



**OFFICER REPORT TO LOCAL COMMITTEE  
(MOLE VALLEY)**

**ALLEGED PUBLIC FOOTPATH 602 (DORKING) BETWEEN  
WESTCOTT STREET AND BRIDLEWAY 112 (DORKING)**

**18 JUNE 2010**

**KEY ISSUE**

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

**SUMMARY**

Mrs Diane Holden submitted an application in October 2007 for a Map Modification Order (MMO) to add a public bridleway from Westcott Street to Bridleway 112 (Dorking) to the Surrey County Council DMS. Although the application was for a bridleway, Mrs Holden has since confirmed that she had intended to claim the route as a footpath.

The route in question is shown on drawing number 3/1/50/H42a (attached as annexe A).

It is considered that there is sufficient evidence to show that a public footpath exists over the route and therefore a legal order to modify the Definitive Map and Statement should be made.

The owners of the section marked E-F-G have agreed to dedicate the route as a public footpath. Should a dedication agreement be completed, it will not be necessary to make an MMO for that part of the claimed route.

## OFFICER RECOMMENDATIONS

**The Local Committee (Mole Valley) is asked to agree:**

- a) That public footpath rights be recognised over the route shown A-B-C-D on drawing number 3/1/50/H42a and that the application for a MMO (made under sections 53 and 57 of the WCA 1981) to modify the Definitive Map and Statement by the addition of a footpath over that route be approved. The route will be known as Public Footpath 602 (Dorking).
- b) That public footpath rights be recognised over the route E-F-G on drawing number 3/1/50/H42a and, should the relevant landowner fail to complete the dedication of a footpath over that route within three months of this decision, the application for an MMO (made under sections 53 and 57 of the WCA 1981) to modify the Definitive Map and Statement by the addition of a footpath be approved. The route will also be known as Public Footpath 602 (Dorking).
- c) That legal orders should be made and advertised and if objections are received they will be submitted to the Secretary of State for the Environment, Food and Rural Affairs for confirmation.

## 1 INTRODUCTION AND BACKGROUND

- 1.1 In October 2007, Mrs Diane Holden submitted an application under the Wildlife and Countryside Act 1981 for an MMO to add a public footpath to the Definitive Map and Statement. 22 evidence forms accompanied the application and a further 12 have subsequently been submitted.
- 1.2 The alleged footpath is located in Westcott, near Dorking and runs in an easterly direction from point 'A', through point 'B', to meet Public Footpath No. 115 at point 'C' as shown on drawing number 3/1/50/H42a. It then continues to its junction with Public Footpath No. 114 at point 'D'. The path recommences further north on Public Footpath No. 114, at point 'E', and runs in a north-easterly direction to point 'F', where it crosses Public Footpath No. 113, to meet Public Bridleway No. 112 at point 'G'.
- 1.3 For legal background regarding MMOs see annexe B to this report.

## 2 ANALYSIS

### PUBLIC USER EVIDENCE OF THE ROUTE

- 2.1 34 people have completed public user evidence forms, collectively showing use of the route from 1940 until 2008. Use has continued to the present day, as the route has remained open. The nature of individual

use varies considerably but the vast majority of users claim to have used it on foot. Only two users show evidence of equestrian use while 5 claim to have cycled the route. A further local resident has written to the County Council stating that they have ridden a horse over the alleged route. The evidence has been summarised in the attached bar chart (annexe C). Officers have interviewed 5 claimants to clarify their personal use of the route.

- 2.2 None of the users claim to have been stopped or told the route was not public. In 2005 the landowner installed a locked field gate at point D. Next to the field gate he erected a kissing gate and so public access has not been prevented.

### **LANDOWNERS AND ADJOINING LANDOWNERS' EVIDENCE**

- 2.3 Taylor Wimpey currently own that part of the alleged route which runs from A to B. They purchased this land from T H Broom and Son (Farmers) Ltd in 2002. Taylor Wimpey initially agreed to dedicate the path as a public footpath. However, they have recently confirmed that they are unwilling to sign the dedication agreement saying, "...we are not opposed to dedicating a Public Right of Way across the site however we are unable to sign the documents [*i.e. the deed of dedication*] as the location of the Public Right of Way is yet to be determined. Once we have worked up the planning application for residential development on the site we will indicate the siting of this right of way". Irrespective of the landowners plans the County Council remains under a duty to determine whether rights exist over the route in question. Where such rights are found to exist an order must be made to add them to the DMS.
- 2.4 Section 'B' to 'D' is owned by Kathleen Shirley Broom, James Courtney Broom and Sara Isolena Kane (all related). Kathleen Shirley Broom owns section 'E' to 'G'. All are agreeable to dedicating the route as a public footpath. It is recommended that the dedication of section 'E' to 'G' be progressed. However it is considered ill advised to accept the dedication of B-C-D as, if an order to add that part of the route marked A-B to the DMS fails, such a dedication could potentially result in a cul-de-sac footpath.
- 2.5 The owners of 'The Dairy', Westcott Street (which is adjacent to the alleged footpath) have objected to the making of an MMO for reasons of privacy and because they believe that it will increase instances of dog fouling in front of their property. In principle they do not have a problem with the path being used by local residents but do not want it shown as such on the Definitive Map.

### **HISTORIC EVIDENCE**

- 2.6 The route is shown in its current location on the Ordnance Survey map of 1914 and it can be clearly seen on the 1948 and 1971 aerial photographs.

- 2.7 In a survey of footpaths and bridleways undertaken in 1950, Dorking Urban District Council did not put the route in question forward for inclusion on the Definitive Map.

### **3 OPTIONS**

- 3.1 The committee may agree or disagree with the officer's recommendations that rights have been acquired. The recommendations are based upon the evidence of use submitted with the application which has been interpreted under the current legislation. Matters such as security and safety may not be taken into account when determining applications to add a route to the DMS (see annexe B)

### **4 CONSULTATIONS**

- 4.1 Mole Valley District Council, the Ramblers Association, the British Horse Society, and the Open Spaces Society have all been invited to comment on the application. Representations were received from the Ramblers Association who confirmed that they support the application.
- 4.2 The local County Councillor, Councillor Hazel Watson and all known affected landowners have also been informed of the application.

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

- 5.1 The cost of advertising a Map Modification Order would be approximately £1200, which would be met from the County Council's Countryside Access budget. If an order was made and objections received to it and a public hearing or inquiry was held, costs in the region of £1000 would be met from the same budget. Under schedule 15 of the Wildlife and Countryside Act 1981 the County Council is under a duty to pay these costs.

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

- 6.1 The Map Modification Order process is about keeping the Definitive Map up to date. This might involve formalising rights, which already exist but have not been recorded; or deleting or diverting rights, which are included on the definitive map in error. The impact of this process on the above issues is therefore usually negligible.

### **7 CRIME AND DISORDER IMPLICATIONS**

- 7.1 The map modification process is aimed at recording those public rights of way which already exist therefore it has no impact on crime or disorder.

## **8 THE HUMAN RIGHTS ACT 1998**

- 8.1 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.
- 8.2 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 to the Act.
- 8.3 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.
- 8.4 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.
- 8.5 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 whether the recommendation will affect the peaceful enjoyment of such possessions.
- 8.6 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.
- 8.7 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.

## 9 CONCLUSIONS AND REASONS FOR RECOMMENDATIONS

- 9.1 A decision on this claim must be made on the legal basis set out in annexe B to this report and the only relevant consideration is whether the evidence is sufficient to raise a presumption that public footpath rights exist. Other issues such as security or safety are irrelevant.
- 9.2 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 the 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.”*
- 9.3 Although no right is currently recorded on the definitive map, there is significant user evidence indicating that public rights exist over this route. No evidence has been submitted indicating that any of the landowners have tried to prevent use on foot or that indicates that the route was used with force, secrecy or permission.
- 9.4 Section 31 of the Highways Act 1980 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 used 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”.*
- 9.5 The period of 20 years referred to in section 31 of the Highways Act 1980 must be calculated retrospectively from the date when the right of the public to use the way is brought into question whether by notice or otherwise. In this case it is considered that the public’s right to use the footpath was first called into question in October 2007 by the submission of Mrs Holden’s application. The 20-year period can therefore be calculated as 1987 to 2007.
- 9.6 The landowners do not dispute the existence of the footpath and have not supplied any evidence to suggest that they have taken steps to stop the public from using the route. Mr Broom has stated verbally that he installed the kissing gate at point D to prevent cyclists using the route.
- 9.7 The objections of the owners of The Dairy relate to privacy and amenity and are therefore not relevant to the claim (see annexe B).
- 9.8 It is the view of officers that there is sufficient evidence for the period between 1987 and 2007 to raise a presumption that footpath rights have been established both under section 31 of the Highways Act 1980 and at common law over the route between points A – B – C – D and E – F – G.

Therefore, a Map Modification Order should be made to add them to the Definitive Map and Statement.

- 9.9 Should that section of the route marked E-F-G be dedicated by the owner as a public footpath then it is considered that it will be unnecessary to make an MMO for that part of the route.

## 10 WHAT HAPPENS NEXT

- 10.1 All interested parties will be informed about the decision. If the recommendations are agreed a legal order will be made to add that section of the alleged route marked A-B-C-D to the DMS as a public footpath. Once made the order will be advertised and representations invited.
- 10.2 The owners of that part of the route marked E-F-G will be asked to complete the dedication as a footpath of that part of the alleged route. If they are unable, or unwilling, to do so within the next three months a further legal order will be made and advertised the effect of which will be to add the route to the DMS as a public footpath.
- 10.3 If objections are maintained to either of the two orders, that order will be submitted to the Secretary of State for the Environment, Food and Rural Affairs for confirmation. If no order is to be made the claimants will be informed and will have an opportunity to appeal to the Secretary of State.

<b>LEAD OFFICER:</b>	Debbie Spriggs, Countryside Access Manager (County Hall)
<b>TELEPHONE NUMBER:</b>	08456 009 009
<b>E-MAIL:</b>	debbie.spriggs@surreycc.gov.uk
<b>CONTACT OFFICER</b>	Andrew Saint, Countryside Access Officer (County Hall)
<b>TELEPHONE NUMBER:</b>	08456 009 009
<b>E-MAIL:</b>	andrew.saint@surreycc.gov.uk
<b>BACKGROUND PAPERS:</b>	All documents quoted in the report. File may be viewed upon request.