

**SALISBURY: ST. ANN PLACE - PROPOSED ADDITION OF FOOTPATH 105
TO DEFINITIVE MAP AND STATEMENT - OBJECTIONS**

Purpose of Report

1. To consider and comment on objections received to the making of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 to add a new Footpath No. 105 to the Definitive Map and Statement at St. Ann Place, Salisbury and to recommend that the Order be submitted to the Secretary of State for the Environment for consideration and confirmation. The route of the proposed Footpath is shown on the plan (**Appendix 1**).

Background

2. On 28th September, 2005, Mrs. Dollar, a resident of St. Ann Place, applied for an Order under Schedule 14 and Section 53(2) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by adding a Footpath between St. Ann Place and Green's Court. Consultations took place between 23rd April, 2007 and 19th June, 2007.
3. The Footpath joins points A and B on the map. The Footpath runs south from Green's Court (Grid Ref: SU1469, 2958) through a wrought iron gate and between two raised shrub beds. The Footpath then turns east until it joins the eastern end of St. Ann Place. (Grid Ref: SU1472, 2956).
4. The claimed Footpath is surfaced to a high standard throughout its entire length. It is claimed to be up to 2 metres wide apart from being restricted at the gateway to 83 centimetres.
5. A Definitive Map Modification Order was made on 18th July, 2007.
6. The status of the way was first brought into question on 17th June, 2005. A sign was erected on that day stating the gate would soon be closed and locked.
7. This means that to succeed in being added to the Definitive Map as a deemed dedicated Footpath it must be proved that there was twenty years usage leading up to this date, i.e., dating back to 16th June, 1985.
8. The application is supported by nineteen witness statements, a summary of which is attached at **Appendix 2**. Of these, eight indicate a full twenty years usage before the path was first called into question.
9. All nineteen of the witnesses concur that the way passed through the gate separating Green's Court from St. Ann Place.
10. From further discussions it would seem they have all used the full claimed route but not in its entirety on every occasion.

11. Together, the statements indicate that the path has been used by them collectively to some considerable degree over the full twenty year period in question.
12. A full copy of the evidence forms will be available for inspection in the **Members' Room** prior to the meeting
13. All statutory consultation was undertaken and there were eleven written replies to the consultation from Green's Court residents mainly concerning anti-social behaviour, crime levels and effects on the environment.
14. An Order was made on 18th July, 2007 to modify the Definitive Map and Statement by adding the claimed Footpath. The decision report will be available for inspection in the **Members' Room** prior to the meeting.

Objections/Representations made to the Order

15. Objections to the Order have been received from fifteen residents of Green's Court, South Wiltshire Community Safety Partnership and Wiltshire Police. Representation from the M.P. for Salisbury, Robert Key, also strongly supports the objection from Wiltshire Police.
16. All letters of objections will be made available in the **Members' Room** prior to the meeting.

Comments on Objections

17. The grounds quoted for objecting to the Order are primarily concerning anti-social behaviour, crime levels and effects on the environment. None of these are relevant considerations under the legislation associated with this Order.
18. The objectors also point out the fact that there are adequate alternative routes that are in close proximity to the claimed way. This is not relevant under the Order legislation.
19. Relevant grounds quoted for objections that challenge the evidence seem to be unsubstantiated by any physical evidence.
20. There is evidence of use given by nineteen witnesses. Of these, eight cover the full twenty year period from 1985 to 2005.
21. The use has been claimed unanimously by the witnesses to be as of right (without force, without secrecy and without permission), unchallenged and continuous throughout the claimed period.
22. The fact that the Footpath was used for the vast majority of this period has not been denied by any of the objectors. It is because the way was being used (albeit by others for purported nefarious purposes) that the gate was welded shut.
23. No physical evidence has been forwarded by the objectors to prove that the way was impassable during the claimed twenty year period.

24. Although there is much mention in objectors' statements that they had no intention to dedicate, the recent appeal case – *Regina (Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs* drew the following conclusion regarding non-intention to dedicate:

“Sufficient evidence of no intention on the part of the landowner to dedicate a way as a highway required evidence of overt acts coming to the attention of users of the way”.

25. The objectors have not provided physical evidence of any overt acts on the part of the landowners to show prevention of public use of the way before the route was called into question in June 2005. The witnesses all state that the way was always available for use by anyone and no signage to the contrary was evident.

Main Considerations for the Council

26. The County Council has a duty to investigate the application made by Mrs. Dollar.
27. Section 53 of the Wildlife and Countryside Act 1981 deals with the duty to keep the Definitive Map and Statement under continuous review.
28. Section 53(2)(b) states:

As regards every definitive map and statement, the surveying authority shall:

“as from that date (the commencement date), keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event”.

29. The events referred to in Section 53(2)(b) relevant to this case are set out in Section 53(3)(c):

‘The discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows -

- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path.....’*

30. As far as Section 53(3) is concerned, the relevant Sub-section is 53(3)(c)(i) where the authority has been presented with witness statement evidence which shows that a right of way can be reasonably alleged to subsist.
31. In considering and determining the application, the County Council must have regard to ‘*all other relevant evidence available to them*’, as the statute demands. However, no historic documentary evidence has been discovered by the Council to support the application as this is not an historic route. The application therefore is solely reliant upon presumed dedication through use of the claimed route.

32. Dedication of a way as highway can be presumed after public use for twenty years provided it satisfies the requirements of Section 31 of the Highways Act 1980. The Section states: ... *'Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate'*.
33. Section 31 provides that where a way has been enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway - unless there is sufficient evidence that there was no intention during that period to dedicate the way.
34. The term 'as of right' means without force, without secrecy and without permission. People using the Footpath must do so openly without damaging the property and not be reliant on being given permission to use the Footpath by the owner of the land over which the Footpath runs.
35. The case of R. v. Oxford County Council ex parte Sunningwell Parish Council (1999) considered the issue of public use of a way. Lord Hoffman presiding stated "...*the actual state of mind of the road user is plainly irrelevant*" It is immaterial, therefore, whether the public thought the way was a 'public' Footpath or not.
36. The above case concluded that it is no longer necessary to establish whether the users believe they have a legal right to use the land.
37. The use of the Footpath must be without interruption. Once the twenty year uninterrupted use 'as of right' has been proved, the burden then moves to the landowner to show that he had no intention to dedicate, i.e. to provide evidence of any overt acts by the landowner to deter the public from using the way, or conversely to permit the public to do so.
38. None of the objectors have provided evidence of any overt acts on the part of the landowners to show prevention of public use of the way. The witnesses all state that the way was always available for use by anyone and no signage to the contrary was evident.

Environmental Impact of the Proposal

39. The environmental impact of the recommendation is the possible spilling over into Green's Court of anti-social behaviour and acts of criminal damage that now occur in St. Ann Close. This would need to be addressed at a later stage by all concerned bodies in the event of the Order being confirmed.

Risk Assessment

40. Residents of Green's Court are concerned that there will be an increased risk to their safety in respect of the anti-social behaviour mentioned in the previous paragraph, and an increased safety risk to any walkers as there is no public footway adjacent to the highway in Green's Court cul-de-sac where residents move on and off their drives in vehicles. This is not a relevant consideration under the legislation.

41. Conversely, residents of St. Ann Place are concerned that there will be an ongoing risk to their own safety in respect of the anti-social behaviour if the gate is not opened as it is said to occur mainly on the St. Ann Place side of the gate. This is not a relevant consideration under the legislation.

Financial Implications

42. Costs will be incurred by the County Council attending a Public Inquiry or Hearing, should one be required, for which budgetary provision is made.

Reasons for Proposal

43. Officers consider that the criteria set out in the legislation have been met and the statutory duty placed on the County Council requires that the Footpath should be added to the Definitive Map and Statement. As there are outstanding objections the Order must be forwarded to the Planning Inspectorate.
44. The legislation states that the Planning Inspectorate is required to determine the matter once an objection is received and not withdrawn within the stated period.

Recommendation

45. That the Order to add the new Footpath Salisbury 105 be submitted to the Secretary of State, together with the objection letters, with the recommendation that the Order be confirmed without modification.

GEORGE BATTEN

Director of Environmental Services

Report Author

Tim Chinnick

Rights of Way Officer

The following unpublished documents have been relied upon in the publication of this report:

Correspondence with Parish and District Councils, User Groups, Wiltshire Police, other interested bodies and members of the public.