
MEETING: PLANNING CONTROL COMMITTEE

DATE: 31 AUGUST 2004

SUBJECT: CLAIM FOR A PUBLIC RIGHT OF WAY AT
OSBORNE WALK, RADCLIFFE

REPORT FROM: MIKE CANNON, BOROUGH ENGINEER

CONTACT OFFICER: IAN CROOK

TYPE OF DECISION: NON KEY DECISION
FOR PUBLICATION

REPORT STATUS:

PURPOSE/SUMMARY:

This report contains information regarding an application made under Section 53 of the Wildlife and Countryside Act 1981 for modification of the Definitive Map and Statement by adding to it a footpath at Osborne Walk, Radcliffe

OPTIONS AND RECOMMENDED OPTION :

The Council must make an order should the Planning Control Committee consider that evidence which (when considered with all other relevant evidence to them) shows that a right of way which is not shown on the Definitive Map and Statement subsists or is reasonably alleged to subsist on land in the area to which the Definitive Map relates.

Advice from Counsel has been sought:

1. To establish that the Council has fully discharged its investigatory obligations.
2. To ensure that the Council directs itself in accordance with the law and guidance of the Court of Appeal in R v Secretary of State for Wales Ex- Parte Emery (1998 4ER 367)

The Committee may determine that the evidence submitted in support of the application is insufficient to support that rights of way subsist or are reasonably alleged to subsist.

The recommended option is for the Committee to determine that the right of way claimed is reasonably alleged to subsist and to authorise the Council Solicitor to make the necessary order to modify the Definitive Map and Statement.

IMPLICATIONS -**Financial Implications and Risk Considerations**

See statement by Director of Finance & E Government.

Corporate Aims/Policy Framework:Do the proposals accord with the Policy Framework? Yes
Improving Transport and the Environment.

Are there any legal implications?

Yes **Considered by Monitoring Officer:**Yes

The Council has an obligation to properly investigate the issues claimed and to then make a careful and properly informed decision as to whether all the evidence shows that a right of way subsists or is reasonably alleged to subsist. Any determination should not be made on a first view of the evidence but through the weighing of all available evidence and any legal principles which may have to be applied.

If Osborne Walk becomes part of the Definitive Right of Way Network it will be added to the Definitive Map and Statement.

Statement by Director of Finance and E-Government:

Financial implications will be assessed once the outcome of the application is known

Staffing/ICT/Property:**Wards Affected:**

Radcliffe Central Ward

Scrutiny Interest:

Economy, Environment and Transport

TRACKING/PROCESS**DIRECTOR:**

Chief Executive/ Management Board	Executive Member/ Chair	Ward Members	Partners
Scrutiny Panel	Executive	Committee	Council
		Planning Control 31 August 2004	

1.0 BACKGROUND

- 1.1. The Authority received an application on 7 February 2003 for the modification for the Definitive Map and Statement by adding to it a footpath at Osborne Walk Radcliffe.

- 1.2. The application is made under Section 53 of the Wildlife and Countryside Act 1981 which provides for modification for the Definitive Map and Statement to be made where it is shown that a right of way subsists or is reasonably alleged to subsist. Rights of way can be acquired where they have been exercised without permission or restriction for a period of at least 20 years.
- 1.3. Plan 1, PRW/RAD/DC/1 shows the claimed route at Osborne Walk, Radcliffe. Plan 2 PRW/RAD/DC/2 shows the route position within the surrounding areas.
- 1.4. The land connects Homer Street with Pavilion Walk. As it passes the properties of Osborne Walk it is privately owned. Osborne walk is un-adopted although it is lit by lighting columns maintained by the Authority. It is believed that the street lighting columns were installed by the former Radcliffe Urban District Council though it has not been possible to locate any record of the decision to install the same. It has a flagged surface, jointly maintainable by the residents.
- 1.5. The land between the last house on Osborne Walk (number 40) and the carriageway of Pavilion Walk is owned by the Authority and is the responsibility of Housing Services. The land takes the form of a grassed embankment down from Osborne Walk to Pavilion Walk.
- 1.6. It is claimed that the route splits into three separate lines on the embankment owned by the Authority as indicated on Plan 1.

2.0 ISSUES

- 2.1. Having received an application for modification of the Definitive Map and Statement, the Council in its capacity as Highway Authority has a duty to investigate the issues claimed and determine whether all the evidence available to it shows that a right of way subsists or is reasonably alleged to subsist.
- 2.2. The claim was made following the removal of a flagged path along the Authority's embankment which connects Pavilion Walk with Osborne Walk. The Authority organised the removal in November 2002 following complaints from some of the residents of Osborne Walk who had received tripping claims from persons traversing Osborne Walk.
- 2.3. Appendix 1 provides a summary of the evidence which has been collected since the claim was received in February 2003 and a brief explanation of how that evidence was received. The following points are a basic explanation of the situation relating to the claim.
 - The claimant submitted evidence suggesting the embankment and Osborne Walk had been used by the public for a sufficient period of time for it then to become a public footpath through usage. It is claimed that the public have used three separate routes along the embankment and along the flagged footway of Osborne Walk and this use pre-dates the installation of the flagged path along the embankment.
 - Those that oppose the claim state that Osborne Walk was originally fenced at its boundary with the embankment adjacent to Pavilion Walk and persons using Osborne Walk have been challenged so that rights could not have been acquired. They claim that before the flagged path was installed on the embankment it was too steep for people to walk. As a result they insist that the necessary 20 years use has not been attained.
 - Residents are also concerned about the use of the route by motorbikes, horses and cyclists as well as the access it provides for vandals and criminals. These problems do exist but they are not relevant to this investigation of an application pursuant to section 53 of the Wildlife and Countryside Act 1981 though the incidents are being reported to the police.

- Some of the residents of Osborne Walk have proposed an alternative solution to this matter by offering Osborne Walk as a permissive footpath to be open during the day and closed at night. However the evidence submitted in connection with the application will determine whether or not Osborne Walk and the routes over the adjoining embankment are public footpaths and the process has to be taken to its conclusion.
- Any order made for the modification of the Definitive Map and Statement may be subject to objection and if such objections cannot be resolved then the issues must be referred to the Secretary of State who may require that a Public Inquiry is conducted.
- If an order is made and ultimately confirmed the claimed routes will become public footpaths for use by the public on foot only, but the ownership of the land crossed by the routes will not be affected.
- If a decision is taken not to make an order, the claimant can appeal to the Secretary of State and again a Public Inquiry may follow.
- If an order is not made, either by the Authority or the Secretary of State, the owners of the land will be able to restrict use of the route by the public by whatever means they can agree between themselves subject to any necessary planning permission.

3.0 CONSULTATIONS

J Hammond, Director of Legal and Democratic Services.
 C. Swinnerton, Head of Legal Services.
 M Owen, Director of Finance & E Government
 M. Kelly, Deputy Chief Executive.
 K Beamer, Borough Property and Technical Services Officer.
 S Jordon, Acting Head of Housing Services.

4.0. CONCLUSION

- 4.1. The Authority has properly discharged its investigatory obligations in this matter.
- 4.2 The evidence available to the Council shows that a right of way along Osborne Walk and three routes across the embankment adjacent to Pavilion Walk are reasonably alleged to subsist.
- 4.3 That the Planning Control Committee authorise the Council Solicitor to make the necessary order to modify the Definitive Map and Statement.

**CM CANNON
 BOROUGH ENGINEER**

List of Background Papers:-

Definitive Map and Statement
 Claim and supporting documents
 Authority's evidence file.

Enclosures:

Appendix 1
Plans 1 and 2

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