

Report of	Meeting	Date
Head of Governance (Introduced by the Executive Member for People & Places)	Council	6 December 2011

PROPOSED DEDICATION OF RIGHT OF WAY UNDER S.25 HIGHWAYS ACT 1980 NEAR FAIRVIEW COMMUNITY CENTRE ADLINGTON

PURPOSE OF REPORT

1. To consider a request received from Lancashire County Council to create a right of way maintainable at public expense over land owned by Chorley Borough Council near Fairview Farm Community Centre Adlington running in a south westerly direction from Highfield Road North to join with Public Footpath No. 5 at the pedestrian level crossing over the Manchester-Preston railway line.

RECOMMENDATION(S)

2. The Head of Governance is authorised to agree and complete a Deed of Dedication with Lancashire County Council to create a public right of way over the land between the points marked "A" and "B" on the plan attached to this report.

EXECUTIVE SUMMARY OF REPORT

3. This matter was first before General Purposes Committee on 7 February 2007. At this meeting a claim lodged with the County Council under Part III of the Wildlife and Countryside Act 1981 was reported to members. The claim was for the conferral of public right of way status on the informal footpath that runs in a south-westerly direction from Highfield Road North, Adlington, to join with Public Footpath No 5 at the pedestrian level crossing over the Manchester-Preston rail-line. The claimant, Adlington Town Council held that the footpath had been used by the public at large for more than 20 years without interruption.
4. A gap in the housing on the west side of Highfield Road North, between No's 15 and 17, allowed access to the land over which the footpath runs and according to previous reports to members it is known that that route being claimed has been used by local residents and the public at large for a considerable number of years. Indeed, when the development of Fairview Farm took place, the footpath was used as the official temporary route in place of Public Footpath No. 5 Adlington. In accordance with paragraph 3 of Schedule 14 of the Wildlife and Countryside Act 1981, the County Council are obliged to investigate the claim and to consult with every local authority in whose area the claimed path is situated. The County Council therefore requested the Borough Council's views on the above.
5. The evidence submitted to Lancashire County Council in support of the claim included 11 evidence of use forms indicating knowledge and use of the route for more than 20 years. The Committee recognised that it had no direct information or evidence to prove usage and that it would not be appropriate either to endorse or oppose the claim. Accordingly this

Committee resolved that no objection be made to the claim for conferral of public right of way status on the footpath.

6. However, the County Council on examining the claim came to the conclusion that the claim put forward did not actually represent the route previously walked; rather it simply reflects a route that has come into being since the construction of the Community Centre. Evidence held by the County Council, e.g. map evidence, recorded user evidence and aerial survey photographs indicate that the route traditionally used is now blocked by the presence of the Community Centre. The County Council considers that the “claimed” line probably does not reflect the previously used route and as such, with no legally recorded history of use, it is therefore quite possible that the claim would have to be rejected. If there had been legally recorded use, the County Council could have contemplated making a Diversion Order instead of a Map Modification Order, but in the absence of such recorded usage there appears to be no grounds for making a Diversion Order.
7. The proposal by the County Council for Chorley Borough Council to enter into a voluntary dedication agreement under the Highways Act 1980 was then reported to this Committee on 18 October 2007. The claimant had agreed to withdraw its claim in return for a dedication agreement. Members resolved to defer a decision pending consultation with the Fairview Youth and Community Association and advice from Liberata, the Council’s term property consultants.
8. The route of the proposed dedication is shown by the dotted line between the points marked “A” and “B” on the attached plan. The Council owns the freehold title to the land which is the site of a former landfill.
9. The Council has received a response on behalf of the Trustees of the Fairview Youth and Community Association stating that they have no objection to the proposed dedication.
10. The Council’s property agents Liberata have not identified any drawback to the proposals which should dispose the Council to decline to enter into the dedication. Their advice is that the land is open space and so formalising the use of the footpath would not impact on its current value.
11. The County Council have confirmed that it will be responsible for the maintenance of the footpath should the dedication be completed. They do not intend to undertake any treatment works to the footpath.

Confidential report Please bold as appropriate	Yes	No
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CORPORATE PRIORITIES

12. This report relates to the following Strategic Objectives:

Strong Family Support		Education and Jobs	
Being Healthy		Pride in Quality Homes and Clean Neighbourhoods	
Safe Respectful Communities		Quality Community Services and Spaces	X
Vibrant Local Economy		Thriving Town Centre, Local Attractions and Villages	
A Council that is a consistently Top Performing Organisation and Delivers Excellent Value for Money			

BACKGROUND

13. The use by the public at large of a route across the parcel of land concerned is undeniable. When presented with an application for a “claimed” footpath it seemed probable that a Map Modification Order would be made. When this was first before General Purposes Committee on 7 February 2007 it was not considered unacceptable given the longstanding history of this footpath.
14. Under the proposed voluntary dedication Chorley Council may enter into a formal dedication agreement with the County Council (under which responsibility for the maintenance of the footpath would pass to the latter) or it can decline the invitation, which means that the “claim” for right of way might well fail. If the claim did not fail, then the Council as landowner would become responsible for the maintenance of the footpath.
15. The route of the proposed dedication does not affect the existing football pitches at the site. It might be regarded as enhancing the existing public footpath network by facilitating a connection between Highfield Road North and Footpath No.5 as it crosses the railway line.
16. The Fairview Youth and Community Association do not object to the proposal and the Council’s property consultants do not see any reason for the council not to complete the dedication agreement.
17. An alternative option is to decline to agree to the proposed dedication. This would mean that users of the footpath would be denied the lawful right to use the route afforded by designation as a public footpath. If the Council sought to restrict access over the footpath users would be inconvenienced by having to take a detour over estate roads to access Footpath No.5. A refusal would be difficult to justify as the proposal only formalises usage which has been ongoing for a number of years.

IMPLICATIONS OF REPORT

18. This report has implications in the following areas and the relevant Directors’ comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal		Integrated Impact Assessment required?	
No significant implications in this area	X	Policy and Communications	

COMMENTS OF THE STATUTORY FINANCE OFFICER

19. No comments.

COMMENTS OF THE MONITORING OFFICER

20. No comments.

Report Author	Ext	Date	Doc ID
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