

PART 1 - PUBLIC

Decision Maker: Rights of Way Sub-Committee

Date: 1st September 2010

Decision Type: Non-Urgent Non-Executive Non-Key

Title: **FOOTPATH 279 - AVENUE ROAD (TATSFIELD) TO MAIN ROAD, BIGGIN HILL, INCLUDING CLARENCE ROAD & PART OF BELVEDERE ROAD - APPLICATION FOR DEFINITIVE MAP MODIFICATION ORDER TO UPGRADE TO/RECORD AS BRIDLEWAY**

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Chief Officer: Nigel Davies, Director of Environmental Services

Ward: Darwin

1. Reason for report

To determine an application for a Definitive Map Modification Order to upgrade FP 279 to/record the unnamed track running from The Grove to FP 279, Clarence Road and part of Belvedere Road as bridleway. The application has been made under the Wildlife and Countryside Act 1981 which places a duty on the Council, as the Surveying Authority for public rights of way, to keep the Definitive Map and Statement under continuous review.

2. **RECOMMENDATIONS**

2.1 **Subject to the view taken by the Sub-Committee on the merits of the evidence provided in support of the claim, either**

1. **Make no Order at all, or**
2. **The Director of Legal, Democratic and Customer Services, in consultation with the Director of Environmental Services, be authorised to make a Definitive Map Modification Order under section 53(c)(i) of the Wildlife and Countryside Act 1981 to add a bridleway to the Definitive Map and Statement for the routes shown from Z-Y and from V-X and make an Order under Section 53(3)(c)(ii) for the route shown Y-X-W on Plan 1a, or**

- 3. The Director of Legal, Democratic and Customer Services, in consultation with the Director of Environmental Services, be authorised to make an Order under Section 53(3)(c)(i) to add a bridleway to the Definitive Map and Statement for the route shown from A-B-C-D on Plan 1b and refuse to make an Order for the sections Y-X and X-V on Plan 1a, and**
- 4. Advise the applicant that the Council takes the view that on the balance of probability, the case in favour of some or all of the application has not been demonstrated and that the application has been refused in whole or in part and the applicant be advised of the right to appeal to the Secretary of State, and**
- 5. Where the making of an Order of under recommendation 2 or 3 above is agreed, authorise The Director of Environmental Services to seek delegated authority from Surrey County Council to include the section of the claimed route that lies within Surrey in the Order.**

Corporate Policy

1. Policy Status: N/A.
 2. BBB Priority: N/A.
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Financial

1. Cost of proposal: Estimated cost £60
 2. Ongoing costs: Non-recurring cost.
 3. Budget head/performance centre: Transport & Highways - Advertising
 4. Total current budget for this head: £3300
 5. Source of funding: Existing 2010/11 Revenue Budgets
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Staff

1. Number of staff (current and additional): 1
 2. If from existing staff resources, number of staff hours: 30
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Legal

1. Legal Requirement: Statutory requirement.
 2. Call-in: Call-in is not applicable.
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All users of FP 279
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes.
2. Summary of Ward Councillors comments: The Ward Member has been consulted and has not offered any comment owing to his involvement with the Sub-Committee

3. COMMENTARY

- 3.1 FP 279 runs in a south-easterly direction from Main Road, at the southern end of Biggin Hill, to the unmade and unnamed extension to The Grove (but sometimes referred to as Avenue Road/The Avenue/The Grove on maps and plans), to the north of the property known as 'The Hermitage'. Along its route it connects with Clarence Road, which in turn connects to Belvedere Road. A claim for upgrading the whole route of FP 279 to bridleway status and including that section of the unnamed track from The Grove to its junction with FP 279, Clarence Road and the north-eastern end of Belvedere Road, based on use by horse riders over a number of years, has been received by the Council.
- 3.2 Following receipt of the claim a consultant, Sue Rumfitt Associates, was appointed to carry out the investigations into and analysis of the claims and her detailed report is attached at **Appendix 1**. Due to the need for the Sub-Committee to reach a decision based on all the available evidence the consultant's report should be read carefully in order to gain an appreciation of the issues involved. A view then needs to be taken, on the balance of probabilities, as to whether sufficient evidence has been adduced in support of the claim to enable the Council to accede to the request to make the requisite Definitive Map Modification Order.

4. FINANCIAL IMPLICATIONS

The continuous review of the Definitive Map and Statement is a statutory requirement and thus the Council has to fund the exercise both in terms of assessing the claims and any subsequent maintenance/signing implications. The latter would be met from the existing highways maintenance budget.

The consultant's fees of £2000 have been met from the previous financial year's Transportation Planning's consultant's fees budget and the advertising costs of £60 would be met from Transportation Planning's advertising budget of £3300.

5. LEGAL IMPLICATIONS

- 5.1 These are fully explained in the consultant's report at paragraphs 4 -14, pages 5-7 of this report.
- 5.2 The Sub-Committee should note that should recommendation 1 or 3 be the outcome of consideration of this report, and any appeal to the Secretary of State were to be successful, a further report would need to be submitted to the Sub-Committee in order to determine how the Council should proceed throughout the subsequent Order process.

Non-Applicable Sections:	Policy; Personnel
Background Documents: (Access via Contact Officer)	File for FP 279

RIGHTS OF WAY SUB-COMMITTEE

Minutes of the meeting held on 1 September 2010

Present:

Councillor Stephen Wells (Chairman)
Councillor Russell Mellor (Vice-Chairman)
Councillors Julian Grainger, Gordon Norrie,
Richard Scoates, Harry Stranger and Michael Turner

1 APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN

RESOLVED that Councillor Wells be appointed Chairman and Councillor Mellor be appointed Vice-Chairman for the 2010/11 Municipal Year.

(Councillor Wells in the Chair)

2 APOLOGIES FOR ABSENCE AND NOTIFICATION OF ALTERNATE MEMBERS

Apologies had been received from Councillor Bosshard as a Ward Member for Chislehurst in relation to Item 6: Public Footpath 41, Camden Park Road, Chislehurst.

3 DECLARATIONS OF INTEREST

There were no declarations of interest.

4 MINUTES OF THE MEETING HELD ON 5TH JANUARY 2010

The Minutes of the meeting held on 5th January 2010 were considered. In relation to Minute 4 (Minutes) the Chairman highlighted that in consideration of Minute 11 of the Sub Committee's meeting held on 27th April 2005 (Public Footpath 41: Camden Park Road, Chislehurst) it had been noted that the Order which had been made following the Sub-Committee's meeting in April 2005 had been based on Drawing No. ETP/9808/1, whilst the Sub-Committee's decision had been based on Drawing No. EHP/9808/1. This had been highlighted at the meeting of General Purposes and Licensing Committee on 16th February 2010, and maps relating to Footpath 41, Camden Park Road, Chislehurst had been re-circulated to all members of Rights of Way Sub Committee prior to the meeting of 1st September 2010. In response to a query from a Member, the Director of Legal, Democratic and Customer Services' representative noted that correspondence with the solicitors acting for Camden Park Estate Ltd had ended in January 2008.

RESOLVED that the Minutes of the meeting held on 5th January 2010 be confirmed.

5 QUESTIONS BY MEMBERS OF THE PUBLIC ATTENDING THE MEETING

No questions had been received from members of the public.

6 PUBLIC FOOTPATH 41, CAMDEN PARK ROAD, CHISLEHURST

Report LDCS10154

At its meeting on 27th April 2005, the Rights of Way Sub-Committee resolved that an Order should be made under S.53 (3)(b) of the Wildlife and Countryside Act 1981 to add a public footpath to the Definitive Map and Statement along the south side of Camden Park Road to link up with the existing FP 41 where it joined Camden Park Road. The rationale at that time for the proposed Order was that Camden Park Estate Limited had blocked public vehicular access by means of electronically controlled gates across the carriageway but had left a manually operated side gate for pedestrian access. The then Director of Legal and Democratic Services considered that to protect future pedestrian access, a footpath as described should be added to the Definitive Map and Statement.

Members were advised at the last meeting of the Sub-Committee on 5th January 2010 (the first time the Sub-Committee had met since the meeting in April 2005) that although the Order had been made in October 2005, it had not progressed to formal confirmation because of various objections to it which had not been withdrawn. As one of the objections challenged the validity of the Order itself, because of an error on the Order plan and description in the body of the Order of the length of the proposed footpath, the Order was defective and if it was to proceed further would have to be re-made. However a six month time limit applied to the making of orders under the Act and the authority to re-make the Order had expired.

Since the meeting in April 2005, the Council had not received any complaint or other indication that pedestrian access had been denied or challenged in any way as had been originally feared. Subsequently the Council had recorded Camden Park Road on its non-statutory list of unadopted highways as a highway restricted to pedestrian rights over the distance between the gates. In legal terms as a highway with that restriction there was no practical necessity or legal requirement to separately record the footpath on the Definitive Map and Statement.

The Chairman highlighted that a statement within the Commentary of the report LDCS10154 was incorrect and put forward a proposal that the entry for Camden Park Road in the Council's non-statutory list of unadopted highways should reflect the decision of the Rights of Way Sub-Committee on 27 April 2005 as follows:

“a highway restricted to footway rights running along the south side of Camden Park Road between the kerb line and street boundary and crossing Camden Park Road to join Footpath 41 on the other side, as shown along the route A to B in drawing EHP/9808/01 as circulated to the Rights of Way Sub-Committee for its meeting on 27 April 2005.”

The Sub-Committee supported this and agreed that, in future, rights of way issues relating to Camden Park Road should have reference to Map EHP/9808/01.

Having considered the report of the Director of Legal, Democratic and Customer Services and the advice of the officers, the Sub-Committee was satisfied that no new Order needed to be authorised.

RESOLVED that

(1) no new Order be authorised; and

(2) the proposal to amend the entry for Camden Park Road in the Council's non-statutory list of unadopted highways as set out above be agreed.

7 FOOTPATH 279 - AVENUE ROAD (TATSFIELD) TO MAIN ROAD, BIGGIN HILL, INCLUDING CLARENCE ROAD & PART OF BELVEDERE ROAD - APPLICATION FOR DEFINITIVE MAP MODIFICATION ORDER TO UPGRADE TO/RECORD AS BRIDLEWAY

Report ESD10125

The Wildlife and Countryside Act 1981 required the Council, as the surveying authority for public rights of way, to keep the Definitive Map and Statement under continuous review. The Director of Environmental Services' representative reported that, under the above Act, an application had been received for a Definitive Map Modification Order to upgrade Footpath 279 to bridleway status based on use by horse riders over a number of years. Following the receipt of the application, a consultant, Sue Rumfitt Associates, had been appointed to carry out investigations into and analysis of the claims. The consultant's report containing conclusions and a recommendation, attached to the report of the Director of Environmental Services, was considered by the Sub-Committee.

The application for a Definitive Map Modification Order, submitted on behalf of the Tatsfield Bridleways Association, claimed that the route of Footpath 279, together with other routes shown on Plan 1a which were not at present shown on the Definitive Map and Statement, should be upgraded to/recorded as bridleways. The consultant had subsequently interviewed the applicant and witnesses who had submitted evidence and had considered all the map evidence available. The consultant had recommended that in respect of route A-B-C-D on Plan 1b there was a case for making a Definitive Map Modification Order to record the route as a bridleway, but an Order be refused for section V-X and W-X-Y on Plan 1a. It was noted that a small part of the claimed route (between B-C on Plan 1b) was in Surrey, and should an Order need to be made a formal agreement would have to be entered into to delegate to the London Borough of Bromley the legal authority to make an Order that would modify the Definitive Map for the County Council of Surrey. The consultant's fees had been met by Transportation Planning's consultant's fees budget from the previous financial year and the advertising costs of £60 would be met from Transportation Planning's advertising budget of £3300.

In considering the implications of the proposal, in conjunction with the consultant's conclusions and recommendation, various questions were asked by Members. The Director of Environmental Services confirmed that the definition of a bridleway differed from a footpath in that users were also permitted to ride or lead a horse and ride bicycles.

Having regard to all the available evidence and to the consultant's findings, the Sub-Committee was of the opinion that, on the balance of probabilities, there was sufficient evidence in support of the claims to enable the Council to accede to the request to make the requisite Definitive Map Modification Order.

RESOLVED that

(1) the Director of Legal, Democratic and Customer Services, in consultation with the Director of Environmental Services, be authorised to make an Order under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add a bridleway to the Definitive Map and Statement for the route shown from A-B-C-D on Plan 1b (ESD/10623/1c) and refuse to make an Order for the sections W-X-Y and V-X on Plan 1a (ESD/10693/1/1a), and

- (2) the applicant be advised that the Council takes the view that on the balance of probability, the case in favour of some of the application has not been demonstrated and that the application has been refused in part and the applicant be advised of the right to appeal to the Secretary of State, and**
- (3) the Director of Environmental Services seek delegated authority from Surrey County Council to include the section of the claimed route that lies within Surrey in the Order.**