

**REPORT**

**Definitive Map Modification Order**

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

**Application by Olney Town Council 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 definitive map modification order (“DMMO”) may also be made by the Council on its own initiative.

**2. Application**

- 2.1** On 21<sup>st</sup> January 2004 the Council received four applications in the prescribed form under the Wildlife and Countryside Act 1981 to add new public footpaths to the Definitive Map and Statement (together “the DMMO Application”).
- 2.2** The DMMO Application was made by Olney Town Council (“the Applicant”) and the grounds appeared to be evidence of use by the public for a period of over 20 years.
- 2.3** Each of the four applications comprising the DMMO Application were accompanied by a certificate signed on behalf of the Applicant and dated 21<sup>st</sup> January 2004, 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.

- 2.4 At the meeting of the Development Control Committee on 11<sup>th</sup> October 2012, Members of the Committee resolved that the evidence in respect of one of the application routes designated B – D did not support a public right of way and was not being proceeded with.
- 2.5 It was also resolved that the determination of the status of the route designated **A – B – E – C – D – H – J – K – L – M – N** be deferred to the meeting of the Development Control Committee on 17<sup>th</sup> January 2013 to enable further evidence in rebuttal to be produced by the landowners and trustees of the land traversed.

### 3. The Claimed Routes

- 3.1 The routes of the claimed footpaths are shown by the broken black lines between the points marked:-
- (i) **A – B;**
  - (ii) **B – C;** and
  - (iii) **C – D;**
- on the plan shown below.



- 3.2 The claimed route **A – B – E – C – D** commences at the junction of Austin Road, Olney and Public Footpath 4A, being Point A on the plan (at approximate grid reference SP489186/251812).
- 3.3 The route then travels in a generally easterly direction for a distance of approximately 161 metres to Point B (at approximate grid reference SP489335/251842).

- 3.4 From Point B the route travels in a generally south-easterly and easterly direction for a distance of approximately 131 metres running through Point E to Point C (at approximate grid reference SP489465/251815).
- 3.5 From Point C the route travels in a generally southerly direction for a distance of approximately 105 metres to Point D (at approximate grid reference SP489487/251711).

#### **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 **D – H – J – K – L – M – N**

- 5.1 In 2008 the Council instructed Robin Carr Associates (Public Rights of Way Management & Consultancy Services) to evaluate the DMMO Application.
- 5.2 In carrying out their evaluation of the DMMO Application Robin Carr Associates obtained evidence of public use of a longer footpath, being the route shown by the broken black line between the points marked **D – H – J – K – L – M – N** on the attached plan marked '**Plan 1**' a copy of which is at **Appendix 1** of this report.
- 5.3 From Point D (at approximate grid reference SP489487/251711) the route travels in a generally southerly direction for a distance of approximately 3 metres over a stile and footbridge (at approximate grid reference SP489488/251707). The route then continues in a generally southerly direction for a distance of approximately 180 metres to Point H (at approximate grid reference SP489531/251541).

- 5.5 From Point H the route travels in a generally southerly direction for a distance of 243 metres to a footbridge at Point J (at approximate grid reference SP489671/251416).
- 5.6 From Point J the route travels in a generally southerly direction for a distance of 146 metres to a stile and footbridge at Point K (at approximate grid reference SP 489701/251273).
- 5.7 From Point K the route travels in a generally southerly direction for a distance of 287 metres to a stile and footbridge at Point L (at approximate grid reference SP489680/250991).
- 5.8 From Point L the route travels in a generally south-westerly direction for a distance of 141 metres to a stile and footbridge at Point M (at approximate grid reference SP489634/250864).
- 5.9 From Point M the route travels in a generally south-easterly direction for a distance of 96 metres to Point N (at approximate grid reference SP489667/250773) being the junction for Olney Public Footpath 01, Olney Public Bridleway 02 and the Clifton Pastures bridge.

## 6. Reports

- 6.1 Robin Carr Associates subsequently submitted three reports to the Council, being:-

(a) **Report 1:** an evaluation of the route shown marked **A – B – C – D – N** on Plan 1; and

(b) **Report 2:** an evaluation of the route shown marked **B – D** on Plan 1; and

(It was resolved at the Development Control Committee on 11<sup>th</sup> October 2012 that evidence in respect of the route designated B – D did not support a public right of way).

(c) **Report 3:** an evaluation of the route shown marked **E – F** on Plan 1 (but which is not the subject of this report to Committee).

(The Council will consider route E – F at a later date).

## 7. Ownership

- 7.1 In view of the fact that the reports prepared by Robin Carr Associates are approximately four years old, further enquiries are being carried out with the Land Registry in relation to ownership of the land affected by:-
- (a) the DMMO Application; and
- (b) route **D – N**.

7.2 A plan showing the relevant land ownerships is attached at Appendix 2

## 8. Assessment of the Evidence

8.1 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.

8.2 The legal test to be applied to the evidence is whether 'on the balance of probability' a route is reasonably alleged to subsist.

8.3 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.

8.4 In the event that the Council decides not to make a DMMO, the Applicant (Olney Town Council) has the right to appeal to the Secretary of State.

8.5 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 not withdrawn, the Order shall have to be submitted to the Secretary of State, who may hold a public inquiry or hearing prior to determining the matter.

8.6 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 **Appendix 3** of this report.

## 9. Surface of Routes

9.1 Copies of the photographs taken during a recent survey of the routes together with a map marked as '**Plan 3**', showing the locations at which these photographs were taken, are attached at **Appendix 4** of this report.

9.2 The photographs record the fact that the routes are unsurfaced.

## 10. Documentary & User Evidence regarding route A – B – E – C – D – H – J – K – L – M - N

10.1 The details of all the parties consulted by Robin Carr Associates are provided in **Appendix 5** of this report.

10.2 The list of the documents, including historical records, consulted and reviewed as part of the investigation carried out by Robin Carr

Associates is provided at **Appendix 6** of this report. (See Appendix 2 of Report 1.)

- 10.3** The DMMO Application was originally supported by fourteen (14) user evidence forms.
- 10.4** These user evidence forms were supplemented by the evidence of an additional forty five (45) witnesses who attended a 'witness interview' session held by Robin Carr Associates at The Olney Centre, High Street, Olney, between 10.00am and 7.00pm on Wednesday 23<sup>rd</sup> April 2008.
- 10.5** The user evidence is summarised in Appendix 4 of Report 1 and in the User-graph that appears in Appendix 5 of Report 1, copies of which are provided at **Appendix 7** of this report.
- 10.6** However, both past and present landowners contend that no public rights of way exist over the land. This evidence is summarised in Appendix 6 of Report 1, a copy of which is provided at **Appendix 8** of this report.
- 10.7** At the Development Control Committee on 11<sup>th</sup> October 2012 at which this claimed route was originally presented, representations were made by members to give the landowners affected a further chance to contest the claim or refute the evidence in the Robin Carr report; it was decided that each landowner whose land fell under the route **A – B – E – C – D – H – J – K – L – M – N** was to be consulted by letter. On 22<sup>nd</sup> October 2012 each landowner was sent a letter and provided with a copy of the draft minutes of the Development Control Committee held on 11<sup>th</sup> October 2012 and a copy of the plan denoting which area of land on the route they own (attached at **Appendix 9**). Each landowner was requested as a matter of urgency to provide any information they may wish to put forward in relation to the public use of the route.
- 10.8** Only one response was received from Olney Rugby Club the owner (by its trustees) of the land at points **A – B – E – C – D** following the consultation letter. A copy of their response letter is attached at **Appendix 10**. No further responses were received from landowners.
- 10.9** As a result of a poor response each landowner was consulted again by letter on 28<sup>th</sup> November 2012 (attached at **Appendix 11**), again giving them an opportunity to put forward any information relating to the route in question. Responses were only received from Olney Town Council, the owner of the land at points **D – H** and lessee of the points **H - J** and Ms Karen Russett the owner of the land between points **J – K**. A copy of these responses is attached at **Appendix 12 & 13**.
- 10.10** The landowners have been fully consulted and numerous attempts have been made to inform them of their opportunity to respond and put forward any evidence they have to rebut the claimed route, which could

have been evaluated and put to the Development Control Committee on 17<sup>th</sup> January 2013. Nonetheless responses have not been received from the landowner for the points at **H – J** nor the landowner for the points at **K – L – M – N**.

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

**12.1** The Council is required to decide whether a public right of way subsists or is reasonably alleged to subsist over:-

- (a) the route marked **A – B – E – C – D – H – J – K – L – M - N** on Plan 1;

**13. Recommendations**

**13.1** 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 – E – C – D – H – J – K – L – M – N** on Plan 1. The public footpath would have a width of 1.8 metres throughout its length.