

TO: PLANNING & REGULATORY COMMITTEE **DATE:** 27 November 2024
BY: SENIOR COUNTRYSIDE ACCESS OFFICER
DISTRICT MOLE VALLEY **ELECTORAL DIVISION & MEMBER:**
 ASHTEAD
 CHRIS TOWNSEND

PURPOSE: FOR ADVICE

GRID REF: 517413 158574

TITLE: REFERRAL OF PUBLIC FOOTPATH 24 (LEATHERHEAD) GREEN LANE LEVEL CROSSING, DEFINITIVE MAP MODIFICATION ORDER TO THE SECRETARY OF STATE

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SUMMARY

On 29 September 2021 Mole Valley Local Committee (MVLC) considered the report at Annex A. The relevant minutes of this meeting are at Annex B. On 10 November 2021, members were asked to reframe their wording so that their position was clarified.

During both meetings there was discussion about the report, the supporting evidence, the recommendation and subsequently the position of the committee was clearly expressed. Following the second meeting a resolution was confirmed that a Definitive Map Modification Order (DMMO) be made to implement changes to the Definitive Statement so that the description matches its depiction on the Definitive Map.

On 30 June 2022, a DMMO was made as directed by the MVLC and advertised for 42 days as required by S. 53 of the Wildlife and Countryside Act 1981 (WCA 1981). One objection was received to the Order from Network Rail. Where objections are received and cannot be resolved the Order must be referred to the Secretary of State (SoS) for determination. Both Committee reports noted this requirement. The authority arising from the resolutions in September and November 2021 is limited to making the Order. There is no indication as to what the Council's position would be upon the receipt of an objection.

In lieu of the defunct MVLC, the Planning and Regulatory Committee (PRC) are now asked to clarify and confirm how it wants to proceed.

This report is to seek advice from committee on the way to proceed.

ILLUSTRATIVE MATERIAL

Annex A: 29 September 2021 Mole Valley Local Committee Report
 Annex B: Minutes of 29 September 2021 committee meeting
 Annex C: 10 November 2021 Mole Valley Local Committee Report and minutes
 Annex D: Copy of Definitive Map Modification Order 24 (Leatherhead) 2022
 Annex E: Network Rail Objection letter
 Annex F: Surrey Code of Best Practice in Rights of Way Procedures'

1. BACKGROUND AND DISCUSSION

- 1.1 There is no suggestion in this report that the PRC should revisit the decision made by MVLC, the Order has in any case been made; it is seeking the most appropriate way forward.
- 1.2 On 29 September 2021 MVLC considered the report found at Annex A. The relevant minutes of this meeting can be found at Annex B. Subsequently members were asked to reframe their wording so that their position was clarified. This was because the decision made at the first meeting was not made in line with standing orders. They did this on 10 November 2021. A copy of this report and its minutes can be found at Annex C.
- 1.3 The first report was concerned with correcting an error on the Surrey Definitive Map and Statement (DMS) which had been brought to the Council's attention by Network Rail, who subsequently made submissions supported by evidence to show that the line A-B (See order at Annex D) was recorded in error on the Definitive Map and should be made consistent with the Definitive Statement from which it was omitted. Following extensive research and consultations, a report, supported by evidence, was brought before MVLC in September 2021 asking that it agree that the map was in error and the line shown over the level crossing on the definitive map be removed by legal order. The minutes of the meeting (Annex B) outline in brief the discussion had by the committee.
- 1.4 Following the meeting it was acknowledged that procedural matters had not been followed. The matter returned to committee on 10 November 2021 so that these could be corrected. These are all noted in the 2nd report and minutes of that meeting. This had no substantive impact upon the decision made following the first meeting.
- 1.5 During both meetings there was extensive discussion of the report and the evidence. The position of the Committee was clearly expressed. Following the second meeting a correctly made resolution was adopted that a DMMO be made to implement changes to the Definitive Statement so that the written description matches its depiction on the Definitive Map. This was the opposite of the recommendation made to the Committee by the Officer on the basis of available evidence. It nevertheless falls entirely within the remit of the Committee and its powers.
- 1.6 Following the second meeting, some further discussions took place with the Chair of the MVLC as to exactly what the content of any amended definitive statement should contain. Unsolicited suggestions on this issue were also received from members of the public. Officers requested, given the nature of the decision made, that any changes be determined by the Committee on the basis of evidence and that they should not seek to rely upon the Officer to perform this task. The Committee Chair directed the Officer that changes should be made to match 'reality'.
- 1.7 In carrying out this instruction Officers produced a new statement which reflected the situation currently on the ground at the crossing. There was insufficient evidence from other sources to write the statement on any other basis. This amended statement was included in the DMMO made on 30 June 2022 and advertised on 21 July 2022.
- 1.8 Following advertisement for 42 days as required by S. 53 of the WCA 1981, one objection was received to the Order from Network Rail (A copy of this objection is included at Annex E). Where objections are received and cannot be resolved, the Order must be referred to the SoS for determination, either by public inquiry, hearing or by written exchange. The Council cannot confirm the Order itself. Both Committee reports confirmed this necessity.
- 1.9 The authority arising from the resolutions in September and November 2021 is limited to making the Order. There is no indication as to what the Council's position would be upon

the receipt of an objection, irrespective of the decision reached or the nature of any objection.

1.10 Despite the unusual situation here, where the Order is being made as part of the Council's inherent duty to make orders of its own volition, as opposed to a response to an application under Schedule 14 of the WCA 1981, it is still necessary for the Council to determine how it wants to proceed.

1.11 Surrey's 'Code of Best Practice in Rights of Way Procedures' notes at para. 10.2:

"The County Council recognises that rights of way decisions are often matters of fine judgement where the balancing of considerations is difficult. The officer's report will normally rely heavily on national legislation and the Council's policies for Rights of Way as stated in the Rights of Way Statement for Surrey (January 2010). Members may wish to exercise their discretion to choose a recommendation as an exception to policy or may not agree with the recommendation. Where the Committee wishes to make a decision contrary to the officer's recommendations (whether for approval or refusal) the Committee will agree the reasons for the decision during the debate on the item, after taking advice from officers. If for any reason this cannot be completed during the debate, the Committee may delegate approval of the detailed drafting of the reasons to the Committee Chairman in consultation with officers. Should the matter end at Public Inquiry as a result of the decision, a Member will be required to attend and give evidence in support".

1.12 Advice from expert independent legal Counsel confirms that the authority arising from the resolutions in September and November 2021 is limited to making the order and there is no indication as to what the Council's position would be in dealing with objections to the order. Whilst committee considered that evidence of use would be sufficient to indicate a public right of way there is no detailed analysis of this. Counsel noted that the investigation and subsequent Officer report had quite properly not focused on the issue of user and any legal considerations in respect of it, because it was based upon considering how the anomaly between the map and statement had arisen and whether any historical explanation for it could be found. If a case was to be supported on the basis of public rights of way having been acquired through user, further matters and evidence would need to be considered.

1.13 Counsel suggested that there are three options available to the Council.

1. *It could decide that it wanted to support the confirmation of the order. If it did so it would be necessary to consider on what basis it would support the confirmation. The basis on which the order was supported would give a basis to the evidence which it would be necessary for the Council to call. In this regard the need to address how any case would be based on user evidence which appears never to have been fully explored when the resolution to make the Order was made.*
2. *It could decide that having addressed the situation with regard to the user evidence, which appeared to be the basis for the resolution to make the order, the Council did not support the confirmation of the Order.*
3. *It could decide to adopt a neutral stance having complied with its duty and made the order and brought about the situation whereby the definitive map and statement would be corrected one way or another having been fully considered by an Inspector. The Council could assist the inquiry with the process although making no firm case either way.*

1.14 It is deemed that the Planning and Regulatory Committee has the authority to consider this matter.

1.15 These points are considered further in the Conclusions below at part 6.

2. CONSULTATIONS AND PUBLICITY

None undertaken nor required.

3. HUMAN RIGHTS IMPLICATIONS

Public Authorities are required to act, as far as possible, compatibly with the European Convention on Human Rights, now enforceable in English Courts by way of the Human Rights Act 1998. The officer's view is that the effects of this report have no human rights implications.

4. FINANCIAL IMPLICATIONS

Unavoidable costs relating to submission to the Secretary of State will vary dependent upon a variety of factors. If a public inquiry ensues and the Council takes a full role in defending said order, the costs of this, including officer time, legal representation, administration, venue hire costs and advertising could amount to £5000 or more. If the Council takes no further part in the process but provides administrative support only, costs are estimated to be around £1500-2000. Hearing costs would fall somewhere in-between. If the matter is dealt with by written exchange the costs would be less than the above. Any party may apply to the Planning Inspectorate to consider their application for costs on the basis that another party has acted unreasonably and therefore cost them money.

5. ENVIRONMENTAL IMPLICATIONS

Neither this process nor the confirmation or otherwise of the Order which have any significant negative or positive impact upon environmental considerations.

6. CONCLUSIONS

6.1 Several options are available for the Council at the determination stage:

1. The Committee decides to support confirmation of the Order. If so, the basis for such support must be considered which would dictate the evidence required. Any case based on user evidence would require consideration of further matters as this was rightly not the focus of the report considering the anomaly between the map and statement.
2. The Council, having addressed the situation with regard to the user evidence, may decide not to support the order.
3. The Council takes a neutral stance at Inquiry (or other forum). Where this is the case, all relevant documents are submitted to the Secretary of State and administrative assistance given to the Inspector, but the Council provides no Statement of Case, provides no expert witness nor Counsel and takes no part in the Inquiry other than to assist its smooth running.

6.2 Position 1 would in both Officer's and Counsel's opinion require significant further exploration of both the user evidence and the statutory position if the Order is to progress to confirmation.

- 6.3 Once the situation with regard to user evidence had been addressed, Position 2 in which the Council decides not to support confirmation of the Order, might be reached.
- 6.3 Position 3 would mean that the Council, having complied with its duty and made the order, takes no further part in the decision-making process, leaving it to interested parties to make submissions to the Secretary of State. All relevant evidence would be submitted to the Secretary of State and assistance given on administrative matters only but no firm case made either way.

7. RECOMMENDATION

The Officer does not seek to secure any one of the above positions but, given the background to the case, asks for direction from the Committee on how to proceed with its submission to the Secretary of State.

CONTACT

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BACKGROUND PAPERS

All accessible documents relating to Footpath 24 (Leatherhead) can viewed by appointment with the contact officer at Mellow Depot, Guildford.

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