



Report to Planning Committee

Cabinet Portfolio/Lead Member: Councillor Margaret Meling

Report of Stuart Wright, Director of Place and Communities

Subject: Application for definitive map modification order - claimed footpath at Long Row, South Shields

Date: 15th July 2024

Wards affected: Beacon & Bents

Does the report and any appendices contain information which has been identified as confidential or exempt?

☒ **No**, this report does not contain information identified as confidential or exempt.

For Executive Decisions only:

Is the decision a Key Decision?

☐ **Yes**

☐ **General Exception Rule**

☐ **Special Urgency Rule**

Relevant Scrutiny Chair: N/A

Is the decision eligible for call-in by Scrutiny? ☐ **Yes** ☒ **No**

(If the decision is anything other than any executive decision made by the Cabinet or a Key Decision made by an officer under delegated powers, call-in is not applicable. This should be explained in the report).

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public right of way based on 20 years use under section 31 Highways Act 1980.

- 3.5.2. Dedication of a highway at common law based on use between 2008 and 2016 could not be inferred, because some of the land over which the application route crossed was leased and mortgaged, and also for a period was in receivership. The leasing and mortgaging in law preclude an inference of highway dedication against the freeholder.

4. **The Initial Carr Report**

- 4.1. On 29 March 2023 RC issued his first report on the application (the **Initial Carr Report**). The Initial Carr Report is at appendix [1] to this report. The Initial Carr Report noted:

- 4.1.1. The user evidence of the ninety-one individuals claiming use of the Application Route¹. RC concluded the existence of a public right of way was brought into question between 2016 and 2018. As a result, the twenty-year period appeared to be 1996/8 to 2016/18.
- 4.1.2. There was apparent evidence of use by the public throughout this period.
- 4.1.3. In 2007/8 land over which part of the application route ran was redeveloped, following which the application route was then made available along its full length.
- 4.1.4. That initial and later redevelopment must have had some impact on use of the application route, but that it was rarely mentioned within the user evidence.

- 4.2. On the evidence available, RC concluded it *was appropriate* for the Council to *make an order* to add the application route to the DMS.

5. **Subsequent events**

- 5.1. In June 2023 the Council invited the applicant and objectors to submit representations on the Initial Carr Report.
- 5.2. In October 2023, the Objectors submitted further representations including a bundle of additional evidence (the **First Supplementary Objection**), all through leading Counsel/barrister with expertise in public rights of way matters (the **Objectors' Counsel**). The First Supplementary Objection is at appendix [16] to this report.
- 5.3. The First Supplementary Objection^{5.2}.

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5.4.

In January 2024 RC issued a supplementary report in light of the material in the First Supplementary Objection -0 10.28/37bk15216078193/32546404581281411((9,0,0,1,1))

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objective: whether a reasonable user would have understood that the owner by their actions was intending to disabuse that user of the notion that the way was a public highway.

Common law dedication

- 6.5. Where there is no evidence of express dedication, and the statutory presumption of dedication in section 31 does not apply because there is less than 20 years' qualifying use, dedication may still be implied at common law in certain circumstances. The key principles are as follows:

- 6.5.1. At common law, no evidence is required to establish that a way has been dedicated to the public.

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public's use but constituted sufficient evidence that there was no intention during that period of 20 years to dedicate it.

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- 8.16.1. In the case of Owen, Objectors' Counsel notes that ploughing a field is not the kind of substantial 15-month long interruption for building works that occurred here.
- 8.16.2. In the case of Fernlee, Objectors' Counsel refers to the Judge's findings that, during the building works, the full route was useable by horse riders and walkers for *'the full 20 years without interruption other than, possibly, ones of such a very temporary works-related nature as not to be significant'*. Compared to the 15-month long blockage in the present case, Objectors' Counsel suggests 'the case is an entirely unsatisfactory

- 9.2. The Supplementary Carr Report acknowledges that there was a period when the land was held by receivers²², and during that period there was nobody with legal capacity to dedicate a highway. However, RC also suggests²³ that *'it may be possible to infer the landowner's intention to dedicate from the direct, clear and overt act of setting out and physically providing the route on the ground. The route was then thrown open to the public who used it in a nature that may be consi* (e f)2.004 Twhw46.769m[059,)p2 (ur)7 3 (24)(si (e f)2.004(di-01)6c)-30.03l (er)7 (i)9h (t)

Even within the evidenced period of use (being less than 20 years), there was also an interruption to the use. A claim based on the Section 31 presumption is destined fail.

Common law dedication

There is no evidence the landowner intended to dedicate a public right of way when laying out the majority of the route in 2007/8 or subsequently, as opposed to merely tolerating such use. Subsequent closure by the landowner is consistent with toleration of use by the public.

There is no evidence the tenants and mortgagee consented to such a dedication and there was a period in receivership when no-one had capacity to dedicate.

Taking these factors together, there are other possible explanations for the public use other than the creation of a right of way. At common law, the mere existence of other possible explanations suffices to prevent any inference of dedication.

Recommendation

- 11.1. It is recommended that the Committee declines to make an order adding Long Row to the DMS.

List of Appendices

1. Robin Carr's Initial Investigatory Report Document
2. Robin Carr's Appendix 1 – Plan 1
3. Robin Carr's Appendix 2 – Google Earth images
4. Robin Carr's Appendix 3 – DMMO Application
5. Robin Carr's Appendix 4 – User Evidence
6. Robin Carr's Appendix 5 –

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21. Robin Carr's Appendix 15 – England Coast Path

22. May 2024 Landowners Submissions

23. Alleged path plan with detail points

background papers background papers background papers

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6. Robin Carr's Appendix 12 - User Evidence Summary	S21 Long Row – Summary of user evidence	S21 Long Row - Summary of user evidence - South Tyneside Council
7. Robin Carr's Appendix 13 – Coastal Footpath Information	S21 Long Row – Coastal path information	S21 Long Row - Coastal path information - South Tyneside Council
8. January 2023 Landowners Submissions	S21 Long Row – First objectors report	S21 Long Row - First objectors report - South Tyneside Council

9. October 2023