

Report of The Public Rights of Way Manager

Report to Definitive Map Modification Order Application Decision Meeting

Date: 21st August 2014

Subject: Rockwood Road to Priesthorpe Lane, Calverley

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)		
Background Documents A E F G I J & K		

Summary of main issues

1. 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

2. 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 Document 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/ upgrading/ amending the route(s) that is/ are 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to be a public right of way and either confirm it as unopposed or, in the event of objections being received and not withdrawn after statutory notice of the Order is given, to refer it to the Secretary of State for the Environment, Food and Rural Affairs for determination,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.

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 Application was made in 2006 by a local resident to add a public footpath to the Definitive Map and Statement between Rockwood Road and Priesthorpe Lane, Calverley. The claimed footpath runs from Rockwood Road through a ginnel and across the north end of Priesthorpe School field to Priesthorpe Lane. Application and map are attached at Background Document A.
- 2.2 The application was made because a gate was erected by Priesthorpe School in 2006 at the end of the ginnel off Rockwood Road, which blocked the alleged route.

3 Main issues

- 3.1 The Definitive Map Modification Order Application was supported by User Evidence submitted by thirty members of the public. Path users were interviewed to provide further information about the claimed footpath and their use. The landowners were also contacted to see if they had any information or evidence that would affect the claimed footpath. The records at the West Yorkshire Archives Services 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 Records checked at the West Yorkshire Archives Services and Leeds City Council include various historic maps, documents and aerial photographs.
- 3.3 The Ordnance Survey map from 1962 shows the ginnel and the boundary line of the properties on Rockwood Grove extending over the end of it. The 1968 map shows the ginnel with a faint line across it at the southern end, the houses and school. The Ordnance Survey maps are shown as Background Document B.
- 3.4 Aerial Photographs from 1968, 1971, 2002 and 2006 show the houses and the ginnel, and the school field. On the 1971 photograph it looks like there is a fence across the path at the Priesthorpe Lane end of the path. Aerial photographs from 2009 show a line (gate) across the route at the Rockwood Road end of the path. The Aerial Photographs are shown as Background Document C.
- 3.5 A notice under Section 31(6) of the Highways Act 1980 has not been deposited with Leeds City Council stating that no public rights of way have been dedicated over this land.

- 3.6 Various Planning Applications for the school grounds were examined dating from the late 1950s to 1972. The 1957 plans shows a double dashed line 'pedestrian access' between plots 66 and 67, which is where the present ginnel is, with the land 'reserved for school site'. The 1962/3 plan shows the ginnel with the path extending towards the school. By 1971/2 the school is shown on the plans and the grass banking, with the 'school entrance path' from the ginnel. The Planning Applications are shown as Background Document D.
- 3.7 Letters from the Education Department, the County and Council and a local resident show that a public footpath was considered, but turned down in the 1960s. A letter from the Head teacher clearly states that 'there is no public right of way or access'. In a letter dated 23rd August 1966 G. Wimpey & Co Ltd state that they are not going to make the path public whilst their purchasers are not in agreement. This was accompanied by a Land Registry plan showing 'Access to Secondary School Site from Rockwood'. Letters and plan attached at Background Document E
- 3.8 Correspondence in the Rights of Way files show that in 1988 complaints were received by the Council regarding 'trespassing' and 'no walking of dogs' signs that were put up by the school. A letter was sent in 1989 stating that the Council would ask the school to remove these signs. Letters attached at Background Document F.
- 3.9 The next correspondence regarding the path is 2006, when the gate was erected at the end of the ginnel and an Application for a Definitive Map Modification Order was submitted. Notice was served on the landowner in 2006, which was Education Leeds, who objected to the claim, as they believed it would affect development of the site. Email from Education Leeds attached at Background Document G.
- 3.10 Site photographs taken at the Priesthorpe Lane end of the path in 2014 show remnants of gate posts, attached at Background Document H.

User Evidence

- 3.11 User Evidence was received from thirty members of the public who have used the claimed footpath. In 2014 ten users of the alleged route were interviewed. Copies of the User Evidence Forms and interviews are shown as Background Document I (I1-30) along with a summary sheet and graphs.
- 3.12 Twenty people used the claimed footpath for twenty years or more with the remaining using it for between six and nineteen years. Longest use was for forty-seven years dating back to 1959.
- 3.13 All of the claimants used the alleged footpath on foot with four also using it with a bicycle. All of the path users believed that it was public, and were mainly using it for pleasure and to get to the shops. Other users accessed the route to get to work, the school and the train station. It is unclear from some of the User Evidence forms which line people took, some walked between the houses and the mound and some walked on the mound, others also walked through the school premises.
- 3.14 11 claims they used the path from 1996 on a monthly basis for leisure. They saw other people using the route to walk the dog, to get to the sports hall and they believe to get to the train station.

- 3.15 I3 started using the route in 1989 until it was blocked in 2006. They used the route between the hill and the back of the houses to walk the dog. They believe that there was a notice and gate around 1991, but can't remember what the notices said.
- 3.16 I11 claims to have only used the path occasionally and never saw anyone else using the way. They used the lower path between the mound and the fence line, and also walked down past the bungalow. However around 1994 they ceased using the route when a gate was erected on Priesthorpe Lane. This deterred them from using the route again, though people had pushed the gate open to get through. They believe that Wimpey Homes had put the ginnel there to give residents' access to Priesthorpe Lane.
- 3.17 I12 started using the route in the early 1970s to walk the dogs. They state that there was a gate at the Priesthorpe Lane end of the path, which was locked, but you could climb over it. They think it has been present for around 25 years (1989-2014). There was also a gate by the Bungalow, which you could access Priesthorpe Lane from. They used this route and the claimed route. They weren't challenged by anyone apart from the caretaker shouting at them to put the dog on a lead.
- 3.18 I15 used the route in the mid-1960s until the early 1970s, and then again in the early 1980s until 2006. They used the route on top of the mound at the back the houses on Rockwood Grove, and also went through the school grounds to Priesthorpe Lane.
- 3.19 I18 used the path in approximately 1966/67, and walked along the fence line to Priesthorpe Lane and also past the bungalow. They report the gate being open on Priesthorpe Lane and it was always there.
- 3.20 I19 started using the route around 1973 when they got a dog, and used the route daily until 1989, when they used it occasionally. They walked on top of the mound when the route was muddy and sometimes walked past the bungalow. There was a gate onto Priesthorpe Lane which gradually fell into disrepair, but was open.
- 3.21 I23 used the route from 1962 occasionally. They state that over time you had to walk further up the bank, as there were blackberry bushes at the back of the houses.
- 3.22 I24 used the route on a weekly basis from 1982 to get to the station and for recreation, and states that no-one was consulted about the gate being put up.
- 3.23 I25 used the route from 1984 daily to walk the dog, to get to the station and to attend activities at the school on an evening. They claim that there was a 'piece-meal' fence and then a gate, which eventually was locked at the Priesthorpe Lane end of the route. The caretaker requested that they keep to the line across the top of the grass mound and away from the school.
- 3.24 I30 states that there was a notice saying 'no trespassers' around 1991, but this was removed, however they don't give a date.

Representations Against the Application

- 3.25 Objections to the Definitive Map Modification Order Application were received from local residents and staff. In 2014 Interviews were carried out with local residents and staff at Priesthorpe School. Objection letters and subsequent interview transcripts attached at Background Document J (J1-5).
- 3.26 J1 the Superintendent of Priesthorpe School, submitted a statement claiming that he had seen people in the school grounds, which he considered to be trespassing, and that signs clearly stated this. He believed people were using the route as a short cut after the fence was vandalised on Priesthorpe Lane.
- 3.27 In March 2014 J1 was interviewed. He has been employed by the school for 27 years, but knew the area as a boy. In the time working at the school he states that he challenged many people using the alleged route. He told people that this was not a thoroughfare and that they should not be walking in the school grounds. He also states that some members of the public were given permission to use part of the route, and a gate near the bungalow was locked at specific times of the day. The other access points were discussed from Rockwood Road and Priesthorpe Lane. He states that there were bollards or steel girders and then a gate was erected at the Rockwood Road end of the route. The gate was put there to allow the electric board access to the sub-station in the 1960s, this was locked but people climbed over it. It fell into dis-repair and was never replaced until about 15 years ago (1999). The present gate was erected in 2006 for security reasons, after a number of burglaries. The access point on Priesthorpe Lane has always had a gate on. This gate allowed tractors to gain entry to cut the grass. In his Statement he claims that there was another route on to Priesthorpe Lane off Rockwood Crescent that people used to use, and he used as boy.
- 3.28 J2 a previous head teacher submitted a statement and had worked at the school between 1980-2006. They challenged people who used the route over the years when they worked there. They also recall a sign present near to the ginnel.
- 3.29 J3 a resident living next to the ginnel stated that they had seen walkers, joggers, and dog walkers infrequently using the path. They had challenged horse-riders and motor cyclists using the route. They explain that in 1964 a gate was erected and locked outside of school hours, this is accompanied by a letter from the County Council in 1966 stating that the gate has been erected and will be locked. Another letter attached is from the Head teacher in 1967 states that the gate will be locked during the Easter holidays.
- 3.30 J3 also claims that there was a notice at the end of the ginnel in 1966 reading 'Priesthorpe School. Private Property. Keep Out'. This notice fell into disrepair between 1987-1992.
- 3.31 In 2014 interviews were held with those people who had an interest in the land or who objected to the footpath claim, some of whom had already submitted evidence above.

- 3.32 J3 was interviewed and stated that they had lived next to the path since 1968. They only used the ginnel to get to the school when their children attended. They believed this was the purpose of the ginnel.
- 3.33 J3 reiterated in their interview that they challenged people coming through on horses and motorbikes. They believed the school children had permission to access the school through the ginnel, though they occasionally saw people going for a walk.
- 3.34 J3 claim that when they came to the area there was a locked 5-bar gate at the Priesthorpe Lane end of the path, which was replaced with a metal one. The lane was fenced prior to the gate being erected in 2006 at the Rockwood Road end of the route. At the Rockwood Road end of the ginnel there was a girder, which was replaced by a gate in the 1990s. This was locked certainly on an evening and in the summer holidays. However, it kept getting vandalised.
- 3.35 J4 have lived near to the route since 1985. In that time they saw people using the path on top of the mound until Priesthorpe Lane was fenced to stop the school children getting out. J4 used the path themselves on occasion but in approximately 1990 they were told they shouldn't be. They didn't like to break the rules so ceased using the route, and only accessed the school grounds with permission.
- 3.36 J4 thought the ginnel's purpose was to access the school. They don't recall any notices or signs. They believe that there has always been a gate on Priesthorpe Lane. The 1st gate was broken down, and replaced by a more robust gate, which was locked.
- 3.37 J5 have lived in the area since 1975. They claim that they have seen people using the school grounds, but not on the claimed route. The route used was through the ginnel and down past the bungalow or on top of the mound. They believed the route past the bungalow to be a permissive route, as they had been told this from the previous owner of their house. They thought the purpose of the ginnel was to allow school children to access Farsley Farfield School and Priesthorpe School.
- 3.38 J5 believed that there were signs erected at the start of the ginnel from 1975 saying 'private property'. They don't recall any verbal challenges but believe the gate at Priesthorpe Lane challenged people, as you had to climb over it. They believe this was present from 1975 onwards. There was also a gate at the beginning of the ginnel prior to 2006, but they couldn't remember specific dates.
- 3.39 J6 has lived in the area since 1983, and used the route in 1990 to get to the ring road. Her husband used the route on a daily basis to get to the station. They used the claimed route between the mound and the houses to access Priesthorpe Lane, and believed the ginnel to be the entrance to the school. However they object to the path due to anti-social behaviour.
- 3.40 J7 has lived in the area since 1996, but in the 1960s did a night class at Priesthorpe School, and was told not to access the school other than the main entrance. They recall a sign at the Rockwood Road end of the route prohibiting access, which made it clear that you were not supposed to go there. They believed the ginnel to

be access for the utility company. Staff who worked at the school also told people that they should not use the path, as did the caretaker between 2001-2005.

- 3.41 J7 states that there was always a farm gate at the Priesthorpe Lane end of the route. The present gate was put up in 2006 and was requested by local residents, in full consultation with the school, residents and councillors.
- 3.42 J8 lived next to the ginnel from 1963 to 1973 and then moved a little further up the road. When they first moved to the area there was no access to Priesthorpe Lane and Wimpey Homes were selling the land to the West Riding for a school to be built. The ginnel wasn't surfaced until after the school was built.
- 3.43 J8 believes that there was a notice up saying 'trespassers will be prosecuted' at the Rockwood Road end of the path, not before 1990. They also state that there was a metal, locked gate which was access for grass cutting, at the Priesthorpe Lane end of the route. There was also a smaller metal gate at the Rockwood Road end of the path which was erected sometime between 1963 and 1973, and was sometimes locked.

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, Ward Members, and relevant council departments have been carried out and their comments are discussed below and attached at Background Document K (1-4).
- 4.1.2 K1, 2 and 3 objects to the claimed route, but their comments are relating to anti-social behaviour and security reasons. Whilst these issues are important they cannot be taken into consideration when determining whether rights of way exist or not.
- 4.1.3 The Leeds Group of the Ramblers Association (K4) wish to remain neutral with regards to the path being added to the Definitive Map. A member of this group did some investigation work of his own and spoke to local residents about the claim.

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 will be carried out to ensure that any works required to open the path will 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.
- 4.3.6 The Parks and Green Space Strategy proposal 19 states that 'we will promote and develop green corridors for recreation, conservation and transport.' Proposal 22 states that 'we will contribute to the West Yorkshire Local Transport Plan by providing sustainable transport routes in parks and green spaces.'

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 Neighbourhoods 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 Neighbourhoods (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 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 Document A, E, F, G, I, J, and K of this report have 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.

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.

5 Conclusions

5.1 The evidence in the public rights of way information forms relates to Section 31 of the Highways Act 1980 and the presumed dedication of a highway on the basis of uninterrupted use as of right over a period of at least twenty years. This twenty years period has to be calculated retrospectively from the date when the right of the public to use that way was first brought into question. The relevant date in this case is 2006 when the gate was locked at the end of the ginnel leading from Rockwood Road to Priesthorpe School.

5.2 It is clear from the User Evidence Forms that members of the public have used part or all of the claimed footpath for in excess of twenty years. All users believed that the path was public. However some of the users walked between the mound and the fence line, some used the route past the bungalow and some used the route along the top of the mound. The claimed route was not always the one that was used.

5.3 There are reports of challenge from the users of the alleged footpath. I11 was deterred by the gate at Priesthorpe Lane. I12 climbed over the gate at Priesthorpe Lane, and other users report the gate being closed. There are claims that the gates were locked at different times, which could constitute as an interruption to use. Users have also seen notices on the school site stating trespassers will be prosecuted. Signs can be ambiguous and their meaning interpreted in different ways. However this sign was on the boundary to the school, so was a clear indication that the public were not welcome.

5.4 The letters regarding the gate on Rockwood Road show that it was locked sometimes in the holidays and outside school hours.

- 5.5 The purpose of the ginnel is uncertain according to some local residents. Some people believe it was provided for access to the school and others believe it was put there to allow residents to access Priesthorpe Lane.
- 5.6 Some of the objectors to the path claim that they have verbally challenged users of the alleged route.
- 5.7 The land owner has not submitted a Section 31(6) notice to Leeds City Council. However, plans from the 1957 Planning Applications show pedestrian access between plots 66 and 67, which is where the present ginnel is, with the land 'reserved' for the school. It is also labelled 'school entrance path' on the 1972 plan. This could imply that the ginnel was meant to provide access to the future school, especially as it was tarmacked after the school was built. Also the letters from the 1960s show that they did not wish to dedicate a right of way through the school grounds.
- 5.8 Therefore, it is considered that it cannot be shown, on the balance of probabilities, that a public footpath has been enjoyed without interruption or force for a period of twenty years. There is not enough relevant documentary evidence to support making a right of way. Therefore, it is also considered that a public footpath cannot be shown to subsist or reasonably alleged to subsist.

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 an Order in accordance with Section 53(2)(b) of the Wildlife & Countryside Act 1981 to modify the Definitive Map and Statement by adding/ upgrading/ amending the route(s) that is/ are 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.

And give full reasons for the decision made.

7 Background Documents¹

- Document A - Definitive Map Modification Order Application and Map
- Document B - Ordnance Survey Maps
- Document C - Aerial Photographs
- Document D - Planning Applications
- Document E - Letters and plan regarding access
- Document F - Letters regarding signs
- Document G - Email from Education Leeds
- Document H - Photograph of gate posts
- Document I - User Evidence Forms, Interviews and Summary Sheets
- Document J - Objections letters and Interviews
- Document K - Consultation Responses

¹ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.