



**OFFICER REPORT TO LOCAL COMMITTEE  
(GUILDFORD)**

**ALLEGED PUBLIC BRIDLEWAY ALONG PUBLIC FOOTPATH No.  
348, TONGHAM AND TONGHAM ROAD, RUSHMOOR,  
HAMPSHIRE**

**7<sup>TH</sup> DECEMBER 2011**

**KEY ISSUE**

The County Council has a duty under Section 53 of the Wildlife and Countryside Act 1981 (WCA 1981) to modify the Definitive Map and Statement (DMS) if it discovers evidence which on balance supports a modification.

**SUMMARY**

Mrs Terina Notz submitted an application for a Map Modification Order (MMO) to add a public bridleway along Public Footpath No. 348, Tongham and Tongham Road, Rushmoor, Hampshire to the Surrey County Council and Hampshire Definitive Map and Statement (DMS). The claimed route runs between points 'A' and 'E' as shown on drawing 3/1/64/H7 (see Annexe A).

It is considered that the evidence shows that bridleway rights can reasonably be alleged to subsist over the route under common law dedication. As such a legal order to modify the Definitive Map and Statement should be made.

**OFFICER RECOMMENDATIONS**

**The Guildford Local Committee is asked to agree that:**

- (i) Public bridleway rights are recognised over 'A'- 'E' on plan 3/1/64/H7 and that this application for a MMO under sections 53 and 57 of the

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Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of a bridleway is approved.

- (ii) A legal order should be made and advertised and if objections are received it will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
- (iii) Authority is sought from Hampshire County Council to make a MMO on their behalf for the section 'D' – 'E' on plan 3/1/64/H7.

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### 1 INTRODUCTION AND BACKGROUND

- 1.1 In May 2007, Mrs Terina Notz submitted an application under the WCA 1981 for a MMO to add a bridleway to the DMS. Twelve user evidence forms have been submitted. In addition, 22 people have signed a form stating they used the route for a number of years. For the legal background on MMOs see **ANNEXE C** to this report.
- 1.2 The route (shown on Drg No. 3/1/64/H7 – **ANNEXE A**) is located in Tongham and runs from point 'A' at Oxenden Road in a north, northwesterly direction along 'The Moors' and Public Footpath No. 348, Tongham to go through an underpass, under the A331 Blackwater Valley Road. It then crosses the county boundary at point 'D' and continues to Tongham Road in Rushmoor, Hampshire to point 'E'.
- 1.3 The footpath has a definitive metalled width of 4 feet along the northern side of 'The Moors', although it is not enclosed. Horse riders claim they have used the full width of the road, excluding the southern edge, which is used for the parking of cars. An iron-kissing gate is recorded in the Definitive Statement at point 'C', although it no longer exists on the ground and has been replaced by an anti-motorcycle barrier and bollards.
- 1.4 Hampshire County Council is content for this authority to deal with the application. If a Map Modification Order were to be made they would grant authority for us to make the order for their section on their behalf.

### 2 ANALYSIS

- 2.1 The user evidence submitted by 12 people spans a period of 31 years from 1975 to 2006. In 2006, at the request of local residents and in consultation by the police, the County Council installed an anti-motorcycle barrier and bollards at point 'B' on the plan. They were installed for safety reasons following instances of motorcyclists travelling at high speed along the route. Under section 66 of the Highways Act 1980, the County Council has powers to provide and maintain barriers as they think necessary for the purpose of safeguarding persons using the highway. Previously, there had been a gate with a gap beside it at that point. The barriers also had the effect of preventing use by horse riders, which led to this application to investigate the status of the route.
- 2.2 The relevant 20-year period for the purposes of Section 31 of the Highways Act 1980 is 1986 to 2006. Seven claimants used the route for the full 20-year period. Individual use was fairly frequent, on average 25 – 30 times a year, for the purposes of visiting friends and family, a local riding club and generally riding for pleasure and exercising horses.
- 2.3 A bar chart with a summary of the evidence contained in the claim forms can be seen at **ANNEXE B**. Five claimants were also interviewed to clarify their own personal use of the route.

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- 2.4 The A331 Blackwater Valley Road (BVR) was constructed between 1991 and 1994. It cut through the western end of the claimed route and an underpass was built to enable the public footpath to continue under the new road. The applicant and the horse riders interviewed say they did not ride the route during the construction works for safety reasons.
- 2.5 A Side Roads Order made in 1991 stopped up Public Footpath No. 348 under the bypass and created a new footpath once the works were complete. The intention of the Order would have been to stop up any existing rights at that time. No reference was made to equestrian or non-pedestrian access, except to stop up private vehicular rights.
- 2.6 The land under the claimed route is unregistered. Mr Pugh of No. 8 'The Moors', represents 'The Moors Residents Association' and has said that the adjoining residents maintain the road. He has raised objections to the route becoming a public bridleway mainly on the grounds of health and safety issues of horses using the road and the fact that the anti motorcycle barrier would have to be removed to allow horse use. None of these concerns are relevant to whether public bridleway rights have been acquired.

### **3 OPTIONS**

- 3.1 The committee can agree with the officer recommendation, in which case an order would be made and advertised.
- 3.2 Alternatively, if the Committee resolve that there is not sufficient evidence to reasonably allege that public rights exist, they may disagree with the officer recommendation.
- 3.3 The decision can only be made on the basis of the evidence submitted as interpreted under the current legislation. Matters such as convenience, amenity or safety are not relevant (see **ANNEX A**).

### **4 CONSULTATIONS**

- 4.1 Consultations have been carried out with the statutory bodies and user groups including Guildford Borough Council, the Blackwater Valley Countryside Partnership, Tongham Parish Council and adjoining residents. Tongham Parish Council own Tongham Moor and the Bowls club to the north of the route. They have made no comment on the application. Guildford Borough Council maintains Tongham Pools at the western end of the route. Their Trees and Countryside Manager has raised concerns regarding horse riders using the route to access Tongham Pools.

### **5 FINANCIAL AND VALUE FOR MONEY IMPLICATIONS**

- 5.1 The cost of making an order is not a relevant factor in this decision. The County Council is under a duty to make a MMO to add a route to the DMS where evidence is discovered which, taken as a whole, is sufficient to reasonably allege the existence of a right of way.

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- 5.2 If the committee were to agree with the officers' recommendation that an MMO should be made, costs in the region of £1400 would be met from the County Council's Countryside Access budget. Most costs are fixed by our duties under Schedule 15 of the Wildlife and Countryside Act 1981. If a MMO was made and objected to and a public inquiry was held, costs in the region of £4,000 would have to be met.

### **6 EQUALITIES AND DIVERSITY IMPLICATIONS**

- 6.1 The Council must act within current legislation. The route is currently a public footpath. By amending the DMS to upgrade the right of way it would formalise bridleway rights.

### **7 THE HUMAN RIGHTS ACT 1988**

- 7.1 The Map Modification Order process is about formalising rights, which already exist but have not been recorded. The impact of this process on the above is therefore usually negligible. However it is recognised that we must consider Human Rights Legislation.
- 7.2 The Human Rights Act 1998 does not incorporate the European Convention on Human Rights into English law. It does, however, impose an obligation on public authorities not to act incompatibly with those Convention rights specified in Schedule 1 of that Act. As such, those persons directly affected by the adverse effects of decisions of public authorities may be able to claim a breach of their human rights. Decision makers are required to weigh the adverse impact of the development against the benefits to the public at large.
- 7.3 The most commonly relied upon Articles of the European Convention are Articles 6, 8 and Article 1 of Protocol 1. These are specified in Schedule 1 of the Act.
- 7.4 Article 6 provides the right to a fair and public hearing. Officers must be satisfied that the application had been subject to a proper public consultation and that the public have had an opportunity to make representations in a normal way and that any representations received have been properly covered in the report.
- 7.5 Article 8 of the Convention provides the right to respect for private and family life and the home. This has been interpreted as the right to live one's personal life without unjustified interference. Officers must consider whether the recommendation will constitute such interference and thus engage Article 8.
- 7.6 Article 1 of Protocol 1 provides that a person is entitled to the peaceful enjoyment of their possessions and that no one shall be deprived of their possessions except in the public interest. Possessions will include material possessions, such as property and also user rights. Officers must consider

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whether the recommendation will affect the peaceful enjoyment of such possessions.

- 7.7 These are qualified rights, which means that interference with them may be justified if deemed necessary in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. Any interference with a convention right must be proportionate to the intended objective. This means that such interference should be carefully designed to meet the objective in question and not be arbitrary, unfair or overly severe.
- 7.8 The recommendation in this case is not considered to engage Article 8 or article 1 of Protocol 1 of the Convention. As such, the recommendation is not in breach of the 1998 Act and does not have any Human Rights implications.

### **8 CRIME AND DISORDER IMPLICATIONS**

- 8.1 Such issues cannot be taken into account when making a decision whether the public have acquired additional rights or not.

### **9 CONCLUSION AND RECOMMENDATIONS**

- 9.1 Under Section 53 of the Wildlife and Countryside Act 1981, *“the authority shall make such modifications to the Definitive Map and Statement as appear to them to be requisite in consequence of the discovery of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates”*.
- 9.2 The applicant has provided evidence in an attempt to prove that public bridleway rights may exist over the route.
- 9.3 Section 31 (1) of the Highways Act states that: *“Where a way over any land other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication has actually been 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”*.
- 9.4 The period of 20 years referred to in sub-section (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question whether that is by a notice, by the making of a schedule 14 application, by blocking the route or otherwise.
- 9.5 In this instance, the right of the public to use the route on horseback was brought into question when the barrier was constructed in 2006 and

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obstructed their use. The Schedule 14 application was made shortly afterwards. Prior to that it could be argued that the construction of the BVR, which prevented use of the route by the public, and the stopping up and creation of the route as a public footpath in the side roads order also called the route into question. Due to the construction of the BVR and the stopping up of the route during those works, there is no clear 20-year period of use. There are 17 years of use from 1974 – 1991, with only 2 riders claiming use for the whole of that period and 12 years of use between 1994 and 2006. Eleven horse riders claim use over the latter period.

- 9.6 Given the lack of public use between 1991 and 1994 it is considered that public bridleway rights have not been acquired under section 31 of the Highways Act 1980.
- 9.7 In addition to the Highways Act, the public can also acquire rights of way at common law. In order to do so it must be possible to infer from acts undertaken by the landowner or by their acquiescence that they had intended to dedicate the route. It must also be shown that the public has accepted the route as a right of way. Unlike the statutory presumption in the Highways Act, the period of user, which is necessary at common law to establish or prove a dedication to the public has never been defined. Every case must depend on its own facts.
- 9.8 In this case common law dedication needs to be considered. There is evidence of inspectors deciding cases submitted to the Planning Inspectorate in favour of dedication at common law over quite short periods, where the user has been “reasonably notorious”. In this instance, there has been regular use by horse riders both before and after the BVR was constructed. An inference of acquiescence by the landowner could be drawn from the fact that they have not taken any action to prevent horse use. A dedication of bridleway rights can therefore be reasonably alleged. If a map modification order were made the landowner would have the opportunity to object and bring evidence of rebuttal against any presumption of dedication.
- 9.9 It has been concluded that public rights have been acquired at common law.
- 9.10 The Guildford Local Committee is asked to agree that:
- (i) Public bridleway rights are recognised over ‘A’- ‘E’ on plan 3/1/64/H7 and that this application for a MMO under sections 53 and 57 of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of a bridleway is approved.
  - (ii) A legal order should be made and advertised and if objections are received it will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
  - (iii) Authority is sought from Hampshire County Council to make a MMO on their behalf for the section ‘D’ – ‘E’ on plan 3/1/64/H7.

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### 10 WHAT HAPPENS NEXT

- 10.1 All interested parties will be informed about the decision. If the recommendations are agreed no legal order will be made. The applicant will have opportunity to appeal to the Secretary of State for Environment, Food and Rural Affairs against this decision.
- 10.2 If the Committee decides that an order should be made and objections are maintained to that order, it will be submitted to the Secretary of State for confirmation.

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BACKGROUND PAPERS: All documents quoted in the report. File may be viewed upon request.

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