



## OFFICER REPORT TO LOCAL COMMITTEE (TANDRIDGE)

### ALLEGED PUBLIC BRIDLEWAY BETWEEN AVENUE ROAD (TATSFIELD) AND THE GROVE (BROMLEY) – BROMLEY AND TATSFIELD

**3 December 2010**

#### 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

In 2006 Mrs Ann Hayes submitted an application to the London Borough of Bromley for a Map Modification Order (MMO) to add a public bridleway over Clarence Road, Footpath No. 270 (Bromley) and from The Avenue/Avenue Road (Tatsfield) to The Grove (Bromley). The claimed routes are shown on plans 1a and 1b [Pages 66,67]. Most of these routes fall with the London Borough of Bromley but a small part between B and C falls within Surrey

It is considered that the evidence shows that public bridleway rights can reasonably be alleged to subsist over the route A-B-C-D on Plan 1b [page 67] including that part which falls within Surrey. A legal order should be made to modify the definitive maps and statements for Surrey and Bromley. This order should be jointly made by both Authorities.

#### OFFICER RECOMMENDATIONS

##### The Tandridge Local Committee is asked to agree that:

- (i) Public bridleway rights are recognised over those parts of route A-D on plan 1b [Page 67] which fall within Surrey (i.e. B-C) and that this part of the 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 joint order is made by Surrey and Bromley Councils. Bromley will advertise and defend said order to implement these changes with proportionate financial input from Surrey. 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 On 30 January 2006, Mrs Ann Hayes submitted an application to the London Borough of Bromley under the WCA 1981 for a Map Modification Order (MMO) to add a bridleway to the Definitive Map and Statement (DMS). The application was accompanied by 29 user evidence forms. [For legal background on MMOs see **Annex A** to this report.]
- 1.2 The claimed route commences at point A where it leaves the southern end of the Grove. It runs in a generally southerly-easterly direction for 464m. It has junctions with several other rights of way before terminating at point D, its junction with Cudham Road and Avenue Road. Section B-C, with a length of 150m on plan 1b [page 67], falls within the Surrey border.
- 1.3 Following receipt of the above application, Bromley appointed a consultant, Sue Rumfitt Associates to carry out investigations into and analyse the claims. A detailed report resulted from this which contains conclusions and recommendations. This lengthy report can be viewed at **Annex B**.
- 1.4 The findings of the above report were presented to The London Borough of Bromley Rights of Way Sub- Committee on 1<sup>st</sup> September 2010. This report and its minutes can be seen at **Annex C**.

## 2 ANALYSIS

The report produced by Sue Rumfitt considers the user and landowner information and outlines the relevant legal tests and the legislative background.

## 3 OPTIONS

- 3.1 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 submitted. 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**).
- 3.2 Alternatively, the committee could decide not to rely upon the evidence gathered and the report commissioned by Bromley. They might direct that Surrey officers undertake their own investigations before making an order.

## **4 CONSULTATIONS**

- 4.1 See Annex 3 of the Rumfitt report. Bromley confirm that they have undertaken all required consultations, including those required within the County of Surrey.

## **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. Bromley have undertaken to advertise and promote the order. Surrey will contribute financially towards this based on the proportionate length of bridleway within the County.
- 5.2 Should committee decide that we should undertake our own research and make our own order for the Surrey Section then the cost of advertising a Map Modification Order would be approximately £1200, which 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.

## **6 EQUALITIES AND DIVERSITY IMPLICATIONS**

- 6.1 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.
- 6.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 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.

- 6.6 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.
- 6.7 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.
- 6.8 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.

## **7 CRIME AND DISORDER IMPLICATIONS**

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

## **8 CONCLUSION AND RECOMMENDATIONS**

- 8.1 Any decision must be made on the legal basis set out in Annex A to this report. The only relevant consideration is whether the evidence is sufficient to raise a presumption that a public right of way exists. Other issues such as amenity, safety or convenience are irrelevant.
- 8.2 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”*.
- 8.3 The report produced by Sue Rumfitt (Annex B) relies on user and landowner evidence at Statute Law.

- 8.4 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”.*
- 8.5 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.
- 8.6 The relevant conclusions can be found in para. 46 of the Rumfitt report:
- “There is clear evidence of public use of this route as a bridleway for at least twenty years from the date of bringing into question in 2006 to 1986. There is no evidence that any landowner has taken actions that would amount to a lack of intention to dedicate the route during that period of time. Further use of the route by the public on horseback is evidenced from at least the 1950s, which is evidence of the public reputation of the route as a bridleway. There is no evidence that suggests that public bridleway rights do not exist. Use has been over the whole route as shown A-B-C-D on Plan 1b” [page 67].*
- 8.7 There is currently no constitutional authority for Surrey to discharge its function for making and processing a Map Modification Order to Bromley by entering into an agreement under s. 101 of the Local Government Act 1972. Therefore it is suggested that a ‘joint’ order be made; outlining the particulars of the route within each Authority and sealed/signed by both parties.
- 8.8 The Tandridge Local Committee is asked to agree with the findings of the Rumfitt report and with the conclusions of the London Borough of Bromley’s Rights of Way Sub-committee. They are therefore requested to agree that:
- (i) Public bridleway rights are recognised over those parts of route A-D on plan 1b [page 67] which fall within Surrey (i.e. B-C) and that this part of the 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 joint order is made by Surrey and Bromley Councils. Bromley will advertise and defend said order to implement these changes with proportionate financial input from Surrey. 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.

## 9 WHAT HAPPENS NEXT

- 9.1 All interested parties will be informed about the decision. If the recommendations are agreed the London Borough of Bromley and Surrey County Council will make and advertise a joint legal order 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.

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