

**HAMPSHIRE COUNTY COUNCIL****Decision Report**

<b>Decision Maker:</b>	Regulatory Committee
<b>Date:</b>	8 January 2014
<b>Title:</b>	Proposal to counter seal an Order made by Surrey County Council to record a bridleway in Surrey and Hampshire
<b>Reference:</b>	5475
<b>Report From:</b>	Director of Culture, Communities and Business Services

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## 1. Executive Summary

1.1 In 2007, an application was made to Surrey County Council (SCC) to upgrade one of its existing public footpaths to a bridleway. The footpath runs between Oxenden Road, Tongham, and the county boundary. Additionally, the application also sought to record bridleway rights over that part of the route which falls within Hampshire, in the Borough of Rushmoor (a length of approximately 10 metres), which is not currently recorded on Hampshire's definitive map. Officers of SCC have received committee approval to make an Order recording these rights, and they have now approached Hampshire County Council (HCC) to ask for its co-operation in the making of this Order. It is recommended that HCC agree to make a joint Order with SCC to record the whole route as a bridleway.

## 2. Legal framework for the decision

2.2 WILDLIFE AND COUNTRYSIDE ACT 1981: (53) Duty to keep definitive map and statement under continuous review:

(2) As regards every definitive map and statement, the surveying authority shall:

b) .... keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence.... of any of [the events specified in sub-section (3)] by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.

(3) The events referred to in sub-section (2) are as follows: -

b) the expiration... of any period such that the enjoyment by the public of the way

during that period raises a presumption that the way has been dedicated as a public path;

c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

i) that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way [to which this Part applies]

ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description

iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

2.2 HIGHWAYS ACT 1980 section 31: Dedication of way a highway presumed after public use of 20 years.

(1) Where a way over any land...has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

(2) The period of 20 years...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...or otherwise.

2.3 PRESUMED DEDICATION AT COMMON LAW:

Use of a way by the public without secrecy, force or permission of the landowner may give rise to an inference that the landowner intended to dedicate that way as a highway appropriate to that use, unless there is sufficient evidence to the contrary. Unlike dedication under S.31 Highways Act 1980, there is no automatic presumption of dedication after 20 years of public use, and the burden of proving that the inference arises lies on the claimant. There is no minimum period of use, and the amount of user which is sufficient to imply the intention to dedicate will vary according to the particular circumstances of the case. Any inference rests on the assumption that the landowner knew of and acquiesced in public use.

### 3. Background

3.1 Officers at SCC presented a report to their Local Committee on 7 December 2011, recommending that bridleway rights should be recorded over the existing footpath in Surrey, and over the short unrecorded section that falls within Hampshire. This report also sought approval to approach HCC to ask that they make an equivalent order so that the route could be recorded on

the Definitive Map and Statement of both Councils at the same time. These requests received committee approval. Having carried out both an investigation into the application and a public consultation, SCC have accepted the responsibility for publicising the making of both theirs and Hampshire's orders, and for defending them in the event of any objections (which could necessitate the holding of a public inquiry). As the lead authority, Surrey would be responsible for covering the administrative costs incurred by the making of this Order.

#### **4. Claimant**

- 4.1 The application was made in May 2007 by Mrs Terina Notz of Ash Green, Aldershot, and was supported by twelve user evidence forms.

#### **5. Landowners**

- 5.1 The land over which the claimed route runs is un-registered and SCC have been unable to establish who the landowner is. Surrey maintains that any landowner would have the opportunity to object and provide evidence as a rebuttal once the Order is made and publicised.

#### **6. Description of the Route**

- 6.1 The majority of the claimed route (shown at Appendix B) lies within Surrey and commences at Oxenden Road in Tongham and runs in a generally north-westerly direction along 'The Moors', proceeding along an underpass to the other side of the A331. This section is already recorded as a public footpath. The route then crosses the county boundary into Hampshire (whereafter the route is not recorded as a right of way) and terminates at a junction with Tongham Road, Aldershot, in Rushmoor Borough.

#### **7. Consultation**

- 7.1 SCC has consulted statutory bodies and user groups including Guildford Borough Council, the Blackwater Valley Countryside Partnership, Tongham Parish Council and local residents, and no objections have been raised during this process. Additionally, HCC has consulted the following:

##### Rushmoor Borough Council

Rushmoor Borough Council's solicitor has stated that:

*"In the course of consultation with Members and appropriate officers here, I have not been made aware of any evidence that would refute the evidence provided to SCC by the applicant and those who have made supporting statements. However, the Borough Council reserves the right to object to the proposed MMO should such refutative evidence come to hand."*

##### Councillor Frank Rust – Local County Councillor

No comment.

## **8. Evidence**

- 8.1 No historic documentary evidence was submitted to support the application, it is based solely on user evidence. Evidence was submitted by 12 people (including the applicant), 5 of whom were interviewed by officers from SCC to further clarify their use of the route. Aside from being sent copies of the user evidence, officers of HCC have not been provided with, and are not aware of the existence of, any other supporting evidence. However, in light of the fact that officers of SCC have already conducted their own investigation, it is considered that it would not be a good use of officer time for this authority to carry out a separate investigation into the matter. Officers are not aware of any evidence which would contradict Surrey's recommendation, which is that the available evidence is sufficient to show that bridleway rights can be reasonably alleged to subsist over the route. The report upon which Surrey relied to make their recommendation, which includes a précis of the user evidence, is provided at Appendix A.

## **9. Conclusions**

- 9.1 In this case, officers are basing their decision on the evidence and report prepared by SCC, and although this provides less certainty than an investigation carried out by officers within Hampshire, it is mitigated by the fact that it will fall to Surrey to defend the Order should it be challenged. As previously stated, given that Surrey has gathered its own evidence officers do not consider that it would be an efficient use of time to now carry out a separate investigation.

## **10. Recommendation**

- 10.1 That authority is given to enable Hampshire County Council to jointly make an Order with Surrey County Council to record bridleway rights between points A – B (as shown at Appendix B).

**CORPORATE OR LEGAL INFORMATION:**

**Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>OR</b>	
<b>This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because: the County Council, in its capacity as ‘surveying authority’, has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981.</b>	

<b>Section 100 D - Local Government Act 1972 - background documents</b>	
<p><b>The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)</b></p>	
<u>Document</u>	<u>Location</u>
Claim Reference:	Countryside Service, Castle Avenue, Winchester, SO23 8UL

**IMPACT ASSESSMENTS:**

**1. Equalities Impact Assessment:**

N/A

**2. Impact on Crime and Disorder:**

N/A

**3. Environmental:**

N/A

**This report does not require impact assessment but, nevertheless, requires a decision because the County Council, in its capacity as the 'surveying authority', has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981.**