



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

**ALLEGED PUBLIC FOOTPATH ALONG SCHOOL LANE TO ST
NICHOLAS C.E. PRIMARY SCHOOL AND FOOTPATH 44
SUNBURY, SHEPPERTON**

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

Ms Catherine Morris, on behalf of St Nicholas C.E. Primary School, submitted an application for a Map Modification Order (MMO) to add a footpath along School Lane from Burchetts Way through to Public Footpath No.44 (Sunbury) behind the First Steps Nursery to the Surrey County Council DMS.

It is considered that the evidence shows that a public footpath does exist 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 the route A-B-C-D on drawing 3/1/86/H8, 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. 78 (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 September 2005, Ms Morris, on behalf of the St. Nicholas Church of England School, submitted an application under WCA 1981 for a MMO to add the above footpath to the DMS. The application was accompanied by 54 user evidence forms. For legal background see **ANNEXE A** to this report.
- 1.2 The route is located along School Lane from its Junction with Burchetts Way to Public Footpath No.44 (Sunbury) behind the First Steps Nursery. The claimed route commences at point 'A' on School Lane and proceeds in a northerly direction to point 'B', then in a north westerly direction through point 'C' to point 'D' for a total of approximately 180 metres.
- 1.3 The path runs along a rough metalled surface above and parallel to Public Footpath No.44 (Sunbury). There are nettles and other vegetation growing along and over the edges of the path. There are currently no notices indicating the status or use of the path.

2. PUBLIC USER EVIDENCE FOR THE ROUTE:

- 2.1 To date, 56 people have completed public user evidence forms; these collectively show use from 1951-2005 with 22 showing 20 years or more of personal use, as shown on the bar chart ANNEXE B. Five of these claimants were also interviewed by officers.
- 2.2 The frequency of use varied from 4 times a year to most days. The majority of the claimants use the route for purposes associated with the School, whilst others use the route for exercise, dog walking, and recreation.
- 2.3 There are several reasons why users had walked along School Lane instead of Footpath No.44 (Sunbury), one of the most popular being as an alternative during bad weather to avoid the mud and puddles.
- 2.4 None of the claimants had ever been stopped or questioned in their use of the route by whatever means.

3. LANDOWNERS EVIDENCE

- 3.1 A land registry search shows that the land crossed by School Lane is registered to Ms Sandra Keegan and Ms Deborah Keegan.
- 3.2 Ms Sandra Keegan, one of the registered land owners, objected to the proposal stating that School Lane is not a public footpath and that there is a perfectly good public right of way adjacent to their land, although no attempts have been made to block the public's access to the path.
- 3.3 All seven of the properties backing onto the path were advised of the application and invited to comment. Mrs Moore of 3 Old Forge Crescent stated that she had lived there for 50 years and to her knowledge the path in question had always been a public right of way. Mr Asbridge of 7 Old Forge Crescent replied in support of the application stating that his family have used the path most days since 1960.

4. DEFINITIVE MAP

- 4.1 The 1953 Draft Definitive Map, the Provisional Definitive Map of 1953 and the 1957 Definitive Map from Middlesex County Council show a footpath labelled '44' following the approximate course of the claimed route and that of Footpath 44 (Sunbury). Due to the maps scale however it cannot be distinguished between which of the two routes path '44' represents.
- 4.2 The 1966 Definitive Map shows Footpath No.44 (Sunbury) running over approximately the same route as the claimed path, although due to scale again the difference between the two parallel routes is unclear.
- 4.3 The current Definitive Map, with the relevant date of 23 March 2005, has the route of School Lane shown running parallel to Footpath No.44 (Sunbury).

5. HISTORIC EVIDENCE

- 5.1 The route of School Lane appears enclosed by pecked lines on maps produced by John Roques, dated 1754, and Colonel Mudge dated 1861. The width of the route displayed could however be interpreted to incorporate both the claimed path and Footpath 44 (Sunbury). On neither of these maps are there any indications of the status of the route.
- 5.2 A path closely approximating to the claimed route can be seen on Ordnance Survey Maps dated from 1871, although again due to scale this is indistinguishable from the parallel route of Footpath 44 (Sunbury). It is not until 1988 that both paths are mapped and are distinguishable.

- 5.3 The route is partially visible on aerial photographs from 1971, 1988 and 1998.
- 5.4 In the Sunbury Urban District Council Highways Committee of Septembers 1947 it was noted that whilst the Council could not take liability for this path the surveyor was instructed to repair potholes for the benefit of children attending the school. In September 1953 this issue arose again. It was pointed out that the footpath was not a public right of way and passed over private property, but the surveyor was asked to approach the landowner to see if any arrangement could be reached whereby children might continue to use the track.

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 route should be of a different status to that recommended. Decisions can only be made on the basis of the evidence submitted. This 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 Spelthorne Borough Council were consulted and stated that neither the Borough Councils Planning or Environment Sections have any evidence or comments to submit regarding the claim.
- 7.2 The Ramblers' Association stated that they saw no evidence of recent use and did not support the claim.

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 This 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 Ms Sandra Keegan and Ms Deborah Keegan both deny that there is or has ever been a right of way across their land, and have contested the public’s use of it since 23 February 2005 by way of a letter to the Council stating as such.
- 11.4 Although a path closely following that of the claimed route can be seen in much of the documentary evidence, there is no evidence of status of the route, which in most cases is also indistinguishable from the route of Footpath No.44 (Sunbury), which runs closely parallel. Therefore the claim must rely on user evidence either by statute or common law.
- 11.5 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”.
- 11.6 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 was first called into question whether by a notice...or otherwise.
- 11.7 The public’s right to use the route was called into question on 3 September 2005 when the County Council received an application for a Map Modification Order from Ms Morris on behalf of the St Nicholas Church of England School. This was submitted following correspondence from Ms Keegan to the Council in February 2005, stating that under no circumstances should Surrey County Council arrange for any vegetation clearance as it was private land, not a right of way, and that it was intended that the plot of land be cordoned off to stop public use.
- 11.8 Prior to February 2005 no attempts appear to have been made by the landowners to prevent the acquisition of public rights over the route, and

none of the objections stated in their letter are relevant under the current legislation. If the point of challenge to the public's use of the route is taken as 2005 when Ms Morris submitted the application, then the relevant 20-year period is 1985-2005. During this time 56 people had used School Lane for some period, 53 on foot and 3 on foot and bicycle. The total period of use runs from 1951-2005.

11.9 The Local Committee (Spelthorne) is asked to agree that:

- i. Public footpath rights are recognised over the route A-B-C-D on drawing 3/1/86/H8, 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. 78 (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.

12. REASONS FOR RECOMMENDATIONS

12.1 The officers conclude that the public has acquired footpath rights over the route A-B-C-D on plan 3/1/86/H8, and that 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 NUMBER: 020 8541 9245
E-MAIL: daniel.williams@surreycc.gov.uk

CONTACT OFFICER: David Lillington, Countryside Legal Officer
TELEPHONE NUMBER: 020 8541 7411
E-MAIL: david.lillington@surreycc.gov.uk

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

