

---

**Meeting:** Development Management Committee  
**Date:** 29 February 2012  
**Subject:** Addition of a Public Footpath to the Definitive Map and Statement for the Parish of Harlington  
**Report of:** Paul Cook – Head of Countryside Services and Transport Strategy  
**Summary:** The report proposes that Central Bedfordshire Council makes a Definitive Map Modification Order under Section 53 of the Wildlife and Countryside Act 1981 to add a Public Footpath onto the Definitive Map between points A-B-C as shown on the plan at Appendix A.

---

**Advising Officer:** Greg Alderson – Director of Sustainable Communities  
**Contact Officer:** Gemma Harrison  
**Public/Exempt:** Public  
**Wards Affected:** Harlington – Cllr. Tom Nicols and Cllr. Norman Costin  
**Function of:** Council

## **CORPORATE IMPLICATIONS**

### **Council Priorities:**

Statutory Duty under the Wildlife and Countryside Act 1981. Promoting Healthier Lifestyles - by protecting and promoting access to the countryside for leisure and recreation.

### **Financial:**

1. The costs of advertising the making and confirmation of the order is estimated at £500. If the order is opposed it is likely to result in a Public Inquiry which would cost the Council approximately £400. All costs would be met out of existing Definitive Map Team budgets and no growth is requested.

### **Legal:**

2. If an order is made, a notice is advertised and posted on-site. By virtue of paragraph (3) (1) C of Schedule 15 to the Wildlife and Countryside Act 1981 there then follows a statutory objection period of not less than 42 days. If any objections are received and not withdrawn the Council cannot confirm the order itself and would have to forward it to the Secretary of State for the Environment, Food and Rural Affairs who appoints an independent Inspector to determine whether the order should be confirmed or not.

3. The Council has received a representation to the proposal from the affected landowner and so therefore an objection being received at the next stage is likely, and a Public Inquiry to look into the merits of the order should be expected.

**Risk Management:**

4. Not Applicable.

**Staffing (including Trades Unions):**

5. Not Applicable.

**Equalities/Human Rights:**

6. The claimed route offers users with push chairs or restricted mobility a preferred alternative route to Harlington Footpath No.1 due to the shallow gradient of the path.

The claimed route dissects a private garden and therefore the landowner's privacy and security will be affected, however the statutory duty which is placed on the Council by the Wildlife and Countryside Act 1981 supersedes the Human Rights Act 1998 in this instance.

**Community Safety:**

7. Not Applicable.

**Sustainability:**

8. Not Applicable.

**Procurement:**

9. Not applicable.

**RECOMMENDATION(S):**

**that the Committee approve the making of an order under Section 53 of the Wildlife and Countryside Act 1981 to add a Public Footpath between Churchill's and Bunyan's Walk to the Definitive Map between points A-B-C as shown on the plan at Appendix A.**

**Introduction**

1. On 3 January 2011 a joint application was received from Mrs. Moriondo and Mr. McCartney to add a Restricted Byway onto the Definitive Map in Harlington. The route connects Churhills to Bunyan's Walk as shown between the points A-B-C on the plan at Appendix A.

2. The application was made to add a restricted byway to the Definitive Map because the applicants believed cyclists used the path as well as pedestrians. A restricted byway is a public right of way for non mechanically – propelled vehicles. After discussion with the applicants, it was established that the only cycle use was occasional use by very young children; this was reflected later from the evidence submitted.
3. The proposed path runs from Harlington Public Footpath No. 1 in a westerly direction along a wide driveway until it crosses through the front garden of No.3 Churchills, where it narrows between two garages before exiting onto Bunyan's Walk.
4. On 4 January 2011 a fence was erected across the path where it exited the garden of No.3 Churchills towards Bunyan's Walk. The fence was only erected for a few hours before local walkers took it down.
5. No.3 Churchills was up for sale as the owner, Mrs. Clarke had recently been put into a care home. Mr. Steven Nicholls was interested in the property and erected the fence, prior to his purchase of the bungalow earlier this year.
6. The erection of the fence is the calling into question on whether the path is a public right of way. A number of locals contacted the Council to find out why a fence had been erected. They were told the route was not recorded as a public right of way on the Definitive Map and given user evidence forms. To date 45 local users have submitted user evidence forms and several have agreed to be interviewed in order to help the Council investigate whether a public right subsists along the claimed path.

### **Legal and Policy Considerations**

7. Central Bedfordshire Council, as the Surveying Authority, has a statutory duty under Section 53 of the Wildlife and Countryside Act 1981 to maintain a public record of public rights of way. This is known as the Definitive Map and Statement. The Council also has a duty to make such modifications as are required to keep the Map and Statement up-to-date and accurate.
8. Section 53(5) of the Wildlife and Countryside Act 1981 allows any person to apply to Central Bedfordshire Council to modify the Definitive Map and Statement by order if they believe it to be wrong.
9. When an application is submitted, the Council has a statutory duty to investigate the matter, taking into account all relevant evidence - not just that supplied by the applicant - when coming to its decision. If the evidence shows on the balance of probability, or on a reasonable allegation - which is a far more lenient appraisal of the evidence, that a public right of way is not shown on the Definitive Map this error should be corrected by the making of a Definitive Map Modification Order.
10. Under Section 31 of The Highways Act 1980 a route can be deemed to be dedicated where a way over any land has been enjoyed by the public as of right and without interruption for a full period of 20 years, unless there is sufficient evidence that there was no intention during that period to dedicate it.

11. In this case a sign was erected by the previous landowner; the sign can still be seen today on Churchills, (Appendix B). The sign has fallen into disrepair and hasn't been maintained in recent years; however it was the previous landowner's intention (Mr Nimrod Clarke) to make local walkers aware that the route connecting Bunyan's Walk to Churchills was a private footpath. No other signs are present.
12. A right of way can also be added to the Definitive Map under Common Law. Under Common Law two things need to happen, implied dedication and implied acceptance. The route must be open to the public at large and follow a defined route and the public have to be using the route as a right, without permission, force or secrecy.
13. If a Modification Order is made and objected to, the Council cannot confirm it but must forward it to the Secretary of State for the Environment, Food and Rural Affairs. The Secretary of State appoints an Inspector to decide whether the evidence, when weighed on the stricter evidential test of balance of probability, allows the Modification Order to be confirmed. If the evidence does not meet the stricter test the Modification Order is not confirmed.
14. The Development Management Committee under the Central Bedfordshire Council's Constitution (E2 at Annex C) is the appropriate body to determine an application made under Section 53 of the 1981 Act. When determining the application, committee members should evaluate the evidence contained within the report to decide whether the alleged public right of way subsists, or can reasonably be alleged to subsist. Ancillary matters, such as the need for a path, or issues of privacy, convenience, nuisance or safety are irrelevant to the issue of whether a right of way does, or does not, exist and are things to be addressed as part of the management strategy of any path added by a Modification Order.

### **Evidence – Bunyan's Walk Residents**

15. The Council received 14 user evidence forms, one from every property in Bunyan's Walk. Council officers interviewed six of the residents on Wednesday 14<sup>th</sup> June 2011. The interviews are summarised in Appendix C.
16. It became clear after speaking with the residents of Bunyan's Walk that users were using the claimed route on foot and not on a bicycle.
17. However, the Bunyan's Walk residents, whether they realised it or not may have had a private right to use the path in question. Mr. Braybrooke was the only resident interviewed who stated he had used the path before becoming a resident of Bunyan's Walk. Having a private right means the residents are using the route by legal entitlement and not as a public right as needed in order to add the path onto the map under Section 53 of the Wildlife and Countryside Act 1981.

18. However Mr McCartney has been informed by Land Registry that the private rights have not been passed onto the current deeds held by Bunyan's Walk residents. This is still unclear as the Council has been shown deeds where the private rights along the claimed route are clearly stated, therefore it seems some of the properties have the private access right, where as others do not. For the purposes of this report all user evidence provided by Bunyan's Walk residents will be put to one side, as there is not 100% certainty that private access rights exist for all Bunyan's Walk residents.

### Evidence – Other Users

19. The Council has received twenty five user evidence forms, supporting the addition of a public footpath from users living outside of Bunyan's Walk. Four of these users were interviewed by the Council on Thursday 7<sup>th</sup> July 2011 and one Mrs Moriondo was interviewed on Wednesday 14<sup>th</sup> June and these are summarised in Appendix D.
20. Mr. Steven Nicholls the current landowner of No.3 Churchills, submitted a user evidence form stating that he did not believe the claimed route to be public. He has stated that he attempted to use the path in 2007 but was told it was a private footpath and so did not use the path again. Mr. Nicholls also stated that he remembers seeing a sign stating the footpath was private. This sign can still be seen today and is located on the corner of Churchills. The sign reads "private footpath Bunyan's Walk Residents "and a photo of the sign can be seen at Appendix B. Mr Nicholls believes there was also a private sign located at the Bunyan's Walk end of the path; this sign is not present today.
21. Mr Steven Nicholls was the only user evidence form submitted which does not support the addition of a footpath to the Definitive Map.

### User Evidence Summarised

22. In order for a path to be added to the Definitive map through deemed dedication, there needs to be sufficient evidence that the path has been used continuously without interruption for 20 years.

23.

	Bunyan's Walk Residents	Other users	Total
0-19 yrs of use	5	10	20
20 years +	10	15	25
		Total No. of evidence forms submitted:	45

24. Out of the 45 evidence forms submitted, 25 users have stated they have used the whole of the claimed route on foot for 20 years or over. 15 users live outside Bunyan's' Walk and used the route as a right and without permission for over 20 years.
25. The user evidence has shown that the route is used on foot and not by bicycle, horse or car. Therefore if an order was going to be made it would be made to add a Public Footpath on to the map and not a Restricted Byway as first applied for. The applicant is happy with this decision.

## **Consultations**

26. Harlington Parish Council were consulted on the proposal and stated in an e-mail dated 19<sup>th</sup> April 2011, that... “that it is used regularly, and has been for a number of years. Parents use this route as a short cut when taking children to the Lower School and other walkers and dog walkers use it too...”
27. The Ramblers Association were consulted and replied on 18<sup>th</sup> May 2011, stating that they could not give any opinion on the status of the claimed route.
28. The current ownership of the land between points B-C is uncertain. The Land Registry describes the land as unregistered. Permission would therefore have to be sought from the Secretary of State for Environment, Food and Rural Affairs for Notice of the orders to be served on the land.

## **Conclusions**

29. The path has been surveyed and the route is currently used by local school children, dog walkers and families.
30. This route is shown on the deeds of the residents of Bunyan’s walk as a private right of way, showing it was always intended to be a private access path when the development was first laid out.
31. The previous landowner erected a sign at Churchills which can still be seen today, this sign was erected to show users of Harlington Footpath No.1 that the claimed route was for private use for Bunyan’s Walk residents only.
32. Some users whilst being interviewed remembered the landowner Nimrod Clarke in the 70’s turning people back, he died in the mid eighties, but his sons continued to live in the bungalow. According to the user evidence gathered his sons did not turn users away, and allowed users including non Bunyan’s Walk residents to use the path.
33. The calling into question occurred in January 2011, therefore in order to add a path onto the Definitive Map using deemed dedication the 20 year period where use must have been continuous and uninterrupted is from January 1991 – 2011. Fifteen users have submitted evidence which shows this to be the case.
34. Under Common Law the route needs to be laid out and accepted by the public, Central Bedfordshire Council has received 25 user evidence forms which shows this to be the case.

35. The test that needs to be met for an order to be made is that public rights have to exist under reasonable allegation; the stricter test of balance of probability has to be met at the confirmation stage. In the last 20 years non Bunyan's Walk residents have walked the route regularly; the private sign previously erected by Nimrod Clarke, has fallen into disrepair, and only existed on one entrance to the route. Therefore there is enough evidence to suggest a reasonable allegation that public rights do exist through use from the last 20 years, and an order should be made to add a Public Footpath onto the Definitive Map from Points A-B-C- as shown on the plan at Appendix A.

**Appendices:**

Appendix A – Plan of claimed route

Appendix B – Photo of the private sign

Appendix C - Summary of evidence from Bunyan's Walk Residents

Appendix D – Summary of evidence from other users