



OFFICER REPORT TO LOCAL COMMITTEE (SPELTHORNE)

ALLEGED FOOTPATH BETWEEN BISHOP DUPPAS PARK AND WALTON LANE, SHEPPERTON, (SUNBURY)

30 JUNE 2008

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

Mr Nick Moreland submitted an application for a Map Modification Order (MMO) to add a public footpath between the edge of Bishop Duppas Park and Walton Lane in Shepperton to the Surrey County Council DMS.

It is considered that the evidence shows that a public footpath is reasonably alleged to subsist over the route. A legal order to modify the definitive map and statement should therefore be made.

OFFICER RECOMMENDATIONS

The Spelthorne Local Committee is asked to agree that:

- i. Public footpath rights are recognised over route A-B on drawing 3/1/86/H10 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 footpath is

approved. The route will be known as Public Footpath no. 80 (Sunbury).

- ii. A legal order should be made and advertised to implement these changes. If objections are maintained to such an order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

1 INTRODUCTION AND BACKGROUND

- 1.1 In July 2006, Mr Moreland submitted an application under WCA 1981 for a MMO to add a footpath to the DMS. The application was accompanied by 15 user evidence forms. For legal background see **ANNEXE A** to this report.
- 1.2 The claimed footpath runs from point A at the southern corner of Bishop Duppas Park and runs in a southerly direction for a distance of approximately 8 metres to Walton Lane at point B on the order plan.

2 PUBLIC USER EVIDENCE FOR THE ROUTE:

- 2.1 15 people have completed public user evidence forms, collectively showing use of the route from 1959-2005 with 11 showing 20 years or more of personal use, as shown on the bar chart in **ANNEXE B**. Officers interviewed five claimants. In addition to this, the claimant submitted a copy of a petition deposited with Spelthorne Borough Council (SBC) containing 54 signatures.
- 2.2 The user evidence spans approximately 47 years with individual use varying from 20 times a year to daily. The total usage amounts to about 7-8 instances per day over the year. The route was used mostly for accessing the park and for general exercise, recreation and dog walking.
- 2.3 None of the users were prevented from using the route in any way until the fence was erected in 2005 at point A.
- 2.4 The petition stated that:

“We the undersigned object to the closure of the entrance to Bishop Duppas Park on Walton Lane next to Bagster Club. Where indicated we confirm that we have lived in the area in excess of 20 years and have enjoyed unimpeded access to the park and its facilities. We urge the council to reinstate the access, if necessary with the addition of a ‘kissing gate’ to restrict motor scooters”.

25 of those who signed the petition claim to have used the route for in excess of 20 years.

3 LANDOWNERS EVIDENCE

- 3.1 The Land Registry shows that the land crossed by A-B is owned by SBC and was leased to Bagster Club and Institute Limited for 28 years from 1 September 1981. Spelthorne also own Bishop Duppas Park. A-B runs across land over which EDF Energy holds an access right to their substation.
- 3.2 SBC had the following objections to the route A-B:
- The public has not been able to use the route for the requisite period of time as a fence has been in place for a number of years. This was confirmed in signed statements deposited by 3 other SBC employees although they were unable to determine exactly when the fence was a viable obstruction.
 - The fence was originally a chain link fence, followed by a post and rail fence, then replaced by a chain link fence.
 - One other employee notes the presence of a fence along Walton Road which gradually disappeared allowing the public access, although not at this point. The fence was there in 1981/82.
 - The lease to the Bagster Club grants a right of access via a gate into Bishop Duppas Park during opening hours of the park. They indicate that this right would not have been placed in the lease if access could have been gained as of right.
 - The route was blocked off in order to prevent mopeds accessing the park at this point and the nuisance this caused to its neighbours.
 - The route was never a public right of way and the Council was entitled to block it off if it wished.
 - They were reluctant to acknowledge it as an official entrance to the park as this would require it to be brought up to standard to meet access requirements for the Disability Discrimination Act.
- 3.3 In February 2007, SBC installed a gate at point A so that access on foot to the park could occur once again. This was accessed from point B via a surfaced path approximately 1.0m wide. Neither were intended to be a recognition of public rights.
- 3.4 The park is subject to byelaws last confirmed in 1992 and made under section 164 of the Public Health Act 1875 and by sections 12 and 15 of the Open Spaces Act 1906 which confirm it as a recreation ground. The byelaws set out various regulations for the management of activities on the park.
- 3.5 The Bagster Club land was acquired and is held in accordance with the Physical Training and Recreation Acts of 1937 and 1958. This does not explicitly give the public any existing right of permission of use, nor prevent the acquisition of such rights. Unlike Bishop Duppas Park, there do not appear to be any byelaws made under this act which are applicable to the land.

3.6 EDF Energy had no objections. Bagster Club has not responded.

4 DEFINITIVE MAP

4.1 No public rights of way are recorded over the route in question and there are no records to suggest that the path was amongst those put forward by the Council for consideration at any stage in the compilation of the Surrey County Council Definitive Map and Statement for Sunbury and Staines in 1964 or 1966. Nor is it shown on the Revised Map as Prepared in Definitive Form for Middlesex as prepared by Middlesex County Council in 1959.

5 HISTORIC EVIDENCE

- 5.1 The route is not visible on sheet 11 of the 6" Ordnance Survey map of 1871 nor the 1914 Surrey Ordnance Survey Map XI:8, and there is no evidence that the park has been laid out. None of the Middlesex Ordnance Survey County Series maps for the area were available from the London Metropolitan Archives.
- 5.2 The 1960 O.S 6" map and 1964 O.S. National Grid Map (TQ 0960) appear to show a very clear delineated route running from Walton Lane to the park between enclosed properties, which no longer appears on current maps. This may also have served as private access to two former properties, which can be distinguished. On the 1964 map there is a continuation of the access shown as a double-pecked line across the grounds of what become Bishop Duppas Park.
- 5.3 There is no evidence of use visible on 1948 and 1971 aerial photographs due to tree cover and shadow. The 1988 and 1998 photographs suggest that there was no impediment to access to the park from this point.
- 5.4 In the Sunbury Urban District Council Allotments and Open Spaces Committee minutes of October and November 1961, reference is made to the land originally known as Merrick's Meadow but now known as Bishop Duppas Park. Its current name was agreed in November 1961. Similarly Bagster Club was originally known as Reid's Yard.
- 5.5 In the Spelthorne Borough Council Recreation and Amenities Committee minutes of October 1975 it was heard that the Reid's Yard shared a common unfenced boundary with Bishop Duppas Park to the north.

6 OPTIONS

6.1 The committee may agree or disagree with the officer's recommendations that rights have been acquired. Alternatively, they

may decide that the evidence submitted shows that the routes should be of a different status to that recommended. Decisions can only be made on the basis of the evidence. The above recommendation is based upon the evidence submitted and interpreted under the current legislation. Matters such as convenience, amenity or safety are irrelevant. (See Annex A).

7 CONSULTATIONS

- 7.1 The Ramblers Association supported the application but had no specific knowledge of use of the path. No response was received from the Open Spaces Society.
- 7.2 Neither the Borough nor the County councillor expressed objections to the alleged right of way.

8 FINANCIAL AND VALUE FOR MONEY IMPLICATIONS

- 8.1 The cost of advertising a Map Modification Order would be approximately £1000, which would be met from the County Council's Rights of Way Budget. Most costs are fixed by our duties under Schedule 15 of the Wildlife and Countryside Act 1981.

9 EQUALITIES AND DIVERSITY IMPLICATIONS

- 9.1 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 issues is therefore usually negligible. However it is recognised that we must consider Human Rights Legislation.
- 9.2 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.
- 9.3 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.
- 9.4 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.

- 9.5 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.
- 9.6 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 whether the recommendation will affect the peaceful enjoyment of such possessions.
- 9.7 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.
- 9.8 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.

10 CRIME AND DISORDER IMPLICATIONS

- 10.1 The route has been in use for a substantial period of time. It is unlikely that legally recording it will have significant crime and disorder implications. Such issues cannot be taken into account when making a decision whether the public have acquired rights or not.

11 CONCLUSION AND RECOMMENDATIONS

- 11.1 A decision on this claim must be made on the legal basis set out in ANNEXE A 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 amenity, safety or convenience are irrelevant.
- 11.2 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 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”.

- 11.3 There appears to be no documentary evidence to indicate that public rights of any sort exist over either route, hence the claims must rely on user and landowner evidence either by statute or common law.
- 11.4 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”.*
- 11.5 The user evidence appears to show regular unhindered use over the route from 1959 to 2005. 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 for example by a notice, by the making of a schedule 14 application, by blocking the route or other. This coincides with obstruction of the route by fencing in 2005. 11 people claim to have used the route during this 20-year period from 1985 to 2005 and another 4 for part of it. In addition the petition shows less detailed evidence, but further regular use spanning the last 20 years and more. None of the users had been prevented from using the route during this period.
- 11.6 Public access onto the park effectively occurs ‘by right’ under the statutory provisions of section 164, but this would not be ‘as of right’ under section 31(1) of the Highways Act 1980. Therefore presumed dedication could not occur here.
- 11.7 Although Bagster Club land is held under the Physical Training and Recreation Act 1937 and 1958 for *“the purposes of the encouragement of physical training and recreation and to facilitate the establishment of centres for social activities”*, the act itself does not grant the public any kind of right to access the land. The limited rights mentioned in the lease for this land do not have any impact on the ability of the public to acquire rights between A-B.
- 11.8 Insufficient evidence has been submitted to show that the above use has effectively challenged between A and B or that there was no intention to dedicate this land.
- 11.9 It is concluded, on the balance of probabilities, that the public has acquired footpath rights over route A-B between Bishop Duppas Park

and Walton Lane. No continuation of rights has been acquired across the park.

11.10 The Spelthorne Local Committee is asked to agree that:

- iii. Public footpath rights are recognised over route A-B on drawing 3/1/86/H10 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 footpath is approved. The route will be known as Public Footpath no. 80 (Sunbury).
- iv. A legal order should be made and advertised to implement these changes. If objections are maintained to such an order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

12 REASONS FOR RECOMMENDATIONS

12.1 Route A-B: Officers conclude, on the evidence available, that the public has acquired footpath rights over route A-B on plan 3/1/86/H10 and the definitive map and statement should be modified accordingly.

13 WHAT HAPPENS NEXT

13.1 All interested parties will be informed about the decision. If the recommendations are agreed a legal order will be made and advertised to implement the changes. If objections are maintained to the order, it will be submitted to the Secretary of State for Environment, Food and Rural Affairs for confirmation. If no order is to be made the claimant will be informed and will have opportunity to appeal to the Secretary of State.

LEAD OFFICER: Daniel Williams, Countryside Legal Officer
TELEPHONE 020 8541 9245
NUMBER:
E-MAIL daniel.williams@surreycc.gov.uk

CONTACT OFFICER: Daniel Williams, Countryside Legal Officer
TELEPHONE 020 8541 9245
NUMBER:
E-MAIL: daniel.williams@surreycc.gov.uk

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

