

Report of the Strategic Director of Regeneration and Culture to the meeting of Bradford South Area Committee to be held on 26th June 2014.

B

Subject: Petition relating to the blockage of a route between Cleckheaton Road and Dyehouse Road, Oakenshaw, Bradford

Summary statement: A petition was received by the Council in May 2013 relating to a blocked route between Dyehouse Road and Cleckheaton Road, Oakenshaw. The matter was dealt with by the Assistant Director Planning, Transportation and Highways and then reviewed by the Corporate Overview and Scrutiny Committee in February 2014. The Committee concluded that the petition had been dealt with correctly but referred the detailed issue to Bradford South Area Committee.

Mike Cowlam, Interim Strategic
Director for Regeneration and Culture

Portfolio:

Planning, Transportation and Highways

Report Contact: Danny Jackson,
Countryside and Rights of Way
Manager

Phone: (01274) 431230

E-mail: danny.jackson@bradford.gov.uk

Overview & Scrutiny Area:

Environment and Waste Management



1. SUMMARY

A petition (Appendix 1) was submitted to the Chief Executive in May 2013 relating to the blockage of a route running between Dyehouse Road and Cleckheaton Road, Oakenshaw. The lead petitioner, Ms Jill Caro-Line of The Bungalow, Dyehouse Road, asserted that the route was a public right of way and that the Council should take enforcement action to re-open the route. The petition was forwarded to the Strategic Director for Regeneration and Culture who appointed the Assistant Director Planning, Transportation and Highways (Julian Jackson) as Named Senior Officer to deal with the matter – in line with the Petitions Scheme. The Named Senior Officer contacted the lead petitioner and subsequently met with her in October 2013. At the meeting the Council's views on the matter were outlined (that the route is not recorded as a right of way and therefore it's opening cannot be enforced) and the outcome summarised in writing and sent to the lead petitioner. A request for a review of the outcome by this Committee was subsequently received. The Petitions Scheme allows for the Corporate Overview and Scrutiny Committee to review the steps the Council has taken in response to the petition. This review was carried out at the Committee's February 2014 meeting and concluded that the petition had been dealt with adequately and that no further action was required. It also recommended, however that the Bradford South Area Committee examine the issues identified in the petition.

2. BACKGROUND

- 2.1 During the construction of a new housing development at Salthorn, Cleckheaton Road, Low Moor in 2011, a route which ran through the site linking Cleckheaton Road with Dyehouse Road was blocked with fencing by the developer's contractor (see Background Document plan 1). The contractor explained that this was for safety reasons whilst construction was ongoing and that on completion, the fencing would be removed and the route re-opened. After completion however, the route was not re-opened and the fencing currently remains in place.
- 2.2 Following complaints about this situation, Rights of Way Officers confirmed that the route is not recorded as a public right of way. Although they contacted the developer and requested that the path be re-opened, there is no legal basis upon which to take enforcement action until such time as the path is proven to have public rights. The developer's solicitors are aware of this and have advised that the fencing should not be removed.
- 2.3 The actual planning application for the development and associated plans submitted, show the route retained through the development and even refer to it on the plans as a "public right of way". The petitioners argue that these references to the route being a public right of way are tacit acceptance of the public status of the route.
- 2.4 Prior to the submission of the petition, Rights of Way Officers were in regular



correspondence with Ms Caro-Line explaining that there is little that can be done until the route's legal status is proven. The process for doing this is for a Definitive Map Modification Order (DMMO) application to be made to the Council as Highway Authority, to claim the route and in doing so, provide evidence of its public use over a period of 20 years. The paperwork for this process was sent out and subsequently submitted in December 2012 by another local resident. This is now in the system for consideration, although it has been explained to the applicants that there is a lengthy waiting list before work can commence on establishing the status of the route.

- 2.5 In parallel with the submission of the DMMO application, Ms Caro-Line has pursued enforcement action through the planning system. This, she argues, is on the basis that the planning application makes reference to a public right of way to be retained through the site and that the subsequent planning permission is subject to a number of planning conditions which relate to the path.
- 2.6 In response to the petition, a meeting was arranged with the Assistant Director Planning, Transportation and Highways plus Countryside and Rights of Way staff. At the meeting, the situation with regard to the legal status of the route was explained and the receipt of the DMMO application and evidence forms was confirmed. The timescale for processing this application was also outlined and was accepted by the petitioners. Discussion then focused on the planning issues, mainly in relation to two planning conditions. Legal advice, obtained prior to the meeting, was that neither planning condition gave sufficient grounds for enforcement action and that the reference to the route on the developer's plan as a "public right of way" did not bind the developer in any way. The meeting concluded and Ms Caro-Line submitted a letter re-iterating the planning related points, as follows:
- i) The developer included the phrase "public right of way to be retained" on plans submitted with the application. Legal Service's view was that, whilst this was the case, it did not mean that there is a breach of the permission or any of its conditions and could not be regarded as binding upon the developer.
 - ii) Planning condition 9 includes a reference to "pedestrian access hereby approved" and should include access both from Cleckheaton Road and from Dyehouse Road/Lee Terrace at the northern end of the site. Legal Service's view is that this is a standard planning condition relating to the timing of the laying out of the means of access to the site. It was not considered that this condition had been breached.
 - iii) Planning condition 13 requires the railings on the western side of the site to be retained to "maintain the openness of the footpath running through the site". The use of the word "through" therefore implies that the route connects beyond the site boundaries into Dyehouse Road. Legal Service's view is the serving of either an enforcement or breach of condition notice would not be justified in the circumstances. Further consideration on this point by planning officers has concluded that there has been no breach of condition 13.



- 2.7 These responses to the points raised above were sent to Ms Caro-Line and were regarded as the conclusion of the petition process. The subsequent request for a review, dated 18th November 2013, was a follow up to the Legal response relating to the planning matters and argues that the developer should be required to apply for “retrospective planning permission to keep the path closed”, which should then be refused. However, the fence is deemed to be classed as ‘Permitted Development’ and a separate planning consent is not required. There would not, therefore be any grounds for requiring a retrospective planning application from the developer. Again, Ms Caro-Line has been informed of this view.
- 2.8 The review of the Council’s handling of the petition was undertaken by the Corporate Overview and Scrutiny Committee on 13th February 2014. The committee concluded that the petition had been dealt with adequately and that no further action was required. During the committee’s discussions however, it was recommended that Bradford South Area Committee examine the issues identified in the petition as the Corporate Overview and Scrutiny’s role was simply to review the handling of the petition, not the detailed issue itself – hence this report. Legal Officers also agreed at that committee meeting, to send a further letter to the developer of the site at Dyehouse Road, asking if they would consider re-opening the path by way of a gate which would preserve some of the security for residents. To date, there has been no response to this request and the path remains closed off.
- 2.9 In conclusion, the situation, given this lack of pro-active response from the developer, is that this route remains subject to the processing of an application to have it added to the Definitive Map, when, if successful, there would then be a legal basis upon which to enforce it’s reopening. There are a number of similar applications in the queue ahead of this one and so it will be some time before it can be addressed. The petitioner is aware of this.

3. OTHER CONSIDERATIONS

- 3.1 It should be noted that even if the fencing was removed and the section of the route which runs through the housing site (south of the blockage) was opened up and accepted as public by the developer, the section of route linking to Dyehouse Road/Lee Terrace to the north is on land owned by another party. In that case, the through link between Cleckheaton Road and Dyehouse Road could not be guaranteed, even if the problem highlighted in Ms Caro-Lines original petition was resolved. This issue will ultimately be addressed as part of the DMMO considerations.



4. FINANCIAL & RESOURCE APPRAISAL

- 4.1 None if the initial outcome is confirmed. Alternative options may have resource implications.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1 The original petition has been dealt with in line with the Council's Petitions Scheme.

6. LEGAL APPRAISAL

- 6.1 The legal appraisal is set out in Appendix 4.

7. OTHER IMPLICATIONS

7.1 EQUALITY & DIVERSITY

7.2 SUSTAINABILITY IMPLICATIONS

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

7.4 COMMUNITY SAFETY IMPLICATIONS

7.5 HUMAN RIGHTS ACT

7.6 TRADE UNION

None.

7.7 WARD IMPLICATIONS

The disputed route lies entirely within the Wyke Ward. Ward Councillors have been consulted and are aware of the matter.

7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS (for reports to Area Committees only)

None

8. NOT FOR PUBLICATION DOCUMENTS

None.



9. OPTIONS

- 9.1 The Committee can either uphold the original outcome reached following consideration of the petition and related issues, or recommend an alternative way forward.

10. RECOMMENDATIONS

- 10.1 That the Committee note the current situation and support the procedure for dealing with the DMMO application as outlined in this report.

11. APPENDICES

Appendix 1: Petition submitted May 2013

Appendix 2: Plan of route

12. BACKGROUND DOCUMENTS

None



Copies - for information only



21st May 2013

Attn: Mr. Tony Reeves, Chief Executive

Dear Sir,

Ref: Public footpath ref TDP6680T1/BDS/FMP - Cleckheaton Rd to Dyehouse Rd

I am sorry to have to appeal to you, personally, over something which your Rights of Way/Highways/ Planning departments should have been able to deal with long since, but we keep meeting with a brick wall. We have been very badly let down throughout by Bradford Council and have been deprived of the use of the path for nearly two years, hence the seventy-three signatures on this petition.

The other enclosed documents are self-explanatory, but I would like to make the following additional comments:

1. It only came to light comparatively recently that it was the developer/architect who is responsible for blocking our public path,
2. As far as we are concerned, the letter (Doc. 1) from Dufton & Sons (building contractor) is the definitive acknowledgement that the path exists, viz:
 - A Why would Highways have to agree to its temporary closure if it was not a bona fide public path?
 - B Why would Dufton's also state that they were awaiting "permission from Bradford Council", if it wasn't necessary?
 - C Why would they additionally state that their work would "significantly improve the access and footpath" if there was not already in existence both access and path (my own use goes back more than 33 years)

Given the historical evidence of the public's use of the path, including a gas streetlamp which was converted to electricity and is maintained by the Council, why was the benefit of the doubt not applied in favour of the residents of Oakenshaw rather than the non-resident developer? Surely the Countryside and Public Rights of Way Act, 2000, was never intended to place residents like ourselves at a disadvantage?

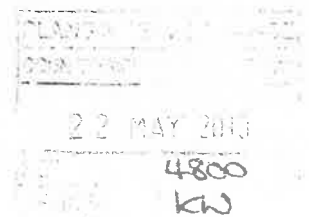
Finally, why should one person be able to ride roughshod over the right of local residents to continue their enjoyment of the path they have been using, in all likelihood, since the late 19th Century.

I look forward to hearing from you.

Yours faithfully,

Jill Caro-Line
Ms Jill Caro-Line

cc PLANNING
HIGHWAYS ✓



We, the undersigned, demand that the illegally closed-off footpath between Dyehouse Road and Cleckheaton Road be re-opened forthwith.

The developer formally applied for temporary closure of the path, for safety reasons, while the building work took place and gave a written assurance that the path would be re-opened on completion. He reneged on that promise to the considerable inconvenience of local people and we are now VERY angry.

The very fact that the Public Rights of Way department is swamped with applications generally, does not negate the council's responsibilities towards residents. WE should be given the benefit of any doubt, NOT the developer. FACT: The path has been in existence for 60-odd years in living memory, but actually dates back at least 100 years.

The Countryside and Public Rights of Way Act, 2000, should be working for and not against us.

Name	Address	Signature
J B BENTLEY	[Redacted]	J Bentley
R. BENTLEY	[Redacted]	R Bentley
M. SAGAR	[Redacted]	M Sagar
L SAGAR	[Redacted]	L Sagar
SIR [Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
B. MOORE	[Redacted]	B Moore
M MOORE	[Redacted]	M. Moore
S. BROWN	[Redacted]	S Brown
M. JAMES	[Redacted]	M James
J BYRNE	[Redacted]	J Byrne
W. JONES	[Redacted]	W Jones
J. Jones	[Redacted]	J Jones
S Adamsan	[Redacted]	S Adamsan
L. DAVIS	[Redacted]	L Davis
P GRAWIN	[Redacted]	P Grawin
J GRAWIN	[Redacted]	J Grawin
L GRAWIN	[Redacted]	L Grawin

Claimed Route Dyehouse Road

Appendix 2

