

Report of	Meeting	Date
Head of Governance	Council	23 September 2014

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

PURPOSE OF REPORT

1. To consider confirmation of the Chorley Borough Council (Public Footpath No.6 Adlington) Public Footpath Diversion Order 2014.

RECOMMENDATION(S)

2. The Head of Governance is authorised to confirm as an unopposed order the Chorley Borough Council (Public Footpath No.6 Adlington) Public Footpath Diversion Order 2014. The Head of Governance is authorised to arrange any necessary press advertisements regarding the Order and in addition to serve such notices as required by the Highways Act 1980.

EXECUTIVE SUMMARY OF REPORT

3. The Council authorised the Head of Governance to make the Chorley Borough Council (Public Footpath No.6 Adlington) Public Footpath Diversion Order 2014 on 18 November 2013. The Chorley Borough Council (Public Footpath No.6 Adlington) Public Footpath Diversion Order 2014 was made on 4 June 2014. On the 17 June 2014 letters were sent to the consultees prescribed in the legislation to advise that the Order had been made. The Council received one objection from the Peak and Northern Footpath Society on 23 June 2014. The Council wrote to the Peak and Northern Footpath Society on the 17 July 2014 setting out the reasons for the Order. The Peak and Northern Footpath Society withdrew their objection on 4 August 2014. Notice of the making of the Order was advertised on 24 June 2014. Any objections were to be received by 30 July 2014. No further objections have been received.

Confidential report Please bold as appropriate	Yes	No
--	-----	----

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 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 was 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 made an application under S119 Highways Act 1980 for a public footpath diversion order. The fresh order was to contain the widths that have actually been provided on the new route.
6. The Council authorised the making of a fresh order on 18 November 2013. The Chorley Borough Council (Public Footpath No.6 Adlington) Public Footpath Diversion Order 2014 was made on 4 June 2014. A copy of the Order and Order Map are attached at Appendix 1.
7. On the 17 June 2014 letters were sent to the consultees as prescribed by the legislation to advise that the Order has been made. The Council received one objection from the Peak and Northern Footpath Society on 23 June 2014, they objected to the Order on the basis that the footpath would be diverted on to an estate road which is contrary to the Paragraph 7.8 of the Defra Circular 1/09 as this states that 'any alternative alignment should avoid the use of estate roads for the purpose wherever possible'. The Council responded to the Peak and Northern Footpath Society on the 17 July 2014 to advise that in the circumstances there is little practical or satisfactory alternative. The Peak and Northern Footpath Society withdrew their objection on 4 August 2014.
8. Notice of the making of the Order was advertised on 24 June 2014. Any objections to the Order were to be received by the Council by 30 July 2014. No further objections were received.

THE PUBLIC PATH DIVERSION ORDER

9. Under S119 of the Highways Act 1980 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.

10. The developer has agreed to meet the associated costs of the application.
11. 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 Order Map at Appendix 1.
12. The Order Map 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
13. 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.
14. 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.
15. 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.
16. It is recommended that the Council exercise their power under S119 of the Highways Act 1980 to confirm as an unopposed order Chorley Borough Council (Public Footpath No.6 Adlington) Public Footpath Diversion Order 2014 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.
17. Schedule 6 to the Highways Act 1980 requires that notice of the confirmation of the Order must be published in the local press. Notice of the confirmation of the Order must be served on the Parish Council, statutory consultees, affected landowners and occupiers. Notice of confirmation of the Order must also be posted at the ends of the proposed diversion of the footpath.
18. In accordance with Schedule 2 of the Highways Act 1980 any person may question the validity of the Order within 6 weeks of the date of publication of the Notice of Confirmation of the Order by way of application to the High Court.

19. 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

20. 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

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

COMMENTS OF THE MONITORING OFFICER

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

Report Author	Ext	Date	Doc ID
Jodi Fitzpatrick	5112	9 September 2014	001403