

Report of	Meeting	Date
Chief Executive	Development Control Committee	10 February 2015

## **PROPOSED CONFIRMATION OF DIVERSION OF A SECTION OF PUBLIC FOOTPATH NUMBER 34 CHORLEY S.257 TOWN AND COUNTRY PLANNING ACT 1990**

### **PURPOSE OF REPORT**

1. To determine whether the Diversion Order in relation to part of Public Footpath No. 34 Chorley (in order to facilitate the development of 24 affordable dwellings) should be confirmed as an unopposed order.

### **RECOMMENDATION(S)**

2. That the Chorley Borough Council (Public Footpath No. 34 Chorley) Public Path Diversion Order 2013 made on 21 November 2013 pursuant to Section 257 of the Town and Country Planning Act 1990 be confirmed as an unopposed order in respect of a length of Footpath Number 34 Chorley.
3. That the Head of Governance is authorised to serve notice regarding the confirmation of the order on prescribed persons and arrange for notice in the local press and on site and certify the order as being complied.

### **EXECUTIVE SUMMARY OF REPORT**

4. A section of Public Footpath No. 34 Chorley affects a parcel of land lying between Moor Road and Hodder Avenue, running in a broadly south westerly direction. The parcel of land was subject of a planning application by Adactus Housing Association to build 24 affordable dwellings.
5. Planning permission was granted by Development Control Committee on 19 November 2013 (Ref 13/00798/CB4). The making of the diversion order was also approved at that committee.
6. The south eastern area of the application site is affected by a section of Footpath Number 34. Members are referred to the order map within Appendix A to this report which shows a section of the existing legal footpath by a continuous bold black line between the points A-C. This is the route which is to be diverted i.e. it will cease to be a legal right of way if Chorley Council certifies the terms of the order as being complied with following confirmation.
7. In order to facilitate the development it is proposed to divert the path onto a route between the points A-B-C shown by bold black dashes on the plan in Appendix A.

<b>Confidential report</b> Please bold as appropriate	Yes	No
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## CORPORATE PRIORITIES

8. This report relates to the following Strategic Objectives:

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	

## DETAILS OF THE MAKING OF THE ORDER ON 21 NOVEMBER 2013

9. The length of Footpath No. 34 between the points A-C forming the subject of the application runs for a total distance of about 33 metres.
10. The length of the proposed diverted route between the points A-B-C runs for a total distance of about 45 metres.
11. The diversion comprises a slightly longer route so it is scarcely any less convenient for users. It is not significantly different in nature (i.e. gradients, extent, length or direction) to the existing route.
12. Before the development authorised in November 2013 the section of Footpath No. 34 to be diverted was in practice not used by the general public as it was obstructed by a fence bounding the eastern boundary of the application site. The diversion will in fact improve matters for the public by restoring a route along footpaths which will become part of the public footpath network and therefore maintainable at public expense.
13. Consent of the owner of the land affected by the newly diverted route is required. The existing legal route is situated on land owned by Adactus which they acquired from the Council in 2013. The route of the proposed diversion is on land retained by the Council.
14. The width of the existing unadopted pathway from point A to point B is 2 metres. However it narrows to about 1.8 metres between points B and C. No change in the width of the path was specified in the order.
15. The cost of dealing with the application has been met by Adactus.
16. The order was made i.e. with provisional effect on 21 November 2013 following approval by Development Control Committee on 19 November. The relevant notices were served on statutory consultees on 27 November 2013 and notice placed on site and in the local press.

## OBJECTION TO THE ORDER

17. A single objection to the order was received on 13 December 2013. The objection was on technical grounds. In Part 2 the order refers to the diversion on to a "footway" between the points A-B-C. A "footway" is a legal term referring to part of the highway i.e. in normal parlance what is referred to as the pavement. Case law has established that it is not possible to divert a public footpath onto a footway. According to Highway Authority records the route between the points A-B-C is not in fact a public right of way so the description used in Part 2 of the order is erroneous. This was explained to the objector who withdrew his objection on 19 December 2013. This means that the Council can authorise confirmation of the order as unopposed.
18. LCC responded that they had no objection. No other responses were received.

## WORKS REQUIRED UNDER THE ORDER

19. The diversion order specified the following works to be completed to the reasonable satisfaction of Chorley Council in respect of the route shown between the points A-B-C on the order map in Appendix A: (a) Replacement Tarmacadam surface to be laid between the points A-B-C on the attached Map (b) Removal of the concrete bollard between the points B and C and reinstatement of the surface to the satisfaction of Chorley Borough Council (c) Removal of vegetation near point A.

20. The Public Rights of Way Officer from Lancashire County Council visited the site on 14 January 2015 and advised that the works have been completed satisfactorily. LCC will become legally responsible for maintaining the footpath once the diversion order comes into effect.

**IMPLICATIONS OF REPORT**

21. 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**

22. The applicant developer made a contribution of £1500 to the costs of making the order and paid for the notice of making in November 2013. Costs of placing the notice of confirmation in the local press will be recovered from the applicant developer. When the order comes into effect after it is certified that its provisions have been complied with legal responsibility for maintenance of the newly created section of public footpath will rest with Lancashire County Council.

**COMMENTS OF THE MONITORING OFFICER**

23. An order made under s.257 may provide for the creation of an alternative highway for the footpath to be diverted. The order may also authorise or require works and require any person named in the order to meet the costs of such works.
24. A public notice describing the order must be advertised in the local press and the order placed on deposit for public inspection. This public notice and order map must also be placed at each end of the length of public footpath to be diverted. Owners of land affected by the order and various statutory consultees must be contacted and served with the order and notice and allowed the opportunity to make objections within 28 days from the making of the order. If no objections are made the order may then be recommended for confirmation to Development Control Committee as an unopposed order.
25. On confirmation of the order similar steps to those outlined in paragraph 24 above must be repeated enclosing a copy of the confirmed order. Objectors may challenge the confirmation in the High Court within six weeks after notice of the confirmation is published on the grounds that the confirmation is outside the Council's powers or that there has been a procedural defect. The diversion order does not come into effect until Chorley Borough Council certifies that the provisions of the order have been complied with. It is reasonable to take into account the views of LCC because the County will be responsible for maintaining the newly diverted route and ensuring that it remains unobstructed.

GARY HALL  
CHIEF EXECUTIVE

**Background Papers**

<b>Document</b>	<b>Date</b>	<b>File</b>	<b>Place of Inspection</b>
Letter from objector	8/12/13	IKEN File 1970	Town Hall
Council response to objector	17/12/13		
Letter withdrawing objection	19/12/13		

<b>Report Author</b>	<b>Ext</b>	<b>Date</b>	<b>Doc ID</b>
Alex Jackson	5166	23 January 2015	IKEN File 1970