

**ITEM 7 ANNEX E****Minutes from Item 8 of Local Committee agenda, 29 September 2021****17/21 PUBLIC FOOTPATH 24 (LEATHERHEAD)- GREEN LANE LEVEL CROSSING INVESTIGATION [FOR DECISION - OTHER COUNTY COUNCIL FUNCTIONS][Item 8]**

**Declaration of Interest:** None

**Officers attending:** Daniel Williams, Countryside Access Officer; Claire Saunders, Access Team Manager; Helen Forbes, Principal Lawyer

**Public Speakers:**

Mr Damian Hajnus representing Network Rail spoke in favour of the officer recommendation, and made the following points:

- When the railway was originally planned and built land ownership was thoroughly investigated and subject to scrutiny;
- The conveyance of land in 1857 provided for the construction of a private crossing;
- Evidence for and definition of a pre-existing trackway is missing;
- There is no evidence to substantiate claims that paths shown on old maps are public rather than private.

Two speakers spoke against the officer recommendation, and made the following points: Peter Williams. Mr Williams began by reading a statement from Mr Brian Bouchard, who had submitted a response to the consultation but was unable to attend this meeting. Mr Bouchard's points were:

- The ordnance Survey map in 1870 shows a continuous path that crosses the railway line;
- There is no new evidence to support the conclusions in the officer's report;
- The railway plan of 1845 shows a footpath in the area that the railway would pass through.

Mr William's own points were:

- Railway companies do have the power to dedicate a right of way;
- He and others have used the route, unimpeded by locked gates or notices saying the route is not dedicated as a footpath, for over 20 years, thereby establishing a right of way.

Glynis Peterkin (Ashted Residents' Association)

- Proper recognition of the route between north and south Ashted for residents was not made at the time the land was acquired for building the railway;
- Historical use of the path by pedestrians is recorded in early Parish Council meeting records and more recently on Network Rail cameras;
- The RA would like the Definitive Statement changed to match what is shown on the Definitive Map.

The officer presented his report.

The Definitive Map (DM) shows a footpath crossing the railway line at the location in question; it first appeared on the DM in 1966, but had not been shown on the two earlier editions, which indicated a gap across the railway. The Definitive Statement has remained

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unchanged throughout, with no mention of the path's crossing the railway. The 1955 Public Enquiry concluded that there never had been a right of way across the railway at this point. There is no evidence of a legal enactment to allow the path to be included on the DM in 1966 and it appears therefore that its inclusion was a cartographical error.

The officer outlined the options available, stating that the County Council has a statutory duty to determine which of the DM or Definitive Statement is correct if they do not match. In Option 1 in his report the DM would be modified to bring it in line with the Definitive Statement. In Option 2, the Definitive Statement would be modified to bring it in line with the DM. The evidence tests for each of these options were stated.

Public consultation took place and responses are summarised in the report.

### **Member discussion – key points:**

The local Divisional member (Cllr Townsend) stressed the importance of the route in question for residents in north and south Ashted, and commented that a continuous route across the railway line would be the common sense approach.

The question of evidence of use was raised, based on statements in the 'Statute Law' section of Annex B of the officer's report and how these relate to paragraphs 2.42 and 2.68 of the report which showed that no signs had been installed by the railway authority to indicate the route had not been dedicated and that public use had continued for many years.

The Chairman adjourned the meeting for 15 minutes in order to consult with the Principal Lawyer on the details of establishing a right of use following questions relating to the interpretation of Section 31 of the Highways Act 1980 which was considered to be at odds with DEFRA guidance issued to Public Rights of Way inspectors.

On reconvening the meeting, proposals were put forward in support of Option 2 in the officer's report (proposed by Cllr Townsend and seconded by Cllr Hawksworth) and also in support of doing nothing. The Legal team drew members' attention to the County Council's duty as the surveying authority to resolve a difference between the DM and Definitive Statement, therefore doing nothing would not be an acceptable course. It was also explained that where the DM and Definitive Statement do differ, one does not take precedence over the other. To pursue Option 2, a Map Modification Order would be required, with a consultation period and the opportunity for objections to be raised. It would also be necessary for the Local Committee to be able to show evidence to support their choice of action in the event of a subsequent Public Enquiry. It was suggested that paragraph 1.12 of the officer's report provided the necessary basis for Option 2 with evidence of use from residents who had responded to the consultation and spoken at this meeting being sufficient to indicate a right of way – the Chairman agreed.

### **Resolution**

The matter was put to the vote with a show of hands.

Members in favour of recommendation (i): 0

Members opposed to recommendation (i): 11

Members abstaining: 1

Members in favour of recommendation (ii): 11

Members opposed to recommendations (ii): 0

Members abstaining: 1

The Local Committee (Mole Valley) REJECTED that:

(i) There are no public footpath rights over A-B on Drg. No. 3/1/51/H116 and that this part of the route should be deleted from the Definitive Map.

The Local Committee (Mole Valley) AGREED that:

(ii) A Definitive Map Modification Order (DMMO) 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 determination.

**Reasons for recommendations:**

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 if it discovers evidence which on balance supports a modification.

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