

EAST AYRSHIRE COUNCIL

COMMUNITY SERVICES COMMITTEE: 2 APRIL 2003

PROPOSED NEW RIGHT OF WAY

Report by the Head of Administrative & Legal Services / Solicitor to the Council

1. PURPOSE OF REPORT

- 1.1 To update Committee of the results of further investigation undertaken as to the usage of the route known as "The Doctors Road", Ochiltree and have Committee determine whether the route or part thereof be added to the Council's rights of way register.

2. BACKGROUND

- 2.1 "The Doctor's Road", Ochiltree - links the A70 with High Street, Ochiltree. This route has been promoted as a right of way by the Rights of Way and Access Society. The Society indicates that the route is well used by people going to and from the church, war memorial and between streets and that it has been used for well beyond the prescriptive period.
- 2.2 One letter was received in response to the public advertisement in the Cumnock Chronicle. This letter was submitted on behalf of the owners of Blackbush Kennels, Ochiltree indicating that the road to the south of the war memorial entrance has never been used as a right of way and access is only to the A70 Ayr / Cumnock road. Said owners have been proprietors of the property for some 30 years and have confirmed that the southern portion of the road has never been used as an access.

3. FURTHER CONSULTATION

- 3.2 Further to the Committee's decision to continue this item for further investigation, The Scottish Rights of Way Society, the local Community Council, the British Legion, the owner of the Kennels, the local Member and those Councillors contributing to the debate at the previous Committee meeting have been consulted. The results of this further investigation are set out in Appendix 1 to this report.

4. LEGAL IMPLICATIONS

- 4.1 In order to be recognised as a right of way constituted by prescription, a route must satisfy the following criteria: -
- 4.2 The route: -

1. must be used by the public;
2. openly, peaceably and without judicial interruption;
3. beginning and ending at a public place and following a definite route;
4. for a period of 20 years.

4.3 If a route meets these criteria it is constituted by prescription and the landowner, if known, should be informed. If the landowner disputes the status of the route the Council can raise legal proceedings for an action of declarator of the right of way.

4.4 The Land Reform (Scotland) Bill was passed by the Scottish Parliament on 23rd January 2003 and has received Royal Assent. The Act aims to secure public rights of access to land for recreational and other purposes and propose to extend some of these provisions to rights of way. It will be the duty of a local authority to assert, protect and keep open and free from obstruction or encroachment any route or other means by which access rights may reasonably be exercised. This duty will encompass rights of way which shall be included in the core paths plan which each local authority will require to prepare within three years of the Act coming into force.

4.5 The current legislative position is that local authorities are required to keep rights of way open and free from obstruction or encroachment. Although local authorities are entitled to maintain a right of way, they are not under an obligation to do so unless it falls within the duty to keep the right of way open.

5. FINANCIAL IMPLICATIONS

5.1 The cost of the advertisement, aftermentioned, will be met from existing budgets.

5.2 If the Committee decide to add the route to the rights of way register and this action is subsequently challenged by a landowner, then legal proceedings may be necessary to have the route declared a right of way, see paragraph 4.3 above.

5.3 As stated in paragraph 4.5 above a local authority is under a duty to keep rights of way open. In doing so this is likely to result in a future financial implication for the Council.

6. POLICY IMPLICATIONS

6.1 None.

7. CONCLUSIONS

7.1 If the Committee is satisfied that the route (or part thereof) fulfils the criteria referred to in paragraph 4.2 above, it would be appropriate to add the route (or part thereof) to the Council's register of rights of way. Should the Committee decide to add the route to the register a further advertisement will be lodged in the local press and the landowner, if found, will be notified.

7.2 If the Committee is not satisfied that the route fulfils the criteria then the route should not be added to the register and the Committee's decision will be reported to the Scottish Rights of Way and Access Society.

7.3 If the Committee wishes to investigate whether the alternative route put forward by Ochiltree Community Council (see Annex) satisfies the criteria then the Director of Community Services should be authorised to carry out all necessary advertisement and consultation prior to reporting back to committee with his findings.

7.4 Members should note that it would be competent to add the route (or part thereof) and investigate the alternative route, as what is being considered is whether routes satisfy the rights of way criteria.

8. RECOMMENDATIONS

8.1 It is recommended that the Committee: -

- (i) determine, with reference to the criteria indicated in paragraph 4.2 of this report, whether "The Doctors Road", Ochiltree, (or part thereof) should be added to the Council's rights of way register and if so authorise the Head of Administrative and Legal Services/Solicitor to the Council to make the necessary arrangements regarding notification and advertisement.

David Mitchell
Head of Administrative & Legal Services / Solicitor to the Council

20 March 2003

DM/KMcL/KN

BACKGROUND PAPERS

1. Evidence of use and advertisement.
2. Report to Community Services Committee of 5 February 2003.

For further information on this report and background papers please contact Karen McLeod, Administrative & Legal Services, Tel: 01563 576220.

Implementation Officer: David Mitchell

APPENDIX 1

Results of further consultation exercise.

1. Response from the Scottish Rights of Way and Access Society – advise that there is regular usage of the route from Main Street to the War Memorial by pedestrians. The Society accepts that fewer pedestrians will access the route from the A70 than in the past due to increased volume of traffic but as far as the Society can gather from local residents, this right is still exercised albeit occasionally. The Society maintains its request that the Council assert the route along its entire length.
2. Response from Royal British Legion – Response from the President of the Royal British Legion for the Ayrshire Area. Support expressed for the route being added to the register although concerned about the condition of the route. Confirmed that there used to be a bus stop at the bottom of the route at its junction with the A70 and people used to walk to it. As the bus stop no longer there, usage along the entire length of route likely to be reduced.
3. Response from Cllr Faulds (Local Member) - subject to the views of the Community Council, seek to have the whole route added as a right of way as it meets the criteria.
4. Response from Provost Boyd – The vast majority of people use the route from Main Street to the war memorial. Given the busy A70 at the exit of the route where there is no footway, unlikely that this is used frequently. Consideration could be given to erecting a kissing gate and signage warning pedestrians that there is a busy road ahead.
5. Response from Cllr Menzies – Happy to support the route from High Street to the war memorial as, in his view, this meets the rights of way criteria. He advises that access to the kennels (at the bottom of the route) is taken from High Street rather than the A70, even though this is not the shortest route, given that this is a safer access. Suggests that consideration be given by the appropriate department to closing off this access given possible safety implications.
6. Response from Ochiltree Community Council – Confirm that it appears the route has been used by members of the public for many years however there is concern that it exits at the A70 at its southern end where there is no footway. In the interests of public safety the Community Council wish to see the route altered so that, at the war memorial, pedestrians would turn left and continue along an existing path which has steps at its exit. The Community Council acknowledges that the steps may have implications for those with a disability or those with babies/toddlers and that a safety barrier should be erected at the proposed exit onto the A70.
7. Response from Black Bush Kennels – Nil (other than acknowledgement from Solicitors of Council's enquiry).