



Countryside Access Team

Excluded Area Strategy

Adding the central Biggleswade and central Dunstable Fully Developed Areas to the Definitive Map



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Excluded Area Strategy

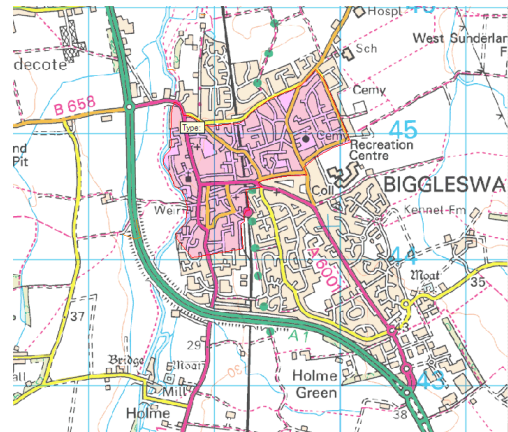
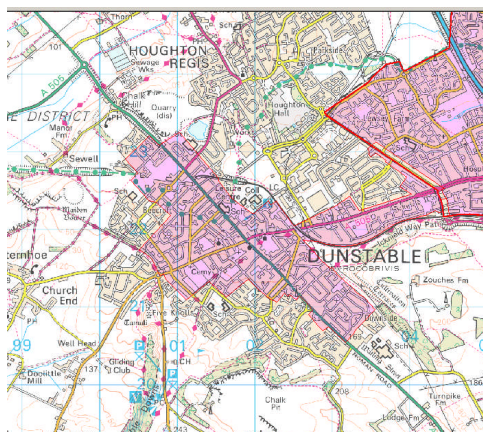
Adding the central Biggleswade and central Dunstable Fully Developed Areas to the Definitive Map

Outcome

Any public rights of way which are shown to have conclusive historical record of their existence in the Excluded Area's of Biggleswade and Dunstable, but are not currently recorded on the Definitive Map will be recorded and an updated Definitive Map produced.

Introduction

- 1.1 There are over 1368 kilometres of public rights of way in Central Bedfordshire, the majority of which are out in the wider countryside. The Countryside Access Team is responsible for the day to day management of this network which consists of 1010 kilometres of footpath, 331 kilometres of bridleway and 27 kilometres of byways open to all traffic (BOAT).
- 1.2 The mapping of public rights of way started in early 1951 under the National Parks and Access to the Countryside Act 1949. Between 1951 and 1964 four separate maps were produced as part of the process of producing a Definitive Map and Statement. The 1949 Act allowed the County Council to seek permission from the Secretary of State to opt out of the process for those urban areas which were fully developed. In the case of Bedfordshire these were: Bedford, Biggleswade, Dunstable, and Luton.
- 1.3 Local government reorganisations took Luton and Bedford out of the area currently controlled by Central Bedfordshire Council leaving just Biggleswade and Dunstable as Excluded Areas under CBC control with sizes of 1.04 km² and 4.25 km² respectively.





- 1.4 The enactment of the Wildlife and Countryside Act 1981 removed the Council's option to avoid mapping the Excluded Areas of Biggleswade and Dunstable. Under Section 53 of the 1981 Act the Central Bedfordshire Council, as Surveying Authority, has a duty to keep the Definitive Map under continuous review and, as soon as reasonably practicable, to make such modifications as appear requisite including mapping the two Excluded Areas.
- 1.5 Section 56 of the Countryside and Rights of Way Act 2000 contains provisions that will "freeze" the Definitive Map on 1st January 2026. Existing public rights of way that are not recorded on the Definitive Map will be extinguished on this date. This action will include those routes currently recorded on the Council's List of Streets as publicly maintainable highways. Whilst this section of the 2000 Act has yet to be commenced, now is an opportune time to pro-actively record these routes through the mapping of excluded areas given the timescales to complete the process.

Approval for Strategy

- 1.6 The process of mapping the two Excluded Areas will be split into two phases. Phase One will look into adding routes onto the Definitive Map which have historical record of their existence and are being used on the ground. Phase Two will come later and will look at routes which may be obstructed or not available on the ground, or routes which are reliant on user evidence and/or there is non exclusive historical record indicating to their legal existence. Phase Two will use a significant amount of manpower and incur costs including Council administration and public consultation. Additionally, some of the routes that may be added may receive opposition and therefore there may be both positive and negative publicity for the scheme.
- 1.7 One issue, which will need to be addressed may be how the added paths are maintained, and by whom. Many of the routes to be added are likely to already be part of a maintenance scheme run by the Council's preferred contractor (at the time of writing this is Amey). The formal recognition of these routes as public rights of way should not affect the means and mechanism by which they are maintained.
- 1.8 To ensure that the current Strategy is fully supported by the Council, briefing notes should be sent to the local Ward Members, Portfolio Holders for Highways and Sustainable Development, and to the Assistant Director for Planning and Development Strategy and to the Head of Service for Transport Strategy. Without the full support of the above it is uncertain whether the Strategy could be implemented within the current/anticipated constraints on the Team.

Legislation

- 1.9 The Wildlife and Countryside Act 1981 imposes a duty on Central Bedfordshire Council as the Surveying Authority to keep up-to-date the Definitive Map, which is the Council's legal record of public rights of way. Section 53 of the 1981 Act enables the Council to make a Definitive Map Modification Order (DMMO) to add or delete public rights where there is evidence to show that such rights do, or do not, exist.



1.10 There are two types of evidence which can be used;

- Documentary evidence: such as Parliamentary Inclosure Awards, historic maps, Parish Council minutes, title deeds, aerial photographs, etc.
- User evidence which usually takes the form of a user questionnaire and follow-up interviews. Ideally evidence should show that twenty years or more of continuous and uninterrupted use has occurred.

1.11 Case law has demonstrated that issues relating to privacy, security, nuisance, need, and safety are irrelevant to whether a public right does, or does not exist and consequently these issues cannot be considered when determining whether a public right of way should be added. However, such issues can be considered when determining how best to manage the route once added to the Definitive Map.

Proposed methodology

1.12 We intend to start by applying Phase One to the Biggleswade and Dunstable Excluded Areas to create a Definitive Map for the area and then looking at Phase Two for both areas at a later date. It is expected that Phase One will encourage local people to submit in evidence for new routes which will be looked at under Phase Two.

1.13 The proposed methodology is outlined in the table below;

TABLE ONE - Methodology

<p>Phase One: Creating the Definitive Map</p> <p>*Elements (1&2) could be put out to tender (if budgets allow) for a third party to complete and take pressure off existing officers.</p>	<ol style="list-style-type: none"> 1. Study of the List of Streets (paper/digital versions) to identify publicly maintainable highways other than roads. 2. Search the Archives for primary sources (see Appendix A for a comprehensive list) - namely: Parliamentary Inclosure Award (if present), deposited plans (railway, gas, electricity, and water), and Quarter Sessions. 3. Speak to Town Councils about the Excluded Area Strategy, the phasing exercise and the next [Order Making] stage. 4. Make and Confirm Orders (If objections not received) to add paths from the above exercise, which are open and available for use, onto a Definitive Map for each area.
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<p>Phase Two: Further Research – Adding to the Map</p>	<ol style="list-style-type: none"> 5. Identify those routes that are currently unusable and/or are considered to be contentious. Conduct an Archives search for secondary sources - namely: Tithe Apportionment map, estate plans, Finance Act records, Urban District and Town Council records. 6. Conduct a Public Consultation. Users will be encouraged to submit further evidence of other routes which may exist. 7. Investigate responses to public consultation exercise. Where new documentary evidence comes to light corroborate this by Archives search. Where evidence is in the form of user evidence this will be collated and users interviewed. 8. Order making and confirmation stage. Any Orders which can not be confirmed will be written up and sent off to the Secretary of State for confirmation.
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Legal and sustainability implications

- 1.14 The Wildlife and Countryside Act 1981 is the primary legislation for undertaking this work and is a statutory duty and function of the Council and thus its actions in adding public rights of way to the Definitive Map would not run contrary to the Human Rights Act 1998. How the Council proceeded in dealing with any paths thus added, however, would be of a discretionary nature and thus it would have to consider the human rights implications¹ of any subsequent actions.
- 1.15 Although there is little case-law (if any) on the mapping of Excluded Areas or the consolidation of Definitive Maps, this does not mean the actions of the Council are unlikely to go unchallenged. Objections are likely to be received against the Definitive Map Modification Orders made. However, it is unlikely that further legal challenges or applications for Judicial Review would be made as long as the Council acted fairly and reasonably² where conflicts arose and can be seen to have followed an established process.
- 1.16 A lot of urban paths are recorded on the Council's List of Streets and are thus maintained by the Council's chosen contractor (Amey at the time of writing). The Council pays Amey to maintain these routes to an appropriate standard which may include re-surfacing and replacement of street lighting and other furniture. In the past,

¹ Human Rights Act 1998 - Protocol I - Protection of Property, and Section 2 of Article 8 - Right to privacy.

² "*Wednesbury unreasonableness*" is a standard of unreasonableness used in assessing applications for judicial reviews of decisions of public authorities under English law. A decision or reasoning is *Wednesbury unreasonable* if it is so unreasonable that no reasonable person acting reasonably could have made it.



when urban routes have been added to the Definitive Map, Amey has chosen not to continue to maintain these routes - stating that budgetary responsibility has passed over to the Countryside Access Team. Thus our first step must be to reach Agreement for Amey (or its successor) to either maintain these urban routes at no extra cost - or to relinquish part of its budget to the Countryside Access Team for it take over the current maintenance regime.

Conclusions

- 1.17 The Wildlife and Countryside Act 1981 imposes a duty on the Council to record all public rights of way on the Definitive Map including those routes recorded on the List of Streets. Any routes not recorded on the map will be extinguished in 2026 if existing legislation is commenced in its current form.
- 1.18 The accurate recording of all public rights of way is essential in order to protect and maintain them for public use so that they can be used to promote healthier sustainable lifestyles³. Accurate recording will also facilitate confident development and business within the towns' centres thus helping to manage growth⁴.
- 1.19 During the process, agreements will have to be reached with landowners, statutory undertakers, and consultees over how routes would be maintained and managed in the future. Additionally, the Council's preferred contractor will have to agree to maintain all those publically maintainable routes that are added to the Definitive Map.
- 1.20 It is likely that one or more bulk Definitive Map Modification Orders will be made for each Excluded Area once evidence of public rights has been collated and evaluated. How this is done will depend upon the number of unrecorded paths discovered, manpower, and levels of Council funding. It is also likely that objections will be received against the orders made with routes being subsequently forwarded to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

³ This is one of Central Bedfordshire Council's five Priorities.

⁴ This is another one of Central Bedfordshire Council's five Priorities.



Appendix A

- Sources of Information

Bedfordshire & Luton Archives

Borough Hall, Cauldwell Street, Bedford, MK42 9AP

1. Bryant's 1826 Map of the County of Bedford
2. Ordnance Survey 2":1 mile map c.1804-15
3. Ordnance Survey 25":1 mile 1st Edition map of 1888
4. Ordnance Survey 25":1 mile 2nd Edition map of 1901
5. Ordnance Survey 25":1 mile 3rd Edition map of 1975
6. Parliamentary Inclosure Award (if present)
7. Deposited Railway Plan
8. Deposited Plans for local gas, water, and electricity companies.
9. Quarter Sessions records (including "QSR*").

Countryside Access Team

Technology House, 239 Ampthill Rd, Bedford, MK42 9QQ [and its off-site storage files]

10. Countryside Access Team files relating to the Definitive Map surveys

Central Bedfordshire Council

Priory House, Monks Walk, Chicksands, Shefford, SG17 5TQ

11. List of Streets
12. Section 38 Adoption agreements



1.21 Appendix B

Statutory Consultees

Ramblers
British Horse Society
Bedfordshire Rights of Way Association
The Open Spaces Society
British Driving Society
Trail Riders Fellowship
Cyclists' Touring Club
Byways and Bridleways Trust
Auto Cycle Union
Parish or Town Council
Chiltern Society (Dunstable)
Land Access and Recreation Association

Geodesys (part of Anglian Water)
National Grid (Gas)
British Telecom Plc.
EDF Energy (electric)

Additional consultees depending on circumstances:

People Places and Partnerships (P3) Group
Network Rail Infrastructure Liability Manager
Environment Agency
Bedfordshire Internal Drainage Board
English Heritage