a public right of way’
- 6.11 The routes that are recorded on the map appear to have been well researched with the majority of the routes shown on the map later being recorded on subsequent definitive maps in the area. The claimed route is within the former County Borough Area of Coventry which was exempt from drafting a definitive map under the 1947 legislation which is a possible reason for the path not being recorded earlier.
- 6.12 In light of the above this map is highly persuasive evidence that the route had some public rights and was being used by the public when the map was drafted and that they continue to subsist over the way.

7. Conclusion

- 7.1 The historic mapping evidence clearly shows that the route has been recorded as a physical feature since 1880 through to today. The recording of a route on an OS map does not in itself represent highway rights nor does it demonstrate that the route was private.
- 7.2 The points raised by the resident’s Solicitors and the residents themselves are generally not relevant to the consideration as to whether or not the route is a highway. Crime and anti-social behaviour, availability of other routes in the area and lack of resources cannot be taken into account.
- 7.3 The objector’s solicitor submits that the actions of the Council as land owner demonstrates that the route was not highway at the time of the sale. They have failed to submit any evidence to support this assertion, none of the actions by the land owner can be interpreted as an intention not to dedicate. They have failed to adduce

any evidence to support their position that the route was not highway at the time of the sale on the land.

- 7.4 The objectors have failed to demonstrate an intention not to dedicate the route prior to the DMMO application.
- 7.5 There is enough evidence on the balance of probabilities to say that the route in question is a public right of way with the status of a public footpath.

8. Comments from Executive Director Resources

8.1 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.

8.2 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.

9 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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Finance: Graham Clark	Lead Accountant	Place	26/11/19	27/11/2019
Clara Thomson	Solicitor	Place	26/11/19	04/12/2019
Other members: Cllr Patricia Hetherton	Cabinet Member (Public Services)		26/11/19	

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