
Meeting: Development Management Committee
Date: 24 June 2015
Subject: Determination of an application to add a claimed
bridleway through the Crown Hotel and yard,
Biggleswade
Report of: Jim Tombe - Interim Head of Service for Transport Strategy and
Countryside Access
Summary: The report proposes that a Definitive Map modification order be made to
add a public bridleway to the Definitive Map and Statement through the
Crown Hotel and its rear yard between High Street and Church Street,
Biggleswade. It is also proposed that enforcement action be taken to
remove security fencing that obstructs the bridleway to enable free use
of the bridleway ahead of a legal order being made.

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Public/Exempt: Public
Wards Affected: Biggleswade South and Biggleswade North
Function of: Council

CORPORATE IMPLICATIONS

Council Priorities:

1. The proposal reflects the following Council priorities:
 - Improved educational attainment.
 - Promote health and wellbeing and protecting the vulnerable.
 - Better infrastructure – improved roads, broadband reach and transport.
 - Great universal services – bins, leisure and libraries.

The proposal will facilitate increased pedestrian and sustainable transport access to the centre of Biggleswade. Walking and cycling for local trips and for leisure reduces pollution and increases general health and wellbeing. The proposal will, however, be detrimental to the proposed re-development of a public house and thus be contrary to one of the other Council priorities.

Financial:

2. The costs of advertising the making and confirmation of the order is estimated at £550. However, the order is likely to be opposed by JDWetherspoon which

means that the order must be forwarded to the Secretary of State for Environment, Food and Rural Affairs for confirmation which would cost the Council approximately £1000 in additional 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 (452600).

3. The current security fencing would be moved at the expense of the land owner, JDWetherspoon as would any legal expenses incurred in securing the compliance of the owner.

Legal:

4. Section 53 of the Wildlife and Countryside Act 1981 permits a member of the public to apply to the Council, as Surveying Authority for the Definitive Map and Statement, if they consider that the map or statement is in error. The Council has a duty to keep the map and statement correct and up to date and to make any requisite orders to modify the map and statement. Definitive Map modification orders are based on evidence – normally a combination of historic documents and contemporary user evidence. To make an order the Council must be satisfied that the evidence shows that it is reasonable to allege that a public right of way subsists. If the order is objected to the Secretary of State will use a stricter test of “balance of probability”. The evidence in the report appears to meet the stricter test.
5. If the Council is satisfied that a public right of way does subsist – and ought to be recorded – it has a further duty under Section 130 of the Highways Act 1980 to assert and protect the rights of the public to use the route. The Council has the power to remove any obstruction under Sections 143 and 137 of the 1980 Act.
6. On 19 February 2015 the owner, JDWetherspoon, received planning consent to develop the Crown Hotel. However it cannot act on this consent until any public right of way - whether officially recorded or not – has been legally extinguished or diverted. JDWetherspoon has the option of applying under either the Town and Country Planning Act 1990 or the Highways Act 1980 to either stop-up or divert the claimed right of way in order to enable the proposed development to take place.

Risk Management:

7. The Council, in carrying out its statutory duty to keep the Definitive Map and Statement up to date, will be preventing the proposed re-development of a local historic landmark by a national pub chain. The actions of the Council are, however, supported by local residents and the local town council. It is likely that any ensuing definitive map modification order will be opposed by the owners. 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, and incur legal and administrative costs of up to £4,000.

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 proposed modification order would recognise the existence of a public right of way. In doing so it would prejudice the re-development of a business. However the business does have a right to object and be heard by an independent Inspector. It also has the opportunity to apply for the diversion or extinguishment of any public right of way that is ultimately added to the Definitive Map and Statement.
10. The proposal would not discriminate against any particular group of local residents. If the proposal succeeds in the recording of a public right of way, the Council does have a duty under the Equalities Act to ensure that it is usable as far as reasonably practicable by all members of the public. The route is currently fairly level and surfaced. Consequently if the obstructions were removed it would be suitable for use by disabled people and mobility scooters.

Public Health

11. Not applicable

Community Safety:

12. 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. The proposed bridleway does mean that the current car park to the Crown Hotel would be shared by pedestrian and cyclists accessing the passageway through to High Street. The passageway has a width of approximately 3 metres and so there is the opportunity for pedestrian-cyclist-vehicle conflict. However, it must be recognised that this proposal merely formalises the informal access situation that existed prior to November 2013. As a recognised public right of way the Council will be able to monitor and take any necessary steps to mitigate any hazards that become evident.

Sustainability:

13. The proposal will facilitate sustainable transport (walking and cycling) to the Market Square from north-western Biggleswade (Cowfair Lands) using relatively traffic-free routes.

Procurement:

14. Not applicable.

RECOMMENDATION(S):

The Committee is asked to approve:-

- 1. The making of a definitive map modification order under Section 53(2) of the Wildlife and Countryside Act 1981 consequent upon the discovery of evidence that shows that it is reasonable to allege under Section 53(3)(c)(i) to the 1981 Act that a public right of way on foot, horse and bicycle, i.e. a bridleway, subsists through the curtilage of the Crown Hotel, Biggleswade between points A-B on the map at Appendix A**
- 2. The taking of unilateral action by the Council under Sections 143 and 137 of the Highways Act 1980, if necessary, to open up the route through the curtilage of the Crown Hotel in accordance with the Council's published Enforcement Policy for public rights of way with reasonable costs being recovered from the owners, JDWetherspoon.**

Introduction

15. Mr. Darren Woodward submitted an application on 22nd October 2014 under Section 53 of the Wildlife and Countryside Act 1981 (*"the 1981 Act"*) to have a public bridleway added to the Definitive Map and Statement from Church Street through the Crown Hotel's yard to the High Street. A bridleway gives members of the public the right to pass and repass on foot, on horseback or leading a horse or on or pushing a bicycle.
16. JDWetherspoon purchased the Crown Hotel, High Street, Biggleswade from Greene King plc. in mid-November 2013. The pub was subsequently closed and (at about this time) the claimed route was obstructed by security fencing pending the successful application for planning consent by JDWetherspoon to develop the site. This application (CB/14/03126/LB) received planning consent on 19 February 2015. The proposed redevelopment seeks to fill in the passageway through the front of the building which gives access to the yard and Church Street to the rear. If this happens it would completely obstruct the claimed public bridleway – hence Mr. Woodward's application.

Legal and Policy Considerations

17. The legal and policy considerations relating to an application to record a public right of way on the Definitive Map and Statement are detailed in Appendix B; the following sections provide a summary of the main points.
18. Section 53(5) of the Wildlife and Countryside Act 1981 permits any person to apply to Central Bedfordshire Council, as the Surveying Authority for the Definitive Map and Statement, for an order to modify the Definitive Map and Statement if they consider these are in error and need correcting. The Council has a duty to keep the Definitive Map and Statement up to date and make any changes that are required. In doing so, the Council has to consider whether the evidence shows, on a reasonable allegation, that the Definitive Map needs modification to add the claimed route.

19. Mr. Darren Woodward has applied to add a public bridleway to the Definitive Map and Statement on the ground that it subsists or is reasonably alleged to subsist, having been a way used both on foot and with pedal cycles. Mr. Woodward's application is being dealt with out of turn due to the irreversible threat to the route by the proposed development and also because the area is already being investigated as part of a project to map unrecorded public rights of way in the urban centre of Biggleswade.
20. Section 31 of the Highways Act 1980 (*"the 1980 Act"*) requires the Council to deem that a way has been dedicated as public right of way if it has been used *"as of right"* and without interruption by the public for a full 20 years prior to the public's right to use the way being called into question. In this case the action that has called into question the public's right to use the claimed bridleway has been the erection of security fencing in late November 2013. The relevant 20 year period is therefore November 1993 – November 2013. The term *"as of right"* means without force, without stealth and without permission.



High Street - fencing across passageway



Church Street – fencing across car park entrance

21. The Council also has to consider whether there is any evidence of a contemporaneous non-intention to dedicate by the owners of the land; this can be evidenced by erected signs or challenges of the users. The route must also be capable of dedication at common law. During the relevant period the land (the Crown Hotel's yard) was owned by Greene King plc. It appears from the evidence given by user surveys and statements that during this time many of the inhabitants of Biggleswade used the claimed route as a cut-through. The route is capable of being dedicated at common law and none of the users have reported any challenges or interruptions during the relevant period.
22. The legislative tests for the Council being able to deem under section 31 of the 1980 Act that a public right of way subsists are summarised above and described in detail in Appendix B. When considering whether a public right of way does or does not exist, the Council cannot consider ancillary matters such as privacy, security, need or convenience; this has been established by the case of *Mayhew v Secretary of State for the Environment [1992]*. Moreover, the proximity of alternative routes – such as Abbot's Walk should also be disregarded.
23. The Committee should have regard to the fact that if it is satisfied that a public right of way exists it will also need to consider whether action should be taken to

make that route open and available for public use. The Council has the power to remove any obstruction on a public right of way under Sections 143 and 137 of the Highways Act 1980. The Council also has the power to extinguish or divert any public right of way affected by development under the Town and Country Planning Act 1990 and or Highways Act 1980.

Historical Evidence

24. A large number of historical documents at the Bedfordshire and Luton Archives have been investigated to try and establish whether a public right of way exists over the claimed route. The findings are detailed in Appendix C and summarised below.
25. In 1833 the Northampton Mercury Newspaper reported on a case held at the Bedford Crown Court. Part of the evidence was given by a youth who was playing with friends in the Crown Hotel's yard and who saw a group of people walk through it from High Street to Brewery Lane as it was then called. The witness' statement indicates that the Crown Hotel's yard was used by the public as a through-route and that the owners of the yard (at this time the Samuel Wells brewery which also owned the Hotel) seemed at least to tolerate youths playing in the area.
26. Early maps, namely Bryant's 1826 county map and the 1838 tithe map, show the centre of Biggleswade and the Market Square, Church Street and Chapel Fields. A route is visible on the tithe map through the Crown Hotel's yard which is depicted in a similar manner to Long Twitchell which is also considered to have long-established public access rights. Bryant's smaller-scale map shows the alleged historic route of the cattle trail from Biggleswade Common to the Market Square.
27. Cattle and horse trails, known as droveways or driftways, although an integral part of the countryside before the advent of steam power and the railways were rarely recorded in legislation outside of Parliamentary Inclosure Awards – which did not happen for Biggleswade. Research by the Biggleswade History Society suggests that there was a driftway from Biggleswade Common to the north of the town which ran via Chapel Fields and through the Crown Hotel's yard into the Market Square. Whilst the route still exists there is no legal recognition of this use – beyond possibly the fact that Chapel Fields is (for most of its length) recorded as a public carriageway.
28. The large scale 1:500 and 25":1 mile Ordnance Survey maps (1st, 2nd, 3rd and 4th editions) all show the claimed route through the Crown Hotel. This is formed by a passageway through the main building of the Crown Hotel from the High Street and through the yard and then through a covered way into Church Street (earlier called Brewery Lane).
29. The Crown Hotel is recorded as part of the 1910 Finance Act valuation process. However no deduction in taxable valuation is made for public rights of way; this suggests that neither the brewery nor surveyor considered the route public at this time.
30. The 1892-8 deeds to the Crown Hotel and an 1898 sale catalogue for the Crown Hotel were studied, neither made any reference to public rights of way; this though is not unusual as deeds and sales plans tend to reference private rights rather than

public rights.

31. Biggleswade Town Council surveyed the urban area in early 1953 as part of the National Parks and Access to the Countryside Act 1949 process of surveying public rights of way, after it was designated a “fully developed area” and thus excluded from the Definitive Map. The survey map held by Central Bedfordshire Council does not show any route through the Crown Hotel yard.
32. None of the historic documents investigated specifically record any public right of way through the Crown Hotel. However, this was not the purpose of most of these documents. The documents do show that a route has been physically available for many years – over 180 years and was (in 1833) used in a manner that we would consider public today.

User Evidence

33. The applicant and the Biggleswade History Society have both submitted evidence of more recent public use of the route through the Crown Hotel’s yard. Other Biggleswade residents (and ex-residents) have independently submitted letters and e-mails describing their use of the claimed route. This evidence is described in detail in Appendix D and summarised below.
34. Mrs. Jane Croot, the editor for the Biggleswade History Society canvassed a significant number of elderly residents close to the Crown Hotel as well as people collecting children from St. Andrew’s Lower School as the claimed route is the most convenient route for these people. Thirty three of those surveyed have stated that they have used the Crown yard route between 1992 and 2013 - which is the relevant period for deemed dedication under Section 31 of the Highways Act 1980. As these results were from a quick survey there is no specific information relating to signs, challenges or any permissive use. However, none of the people canvassed mentioned any of these things in the “remarks” section of the survey form. The results, whilst lacking in detail do give a picture of public use of the Crown Hotel’s yard as a public thoroughfare from at least as early as the 1920s.
35. The applicant has supplied ten user evidence forms which detail the use of the claimed route through the Crown Hotel. These document public use between 1968 and late 2013 and bolsters the public use within the relevant 20 year period evidenced by the Biggleswade History Society survey. More importantly it provides the necessary detail relating to user “*as of right*”; none of the ten users who submitted statements reported either being challenged or seeing prohibitive signs on the route. None were interrupted in their use prior to the security fencing being erected. Unfortunately none of the users have given a precise date for the erection of this fencing – believed to be in late November or early December 2013. Eight people were interviewed and described their use of the claimed route in detail.
36. Four of the people who submitted user evidence forms claimed they had cycled the claimed route – as did two others who contacted the Council independently. The use of the claimed route by six cyclists, three for the full 20 years and three for periods of between eight and ten years, during the relevant 20 year period prior to the end of 2013 is evidentially significant. Any cycle use outside the relevant period, whilst not qualifying, does give an indication of the public’s general view of the route’s status. This level of qualifying public use is above that previously addressed by the courts in the case of *Whitworth 2010* (see Appendix B for further

details of this case). In that case it was held that regular use by a single person was sufficient to give rise to a presumption of dedication if that use was for the full 20 years of the relevant period.

37. The appeal to the *Whitworth 2010* case established that a public right of way based on cycling should have the lowest status possible that permitted cycle use. This currently is a bridleway – even though it is highly unlikely that equestrians would wish to use the route through the Crown Hotel (see Appendix B for further details).

Consultation

38. A consultation was carried out with Biggleswade Town Council, Biggleswade Historical Society, local ward members, P3 volunteers, the local Ramblers Representative, and a number of local residents.
39. Biggleswade Town Council has been consulted. The Town Clerk has responded stating the “... *Council have asked that I write to you to insist that an application is made to register the Crown walkway as a footpath on the definitive map....*”. A further request from the Deputy Town Clerk was “...*the Council has asked that the route be re-opened with the possibility of the [security] fencing being moved to the boundaries of the route if required, i.e. between the route and the building, rather than sealing off the route....*”.
40. Witcomb Project Management Ltd. acts as architects for JDWetherspoon. They have expressed disappointment of the Council’s interest in investigating the claimed public right of way. McLellans Solicitors act for JDWetherspoon and, in its view, considers the bridleway claim unlikely to be successful and that it would be totally disproportionate to claim a public right of way when Abbot’s Walk lies so nearby.
41. In response – the legal advice by McLellans is seriously flawed and takes no account of the provisions of either the 1980 or 1981 Acts or any case law relating to modification orders. The fact that the claimed bridleway would prevent re-development of the pub unless either moved or stopped-up is irrelevant to the issue of whether bridleway rights subsist.
42. JDWetherspoon was given an early draft of this committee report and appendices in late 2014. McLellans Solicitors, acting for JDWetherspoon commented on the report stating that the various historic maps cannot evidence the status of the route. Other historic evidence is anecdotal and unsupported and does not support continuous use by the public to the time the public’s right to pass and re-pass was called into question. McLellans states that the tithe map does not show a road through the Crown Hotel and the 1833 Assizes report merely indicates that the witnesses were at the location – not necessarily exercising any public right.
43. In response, the report acknowledges at Paragraph 32 above that none of the historic documents investigated specifically record any public right of way through the Crown Hotel but these do show that a route has been physically available for use for over 180 years.
44. McLellans also comments on the poor quality of the user evidence, stating that public use of the route prior to the relevant period (1993 – 2013) cannot count

towards evidence for deemed dedication and that the Biggleswade History Society's survey did not differentiate between sporadic and continuous use or the frequency, time of day or purpose for their use. McLellans also points out that only two users have used the claimed route for the full 20 year period. The evidence of Messrs Ball and Page was initially discounted as occurring prior to the relevant period. McLellans also cite the *Whitworth [2010]* appeal case to counter the use by a single cyclist as warranting the making of an order to record a public bridleway; it argues that if any order be made it should be to record only a public footpath.

45. In response, it should be noted that following the comments by McLellans a number of late submissions by the applicant increased the number of user evidence forms to ten. A statutory declaration by Mr. Page has also subsequently been received as well as statements from a number of other individuals. It is accepted that the results of the Biggleswade History Society's user survey are without detail. However, this does show that 33 people used the route during the relevant period – 23 for the full 20 years. Why and when they used the route is irrelevant if the use was "*as of right*". Similarly, with this number of users, a high frequency of use or individual use for the full 20 year period is not required. Following the submissions made by McLellans, eight witnesses were subsequently interviewed and their evidence incorporated into Appendix D. The use by Messrs. Ball and Page and Cllrs. D. and J. Lawrence is both within the relevant period as well as preceding it by several decades and is thus qualifying use. User interviews and late submissions have clarified and bolstered the cycling evidence. Six people have stated that they have cycled the claimed route with frequencies of between weekly and less than monthly. This level of use is considered valid and sufficient use for the proposed order.
46. Mr. Desmond Ball has written and telephoned the Council concerning the blocked entrance to the Crown Hotel. Mr. Ken Page has submitted a statutory declaration concerning the history of the claimed route to the local Town Council. Mrs. Jane Croot, editor for the Biggleswade History Society, has submitted a user survey and other historic documentation as part of its objection to the planning application for the Crown Hotel. These are discussed in more detail at Appendix D and summarised below.
47. Mr. Ball has asserted that as a former employee of the Biggleswade Urban District Council ("*BUDC*") he assisted with a rights of way survey in the 1950s and that the Crown Hotel yard was considered a public through-route. Indeed he alleges that the BUDC carried out publicly funded repairs to the route sometime in the late 1940s or 1950s. There is no corroborating documentary evidence of this or that the brewery disputed the public status of the claimed bridleway. However, Mr. Page was employed by the brewery to look after its property records during the same period and recalls that it welcomed the works by the BUDC to maintain the claimed route. Mrs. Temple, another witness and a former employee of the Crown Hotel owned by the brewery has stated that the landlord told her the claimed route was a public right of way.
48. Mr. Ball has also stated that the Crown Hotel's yard was used as access to the school which used to exist on Church Street (previously Brewery Lane) as well as to a number of smaller shops which people again accessed from the High Street via the Crown Hotel's yard. There was even a barber and dentist actually within the yard of the Crown Hotel. Mr. Ball also recalls that many people used to walk down Chapel Fields from Cowfair Lands and access the Market Square and High Street

via the Crown Hotel's yard as the current cut-through (Abbot's Walk) didn't come into being until c.1978. This newer route is not recorded as a public right of way.

49. Mr. Ken Page is local historian and ex-employee of the brewery and has submitted a statutory declaration describing his extensive knowledge of the Crown Hotel. He and his friends regularly used the Crown Hotel's yard route in the 1930s as a pedestrian route to get to and from the junior school in Church Street. The claimed route was also used by brewery workers going to and from the brewery in Church Street. Mr. Page states that he has no knowledge of the route ever being closed or public use challenged in his lifetime until the erection of the security fencing in early 2014. Mr. Page also stated that long ago drovers herded cattle south from Biggleswade Common along Sun Street and then into Chapel Fields and through the Crown Hotel's yard into the Market Square to access to the cattle markets.
50. Mrs. Jane Croot, the editor for the Biggleswade History Society, submitted a lengthy objection against the proposed re-development of the Crown Hotel. Much of the Society's grounds for objection were based on the historic nature of the public thoroughfare through the Crown Hotel. As part of the objection she submitted a user survey consisting of 51 people which describes public use of the route since the 1930s (see Appendix D). She has also asserted that the route was historically used as part of the cattle trail from Biggleswade Common – something supported by a leaflet in the Bedfordshire and Luton Archives on the origins of the Market House Café.
51. Biggleswade P3 Group and the Ramblers have not responded to the consultation.
52. Following consultations with the local ward members for Biggleswade North and Biggleswade South, Cllrs. Jane and David Lawrence have responded to say that they have both lived in Shortmead Street since 1978 and until Asda was built (c.2005/6) used to use the claimed route “...*through the Crown to go to the Market Square from Brunts Lane and Chapel Fields. More recently because of ASDA we tend to use Abbots Walk...*”.
53. A number of unsolicited e-mails have also been received by the Council concerning the claimed route through the Crown Hotel. Out of the six e-mails received, four people stated that they had used the route; two supported the path's retention; four indicated it should either not be retained or could be moved; and four supported the proposed development by JDWetherspoon (see Appendix D)

Conclusions

54. There is no direct documentary evidence to indicate that the claimed route through the Crown Hotel yard has been statutorily created as a public right of way. Mapping and other evidence does suggest that the route has been physically available for use for over 180 years; this though only can lead to an inference of a historic dedication of public rights. Likewise the alleged use of the Crown Hotel's yard as part of a driftway also only contributes towards such an inference.
55. Evidence of public pedestrian use potentially dates back to 1833. More recent user surveys and statements suggest that the Crown Hotel's yard has been used regularly and to a significant extent by the public at large as a pedestrian thoroughfare since the 1930s. This level of use – which appears to have been

unchallenged and “*as of right*” – supports a stronger inference of dedication.

56. User evidence forms and user interviews have provided evidence of significant public pedestrian use of the claimed route during the relevant 20 year period - counting back from the erection of security fencing in late c. November 2013. In the absence of any evidence demonstrating an overt and contemporaneous non-intention by the brewery to dedicate a highway, the Council has a duty under the 1980 Act to deem that a public right of way at least on foot exists across the curtilage of the Crown Hotel.
57. Evidence of use of the claimed route by bicycles during the relevant 20 year period also exists. The use by six people suggests that higher status public rights can be reasonably alleged to subsist and is in accordance with the case of *Whitworth 2010*. This bicycle use gives rise to a public bridleway as this is the minimum status of highway which lawfully permits such use.
58. If the Committee considers that either a public footpath or public bridleway is deemed to have been dedicated then the current security fencing is an unlawful and unauthorised obstruction – albeit an unintentional one erected on behalf of JDWetherspoon. Representations from the Town Council and frustrated users indicate that there is a wish to see this route re-opened as soon as possible. This can be done under the powers contained within the Highways Act 1980.

Appendices:

- Appendix A – Location plan showing Crown Hotel
- Appendix B – Legal and Policy Considerations
- Appendix C – Historic Evidence
- Appendix D – User Evidence