

| Report of | Meeting | Date |
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| Head of Governance | Council | 7 January 2014 |

SECTION 119 HIGHWAYS ACT 1980 PROPOSED PUBLIC PATH DIVERSION ORDER OF FOOTPATH 4 CHORLEY RIVINGTON VIEW ESTATE

PURPOSE OF REPORT

1. To seek approval for a diversion order of two lengths of public footpath in Chorley. This will then enable Chorley Council to certify that Article 2 of a footpath diversion order made in 2010 under Section 257 of the Town and Country Planning Act 1990 has been complied with.

RECOMMENDATION(S)

2. The Head of Governance is authorised to make a diversion order under Section 119 Highways Act 1990 in respect of the lengths of footpath shown on the attached plan in Appendix B.
3. Following the coming into effect of the diversion order referred to in paragraph 1 above that the Head of Governance is authorised to certify that Article 2 of the footpath diversion order made on 14 September 2010 under Section 257 of the Town and Country Planning Act 1990 attached as Appendix A has been complied with.

EXECUTIVE SUMMARY OF REPORT

4. Morris Homes obtained residential planning permission to develop the Rivington View estate some years ago. The site is affected by Footpaths 4 and Footpath 19. In order to facilitate the development Morris Homes applied to the Council for a diversion of sections of both footpaths as shown on the order map within Appendix A. Development Control Committee approved the proposed diversion on 30 March 2010 under s.257 of the Town and Country Planning Act 1990. The order was advertised as required under statute and notices served on statutory consultees. A copy of the order is attached as Appendix A. No objections were made. The order was confirmed without modification on 22 November 2010. The final step is for Chorley Council to certify the terms of the diversion order as being copied with. However a site visit by the Public Rights of Way Officer at Lancashire County Council in December 2012 revealed that sections of the diverted footpaths within the estate do not conform to the order map. The discrepancies are substantial and on that basis it would not be possible for Chorley Council to confirm the order as being copied with. Case law has established that making a fresh order under s.257 with a new order map is not possible where the development is largely complete. Instead it is proposed to divert the "irregular" sections of footpath not in accordance with the order map using Chorley Council's powers under s.119 Highways Act 1990. Once this is done Chorley Council can certify that Article 2 of the 2010 diversion order has been complied with and the previous legal routes will cease to be public rights of way.

5. Lancashire County Council who are legally responsible for the footpaths agree to the proposal. The proposal was put to the developer Morris Homes in July 2013. At the time of writing the developer has not replied substantively to confirm its agreement. The next available full Council after the Special Council in February is in April 2014. In the interests of progressing the matter without further undue delay members' approval is being sought now. The steps proposed in the recommendation will not be taken until the developer has agreed to them.

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| Confidential report Please bold as appropriate | Yes | No |
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CORPORATE PRIORITIES

6. This report relates to the following Strategic Objectives:

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| Involving residents in improving their local area and equality of access for all | X | A strong local economy | |
| Clean, safe and healthy communities | | An ambitious council that does more to meet the needs of residents and the local area | |

BACKGROUND

7. Public Footpath No. 4 Chorley runs from Crosse Hall Lane in a generally northerly direction across land sandwiched between the Black Brook and the M61 Motorway to Froom Street. The land over which the footpath runs was formerly pasture land.
8. Public Footpath No. 19 Chorley runs from Eaves Lane, by way of Canal Walk, in a generally easterly direction across a previously undeveloped expanse of open land to the Black Brook, which is crossed by means of a foot-bridge, whereupon the Footpath joins up with Public Footpath no. 4.
9. Planning permission was granted to Morris Homes Ltd several years ago to develop the parcel of land bounded by the Leeds-Liverpool Canal on the west, the M61 Motorway on the east, Crosse Hall Lane on the south and Froom Street on the north for residential housing. The estate is known as Rivington View.
10. The three lengths of Footpath No. 4 which formed the subject of the original application for the s.257 diversion run for a total distance of 319 metres. The first length to be diverted comprises a 112 metre length running from point A on the map attached in Appendix A in a generally northerly direction to point B, which length was to be diverted on the new estate footpath running from point A by way of point E to point B, a total distance of 141 metres.
11. The second length of Footpath No. 4 to be diverted runs from Point C northwards to Point D on Froom Street, comprising a distance of about 112 metres, and was to be diverted on to the new estate road, as marked by the line C-F-G and thence on to the new link-footpath, as marked by the line G-H-D, a total distance of approximately 145 metres.
12. The third length of Footpath No. 4 to be diverted runs from point J in a generally southerly direction to point K and to point L on the Order map for a total distance of about 95 metres and was to be diverted onto the estate footpath marked by bold black dashes from point J to point L for a total distance of about 100 metres.
13. The length of Footpath No. 19 to be diverted runs for an approximate distance of about 105 metres. The length to be diverted runs from point M on the map attached in a generally easterly direction to point K, which length was to be diverted onto the footway of the new

estate road adjoining the carriageway shown by bold black dashes from point M to point K by way of point N, a total distance of approximately 130 metres.

14. Although the diversions proposed to DC Committee in 2010 lead to slightly longer routes, they were not significantly different in nature i.e. gradients, extent or direction to the existing routes. The end effect of the diversion order would result in the footpaths being encompassed within a fully urbanised environment.

THE DIVERSION ORDER UNDER S.257 TOWN AND COUNTRY PLANNING ACT 1990

15. Development Control Committee approved the making of the order on 26 March 2010. The order was made on 8 July 2010. Following the identification of an error in the order map a new version of the order with a corrected order map was made on 14 September 2010 and statutory notice was served on a list of prescribed persons and an advertisement was placed in the local press. No objections were made to the order. The next step was for DC Committee to authorise the confirmation of the order as unopposed. DC Committee approved the confirmation without modification on 16 November 2010 and the order was confirmed on 22 November 2010. Notice was served on the statutory consultees and the required statutory notice placed in the local press.
16. Until the s.257 order is certified as being complied with (the final step taken by Chorley Council after confirmation of the order) the existing sections of legal footpaths continue to be a legal right of way. Part of the sections of footpaths to be diverted have been closed to the public on grounds of public safety under repeated temporary orders made by the Department for Transport on application of LCC acting as highway authority.
17. A site visit by the Public Rights of Way Officer at LCC in December 2012 revealed that the route of the footpaths on the estate do not conform to the route as shown on the order map attached as Appendix A. In addition part of the new footpath had not yet been constructed. The issues identified in December 2012 were:
 - (i) Between the points "A" and "E" the new route had not yet been constructed and crossed the car park used by the builder.
 - (ii) South of point F the line shown by the order plan is not available and appears to pass through what are now the gardens of three houses.
 - (iii) Around point J there is a similar problem. When the diversion map is overlaid on the physical estate layout the alternative public footpath crosses the driveway of property No. 9 and practically touches the new garage (buildings shown by bold red outline). On the background map supplied by the developers it is clear that there was going to be a constructed walkway and the properties No. 7 and 9 were originally to be built in different locations facing a different direction and the front of the houses would have been set back from the proposed path/pavement.
18. It appears that the estate layout was amended but the order map in the diversion order was based on an earlier estate layout. The order map does reflect what the developer originally requested.

PROPOSED PUBLIC PATH DIVERSION ORDER S.119 HIGHWAYS ACT 1980

19. In order to enable as much of the footpaths as possible to be diverted under the 2010 order it is recommended that the sections which deviate from the order map are diverted instead under s.119 Highways Act 1980. The remainder of the new footpaths which conform to the

2010 order map can then be diverted under the 2010 order. The effect of the public path diversion order under the Highways Act is to create a new public footpath along the lengths in the order map and permanently extinguish the previously existing route.

20. A draft map for the order proposed to be made under s.119 is attached as Appendix B. The route of the proposed diversion is shown between the points J-G-H-D by a broken black line. The route of existing legal right of way along this section of Footpath 4 is shown between the points marked J-C-F-G-H-D.
21. The Borough Council may make a public path diversion order under s.119 if it appears expedient to do so in the interests of the landowner or the public. The order may not alter the point of termination of the path otherwise than to another point on the same highway or a highway connected to it and which is substantially as convenient to the public.
22. The public path diversion order may provide that it does not come into force until any necessary work to bring the new sections of footpath into a fit condition for use by the public has been done and after LCC acting as highway authority has certified that the work has been carried out. The order must be accompanied by a map which shows both the existing footpath and the proposed new route. Notice must be placed in the local press when it is proposed to confirm the order and notice served on the landowner and various statutory consultees. The notice and order map must also be displayed prominently at the ends of the footpath to be diverted and available for inspection at the Town Hall. Similar steps must be taken after the order is confirmed.
23. A public path diversion order is subject to confirmation by the Council as an unopposed order if no objections have been made 28 days after the notices referred to in paragraph 22 above have been circulated or confirmation by the Secretary of State if opposed. 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 Morris Homes and no further landowners will be affected. 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

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

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

COMMENTS OF THE STATUTORY FINANCE OFFICER

25. 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. However these can be recovered from the developer. LCC is obliged to survey the route and carry out any necessary works and can recover the costs incurred from Chorley Council. In practice Chorley Council will not progress the proposed diversion order unless the developer carries out any works satisfactorily which have been identified by LCC. After the process is completed LCC will be responsible for maintaining the diverted footpath as part of the wider public footpath network.

COMMENTS OF THE MONITORING OFFICER

26. The wording of s.257 of the Town and Country Planning Act 1990 is prospective in character. Case law is clear that the powers available to the district council as local planning authority under s.257 may not be exercised once a development has been substantially completed. Since the Rivington View development is so advanced starting afresh with a new order under s.257 of the Town and Country Planning Act 1990 and an order map which reflects the route of the diverted footpaths as they now exist is not available. Diversion under s.119 of the Highways Act 1980 of the two lengths which do not conform to the route of the order map made under s.257 on 14 September 2010 and then certifying the 2010 order as being complied with in respect of the remainder of the route is a pragmatic solution which is also a proper exercise of the Borough Council's powers.
27. The right of LCC to recover costs of any necessary works from Chorley Council under s.27 of the Highways Act 1980 is addressed within paragraph 24 above.

| Background Papers | | | |
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| Document | Date | File | Place of Inspection |
| Drawings and photographs taken by LCC Public Rights of Way | 19.12.12 | IKEN File 311 | Town Hall |

| Report Author | Ext | Date | Doc ID |
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| Alex Jackson | 5166 | 17 December 2013 | *** |