

## **Definitive Map Modification Order**

### **Wildlife and Countryside Act 1981, Section 53**

#### **Application by Mr David Giles to add a Public Footpath to the Definitive Map and Statement**

#### **1. Background**

- 1.1** The Council is the surveying authority responsible for the preparation and upkeep of the Definitive Map and Statement of public rights of way in the Borough of Milton Keynes.
- 1.2** The Definitive Map is conclusive evidence of the existence of the public rights of way shown on it; although other rights may also exist that remain unrecorded.
- 1.3** Anyone can apply to the Council to modify the Definitive Map and Statement:-
  - (a) to add a right of way where it is shown to exist but not recorded on the map;
  - (b) to delete a right of way where it is shown to be included in error;
  - (c) to alter the status of a right of way; or
  - (d) to record a width in the Definitive Statement although such a DMMO may also be made by the Council on its own initiative.

#### **2. Application**

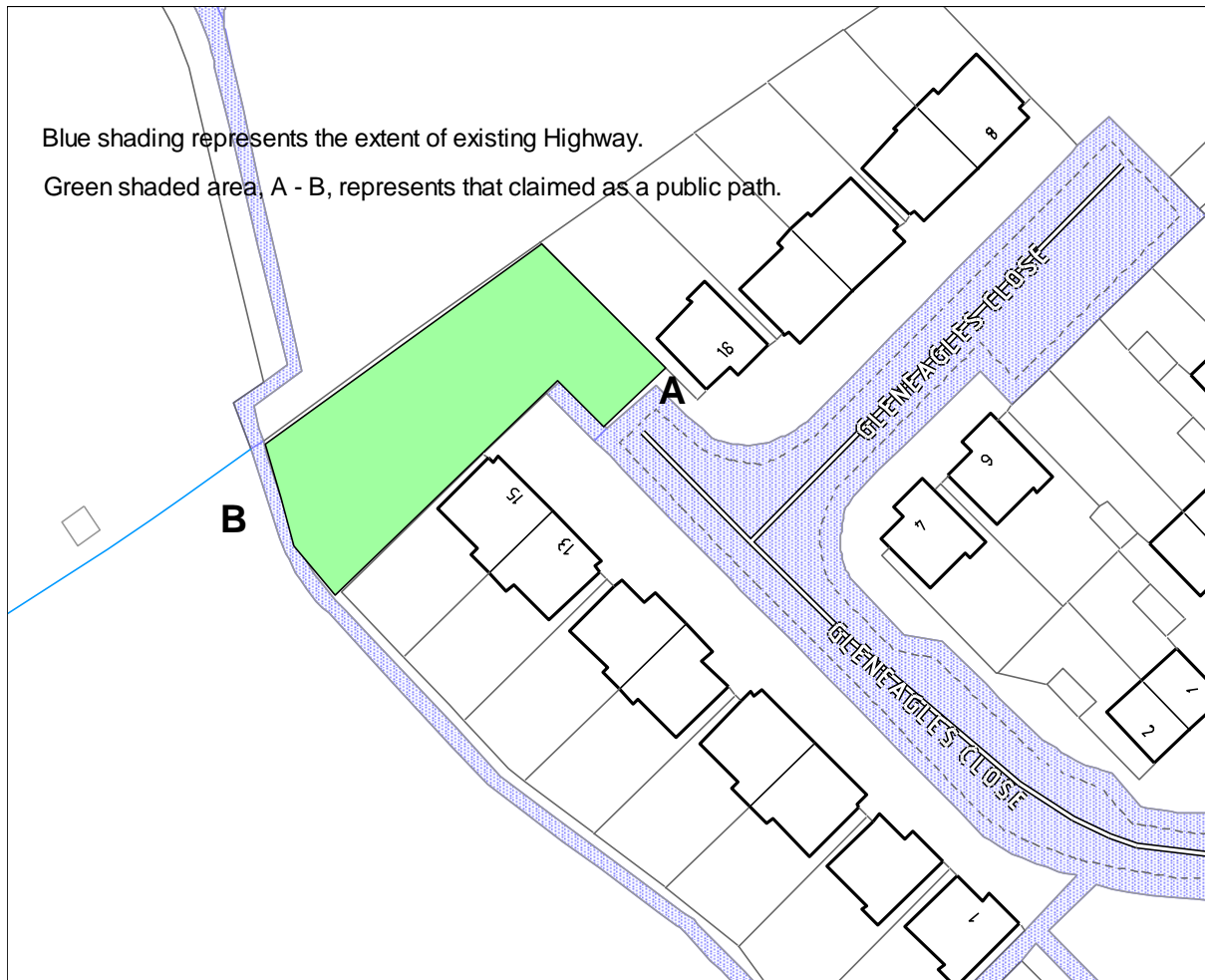
- 2.1** On 6<sup>th</sup> August 2013 the Council received an application in the prescribed form under the Wildlife and Countryside Act 1981 to add a new public footpath to the Definitive Map and Statement (“the DMMO Application”).
- 2.2** The DMMO Application was made by D Giles (“the Applicant”) on the grounds that there appeared to be evidence of use by the public for a period up to and exceeding 20 years.
- 2.3** The application of the DMMO was accompanied by a certificate signed by the Applicant and dated 5<sup>th</sup> August 2013, confirming that the requirements of paragraph 2 of Schedule 14 of the Wildlife and Countryside Act 1981 (i.e. the requirement to notify every owner and occupier of any land to which the application relates) had been complied with. (**ANNEX A**)

### 3. The Claimed Routes

3.1 The route of the claimed footpath is shown by the various lines between the points marked:-

- **A – B,**

on the plan shown below.



3.2 The claimed routes **A – B** commences at the junction of Gleneagles Close, Bletchley and the eastern edge of the Windmill Hill Golf Course, being Point **A** on the plan (at approximate grid reference SP484724/233464). The route is claimed to be 8.5m wide.

3.3 The claimed route then travels in a generally southwest direction for a distance of approximately 34 metres to Point **B** (at approximate grid reference SP484699/233441). This terminates at the highway path edge that runs from behind the properties of numbers 1 – 15 Gleneagles Close) towards Hunstanton Way.

**3.4** The area occupied is approximately 42m x 21m. The route claimed is of a grassed surface. Bounded by number 15 Gleneagles Close to the southeast, number 16 the northeast, a hedge line on the northwest and the highway path to the southwest.

#### **4. Legal Background**

**4.1** Section 53 of the Wildlife and Countryside Act 1981 requires the surveying authority (in this case, the Council) to keep the Definitive Map and Statement under continuous review and, as soon as reasonably practicable after the occurrence of an event, by Order make such modifications to the Definitive Map and Statement as appear to them to be requisite in consequence of the occurrence of that event.

**4.2** Section 53(3)(c) of the Wildlife and Countryside Act 1981 requires the surveying authority to modify the Definitive Map and Statement where it has discovered evidence which, when considered with all other available and relevant evidence, shows that a right of way not on the Definitive Map and Statement subsists or is reasonably alleged to subsist.

**4.3** Section 53(3)(b) of the Wildlife and Countryside Act 1981 requires that, before making an Order to add a right of way to the Definitive Map and Statement, there must be evidence that the right of way has come into being through presumed dedication following use over a period of time and that that presumption has been called into question before the making of the Order.

**4.4** Section 31(1) of the Highways Act 1980 provides for presumed dedication of a way as a highway after it has been enjoyed by the public, as of right and without interruption, for a full period of 20 years (except where such a route could not be otherwise claimed under common law or where there is sufficient evidence that the landowner did not intend to dedicate the way as a highway).

**4.5** Section 31(2) of the Highways Act 1980 provides that the period of 20 years referred to in subsection (1) is to be calculated retrospectively from the date when the right of the public to use the way is brought into question (e.g. by notices placed on the land saying “private land – no access”).

**4.6** The Natural Environment and Rural Communities Act 2006 made changes to the legislation and introduced new subsections 7A and 7B.

**4.7** Subsection 7A of the Highways Act 1980 (which came into effect on 2<sup>nd</sup> May 2006) provides that “subsection 7B applies where the matter bringing the right of the public to use a way into question is an application under Section 53(5) of the Wildlife and Countryside Act 1981.

**4.8** Subsection 7B of the Highways Act 1980 provides that the date mentioned in subsection (2) is to be treated as being the date on which the application is made.

- 4.9** This means that, if an application is made to record a public right of way on the Definitive Map and that route is not obstructed, the starting date for calculating the 20 years user period shall be the date of the application.
- 4.10** For a right of way to exist under common law it must be shown that two conditions have been met. First, there must be a dedication of the route by the landowner over whose land the route crosses (by express act or implied intention) and second, there must be an acceptance by the public of that right of way (shown by usage).
- 4.11** Section 32 of the Highways Act 1980 requires that any court or tribunal either determining whether a way has been dedicated as a public right of way or determining the date on which such a dedication took place, shall take into consideration any map, plan, history of the locality or any other relevant document which is given in evidence and shall give such weight to those documents as the court or tribunal considers justified in the circumstances. The circumstances could include the antiquity of the documents, the status of the person who made them or for whom they were made and the custody in which they have been kept.

## **5. User Evidence of route**

- 5.1** On Friday the 6<sup>th</sup> February 2015 an evening was organised to interview members of the public that had submitted information on the use of the path. All were invited on the 15<sup>th</sup> January 2015.
- 5.2** Of the 48 people that supplied user evidence forms only 13 were prepared to be interviewed over the claim despite alternatives being offered.
- 5.3** At the time all of those submitting evidence were subject to a number of non-leading questions of a standard form.
- 5.4** Each person was asked to draw the route they were claiming on an area map. All indicated use of the claimed route for all or most of the claimed length.
- 5.5** All of the originally submitted evidence forms had the width of the claimed path pre-written as 8.5m.

## **6. Documentary evidence**

- 6.1** Documents were scrutinised at the Buckinghamshire Archives Centre, Aylesbury and also at the City Discovery Centre Library & from Rights of Way records as summarised as follows: -
- 6.2** Analysis of the maps and plans showing the historic routes and public rights of way in the area that has existed during the last 130 years.
- 6.3** Statements & maps of intent prior to development.
- 6.4** Documentary evidence provided by the analysis of historical records.

- 6.5 Aerial photography from 1980, 1990, 2005, 2007, 2009 and 2012.
- 6.6 Testimony of those who live in the area and who have used the paths and footways in the area over the last 1-40 years.

## 7. **Assessment of the Evidence**

- 7.1 In deciding whether or not to make a DMMO the Council must consider all available evidence, including the evidence of use submitted by the Applicant and historical documents.
- 7.2 The legal test to be applied to the evidence is whether 'on the balance of probability' a route is reasonably alleged to subsist.
- 7.3 It is important to note:-
- (a) the determination of DMMO applications under Section 53 of the Wildlife and Countryside Act 1981 is a statutory duty; and
  - (b) in determining such applications the Council is not allowed to consider the amenity or desirability of the claimed route.
- 7.4 In the event that the Council decides not to make a DMMO, the Applicant has the right to appeal to the Secretary of State.
- 7.5 In the event that the Council decides to make a DMMO, the Order shall be made and advertised and be open to objections. If objections are received and not subsequently withdrawn, the Order will be submitted to the Secretary of State, who may hold a public inquiry or hearing prior to determining the matter.
- 7.6 A copy of a flowchart published by The Ramblers, which succinctly illustrates the various permutations associated with decisions and objections regarding DMMO applications, is attached for your information at **ANNEX B** of this report.

## 8. **Documentary & User Evidence regarding route A – B.**

- 8.1 The Parish Council together with the Milton Keynes Councillors for the ward have been made aware of the application. The consultation began on the 17<sup>th</sup> April 2015.
- 8.2 The list of the documents, including historical records, consulted and reviewed as part of the investigation is provided at **ANNEX C** of this report.
- 8.3 The DMMO Application is supported by forty four (44) user evidence forms representing 48 people.

- 8.5** The user evidence is summarised in **ANNEX D** the User-graph that appears there.
- 8.6** The land owner does not recognise that any public rights exist across the land. The land owner has offered an alternative route from point A alongside number 15 Gleneagles Close down to the highway path as part of any future planning application.
- 8.7** Whilst investigating the actual width it became evident that the routes taken were from point A – B were for personal use and not for the full 8.5m width. All people interviewed started at point A. The exit of use varied along the entire line of the highway path along by point B.

**9. Matters to be decided by the Council**

- 9.1** The Council is required to decide whether, on balance of probabilities, a public right of way subsists or is reasonably alleged to subsist over:
- the route marked **A – B** on Plan 1.

**10. Recommendations**

- 10.1** It is recommended that the Council makes a DMMO in accordance with Section 53(2)(b) of the Wildlife and Countryside Act 1981 (which provides that the authority shall, from the commencement date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of the events referred to in Section 53(3), by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event) to record a public right of way for pedestrians over the route marked **A – B** on Plan 1.