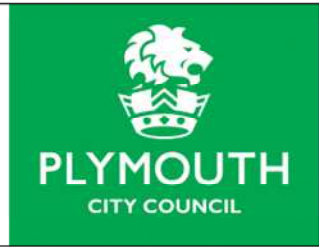
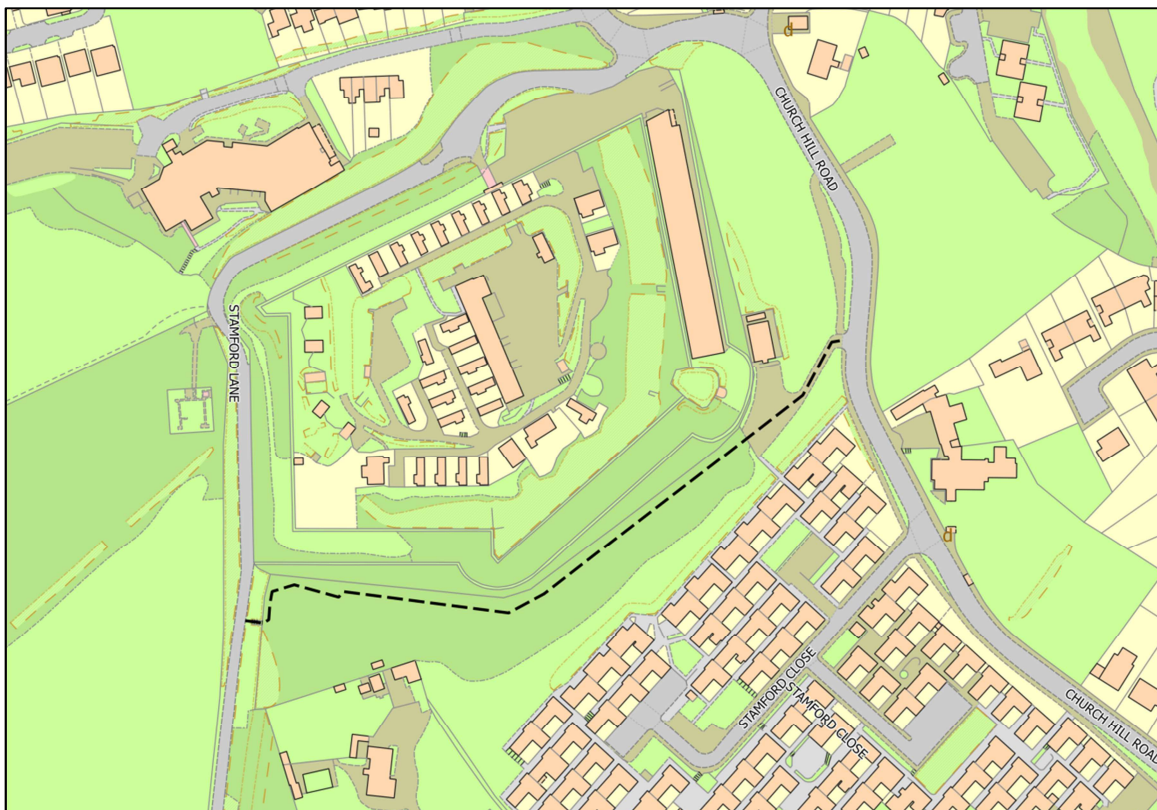


PLANNING COMMITTEE REPORT



Application Ref	WCA.007	Ward	Plymstock Radford
Site Location	Land between Church Hill Road and Stamford Lane, Turnchapel		
Proposal	Addition of a Public footpath		
Applicant	Radford and Hooe Lake Preservation Association		
Committee Date	12 January 2017		
Case Officer	Robin Pearce		
Recommendation	Approval		
Click for documents	www.plymouth.gov.uk		



1. Description of site

- 1.1 The route being claimed runs west from Church Hill Road along the access drive to the Community Centre. At this point there is a sign "Stamford Close Private Estate No public right of way over roads paths or grass surrounds". The route then continues along the northern edge of the Stamford Close grounds, where there is a defined route over grass, before turning south and then descending to Stamford Lane.

2. Proposal description

- 2.1 The Radford and Hooe Lake Preservation Association have applied to have the Definitive Map and Statement modified on the basis they believe it to be currently incorrect. The applicant's case is that the public record can be corrected by the addition of a footpath linking Church Hill Road and Stamford Lane.

3. Background papers

- 3.1 Attention is drawn to the accompanying background papers which should be read in conjunction with, and are deemed to form part of, this report. Due to the size of those papers they are available online at <http://www.plymouth.gov.uk/parkingandtravel/walkingandrightsway/publicrightsway/changesrightsway>

4. Legislative Framework

- 4.1 This is a report of an application for an Order to be made under section 53 of the Wildlife and Countryside Act 1981 to modify the definitive map and statement of public rights of way by the addition of a public footpath. The definitive map and statement is a legal record held and maintained by the City Council in its capacity as surveying authority under the 1981 Act.
- 4.2 The test that applies to such an application is whether or not the evidence shows that a public right of way exists, or is reasonably alleged to exist: the Committee's role is therefore a quasi-judicial one. Factors such as the desirability of the route being a public footpath or the impact on landowners and occupiers are not relevant to the decision on the application.
- 4.3 If the Committee decides to make an order, it has to be publicised: if any objections are received, the order and objections have to be referred to the Secretary of State for Environment, Food and Rural Affairs on whose behalf the Planning Inspectorate makes the final decision on the order.
- 4.4 If the Committee decides not to make an order, the applicant has a right of appeal to the Secretary of State for Environment, Food and Rural Affairs on whose behalf the Planning Inspectorate decides whether or not to allow the appeal. If the appeal is allowed the City

Council will be directed to make an order, although it is not then obliged to support such an order if there are objections.

5. The Application

- 5.1 An application was received on 14 August 2009 on behalf of the Radford and Hooe Lake Preservation Association for the making of a Modification Order under section 53 of the Wildlife and Countryside Act 1981. The Association sought the addition of a footpath between Church Hill Road and Stamford Lane, Turnchapel in the Plymstock, Radford Ward.
- 5.2 At the time the application was made the applicant certified that the requirements of paragraph 2 of Schedule 14 of the Wildlife and Countryside Act 1981 had been complied with in that a copy of the statutory notice had been served by the applicant on each and every owner and occupier of land over which the route being claimed subsists, those being:
- Stamford Court Management Company
- 5.3 The route being claimed runs west from Church Hill Road along the access drive to the Community Centre. At this point there is a sign "Stamford Close Private Estate No public right of way over roads paths or grass surrounds". The route then continues along the northern edge of the Stamford Close grounds, where there is a defined route over grass, before turning south and then descending by steps to Stamford Lane. There is a further sign at the western end with the same content as that at the eastern end. There is a kissing gate at the top of the steps, but no fence adjoining it. The applicant relies upon the evidence of 16 users of the alleged route whose evidence is set out in the appendices of this report. The application has been opposed by Stamford Court Management Company LTD, the owners of the land crossed by the route, and the Hooe and Turnchapel Community Association, which has a private right of way over the access drive to its Community Centre at the eastern end of the route.
- 5.4 Photographs submitted by the applicant show that there were signs in place in April 2009. The sign at the western end appears to be the same as at present. However the sign at the eastern end read "Private Estate No public right of way over roads paths or grass surrounds" underneath which was an arrow pointing to the side where the claimed route runs and underneath the arrow the words "Footpath" and "Stamford Court Management Co. Ltd". A smaller sign attached to the bottom of the larger sign read "Stamford Court Private Estate Please respect our grounds Dog fouling is a criminal offence Offenders may be prosecuted".
- 5.5 The application appears to have been prompted by the erection of the signs. Although there is no physical impediment to walking the application route the signs erected at each end are clearly intended as a deterrent to so doing.

6. Summary of the evidence relied upon by the applicant

- 6.1 The user evidence relied upon by the applicant shows use to a varying extent by 16 users over a period starting in the 1920s. Some of the users claim not only to have used the route all their life, but also to have used it frequently.
- 6.2 A copy of an Ordnance Survey plan supplied by one of the users (Ms Outhwaite) shows a path with its western end at the location of the steps but then running south-easterly to Jennycliff Lane rather than along the claimed route.
- 6.3 Most of the user evidence forms refer to the kissing gate at the top of the steps at the western end of the route. One user, Ms Whyte, says that she paid for a new kissing gate to be made and installed in 1996. It would therefore seem appropriate for the kissing gate to be recorded as a limitation on the public's right of passage if an order is made.

7. Summary of the landowners' views and any evidence they provided

- 7.1 Stamford Court Management Company Ltd, which has owned the land crossed by the route since 1981, completed a landowner evidence form. The company claimed to have had signs indicating "Private Property No Admittance" in place since 1981, however this is at variance with the evidence submitted by the applicant of a sign at the eastern end referring to a footpath. The company also claimed to have stopped people using the route, however no details or dates when this occurred were given. The company also said that use of the route had been intermittent.
- 7.2 The chairman of the Hooe and Turnchapel Community Association also completed a landowner evidence form relating to their car park and drive at the eastern end of the route. He also said that use of the route had been intermittent and that they had spoken to unauthorised users of the car park.

8. Summary and outline of any documentary evidence discovered not submitted by interested parties

- 8.1 Historical Ordnance Survey mapping has been examined. Maps published in the 1940s show that at the time there was no development in the area: there is no indication on historical mapping of a route on the ground.
- 8.2 Archive research undertaken in the Plymouth and West Devon Record Office revealed a publication by the Radford and Hooe Lake Preservation Association. This was first published in 1986, and a revised edition published in 1990. The pamphlet includes a description and map of a walk that appears to use the route the subject of the application.

9. Summary of the views of those consulted as part of informal consultations

- 9.1 Consultations have been undertaken with interested parties, such as the emergency services and user groups, but no comments or further evidence have been received.

10. The date that public rights were brought into question

- 10.1 If section 31 of the Highways Act 1980 is to be used for the grounds of the application it is necessary to establish a date that public rights were first challenged so that retrospective evidence of 20 or more years use, as of right and without interruption, may be considered to determine whether or not public rights have accrued and become established by presumed dedication.
- 10.2 In this case although there are claims by the landowner that signs had been in place since 1981, this is not supported by the evidence of the applicant, namely that signs were erected in 2009, and that this prompted the submission of the application.
- 10.3 It is considered, therefore, that the date on which the right of the public to use the way was brought into question was 2009, and the relevant period (which, under section 31 of the Highways Act 1980, has to be counted back from the date of challenge) is 1989 - 2009. Evidence of use prior to the earlier date, although not directly relevant for the purposes of section 31, is relevant to the extent that it provides evidence of the reputation of a way used over a long period of time, with the use during the relevant period being seen as a continuation of that use.

11. Analysis of the evidence in support of the application

- 11.1 The applicant relies on the evidence of users of the claimed route to support their case. There is relevant documentary evidence of the publication by the applicant of a pamphlet of walks including the claimed route, the second edition of which was published during the relevant period. However this is evidence of reputation of the route as public, rather than evidence of statutory creation. Therefore the relevant tests for consideration by Members are set out under section 31(1) Highways Act 1980. If an Order were to be made it would be made under section 53(3)(b) Wildlife and Countryside Act 1981.
- 11.2 The test under section 31(1) Highways Act 1980 is a two part test. Firstly it is necessary for the applicant to provide evidence that the claimed route, which must be 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 20 years. If the applicant can meet that test the rebuttal applies which is a matter for the owners and occupiers of the land over which the alleged route subsists to engage. This is a section of the Highways Act which has helpfully been tested by the courts and so we can offer the committee clear guidance on how they should interpret the evidence before them.
- 11.3 Firstly the applicant must satisfy the committee that the claimed route has been actually *enjoyed*. This simply means that there must have been sufficient use of the claimed route

and will vary depending on the circumstances of each case. What might constitute sufficient use in remote Dartmoor might not be considered sufficient use in urban Plymouth.

- 11.4 Secondly use must have been 'by the public' which is to say the public at large rather than a particular class of the public such as employees of a particular company or customers of a particular shop.
- 11.5 Thirdly use must have been 'as of right' the meaning of which was helpfully clarified by the House of Lords in *R v Oxfordshire County Council ex parte Sunningwell Parish Council* (Sunningwell). Before Sunningwell it was held that use which was as of right was use which was open, not by force and without permission and in addition users were required to hold an honest belief that they had a right to use the way in question. It was therefore necessary to prove the state of mind of the user. Sunningwell confirmed that the state of mind of the user is an irrelevant consideration.
- 11.6 Finally it is necessary for the applicant to prove that use of the claimed route occurred over a full period of 20 years without any interruption in that use. An interruption can be nothing more than the closing of the claimed route for a single day but may also include isolated acts of turning users back etc.
- 11.7 Taking the above into account we aid committee by offering our assessment of each of the users evidence in turn: -

Mrs Mickley, 1984-2000, numerous times, 2000-2009 occasionally

Ms Sanchez, 1995-2009, 50 times a year

Mr Skilton, 1967-2009, 10 times a year

Ms Coleman, from childhood to 2009, frequently

Ms Outhwaite, 1950s-2005, approx 100 times a year

Mr Finch, ("most of my life" - born 1925), many times a year

Ms Whyte, 1920s-1999, times a year : "too many to count"

Mr Rossetter, 1958-2009, 2 times a year

Ms Hepworth, 1960s-2000, many times a year

Ms Reed, 1960s-1990s, 3-4 times a week

Mr Bulley, 1969-2009, 3-5 times a year

Ms Murden, 1968-2009, 6-8 times a year

Mrs Earl, 1968-2008, several times a year

Mrs Phillips, approx 1930-2009, 3-4 times a year

Mr Burr ridge, approx 1925-1955, often

Mr Earl, 1960s-2008, many times a year, but didn't always use same route

11.8 This is considered to be sufficient evidence to give rise to a presumption of dedication.

12. Analysis of the evidence against the application

- 12.1 Each owner of land over which the claimed route subsists was invited to submit evidence to support their view. In this case responses were received from two owners. Their evidence is set out in section 7 above. It does not appear to be in dispute that the landowner installed signage. The applicant and the landowners disagree on the wording on that signage and the photographic evidence falls in favour of the applicants version of events. The more recently installed and stronger worded signage was the catalyst for the application and therefore its impact is not relevant.
- 12.2 Although the landowner claims to have provided evidence of an intention not to dedicate, officers do not consider that this is sufficient evidence of action on the part of landowners to demonstrate an intention not to dedicate.

13. Officer Recommendation

- 13.1 Members must be satisfied that two tests have been met. The first relates to the case made out by the applicant in establishing use, by the public, as of right and without interruption for a full period of 20 years. I conclude that this part of the test has been met in respect of the route.
- 13.2 I further conclude that the landowner has taken insufficient steps to prevent a public right of way accruing and that the application also succeeds in respect of this test.
- 13.3 The officer recommendation to Committee is that an Order be made to add to the definitive map a public footpath along the route applied for, with a limitation of the right of the landowner to erect and maintain a kissing gate at the top of the steps at the western end of the route.