

# Executive Decision Report

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## **Modification of the definitive map and statement of public rights of way by the addition of the footpath between Victoria Park Road and University Road**

Decision to be taken by: Deputy City Mayor for Transport,  
Clean Air & Climate Emergency

Decision to be taken on: 25 November 2022

Lead director: Andrew L Smith

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**City Mayor**

## Useful information

- Ward(s) affected: Castle
- Report author: Paul Standley, Transport Strategy
- Author contact details: [paul.standley@leicester.gov.uk](mailto:paul.standley@leicester.gov.uk)
- Report version number: 1.1

### 1. Summary

The purpose of this report is to seek approval to the making and advertising of a definitive map modification order adding the footpath between Victoria Park Road and University Road to the council's definitive map and statement of public rights of way.

### 2. Recommendations

To approve a modification of the definitive map and statement of public rights of way by the addition of the footpath between Victoria Park Road and University Road.

### 3. Supporting information including options considered:

Users of the popular and longstanding footpath between Victoria Park Road and University Road have made an application to the council to add the footpath to the council's definitive map and statement of public rights of way. The application was made in February 2021 and followed the closure of the path by the locking of gates at the Victoria Park Road end of the path. Users have submitted evidence forms in support of their application showing that they have enjoyed a full period of 20 years uninterrupted use.

Wyggeston & Queen Elizabeth I College, which owns the land upon which the path runs, has submitted statements detailing their position and challenging the public use of the path. WQE has provided statements disputing the 20 years use of the path and claim that the path has been closed to enable maintenance along the path, emergency evacuations and a 6 to 8 week-long closure to facilitate demolition and improvement works. The college also bring attention to signage along the path and the ejection from their campus of persons using the path.

The council has considered the user applications and the statements submitted by the landowner. The closures referred to are considered to be temporary one-off incidental measures related to ensuring public safety whilst construction and maintenance activities were underway, and other emergency safety procedures.

It appears that none of the closures referenced by the landowner were undertaken to specifically disabuse users of the belief that the path was a public right of way.

Signage referred to by WQE as having been used along the path convey a range of different messages, but none of them specifically stated (before the path was closed, believed be in early 2021, by the College) that there was no public right of way.

In terms of wider context, the council has been delivering its Connecting Leicester Programme over the past 10 years with the intention of connecting neighbourhoods with work, retail and leisure areas. This also has significant benefits in terms of tackling air pollution, encouraging healthy and active travel and contributing to delivery of the council's Climate Emergency Action Plan. The council also faces challenging decarbonisation targets from the Government including a commitment that a half of all journeys in towns and cities will be cycled or walked by 2030. The link between Victoria Park Road and University Road through the WQE site is important in this wider strategic context.

After careful consideration of legal advice on relevant matters, officers recommend adding the footpath to the definitive map and statement.

Case law on definitive map orders is open to interpretation, so it is possible the order will be challenged by the landowner and the status of the footpath would then be subject to determination by the Planning Inspectorate.

#### **4. Details of Scrutiny**

The application has been considered in detail by officers.

#### **5. Financial, legal and other implications**

##### 5.1 Financial implications

The advertising costs for making the order are stated as £1,000, which will be absorbed within existing budgets. If the order is challenged and has to be determined at public inquiry, then the estimated legal costs could be in the region of £10,000.

Stuart McAvoy – Acting Head of Finance

##### 5.2 Legal implications

Leicester City Council has a duty under Section 53 of the Wildlife and Countryside Act 1981 to keep a Definitive Map and Statement of public rights of way under continuous review and to amend it as necessary. Amendments are made by a definitive map modification order as outlined in Section 53.

Section 53 outlines the events which can cause an amendment to be made to the Definitive Map. Section 53(3)(b) requires the Definitive Map to be modified on the

expiration of any period such that enjoyment by the public of a path during that period raises a presumption that the path had been dedicated as a public path.

Section 31 of the Highways Act 1980 provides that a presumption of dedication is raised where a path has been enjoyed by the public as of right and without interruption for a full period of twenty years unless there is sufficient evidence that there was no intention during that period to dedicate it. The twenty-year period ends with an act that brings into question the public right to use the path and is calculated retrospectively from that time.

For a definitive map modification order to be made under Section 53, the Council must therefore also be satisfied that the requirements of the Highways Act 1980 are met, i.e., that the public has used the path for a complete, uninterrupted period of 20 years unless there is sufficient evidence that there was no intention during that period to dedicate it

Applications under Section 53 were received by the Council from members of the public applying for the Definitive Map to be updated. The owners of the property have disputed the application and have submitted documentation that they believe establishes interruption of the required period and which they consider also evidences that they had no intention to dedicate the path as a public footpath but, for the reasons stated above, the decision to make the order is sought.

Once a modification order is made there must follow a statutory period for objections to be submitted and the Council cannot confirm an order if there are any objections which have not been withdrawn. If objections are not withdrawn the order must be submitted to the Secretary of State (SoS) for determination. The SoS will reach a decision either based upon written submissions or they may call for a public inquiry. Given the response from the owners of the property thus far, an objection may be made that will not be withdrawn and an estimated cost for potential public inquiry is highlighted above.

If an order is subsequently confirmed by the SoS, the 1981 Act then goes further to provide that an aggrieved person may further challenge the validity of an order by way of High Court application, the cost of which is unknown.

Zoe Iliffe - Acting Principal Lawyer, Legal Property & Highways Team

### 5.3 Climate Change and Carbon Reduction implications

There are limited climate emergency implications directly associated with this report due to the relatively small scale of this proposal. However, it should be noted that in general the provision of public footpaths helps to enable active and sustainable travel within the city and therefore should have a positive environmental impact overall.

Aidan Davis - Sustainability Officer

#### 5.4 Equality Impact Assessment

There are no direct equality implications arising from this report, however access to the path will benefit people from across a range of protected characteristics.

Sukhi Biring - Equalities Officer

#### 5.5 Other Implications (You will need to have considered other implications in preparing this report. Please indicate which ones apply?)

None

#### **6. Background information and other papers:**

Plan showing in a dashed line, the route of the footpath.

#### **7. Summary of appendices:**

None

#### **8. Is this a private report (If so, please indicated the reasons and state why it is not in the public interest to be dealt with publicly)?**

No

#### **9. Is this a “key decision”?**

No

#### **10. If a key decision please explain reason**

N/A