

<b>Report of:</b>	Executive Member for Environment Director of Environment and Community Services
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<b>Submitted to:</b>	Executive
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<b>Date:</b>	18 October 2022
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<b>Title:</b>	Poole Hospital Definitive Map Modification Order
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<b>Report for:</b>	Decision
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<b>Status:</b>	Public
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<b>Strategic priority:</b>	Physical environment
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<b>Key decision:</b>	No
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<b>Why:</b>	Decision does not reach the threshold to be a key decision
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<b>Urgent:</b>	No
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<b>Why:</b>	Not Applicable
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### **Executive summary**

The Council has a statutory duty to promote the modification of the Definitive Map and Statement, by way of a Definitive Map Modification Order if evidence is discovered which suggests that public rights subsist or are reasonably alleged to subsist along the line of the route.

The Council's Public Rights of Way Officer has looked into the history of the route and has searched for any available evidence which would demonstrate that public rights have been shown to exist under Section 31 of the Highways Act 1980; and at Common Law by showing that the landowner at some time in the past dedicated the way to the public either expressly, the evidence of the dedication having been lost, or by implication making no objection to use by the public of the way.

Having considered all of the available evidence, the officer is satisfied that the evidence is sufficient to satisfy the requirement under Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981.

## **Purpose**

1. To consider whether evidence discovered shows on the balance of probability that public rights of way exist under Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981.
2. Also to seek approval to make a Definitive Map Modification Order (DMMO) to modify the Definitive Map and Statement by the addition of a Footpath from Brideway Middlesbrough No 56 to Old Stokesley Road. The route is shown as A-B-C-D-E-F on the report plan (see appendix 1).

## **Background and relevant information**

3. In 1931 Alderman T.Gibson Poole offered to buy 'Grey Towers' estate and presented it to the town as a site for a TB sanatorium. The former home and grounds started life as a hospital in 1932 following some modification and was called 'Poole Hospital'.
4. Following a north east conference in 1933 into the availability of facilities to tackle TB, a special committee was set up which recommended the establishment of a Poole Joint Sanatorium Committee in early 1936 which became a board by the end of 1936 by virtue of The Public Health Act 1936. This committee also recommended the acquisition of Grey Towers and its estate from the Council's Health Authority and the building of a 315 bed sanatorium.
5. Following the establishment of the NHS in 1948, the Hospital and Estate became NHS Assets. The Hospital continued to be used for the treatment of TB and later as a general hospital until the mid-1990's. During the life of the hospital staff, patients, visitors and the local community would use the grounds for relaxation and to aid recuperation.
6. Following the closure of the hospital and the decline of the buildings, the estate was promoted in 1999 as a Development Opportunity by the NHS. The land was purchased in the early part of 2000's by a housing developer who made an application for the development of a residential estate on the former hospital site.
7. Development proposals were guided by a draft s.106 Agreement which included a number of requirements in particular 'The continuation of the Green link Network by the creation of a suitable route in a landscaped setting linking the bridleway to the north of the site with Nunthorpe village road'. This specifically required a Public Footpath to be provided as part of the s106 Agreement which was signed by the developer and shown on the plan attached to the Agreement as the 'Green link'.
8. The route of the Green link was agreed with the Council during planning and the infrastructure put in place on the ground in 2004 which the public then started to use and the Council maintained. The process for creating a Public Footpath, as required by the s.106 Agreement, is by way of a Creation Agreement under s25 Highways Act 1980.

9. A Creation Agreement was drafted and signed by the then landowner but for some reason was not completed by the Council. Despite this the path was made available on the ground and the path was used by the wider public as had been the intention and a requirement of the planning approval.
10. As part of the planning permission, it was a requirement that a Management Company be set up to manage the landscaping on the housing development and the wider estate which included the woodland, lake and the surrounding farm land. The management company 'Grey Towers Park Limited' (GTP) is made up of a number of directors who are elected from residences of the housing estate. The landownership has changed hands over the years and it was not until recently that the management company became the landowner.
11. The Council has looked into the different options available to enable the route to be recorded on the definitive map, this has included the entering into a Creation Agreement. The management company as landowner has been asked on several occasions if they would agree to a creation agreement.
12. The Council has not received confirmation from GTP that they would agree to this, which has meant that the Council has been unable to add the footpath to the Definitive Map and this has resulted in conflict between the public and residents of the new estate. This in turn has led to uncertainty for the public and resulted in members of the public walking onto private land.
13. The Council and the GTP have had a number of meetings over the years to discuss the legalities of the route and the Council's position has never changed. In recent years the GTP have requested the legal diversion of the route, which would indicate an acceptance of its legal status.
14. The Council's position has always been clear that the entire route would need to be diverted to enable it to be recorded on the definitive map if confirmed. However, as this is unlikely to happen without objections then the route must first be recorded on the definitive map.

### **What decision(s) are being recommended?**

15. That the Executive:
  - a) Authorises the Head of Legal Services to make an order under Section 53 of the Wildlife and Countryside Act 1981, to modify the Definitive Map and Statement by adding a footpath at the Poole Hospital estate in the parish of Nunthorpe.
  - b) That the Order be confirmed by Middlesbrough Council as an unopposed Order if no objections or representations are received to the Order within the statutory timescales; or, if objections or representations to the Order are received that they be submitted by Middlesbrough Council to the Secretary of State with a request that the Order be confirmed.

## **Rationale for the recommended decision(s)**

16. In most cases, it is usual for the Council to receive a claim to modify the definitive map from a member of the public, organisation or landowner but in some instances, the council will also look to modify the definitive map where it finds evidence.
17. Section 53 (3)(c)(i) is relevant in circumstances where the discovery by the authority (including through a third-party application), 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.
18. Thus, if a way is not shown on the definitive map but documentary evidence shows that a public right of way exists, or is reasonably alleged to exist, an application may be made under this section for the path to be added to the definitive map and statement.
19. The s106 agreement and the Creation Agreement are supporting evidence to the question of whether the claimed route has been dedicated as a highway at common law. It is therefore considered that the documentary evidence indicates that it is reasonably alleged the whole of the route (A-B-C-D-E-F) on the report map was dedicated as a public footpath.
20. Having considered all of the available evidence, the officer is satisfied that the evidence is sufficient to satisfy the requirement under Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981.
21. It is therefore considered that the Council should make a Definitive Map Modification Order to add the route A-B-C-D-E-F to the definitive map and statement as a Footpath. It is considered that if the Order made by the Council is unopposed, it should be confirmed by the Council and if the Order is opposed, it should be forwarded to the Secretary of State with a request that it be confirmed.

## **Other potential decision(s) and why these have not been recommended**

22. The Council has considered all available legal options to be able to record the route on the definitive map (see Appendix 1) and has concluded that the most appropriate legal option would be a Modification Order under Section 53 of the Wildlife and Countryside Act 1981.

## **Impact(s) of the recommended decision(s)**

### ***Legal***

23. The making of the DMMO requires a two stage process (making and confirmation) which is governed by Schedules 14 and 15 of the Wildlife and Countryside Act 1981. The first stage involves the Council (as surveying authority) making and publishing the order which will trigger a six week period to invite objections.

24. The second stage requires the order to be confirmed. The Council may itself confirm the order, if no objections are made or if any such objections are withdrawn. Otherwise, the order must be submitted to the Secretary of State for confirmation. The Secretary of State will usually proceed to hear all representations by way of a public inquiry (or on occasion by written representations) before making a decision as to whether an order should be confirmed.
25. Any confirmed order may be subject to legal challenge in the High Court for a further six week period on narrow legal grounds (namely that the Council or the Secretary of State has erred in law, the Order is not within the statutory powers or the statutory process has not been followed).
26. Section 53 of the Wildlife and Countryside Act 1981 places a duty upon the Local Authority to keep their Definitive Map and Statement of Public Rights of Way under continuous review, and to make such changes as become apparent, upon the discovery of evidence which suggests, when all other available evidence has been taken into account that the Definitive Map and Statement require modification.
27. In particular Section 53(3)(c)(i) places the Authority under a duty to promote a modification of the Definitive Map and Statement, by way of a Definitive Map Modification Order if evidence is discovered which suggests that public rights subsist or are reasonably alleged to subsist.

### ***Strategic priorities and risks***

28. The Council's Strategic Plan has nine priorities; one of which is Physical Environment. Progression of this work is key to achieving one of the underpinning initiatives within that priority.

### ***Human Rights, Equality and Data Protection***

29. There are no concerns that the planned approach could have an adverse impact on individuals or groups as a result of holding one or more of the characteristics protected by the Equality Act 2010, therefore a Level 1 screening equality impact assessment is not required.

### ***Financial***

30. The costs associated with making and confirming a Definitive map modification order have to be met by the Council.
31. If objections are received, which cannot be resolved and no contrary evidence is produced to change the Council's view, the DMMO will be determined by the Secretary of State, which may involve the holding of a public inquiry. Parties are expected to meet their own expenses although the Council will be responsible for making the inquiry arrangements.
32. An application for costs may be made against either party only where they are shown to have acted unreasonably.

## Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
Instructions sent to Legal Services	Public Rights of Way Officer	10/10/2022
Notification Severed on the Owner of the land and all relevant parties	Legal Solicitor	10/11/2022
Legal Order made and Advertised	Legal Solicitor	1/12/2022

## Appendices

1	Report Plan
2	Legal Options
3	Evidence Bundle <ul style="list-style-type: none"><li>• Evidence of Green Link</li><li>• Section 106 Agreement Poole Hospital</li><li>• Section 106 Plan 1</li><li>• Section 106 Plan 2</li><li>• Letter from GTP Requesting a Diversion of the Green Link 29.9.18</li></ul>

## Background papers

Body	Report title	Date

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