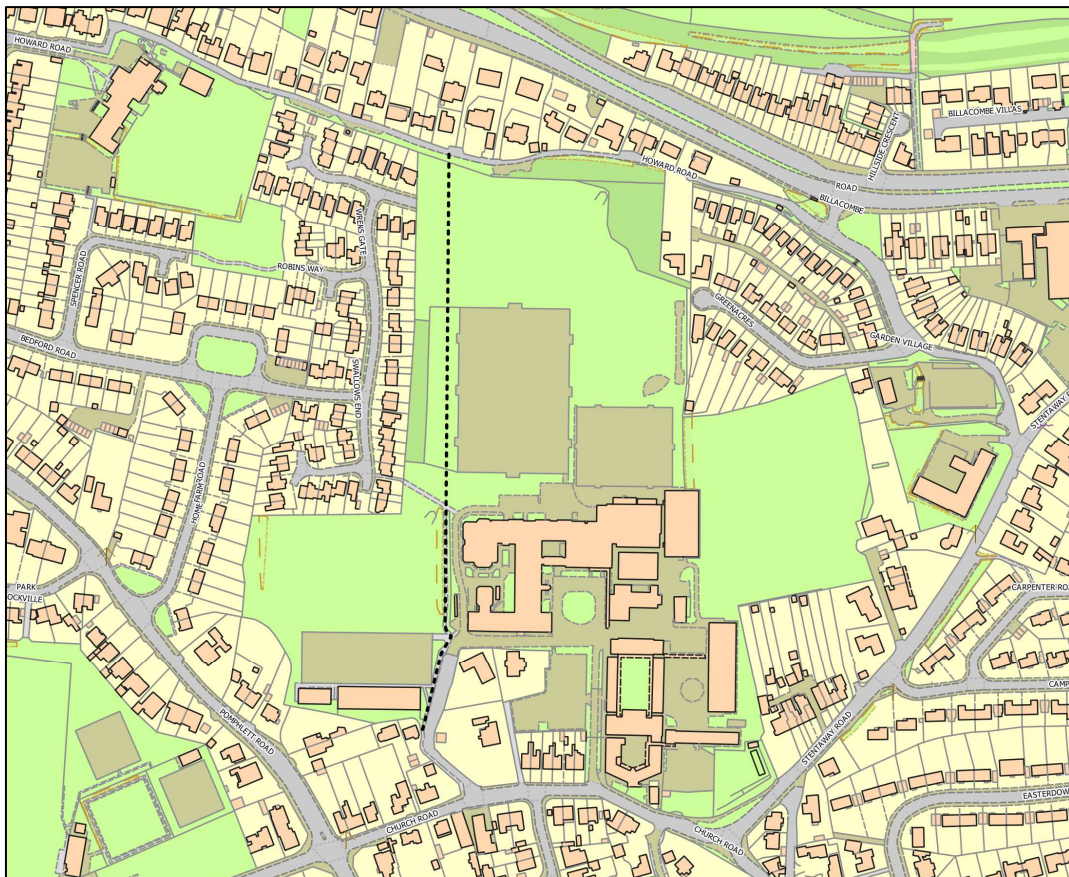


PLANNING COMMITTEE REPORT



Application Ref	WCA.011	Ward	Plymstock Radford
Site Location	Plymstock School Grounds (Between Howard Road and Church Road)		
Proposal	Addition of a public footpath		
Applicant	Mrs Maureen Edwards		
Committee Date	12 January 2017		
Case Officer	Robin Pearce		
Recommendation	Refusal		
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1. Description of site

- 1.1 The route being claimed runs south from Howard Road along the western side of the school playing fields past the school buildings to Church Road. At the Howard Road end there is a padlocked gate in the school boundary fence and a sign "Private Property The exercising of dogs is forbidden." Further fencing has been erected across the route north of the school buildings. The route passes to the west of the school buildings. To the south of the school buildings the route follows the school access drive to Church Road.

2. Proposal description

- 2.1 Mrs Edwards (the Applicant) has applied to have the Definitive Map and Statement modified on the basis she believes it to be currently incorrect. Mrs Edwards case is that the public record can be corrected by the addition of a public footpath from Howard Road, heading south through the grounds of Plymstock School to a point on Church Road

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 15 August 2011 from Mrs Edwards for the making of a Modification Order under section 53 of the Wildlife and Countryside Act 1981 for the addition of a footpath between Howard Road and Church Road, Plymstock through the grounds of Plymstock School 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:
- Headteacher of Plymstock School

6. Summary of the evidence relied upon by the applicant

- 6.1 The applicant relies exclusively on the evidence of other users of the route she is attempting to claim to make out her case. That evidence shows use to a varying extent by 10 users, including the applicant, the earliest of which goes back to 1961

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

- 7.1 Solicitors acting for Plymstock School have provided statements from a former headteacher and other present and former teachers. These state that a gate at the northern boundary of the site was locked at weekends and holidays, that there were signs indicating that the site was private, and that teachers out on the playing fields and in classrooms overlooking the claimed route would have seen members of the public using the route had they done so to the extent claimed in the user evidence forms.

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

- 8.1 The usual consultations have been undertaken with interested parties, such as the emergency services and user groups.
- 8.2 Devon and Cornwall Police wrote to oppose the application, basing their opposition upon the recommendations contained in the Secured By Design schools design guidance 2014.

However that opposition appears to relate to the principle of the creation of a right of way through school grounds: the application seeks to record what the applicant believes to be an existing public right of way.

9. The date that public rights were brought into question

- 9.1 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.
- 9.2 There is evidence in the user evidence forms that the gate at the northern end was locked in 2006. It is considered, therefore, that the date on which the right of the public to use the way was brought into question was 2006, and the relevant period (which, under section 31 of the Highways Act 1980, has to be counted back from the date of challenge) is 1986 - 2006. 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.

10. Analysis of the evidence in support of the application

- 10.1 The applicant relies on the evidence of users of the claimed route to support her case. There is no relevant documentary evidence submitted. 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.
- 10.2 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.
- 10.3 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.
- 10.4 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.

- 10.5 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*¹ (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 conformed that the state of mind of the user is an irrelevant consideration.
- 10.6 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.
- 10.7 Taking the above into account we aid committee by offering our assessment of each of the users evidence in turn: -

Mrs. M. Edwards, 1976-2007, up to 200 times a year but stopped in 2007 when the gate was erected and access prevented.

Mrs. S. J. Ridgeway, 1972-2007, up to 100 times a year – Mrs Ridgeway has not signed either her evidence form or plan and has not marked any route on the plan identifying the route to which her evidence relates severely limiting the weight that may be applied to her evidence

Mr. D. Shannon, 1988-2001, daily, use included going to school

Mrs. E. Walch, 1970-2007, approx 24 times a year, use included going to school – has only claimed to use half of the application route

Mrs Anthea Hall, has never used the application route

Mrs. D. Mabin, 1991-2008, daily

Mrs. B. K. Mortimer , 1975-2008, 3-4 times a week

Mr. S. E. Inch, 1961-2007, most days, use included on a cycle

Ms. J. Taylor, 1969-1974 going to school, now 4 times a year

Mr. D. Chaffe, 1967-2006, once a week

- 10.8 Given the quality of the evidence in the context of the application site this is considered to be insufficient evidence to give rise to a presumption of dedication

11. Analysis of the evidence against the application

- 11.1 Solicitors acting for the landowner have collected and submitted signed statements from a range of previous school employees including a former head teacher.

Mr A. Parsons – Head Teacher 1991 – 2002. Mr Parsons evidence is that he was on site during term time school hours between 1991 to 2002. In his statement Mr

Parsons says he was responsible for site security and the schools aim from the early 1990's onwards was to secure the school site. He specifically mentions a corporate intention to fence the site but allow a rear gate for the ingress and egress of school pupils. Mr Parsons states this gate was locked at weekends and school holidays. Mr Parsons states the matter of school security was prevalent in the early 1990's and meant that his staff were conscious of intrusions and members of the public were challenged if seen. Mr Parsons says the site was signed to the effect that it was a private school site and had staff over-seeing the arrival and departure of pupils through the gate.

Mr A Thomas was employed at the school from 1990 until 2012. He states a clear recollection of consistent fencing and signage around the school perimeter, He also provides examples of members of the public being challenged and speaks to the schools practice of formal challenge employed by him and other school staff.

Mrs J. Jones was employed by the school from 1989 until 2009 as a science teacher and from her classroom had a clear unobstructed view of the application route. Her position is that she did not notice any regular public use of the path during her time at the school and that it would have been unavoidable for her to miss such use had it occurred to the degree set out by the applicant. Further to this she makes reference to her memory of the reconfiguration of the schools boundary fencing in the 1970's and states she does not remember there being a rear gate in the new fencing.

Mr J Jones was a science teacher at the school from 2002 until 2009. He taught from a classroom overlooking the application route and says had the level of public use been that as described by the applicant he would have been aware of it. His position is that he was not aware of any public use of the application route.

Mrs Ford provides anecdotal evidence of public use of the path during javelin lessons and vandalism to the fence to gain access that forced the school to undertake repairs

Mr Ford was the Assistant Head Teacher and had worked at the school for 30 years and his statement collaborates the schools general practise of challenging public use of school land.

Mrs Parkinson is a local resident who lived in the area of the school from 1976 until 2005. She states she walked her dogs along Howard Road and does not remember there being any public access to school land. She was also a teacher at the school between 1998 until 2009 and was posted at the rear gate as a 'duty'.

Mr Johns taught at Plymstock school from 1877 until 2006. His statement refers to his memories of the schools boundary fencing being repaired with a specific example in early 1990's. Mr Johns remembers the first time that signage indicating the school land was private were erected and challenging the public when 'on duty' as well as discussing how the teaching staff would react to members of the public who attempted to walk through the school site.

Mr Underhay worked at the school from 1969 until 2006. During the relevant period he was a PE teacher and so spent large periods of time outdoors with a good view of the application route and makes no mention of extensive public use of the application route.

- 11.2 The evidence provided by the school is strong and compelling. It is considered sufficient evidence of a negative intention on the part of the landowner.

12. Officer Recommendation

- 12.1 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 on the basis of the written evidence, this part of the test has not been met in respect of the application route.
- 12.2 I further conclude that the school, as landowner, took sufficient steps to prevent a public right of way accruing and that the application therefore fails in respect of this test.
- 12.3 The officer recommendation to Committee is that no Order be made to add to the definitive map a public footpath along the route applied for and the applicant be advised of her right of appeal to the Secretary of State