

Report of	Meeting	Date
Head of Governance	Council	28 November 2013

PUBLIC FOOTPATH NO.6 ADLINGTON PROPOSED PUBLIC PATH DIVERSION ORDER UNDER S.119 HIGHWAYS ACT 1980

PURPOSE OF REPORT

1. To bring to members' attention an issue of a public footpath which remains to be legally diverted.

RECOMMENDATION(S)

2. The Head of Governance is authorised to make a diversion order under s.119 Highways Act 1980 in respect of the lengths of public Footpath No. 6 as shown on the Map attached at Appendix 1. The Head of Governance is also authorised to arrange any necessary press advertisement about the order and serve notice on consultees prescribed in legislation.

EXECUTIVE SUMMARY OF REPORT

3. Planning permission to develop a parcel of land at Fairview Farm, Adlington was granted in February 2010. The site is affected by a public footpath No. 6. In order to facilitate the development the developer applied for an order to divert public footpath No. 6 under S257 of The Town and Country Planning Act 1980. The Chorley Borough Council (Public Footpath No 6, Adlington) Public Path Diversion Order 2010 was made in March 2010 and published as required by legislation. No objections to the order were received and the order was subsequently confirmed. The order does not come into force until the new route has been constructed and it is certified that the new route complies with the terms of the order. In March 2012 a Public Rights of Way Officer employed by Lancashire County Council (LCC) attended the site to assess and certify the new route, the Rights of Way officer was not able to confirm that the new route had been provided in accordance with the terms of the order because the widths of the new route did not correspond to the width described in the order. The developer is not able to increase the width of the footpath so that it complies with the order because it is bounded on each side by the boundaries of rear gardens. In order to rectify the situation the developer has made an application under S119 Highways Act 1980 for a public footpath diversion order which will result in a fresh order diverting Footpath No.6 being made. The fresh order will contain the widths that have actually been provided on the new route.

Confidential report Please bold as appropriate	Yes	No
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CORPORATE PRIORITIES

4. 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

5. Planning permission for the development of affordable housing at Fairview Farm, Adlington was issued under the Town and Country Planning Act 1990. The site is affected by Public Footpath No. 6 as shown by the map in Appendix 1. The existing route runs through the rear of the gardens of a number of houses. Therefore it was desirable to divert the footpath in order to facilitate the building of 36 properties on the site. It was proposed that the new route was to run alongside the estate road and then between houses.
6. The Chorley Borough Council (Public Footpath No 6, Adlington) Public Path Diversion Order 2010 was made on 23 March 2010 under S257 of the Town and Country Planning Act 1990. The Order was advertised in the Chorley Guardian and notices were placed out on site. Various statutory consultees were also served with a copy of the order. No objections were received and the Order was subsequently confirmed on 1 June 2010. The terms of the order provided that the Order would not come into force until such time as the proposed new route is certified by Chorley Council to confirm that it has been constructed and that it complies with the terms of the Order. The Council would not be in a position to certify the order until the estate roads and footways of the development were constructed.
7. On 29 March 2012 a Rights of Way Officer from Lancashire County Council attended the site with a view to certifying the footpath. The Rights of Way officer advised that the proposed new route did not comply with The Chorley Borough Council (Public Footpath No 6, Adlington) Public Path Diversion Order 2010. In paragraph 2 the Order specifies that the new route would be 2 metres in width. The footpath running alongside the estate road is 1.8 metres however the rights of way officer advised that on the assumption that the rest of the width (being used by vehicles) will also be available for pedestrians, the reduced width over this section would not be a significant concern.
8. Approximately one third of the diverted route is a path confined by fences running through the recently built houses. The maximum width along this section is 1.8 metres and at a section along part of the path the width is reduced to 1.5 metres. Because the width is reduced so much from the width specified in the diversion order the Council is unable to certify that the route has been provided.

PROPOSED PUBLIC PATH DIVERSION ORDER S.119 HIGHWAYS ACT 1980

9. The developer Cruden Construction Limited acting on behalf of Places for People Limited has advised that as the development is complete they are not able to widen the path so as to create a 2 metre footpath which would comply with the 2010 Order.

10. As the development is now complete the Council is prevented by case law from making a fresh order detailing with the correct widths under S257 of The Town and Country Planning Act 1990. Section 257 powers must be used prospectively.
11. The developer has submitted an application for a public path diversion order under S119 of the Highways Act 1980 which provides that the Council may make a public path diversion order where it appears to the Council to be in the interest of the owner and/or in the public interest.
12. The developer has agreed to meet the associated costs of the application.
13. The existing footpath runs from a westerly termination of Farm Avenue, Adlington in a general south-westerly direction to the rear No.112 Fairview Drive and then in a south south-westerly direction adjoining the highway know as Fairview Drive as shown between points A and B on the Map at Appendix 1. The proposed new route of the footpath runs from the westerly termination of Fairview Drive in a generally south-westerly and southerly direction along the pavement serving the housing development and adjoining the Footpath on the highway known as Fairview Drive as shown between points C and B on the Map at Appendix 1.
14. The map to be appended to the order at Appendix 1 details the width of the proposed new route as follows:

From point B-E	1.8 metres
From point E-D	1.5 metres
From point D-C	1.8 metres
15. In accordance with S119 of the Highways Act 1980 the Council must satisfy itself that the diversion to be effected is expedient, that the path will not be substantially less convenient to the public in consequence of the diversion and the Council must consider the effect which the diversion would have on public enjoyment of the path or way as a whole. The council must also consider the effect that any diversion order may have on the land serving the existing footpath and the proposed new route.
16. The diversion of Public Footpath No. 6 was considered to be in the public interest so as to enable the development of 36 properties in accordance with the planning permission. As the properties have now been built the diversion is in the interest of the landowners and the public as the existing footpath is now inaccessible to the public. In addition a diversion order will provide footpath users with the certainty that they are able to exercise their right and that Lancashire County Council will maintain the footpath and keep it free from obstructions.
17. The length of the existing footpath runs for a total distance of 158.7 metres, the proposed diversion runs for a total distance of 174 metres, although the diversion comprises a slightly longer route, it is not significantly different in extent or direction to the existing route. The end effect of the diversion order would result in the footpath being encompassed within a fully urbanised environment.
18. It is recommended that the Council exercise their power under S119 of the Highways Act 1980 to divert part of Public Footpath No. 6 on the grounds that it is satisfied that the new route will not be substantially less convenient to the public and that the diversion is in the owner's interest and the public's interest.

19. Schedule 6 to the Highways Act 1980 requires that Notice of the making of the Order must be given to the public in the local press before the Public Path Diversion Order is confirmed. Notice must be served on the Parish Council, statutory consultees, affected landowners and occupiers. Site notices must also be posted at the ends of the proposed diversion of the footpath.
20. Objections may be made in writing within 28 days of the publication of the notice. If no objections are made or if any objection made are subsequently withdrawn the order may then be confirmed by the Council. A similar notice procedure applies on confirmation to that in relation to the making of the order.
21. Before confirming the order as unopposed the Council must be satisfied that the diversion is expedient and that the new path will not be substantially less convenient to the public as a consequence of the order. Regard must be had to the effect that the diversion would have on public enjoyment of the path as a whole, the effect on other land served by the existing public right of way and the effect which the new diverted route would have on the land which it affects. In this case the adjustments are not great and will not inconvenience users and will not diminish public enjoyment of the affected sections of footpaths. The diverted route will affect only land owned by Places for People and two other owners who have purchased properties on the development. The Council must also have regard to any material provision of a right of way improvement plan prepared by a local highway authority. The plan for Lancashire does not contain any specific matters relevant to the proposed public path diversion order.

IMPLICATIONS OF REPORT

22. 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

23. Chorley Council will incur costs in advertising the proposed order in the local press and officer time must be spent in drafting reports and the diversion order. The developer has agreed to meet the costs of the application.
24. Maintenance responsibility of public footpaths rests with Lancashire County Council as part of the wider public footpath network.

COMMENTS OF THE MONITORING OFFICER

25. **The legal basis for the making and confirmation of the order and the procedural requirements are addressed within the body of the report.**

Background Papers			
Document	Date	File	Place of Inspection

Report Author	Ext	Date	Doc ID
Jodi Fitzpatrick	5112	18 November 2013	001403/046215