

Wildlife and Countryside Act 1981

The London Borough of Sutton (Benhilton Gardens to Oakhill Road Sutton) Modification Order 2022

Statement on behalf of the London Borough of Sutton (“the Council”) to the Planning Inspectorate responding to the objection made to the London Borough of Sutton (Benhilton Gardens to Oakhill Road Sutton) Modification Order 2022 (“the Order”) on the 14th November 2022.

1. The Council received an application to add the route from Benhilton Gardens to Oakhill Road Sutton as shown on the order map by a purple line to its Definitive Map and Statement held under the Part III of the Wildlife and Countryside Act 1981 (“the 1981 Act”) in June 2021. The application was accompanied by 12 statements from residents of Benhilton Gardens and Hunting Gate Mews testifying to the use of the route as a path to and from Oaktree Road for varying periods but all in excess of 20 years. In each case the resident referred to use of the path on a regular basis and without its way being obstructed, the use not being challenged and there being no sign or other indication that the use was other than as of right.
2. The Council considered the application and found that it has no evidence of the presence of the path on its Definitive Map and Statement held under the 1981 Act, its register of publicly maintainable highways held under section 36(6) of the Highways Act 1980 or otherwise. Dovercourt Lane over which the greater part of the path passes is not a publicly maintainable highway.
3. The majority of the route of the claimed path is unregistered but the Council notified the owner of the property 5 Dovercourt Lane, which has rights of way over the route, of the application and received a response from Mr Zamin who it is assumed is resident at that property. Mr Zamin objected to the application but did not provide evidence to controvert the claimed use of the route.
4. The Council considered a report, a copy of which is appended to this statement, and a duly authorized officer agreed on 24th November 2021 that the path should be added to the Definitive Map. An order was initially made on 14th February 2022 and attracted an objection from Mr Zamin. The order was therefore referred to the Planning Inspectorate on 25th February 2022. The Planning Inspectorate considered that it was in an incorrect format and required that it be remade in an

amended form. This was duly done and the Order now under consideration was made on 22nd November 2022.

5. The Order was published in accordance with the statutory procedure and attracted a further objection from Mr Zamin so was referred to the Planning Inspectorate for a decision whether it should be confirmed or not.
6. The Council made the Order on the basis that the path in question had been “actually enjoyed by the public as of right and without interruption for a full period of 20 years” so under section 31(1) of the Highways Act 1980 a presumed dedication had arisen. This use was first brought into question for the purposes of the section 31(2) of the Highways Act 1980 on or about April 2021 when Mr Scouse, a resident of Benhilton Gardens who adjoins the footpath, contacted a local Councillor after having been told by a resident of Dovercourt Lane that he proposes to close the path when works had been undertaken to an adjacent property that would block the public’s use of the route. Mr Scouse made a statement in support of his position in which reference is made to an assertion by or on behalf of the adjacent landowner that there was not a right to use the section of the route nearest to Benhilton Gardens.
7. The objection by Mr Zamin and the residents of Dovercourt Lane to the Order is similar to the objection when Mr Zamin was initially notified of the application. In summary the objection is based on the allegation that the route is for the benefit of Dovercourt Lane residents only and is unsuitable as a through passage because of its narrow width. There is no detailed challenge to the testimony of those who claim to have used the route and in fact Mr Zamin in his second paragraph refers to “...the guy who is living in benhilton garden and is always using our road...”. In the part of the objection signed by other residents of Dovercourt Lane it refers to members of the public unlawfully accessing Dovecourt Lane, which indicates that it has in fact been used by the public. The objection is primarily on the basis that persons who are not residents or associated with the properties in Dovercourt Lane should not be using the route and that it is physically unsuitable for through passage. However, this reference to the physical condition of the route does not accord with the position at the time of the application when it came to the attention of the Council and subsequently where the route has been found to be passable as a footpath from Benhilton Gardens to Oakhill Road.
8. As indicated in paragraph 4 prior to making the Order the Council considered in detail the application and the initial objection of Mr Zamin,

which is substantially similar to his objection following the making of the Order, and came to the conclusion for the reasons set out in its report, copied with this statement, that the evidence supported the Council adding the route as footpath to the Definitive Map and Statement. Nothing has subsequently transpired leading to a revision of that conclusion and the report accordingly stands as the basis of the Council's case. In the light of that report it is submitted that the Order should be confirmed.

Dated this 27th November 2023

George Chesman

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