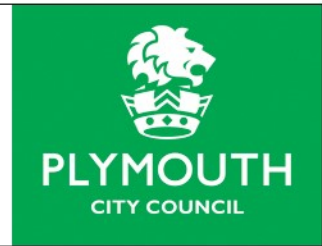


# PLANNING COMMITTEE REPORT



<b>Application Ref</b>	WCA.012	<b>Ward</b>	Peverell
<b>Site Location</b>	Beechfield Grove to Venn Close		
<b>Proposal</b>	Addition of a public footpath		
<b>Applicant</b>	Mr Bentley Bennett		
<b>Committee Date</b>	14 February 2019		
<b>Case Officer</b>	Robin Pearce		
<b>Recommendation</b>	Approval		
<b>Click for documents</b>	<a href="http://www.plymouth.gov.uk">www.plymouth.gov.uk</a>		



## 1. Description of site

- 1.1 The route being claimed is located in the Peverall Ward of Plymouth and runs from Beechfield Grove running along the western edge of Kings School to meet with Venn Close to the north. The path is open at both ends where it meets the public highway. The southern section has recently been upgraded and adopted due to development of the former Plymouth Preparatory School by Linden Homes.

## 2. Proposal description

- 2.1 Mr Bennett (the Applicant) has applied to have the Definitive Map and Statement modified on the basis he believes it to be currently incorrect. Mr Bennett's case is that the public record can be corrected by the addition of a public footpath from Beechfield grove to Venn Close. Mr Bennett provides the evidence of a number of local people who have also used the route as a useful pedestrian route to and from the nearby Morrison's supermarket and who say they have used the route to access a local school.

## 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 28 January 2014 from Mr Bennett for the making of a Modification Order under section 53 of the Wildlife and Countryside Act 1981.
- 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 he had requested that notice to the landowner may be served by serving notice on the land, no landowner having been identified.

## 6. Summary of the evidence relied upon by the applicant

- 6.1 The applicant relies upon the evidence of other users of the route he is attempting to claim to make out his case. That evidence shows use to a varying extent by 14 users, including the applicant, going back to the 1960's. The applicant also included historic Ordnance Survey maps to support his case.

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

- 7.1 The claimed route is unregistered land and no response to the notice served on the land was received by any person claiming to be the landowner

## 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 and no adverse comments have been received.

## 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 no clear evidence in the user evidence forms which suggest that there has been an overt attempt to prevent public access. The catalyst for the application appears to be a fear of the loss of the path due to development of the adjacent land. Primarily a boundary wall facing collapse and the temporary closure of the path for the adjacent landowner to facilitate repairs brought the matter of the footpath to the public's attention. Without an effective date of challenge the date the application was received is the end of the relevant 20 year period. It is considered, therefore, that the date on which the right of the public to use the way was brought into question was 2014, and the relevant period (which, under section 31 of the Highways Act 1980, has to be counted back from the date of challenge) is 1994 - 2014. 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 his 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* (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.

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 summary of each of the users evidence in turn: -

Mr B. Bennett (applicant), 1984 - 2014, up to 200 times a year using the path twice weekly upto the point the application was made.

Ms P. Bassett, 1980 - 2013, used the path at least weekly.

Mr. N. Palmer-Still, 1984-2013, 186 times a year

Mrs.B. Watson, 1967-2013, approx. 365 times a year

Mr. C. Woodman, 1968 - 2013 , approx 500 times per year to and from school, work and local shops

Mrs. J. Woodman., 1968 – 2013. Used daily during the 1970's when her children were at school and three times a week following that.

Mr. A. Sutton, 1984-2013, 200 times a year

Dr. P. Robinson, 1984-2014, 300+ times a year

Mrs. M. Edwards, 1990-2014, at least 50 times a year

Mr. R. Cole, 1984-2014, 200 times a year

Mr. T. Evans, 1974 – 2014, approx 6 times a year

Mr. K. Loze. 1980 – 2014, used weekly

Mr. D. Pawley, 1985 – 2014, used 100+ times a year

Mr. R. Atkin, 1991 – 2014, used 6 times a year

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

## 11. Analysis of the evidence against the application

11.1 No evidence against the application was received.

## 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 been met in respect of the application route.

- 12.2 I further conclude that there is no evidence that any landowner took sufficient steps to prevent a public right of way accruing and that the application therefore succeeds in respect of this test.
- 12.3 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.