

Report of Public Rights of Way Manager

Report to Definitive Map Modification Order Application Decision Meeting

Date: 21st August 2014

Subject: Claimed Footpath At Richardshaw Road, Pudsey

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s):	Calverley & Farsley	
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, Access to Information Procedure Rule number: 10.4 (1 & 2)		
Appendix number: B, I, N & O		

Summary of main issues

- To determine a Definitive Map Modification Order Application under Section 53 (5) of the Wildlife and Countryside Act 1981 and seek authority to make a Modification Order if evidence shows that a public right of way exists or that the Definitive Map and Statement needs modifying.

Recommendations

- The Natural Environment Manager is requested to consider the evidence and the law to determine the status of the claimed public right of way (as shown in Background Paper A) and authorise the City Solicitor either,

To make an Order in accordance with Section 53(2)(b) of the Wildlife & Countryside Act 1981 to modify the Definitive Map and Statement by adding the route that is considered to be a public right of way and either confirm it as unopposed or, in the event of objections being received and not withdrawn after statutory notice of the Order is given, to refer it to the Secretary of State for the Environment, Food and Rural Affairs for determination,

or

Refuse authorisation for a Modification Orders to be made on the grounds that the existence of a public right of way cannot be reasonably alleged.

1 Purpose of this report

- 1.1 Leeds City Council is the Surveying Authority for the Leeds Metropolitan District and has a duty to keep the Definitive Map and Statement for the Area under continuous review and to make Modification Orders as necessary to take account of events requiring the map and statement to be modified.

2 Background information

- 2.1 A Definitive Map Modification Order was made in August 2002 by a local resident to claim a footpath off Richardshaw Road, Pudsey that had recently been fenced off. The claimed footpath ran from Richardshaw Road on the Grangefield Industrial Estate, along the edge of an engineering works site and ended to the rear of this site. It is believed that from there people continued around other industrial units to Intercity Way but no user evidence has been submitted to show this. The application can be seen as Background Document B.
- 2.2 The Definitive Map Modification Order Application was accompanied by User Evidence Forms from fifteen people. Earlier forms from fifty seven people were submitted in April 1990 for a path from Grangefield Industrial Estate to Swinnow Lane but no maps accompanied these forms.

3 Main issues

- 3.1 The Definitive Map Modification Order was supported by user evidence submitted by 15 people in 2002 and 57 people in 1990. Path users were contacted to provide additional information about their use of the claimed footpath but they either did not respond or were not willing to be interviewed. The landowners were contacted to see if they had any information or evidence that would affect the use of the claimed footpath. The records held at West Yorkshire Archives Service and Leeds City Council were also checked to see if there was any documentary or historical evidence concerning the claimed footpath. The evidence and its implications are considered below.

Documentary Evidence

- 3.2 The records checked at the West Yorkshire Archives Service and Leeds City Council include historic Ordnance Survey maps, aerial photos, railway plans, building plans and planning records.
- 3.3 There is no sign of the claimed footpath on the Historical Ordnance Survey maps of 1840, 1849, 1888, 1892, 1907, 1908, 1933, 1953 and 1956. Richardshaw Road and Intercity Way are not shown. From 1888 the Great Northern Railway, Pudsey and Low Moor branch is shown over the claimed footpath. There is no crossing in this location. There are underpasses 65 metres and 161 metres further north and 130 metres to the south on this line which would have need to have been used to reach Swinnow Lane from the Grangefield area. The Bramley Brick Works was first shown on the Ordnance Survey maps in 1907 and this increased in size over the years. This would have also needed to have been crossed to reach Swinnow Lane from Grangefield. The Historical Ordnance Survey maps are shown as Background Document C.

- 3.4 On the aerial photograph dated 21st of July 1966 Richardshaw Road has been laid out but only a few industrial units have been built, particularly at the eastern end of the road. The unit that the claimed footpath runs through has been built and the one to the north, but there are no units on either side of them. There appears to be a fence half way through the unit that would obstruct the line of the claimed footpath. There are no wear lines on the line of the claimed footpath. The railway line looks disused but appears to be on an embankment and higher than the industrial units. There also appears to be a fence or hedge between the units and the disused railway line which would have been across the line of the claimed footpath. The Stanningley Bypass and Intercity Way have not been built and the Bramley Brick Works takes up most of the land between the railway line and Swinnow Lane with no apparent way through it. There do appear to be a number of wear lines to the south of the brick works which reach Swinnow Lane. There are very clear wear lines from the north eastern end of Richardshaw Road to the railway line underpass and just north of it and then continuing on a track to Town Street near St. Thomas Church. These are not on the line of the claimed footpath. There is also what appears to be a faint wear line to the south of the industrial unit through which the claimed footpath runs and then onto Lane End through the former Priestly Mills site, but again this is not on the line of the claimed footpath. The 1966 Aerial Photographs are shown as Background Document D.
- 3.5 On the aerial photograph dated the 25th of April 1968 additional industrial units have been built and the Stanningley Bypass is under construction. Intercity Way has not been built. There appear to be items on the line of the claimed footpath and a fence half way through that would obstruct it. There is a fence or wall at the north western end of the claimed footpath across the line of the claimed footpath although there is a vehicular entrance south of it. The railway appears to be higher than the industrial site. There also appears to be a fence or hedge between the units and the disused railway line which would have been across the line of the claimed footpath. There are no wear lines on the line of the claimed footpath. The plot to the south of the unit where the claimed footpath runs appears to be a car park. There is a clear wear line to the bypass but this is not on the line of the claimed footpath. The wear lines towards the underpass from the north eastern end of Richardshaw Road are no longer clear. An aerial photograph is not available for the land to the east of the railway line. The 1968 Aerial Photograph is shown as Background Document E.
- 3.6 On the aerial photographs dated the 19th and 21st of July 1971 the Stanningley Bypass is open. Intercity Way has not been built. There are no wear lines on the line of the claimed footpath and there is a fence across the line of the claimed footpath half way through the unit. There is a fence or wall at the north western end of the claimed footpath across the line of the claimed footpath although there is a vehicular entrance south of it. There also appears to be a fence or hedge to the rear of the unit alongside the disused railway line which would cross the line of the claimed footpath. The area to the south of the unit where the claimed footpath runs is being used as a car park. There are clear wear lines from the south west corner of the metalled parking area to the bypass and along the eastern side of this plot over the disused railway and down to the bypass. The bypass is fenced. There is also a clear wear line from the corner of the car park at the north eastern

end of Richardshaw Road across the railway and then onto the track to Town Street near St. Thomas Church and also east to the former underpass on the other railway branch of the railway and then along the railway towards Swinnow Lane. These wear lines are not on the line of the claimed footpath. The underpasses have been removed and height of the embankment appears to have been reduced. The July 1971 Aerial Photographs are shown as Background Document F.

- 3.7 On the aerial photograph dated the 11th of November 1971 Intercity Way has not been built. There is no wear line on the line of the claimed footpath and there is a fence across the line of the claimed footpath halfway through the unit. There is a fence or wall at the north western end of the claimed footpath across the line of the claimed footpath although there is a vehicular entrance south of it. There also appears to be a fence or hedge to the rear of the unit alongside the railway line. The area to the south of the unit where the claimed footpath runs is being used as a car park. There are wear lines from the south west corner of the metalled parking area to the bypass and clear wear lines along the eastern side of this plot over the disused railway and down to the bypass. The bypass is fenced. The wear lines from the car park at the north eastern corner of Richardshaw Lane can hardly be seen and the track towards the former underpass is no longer there. The eastern side of the railway also appears to have been fenced. The November 1971 Aerial Photograph is shown as Background Document G.
- 3.8 The 1978 Ordnance Survey map shows that Intercity Way has been built although there are no units on the southern side of the road. There is now a foundry on the site of the car park to the south of the unit where the claimed footpath runs and the disused railway has gone. There are lines across the claimed footpath at the north western end and half way through the unit which could indicate fences or walls. These are in the same position as those shown on the aerial photographs. There is no line to the rear of the unit and it appears that there was no boundary line here to the units at the end of Intercity Way. The foundry to the south and the unit to the north appear fenced off at their rear boundaries. The units numbered 1-10 at Intercity Court have a dashed line around them indicating a path. The 1978 Ordnance Survey map is shown as Background Document H.
- 3.9 In November 1989 Senior Heat Treatment Ltd. contacted the council saying that they had recently taken over the unit through which the claimed footpath runs from Guthrie Adams (Heat Treatment) Limited. They were undertaking construction work and on completion were going to fence the site. They were aware that people were walking through their site as a shortcut and that fencing it would inconvenience people but would be 'prepared to allocate a strip of land that would allow the local authority to erect a fence and create a footpath along' their boundary fence. A plan was enclosed that showed a 2 metre wide route along the line of the claimed footpath. Ogden's who occupied the units at the end of Intercity way agreed that Guthrie Adams Yard had been used by the public and that they had not taken steps to stop them entering their own land, but they would not acknowledge that a right of way existed. A site visit on the 15th of January 1991 proposed a route between Seniors and the site to the north then along their rear boundary to the line that was currently being used to the corner of the Odgen's unit. Ogden's would not agree to the use of the perimeter path at the

rear of their building as this would be a security risk. Since construction on the Seniors site had begun the route had varied to avoid the grassy bank. The path would need to be to adopted standards and funding may be available from area funds and committee approval would be required. Consideration was given to the scheme at the Environmental Improvement Sub-Committee but there were insufficient funds and the scheme was not seen as a priority. Seniors agreed with Highways (Peter Dickinson) to stop their fencing two metres short of the proposed route in case funding could be made available. There were also signs of people going through undeveloped parts of the estate to the bypass where the fencing had been broken down. The letters, file and meeting notes concerning this proposal are shown as Background Document I.

- 3.10 Photographs were taken on a site visit on the 9th May 1991. The western end of the claimed footpath is not shown. A blue gate is shown with a gap to the northern side and then a path continues between two high chain link fences with an uneven stone surface. Behind the units on Intercity Court there is a low but steep uneven bank and then a gravel path around the units. A photograph from the southern end of the Intercity Court units shows a clear wear line down the bank to the gravel path behind the units but this is not on the line of the claimed footpath. It would appear that prior to the new fencing being erected in 1989 this was the line that was being used. The 1991 site photographs are shown as Background Document J.
- 3.11 On the 1999 aerial photograph there appears to be a fence or wall and trees or bushes across the north western end of the claimed footpath although there is a vehicular entrance south of it. At the north western corner of the building there is the blue gate and fence line which appear to continue north to the fence/ hedge line between this unit and the one to the north. The gates are closed. There is no sign of the claimed footpath and the double fencing from the 1991 site photographs cannot be seen due to vegetation. The area between this site and Intercity Way also appears to have a lot of trees and bushes and there appears to be a fence between the two. The fence in the middle of the unit, shown on earlier aerial photographs, is no longer there. The 1999 Aerial Photograph is shown as Background Document K.
- 3.12 On the 2002 aerial photograph there is a fence or wall across the north western end of the claimed footpath and the vehicular access has closed gates across it. The blue fence goes from the north western corner of the building to the northern boundary fence. The vegetation along the northern boundary is no longer there. The double row of fencing is visible. The whole of the rear of the unit is fenced off including the end of the claimed footpath. The 2002 Aerial Photograph is shown as Background Document L.
- 3.13 A site visit was carried out on the 2nd of September 2002 and photographs taken. There is a low stone wall with a palisade fence behind it at the north western end of the claimed footpath. On this fence was a laminate notice which said "NOTICE WE REGRET TO ADVISE THAT THIS FOOTPATH IS NOT A PUBLIC RIGHT OF WAY. DUE TO SECURITY REASONS THE ...". The rest of the notice was not legible due to water damage. The entrance gates were open as were the blue gates at the north western corner of the building. The gap to the side providing access to the claimed footpath between the fencing was fenced off with a section

of palisade fence and barbed wire as was the far end. There were also a number of large stones on the surface of the footpath and the back below the fence at the south eastern end. No photographs were taken of the rear of the Intercity Way units. The 2002 site photographs are shown as Background Document M.

User Evidence

- 3.14 User Evidence Forms were completed in April 1990 and August 2002 following challenges to use of the claimed footpath. The 1990 forms describe the route used as running from Swinnow Lane to Grangefield Industrial Estate. The 2002 forms describe the route as Richardshaw Lane to Intercity Way, Grangefield Industrial Estate, Pudsey. The User Evidence Forms are shown as Background Document N (1-72)
- 3.15 Fifty seven people submitted User Evidence Forms in April 1990 although none of them included a map of the route they had used. These forms claim use between 1950 and 1990. Six people used the claimed footpath for a period of twenty years before the challenge date with the rest using it for between one and nineteen years. Forty one people used the claimed footpath on a daily basis, ten people several times a week, one person several times a month and five people occasionally. Fifty five people used it to get to work, twelve also used it for pleasure and two people used it only for pleasure.
- 3.16 Six people refer to notices challenging use and five people state that they were erected in October 1989. The notices were reported to say private land, access to be closed, way will be fenced off, or similar. Many other people raised concerns about the extra distance to walk if access was prevented as if they were expecting this to happen. Only one person indicated where this sign was located which was by the firm Seniors. This is the site through which the 2002 claimed footpath runs.
- 3.17 A map was not included with the 1990 User Evidence Forms which significantly reduces the weight that can be placed on them as it is not possible to identify where the path they were using was exactly. However, the railway line was in operation from 1878 when the line opened until June/ July 1964 when the line and stations were closed. Therefore, any use prior to 1964 could not have been on the line shown on the 2002 application because it would have been an offence to cross the railway line. Anyone using a route to Swinnow Road before 1964 is likely to have used the underpasses to the north or the south of the claimed footpath. Three of the claimants claim to have used a footpath prior to this date which casts further doubt on their evidence. The aerial photograph of 1971 and the 1978 Ordnance Survey map shown a fence across the line of the claimed footpath which would have prevented use. Furthermore, the aerial photographs also indicate that until at least 1971 the claimed footpath was not being used but alternative routes to the north and south were. The reference to the notice being by Senior does indicate that they were likely to be using a route through this unit by 1989. It is clear that a full period or twenty years use was not possible on the line of the claimed footpath between 1969 and 1989.
- 3.18 Fifteen people submitted User Evidence Forms in August 2002 and each form had a map that showed a route along the northern boundary of an industrial unit off Richardshaw Road to the back of a unit on Intercity Way/ Court. Once it got to

the back of the Intercity Court unit the maps and forms did not indicate which way the claimants went to meet the public highway which reduces the value of the forms. They also show use all the way along the northern boundary of the site. However at the north western corner there is a low wall with a palisade fence on top. This is shown on the aerial photos from 1968, the Ordnance Survey map from 1968 and seen during site visits in 2002 and 2014. Path users would most likely have gone in through the vehicular access before cutting across to the path that was fenced off in 2002.

- 3.19 These forms show use between 1972 and 2002. Three people claim use for twenty years or more with the rest using the claimed footpath for between four and nineteen years. Twelve people state that they used the claimed footpath on a daily basis, two several days a week and one several days a month. All state that the claimed footpath was fenced off and most state that this was done in May or June 2002. None of the claimants refer to the 1989 notices or the preventing of access to the site during the construction works in 1989 to 1990. They also do not mention that the line changed after 1989 when the path was relocated to the boundary of the site. Because the forms and maps do not show the full route used and do not mention the notices or change of line which occurred in 1989/1990 this casts doubt on the validity and value of the evidence submitted in the 2002 User Evidence Forms.

Representations Against the Application

- 3.20 The current landowners were contacted in 2014 to see if they had any evidence relating to the claimed footpath. They telephoned the office to discuss the claim. The current owners had only purchased the site a few years before and did not have knowledge of the site to rebut a claim. They would not want to see the claimed footpath reopened as it would affect the security of their site.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 No statutory consultations with prescribed bodies are required prior to making a Modification Order. However, in line with Department of the Environment Circular 1/09, consultation with the main user groups has occurred.
- 4.1.2 Ward Members, the City Solicitor and Parks and Countryside have been consulted, replies of which are attached at Background Paper O. Where necessary landowners, applicants and other interested parties have also been consulted.
- 4.1.3 The Ramblers Association did not have direct knowledge of the claimed footpath but carried out a site visit before responding. They referred to the claimed footpath being blocked off with evidence that a gap had been filled in. They also referred to the fact that it did not join the adopted highway at the south eastern end and that the security fencing between the units prevented use of the claimed footpath. They did feel that there would be a need for a connecting route on foot between Intercity Way and the Grangefield Industrial Estate and would support the application if it could be shown that it would connect one publicly accessible

location to another. Councillor Carter also stated that he would support the application but gave no further information.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 As the decision is a Significant Operational Decision an EDCI impact assessment is not required.

4.2.2 Definitive Map Modification Order Applications can only be determined on the basis of the evidence available to show if a public rights of way subsists or can be reasonably alleged to subsist. Therefore, issues such as suitability, desirability, human rights, equality and diversity cannot legally be taken into consideration when determining Definitive Map Modification Order Applications. If an Order is made and confirmed an EDCI Impact Assessment would be carried out to ensure that any works required to open the path would consider equality and diversity issues.

4.3 Council Policies and City Priorities

4.3.1 The determination of this application is dealt with in accordance with the 'Leeds City Council Wildlife and Countryside Act 1981 Modification of the Definitive Map and Statement of Priorities' which lists priorities for keeping the Definitive Map and Statement up to date.

4.3.2 Statement of Action DM1 in the Rights of Way Improvement Plan states that 'we will continue to review the Definitive Map and Statement'.

4.3.3 Statement of Action DM2 in the Rights of Way Improvement Plan states that 'we will take a proactive approach to dealing with Definitive Map Modification Order Applications'.

4.3.4 Statement of Action DM6 in the Rights of Way Improvement Plan states that 'we will endeavour to meet the 2026 cut of date for recording historical public rights of way as set out in the Countryside and Rights of Way Act 2000'

4.3.5 Statement of Action DM7 in the Rights of Way Improvement Plan states that 'we will continue to identify and record all Definitive Map anomalies, missing links and unrecorded paths'.

4.4 Resources and Value for Money

4.4.1 Leeds City Council has a duty to investigate Definitive Map Modification Order Applications and make Definitive Map Modification Orders if necessary.

4.4.2 The cost of making any Orders, should one be authorised, would be met from the existing public rights of way budget.

4.4.3 If the Order is opposed, referred to the Secretary of State and is taken to Public Inquiry, then the additional costs are incurred. Public Inquiry will cost approximately between £3000 and £7000.

4.4.4 A Modification Order recognises the existence or correct status of a public right of way and no new rights or liabilities will be created should an order be made. There are consequently no resource implications.

4.4.5 There are no additional staffing implications resulting from the making of the Order.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The Director of Environment and Housing has authority to take decisions relating to the determination of Definitive Map Modification Order Application under Section 53 of the Wildlife and Countryside Act 1981 as set out in the Constitution under Part 3, Section 3E, Officer Delegation Scheme (Council (Executive) functions), Director of Environment and Housing (2I).

4.5.2 The Wildlife & Countryside Act 1981 places statutory duty on the City Council as the Surveying Authority to investigate the matters stated in an application made under Section 53(5) of the Act and to decide whether or not to make an Order to which the application relates. Under Section 53(2)(b) of the Act, Surveying Authorities are required to keep the Definitive Map and Statement under continuous review and to make such modifications to the map and statement as appear to them to be requisite.

4.5.3 Section 53(3)(b) of the Act, requires the Definitive Map and Statement to be modified by Order on the expiration of any period such that the enjoyment by the public of a way during that period raises a presumption that the way had been dedicated as a public path or restricted byway. Section 53(3)(c)(i) of the Act, requires the Definitive Map and Statement to be modified by Order if evidence is discovered which, when considered with all other relevant available evidence, subsists or is reasonably alleged to subsist over land in the area to which the map relates. Section 53(3)(c)(ii) of the Act, requires the Definitive Map and Statement to be modified by Order if 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. Section 53(3)(c)(iii) of the Act, requires the Definitive Map and Statement to be modified by Order if 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.

4.5.4 Should an Order be authorised, the City Solicitor will make and advertise the Order and either confirm it as unopposed or, in the event of objections being received and not withdrawn after statutory notice of the Order is given, to refer it to the Secretary of State for the Department of the Environment, Food and Rural Affairs for determination.

4.5.5 Section 31(1) of the Highways Act 1980 provides that a presumption of dedication is raised where a way has been enjoyed by the public as of right (without force, secrecy or permission), without interruption for a full period of twenty years. The twenty-year period ends with an act that brings into question the public's right to use the way, and is calculated retrospectively from that time (Section 31(2) of the 1980 Act).

- 4.5.6 The presumption is rebuttable by proof that the landowner has erected and maintained notices visible to path users inconsistent with dedication (Section 31(3) of the Act) or that he has given notice to the highway authority, where a notice erected is subsequently torn down or defaced, denying any intention to dedicate (Section 31(5)) or made statutory declarations to the highway authority denying the dedication of a new rights of way over the land shown in map and statement deposited with the authority (Section 31(6)).
- 4.5.7 In order to have brought the public's right to have used the alleged way in question, the landowner could have taken various measures during the claimed period of use.

These measures include:

- § Locking a gate across the path.
- § Putting up a notice denying the existence of a public right of way.
- § Physically preventing a walker from using the way.
- § Indicating that the path was for use by permission only.
- § Giving an instruction to an employee or tenant to prevent people walking the path.
- § Giving notice to the Highway Authority denying any intention to dedicate a public right of way over the land.
- § Seeking a court declaration that the way was not public or bringing an action for trespass.

- 4.5.8 The burden of proof therefore rests with the landowner to show that there is sufficient evidence to show that there is no intention to dedicate a public right of way over the claimed path during the claimed period of use.
- 4.5.9 The decision to make a Modification Order when a claim is based on user evidence only should be based on the on the balance of probability (not beyond all reasonable doubt, as is the case in criminal law) in the light of all relevant available evidence. Consequently if, on the balance of probabilities, it is considered that it is more likely that a right of way can be shown to subsist, then a Modification Order should be authorised. For claims where documentary evidence exists (instead of or as well as user evidence), the decision to make a Modification Order when a path is not shown on the Definitive Map and Statement should be based on if it can be shown to subsist or reasonably alleged to subsist and the decision to confirm it on the balance of probability (not beyond all reasonable doubt, as is the case in criminal law) in the light of all relevant available evidence. Consequently if it is considered that a right of way can be shown to subsist or can be reasonably alleged to subsist, then a Modification Order should be authorised. The decision to make and confirm a Modification Order when a path is shown on the Definitive Map and Statement should be based on the on the balance of probability (not beyond all reasonable doubt, as is the case in criminal law) in the light of all relevant available evidence. Consequently if, on the balance of probabilities, it is considered that it is more likely that a right of way can be shown to subsist, then a Modification Order should be authorised. The question of suitability or desirability, safety or maintenance is not a relevant factor when determining applications.

- 4.5.10 Public Rights of Way cannot be extinguished by disuse. Once a right of way has come into existence, it continues indefinitely and can only be brought to an end by the use of statutory powers, thus the maxim “Once a highway, always a highway”. This is irrespective of any changes that have occurred on the ground in the meantime.
- 4.5.11 Section 32 of the Highways Act 1980 states that when determining whether a way has or has not been dedicated as a highway, any map, plan or history of the locality or other relevant document, tendered as evidence shall be taken into consideration.
- 4.5.12 Under the provisions contained within Section 130 of the Highways Act 1980 the City Council has a statutory duty to protect and assert the right of the public to the use and enjoyment of any highway and as far as possible to prevent the stopping up or obstruction of highways.
- 4.5.13 Under Common Law there is no specific period of user which must have passed before an inference of dedication may be shown. However, a landowner must be shown to have intended to dedicate a right of way over the land. Public use can be used as evidence to show an intention to dedicate but it must be sufficient to have come to the attention of the landowners. If other evidence exists that showed that public rights were not intended, public use will not raise an inference of dedication.
- 4.5.14 The personal information in Background Paper B, I, N and O of this report has been identified as being exempt under Access in Information Procedures Rule Number 10.4 (1 & 2) because it contains personal information about a member of the public. This information is exempt if and for so long as in all the circumstances of the case, the public's interest in maintaining the exemption outweighs the public interest in disclosing this information. The comments relating to the modification made in the exempt documents are considered in Sections 2, 3 and 4.9 therefore the public's interests in relation to the diversion have not been affected.
- 4.5.15 The recommendations in this report do not relate to a key decision, therefore prior notification in the Forward Plan is not necessary.

4.6 Risk Management

- 4.6.1 As with all Definitive Map Modification Orders if the decision is taken to make an Order there will be an opportunity to object to the Order with the associated costs. However, if the evidence indicates that an Order needs to be made to modify the Definitive Map and Statement Leeds City Council have a duty to make an Order. If an application is turned down the applicant has a right to appeal the decision to The Planning Inspectorate.

5 Conclusions

- 5.1 Challenges occurred to use of the claimed footpath in 1989 by the erection of notices and again in 2002 by the erection of fencing and notices. Access to the unit where the claimed footpath runs was prevented between 1989 and 1990

while construction occurred. The new owner of the unit left a two metre strip for the provision of a footpath after 1990 but this was never fully laid out as funding could not be found. The owner of the unit on Intercity Way objected to the change in alignment to the claimed footpath. There is no twenty year period of use prior to the Definitive Map Modification Order Application in 2002 as there were notices erected in 1989 saying there was no access and access was prevented during construction on the industrial unit. The aerial photographs indicate that the low stone wall at the north western end of the claimed footpath had existed since at least 1968 and that a fence was across the middle of the claimed footpath between 1966 and 1971 with it also being shown on the 1978 Ordnance Survey map. The aerial photographs up until 1971 indicate that the claimed footpath was not being used but a number of other routes were. Therefore, use before 1978 is most likely to have been on a different line. Because of the fencing, walls and hedging across the site and a raised railway behind it a claimed footpath could not have been used though this site to Intercity Way or Swinnow Lane for twenty years between 1969 and 1989 or for an earlier 20 year period. A claim under common law is also not considered possible because the owner of the Intercity Way unit did not agree to the realignment or dedication of a path and a new route over the Richardshaw Road unit was not completed or approved.

- 5.2 It is clear that there have been obstructions and challenges through the site that would have prevented use of a public footpath for a full period of twenty years before 2002 and 1989. The route used was also not the same route and use between Swinnow Lane and Grangefield Industrial Estate varied regularly as the site developed and routes were obstructed.

6 Recommendations

- 6.1 The Natural Environment Manager is requested to consider the evidence contained within the attached reports, and the law to determine the status of the alleged public rights of way and authorise the City Solicitor either,

To make Orders in accordance with Section 53(2)(b) of the Wildlife & Countryside Act 1981 to modify the Definitive Map and Statement by adding the routes that are considered to be public rights of way and either confirm them as unopposed or, in the event of objections being received and not withdrawn after statutory notice of the Order is given, to refer it to the Secretary of State for the Environment, Food and Rural Affairs for determination,

or

Refuse authorisation for a Modification Orders to be made on the grounds that the existence of a public rights of way cannot be reasonably alleged.

7 Background Documents¹

- Background Document A: Map of the claimed footpath
- Background Document B: Definitive Map Modification Order Application
- Background Document C: Historical Ordnance Survey Maps 1840 to 1953
- Background Document D: 1966 Aerial Photographs
- Background Document E: 1968 Aerial Photograph
- Background Document F: July 1971 Aerial Photographs
- Background Document G: November 1971 Aerial Photographs
- Background Document H: 1978 Ordnance Survey Map
- Background Document I: Letters, File and Meeting Notes Concerning a Proposed Path
- Background Document J: 1991 Site Photograph
- Background Document K: 1999 Aerial Photograph
- Background Document L: 2002 Aerial Photograph
- Background Document M: 2002 Site Photograph
- Background Document N: User Evidence Forms
- Background Document O: Consultation Responses

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.