
Meeting: Development Management Committee
Date: 4 December 2013
Subject: Recording the width of Barton-le-Clay Footpath No. 9 in the Definitive Statement
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 record a width and position for Barton-le-Clay Footpath No. 9 in the Definitive Statement between points A-B-C-D as shown on the plan at Appendix A.

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Public/Exempt: Public
Wards Affected: Barton – Cllr. Ian Shingler
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 £550. If the order is opposed it is likely to result in a public inquiry which would cost the Council approximately £1000 in administration and venue hire. Should external legal advice or advocacy be required, this could cost potentially between £1000 and £3000. All costs would be met out of existing Countryside Access Team's General Rights of Way budget (452 600) and no growth is requested.

Legal:

2. Central Bedfordshire Council, as Highway Authority, has a duty under Section 130 of the Highways Act 1980 ("the 1980 Act") to assert and protect the rights of the public to use a public right of way. Mr. Corbett, the owner of No. 44 Sharpenhoe Road and of the majority of the track along which Barton-le-Clay Footpath No. 9 runs has disturbed the surface of the track (a metre-wide strip adjoining his fence) which resulted in a complaint from his neighbour. In responding to the complaint, the Council has investigated the legal width of the footpath with a view to protecting its surface and recording a width on the Definitive Statement.
3. Central Bedfordshire Council is also the Surveying Authority for the Definitive Map and Statement and has a statutory duty under Section 53(2) of the Wildlife and Countryside Act 1981 (the 1981 Act") to keep the map and statement under continuous review. Where evidence is found that the map and/or statement need updating this is done by the making of a Definitive Map Modification Order. Currently no width is recorded for the section of footpath in question. This report reviews the evidence available to record a width and position in the Definitive Statement for Footpath No. 9.
4. If an order is made, a notice is advertised and posted on-site. By virtue of paragraph (3)(c)(1) of Schedule 15 to the 1981 Act there then follows a statutory objection period of not less than 42 days running from the date of first publication of the notice. If any objections are received and not withdrawn the Council cannot confirm the order itself but must 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. The Inspector has to consider whether the evidence shows on the balance of probability that a public right of way exists over the width stated in the order.
5. Following its initial investigations, the Council received representations from the affected majority landowner, Mr. Corbett who objected to a proposal for a 12 feet wide footpath. Further investigations have lead to a revised proposal with a narrower, 6 feet width. Whilst the reduced width is generally supported by Mr. Corbett, the narrower width has received opposition from the holders of private easements which run along the footpath as well as from a member of the public and from the local Parish Council. Most of the representations received relate to issues concerning ease of access, safety and security. However, case law and Defra and Planning Inspectorate guidance dictates that only issues relating to the existence or non-existence of public rights can be considered when determining whether to make a modification order. Ancillary matters such as the need for or convenience of a path or issues of privacy, security and safety are not relevant to whether that right exists and consequently should be disregarded for the purposes of this report.
6. The recommendations of this report mean that the gate previously installed by Mr. Corbett with the consent of the Council would fully obstruct the six feet legal width of the footpath. The gate cannot be authorised in its current position and would need to be removed.

Risk Management:

7. The Council, whilst carrying out its statutory duty to keep the Definitive Map and Statement up to date, has become involved in a neighbour dispute over a private easement. It is likely that any ensuing definitive map modification order will be opposed by one or more of the parties involved. This could result in a public hearing or local inquiry being convened to hear the objections to the order. It is also possible that the Council may receive negative press coverage over this issue due to the differing perspectives of the parties involved.

Staffing (including Trades Unions):

8. Not Applicable.

Equalities/Human Rights:

9. The Wildlife and Countryside Act 1981 is concerned only with whether public rights already do, or do not exist. Consequently the primary legislation of this Act takes precedence over the Council's statutory duty placed upon it by the Human Rights Act 1998 to have regard to a person's right to privacy and security. The southernmost section of Barton-le-Clay Footpath No.9 runs along a track between the garden fences and properties of Nos. 44, 42, and 32 Sharpenhoe Road. The recording of a width of 1.8 metres (6 feet) for the footpath along mainly the eastern side of the track would allow the owner of No. 44 to continue growing pyracantha (or similar prickly plants) outside his high (2.2 metre) garden fence as a defence against would-be intruders.
10. Case law and Defra/Planning Inspectorate guidance requires the Council to disregard issues of safety, nuisance, and convenience when considering whether public rights do or do not exist along the route of the footpath. Similarly any issues relating to the provision of disabled access would also need to be disregarded as these are path management issues to be dealt with separately under the Equality Act 2010 rather than used as evidence of whether a particular public right exists.

Community Safety:

11. Since the re-opening of the footpath following the completion of the nearby housing development, there has been a notable increase in the levels of bicycle and motorcycle use; neither of which is permitted on a footpath. The Council has a statutory duty under the Crime and Disorder Act 1998 to consider the community safety implications that may result from making the decision set out in the report, albeit that the decision to record a width for the footpath will not facilitate an increase in this unauthorised use but will help in determining what measures could be considered to control or reduce non-pedestrian traffic along the footpath in the future.

Sustainability:

12. Not Applicable.

Procurement:

13. Not applicable.

RECOMMENDATIONS:

That the Committee approves the making of a Definitive Map Modification Order under Section 53(2) of the Wildlife and Countryside Act 1981 to:

- a) Record a width of 1.8 metres (6 feet) in the Definitive Statement for that section of Barton-le-Clay Footpath No. 9 shown between points A-B-C-D on the plan at Appendix A under Section 53(4) of the 1981 Act.**
- b) To amend the particulars of Footpath No. 9 to record it running along the centre of the track between point A and point D under Section 53(4) of the 1981 Act.**
- c) To further amend the particulars to remove the reference to a “broken stile” at point A on the grounds that this stile has not been installed or maintained since at least 1990 and consequently the path can be deemed to have been re-dedicated without this limiting structure under Section 31 of the Highways Act 1980.**

It is proposed that the particulars within the modified statement for Barton-le-Clay Footpath No. 9 should read as follows:

The path is a footpath.

It starts at Mill Lane entrance by a gap by hedge, much overgrown, to Park Meadow with a broken stile, due south into small meadow, gap, stile in pieces, leading to paddock with good stile, then continues from OS GR TL 0789 3088 along the centre of a track to terminate at its junction with Sharpenhoe Road at OS GR TL 0789 3083.

Except for the first portion path good throughout.

No signs or notices.

Between OS GR TL 0789 3088 and OS GR TL 0789 3083 the path has a width of 1.8 metres (6 feet)

The main body of the statement will be amended further on Consolidation of the Definitive Map and Statement to record the changes imposed by the new housing developments.

Introduction

14. In March 2011 Mr. & Mrs. Corbett moved into No. 44 Sharpenhoe Road, Barton-le-Clay. Mrs. Corbett subsequently suffered damage to her parked car caused by a driver turning their vehicle in his driveway. Mr. Corbett contacted the Council to discuss the erection of a roadside gate to deter unauthorised parking and turning at the entrance to his property. The gate impinges on Barton-le-Clay Footpath No. 9. However, Mrs. Gemma Harrison, the Rights of Way Officer for Barton-le-Clay did not object to the erection of the gate across the public footpath, as long as a 1.2 metre gap was created to the side

of the gate to allow easy pedestrian passage.

15. However, once the gate had been erected close to point D a neighbour, Mrs. Vincent, complained to the Council as the new gate prevented her from exercising her private vehicular rights over the footpath and that she could no longer access her garage without straying off her easement to bypass the gate. The interference of private vehicular access rights is a private dispute between the landowner and affected easement owner and consequently is outside the scope of this report. The gate currently has a minimal effect on the public's use of the footpath as long as the adjoining hedge is kept well trimmed. However, if the Definitive Statement is amended to record the footpath as running along the centre of the track, the gate would completely obstruct the legal line of the footpath. The Council may need to take enforcement action to remove it even though a gap would still remain between the gate and the hedge.
16. The footpath was temporarily closed by order between May 2011 and May 2012 to enable the last phase of the Grange Farm Building development to be carried out to the rear of No. 44 Sharpenhoe Road by Connolly Homes Plc. As the footpath was closed, no maintenance or vegetation clearance was carried out on this path for approximately a year resulting in notable growth of weeds and the accumulation of litter and refuse which was subsequently cleared by the Corbetts.
17. Mrs. Harrison visited the footpath on 31 October 2011 after receiving complaints from Mr. and Mrs. Vincent that the surface of the public footpath had been disturbed. A strip approximately one metre wide adjacent to Mr. Corbett's garden fence had been rotavated and a pyracantha hedge planted next to the fence. The grass track has also been subsequently levelled and re-seeded by Mr. Corbett.
18. No immediate enforcement action could be taken against Mr. Corbett as Footpath No. 9 does not have a width recorded in the Definitive Statement for the section A-B-C-D. The Statement is part of the legal record which, along with the Definitive Map, describes the location, status, and width of a public right of way. The affected section of Footpath No. 9 has not been diverted or altered and consequently its textural description is based on the original 1952 parish survey – which often omitted to record widths for the rights of way surveyed.
19. The actions of Mr. Corbett have called into question the public's right to use the full width of the track. This report details the investigation into the history of the footpath to see what width could be determined for the footpath between points A-B-C-D on the plan at Appendix A. At the time of writing the pyracantha plants remain in place.

Legal and Policy Considerations

20. Central Bedfordshire Council, as the Surveying Authority, has a statutory duty under Section 53(2) 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. A modification order may be made under Section 53(4) of the 1981 Act to include within the statement the position and width of a right of way.

21. Once the Council is made aware that there is an error on the Definitive Map or in the Statement then it has a statutory duty to investigate the matter, taking into account all relevant evidence when coming to its decision. The Council has to be satisfied it has discovered evidence which shows on the balance of probability that the particulars within the Definitive Statement for Barton-le-Clay Footpath No. 9 require modification under Section 53(3)(c)(iii) of the 1981 Act. If the evidence indicates that a width can be recorded on the Definitive Statement, then the statement should be modified by the making of a Definitive Map Modification Order to do so.
22. 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 to show that there was no intention during that period to dedicate it. The 20 year period is counted back from the date when the public's right to use a right of way is called into question. Mr. Corbett rotavated part of the track's width and planted pyracantha shrubs on it alongside his fence in November 2011. However this act occurred during the temporary closure of the path and so could not be brought to the users' attention until the path was reopened in May 2012. I have therefore taken the relevant period to be May 1992 – May 2012.
23. For the purposes of Section 31, a qualifying interruption to public use must be made by the land owner for the purposes of depriving members of the public of their use of a right of way. A statutory closure, for example for foot and mouth disease or to protect users during development works does not count as a qualifying interruption. Similarly, Footpath No. 9 was closed between 16 May 2011 and 16 May 2012 under Section 14 of the Road Traffic Regulation Act 1984 to protect members of the public during works to build the last phase of the Grange Farm Buildings estate to the north of point A.
24. A right of way can also be added to the Definitive Map under common law. The use of the route by the public at common law is evidence from which a rebuttable presumption that the route has been dedicated can be inferred. However, this is only an inference and the onus is on the Council (or claimant) to prove dedication rather than on the land owner to refute it. Additionally, the route must be open to the public at large and follow a defined route. The public must have used the route as a right, without permission, force or secrecy. Common law requires that public use must merely be sufficient over an undefined period and does not require the right to be called into question.
25. Case law exists about the width of a highway in relation to its physical boundaries. The original principle involved was commonly known as the "hedge to hedge" principle¹ and had established in the 19th Century that a highway could be initially presumed to occupy the full width between

¹ R v United Kingdom Electric Telegraph Co (1862) 31 LJ (MC)

boundaries unless there was evidence to the contrary. In the case of Footpath No. 9, the boundaries present on the Ordnance Survey maps appear to demarcate an access route; although this is confused by the owner's need to potentially also separate the 12 feet wide private easement from the remainder of the plot. This type of confusion was addressed by later cases² in the 1970s which established that the presence of fences to either side only raised a rebuttable presumption that all the intervening space was highway. The more recent case of Hale v Norfolk County Council³ addressed the issue of this presumption and clarified that reasons behind the purpose of the fence or hedge are critical to whether the rebuttable presumption can be applied.

26. In the current case, the aerial photographic evidence suggests that the line of hedge and fruit trees was planted to the western side of the private easement between c.1940 and c.1970. At this time the eastern boundary of the track appears to have been hedged for the majority of its length. The western hedging appears to have been for the purposes of demarcating the easement and 1947 access track within the plot rather than to provide a boundary to the public footpath. Consequently the hedge to hedge presumption cannot be applied. Evidence would therefore be required to record a width greater than the 6 feet, as recorded in the parish council survey map. Such evidence could come from documentary evidence or from evidence of public use of the extra width.
27. For dedication at common law or under Section 31 the landowner must be capable of defending his land and challenging any public use. In this case a public footpath is accepted and known to exist along the track – although its precise position and width are disputed. As such it is likely that any reasonable owner of the track would feel legally incapable of challenging any user – especially as private access rights also occupied the full width of the track. Consequently any unchallengeable public use outside of the recorded 6 feet width could not give rise to a presumption or inference that this extra width has been dedicated as public footpath. This is to some degree analogous to public use of a subsequently deleted path in that rights that cannot be prevented cannot be acquired⁴.
28. If a Definitive Map 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 would appoint an Inspector to decide whether the evidence is sufficient to enable the order to be confirmed. The Inspector must be satisfied that the footpath exists on the balance of probability over the width recorded in the order.
29. Central Bedfordshire Council's Constitution (Section C of Part E2 at Annex A) identifies the Development Management Committee as the appropriate body to authorise the making of a Definitive Map modification order under the 1981 Act. The Constitution (H3 at Section 4.4.148.) further authorises the Assistant Director - Planning and Development Strategy to carry out the functions of

² Attorney General v Beynon [1970] 1 Ch 1

³ Hale v Norfolk County Council EWCA Civ 290 [Nov 2000]

⁴ Defra Rights of Way Circular 1/09 v.2 at Section 4.22.

the Council in respect of public rights of way, including the exercise of the Council's powers and duties under the 1981 Act, where there is no significant objection. This power is delegated further to the Head of Service - Transport Strategy and Countryside Access. If no significant objections are received to this report it will be dealt with by means of a report to the Head of Service rather than by the Development Management Committee.

Land Registry and Ownership Issues

30. The plan at Appendix B combines Land Registry Title information from several Title plans and conveyances and indicates that there are potentially six possible owners of the track. Mr. and Mrs. Corbett own approximately the western two-thirds under two different Titles (BD227185 and BD229608). The northernmost approximately 1.7 metres of the track is recorded as being in the ownership of Connolly Homes (BD201693). The remainder of the track, essentially the eastern third (up to approximately 0.8 metres depending on position) appears unregistered.
31. Two conveyances dated 1965 and 1967 for the southern and northern halves of the unregistered strip establish ownership at these dates to a Miss. Sarah Murden and Mrs. Margaret Osborn respectively. The track's eastern boundary fences and hedges snake over the land identified as being Sarah Murden's. If these Titles are no longer valid (or have not been transferred in full to the current householders) it is possible that the common law presumption of ownership to the centreline by frontagers could prevail. If this were the case, Mr. Rogers of No. 42 and Mr. and Mrs. Vincent of No. 32 could be presumed to be owners of parts of the track.
32. Where the ownership of land affected by a prospective modification order cannot be positively ascertained, Section 3(4) of Schedule 15 to the 1981 Act enables the Secretary of State for Environment, Food and Rural Affairs to permit the serving of notice of the order on the land, rather than on an owner.
33. Land Registry Titles and conveyances also describe the extent of private rights, or easements. All the documents viewed give a consistent view of the existence of a private right of way (easement) for the owners of Nos. 32, 40 and 42 Sharpenhoe Road (Mr. and Mrs. Vincent, Mr. and Mrs. Stiles and Mr. Rogers respectively) along the track occupied by Footpath No. 9. This easement is recorded variously as a "right of way" or "roadway" with a width of twelve feet (3.6 metres). This width is recorded in the 1965 and 1967 conveyances as being set out from the then line of the boundary fence and hedge of Nos. 32 and 42 by between approximately 2 and 4 feet respectively although the reasoning behind this is unknown. The extent of the easement is shown by hatching on the plan at Appendix B.

Historical Documentary Evidence

34. Appendix C details the mapping and photographic evidence for the existence of the track along which Footpath No. 9 runs. The track has been in existence since before it was recorded on the 1882 Ordnance Survey (1st Edition) 25":1 mile map (see Appendix C - Section C.1). The 1976 Ordnance Survey

map records a physical feature separating the track from the remainder of the paddock. In this map the footpath (as a physical feature) is depicted abutting the boundary of the Vincent's and Rogers' lands – rather than running centrally along the present track. This fits in with the earlier 1968 Aerial photograph at Appendix C which suggests a worn route along the eastern boundary of the track at this time.

35. Footpath No. 9 was initially recorded by Barton-le-Clay Parish Council in 1952 as part of the process of drafting the original 1964 Definitive Map. The Parish Council annotated its survey map to record the footpath as having a width of 6 feet (1.8 metres) with a damaged stile at point A and a damaged field gate at point D (see Appendix C - Section C.4). At the time the footpath passed along the edge of an open plot/paddock. Unfortunately neither the width of the path nor the precise position of the footpath in relation to the edge of the plot was recorded on the Definitive Statement. Close inspection of the line of the original 1964 Definitive Map possibly suggests that the footpath lies closer to the boundary with Mr. Rogers' land (points C-D) than at the northern end of the track (point A). On the current digital Definitive Map the line for Footpath No. 9 fills the track at the legally conclusive scale of 1:5000. When zoomed in beyond this however, the centre-line of the footpath generally lies within the eastern half of the track.
36. Since the original Definitive Map and Statement was published in 1964 most of the footpath has been incorporated into or diverted through new developments. However these changes have yet to be recorded within the Definitive Map and Statement; this will be done when these sections of the Definitive Map are Consolidated in the next 2-3 years.
37. Photographs of the track taken between 1990 and 1996 show that there was generally at least a car's width available down the centre of the track (see Appendix C - Section C.12). In February 1995 the die-back in seasonal vegetation allowed a width of approximately 3.5 metres whilst in June 1992 summer growth had restricted this to approximately 2.2 metres centred on the middle of the track. A later 2009 Google Streetview[®] image (see Appendix D), taken prior to the period when the path was temporarily closed shows that at this time there was upgrowth of vegetation on the track and that the trees of No. 44 had grown to overhang the footpath significantly.
38. Aerial photographs from 1947, 1968, 1986, 1991, 1996 and 2002 have been studied. Extracts from these and their interpretation can be found at Appendix C (see Section C.17). The aerial photographs are difficult to interpret due to their lack of resolution, differing angles and the amount of vegetation obscuring or growing within the path. Despite this, the aerial photography between 1947 and 1991 clearly shows a track passing at least as far north as Mr. and Mrs. Vincent's garage (point C). The 1947 aerial photograph clearly shows the track continuing around the northern edge of the plot. The width of the track during this period, where visible, appears to have been generally between 2.0 and 3.0 metres wide, depending on year and point measured. It is not possible to tell from the aerial photographs whether the track is narrow because of surface vegetation, hedge growth, or overhead tree growth.

39. The documentary evidence to establish a position and width for Footpath No. 9 is in parts contradictory and/or inconclusive. The evidence does confirm that a physical track has been present in the area since at least 1888 and that since the 1940s this has been generally wide enough for a car to pass. Photographs and mapping suggest the physically available route has predominantly either been along the centre or eastern portion of the track as currently set out. This generally agrees with the position of the legal line of the route.

User evidence – Interviews and user evidence forms

40. Gemma Harrison (Area Rights of Way Officer) and Adam Maciejewski (Definitive Map Officer) interviewed Mrs. Stiles, Mr. Rogers, Mr. and Mrs. Vincent and Ms. Brown in January 2012 as part of the investigative process. These residents were chosen as they had lived in Barton-le-Clay adjacent to Footpath No. 9 the longest and could give evidence spanning the 20 year period prior to Mr. Corbett inadvertently calling into question the public's right to use the full width of the track by disturbing its surface. Mr. David Henden also submitted a user evidence form attesting to his occasional use of the footpath between 1990 and 2008 but he was not interviewed. Details from witness interviews and user evidence forms are included at Appendix E and are summarised below.
41. The four witnesses interviewed gave broadly similar recollections as to the width and usage of the path. Ms. Brown has lived in the area since the 1960s, Mr. and Mrs. Vincent moved to the area in 1975, Mr. Rogers moved into his house in 1989 and Mr. and Mrs. Stiles in 1998. The path was used by walkers, schoolchildren, and occasionally by cyclists. Ms. Brown used to ride her horse along the footpath to gain access to the field beyond. However, in doing so she exercised her private right as land owner. All the witnesses interviewed were consistent in their recollections that there used to be a well-worn strip along the middle of the track that walkers used. The witnesses interviewed stated that prior to Mr. and Mrs. Corbett's and Ms. Brown's houses being built, the plot was overgrown and separated from the footpath by a short line of fruit trees. These trees were incorporated within the garden of No. 44 by the previous owners, Mr. and Mrs. Dempsey and now stand about 0.5 metres behind the garden fence. The witnesses recalled that the footpath was wide enough to drive down as both the Vincents and the Stiles used to exercise their private rights of vehicular access and kept the southern half of the track generally clear of vegetation. The section between points C-D was surfaced with hoggin (a type of mixed aggregate) as part of a 1986 planning condition. The northern half (between points A-B-C) tends to be grassier. Vegetation also grew in from the western side which used to be an unkempt plot (described by one witness as "scrubland"). Only one witness recalled the gate at the road end of the footpath (point D). This was taken out in the early 1960s. Structures at the northern end (at point A) varied according to the year; there was a stile which became decrepit after the cattle were taken out of the adjoining field in the mid-1980s. This eventually became a gap which eventually was partially plugged by a telegraph pole and then most recently an upright sleeper, and the chain-link fencing associated with the building of Nos. 44 and 46 Sharpenhoe Road.

42. Mr. John and Mrs. Julie Corbett and their sons David and Michael and daughter Laura all submitted evidence forms. The Corbett family moved into No. 44 Sharpenhoe Road in March 2011. None of the evidence forms submitted by the Corbett family provide any information about their use of the path prior to 2010. The Corbett's evidence forms record that there were notices erected at the end of the footpath advertising a temporary closure for the construction of the new housing estate situated behind the Corbett's home and that during this time the footpath was very overgrown and rubbish-strewn. None of the Corbett family was interviewed about their use of the footpath during the initial round of user interviews. This was because they were new to the area and could not provide any detail of what the footpath had been like in previous decades. Although not interviewed at the same time as the other residents, Mr. and Mrs. Corbett have subsequently met with Officers to discuss the footpath and the findings of this report.
43. The use the footpath by Mr. and Mrs. Stiles, Mr. Rogers, Mr. and Mrs. Vincent, and Ms. Brown cannot count towards the recording of a width for Footpath No. 9 as these people all have a private right to use the track and thus their use cannot be "as of public right". However, the details the witnesses give of use of the footpath by other local residents does count, and gives a picture, along with private documents supplied by them, of the use and character of the route occupied by Footpath No. 9. It appears that the southern half of the track between points C-D was kept reasonably clear of vegetation to enable the Stiles and Vincent families to drive vehicles along that part of the track. Further north, between points A-B-C, vegetation grew in from the sides narrowing the path. Earliest recollections by the witnesses suggest that walkers kept to a fairly narrow worn line along the centre of the track.

Consultations

44. Central Bedfordshire Council consulted Mr. and Mrs. Corbett and Connolly Homes Plc. as positively identified owners of the track. Ms. Brown, Mr. Rogers, Mr. and Mrs. Vincent, and Mr. and Mrs. Stiles were consulted as interested parties with private access rights along the footpath. The local parish council, the local ward member Cllr. Ian Shingler, the local Ramblers representative; and the Bedfordshire Rights of Way Association were also consulted. Drafts of this committee report were given to the affected owners and easement holders for their comments. Where appropriate, these have been included in the report.
45. Mr. and Mrs. Corbett consider that they own all the land over which the footpath runs and the legal line of the footpath occupies the eastern side of the track. They consider that the recording of a greater width will prejudice their rights to protect their property by not allowing prickly shrubs to be planted against their fence. They also consider the recording of the full width could lead to increased unauthorised use of the footpath by cyclists, horses, and motorcycles. On this point Mr. Corbett considers that the now removed upright sleeper at point A was installed to prevent motorcycle use of the footpath prior to the new development being started. Since its removal and the opening up of the path after the completion of the nearby Grange Farm Buildings development Mr. Corbett has reported an increase in use of the route by bicycles and motorbikes. Mr. Corbett believes the definitive line of

Footpath No.9 as shown on the Definitive Map has been recorded wrongly, and that the footpath is more correctly depicted by the route shown on the 1976 1:2500 Ordnance Survey map (4th Edition) (see Appendix C at Section C.2). Mr. Corbett also submitted a Google Streetview® image to show the level of overgrowth on the closed footpath prior to him clearing it (see Appendix D). Mr. Corbett also considers that the Council are acting unreasonably in favour of Mr. and Mrs. Vincent and that the Council should have interviewed his family about the footpath at an earlier stage.

46. Mrs. Julie Corbett has responded in her own right to the draft report to explain that the gate across the entrance to their driveway was installed for security reasons and to prevent members of the public using the entrance as a turning space. Mrs. Corbett states that when they moved in the footpath was very overgrown and full of rubbish and a worn track was indented leading to a narrow gap (at point A). Mrs. Corbett states that they have been the victims of three acts of theft, attempted theft and vandalism from the footpath. Mrs. Corbett also states that their family had to clean up the path and remove all the litter and cut the path back to get it into a usable shape before planting the shrubs next to their fence.
47. Connolly Homes Plc. has been consulted but no response has been received at the time of writing.
48. Mr. and Mrs. Stiles of 40 Sharpenhoe Road had originally submitted a user evidence form and were subsequently interviewed about their use and knowledge of the footpath in January 2012 (see paragraph 2 at Appendix E). They have stated they have a 12 feet wide private vehicular right of access along the footpath. They have stated that they cannot recall the footpath ever running alongside the boundary of No. 42 - the worn route was always in the centre of the track due to the nettles growing against the boundary fence. Mr. and Mrs. Stiles have stated that they are in complete support for the recording of a public footpath across the full width of the track. A later letter submitted by Mr. and Mrs Stiles and Andrew Stiles and Leah Baldock in October 2013 states that "...Members of the community have known Footpath No. 9 to have been widely used over at least the past 30 to 35 years. It is clear that users have had the opportunity to walk the full width of the track for more than twenty years and therefore creating public rights across the entire 12 ft... ..it is irrelevant that vegetation grew at certain times of the year. The public still had the opportunity to walk the full width and enjoyed doing so...". The letter makes other points relating to pedestrian-vehicle conflict, the current use of the path by residents of the new estate and issues relating to disabled access and the hazard posed by the pyracantha shrubs.
49. Mr. and Mrs. Vincent of 32 Sharpenhoe Road have stated that they possess a 12 feet wide private right of access along the track. They were previously interviewed about their use and knowledge of the footpath in January 2012, (see paragraph 4 at Appendix E). They have also written to the Council in March and September 2012 in relation to the Council's investigation and consultation. Mr. and Mrs. Vincent have stated that they were required to surface the southern half of the footpath (between points C-D) with hoggin (mixed aggregate) as a planning condition for the construction of their

garage. However their neighbour, Mr. Corbett subsequently dug up part of this surface in order to plant his pyracantha shrubs which now obstruct their vehicular easement. The obstruction of their easement is an issue outside the scope of this report. Mr. and Mrs. Vincent have stated that when they moved into their house there was a well trodden footpath running along the centre of the track which was bounded on its western side by a line of plum trees; these were incorporated into the garden of No. 44 by the previous owners or developers.

50. Barton-le-Clay Parish Council was consulted and, following a debate at its 9th September meeting stated "...Barton-le-Clay Parish Council supports the data provided to Bedfordshire County Council in the circa. 1952 Parish Survey, in which the footpath was reported as having a width of 6ft (1.8m). However, Barton-le-Clay Parish Council also acknowledges that a width of 12ft has been in use for majority of the length of the footpath, narrowing to approximately 5ft (1.5m) at the Sharpenhoe Road end, for many years..."
51. Cllr. Ian Shingler has been consulted but has declined to comment as he is a sitting member of the Development Management Committee.
52. A local disabled resident, Mrs. Diane Huish, has made unsolicited representations on the issue. Mrs. Huish's comments generally relate to the need for the footpath due to its convenience and safety compared to alternative routes. She considers the footpath to be the most easily accessible access to the village centre and that this route would be compromised if a legal width of 6 feet was recorded and that this "reduction" would have no public benefit.
53. Mrs. Carol Bond, the Ramblers Representative for Barton-le-Clay, responded on 1 March 2012 stating that she didn't know the footpath very well and didn't have any comments to make.

Comments on consultation responses

54. Many of the comments received relate to issues of security, privacy, land ownership, and the exercising or obstruction of the 12 feet wide private easement. None of these can be considered by the Council in coming to a view on the width of the public right of way. What can be considered is the available map evidence and evidence of public use of the track. In the current case this evidence is personal and aerial photographs showing the extent of the footpath and track and statements by local residents describing the available width of the footpath over the last 40 or so years and the level of use by local villagers. Mrs. Huish commented on the duties that the Council has under the Equalities Act 2010 to ensure that its services (including public highways) are available for all to use where reasonably practicable. Whilst these are important considerations for how the Council manages its footpaths and bridleways, these issues are not relevant to determining what public rights do or do not exist in the first instance which is the purpose of this report.

Conclusions

55. Currently Barton-le-Clay Footpath No.9 has no width recorded with the Definitive Statement, which is the legally conclusive record of the position and width of a public right of way. In order to modify the statement for Footpath No.9 to record a width for the footpath, there needs to be evidence to do so. The only documentary record for a width comes from the 1952 parish survey map of rights of way which records a width of six feet (1.8 metres). The larger scale 25":1 mile Ordnance Survey maps for 1925 and 1976 indicate that a physical route abutted the mapped boundaries to what are now Nos. 32 and 42 Sharpenhoe Road. The 1976 map also depicts the line of the fruit trees which are now fenced within Mr. Corbett's garden. The various stages of drafting the Definitive Map all depict the line of Footpath No. 9 lying within the bounds of a track. There is some suggestion that it ran closer to the eastern side for the central and southern section of the track (between points B-D), and closer to the western side at the northern end of the track (between points A-B). This though is not conclusive owing to the scale of the map and relative thickness of the drawn lines.
56. The judgment of *Hale v Norfolk County Council* requires the Council to have positive evidence of a dedication of land as highway to establish a full width for Footpath No. 9. However, the map evidence and evidence from within title deeds and conveyances suggest that the western boundary of the track was set out to delineate the 12 feet wide easement, rather than the narrower footpath. This evidence does not support a "hedge to hedge" presumption for the width of the footpath. Any greater width than the six feet recorded can only come from qualifying evidence of public use of the full width of the track. This must be for the 20 year period dating back from when the public's right was called into question; I have taken this to be when the path was re-opened in May 2012 which was when the public would first witness Mr. Corbett's earlier October 2011 actions.
57. Interviews with those residents who live next to the track indicate that it has been regularly used by other members of the public during the relevant period, 1992 – 2012. Witnesses describe the width of the track as being either at least twelve feet (3.6 metres) wide or as having a worn route down the centre of the track (in the mid-1990s). Personal photographs taken during the 1990s seasonal variation in the width of the track; users have had the opportunity to walk near enough the full width of the track during winter months, however this use was restricted to the central portion in summer by seasonal vegetation growth. Consequently the full width of the track has not been available throughout the full 20 year period (1992 – 2012). Additionally, any public use off the width of the footpath was unlikely to be challenged by the land owner who would have been aware that a public right of way existed along the track and so could never be precarious in its nature. The Council therefore cannot deem that a public right of way has been dedicated across the entire 12 feet (3.6 metres) width of the track.
58. The evidence available to establish where the 1.8 metres (6 feet) of the footpath, as recorded on the 1952 parish survey map, lies is contradictory and/or inconclusive in parts. The 1963 Provisional and 1964 Definitive Maps

possibly suggest that the six feet lies within the eastern half of the track. However, the statements of public use of the path and the Council's ongoing maintenance regime for the footpath both suggest that the right of way is along the centre of the track. It is possible that the legal line of the footpath and the route people walk are not co-linear. However, when considering all the available evidence and given the minimal distances involved (approximately 1 metre) and the variability in the accuracy of the various maps, I consider that the footpath is, on the balance of probability, located centrally within the existing track.

Appendices:

Appendix A – Plan of affected section of Footpath No. 9

Appendix B – Land Registry compilation plan

Appendix C – Historic evidence including maps, photographs and aerial photographs

Appendix D – c.2012 aerial photograph and Google Streetview[®] image

Appendix E – User evidence summary