

Report of Public Rights of Way Manager

Report to Definitive Map Modification Order Application Decision Meeting

Date: 20th May 2016

Subject: Various Claimed Footpaths Across Engine Fields, Yeadon

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Otley & Yeadon, Guiseley & Rawdon	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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? If relevant, Access to Information Procedure Rule number: Appendix number: B, C, N & O	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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. The Natural Environment Manager is requested to consider the evidence and the law to determine the status of the claimed public rights 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 the routes that are considered to be public rights of way and either confirm it as unopposed or, in the event of objections being received and not withdrawn after statutory notice of the Order is given, to refer it to the Secretary of State for the Environment, Food and Rural Affairs for determination,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 public rights of way cannot be reasonably alleged.

and give full reasons for the decision made.

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 The area of land in question is known locally as Engine Fields, Dog Mill Ponds or Yeadon Old Mills, and is an area of open space between an Industrial Estate to the west and residential housing to the east. To the north is the site of an old mill off Miry and Well Lane, and retail units off Kirk Lane, and to the south a disused railway which is a recreational route known as The Yeadon Guiseley Railway Path. There has been enquires regarding various different routes over Engine Fields for a number of years. There is one Definitive Footpath to the east, which is Aireborough Footpath No. 69. This path was diverted in the late 1990s when the housing estate was extended.

2.2 In approximately 1978 the area around Engine Fields was included in consultation for the reclamation of land. Around 1989 the Industrial Estate was expanding, which resulted in a local resident asking for a footpath crossing Aireborough Footpath No.69 and over the Beck, to be added to the Definitive Map and Statement, and for the installation of a bridge. No application was submitted at this time, but the bridge was built in 1997, known as the Albert Shutt Memorial Bridge.

2.3 In 1991 ten User Evidence Forms were received after a Planning Application was submitted to develop part of the land, for a criss-cross of routes at the southern end of Engine Fields leading from the Industrial Estate to the Railway Footpath and then up towards Well Lane. However, a Definitive Map Modification Order wasn't submitted until 2003 for footpaths to the south of Engine Fields, from the Albert Shutt Memorial Bridge to the Yeadon and Guiseley disused railway path. This was in reaction to a fence being erected at the southern end of Engine Fields to allow development to occur. All but one of these footpaths has been built over. The Definitive Map Modification Order Application is shown as Background Document B. The application was accompanied by thirty-one User Evidence Forms.

2.4 More recently there were further claimed footpaths across this piece of land from Well Lane to Guiseley Railway path, Parkland View and West Field Industrial Estate to the Railway path. This came about after the development of the Industrial Estate to the west. These additional footpaths are laid out on the ground and are well used. Background Document A shows the existing footpaths that have been claimed with the paths lettered so that individual sections can easily be identified.

2.5 Most of Engine Fields is owned by Leeds City Council, and vested with Parks and Countryside. The route A-B is owned by a local company, and most of the route G-H is owned by the previous developer. Landownership is shown as Background Document C.

3 Main issues

3.1 The Definitive Map Modification Order Application was supported by forty-one User Evidence Forms. Some path users were interviewed about their use of the claimed footpaths. 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 was 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 includes historic Ordnance Survey maps, aerial photos, railway plans, building plans and planning records.

3.3 On the 1838 Tithe Map for Yeadon Aireborough Footpath No. 69 can be seen as a double dashed line none of the claimed footpaths are shown. An extract of the Tithe Map is shown as Background Document D.

3.4 On 1840 Ordnance Survey map there is open fields and none of the claimed footpaths are shown. The 1840 Ordnance Survey map is shown as Background Document E.

3.5 On the 1888 Ordnance Survey map the area has been developed with various Mills and Mill Ponds. There are also houses off Henshaw Lane and Well Lane. The Guiseley, Yeadon and Rawdon Branch of the railway is shown. There is a double solid line leading from the Railway past a Mill Pond to 'Tanks', which is close to one of the claimed rights of way. There is also a double dashed line marked 'FP' close to Aireborough Footpath No.69 from Henshaw Lane to South Parade. None of the other claimed paths are shown. The 1888 Ordnance Survey map is shown as Background Document F.

3.6 On the 1907 Ordnance Survey maps the Definitive Footpath, and the double solid line as above. None of the other claimed footpaths are shown. The north section of the claim looks to be built over near Well Hill. The 1907 Ordnance Survey map is shown as Background Document G.

3.7 The 1956 Ordnance Survey map shows a Mill near Engine Fields and a single dashed line from the Mill to a double dashed line, which is now Aireborough Footpath No. 69. The 1956 Ordnance Survey map is shown as Background Document H.

3.8 On the Draft Definitive Map of 1952 and 1985, and the 1970s Leeds County Borough Map shows Aireborough Footpath No. 69, but none of the claimed paths. The documents relating to this are shown as Background Document I.

3.9 Development Plans map from 1951 Shows Engine Fields to be designated as Public Open Space shown as Background Document J.

3.10 On the 1993 aerial photograph footpath claim C-D is clear to see, and there is a wear line in the region of claimed footpath E to G and A. There are no wear lines on the 1991 claimed paths. The 1993 aerial photograph is shown as Background Document K.

- 3.11 On the 1999-2006 aerial photographs the Definitive Footpath is clearly laid out as a surfaced path, as are footpath claims C-D, E-F and G-H. There is a wear line on the line A-B, which is particularly clear at the northern end, and appears more defined by 2006. By 2009 a building has been built and there appears to be a formal path laid out on the line A-B. The aerial photographs are shown as Background Document L.
- 3.12 A site visit was carried out on 19th June 2015 and photographs were taken of the claimed footpaths. The photographs are shown as Background Document M.
- 3.13 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.

User Evidence

- 3.14 User Evidence Forms were completed by forty-one people in support of various paths in the southern part of Engine Fields. Interviews were also carried out with some of those completing User Evidence Forms. Copies of the User Evidence Forms, Interview Transcripts and Summary Sheets are shown as Background Document N.
- 3.15 The 1991 User Evidence shows a criss-cross route at the southern end of Engine Fields leading from the Industrial Estate to the Railway Footpath and then up towards Well Lane. Part of the route is similar to that of route A-B-E. It seems likely that this line was drawn onto the forms by the same person, as the line is the same on all sheets. One User added a spur towards Aireborough Footpath No.69. The earliest use for these routes was from 1961. From these forms three people used the route for twenty years or more, and four people claim to have known the routes in excess of twenty years, but do not state how long they have used the paths.
- 3.16 The User Evidence from 2003 shows a number of small routes leading from the Railway Footpath towards a double dashed line to the east of the Sorting Office. The applicant admitted that he had marked the routes on for everyone. One of these paths is almost on the same line as route A-B. The earliest use for these routes was 1941. Ten of these people used the route for twenty years or more, and 5 do not state when they started to use the route, but claim they have known the route in excess of twenty years.
- 3.17 From the four Statements taken in 2015 all of the people interviewed except the applicant, claim to have used all of the laid out paths, including Kirk Lane, for a number of years, as early as 1978. A number of users explain that it was possible to walk anywhere over Engine Fields in the past, and that there were a number entrances on to the land. One User (N26) states that they only sometimes used Kirk Lane, as it is a car route.
- 3.18 Most people used the claimed footpaths for pleasure and recreation, but use was also for dog walking, going to work, and the shops. The majority of people used the paths on foot, ten people used a bike, and one person was on a mobility scooter.

3.19 Notices were reported in 2003 attached to the fencing which was erected when the Industrial estate was being developed. These notices read 'private, keep out', 'private property', and 'for sale'. One user (N9) said that they kept taking the notices and fencing down. The fence and notices seem to have been put up to allow development to occur, and for the safety of the general public.

3.20 None of the claimed footpath users were challenged verbally. The other laid out routes continued to be used after the submission of the Definitive Map Modification Order Application and are still currently being used. The route along Kirk Lane is difficult to use, as vehicles park across it on a daily basis.

Representations Against the Application

3.21 To date there have been no objections to any of the claimed footpaths.

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 Document O. Where necessary landowners, applicants and other interested parties have also been consulted. Their comments are below.

4.1.3 After the consultation process the landowner to the south of Engine Field agreed to enter into a Creation Agreement to dedicate a path from A to B.

4.1.4 Engine Fields Friends of Group also sent comments regarding the history and use of the land. The friends of group were established in 1995, to carry on work started by a local resident who the memorial bridge is named after. In the 1980s royal mail applied for planning permission to build a sorting office, which some local residents tried stop in order to prevent losing some of the land. They also state that a fence was erected in 2002/2003 near to the sorting office, leaving a narrow strip from the stone bridge to the industrial estate. This was vandalised by local residents, and eventually removed. They claim that some of the developers were not opposed to there being a footpath from the stone bridge to the cycle track.

4.1.5 Most of the land is vested with Parks and Countryside and they have agreed to dedicate paths from C-D and E-F. They are currently in consultation to purchase the rest of the land that G-H lies on. If this is successful, then the route G-H could also be dedicated.

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 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 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 Documents B, C, N & 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.

5 Conclusions

- 5.1 The Documentary evidence shows that from the 1840s the area has been open land with development occurring around it over the years. The Development Maps show that area was suggested the land was to be used as Public Open Space in the 1950s. The Aerial photographs reveal wear lines and laid out paths between 1993-2009.
- 5.2 The user evidence indicates that some of the claimed footpaths have been well used by the public since the 1950s with 13 people using the route A-B for twenty years or more, and a further 9 people claiming to have known the route for in excess of 20 years. It seems from the user evidence that prior to the paths being laid out, it was possible to walk all over Engine Fields.

- 5.3 No challenges or interruptions are reported until the fencing was erected at the south end of Engine Fields in 2003. The development meant that some of the claimed footpaths could no longer be used as they were built over. The fences and notices were for the safety of the public whilst development was taking place.
- 5.4 The owners of the land have agreed to dedicate the routes A-B, C-D, E-F and possibly G-H. Therefore, a Creation Agreement could be drawn up for route A-B and Declarations could be made for C-D, and E-F.
- 5.5 User evidence indicates that the route A-B has been used in excess of twenty years. Although the 2003 claim forms show a number of routes, they were all drawn up by the applicant, which reduces the strength of the evidence. When interviewed the claimants didn't refer to use of the early claimed routes, only route A-B and the formally laid out paths. Therefore it is considered that there is only enough user evidence to show twenty years use of the route A-B, and a modification order should not be made for the other routes marked on the application.
- 5.6 It can be considered that under Common Law, the paths that were already laid out on the ground, have been dedicated as public rights of way, as they were provided for public use. There is not enough evidence to show that there was no intention to dedicate public rights of way. Since the land has been developed the route A-B has been laid out on the ground, and can also be dedicated at Common Law.
- 5.7 The route along Kirk Lane does not have strong evidence of use from the forms received. Walkers of this route would be forced to walk on the road in places, as vehicles obstruct the route. Until further evidence is available, it is recommended not to make an order for this section of route.

Recommendations

- 5.8 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 Order to be made on the grounds that the existence of a public rights of way cannot be reasonably alleged.

and give full reasons for the decision made.

6 Background Documents¹

Background Document A: Map of Claimed Footpaths

Background Document B: Definitive Map Modification Order Application

Background Document C: Landownership

Background Document D: Tithe Map

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.

Background Document E: 1940 Ordnance survey Map

Background Document F: 1888 Ordnance survey Map

Background Document G: 1907 Ordnance survey Map

Background Document H: 1956 Ordnance survey Map

Background Document I: Draft Definitive Map 1952, 1985 and 1970s Leeds County Borough Map

Background Document J: Development Plans 1951

Background Document K: 1993 Aerial Photographs

Background Document L: 1999-2006 Aerial Photographs

Background Document M: 2015 Photographs

Background Document N: User Evidence Forms and Summary

Background Document O: Consultation Responses