

Central Bedfordshire Council

Decision by the Assistant Director - Highways under Delegated Powers
14/11/2016

TITLE OF REPORT: The determination of an application to add a claimed public footpath to the Definitive Map and Statement along Stratton Park Drive in Biggleswade

Report of David Leverington - Rights of Way Team Leader

Report Author: Adam Maciejewski – Senior Definitive Map Officer – x76530

Purpose of this report

1. To determine whether a public right of way subsists along the route of Stratton Park Drive which runs between the Manor Court mobile home complex and Dunton Lane, Biggleswade (see map at Appendix A).

RECOMMENDATION

The Assistant Director - Highways is asked to:

1. **Refuse** an application under Section 53 of the Wildlife and Countryside Act 1981 to add a public footpath between points A-B-C on the plan at Appendix A to the Definitive Map and Statement for Central Bedfordshire on the grounds that, contrary to Section 31 of the Highways Act 1980 (and common law), there has not been use by the public at large during the relevant 20 year period and that during this period there was a non-intention to dedicate the claimed route as a highway.

Issues

2. For many years the residents of the Manor Court mobile home site to the south-east of Biggleswade have walked or used mobility scooters to travel along Stratton Park Drive through the Stratton Park mobile home site to access Dunton Lane. The Manor Court residents then use the footway alongside Dunton Lane to access the nearby bus stop, post office and local shops including the Saxon Centre. The residents of Manor Court range in age between 50 and 85 (average of about 68 years) and several are infirm and use mobility scooters to a variety of extents.
3. Stratton Park Drive is a tarmaced lane running from Dunton Lane at point C generally east-north-eastwards past a line of 20 static mobile homes (situated on the northern side of the lane) over a culverted drain to a gate at point B. The route then continues a short distance north-eastwards to point A where it has a junction with the new access lane which connects Dunton Lane to both the Manor Court mobile home site and adjoining Stratton Park light industrial park.

4. In c.June/July 2015 an existing metal farm gate at point B which separates the two mobile home sites was locked and the adjacent gap blocked with wire fencing. This has generally prevented the Manor Court residents from using this unofficial pedestrian route to Dunton Lane.
5. The official exit from the Manor Court mobile home site uses a purpose built access road which leads southwards on to the relatively narrow but busy Dunton Lane at a bend (point X). At this location the road has a national (60mph) speed limit and there is no footway or street lighting. An elderly/infirm person either walking along the road or using a mobility scooter is likely to pose a significant risk to both their own safety and that of other road users.
6. Residents of Manor Court have reported that a small number of Stratton Park residents have challenged Manor Court residents since the summer of 2014 and have become increasingly vociferous and aggressive towards any Manor Court resident straying onto Stratton Park Drive.
7. On 26 February 2016 Mr. David Lewsey, one of the Manor Court residents, applied to Central Bedfordshire Council under Section 53(5) of the Wildlife and Countryside Act 1981 for a public footpath to be added to the Definitive Map and Statement along Stratton Park Drive between points A-B-C. This application was accepted as duly made on 7 March 2016. The application included 15 user evidence statements from fellow Manor Court residents.
8. Follow-up interviews with those who had submitted user statements saw 17 residents being interviewed in total in early September 2016.

Legal and Policy Considerations

9. Central Bedfordshire Council is the Surveying Authority for the Definitive Map and Statement for Central Bedfordshire. This is the Council's legal record of public rights of way (footpaths, bridleways and byways).
10. The Council has a duty under Section 53 to ensure that the Definitive Map and Statement are kept up to date and to make such modification as it deems expedient to ensure that it is.
11. Mr. David Lewsey applied to the Council for an order modifying the Definitive Map and Statement to record a public right of way on foot along Stratton Park Drive. The substance of the claim is that residents of Manor Court have walked along Stratton Park Drive (the claimed route) for many years and it has become a public right of way.
12. Appendix B details the legal considerations relating to an application to record a public right of way under Section 53 of the Wildlife and Countryside Act 1981 ("the 1981 Act"). For the Council to be able to deem under Section 31 of the Highways Act 1980 that a path or way has been dedicated as a public highway a number of criteria need to be met. These are:
 - a. It must have been enjoyed by the "*public at large*" and not, for example, only by tenants or employees of the landowner or residents of a particular street. Use must be of sufficient frequency to amount to enjoyment by the public; use by one or two people once or twice a year would not suffice.

- b. Use of the way must be “*as of right*” and not merely with the landowner’s permission or under any other private right.
 - c. Use must be without interruption, i.e. without physical challenge by the landowner or someone acting lawfully on the landowner’s behalf.
 - d. Use must be for a full period of 20 years counted backwards from the date on which the right of the public to use the way was brought into question.
 - e. The owners must be capable of dedicating a public right of way across the land and the land must of a character suitable for being dedicated as a highway.
 - f. There must not be sufficient evidence to indicate that the landowner had no intention to dedicate a public right of way over their land. Any evidence of a non-intention to dedicate should be overt and contemporaneous with the use and does not have to be continuous throughout the 20 years of use.
13. Only if all the above criteria are met can the Council deem that the owner (or a previous owner) has dedicated the claimed route as a public right of way.
14. Alternatively, the Council can infer that the claimed route has been dedicated at common law. This is a more difficult process which does not require a calling into question or for there to be any specific period of public user. At common law, the question of dedication is one of fact. Public user is no more than evidence, and is not conclusive evidence. Any presumption that public user is the result of an earlier dedication can be rebutted. The Section 31 criteria above (with the exception of the 20 year period) apply at common law.
15. The restricted source of the users – the 14 mobile homes at Manor Court raises the question of whether these users constitute “*the public at large*”. A number of those who provided statements or who were interviewed stated that their non-resident relatives when visiting have walked to and from the mobile homes along Stratton Park Drive. However, as their start and end points were the mobile homes I consider their origin to be within Manor Court even though they lived elsewhere. Consequently the use of the claimed route has not been by the public at large but by a very limited subsection.
16. The locking of the gate at point B in c.June/July 2015 was preceded by approximately one year of intimidation and challenges to a number of the Manor Court residents when they attempted to walk along Stratton Park Drive. As I cannot show that these challenges were authorised by and on behalf of the landowner I cannot take them to be an indication of a non-intention to dedicate the claimed route. Furthermore, as these challenges seem to have been very selective, they did not bring the right of the remainder of the residents to use the route into question. Consequently the relevant 20 year period is counted back from the locking of the gate in c.June/July 2015.
17. Witnesses have provided a wide range of dates for when the prohibitive signs (“*Private*” and “*Private No Entry*”) were erected at either end of Stratton Park Drive at points B and C. The earliest recollection dates back to 1988. Whilst none of the Manor Court residents considered that the sign applied to their own personal use, case law (*R (on the application of Godmanchester Town Council)*)

v Secretary of State for the Environment, Food and Rural Affairs; R (on the application of Drain) v Secretary of State for the Environment, Food and Rural Affairs - [2007] UKHL 28 – hereafter “*Godmanchester*”) suggests that it is the intention of the owner of the land rather than the perceived applicability of the sign to the users that is important. The wording “*Private No Entry*” at point B is an unambiguous instruction and, according to *Godmanchester*, should be taken as evidence of a non-intention to dedicate the claimed route as a public right of way.

18. The absence of use of the claimed route by the public at large and the evidence of non-intention to dedicate within the relevant period prevents the Council either deeming or inferring that a public right of way has been dedicated over Stratton Park Drive.

Historic Evidence

19. The process to map public rights of way in Bedfordshire began shortly after the enactment of the National Parks and Access to the Countryside Act 1949, see Appendix D. Stratton Park Drive was not claimed by Biggleswade Town Council as a public right of way and, following publication of the Draft Map of Public Rights of Way, no objection to the omission of the claimed route was raised. Consequently it has never been recorded as a public right of way.
20. None of the historic and more modern maps examined provide any evidence that a public right of way ran along Stratton Park Drive. A 1926 lease clearly identifies the route as not being a public right of way and grants access to it (on what would have been a permissive basis) to the tenant and his servants and agents. This grant precludes any such use giving rise to an inference of dedication.

User Evidence

21. User evidence is detailed at Appendix C and shows that residents of 10 of the 14 mobile homes have stated that they have used the route over a varying number of years. Recorded use tends to be concentrated over the last seven or so years – possibly due to the frequency with which such properties change hands – although two of the users have used the claimed route for the full 20 years of the relevant period. The use has nearly always been pedestrian and of varying frequency for the purpose of going to the nearby bus stop, garage, local Co-Op or the more distant Saxon Centre. Although the use is characteristic of the exercise of a public right, the subsection of the general public that have used the route (Manor Court residents and their guests) is too small a sub-set for the route to be considered to have been used by the “*public at large*”.
22. As discussed above, a small number of the Manor Court residents were challenged by Stratton Park Drive residents in the year preceding the locking of the gate. A number of residents recall the presence of a “*Private No Entry*” sign on the locked gate at point B during the relevant period. As discussed in Appendices B and C, this sign can be taken as evidence of a non-intention to dedicate the route.

23. Ten residents of Stratton Park Drive completed questionnaires (see Appendix C) which indicated that none of them considered the route to be public. Moreover, the residents also recalled the “*Private No Entry*” sign at point B and also stated that some Manor Court residents had been challenged in the past.

Options for Consideration

24. To advise the applicant and his fellow residents that their long use might have resulted in them acquiring a common law easement over Stratton Park Drive. This though is something that they will need to explore privately at their own expense using their own independent legal advisors.
25. That the Council's Private Sector Housing Team explores the possibility of securing a permissive access along Stratton Park Drive for the Manor Court residents
26. That the Council Highways Team explores alternative pedestrian routes to facilitate safe access to the bus stop and local amenities for the Manor Court residents. The route will need to be suitable for mobility scooters and possibly could cross the abutting Central Farms land which is owned by Central Bedfordshire Council and earmarked as a site for Travelling Showpeople.

Consultations

27. Biggleswade Town Council was consulted. Town Cllr. Hazel Ramsay has responded, stating: the “...*report makes it clear that the situation of the Manor Court residents cannot be resolved ‘in law’ I feel that some resolution to their situation must be found as we have a duty of care for all residents in Biggleswade...*”
28. Mr. Ray, the owner of Stratton Park mobile home site was consulted and is against the recording of any public right of way along Stratton Park Drive.
29. Mr. Lewsey, the applicant, has been shown a draft of the report and has responded in a letter signed by himself and three fellow residents: Mrs. Lewsey, Mr. Milne and Mrs Griffiths. He states that two of the residents have proved usage in excess of twenty years and, at a meeting in 2014, a Council solicitor told the residents to continue using the claimed route. The residents understood this to be confirmation that a legal right to do so existed.
30. In response, the period of twenty years usage is merely the period during which a range of other criteria need to be satisfied in order for the Council to deem that a right of way has been dedicated. At common law no fixed period is required but the other criteria still need to be met. These criteria have been discussed in detail at Appendix B. Moreover, the views of a Council solicitor who had not fully investigated the matter and who provided informal advice/commentary cannot be considered a material factor in determining the application.
31. Mr. Lewsey also referred to the impact of the locked gate on services such as the postman and bin lorries and the effect on the private easement enjoyed by the owner of the light industrial estate adjoining Manor Court. Mr. Lewsey also

commented on the safety issues of attempting to use Dunton Lane either on foot or in a mobility scooter.

32. In response, the impact of the locked gate on the passage of service vehicles and any enjoyment of a private easement is irrelevant to the application for a footpath as these vehicles are operating with implied permission rather than exercising any public right over a highway and the use of any easement is “*by right*” rather than “*as of right*”. The *Mayhew* case (see Appendix B) confirmed that issues of desirability and suitability are not valid considerations for determining whether public rights of way do or do not exist. Whilst Dunton Lane is clearly not suitable for use by elderly pedestrians with or without mobility scooters, this is something that cannot be considered for the determination of Mr. Lewsey’s application, but can be a basis for any additional actions considered by the Council.
33. The local ward members were consulted. Cllr. David Lawrence supports “...*the right of way at a pedestrian level...*”

Reason/s for Decision

34. For the Council to be able to record a public right of way through long use by the public, there must be evidence to show that the route has been used by the “*public at large*” – rather than be a small subsection of the public. In this case the only use of the claimed footpath along Stratton Park Drive has been by the residents of Manor Court and their guests.
35. Furthermore, the “*Private No Entry*” sign at point B constitutes a non-intention to dedicate according to case law (the *Godmanchester* judgment) and has been present during the relevant 20 year period.
36. There is no historic evidence to show that Stratton Park Drive was ever a historic public right of way.

Council Priorities

37. The proposal **conflicts** with several of the Council’s priorities, namely:

- Enhancing Central Bedfordshire
- Delivering great residents’ services
- Protecting the vulnerable, promoting wellbeing
- Creating stronger communities
- An efficient and responsive Council

as the proposal seeks to **not** record a public right of way over a route used local residents; the residents’ only alternative pedestrian route is via an unlit national limit country road with no verge or footway. This will consequently affect the safety and security of elderly and disabled residents and could require them to move away.

Corporate Implications:

Legal Implications

38. This report proposes that an application under Section 53 of the 1981 Act be refused on the grounds that there is insufficient use by the public at large for the Council to either deem or infer that a public right of way has been dedicated.
39. The applicant, Mr. Lewsey has the right to appeal to the Secretary of State for Environment, Food and Rural Affairs against this decision. An Inspector appointed by the Secretary of State would then review the evidence and its interpretation and the relevant case law to determine whether the Council should be directed to make a definitive map modification order or not.
40. Any directed order could be opposed by anybody – including the owners and residents of Stratton Park. The case officer may consider, in consultation with senior officers, whether the Council should object to, support or take a neutral stance to any directed order. As the evidence is user-based it is most likely that the case would be heard at a public inquiry where users could be cross-examined.

Financial Implications

41. The Council has a statutory duty to ensure the Definitive Map and Statement is up to date and to make any requisite modifications on discovery of evidence which shows that the map or statement requires updating. The legislation does not permit the Council to charge for this work. Consequently all administration and any advertising costs are borne by the Council out of existing Rights of Way Team budgets. If the application is refused, the only expense is the already incurred administration costs. If the applicant appeals then further administration costs of approximately £300 - £1000 would be incurred defending the Council's decision. If an order is made then the cost of advertising the order could be in excess of £600. If the order is opposed, the cost to the Council will depend on its stance and could range from £1000 to over £3000 - assuming the case is heard at a public inquiry. All these costs would be borne by the Rights of Way Team budgets over potentially the next two financial years.

Equalities Implications

42. Section 53 of the Wildlife and Countryside Act 1981 enables the Council to make such modifications to the Definitive Map and Statement that are requisite as dictated by whether there is evidence that public rights do or do not exist. The primary legislation of the 1981 Act requires that any such decision be solely evidence-based and thus removes any discretion to act otherwise by the Council. Such decisions are therefore not subject to the Human Rights Act 1998 and its Articles and Conventions.
43. The proposed refusal of Mr. Lewsey's application reflects the Council's view that no public right of way exists along the claimed route, Stratton Park Drive, and consequently the Council would not be making a legal order to record the

route on its Definitive Map and Statement as a public right of way. This is legally different from extinguishing a pre-existing right of way.

44. Central Bedfordshire Council has, however, a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
45. Advancing equality of opportunity involves considering the need to:
 - Remove or minimise disadvantages suffered by people because of their protected characteristics
 - Meet the needs of people with protected characteristics
 - Encourage people with protected characteristics to participate in public life or in other activities where their participation is low.
46. This can include taking steps to meet the needs of disabled people that are different from the needs of people who are not disabled.
47. The Council recognises that its refusal to make a modification order will permit the route historically used by the residents until last year to remain blocked – thus preventing safe pedestrian access to local amenities. The lack of a safe pedestrian and mobility scooter-friendly route to local services and amenities could force some of the more elderly Manor Court residents or those that cannot drive to move out of their homes to another area with safer links to local amenities and services.
48. The Council is consequently investigating a range of options to provide the Manor Court residents with an alternative safe pedestrian route to the local services if practicable to do so.

Community Safety Implications

49. 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 report proposes that no public right of way be added to the Definitive Map and Statement through Stratton Park Drive. The alternative route to local amenities is thus via Dunton Lane which is an unlit national limit narrow country road with no lighting or verge or footway. In the author's personal opinion, use of this road by the elderly residents either on foot or in a mobility scooter could potentially result in serious injury to either themselves or other road users and is thus not recommended. This view is also supported by the Council's Senior Traffic & Safety Engineer. However, it should be noted that these views cannot be taken into consideration when deciding whether a public right of way does or does not exist along Stratton Park Drive but can be used in considering what other options are open to the Council at a later date.

Corporate Risk Implications

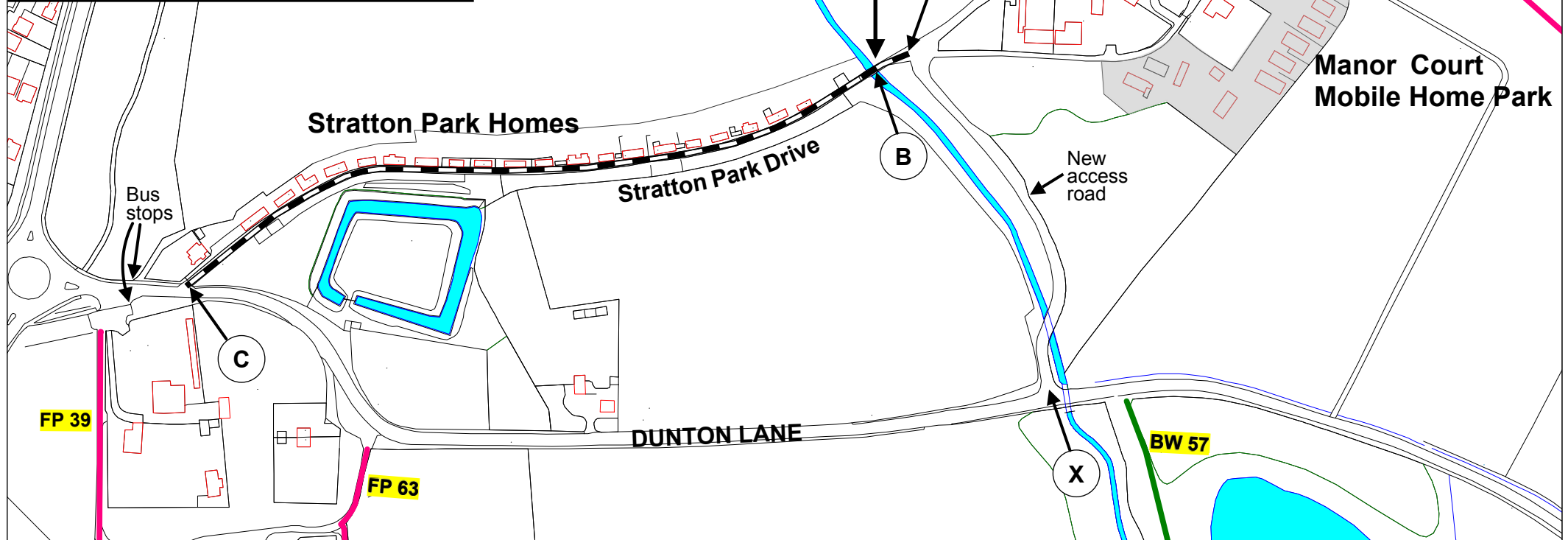
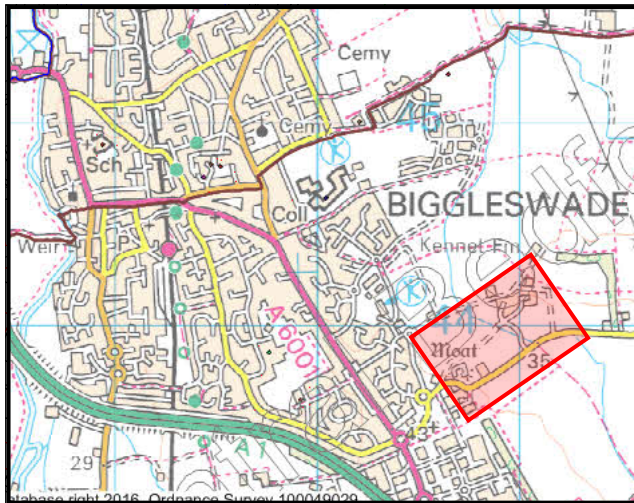
50. The proposed refusal of an application to add a public right of way to the Definitive Map and Statement will be very unpopular with the residents of Manor Court. Some have already spoken about getting the local paper and BBC radio involved to support their case. The proposed refusal may also have community safety implications and does not support the delivery of several of the Council's priorities. There is also a risk of challenge.
51. However, in this case the Council's discretion is severely limited by the legislation and case law on what can and cannot be considered when determining whether a public right of way does or does not exist.

Conclusions and Next Steps

52. This report investigates the evidence behind an application to add a public right of way to the Definitive Map and Statement along Stratton Park Drive. Evidence is predominantly based on use by the residents of the Manor Court mobile home site.
53. There is insufficient evidence for the Council to be satisfied that the use that has occurred has been by the "*public at large*" – instead it appears to have been by a very small subset of the public – namely the Manor Court residents and their guests. Furthermore prohibitive signs, although ignored by the residents, indicate a non-intention to dedicate a highway. Consequently the Council can neither deem nor infer that a public right of way has been dedicated along the claimed route.
54. The Council will need to formally notify the applicant, Mr. Lewsey, that his application has been refused and then deal with any subsequent appeal. The Council may subsequently consider trying to provide or negotiate an alternative safe pedestrian route to local amenities. Any such provision though is beyond the scope of this report and the legislation within the 1981 Act.

Appendices:

Appendix A – Plan of Stratton Park Drive
Appendix B – Legal and Policy Considerations
Appendix C – User Evidence
Appendix D – Historical Evidence

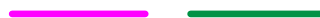


WILDLIFE AND COUNTRYSIDE ACT - SECTION 53

Claimed public footpath from Manor Court Mobile Home Park to Biggleswade

Footpath likely to be claimed as a public right of way

Unaffected public footpaths and bridleways



Date: 08 February 2016

Scale: 1:3000

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Appendix B

Legal and Policy Considerations

- B.1. Section 56 of the Wildlife and Countryside Act 1981 (the “1981 Act”) explicitly states that the Definitive Map is conclusive evidence as to the public rights shown upon it, though this is without prejudice to the subsistence of any higher right.
- B.2. Section 53(5) of the 1981 Act, however, 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 under subsection 53(3) of the 1981 Act if they consider these are in error and need correcting.
- B.3. Section 53(2) of the 1981 Act places a duty on the Council, as the Surveying Authority, to modify the Definitive Map and Statement upon the occurrence of certain events detailed in Section 53(3) of the 1981 Act. Section 53(3)(c) gives details of some of the events which require the Council to modify the Definitive Map and Statement:
- “53(3)(c) The discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-
- (i) *That a right of way not shown in the map and statement subsists, or is reasonably alleged to subsist...*”
- B.4. A highway can be created either by statute or can be dedicated by the landowner. Dedication of a highway may be:
- a) “Express” - where the owner openly declares that they are dedicating the way as a public highway;
 - b) “Deemed” - where public user is for a period of 20 years or more. This is regulated by Section 31 of the Highways Act 1980 (“the 1980 Act”);
 - c) “Inferred” - where user has been sufficient to infer that the way has been dedicated as a public highway at common law.
- B.5. Where a highway has been dedicated, the dedication must be accepted by the public. This is usually demonstrated by their use of the route.
- B.6. Section 31 of the 1980 Act describes how a highway may be deemed to have been dedicated by the landowner - as indicated by long use of the way by the public. It states:
- “1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no

- intention during that period to dedicate it.
- 2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question...
 - 3) Where the owner of the land...
 - (a) has erected... ..a notice inconsistent with the dedication of the way as a highway...

the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.
 - 4) In the case of land in possession of a tenant... ..[the owner] shall, notwithstanding the existence of the tenancy, have a right to place and maintain such a notice...
 - 5) Where a notice... ..is subsequently torn down or defaced, a notice given by the owner of the land to the appropriate council that the way is not dedicated as a highway is, in absence of proof of a contrary intention, sufficient evidence to negative the intention of... [the landowner] ...to dedicate the way as a highway.
 - 6) An owner of land may at any time deposit with the appropriate council...a map... .. and... ..statement indicating what ways (if any) over the land he admits to having been dedicated as highways... ..to the effect that no additional way... ..has been dedicated as a highway since the date of the deposit... ..[and is] sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway...
 - 7) ...'owner', in relation to the land, means a person who is for the time being entitled to dispose of the fee simple in the land...
 - (7A) Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications so as to show the right on the definitive map and statement.
 - (7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.
 - 8) Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public or statutory purposes to dedicate a way over land as a highway if the existence of a highway would be incompatible with those purposes...
 - 9) Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less than 20 years..."

B.7. For a way to be deemed to have been dedicated under the terms of Section 31 the following therefore applies:

- It must have been enjoyed by the public at large and not, for example, only by tenants or employees of the landowner or residents of a particular street. Use must be of sufficient frequency to amount to enjoyment by the public; use by one or two people once or twice a year would not suffice.
- Use of the way must be “as of right” and not merely with the landowner’s permission or under any other private right.
- Use must be without interruption, i.e. without physical challenge by the landowner or someone acting lawfully on the landowner’s behalf.
- Use must be for a full period of 20 years counted backwards from the date on which the right of the public to use the way was brought into question.
- The owners must be capable of dedicating a public right of way across the land and the land must be of a character suitable for being dedicated as a highway.
- There must not be sufficient evidence to indicate that the landowner had no intention to dedicate a public right of way over their land. Any evidence of a non-intention to dedicate should be overt and contemporaneous with the use and does not have to be continuous throughout the 20 years of use.

B.8. Each of these issues will be addressed separately below.

As of right

- B.9. It is important to determine that use of a way by the public has been “*as of right*”, which has been defined, as in the judgment of Pill J. in *O’Keefe v. Secretary of State for the Environment (1996)*, as being “...*nec vi, nec clam, nec precario*...” which equates to “...*without force, without stealth, and without permission or licence*...”. Use of land by the permission of the owner or on the basis that the user is visiting or in the employment of the landowner or had a private right of access would generally mean that the use was not “*as of right*”.
- B.10. None of the persons interviewed have stated that they had ever received permission to use the claimed route. One of the other residents did write to the owner of the Stratton Park site to ask if he could walk down Stratton Park Drive but never received any response. Another resident asked some of the Stratton Park Drive residents if it was alright to walk down the drive. However, as the residents do not have the power to either authorise or challenge use this does not count for the purpose of Section 31.
- B.11. A number of residents have claimed that they have either climbed over the gate situated at point B (see plan at Appendix A) or undone the fastening to get through. This use after the original locking of the gate would be with “*vi*” or force and thus would not have been “*as of right*”. However, as use is

counted back from the original act of locking this subsequent use is not counted within the relevant 20 year period.

- B.12. Much has been made by a number of the residents of the reference in historic deeds of the right of the then owner of Stratton House and his servants to walk down Stratton Park Drive. These historic rights have been superseded by more recent land transfers. The area of the light industrial complex comes under Title No. BD83142 and reserves to the owners rights of way over Stratton Park Drive. Consequently any use by any persons travelling to or from the industrial units is not exercising a public right and so is not using the claimed route “as of right” but “by right”.
- B.13. Title No. BD254804 relates to the Manor Court mobile home site and does not record any private right of access over Stratton Park Drive. Some of the mobile homes (Nos. 1-6 and Albray Villa, however, are within an area granted a private right of access over parts of the Kiln Farm access track owned by Central Farms. Title No. BD181007 provides a right of way for Parkhomes for all purposes along the new roadway which connects to Dunton Lane. Consequently, use of Stratton Park Drive by Manor Court residents would appear not to be in exercise of any private right.
- B.14. A number of the residents interviewed have mentioned use of the claimed route by members of their family or friends coming to visit them. As the residents do not have a private right of access along the claimed route and were using the route “as of right” it follow that their visitors were also using the route “as of right” too.

Definition of “public”

- B.15. There is no statutory legal definition of “public”. However, a number of cases in the 19th and early 20th centuries have addressed the issue. In *Poole v Huskinson (1843) 11 M&W 827*, Parke stated that “...*There may be a dedication to the public for a limited purpose, as for a footway, horse-way, or drift-way; but there cannot be a dedication to a limited part of the public...*” highlighting that any dedication must encompass all the public and not a select group. Later, in *R v Inhabitants of Southampton [1887] 19QB 590*, Coleridge C.J. said that “...*user by the public must not be taken in its widest sense ... for it is common knowledge that in many cases only the local residents ever use a particular road or bridge...*” As such, use wholly or largely by local people or from the local community may therefore constitute use by the public but this depends on the particular circumstances of each case. This was reinforced in *Leckhampton Quarries Co Ltd v Ballinger and Cheltenham RDC (1904) 68 JP 464* it was held that a route used by quarry workers to gain access to various quarries was not use by the public as the users were from too narrow a section of the public.
- B.16. The above case law is a material consideration in this case because the claimed route serves 14 mobile homes and three houses. The use by people from the small light industrial units situated adjacent to Manor Court is “by right” and thus does not count. User evidence has, however, only been provided by the residents of ten of the mobile homes. In addition to the approximately 30 residents of Manor Court and the adjacent house and

bungalows a small number of visitors mainly children and grandchildren) have been reported as using the claimed route. As these visitors are connected to the residents and share a common point of origin/destination (Manor Court) I do not think that they can be considered separate to the Manor Court residents when considering whether they represent a broader subset of the general public.

- B.17. Moreover, as the claimed route terminates at Manor Court which cannot be considered a place of public resort, it is unlikely that any members of the wider public would have used the claimed route for purposes unconnected with visiting the residents of Manor Court.
- B.18. In my opinion the use of the claimed route by such a small subset of the general public cannot be representative of the public at large.
- B.19. Furthermore, whilst it could be argued that the turning of a blind eye or some degree of tolerance by the owner of Stratton Park to the use of the claimed route by the Manor Court residents, this tolerance was unlikely to be extended to non-residents and the public at large.

Lack of interruption

- B.20. None of the residents who were interviewed or which filled in user evidence statements have had their use of the claimed route interrupted prior to the gate being locked. A few have had holidays of 2-3 weeks duration but this is acceptable within the scope of individual usage.
- B.21. The gate at point B has periodically been pulled shut and held so with a loop of string during the relevant period. This though did not prevent use of the route by the Manor Court residents and so (in accordance with the case of *Ali v Secretary of State for Environment, Food and Rural Affairs and anor.* [2015] EWHC 893 (Admin)) there was no interruption to use by the owner of Stratton Park Drive.

Period of use

- B.22. Section 31 of the 1980 Act stipulates that the period of use must be counted back for a full period of 20 years from the date that the public's right to use a way is called into question. This use can be aggregated over many people – each user is thus not required to have used the claimed route for 20 years. Indeed, only two residents' use exceeds 20 years, the rest generally having moved in after 2004.
- B.23. The locking of the gate in June or July 2015 is clearly a calling into question of any right of the Manor Court residents to use Stratton Park Drive. A number of the Manor Court residents reported that the behaviour of some of the Stratton Park residents towards some of them changed in the summer of 2014 with increased hostility being directed especially towards Mr. Milne. This resulted in a meeting with the Council being arranged for 23 September 2014. Whilst this detrimentally affected a small number of users it did not stop their use or appear to call into question their perceived right to use Stratton Park Drive.

- B.24. A “*Private No Entry*” sign has been present on the gate at point B for potentially many years before it was locked. This does not seem to have deterred any of the residents from using the claimed route. Indeed many did not think the sign applied to them. Consequently I do not consider that it counts as a calling into question of the residents’ right to use the claimed route.
- B.25. Consequently I consider the relevant 20 year period to be June 1995 to June 2015 as dated back from the first locking of the gate.

Capable of dedication

- B.26. Mr. David Ray is the owner of the Stratton Park mobile home site. He has owned it since c.1983. I have not found anything in either Mr. Ray’s Title deeds or in any of the legislation relating to mobile home parks that would prevent him dedicating a public right of way along Stratton Park Drive.

Character of the claimed route

- B.27. The claimed route along Stratton Park Drive is the sole access route to the mobile homes in Stratton Park and, up until c. 1986/7 was also the sole access to the Manor Court mobile home site. The claimed route is over land subject to mobile home legislation but this does not prevent any dedication of public rights.

Evidence of a non-intention to dedicate

- B.28. Residents of both Manor Court and Stratton Park have identified the presence of prohibitive signs at both the eastern and western ends of Stratton Park Drive (points B and C respectively). Recollections vary considerably as to when these signs were installed but two residents have stated that the handmade “*Private No Entry*” sign on the gate at point B was in place in 1994. Other residents have consistently identified a “*Private*” sign also being in place at the western end of Stratton Park Drive at the junction with Dunton Lane (point C) for many years. Google Street View records the presence of this notice in August 2009 and a renewed notice in September 2014 which are within the relevant period.
- B.29. Section 31(3) of the 1980 Act enables the owner of the land (or somebody authorised to act on his behalf) to erect a notice inconsistent with the dedication of a right of way. These notices need to be maintained – as is evidenced by the 2009 notice being updated in 2014 Google Street View photograph. I consider that the notices erected on the gate were likely to have been done so either by, or with the authority of, the owner.
- B.30. The case of *Burrows v Secretary of State for Environment, Food and Rural Affairs* [2004] EWHC 132 (Admin) QBD focussed on, amongst other things, the meaning of a “*Private Road*” sign on a claimed bridleway. In this case, Nicol QC (sitting as a deputy judge) supported the conclusions of the Inspector in that “*Private Road*” was ambiguous as to whether there was any right of access for equestrians along the road which also contained a public

footpath. As well as not calling into question the right of equestrians to use the road, it also did not evidence a non-intention to dedicate the road as a bridleway. Nicol QC stated at paragraph 8 of his judgment:

“...The inference as to the intention of the person who erected it is (in the absence of any evidence to the contrary) naturally to be drawn from how the notice would be likely to be understood by members of the public who saw it in its context...”

B.31. In the current case the wording of the signs are different, being “*Private No Entry*” on the gate and simply “*Private*” at the junction of Dunton Lane. I would consider the wording “*Private No Entry*” to be unambiguous prohibition of access. However, none of the residents of Manor Court considered that this sign applied to them and they passed through the gate despite the presence of the clearly prohibitory notice as they had been told by other residents that they could walk through the gate and down Stratton Park Drive.

B.32. Testimony from the residents of Manor Court indicate that they have been accustomed to passing through the now locked gate at point B or through the gap to the side for many years. Indeed, prior to the creation of the current separate access road to Dunton Lane at point X in c.1986-87 the only means of access (both pedestrian and vehicular) was along Stratton Park Drive. The fact that the gate at point B was either left open or kept closed with a loop of twine for many years does not reflect the intention of the “*Private No Entry*” sign attached to the gate. However, a suitable sign can be sufficient to evidence a negative intention without any gate being present.

B.33. In the case of *R (on the application of Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs; R (on the application of Drain) v Secretary of State for the Environment, Food and Rural Affairs* - [2007] UKHL 28 Hoffman LJ took a different view, stating at paragraph 24:

*“...The evidence which will satisfy the proviso is not something less than enjoyment as of right but something different. For example, there may be a notice which says “No right of way. Trespassers will be prosecuted.” Nevertheless, for upwards of twenty years members of the public may have ignored the notice and used the way, openly and apparently in the assertion of a right to do so. Their user will satisfy s.31(1) but the landowner, even on the most objective test, will have satisfied the proviso. (It may be that putting up the notice also brought the right to use the way into question, in which case, as in the Fairey case, the public would succeed if they could prove another 20 years user before the notice went up. But that is another matter.) The potential contradiction imagined by Laws J may be due to the view held, at the time of his judgment, that enjoyment as of right required a subjective belief by the users that they had the relevant right – a view which was rejected in *R v Oxfordshire County Council, ex parte Sunningwell Parish Council* [2000] 1 AC 335, [1999] 3 All ER 385, [1999] LGR 651. Even so, there need not be any contradiction. The*

users and the landowner may simply differ in their opinions as to whether the right exists or not...

- B.34. Delivery vehicles accessing the light industrial estate adjacent to Manor Court have for many years driven up Stratton Park Drive via points C-B-A. Speed bumps on the drive were installed to restrict vehicle speeds. The alternative access to the light industrial estate is via points X-A along the new access road to Manor Court. It is possible that the sign on the gate at point B was erected by the owner or somebody on his behalf to deter delivery vehicles from driving westwards along Stratton Park Drive – instead directing them down to Dunton Lane via the new access road.
- B.35. Consequently I consider that the purpose of the “*Private No Entry*” to be potentially ambiguous. However, in accordance with *Godmanchester* (see above) the sign can potentially be taken as evidence of a non-intention of the owner to dedicate a public right of way along Stratton Park Drive.

Common law dedication

- B.36. A dedication at common law does not require a calling into question or for there to be any specific period of public user. At common law, the question of dedication is one of fact. Public user is no more than evidence, and is not conclusive evidence. Any presumption that public user is the result of an earlier dedication can be rebutted.
- B.37. At common law the path or way must again have been be used as of right by the public and not be a section or class of public. Evidence of a non-intention to dedicate would rebut any presumption or inference of a dedication. As discussed above, it seems clear that use of the claimed route was not be the public at large but by a very small subset – that of the residents of Manor Court and their relatives and friends. In light of *Godmanchester*, it also seems apparent that the signs erected at either end of Stratton Park Drive are inconsistent with an intention to dedicate the claimed route as a highway.

Purpose of determination

- B.38. The case of *Mayhew v Secretary of State for the Environment [1992] QBD* considered, amongst other things, what was required to trigger a modification order. In the case, Potts J. stated that:

“...section 53 [limits] the modifications which ought to be made in consequence of the occurrence of a relevant event to those which would give effect to the rights of way which were found to exist rather than those which might be thought suitable or desirable... ...The surveying authority’s duty under section 53 was to ascertain public rights of way and to modify the map so that it correctly defined those rights; no more and no less...”.

As a consequence of this judgment, the Council, as Surveying Authority, can only consider evidence showing whether a public right of way does or does not exist. Issues of suitability or desirability – and by analogy: privacy,

security, and need for a right of way cannot be considered in establishing what rights, if any, exist when determining whether to make a definitive map modification order.

- B.39. Consequently, whilst this report acknowledges the difficult situation the Manor Court residents have been placed in, now having no safe pedestrian access to local amenities, their plight cannot be taken into consideration when establishing whether their prior use has evidenced the dedication of a public right of way along Stratton Park Drive.

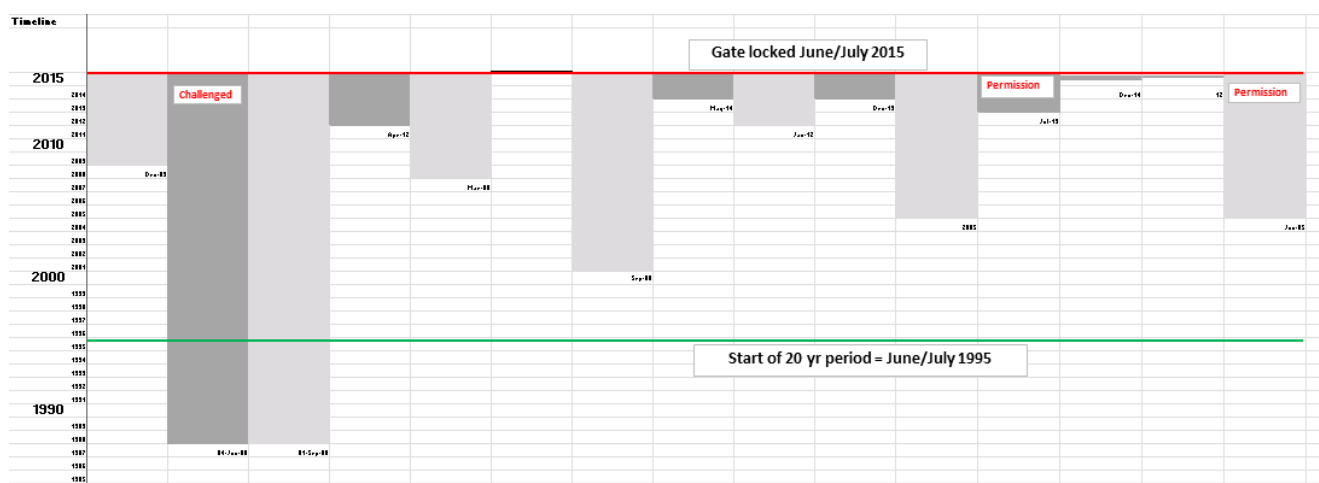
Private rights

- B.40. Whilst the acquisition of a public right of way for the residents of Manor Court may have failed, it is potentially possible that their use has been consistent with the acquisition of a private easement along Stratton Park Drive. However, the matter of resolution and enforcement of private rights falls outside of the scope of the powers of Central Bedfordshire Council as either the Surveying or Highway Authority and is something that the residents are likely to need to resolve on their own having taken their own independent legal advice.

Appendix C

User Evidence

- C.1. Mr. David Lewsey submitted 15 user evidence forms (“UEFs”) from Manor Court residents as part of his application for a claimed footpath along Stratton Park Drive. Follow-up interviews recorded the recollections of seven couples and three individuals – all residents of Manor Court.
- C.2. The breadth of the residents’ use is shown in the graph below and shows that only two residents have used the claimed route for the whole of the relevant period (June 1995 – June 2015).



- C.3. The remainder of the residents interviewed seem to be relatively new and have only used the route from 2005 with one not having arrived until after the gate shown at point B on Appendix A had been locked.

Use – frequency and manner

- C.4. All of the residents interviewed and who submitted UEFs have stated that they have used the claimed route on foot and/or in a mobility scooter (which for the purposes of Section 31 of the Highways Act 1980 is classed as pedestrian use).
- C.5. In addition, two residents stated that they have rarely used the route in a car and one has occasionally cycled the route. One of the resident’s sons also used to cycle along Stratton Park Drive to visit them at Manor Court.
- C.6. The frequency of pedestrian use varies from resident to resident; with two using it daily, 4 using it weekly and 5 using it on a monthly or occasional basis.
- C.7. Most residents have identified the local garage, bus stop, nearby Co-Op shop, slightly more distant Saxon Centre and the nearby recently opened retail park as their principle reasons for walking along Stratton Park Drive.
- C.8. Most of the Manor Court residents interviewed have remarked that they cannot safely use the alternative route via their access track and then along Dunton Lane due to the lack of any footway combined with the narrowness and

windiness of the road and speed and volume of the traffic using it. The road is also unlit and in places has very little verge if any.

Signs

- C.9. Approximately half of those interviewed could not recollect seeing any signs on the locked gate at point B whereas the other half could recall a sign being present but had differing ideas as to when this was present – with one recalling the sign being present since 1988 (this is roughly corroborated by one of the non-users from Stratton Park Drive). The sign is a handmade sign loosely attached to the gate and states “*Private No Entry*”. Most residents recall there being a “*Private*” sign at the junction of Stratton Park Drive and Dunton Lane (point C). This sign has been changed at least once (between 2009 and 2014 - based on Google Street View data) and also appears handmade.



Sign on gate at point B (c. July 2016)



Sign at point C (c. September 2014)

Challenge

- C.10. The owner of the Stratton Park mobile home site does not live locally and no staff live on the site. Consequently there is usually nobody apart from residents on the site. None of the residents of the adjoining Manor Court site report having been challenged by Stratton Park staff. However, a small number of Manor Court residents, including Mr. John Milne, have been challenged by a small number of Stratton Park residents. Challenges by somebody who is not the owner or authorised by the owner do not constitute a non-intention to dedicate but potentially could call into question the public's right to use the route.

Obstruction

- C.11. Most of the Manor Court residents interviewed identified a period around June-July 2015 when the gate at the eastern end of Stratton Park Drive was locked. Prior to this the gate had been kept closed with a loop of string or had either been ajar or fully open. Similarly the gap to the side of the gate was blocked by wire fencing during the same period in June-July 2015.

Permission

- C.12. None of the Manor Court residents interviewed stated that they had received permission to use Stratton Park Drive from the owner. Two had asked residents of Stratton Park whether it was okay to walk down the drive. However these residents do not have the authority to grant such permission so any consent given would not count. One of the Manor Court residents also e-mailed the owner to ask whether they could walk down Stratton Park Drive but never received any response to his query.

Interruption

- C.13. None of the Manor Court users interviewed recalled that they had spend any significant time away from Manor Court apart from on occasional holidays. None of the users had been prevented from using the claimed route due to obstructions other than the locked gate..

Stratton Park residents' statements

- C.14. In addition to the UEFs submitted by residents of Manor Court, the owner of Stratton Park distributed a separate questionnaire to the Stratton Park Residents. A total of ten Stratton Park residents completed the questionnaire and submitted them to Central Bedfordshire Council.
- C.15. Unfortunately the statements submitted did not ask the Stratton Park residents to print their name or give their address although the statements are signed and dated. Four of the Stratton Park residents moved in before 2000 with three residents moving in between 2001 and 2010.
- C.16. All of the Stratton Park residents considered that Stratton Park Drive is private and not a public right of way. All stated that there were "*private*" signs present with seven residents stating that there was a "*private*" sign on the gate at point B between the two sites. One resident stated that this had been present since 1994.
- C.17. The Stratton Park residents have stated that the gate was originally secured by a loop of string but was later locked (no date for this. Since then the lock has been vandalised/broken and the residents have been trying to keep the gate closed.
- C.18. Similarly the Stratton Park residents recall the gap to the side of the gate being present and occasionally climbed over or removed.
- C.19. Seven of the Stratton Park residents have reported challenging people (two specifically identified Manor Court residents) who walked along Stratton Park Drive although none gave a time frame for doing so.

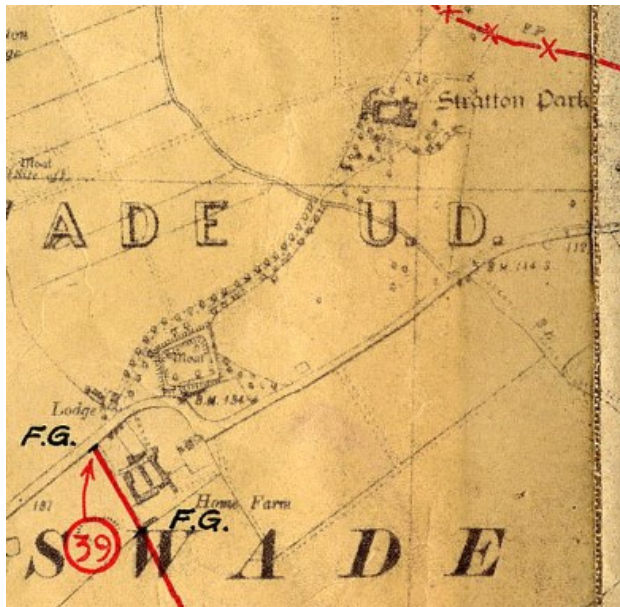
Appendix D

Historic Evidence

- D.1. Mr. Lewsey did not submit any historic/documentary evidence as part of his application for a claimed footpath along Stratton Park Drive between points A-B-C on the plan at Appendix A. The case officer has investigated a number of document sources to ascertain whether there is any historic record of a public right of way along Stratton Park Drive.
- D.2. Stratton Park began its history as a Manor in Saxon times. The manor house was rebuilt in Elizabethan times and had extensive gardens. The estate was sold in 1910 with the former Bedfordshire County Council buying most of the farm land (as “*County Farms*” and now “*Central Farms*”). The house was subsequently leased in 1926 and became Parkfield School. The house was requisitioned by the Ministry of Defence and used during the Second World War as barracks and then subsequently after the war was used as a poultry farm until the then present owner (Mr. Walter Stratton) demolished the property and used the materials to build the current Stratton Park House.

Definitive Map process records

- D.3. In c.1952 Biggleswade Town Council submitted its survey of public rights of way to the former Bedfordshire County Council as part of the National Parks and Access to the Countryside Act 1949 process. No public right of way was recorded along Stratton Park Drive.



c.1952 Parish Survey Map

(not to scale)

- D.4. Once the former County Council had received all the local town and parish survey maps it published the Draft Map of Public Rights of Way in 1953. The

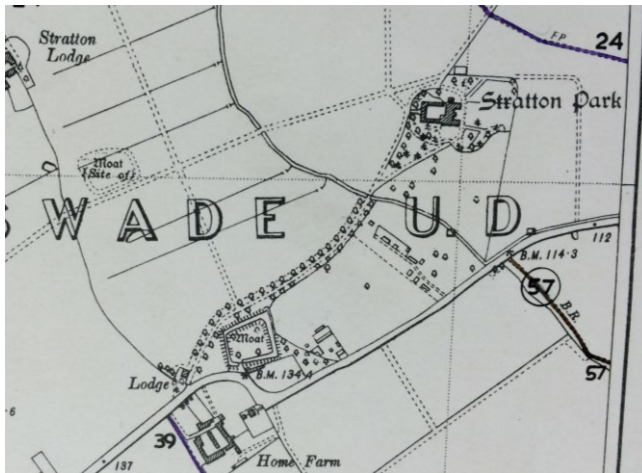
Council did not consider that Stratton Park Drive held public rights and so no right of way was published on this map.



1953 Draft Map of Public Rights of Way

(not to scale)

- D.5. There was no objection to the omission of a public right of way from the Draft Map along Stratton Park Drive and so neither the subsequent Modified Draft nor the Provisional Maps record any public right of way along Stratton Park Drive.



c.1963 Modified Draft / Provisional Map

(not to scale)

- D.6. The absence of any public rights was carried onto the 1964 Definitive Map and then onto the various iterations of the Consolidated Definitive Map.

Historic Maps

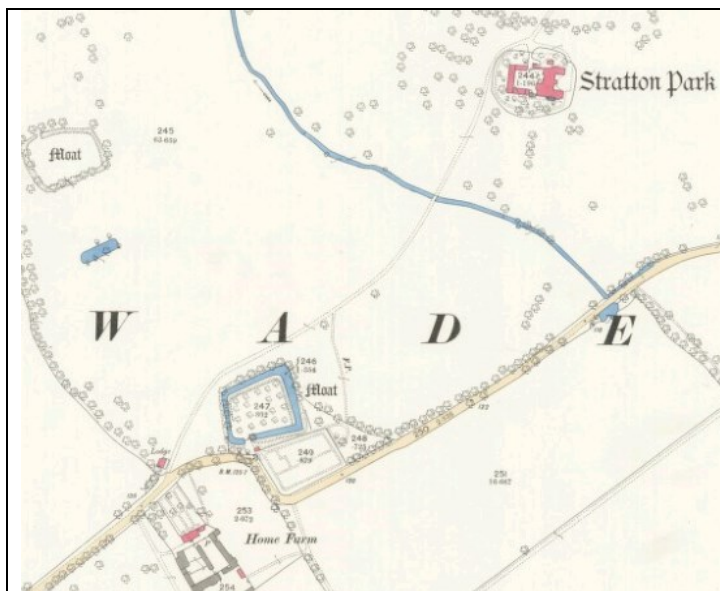
- D.7. Bryant's 1826 Map of the County of Bedfordshire depicts Stratton Park Drive as an unfenced track leading up to and stopping at Stratton Park House. It is not labelled as either a footpath or bridleway and the map symbology does not indicate it was considered a road likely to be used by the general public.



Bryant's 1826 Map of the County of Bedfordshire

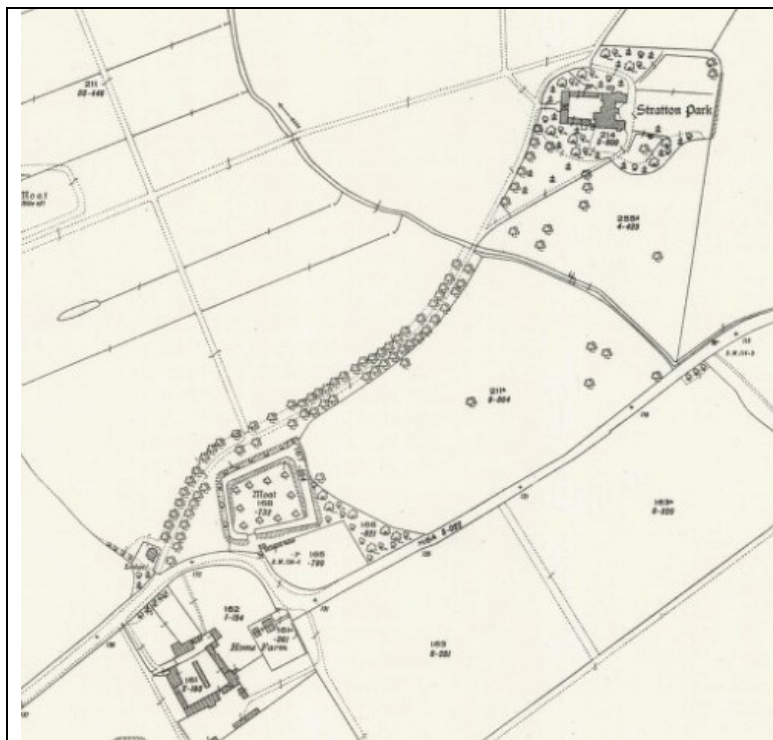
(not to scale)

- D.8. There is no Parliamentary Inclosure Award for the parish of Biggleswade. This would usually be the primary source of a historic statutory creation for a public right of way.
- D.9. The 1883-4 1st Edition of the Ordnance Survey's 25":1 mile map records Stratton Park Drive as an unfenced track leading north-eastwards from Dunton Lane to and around the almost circular enclosure of Stratton Park House before continuing north-eastwards to Kennel Farm. Stratton Park Drive is depicted by a double-pecked ("= = ") line signifying an unfenced track/road. The route is not tree-lined. It is unannotated. By comparison, the route of what is now Footpath No. 25 is annotated "F.P." for footpath and indicates the character of this route – rather than its legal status.



1884 Ordnance Survey
1st Ed. 25":1 mile map

(not to scale)



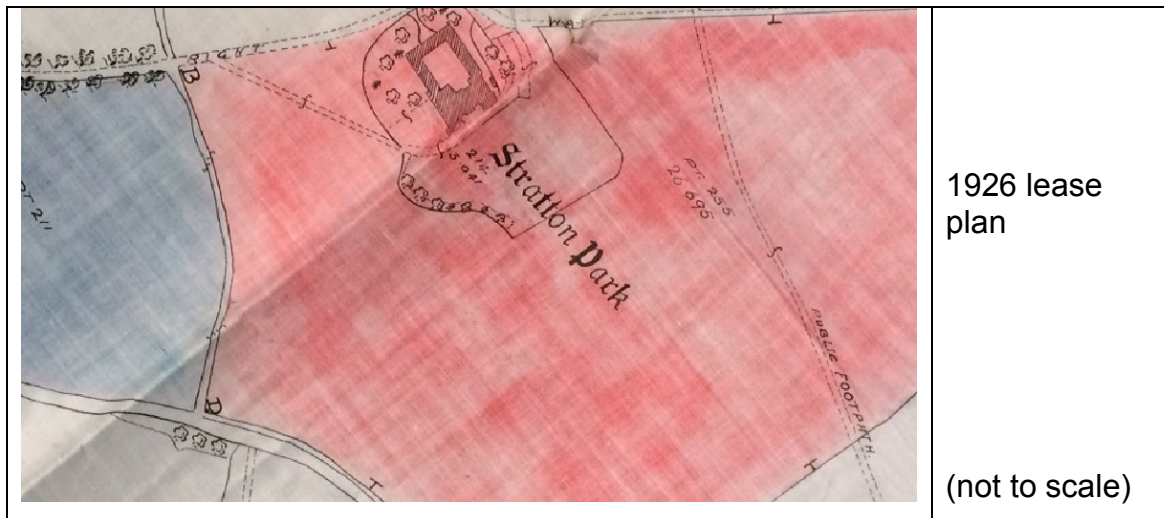
1926 Ordnance Survey
3rd Ed. 25":1 mile map

(not to scale)

- D.10. The later 1901 2nd Edition of the Ordnance Survey's 25":1 mile map records Stratton Park Drive as now being tree-lined but still unfenced. The route is unannotated unlike the intersecting Footpath No. 25 to the north-east which is again annotated "F.P." for footpath. The later 1926 3rd Edition depicts Stratton Park Drive in a very similar manner (see above).
- D.11. The 1973-4 4th (or "New") Edition of the 1:2,500 Ordnance Survey map records Stratton Park Drive without any tree lining and depicts ten regularly spaced caravans along the northern side of the track. Only one caravan is shown at Manor Court.
- D.12. A 1924 lease and plan [SH 267/5] records that the owners (the former County Council) granted to the lessee of Stratton Park House – one Rev. Sneed:

"...a right of way at all times and for all purposes for the Tenant and his servants and agents with or without horses carts and other vehicles over and along the road between points 'A' [junction with Dunton Lane = point C on plan at Appendix A] 'B' [stream crossing = point B on plan at Appendix A] and 'C' [Kennel Farm] on the said plan..."

This private right of way (easement) thus ran along Stratton Park Drive and the connecting section of track leading to Kennel Farm and was not a public right of way. This indicates that at time the (then) owner of the land, the former County Council, did not consider any public rights to exist along Stratton Park Drive. This inference is supported by the footpath crossing to the north of Stratton House being labelled "*public footpath*" on the accompanying plan (see below) whereas the granted access is annotated "*right of way*". This permissive grant precludes the historic use of the claimed route by the Stratton Park residents from leading to an inference that the route was dedicated as a public right of way at that time.



D.13. No evidence has thus been discovered to indicate that any historic public rights of way subsist along Stratton Park Drive between points A-B-C.