

Decision Maker: RIGHTS OF WAY SUB-COMMITTEE

Date: 10th January 2024

Decision Type: Non Urgent Non-Executive Non Key

Title: PROPOSED PUBLIC RIGHT OF WAY AT THE LANDWAY

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Ward: Darwin

1. Reason for decision/report and options

1.1 To determine an application for a Definitive Map Modification Order to recognise a public right of way at the Landway at Petleys Farm, Luxted Road, Downe. 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**

2.1 The Director of Corporate Services and Governance, in consultation with the Director of Environment and Public Protection, not be authorised to make a Definitive Map Modification Order under section 53(c)(i) of the Wildlife and Countryside Act 1981, following on from a recommendation from the Council's Public Rights of Way Consultant.

Impact on Vulnerable Adults and Children

1. Summary of Impact: N/A
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Transformation Policy

1. Policy Status: Existing Policy: Further Details
 2. Making Bromley Even Better Priority -
(4) For residents to live responsibly and prosper in a safe, clean and green environment great for today and a sustainable future.
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Financial

1. Cost of proposal: Estimated Cost: Further Details: 4-7K
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre: Highways Maintenance
 4. Total current budget for this head: £2M
 5. Source of funding: Existing revenue budget 2023/24
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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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Property

1. Summary of Property Implications: N/A
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Carbon Reduction and Social Value

1. Summary of Carbon Reduction/Sustainability Implications: N/A
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Impact on the Local Economy

1. Summary of Local Economy Implications: N/A
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Impact on Health and Wellbeing

1. Summary of Health and Wellbeing Implications: N/A
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Customer Impact

1. Estimated number of users or customers (*current and projected*): All persons who claim to use the route at present, but, if the recommendation is accepted, would no longer be able to do so in the belief that the route is a registered right of way.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments: None received.

3. COMMENTARY

3.1 On the 10th June 2020 Mr Steve Barnes made an application for a Definitive Map Modification Order to modify the Definitive Map and Statement by adding a footpath at the Landway at Petleys Farm, Downe.

3.2 The Landway is in the ownership of Philip Lapper. The Landowners object to the application and evidence has been submitted on their behalf.

3.3 Following receipt of the claim a consultant, Robin Carr Associates, was appointed to carry out the investigations into and analysis of the claim and his 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 refuse the request to make the requisite Definitive Map Modification Order. In this regard, as emphasized in the Consultant's report, the Sub-Committee has a quasi-judicial role to fulfil.

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 £4,140 have been met from the Highways Maintenance budget.

3.6 Should Members decide to accept the recommendation, a process exists whereby the Applicant may appeal against the decision not to make an Order. The Council will then have to provide a statement to the Planning Inspectorate explaining their decision.

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

5. TRANSFORMATION/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 Council has to fund the investigation into any application for an Order. In the event it be decided that an Order should not be made, and an appeal is made against this, the Council then has to meet the costs of explain its decision.

6.2 The consultant's fees of £4,140 have been met from the existing Highways Maintenance revenue budget.

6.3 In the event that Members decide to accept the recommendation and the Applicant appeals the decision, the Council would be put to preparing a statement explaining the decision not to make an Order, which would involve its Consultant. Should the Council then be directed to make the Order, this may lead to objections which require further advice from the Consultant, in which case it is estimated that the total addition costs could amount to 2.5K.

7. PERSONNEL IMPLICATIONS

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 recommends refusing the application for a footpath due to lack of evidence of the way being used freely by users on foot; the Council therefore has two options opened to it:

- follow the recommendation and not make an order to record a footpath;
- or refuse the consultants recommendation and make an order for a footpath.

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 discards 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 Following the acceptance of the recommendation should the Applicant decide to appeal would likely involve further involvement from consultant Robin Carr Associates with additional investigations and comments.

- 10. PROPERTY IMPLICATIONS
- 11. CARBON REDUCTION/SOCIAL VALUE IMPLICATIONS
- 12. IMPACT ON THE LOCAL ECONOMY
- 13. IMPACT ON HEALTH AND WELLBEING
- 14. CUSTOMER IMPACT
- 15. WARD COUNCILLOR VIEWS

15.1 No comments received.

Non-Applicable Headings:	1, 4, 7, 10,11,12,13,14
Background Documents: (Access via Contact Officer)	