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BROMLEY CIVIC CENTRE, STOCKWELL CLOSE, BROMLEY BRI 3UH

TELEPHONE: 020 8464 3333

CONTACT: Graham Walton
Graham.Walton@bromley.gov.uk

DIRECT LINE: 020 8461 7743

FAX: 020 8290 0608

DATE: 15 September 2021

To: Members of the
RIGHTS OF WAY SUB-COMMITTEE

Councillors Vanessa Allen, Mike Botting, Simon Fawthrop, Richard Scoates,
Harry Stranger, Kieran Terry and Michael Tickner

A meeting of the Rights of Way Sub-Committee will be held at Bromley Civic Centre
on **THURSDAY 23 SEPTEMBER 2021 AT 7.00 PM**

PLEASE NOTE: This meeting will be held in the Council Chamber at the Civic Centre, Stockwell Close, Bromley, BR1 3UH. Members of the public can attend the meeting: you can ask questions submitted in advance (see item 3 on the agenda) or just observe the meeting. There will be limited space for members of the public to attend the meeting – if you wish to attend please contact us, before the day of the meeting if possible, using our web-form:

<https://www.bromley.gov.uk/CouncilMeetingNoticeOfAttendanceForm>

Please be prepared to follow the identified social distancing guidance at the meeting, including wearing a face covering.

ADE ADETOSOYE OBE
Chief Executive

***Copies of the documents referred to below can be obtained from
<http://cds.bromley.gov.uk/>***

A G E N D A

- 1 APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN FOR 2021/22
- 2 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS
- 3 DECLARATIONS OF INTEREST
- 4 QUESTIONS

Questions specifically on reports on the agenda should be received within two working days of the normal publication date of the agenda. Please ensure that questions specifically on reports on the agenda are received by the Democratic Services Team by **5pm on Friday 17 September 2021.**

5 **MINUTES OF THE MEETING HELD ON 4 FEBRUARY 2015** (Pages 3 - 6)

6 **PROPOSED PUBLIC RIGHT OF WAY AT HEATHSIDE, PETTS WOOD**
(Pages 7 - 22)

Petts Wood and Knoll ward

7 **LOCAL GOVERNMENT ACT 1972 AS AMENDED BY THE LOCAL GOVERNMENT
(ACCESS TO INFORMATION) (VARIATION) ORDER 2006 AND THE FREEDOM
OF INFORMATION ACT 2000**

The Chairman to move that the Press and public be excluded during consideration of the item of business listed below as it is likely in view of the nature of the business to be transacted or the nature of the proceedings that if members of the Press and public were present there would be disclosure to them of exempt information.

Item of Business

Schedule 12a Description

8 **PROPOSED PUBLIC RIGHT OF WAY
AT HEATHSIDE, PETTS WOOD - APPENDIX**

Information relating to any individual.

Appendices to the Consultant's report
will follow under separate cover for
Members of the Sub-Committee.

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RIGHTS OF WAY SUB-COMMITTEE

Minutes of the meeting held at 7.00 pm on 4 February 2015

Present:

Councillor Simon Fawthrop (Chairman)
Councillor Lydia Buttinger (Vice-Chairman)
Councillors Vanessa Allen, Teresa Ball,
Richard Scoates and Michael Turner

1 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

Apologies for absence were received from Councillor Mary Cooke.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 QUESTIONS BY MEMBERS OF THE PUBLIC ATTENDING THE MEETING

No questions had been received.

4 MINUTES OF THE MEETING HELD ON 10TH JULY 2013

RESOLVED that minutes of the meeting held on 10th July 2013 be confirmed.

5 PROPOSED DIVERSION OF PART OF PUBLIC FOOTPATH 258 - 2 PECKS COTTAGES CHURCH ROAD CHELSFIELD Report ES15009

Public right of way 258 runs from Pecks Cottages Church Road at its northern end, southwards in varying sections of Footpath, Bridleway and Byway, for some 3.5km to the Borough Boundary with Kent County Council at Washneys Road. The route was shown on an extract from the Council's Definitive Map attached to the report, together with photographs showing examples of the nature and width of the footpath along its route together with photographs of other footpaths nearby.

The section of the route affected by the current diversion application related to a short length of footpath (approximately 36m) running from Church Road diagonally through land at 2 Pecks Cottages, shown on drawing 11858-01.

A similar diversion had been proposed by the previous owner of the property in 1995. That application was considered by the then Environmental Services (Operations) Sub-Committee on 3 September 1996, when it was resolved to make a Public Path Diversion Order.

The ensuing diversion order was subsequently made and objections were received from both the Ramblers Association and EnBro on a number of grounds. These resulted in the matter being considered at a Public Inquiry held in November 1998. (The Inspector's report dated 5 March 1999 was appended to the report submitted to the Sub-Committee.) In all but one issue the Inspector was not opposed to the Order, however on the ground of public enjoyment of the way as a whole he found the objector's argument persuasive and decided not to confirm the Order.

The current owner of 2 Pecks Cottages had been made aware of the history but nonetheless, decided to make the current diversion application to the Council under section 119 of the Highways Act 1980 on the basis that such diversion was in his interest.

The current route of the footpath ran diagonally across land that although having an agricultural designation, was being used for garden purposes. It was understood that the intention of the applicant was to make an application for a change of use to the Council. The applicant had made the diversion request on the ground that it would enable him to maximise his use/enjoyment of the land by not having a footpath running diagonally across the middle of his garden. The diversion was also perceived to have security benefits for the property.

The applicant had recently fenced the garden land and created a permissive alternative route for use by walkers around the garden. The proposal was for the path to run around the outside of the fenced garden along the permissive route currently available.

The applicant had made an informal offer to maintain the route of the diversion on behalf of the Council should his request ultimately prove successful. Such an informal arrangement would, however, not affect the Council's maintenance responsibility for the path as a highway.

Extensive informal consultation had been carried out including Ward Members, Environment Bromley, local Residents Associations, local Ramblers Association and British Horse Society representatives and public utility companies. No objections had been received from the utility companies and the only comment received from the other consultees came from Enbro who considered '...the diversion to be minor and makes little difference to the walker whilst giving benefit to the landowner.' The Council's costs associated with the making and advertising of the Order, estimated at £1.5k would be recovered from the applicant.

A Project Engineer from the Environment and Community Services Department presented the detailed report and answered questions raised by Members of the Sub-Committee.

The Sub-Committee were advised that public right of way 258 had been in existence for a long time and it had been shown on Ordnance Survey maps in the 1930s and 1940s. It was confirmed that the proposed diverted route running parallel to Church Road was on land owned by the applicant.

Although designated as agricultural land, the area concerned had been enclosed and used as a garden by the previous owners of the property. The Project Manager advised that the area was small and had not been used as agricultural land for many years.

Councillor Buttinger (Ward Councillor) had visited the site and although considering that the proposed diversion to the right of way would not be a huge inconvenience to the public, had concerns about the impact of the high wooden close boarded fencing which obscured the view of the golf course. The Project Engineer confirmed that a fence of up to 1.8 metres could be erected without planning permission, as long as it was not adjacent to a vehicular highway. Councillor Buttinger commented that fencing on agricultural land would not normally use high boarded fencing and a more open type of fencing or hedge would be usually be used.

The Legal Adviser confirmed that if the diversion was designated as a public highway the Council would have a legal obligation to maintain it.

The Legal Adviser and Project Engineer advised that if the proposed diversion was in the interest of either the owner or the public, the Council should make a Public Path Diversion Order, following which it would be advertised and any objections could then be raised during the second stage of the process.

Having considered all the factors involved, the Sub-Committee agreed to the recommendation in the report, subject to planning permission being granted for the relevant land being granted a change of use from agricultural to residential use.

RESOLVED that the Director of Corporate Services in consultation with the Executive Director of Environment and Community Services, be authorised

(i) to take the necessary steps to make a combined Public Path Diversion and Definitive Map Modification Order for part of Footpath 258 as shown on drawing no. 11858-01, subject to planning permission being granted for a change of use from agricultural to residential land, and

(ii) if no objections are received, or any such objections are withdrawn, to confirm the Order subject to the relevant tests set out in the Highways Act being satisfied.

**6 DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY
 Report ES15010**

The Sub Committee received a report which requested authority to enable the Council to make Definitive Map Modification Orders (DMMOs) under the provisions of the Wildlife and Countryside Act 1981, to make amendments to the Definitive Map and Statement of Public Rights of Way (DMS) to bring it up to date, and subsequently prepare a modified copy of the Map and Statement.

The Council last prepared a modified copy of the DMS in 1998. Since that time some 16 legal event orders had been made and confirmed by the Council. The Council was required to keep available for public inspection a copy of the 1998 DMS together with a copy of each of the legal event orders. This was a cumbersome record resulting in the need to consult both sets of information in order to ascertain the up to date position. Preparing an updated DMS was therefore of benefit to both the Council and the public.

In order to enable the Council to amend the DMS to reflect the legal event orders, Definitive Map Modification Orders (DMMOs) had to be made in respect of each order. Recent legislation had enabled the making of combined Diversion and Modification orders. The latter approach had been used for the two most recent legal event orders and there were still nine needing DMMOs.

To comply with the duty to keep an up to date DMS and to be in a position to publish an accurate up to date DMS the making of the DMMOs referred to above was necessary. It was noted that in addition, the Council had been carrying out an exercise to digitise the DMS with the aim of publishing the information on its website.

Due to the duty imposed by the Wildlife and Countryside Act to keep the DMS under continuous review the Council, as the Surveying Authority, had to bear the costs associated with the making and advertising of the necessary Orders, estimated at £2.5k. This would be funded from the Highways budget.

The Sub-Committee agreed to the recommendation in the report, however Members considered that in future, rather than necessitating committee authority, delegated authority should be given to officers. The Sub-Committee requested that this suggestion be referred to Council to be considered as an amendment to the Scheme of Delegation to Officers.

RESOLVED that

(i) the Director of Corporate Services, in consultation with the Executive Director of Environment and Community Services, be authorised to take the necessary steps to make Definitive Map Modification Orders (DMMOs) under section 53(2) (a) of the Wildlife and Countryside Act 1981 to enable the Definitive Map and Statement to be brought up to date and subsequently prepare a new consolidated Map and Statement under the provisions of section 57(3) of the same Act, and

(ii) Council be requested to consider amending the Scheme of Delegation to Officers to enable them to make Definitive Map Modification Orders and amendments to the Definitive Map and Statement of Public Rights of Way.

The Meeting ended at 7.26pm

Chairman

Report No.
ES20126

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: RIGHTS OF WAY SUB-COMMITTEE

Date: Thursday 23rd September 2021

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

Title: PROPOSED PUBLIC RIGHT OF WAY AT HEATHSIDE

Contact Officer: Chloe Houghton, Highways Development Engineer
0208 313 4889 chloe.houghton@bromley.gov.uk

Chief Officer: Colin Brand Director of Environment and Public Protection
0208 313 4107 colin.brand@bromley.gov.uk

Ward: Petts Wood

1. Reason for report

1.1 To determine an application for a Definitive Map Modification Order to recognise a public right of way at Heathside PettsWood. 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. RECOMMENDATION(S)

2.1. The Director of Legal, Democratic and Customer Services, in consultation with the Director of Environmental and Public Protection, 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 A-B and from B-C and from B-D and make an Order under Section 53(3)(c)(ii) for the route shown as above on the plan shown in Appendix A DoC 2 Page 5.

Impact on Vulnerable Adults and Children

1. Summary of Impact: N/A
-

Corporate Policy

1. Policy Status: Existing Policy: Further Details
 2. BBB Priority: Quality Environment:
-

Financial

1. Cost of proposal: Estimated Cost: Further Details: £2,250
 2. Ongoing costs: Recurring Cost: approx. £500 per annum
 3. Budget head/performance centre: Highways Maintenance
 4. Total current budget for this head: £2m
 5. Source of funding: Existing revenue budget 2021/22
-

Personnel

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

Legal

1. Legal Requirement: Statutory Requirement:
 2. Call-in: Applicable:
-

Procurement

1. Summary of Procurement Implications: These would be dependant on the outcome of the reccomdation accepted.
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All users of the Footpath.
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments: Cllr Fawthrop fully supports the proposal, as residents have used this pathway for many many years.

3. COMMENTARY

3.1 On 16th February 2019 Mrs Karen King made an application for a Definitive Map Modification Order to modify the Definitive Map and Statement by adding a network of public footpaths over the land to rear of Heathside Petts Wood.

3.2 Following receipt of the claims 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 claims to enable the Council to accede to the request to make the requisite Definitive Map Modification Order.

3.3 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.

3.4 The consultant's fees of £1,700 have been met from the Highways Maintenance budget if accepted the advertising approx. £500 and signage costs approx. £250 also be met from this budget.

3.5 Should Members decide not to accept the recommendation and the applicant decides to appeal this decision considerable officer time and a specialist consultant would need to be employed to investigate the matter further.

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

4.1 See N/A sections.

5. POLICY IMPLICATIONS

5.1 The Council is under a statutory duty to consider applications to add new routes to its Definitive Map and Statement.

6. FINANCIAL IMPLICATIONS

6.1 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.

6.2 The consultant's fees of £1,700 have been met from the existing Highways Maintenance revenue budget. If Members accept this application, there would be one-off costs of advertising and signage of approximately £750, plus recurring maintenance costs of up to £500 a year which would also need to be met from this budget.

6.3 In the event Members decide not to accept the recommendation and the applicant decides to appeal this decision, considerable officer time and a specialist consultant would need to be employed to investigate the matter further at an estimated additional cost of £1k.

7. PERSONNEL IMPLICATIONS

7.1 See N/A sections.

8. LEGAL IMPLICATIONS

8.1 These are fully explained in the consultant's report at Appendix 1.

9. PROCUREMENT IMPLICATIONS

9.1 Recommendation 2 would require the definitive statement to be updated meaning an update of the database and resources in due course. Recommendation 3, should the Applicant decide to appeal would likely to involve further involvement from consultant Sue Rummit Associates with additional investigations and comments.

Non-Applicable Sections:	1, 4, 7
Background Documents: (Access via Contact Officer)	None

Application for a Definitive Map Modification Order to add public footpaths to the Definitive Map and Statement for Bromley: Land to the rear of Heath Side.

Report for the London Borough of Bromley Council

Application for a Definitive Map Modification Order to add public footpaths to the Definitive Map and Statement for Bromley: Land to the rear of Heath Side.

Sue Rumfitt Associates

161 Spring Road
Kempston
Bedford
MK42 8NR

Sue@Rumfitt.com

Introduction

1. This report covers the results of investigations into an application for a Definitive Map Modification Order to add public footpaths to the Definitive Map and Statement for Bromley affecting land to the rear of Heath Side, Petts Wood, Orpington. It aims to assist the Council in determining the application for an Order to modify the Definitive Map and Statement for the London Borough of Bromley in accordance with the Council's statutory duty, under the Wildlife and Countryside Act, 1981.
2. The report is divided into the following sections:

Background

Legislative Framework

The evidence in support of the application

Landowner's evidence

Evaluation of the evidence against the tests in Section 31 of the 1980 Act

Status

Width

Limitations or conditions

Recommendation

Background

3. On 16 February 2019 Mrs Karen King made an application for a Definitive Map Modification Order ("DMMO") to modify the Definitive Map and Statement for Bromley by adding a network of footpaths over land to the rear of Heath Side. The application was accompanied by 19 Public Rights of Way Evidence Forms, each of which had been completed by an individual member of the public, detailing their use the application paths.

Application for a Definitive Map Modification Order to add public footpaths to the Definitive Map and Statement for Bromley: Land to the rear of Heath Side.

4. A plan showing the routes claimed is at Appendix A (Doc2 Page 5). For ease of reference the path network has been divided into three sections: A-B being a short length of path that connects the other two paths to Council owned land; B-C runs broadly along the northern boundary of the site (“the northern footpath” and B-D runs to the south of this (“the southern footpath”). Both B-C and B-D connect to an existing public footpath No 134 which runs behind some of the houses on Heath Side.
5. The application was prompted by the change in ownership of the land crossed by the paths; the land was bought by 168 Group Limited in November 2018. Local residents feared that the land would be developed and it was this that appears to have prompted Mrs King to make her application.

Legislative Framework

6. By virtue of the Wildlife and Countryside Act, 1981 (“the 1981 Act”) the Council is the surveying authority for its area.
7. The 1981 Act places a duty on surveying authorities to keep the definitive map and statement under continuous review, and under s 53(2)(b), to make orders that make such modifications to the map and statement as appear to the authority to be requisite as a consequence of the occurrence of an event. The events referred to in s 53(2)(b) are specified in s 53(3) and includes at s 53(3)(b):

The expiration....of any period such that the enjoyment by the public of the way during that period raises a presumption that a way has been dedicated as a public path or restricted byway.

8. The provisions of s 31 of the Highways Act 1980 (“the 1980 Act”) are also relevant. Section 31(1) provides that:

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Where a way over land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as highway unless there is sufficient evidence that there was no intention during that period to dedicate it."

Section 31(2) provides that:

The period of 20 years referred to in subsection (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 by a notice such as is mentioned in subsection (3) of otherwise.

9. Section 7A and 7B provide that:

Section 7B applies where the matter bringing the right of the public to use a way into question is an application under Section 35(5) of the Wildlife and Countryside Act 1981 for an order making modifications so as to show the right on the Definitive Map and Statement

10. If a full 20 year period of user is not made out, a right of way may nevertheless be dedicated under the common law. This requires the use of the way and the actions of the landowner to have been of such a nature that dedication of the way can be presumed, or deemed to have occurred. Evidence about the openness and frequency of user, and the knowledge and acquiescence of the landowner will be taken into account.

11. The test to be applied to evidence for and against the public status of the claimed routes is the civil test of 'on balance of probability'.

The evidence in support of the application

12. Nineteen people completed Public Rights of Way Evidence Forms ("Forms") that were supplied with the application. The earliest date of use of the application routes was 1960 (Mr L King), with 18 people claiming that their use continued until 2018, when most Forms were

Application for a Definitive Map Modification Order to add public footpaths to the Definitive Map and Statement for Bromley: Land to the rear of Heath Side.

completed. (Mrs S Buller stopped using the routes for health reasons in 2004.) The majority of users had used the routes without a break (Ms J Sheary noted a short break in her use in 2017); even where users had moved away for a period (Ms J Abram, Ms E Buller) they continued to use the routes on visits back to the area to see family members.

13. Where frequency of the use was detailed, use varied from daily or more than daily to weekly.

All 19 people stated that they saw other people using the routes and considered that they would have been seen by others. No user had permission to use the routes. No user was connected to the landowner. There were no signs visible from the routes. The routes were never obstructed by man-made obstructions; the only obstructions were natural overgrowth from the sides of the routes, the occasional fallen tree or branch and flooding.

14. The majority of users used the routes on foot. Eight users had used some of the routes for some of the time on bicycle.

15. The investigation into the user evidence started as the country went into lockdown in response to the covid-19/coronavirus pandemic. It was not therefore possible to interview any witnesses face-to-face. Some user witnesses (Ms J Abram, Ms E Buller, Mrs S Buller, Mrs King, Mr Lyddall, Mr and Mrs Taylor and Mrs Ward) have been contacted by email or telephone and have made more detailed statements about their use; giving more information about whether their frequency of use or mode of use has changed over time and more detailed information about whether or not they have used all parts of the network to an equal degree or not. Witnesses were asked about the width of the routes and one witness (Ms J Abram) provided photographs taken in August 2020 and a sketch with measurements of the width taken at various points along the routes (the photographs and sketch are at Appendix D). Witness statements from witnesses interviewed in this way are in Appendix B.

16. Following interviews, the evidence has been clarified in the following ways:

- One witness (Mr R Lyddall) has never used the northern route, and has not used the southern route in the last 30 years;

Application for a Definitive Map Modification Order to add public footpaths to the Definitive Map and Statement for Bromley: Land to the rear of Heath Side.

- One witness (Mrs J Ward) has never used the northern route ;
- For some of those witnesses who used both northern and southern routes, use of the northern route has been far less than use of the southern route. (Ms E Buller, Mrs S Buller, Mrs K King and Mr and Mrs Taylor.) Nevertheless, users report both the northern route and the southern route to be very-well used.
- None of the sections of path are fenced. Over the years the routes have varied in width and at some points on both the northern route and the southern route it has been necessary to step off the trodden paths to allow another user to pass. The section of path from A-B is the widest part of the paths and is wide enough to allow two families to walk side-by-side (Mrs K King). No witness reports any difficulty in stepping of any part of the narrower sections of path to allow other users to pass.
- The majority of use has been on foot, with some users cycling. Other walkers and cyclists have been seen; horse-riders have been seen rarely.

Landowner's Evidence

17. No evidence has been submitted on behalf of the landowner. The land is registered under Title SGL464283 to 168 Group Limited. Communications sent to the registered address for the company have not been responded to. Research at Companies House showed that 168 Group Limited had one director, Ms Yan Hu. Correspondence sent to her, recorded delivery, at the correspondence address was returned 'uncalled for'. The applicant advised that her correspondence to Greenland Petts Wood Ltd (believed by the applicant at the time to have an interest in the land) c/o 168 Express Limited Unit 2 Birch Walk Erith was received. But later correspondence sent recorded delivery to this address was eventually returned 'addressee unknown'.

Evaluation of the evidence against the tests in Section 31 of the 1980 Act

18. Section 31 provides that the 20 year period of use from which a presumption of dedication can be drawn runs back from the date at which the right of the public to use a route is brought into question. In this case use has not been physically prevented and there have been no signs erected to be visible from the routes indicating that the public may not use the routes. The matter bringing the right of the public to use the routes into question is the application made by Mrs King. The relevant date for the purposes of Section 31 is therefore 16 February 2019 and the 20 year period is February 1999 to February 2019.
19. Mrs King collected evidence in late 2018, after she and other local people became aware of the sale of the land. There is, therefore, an apparent gap in the written evidence in user evidence forms between the date when the evidence was collected and the date of the application. This gap was caused by the Council incorrectly telling Mrs King that she needed to pay an application fee, which delayed Mrs King's application until she had raised the necessary monies to pay the fee. However, it is apparent from interviews that witnesses have continued to use the routes in much the same way as they had before. There would appear to be no actual gap in use and several users contacted for interview reported that they were continuing to use the paths in much the same way as they had previously; albeit with amendments following changes in their day to day lives owing to restrictions placed on them to deal with the pandemic.

Is there a way over land?

20. The application routes are all clearly defined routes between terminal points sufficient to qualify as ways over land.

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Are the ways of such a character that dedication could occur at common law?

21. The ways are physically defined linear routes and although they appear to terminate at a dead end at Point A, the land to the west of A is owned by the Council (under title SGL497114) as land for public recreation and the public have a right of access for recreational purposes and for research. Whilst it is usually the case that public rights of way begin and end on other highways there is no rule of law that says a public right of way may not be a dead end; though it is unusual for dead end rights of way to arise from deemed or presumed dedication following a period of use by the public. In this case the public has the right to access the Council owned land to the west of A and it is clear from the evidence that members of the public have either used the routes to specifically access the Council-owned land or to cross over it to other destinations.

Have the ways been enjoyed by the public?

22. Enjoyment in this context is held to mean used. The evidence discussed above shows that the public has used the application routes and that use has been by members of the public in addition to those who completed evidence forms and those whose evidence has been clarified at interview.

Is the use by the public 'as of right'?

23. 'As of right' is defined as being without force, without permission and without secrecy. Use by the public has been open and frequent. There is no evidence that use has been with force or has been contentious. None of the 18 people who have used the routes in the 20 year period have had permission from the current or any previous landowner. There is no evidence that the land was fenced against the public and there were no signs forbidding access. Use therefore appears to have been 'as of right'.

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Has the use been for the full period of 20 years?

24. Fifteen members of the public have used the southern route and A-B for the full period of 20 years. Fourteen members of the public have used the northern route for the full period of 20 years. Other users have used the routes for lesser periods or during periods outside the 20 year period.

Is there any evidence of a lack of intention to dedicate the routes to the public?

25. As noted above, the current landowner has not responded to correspondence. There is no evidence of the current or any previous landowner erecting any signs at all and no landowner has submitted statements or deposits under Section 31(6). There is no other evidence that any landowner has carried out any other actions that would qualify as evidence of lack of intention to dedicate with the qualifying 20 year period.

Status

26. Mrs King's application was to record the routes as public footpaths. There is some evidence of use by the public on bicycles (see for example Ms J Abram) and some indirect evidence of use by horse-riders. The predominant use by the public seems to be on foot. Some users who have in the past made use of the routes on bicycle did so as children. The evidence as a whole tends to point to the status of the routes being footpaths.

Width

27. The Planning Inspectorate's Rights of Way Advice Note 16 advises that all DMMOs should contain a width. (Additional advice on specifying widths in Orders was issued to English local authorities by Defra on 12 February 2007.) See Appendix E for these documents.

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28. In this case the widths of the routes vary considerably and have varied over time. Whilst it is possible to measure the width of the current trodden paths (as Ms J Abram has done) this almost certainly does not reflect the width of the routes throughout the 20 year period. It is also clear from the evidence collected at interview that where sections of the paths were narrow the public was easily able to step to one side to allow other users to pass; the public therefore appears not to have felt constrained to stick to the narrow, trodden path.

29. Advice in the 2007 Defra letter for cases where there is no or little evidence of the width of a route is as follows: *“There will be a small number of cases where there is little if any evidence, either documentary or user, as to the width of the route. In such cases the OMA [Order-Making Authorities] should include a width that appears appropriate having regard to all relevant factors which may include, for instance, the type of user, location and the nature of the surface and other physical features. OMAs should bear in mind that such a width should be the minimum necessary for the reasonable exercise of the public right in these circumstances, enough for two users to pass in comfort, occasional pinch points excepted.”*

30. It is suggested that this case falls to be considered in this way.

Limitations or Conditions

31. There is no evidence that dedication to the public was subject to any limitation or condition (for example, the right of the landowner to have a gate or stile on a route).

Recommendation

32. On balance, the evidence supports the making of the Order applied for and appears to meet the test set out in s 53(3)(b) of the 1981 Act. If the Council decides to make the Order it is

Application for a Definitive Map Modification Order to add public footpaths to the Definitive Map and Statement for Bromley: Land to the rear of Heath Side.

recommended that the Council follows the advice in the 2007 Defra letter and specifies a width of 2 metres.

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