

Decision Maker: RIGHTS OF WAY SUB-COMMITTEE

Date: 28th September 2022

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

Title: PROPOSED PUBLIC RIGHT OF WAY AT HAYES STREET FARM, HAYES, BROMLEY

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Chief Officer: Colin Brand Director of Environment and Public Protection
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Ward: Hayes and Coney Hall

1. Reason for report

- 1.1 To determine an application for a Definitive Map Modification Order to recognise a public right of way at Hayes Street Farm, Hayes, Bromley . 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 Corporate Services and Governance, in consultation with the Director of Environment 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 footpath to the Definitive Map and Statement for the route shown from A-F on the plan in Appendix A and make an Order under Section 53(3)(c)(ii) for the route shown on the said plan .

Impact on Vulnerable Adults and Children

1. Summary of Impact: N/A
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Corporate Policy

1. Policy Status: Existing Policy: Further Details
 2. BBB Priority: Quality Environment:
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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 2022/23
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Personnel

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

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

1. Summary of Procurement Implications: These would be dependent upon the outcome of the recommendation being accepted.
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Customer Impact

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

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments:
Councillors Micheal and Turrell have no objection to the recommendation.

3. COMMENTARY

3.1 On 14th March 2019 Ms Nicola Brown made an application for a Definitive Map Modification Order to modify the Definitive Map and Statement by adding a bridleway over land at Hayes Street Farm.

3.2 Hayes Farm is in the ownership of the Rookery Estates Company and Stephen John Welch Norman (“the Landowners”). The Landowners object to the application and evidence has been a submitted on their behalf.

3.3 Following receipt of the claim a consultant, Sue Rumfitt Associates, was appointed to carry out the investigations into and analysis of the claim 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.

3.4 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 claim and any subsequent maintenance/signing implications. The latter would be met from the existing highways maintenance budget.

3.5 The consultant’s fees of £2,250 have been met from the Highways Maintenance budget ; if accepted the advertising (approx. £500) and signage costs (approx. £250) would also be met from this budget.

3.6 Should Members decide not to accept the recommendation and the applicant decide to appeal this decision considerable officer time would be required and a independent specialist consultant would need to be employed to 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 £2,250 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 Under section 53 of the Wildlife and Countryside Act 1981 (“the Act”), the Council is under a duty to keep the definitive map and statement of the public rights of way in its area up to date, specifically when evidence is provided, showing the existence of an unregistered right of way (s53(3)(c)). Section 53(5) of the Act enables anyone to apply for an order to modify the said map and schedule 13A provide the means of determination of such applications and making of relevant orders.
- 8.2 The Act and associated regulations are clear as to what the applicant needs to provide for their application to be accepted. In this case, the information provided has been assessed as adhering to the requirements and the application added to the register of applications.
- 8.3 In the event the Council did not determine this application within 12 months of receipt of the application, schedule 13A paragraph 5 provides the applicant and the owners of the land with the right to apply to the Magistrates’ Court for it to Order the Council to make a determination, meaning more expense for all parties;
- 8.4 The criteria for determination are fully explained and argued in the Consultant’s report, quoting the relevant law where appropriate ; following the assessment of the evidence received, the Consultant recomands refusing the application for a bridle way due to lack of evidence of the way being used by horses (and bicycles) ; it however recomands that an order be made to record a footpath along the route provided in the application, due to the strong evidence of use by foot ; the Council therefore has three options opened to it:
- follow the recomandation and make an order to record a footpath;
 - make an order to record a bridle way;
 - or refuse the application.
- 8.5 Schedule 13A paragraph 7 provides the applicant with a right of appeal to the Secretary of State in the event the Council refuses to make an order ; if the Council does make an order, Schedule 13A requires the Council to advertise the order and invite representations, including from the land owners, before the Order can be confirmed ; opposed orders will be confirmed by the Secretary of State, possibly via a public inquiry ; in both cases the Consultant’s report will be part of the evidence from either party to the proceedings, as well as the Council’s minutes of the decision ; it is therefore essential that clear reasoning is provided of the decision making process.

- 8.6 As for all decision made by the Council, Judicial Review is open to anyone who wants to challenge the decision if the processes have not been followed;
- 8.7 The Consultant's report also considers the legislation under the Common Law (where public rights or way required consent and application from the land owner) and rightly disards it.
- 8.8 It is therefore suggested that the Consultant's report is carefully considered and that a reasoned decision is provided.

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 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