

Appendix D - Committee Update

Agenda Item

- Application for a Definitive Map Modification Order to record a public footpath at Old Lane, Scapegoat Hill, Colne Valley on the Definitive Map and Statement, and two other discovered routes.

Introduction

At the District Wide Planning Committee on 19th September 2024, members [resolved to defer the determination](#) of the agenda item in order to undertake a site visit and walk the routes, which was proposed by Councillor Firth, and seconded by Councillor Bellamy to further inform the determination to be made. Officers would like to take this opportunity to provide further advice for members.

Furthermore, at the same meeting, Claire Atkinson, an affected landowner and local resident, and Paul Hobson, representing Scapegoat Hill Baptist Church, also an affected landowner, spoke in opposition of the application and Officer recommendations. Additionally, Councillor Bellamy provided several comments. Officers would also like to take the opportunity to address the points raised by the aforementioned persons prior to the site visit and determination of the agenda item.

Site Visit

The determination of the agenda item by members must be based on the available evidence and especially focused on the physical character of the ways during the relevant period of 24th November 1997 to 24th November 2017. Photos of the ways during the relevant period on 22nd June 2017 are provided in Figure 7 of Appendix C. Additionally, aerial photos taken between 2000 to 2018 at Figures 19 to 23 also show the physical character of the ways during the relevant period.

These images are of significant importance as they provide a window to the past and the time period when the ways were being actually enjoyed by the public. In particular, the way from Old Lane to the burial ground route 1 is shown leading between wide drystone wall boundaries with a grassed surface and public use of this particular part of the way was not limited by gates or walls.

On the other hand, at the site visit, members will see that the physical character of the ways have changed considerably in recent years. Route 1 is obstructed by gates, leads along a tarmac driveway, and is then obstructed by a newly erected boundary wall; and route 2 is partially obstructed by a brick wall where it joins route 1, but remains open for public use. The development, purchase, and occupation of the affected property are events that have taken place outside the relevant period of 24th November 1997 to 24th November 2017

The grant of planning consent or subsequent development of the land has no extinguishing effect of any unrecorded public rights that may subsist. The developer was notified of this fact by Officers on 5th February 2019. Works undertaken to the land over which the ways are alleged to subsist were at the developers' risk. The developers were notified of this risk by Officers on 3rd July 2020.

Therefore, these factors do not constitute credible evidence that rebuts the presumption of deemed dedication, or the Officers recommendations, and cannot be taken into consideration.

Comments in reply

The statements provided by Claire Atkinson and Paul Hobson, and comments from Councillor Bellamy must be evaluated within the context of the relevant tests and statutory provisions. In particular, members must deliberate, is there a discovery of new credible conflicting evidence and/or incontrovertible documentary evidence rebutting the presumption of deemed dedication?

At the District-Wide Planning Committee meeting on 19th September 2024, Claire Atkinson raised concerns regarding the recommendations to make a Definitive Map Modification Order and record a public footpath over land that now constitutes the garden and driveway of 6 Old Lane, Scapegoat Hill, HD7 4ND.

Whilst Officers understand this is an emotive situation, and sympathise with the concerns raised, it must be emphasised that the determination of the agenda item is based on the discovery of evidence. As stated in the Committee Report and the presentation at the previous meeting, issues relating to security, any potential effect on land use, and possible future use by the public cannot, and must not, be taken into consideration when determining the agenda item.

Providing detailed answers to each of these issues invites the possibility to distract members from the relevant statutory tests that must be applied. Nevertheless, members should be aware that Officers received an email on 27th October 2023 from the agent acting on behalf of the vendor of 6 Old Lane, Scapegoat Hill, HD7 4ND, stating:

“For information, ... is in the process of selling the land to a willing buyer (which for the avoidance of doubt does know about the DMMO Application and the Council’s current investigation).”

And, earlier on 12 May 2020, the developer informed Officers that the DMMO application had shown up on a conveyancing search. The Law Societies CON29 conveyancing local search standard form includes a question about any pending applications to record public rights of way that abut, or cross the property.

Additionally, the intention of the applicant, or whether the applicant retains interest in the outcome of the application is irrelevant. The Council still has a statutory duty to determine the application, to keep the Definitive Map & Statement under continuous review, and there has been a discovery by the authority of evidence. Notwithstanding

the above, Officers note that the application was submitted on behalf of Scape Community Group, and there has been a continuity of contact with a member of this group throughout the pre-application, application, investigation, public consultation and afterwards. It can be noted that in relation to proposed development, the DMMO application refers to:

“[...] the green lane footpath leading from Old Lane to Taylor Lane used by people as a footpath for generations. Also builder proposing large gates along this footpath to stop access”.

Paul Hobson, Church Graveyard Secretary

At the District-Wide Planning Committee meeting on 19th September 2024, Paul Hobson raised concerns regarding the recommendations to make a Definitive Map Modification Order and record a public footpath over land that constitutes Scapegoat Hill Baptist Burial Ground and in the freehold possession of The Yorkshire Baptist Association. Paul Hobson was appointed Church Graveyard Secretary in approximately 2020, three years after the end of the relevant period. Nevertheless, factors have been raised that are pertinent to the presumption of dedication under section 31(1) of the 1980 Act.

In the first instance, the Council is not proposing to create, or make, a public footpath through the graveyard. The Council is acting in its capacity as the surveying authority. The Officer recommendations are based on the discovery of evidence that a public right of way already subsists or is reasonably alleged to subsist and an Order should be made to modify the Definitive Map and Statement and add the way to the legal record of public rights of way.

Paul Hobson also mentions that graveyard steps are not shown on any maps as a public thoroughfare. Officers have considered the documentary evidence tendered in evidence and conducted their own research of the evidence available to them. Officers agree that there is no inference of public status along the graveyard steps from documentary evidence, such as maps. However, the recommendation is not based on

documentary evidence, but on recent public use and deemed dedication under section 31(1) of the 1980 Act.

Paul Hobson stated that the graveyard steps were never intended to form a thoroughfare and, by deduction, the landowner had no intention to dedicate a public footpath over their land. Officers recognise that this is a sensitive issue and the steps may well have been built for the access, development, and maintenance of the graveyard. However, under section 31(1) of the 1980 Act, there is no need to infer a dedication, or an intention to dedicate a public right of way, by an owner. The way becomes a highway by operation of law providing the legal requisites are satisfied from proof of public user and acquiescence/toleration to public use by the landowner.

To benefit from the rebuttal of deemed dedication proviso, the landowner must manifest and communicate their intention to the reasonable audience, namely the users of the way, through overt acts. There is no evidence of an overt act that rebuts the presumption of deemed dedication of a public footpath over the Baptist Burial Ground. Accordingly, the allegation that the way subsists over the steps at the Baptist Burial Ground remains reasonable.

On the subject of sufficiency of public use and acquiescence/toleration by the landowner, Paul Hobson stated that none of the people he had spoken to had ever seen any member of the public using the steps through the graveyard as a walkway. The credible evidence submitted in the application that the way has been actually enjoyed by the public as of right and without interruption for a full period of 20 years is to be judged from how the matter would have appeared to the owner of the land, or if there was an absentee owner, to a reasonable owner who was on the spot. As stated in Appendix B, Officers consider that the extent and quality of use is sufficient to alert an observant owner to the fact that a public right is being asserted and ought to be resisted if such right is not recognised.

Paul Hobson raised issues regarding the existence of a public footpath over consecrated land and Officers recognise that this is a sensitive subject. Section 31(8) of the 1980 Act states:

“Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public or statutory purposes to dedicate a way over that land as a highway if the existence of a highway would be incompatible with those purposes”.

The provision is a pragmatic test to be applied on the facts of the particular case. However, as stated in paragraph 101, page 24 of Appendix B – Investigation Report, there is no issue with any incapacity to dedicate a way over the graveyard steps as the land is not consecrated land but is a private burial ground. Therefore land forming part of the Baptist Burial Ground can after 20 years use by the public as of right be deemed to have been dedicated as a highway under section 31(1) of the 1980 Act.

Another factor raised was the purpose of members of the public using graveyard steps. During the presentation, Paul Hobson stated that route 2 formed a thoroughfare from High Street to Old Lane, whilst part of route 1 and part of route 3 formed the main thoroughfare from Old Lane to Vermont Close. The statement adds further support to the presumption of deemed dedication over the land in the possession of Claire Atkinson. However, in relation to the available evidence for route 3, Officers do not consider that an allegation that the way is a public footpath is reasonable due to insufficient documentary and user evidence, when considered under statute or at common law.

The provisos in section 31(1) of the 1980 Act do not enquire as to why the public go along the way. However, the public do not claim to use a path ‘as of right’ unless there is some point in their doing so. Paul Hobson stated that route 1 from Old Lane to Taylor Lane was not the most direct route from Scapegoat Hill to Golcar. At paragraph 118, page 28 of Appendix B – Investigation Report, Officers described that the purpose of public use on foot was for walking, dog walking, leisure, and going to the bus stop/school/shopping in Golcar. Some users annotated on the user evidence map that they walked a circular route via route 1, Taylor Lane, Old Lane, and route 1. The evidence of user is credible and there is no need to go behind the user evidence forms.

Comments in reply to Councillor Bellamy

At the District-Wide Planning Committee meeting on 19th September 2024, Councillor Bellamy recalled living in Scapegoat Hill approximately 45 years ago, before the start of the relevant period on 24th November 1997, and represented the Colne Valley Ward a few years ago. Councillor Bellamy did not remember using any of the alleged routes, particularly via the burial ground.

Instead, Councillor Bellamy claimed to reach Taylor Lane via Grand Stand, a route that joins and rejoins Old Lane and is not recorded as a highway maintainable at public expense on the List of Streets held under [section 36\(6\) of the 1980 Act](#), and was awarded as a private carriage and occupation road known as Savile's Road in the [1823 Manor of Golcar Inclosure Award](#). Officers appreciate the recollection of use by Councillor Bellamy; however, it does not conflict with the discovery of credible user evidence, and five members of the public that claimed to use the ways were or are resident at Grand Stand.

Twenty-two user evidence forms were also submitted as evidence in support of the application and eight additional user evidence forms were provided during the preliminary consultation. The forms utilise a template provided by the Public Rights of Way Team, which ask several questions regarding the mode, duration, and frequency of use, as well as whether use was by force, secrecy, permission, or a private right, the width of used way, any limitations, and whether their use was challenged. Officers consider that the user evidence forms have been completed with due diligence and answered as fully as possible.

Each of the original twenty-two user evidence forms signed and dated a statement, which reads: *"I hereby certify that to the best of my knowledge and belief, the facts I have stated are true"*. The standard template user evidence forms were updated, with eight users completing a new form which includes a statement of truth: *"I believe that the facts and matters contained in this statement are true and I have read the declaration above and the warning below"*. The warning states: *"If you dishonestly enter information or make a statement that you know is, or might be untrue or*

misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment of an unlimited fine, or both".

The user evidence forms provide credible evidence of public user and can reasonably be taken at face value at the Order-making stage. There is no need to go behind the user evidence forms. The Councils duty to investigate the matters stated in the application under schedule 14, paragraph 3(1) of the WCA, has been performed by Officers tabulating and analysing the user evidence forms, which is presented in Appendix B under the heading 'User Evidence Evaluation' and in Appendix C.

Councillor Bellamy queried whether the use has commenced just before they "... *built them homes down at the bottom*". The location of the homes Councillor Bellamy refers to is unclear, however, a comparison of Ordnance Survey maps show that the residential properties west of Grand Stand and north of Taylor Lane, and at Upper Haughs are relatively recent developments, since at least 2004. As shown in Figure 29 of Appendix C, there is evidence of public use as far back as the 1940s, 60's, 70's and 80's, before the relevant period, and provided from members of the public located around the Scapegoat Hill area.

If an Order is made as recommended

In R v Secretary of State for Wales ex parte Emery [1997], Roch LJ stated:

"... the authority and the Secretary of State must bear in mind that an order under Section 53(2) made following a Schedule 14 procedure still leaves both the applicant and objectors with the ability to object to the Order under Schedule 15 when conflicting evidence can be heard and those issues determined following a public inquiry".

Officers consider that the relevant evidential tests have been met for making a Definitive Map Modification Order as recommended. Officers do not consider that

conflicting evidence has been presented. In any case, the statutory procedure is the considered to be the correct course of action as the affected parties may have an opportunity of being heard by the Planning Inspectorate under Schedule 15 of the Wildlife & Countryside Act, 1981.