

## AGENDA ITEM

# 7

**COMMITTEE:** Administration & Regulation Committee

**DATE:** 17<sup>th</sup> July 2019

**SUBJECT:** Addition of a section of path at Langley Place to the Definitive Map and Statement

**REPORT BY:** Service Director, Planning & Economic Growth

**CONTACT OFFICER:** Keith Dove, Strategic Policy Adviser

**IMPLICATIONS:**

LEGAL	x	COMMUNITY SAFETY
EQUALITIES		ENVIRONMENT
FINANCIAL	x	CONSULTATIONS
STAFFING		OTHER

**WARDS AFFECTED:** South

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## **PURPOSE**

1. To request authority to carry out the legislative process in order to add a section of path at Langley Place to the Definitive Map and Statement.
2. Committee is recommended to authorise Legal Services to undertake the process pursuant to the Wildlife and Countryside Act 1981 and all other enabling powers, in order to add a section of path at Langley Place as shown cross hatched on the plan at Appendix 1, to the Definitive Map and Statement

## **BACKGROUND**

3. At its meeting on 29<sup>th</sup> November 2018 the Committee considered a report with the same recommendation as above. A copy of that report and the appendices to it are included at Appendix 2 to this report and the advice/recommendation therein remains the same notwithstanding this update.
4. At that meeting, Members allowed the Developer of the site and the landlord of the Sugar Loaf pub to address the Committee. Further details of the issues each of them raised, together with points raised by the Committee, are recorded in the minutes of the meeting (see Appendix 3). Furthermore, as recorded in those Minutes of its meeting on 29<sup>th</sup> November 2018, Members Resolved:  
*'Having considered the officer's report and the representations made by Cllr Castleman, Barrie Morris, for the Developer and owner of the Telmere Industrial Estate and Gerald Duggan, the Landlord of the Sugar Loaf pub, Committee decided there was insufficient information on which to make a decision and therefore deferred consideration of the matter, pending provision of further information, legal advice, including case law and custom and practice and a site visit.'*
5. Consequently, at its meeting on 29<sup>th</sup> January 2019, the Committee considered a report (see Appendix 4) with the same recommendation as above which, as reflected in the Resolution of the previous meeting, provided legal advice and further information on:
  - the stopping up of Langley Place;
  - whether alternative means of access could be provided to the Developer's site; and
  - the layout of the pub entrance.
6. There were three appendices to that report:
  - Appendix 1 included a letter from the Developer's legal adviser in response to the reasons for the November deferral (note at the time of writing no further information has been received from the landlord or the owners of the pub).
  - Appendix 2 to that report included ownership information relating to the pub and its garden area.
  - Appendix 3 to that report included the November report and the same historical evidence on the existence of a path at Langley Place that was presented at the previous meeting held on 29<sup>th</sup> November 2018.
7. The site visit took place on 22<sup>nd</sup> January 2019, after the publication of the report to the meeting of 29<sup>th</sup> January, and was attended by the Chair and Vice-Chair along with representatives of the Developer and the Sugar Loaf pub. Member's observations on the outcome of the site visit are therefore recorded in the minutes of the meeting on 29<sup>th</sup> January 2019, along with

extensive legal advice provided by the Council's Solicitor at the meeting(see Appendix 5).

8. Legal advice has been consistently provided in all of the previous reports on this matter brought to this Committee in terms of:
  - 1) the Council's Duty to produce a Definitive Map and Statement (DM&S) of Public Rights of Way (as required by the National Parks & Access to the Countryside Act 1949 Act and Section 55(3) of the Wildlife and Countryside Act 1981),
  - 2) the requirement to keep that DM&S under review (as required by Section 53 of the Wildlife and Countryside Act 1981), and
  - 3) the recommendation to add this section of Langley Place to the DM&S based on the evidence received.This advice was set out in paragraphs 3-11 of the report to the 29<sup>th</sup> November 2018 meeting (Appendix 2), the "legal advice" heading to the report of 29<sup>th</sup> January 2019 meeting (Appendix 4) and the bullet points in the penultimate paragraph of the "background" Section paragraph 5 of the 19<sup>th</sup> June 2019 report (Appendix 6).
9. The Committee decided at the January meeting not to add the section of Langley Place to the DM&S, as it considered that it was not in the spirit of the legislation, in particular as the purpose of Langley Place in question was only to serve the developer's site (see Appendix 5).
10. The Council's Solicitor had warned Members, as recorded in the minutes of the meeting on 29<sup>th</sup> January 2019, that the Developer could issue a High Court Judicial Review Challenge if it refused to add Langley Place to the DM&S. The reason for bringing a report back to the 19<sup>th</sup> June 2019 meeting of this Committee was because on 12<sup>th</sup> April 2019, the developer's legal advisors sent a pre-action protocol letter to the Council as a pre-cursor to a Judicial Review of the Council's decision of 29<sup>th</sup> January. A copy of that letter is included at Appendix B to the report of the last meeting (see Appendix 6) and the full reasons for returning to Committee are contained in paragraphs 7-13 to that June report.
11. At the last meeting on 19<sup>th</sup> June, Members of this Committee requested that a comprehensive report was brought back to this meeting, to include all previous reports and minutes, together with a presentation of the evidence concerning Rights of Way on Langley Place.

## **REPORT**

### Background to the development proposal

12. In May 2017, the Development Management service received a request for determination as to whether the prior approval of the Local Planning Authority was required under Part 3 Class O of the Town & Country Planning (General Permitted Development) Order 2015) ("GPDO") to

convert Unit 4 in the Telmere Industrial Estate in New Town to 12 bedsits. The decision subsequently made on 1<sup>st</sup> August 2017 was to grant prior approval subject to conditions, which have subsequently been satisfactorily discharged.

13. The Developer's view is that it would be inappropriate that their development is accessed through the remaining units and circulatory space within the Telmere Industrial Estate. The developer has presented the Council with evidence of an historic path known as Langley Place which ran through the land now occupied by the industrial estate and connected with New Town Street. The path ran alongside the Sugar Loaf pub.

#### Historic evidence of Langley Place's existence as a Right of Way

14. As recorded in the minutes of the meeting on 29<sup>th</sup> November (see Appendix 3), Councillor Castleman had queried why officers had not been able to provide evidence of the extinguishment of highway rights through Langley Place via a formal Stopping Up Order. Further requests have been made to both the Councils Legal and Land Charges administration teams. To date we have been unable to locate the Stopping Up Order and plans.
15. The presentation to this Committee of key historical evidence showing the existence of Langley Place as a right of way is therefore based on information contained in:
  - Appendix 2 to the report of 29<sup>th</sup> November 2018 and
  - the report to this Committee on 29<sup>th</sup> January 2019.
16. The plan on page 133 of Appendix 2 is an extract showing the length of Langley Place (coloured red) that according to the Councils records was extinguished when the industrial estate was built. Before the land was sold, this would have also led to numerous homes in Langley Place.
17. Coupled with, amongst others, the plans on pages 114 and 126 to Appendix 2, which continue to show Langley Place as it exists at the New Town junction; along with the plan on page 193 of the January report excluding from the sale the area of Langley Place in question; it is therefore reasonable to conclude that this section of Langley Place was not formally stopped up and therefore continues to be "highway" even if not currently used as such. If the Stopping Up Order could be found therefore, it is reasonable to assume that the stopping up of Langley Place would not have stopped up the area of Langley Place in question.
18. On the basis of the information contained in the presentation and previous reports on this matter to this Committee, your officers believe the evidence demonstrates the existence of a right of way over Langley Place which on the balance of probability is considered sufficient to fulfil the evidential

threshold of Section 53 of the Wildlife and Countryside Act 1981. On this basis, irrespective of whether the section of Langley Place is currently in use as such or otherwise, the principle of “once a highway, always a highway” is applicable. Note too for the avoidance of doubt, motive, merit and current use of the area in question is not relevant.

19. The Council’s solicitor agrees with the above and is of the opinion that the previous decision made by this Committee would be quashed and the Council would be liable for the appellant’s costs which could run to tens of thousands of pounds if taken through the High Court process.
20. If quashed by the High Court, the matter would have to return to A&R Committee for a further decision as the Council has a duty to prepare a DM&S for Langley Place amongst other areas of highway within Luton, (referred to in previous reports as the “Excluded Area”), pursuant to section 55(3) of the 1981 Act. Consequently, taking no action to deal with this request is not considered to be an option as the Council could be compelled to act via a further Judicial Review.
21. Consequently, Committee approval is sought to formally add this section of Langley Place to the DM&S. The legislative procedure requires notices of the order to be served on the interests in the land, posted on the route and advertised in a local newspaper. If no objections are received, the order will be confirmed and a new DM&S for Langley Place created. However, if objections are made and not withdrawn, the Council will have to forward the order to the Secretary of State for Environment, Food and Rural Affairs who will determine whether it should be confirmed or not.

### **PROPOSAL/OPTION**

22. Not to progress this based on the evidence supplied and coupled with the duty to prepare a DM&S for the Excluded Area could result in a legal challenge compelling the Council to do so, especially in light of the developer’s interest in developing Unit 4.

### **HUMAN RIGHTS AND CRIME AND DISORDER ACT - IMPLICATIONS**

23. The recommendation notes the rights to respect for private and family life and protection of property but acknowledges and recognises the duties under Section 53 above. In addition there are not considered to be any crime and disorder implications arising but again the Section 53 duty is noted.

### **EQUALITY ACT 2010**

24. There are no disproportionate effects on people with protected characteristics namely: age, sex, gender assignment, sexual orientation,

disability, marriage/civil partnership, pregnancy/maternity, race, religion or belief, arising from this report.

## **APPENDICES**

- Appendix 1 Plan of the area to be added to Definitive Map and Statement
- Appendix 2 Report to Administration and Regulation Committee on 29<sup>th</sup> November 2018
- Appendix 3 Extract from Minutes of Administration and Regulation Committee on 29<sup>th</sup> November 2018
- Appendix 4 Report to Administration and Regulation Committee on 29<sup>th</sup> January 2019
- Appendix 5 Extract from Minutes of Administration and Regulation Committee on 29<sup>th</sup> January 2019
- Appendix 6 Report to Administration and Regulation Committee on 19<sup>th</sup> June 2019

## **LIST OF BACKGROUND PAPERS**

### **LOCAL GOVERNMENT ACT 1972, SECTION 100D**

None