

**COMMITTEE:** Administration & Regulation Committee

**DATE:** 19<sup>th</sup> June 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:**

<b>LEGAL</b>	<b>x</b>	<b>COMMUNITY SAFETY</b>
<b>EQUALITIES</b>		<b>ENVIRONMENT</b>
<b>FINANCIAL</b>	<b>x</b>	<b>CONSULTATIONS</b>
<b>STAFFING</b>		<b>OTHER</b>

**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.

## **RECOMMENDATION(S)**

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 edged red on the plan at Appendix A, to the Definitive Map and Statement.

## **BACKGROUND**

3. At its meeting on 29<sup>th</sup> November 2018 and, following the receipt of further information and clarification, a subsequent meeting on 29<sup>th</sup> January 2019, the Committee considered reports with the recommendation set out above. A copy of those reports and the appendices to them are referred to as Background papers to this report.
4. The reason for bringing those reports to the Committee was because following a determination from the Council's Development Management service on 1<sup>st</sup> August 2017 to grant prior approval for conversion of Unit 4 in the Telmere industrial estate in New Town to 12 bedsits, the developer 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 running alongside the Sugar Loaf pub for a distance of approximately 11.25 metres. That evidence was included as Appendix B to the report to the 29<sup>th</sup> January 2019 meeting of this Committee (See background papers).
5. The key points of the advice previously given are as follows:
  - the Duty to produce a Definitive Map and Statement (DM&S) of Public Rights of Way (RoW) was first required by the National Parks & Access to the Countryside Act 1949, which included 'exceptions to survey' where the area was so fully developed it would be inexpedient to do so (the case in much of Luton);
  - this "Excluded Area" in Luton remains largely un-surveyed but all rights of way in that area need to be added to the DM&S by 1<sup>st</sup> January 2026.
  - Section 55(3) provides a duty upon the Council to prepare a definitive map and statement for ROW's within the Excluded Area. The duty has been in force since February 1983. Following receipt of the evidence from the developer, the Council took Counsel's advice who advised that the Council could be compelled to take action to map the excluded area via High Court action as little meaningful action to do so has taken place. Hence the reports were prepared for the committee's attention.
  - the Council has a duty under Section 53 of the Countryside & Wildlife Act 1981 to keep the DM&S under continuous review, and make such modifications in consequence of the occurrence of, amongst other things, the discovery of evidence which shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.
  - the section 53 evidential test of RoW's to consider in fulfilling the section 55(3) duty to prepare a DM&S for the excluded area, is whether there is sufficient evidence which demonstrates on the balance of probability that a public RoW over Langley Place subsists.
  - The evidence provided is considered to fulfil the section 53 evidential threshold.

- The principle; “once a highway, always a highway” is applicable.
6. The Committee decided to refuse the officer’s recommendation, as they 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.

## **REPORT**

### Background to the development proposal

7. The justification for bringing this matter back to this Committee is 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 this letter is included at Appendix B to this report.
8. In particular, the letter sets out that the Council has misdirected itself in law, as the duty pursuant to section 53 of the Countryside & Wildlife Act 1981 as set out above has not been engaged with and the decision reached is outside of its scope.
9. 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.
10. 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 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.
11. In addition, the evidence received is considered to be compelling to satisfy the Section 53 test and so to make a decision on the basis that the evidence is not sufficient to show a RoW subsists could also be challenged through the High Court.
12. Note too for the avoidance of doubt, motive, merit and current use of the area in question is not relevant. If the area of land is shown to be a RoW as a result of the historical evidence received, whether currently in use as such or otherwise, then it remains as such as: “once a highway, always a highway”.
13. 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**

14. Not to progress this based on the evidence supplied and coupled with the duty to a DM&S 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**

15. 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**

16. 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 A Plan of the area to be added to Definitive Map and Statement.

Appendix B Pre Application Protocol letter received from Bevan Brittan

### **LIST OF BACKGROUND PAPERS** **LOCAL GOVERNMENT ACT 1972, SECTION 100D**

Report to Administration and Regulation Committee on 29<sup>th</sup> November 2018

Report to Administration and Regulation Committee on 29<sup>th</sup> January 2019