



Date of Meeting	13 th February 2020
Portfolio	Cabinet Member for Environment
Report Author	Julie Simpson
Public/Private Document	Public

Claim of Footpath from Manchester Old Road to the Rear of 564 Manchester Old Road, Middleton

Executive Summary

1. Under section 130 Highways Act 1980 the Council has a duty to protect and assert the rights of the public to the use and enjoyment of any highway defined on the map of rights of way and supporting statements. The Council are also required to maintain and keep under review a map, the Definitive map, and statement showing the public footpaths and bridleways in its area.

One of the circumstances in which the map can be modified is by a landowner shown to have intended to dedicate the way as a public right of way, to be decided on the evidence

Section 31 of the Highways Act 1980, provides the criteria that the way over land actually enjoyed by the public, as of right and without interruption for a full period of 20 years, shall be deemed to have been dedicated as a public right of way unless there is sufficient evidence that there was no intention to dedicate the way for public use.

The Council have received an application claiming a footpath under section 53(5) of the **Wildlife & Countryside Act 1981** for an order to be made to modify the Definitive Map and Statement to include a path or way from Manchester Old Road to the rear of 564 Manchester Old Road, Middleton Rochdale.

This application contains 18 supporting evidence forms from members of the public who have also submitted maps on which they have identified the route they have used. The location of the route claimed is shown by a thick black line on the attached map to this report.

Recommendation

2. It is considered no reasonable public rights exist and that there is no presumed dedication. It is recommended that the Council should not proceed with a map modification order to add a footpath to the definitive map and statement running from Manchester Old Road to the rear of Manchester Old Road, Middleton Rochdale.

Reason for Recommendation

3. There is a duty on the Council to consider the criteria set out under the Highways Act for a Definitive Map Modification Order, Whilst applying this criteria the evidence clearly shows that the landowner has not intended to dedicate the way as a right of way; the route claimed runs from the side of 580 Manchester Old Road and continues to the rear of 578 – 564 Manchester Old Road. The claim would create a cul-de-sac; it does not start/end on an adopted highway or at a junction with other rights of way and therefore does not link with the definitive network or assists the passing and repassing of a right of way.

Whilst carrying out further investigation into the claim I considered looking at older maps, I obtained a map from 1929 that shows the route in a slightly different location as though it runs through part of the bowling green and the gardens to the rear of properties 578-564 Manchester Old Road. A property blocks access to this route from Manchester Old Road.

The 18 evidence forms supporting the claim provided by neighbouring residents may not be sufficient to show that the **public at large** require this route to be added to the definitive map and statement. Only 1 person resides further along Manchester Old Road and has provided evidence of use of part of the route claimed, the remaining 17 evidence forms provide evidence of use and are completed by a group of people in the immediate vicinity of the claimed footpath on Manchester Old Road, Middleton.

The applicant can only submit a claim of a public right of way to the Council in the event their access has been obstructed. I do not believe the claim was made for this reason, as part of the legal procedure, and, if there is any doubt I am required to interview some of the people who have submitted an evidence form, I invited 4 people into the Council for an interview and only 1 person attended. During the interview it was confirmed to me that the claim was made to obtain private rights as some residents had sought the employment of a Solicitor however the fees are too expensive, they therefore made a public claim that may achieve the same required result.

Considering the location of the claimed footpath it runs parallel with adopted highway Manchester Old Road, there is only a distance of 32 metres between the adopted highway and the route claimed. For the residents that occupy the properties between the claimed footpath and Manchester Old Road and are the main supporters of this claim, if they use their front door it would be quicker than using the route at the rear, and, it would take slightly longer for any resident from Croft Gates Road (the remaining supporters of

the claim) to walk to the rear of the properties 580 – 564 Manchester Old Road than to continue along the adopted highway.

Whilst there are significant factors why the footpath claim should not be supported by the Council, there is an obligation to look at the claim from a point of law, and considering that it does not run from highway to highway and will form a cul-de-sac, and, the evidence is not from the Public at large is a consideration the Council can apply to refuse the application.

Key Points for Consideration

The applicant has to show an intention to dedicate by providing evidence to show that they have passed and repassed from highway to highway, the claimed route ends to the rear of 564 Manchester Old Road and therefore it does not meet the criteria starting on a highway and ending on a highway.

The evidence submitted to claim a footpath from Manchester Old Road to the rear of 564 Manchester Old Road is from a group of people who reside in the area and is not the public at large.

It is disputable whether the footpath has been located in its current position during the period of the claim as older maps show a slight difference of route that could have been used.

4. Alternatives Considered

- 4.1 The alternative is to accept the evidence and proceed with a Definitive Map Modification order to add a footpath to the definitive map and statement and to ensure a footpath is available for public use.

Costs and Budget Summary

5. The recommendation is not to proceed and therefore there are no costs associated with this.

Risk and Policy Implications

6. The associated risks relate to fuelling the neighbour dispute and proceeding against the Council's anti-social Strategy that aims to make the borough a place where everyone is safe and feels safe, also the Safer communities Plan seeks to reduce crime and increase confidence and satisfaction in the borough. The Council have a duty to ensure that their actions will not impact the lives of residents within the vicinity.

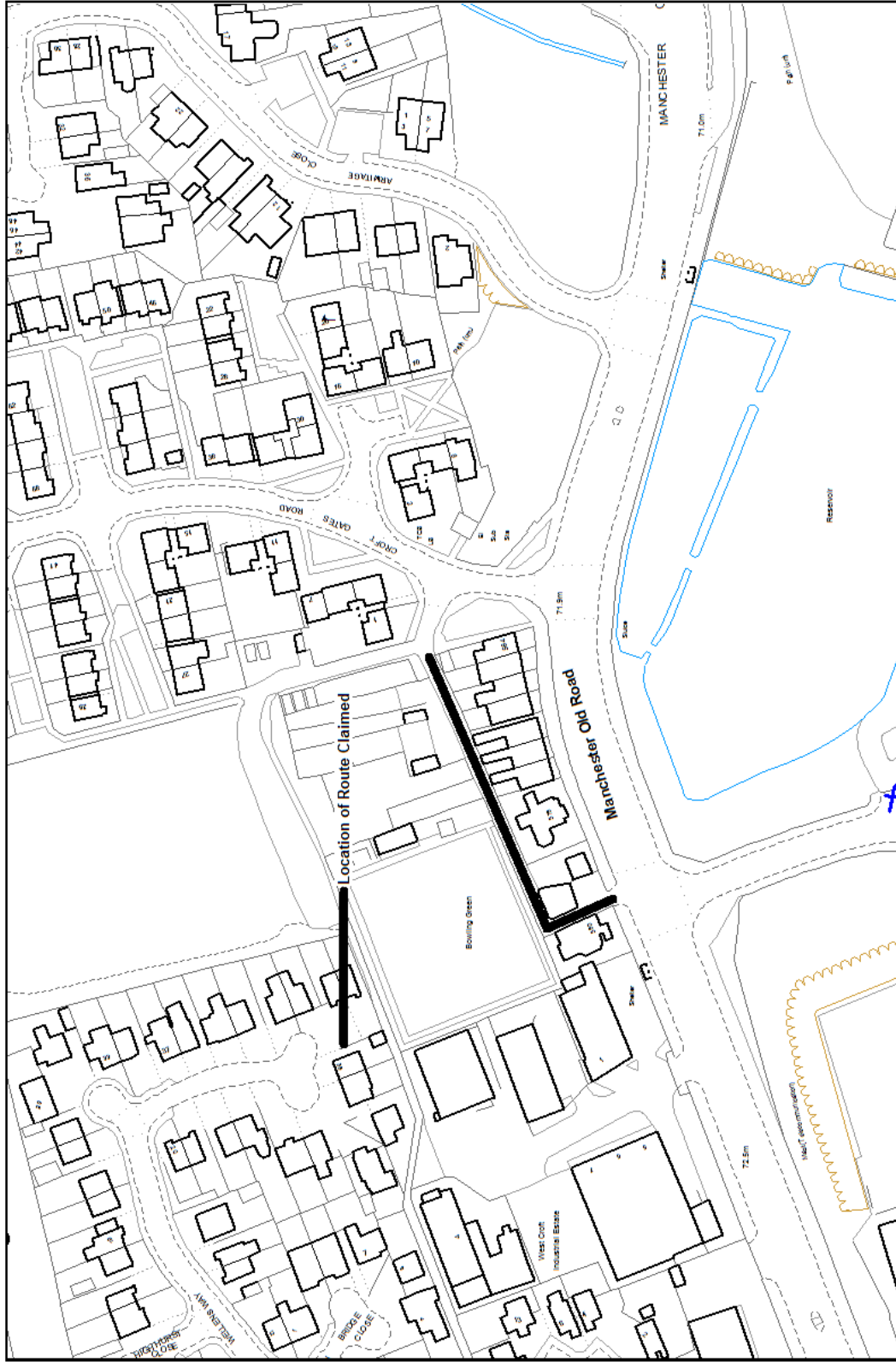
Should the Council decide that the order should proceed to definitive status this route becomes part of the definitive network, the Council is responsible for any maintenance for the general public on foot only. It is possible that it is maintained as a private right as the general public (at large) are not using the route, there isn't any evidence to suggest that the general public want this route added to the definitive map and statement.

Consultation

7. The report will be considered by Ward Councillors for South Middleton to assist them in their decision.

Background Papers	Place of Inspection
8. File 14844	Environmental Management, Green Lane, Heywood, OL10 2DY

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of 564 Manchester Old Road, Middleton**

I have read the content of the report in respect of a claim of footpath from Manchester Old Road to the rear of 564 Manchester Old Road, Middleton and as advised and recommended within that report I provide Council authorisation under delegated powers to support the recommendation.

Signed

Position.....

Date.....