

WILTSHIRE COUNTY COUNCIL  
NO.

AGENDA ITEM

REGULATORY COMMITTEE  
13<sup>th</sup> NOVEMBER 2002

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**LITTLE CHEVERELL: FOOTPATH NUMBER 10**

**Purpose of Report**

1. To consider and comment on an objection received to the making of an Order under Section 53(2) of the Wildlife and Countryside Act 1981 to add a footpath to the Definitive Map and Statement from its junction with Little Cheverell Footpath 4 leading south-westerly to unclassified road 7086, as shown on the plan at **Appendix 1**.

**Background**

2. On 10<sup>th</sup> January 2001, the Environmental Services Sub-Committee considered a report on an application by the Chairman of Little Cheverell Parish Council for an Order under Section 53(2) of the Wildlife and Countryside Act 1981 to add a public footpath to the Definitive Map and Statement. A copy of this report is attached at **Appendix 2**.
3. The Sub-Committee resolved:-
  - (1) *To refuse the application by Little Cheverell Parish Council for an Order under Section 53(2) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement a public footpath from unclassified road 7086, School Lane, at Grid Reference ST 9875 5375, leading north-north-easterly for approximately 400 metres to unclassified road 7087, Low Road, at Grid Reference ST 9892 5412, with a width of 0.9 metres, on the grounds that there appeared to be no evidence of express or implied dedication.*
  - (2) *To inform the applicants accordingly.*
4. The applicant exercised his right to appeal against the Council's decision.
5. In a letter dated 18<sup>th</sup> January 2002 from the Government Office for the South West, Mr. Wright, on behalf of the Secretary of State, stated:-

*"The Secretary of State considers that the main issue to be determined in this appeal is whether a public right of way subsists, or is reasonably alleged to subsist, over the claimed route. The Secretary of State has given careful consideration to the Inspector's conclusions and to all the*

*arguments made for and against the appeal. Section 31 of the Highways Act 1980 provides that, where a way has been enjoyed by the public as of right and without interruption for a full period of 20 years before the right of way was brought into question, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention to dedicate it during this period.*

*However, the Secretary of State agrees with the Inspector that the ownership of the land by the Ministry of Defence for part of the period means that Section 31 of the 1980 Act cannot apply in this instance. He has therefore considered whether there has been implied dedication under common law and agrees with the Inspector that, while there are conflicts in the evidence presented, the user evidence is strong in that it demonstrates continued use of the route for a long period of time, which was not challenged by the landowners. The Secretary of State concludes that there is little doubt that the public walked across the alleged route and overall, he considers that there is sufficient evidence of a common law dedication as a footpath to conclude that a footpath is reasonably alleged to subsist over the claimed route. He therefore accepts the Inspector's recommendation and allows the appeal. He will accordingly direct Wiltshire County Council to make an order adding the route to the Definitive Map as a footpath."*

6. On 21<sup>st</sup> February 2002, an Order was made proposing to modify the Definitive Map and Statement by adding the footpath.

#### **Objection received to the making of the Order**

7. In a letter dated 9<sup>th</sup> April 2002, Mr. Jenkinson, owner of the land affected by the Order, gave the following grounds for objecting to the path being recorded as a public footpath:-
  - *"Neither I nor the prior owner of the property have permitted usage of any route through this property.*
  - *The progress of this attempted modification has been based on a mixture of various acts and, in my opinion, is still not focused on any one act.*
  - *I have photographic evidence that refutes the claims made (overgrown stiles etc)."*

#### **Comments on the objections and legal points to consider**

8. The legal issues are set out in paragraphs 14-26 of **Appendix 2**.
9. The Council was directed by the Secretary of State to make the Order.
10. There is a conflict of opinion between the landowner and the claimant as to whether the Order should be confirmed.

11. It is noted that Mr. Jenkinson and Mr. Harley were either not aware that a definite route was being used by the public or in their understanding had permitted use of the path.
12. Current photographic evidence will not assist in determining whether there has been a dedication at common law of the claimed path as a public footpath.

13. There are two compulsory ingredients for the creation of a highway at common law. They are:-

- (i) dedication by the landowner of a public right of way across this land; and
- (ii) acceptance by the public of that right of way.

In the absence of evidence of express dedication, dedication may be implied from evidence that the public has used the right of way and the landowner has acquiesced to that use.

14. Officers feel that the only way to determine if dedication can be implied is for a local Public Inquiry to be held by an Inspector appointed by the Secretary of State to allow the witnesses to verbally give evidence and to be cross-examined on that evidence.

### **Conclusions: Options Considered**

15. The Council was instructed to make the Order. The Council cannot determine the Order; the Secretary of State has powers to do so. The Order needs to be determined and paragraph 7(1) of Schedule 15 to the Wildlife and Countryside Act 1981 states that *"If any representation or objection duly made is not withdrawn, the authority shall submit the Order to the Secretary of State for confirmation by him."* Therefore it must be submitted to the Planning Inspectorate.

### **Recommendation**

16. That the Order be submitted to the Secretary of State for determination.

### **Reason for Recommendation**

17. To determine the Order.

**RICHARD J. LANDER**

Director of Environmental Services

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**The following unpublished documents have been relied on in the preparation of this Report:**

Correspondence with District and Parish Councils, owners of land affected and other interested persons.

**Environmental impact of the Recommendation contained in this Report:**

None.