

Report of	Meeting	Date
Corporate Director of Governance	General Purposes Committee	18/10/07

## **FOOTPATH AT FAIRVIEW FARM, ADLINGTON WILDLIFE AND COUNTRYSIDE ACT 1981 – CLAIM FOR DEFINITIVE MAP MODIFICATION ORDER, APPLICATION NO.804.455**

### **PURPOSE OF REPORT**

1. To consider a request from Lancashire County Council for the formal dedication of a footpath running from Highfield Road North, Adlington in a south-westerly direction to link up with Public Footpath No. 5, Adlington, where it crosses the Preston to Manchester Level crossing.

### **RECOMMENDATION(S)**

2. That subject to consultation with The Trustees of Fairview Youth and Community Centre, the Council indicate its willingness in principle to dedicate the route that has come into being, running over the open land at the southern end of the Fairview estate.

### **REASONS FOR RECOMMENDATION(S)**

3. The use by the public at large of a route across the parcel of land concerned, i.e. at the southern end of what was pasture land formerly forming part of Fairview Farm is undeniable. When presented with an application for a “claimed” footpath in respect of which it was highly probable that a Map Modification Order would be made was not considered unacceptable given the longstanding history of this footpath. The course of action now proposed by the County Council appears to give the Borough Council an element of choice, in that it can confirm usage of the route by way of entering 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. Although the public would not necessarily be disadvantaged by a refusal to accord formal recognition to the footpath, such action could also be construed as a refusal to acknowledge public usage of it and with it any willingness to see such usage afforded any kind of formal protection.

### **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

4. The only other alternative available would have been to oppose in the first instance the “claimed” footpath and consequent making of a Map Modification Order, which probably have proved an unsustainable course of action given the known, longstanding use of the path.

## CORPORATE PRIORITIES

5. This report does not relate to any of the following Strategic Objectives:

Put Chorley at the heart of regional economic development in the central Lancashire sub region		Improved access to public services	
Improving equality of opportunity and life chance		Develop the character and feel of Chorley as a good place to live	
Involving People in their Communities		Ensure Chorley is a performing Organisation	

## BACKGROUND

6. At its meeting on 15 March 2007, the Committee was asked by Lancashire County Council for its views about claims lodged with the County Council under Part III of the Wildlife and Countryside Act 1981 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 (see plan attached). The claimants held that the footpath had been used by the public at large for more than 20 years without interruption.
7. The area over which the footpath runs was formerly part of Fair View Farm. A gap in the housing on the west side of Highfield Road North, between Nos. 15 and 17, allowed access to the land over which the footpath runs and 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 Fair View 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. Accordingly, the County Council is requested the Borough Council's views of the above.
8. The evidence submitted to Lancashire County Council in support of the claim includes 11 evidence of use forms indicating knowledge and use of the route for more than 20 years. The Committee recognised that the claim reflected a long-standing public usage of the route concerned. Accordingly the Committee resolved that no objection be made to the conferral of public right of way status on the footpath under Part III of the Wildlife and Countryside Act 1981 on the basis that the path had been used for more than 20 years without interruption by the public at large.
9. However, the County Council on examining the claims now considers that the claims put forward do not actually represent the route previously walked, rather they 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 may have to be rejected. If there had been legally recorded use, the County Council could have contemplated making a diversion Order instead of Map Modification Order, but in the absence of such recorded usage there appears to be no grounds for making a diversion Order, i.e. you cannot divert what previously did not exist.

## DETAILS OF PROPOSAL

10. As a way forward the County Council suggests that the “new” route that has come into being to accommodate the presence of the Community Centre, and which thus does not have the required 20-year history of use, be the subject of a formal dedication agreement between the Borough Council and the County Council. Clearly this places the onus on the Borough Council to recognise in formal terms that there is a right of way exists and should thereafter enjoy a protected status, which has implications for the management of the site. The County Council note that this would be a cost-free exercise and, more significantly, responsibility for the maintenance of the path would pass to the County Council. The lease entered into between Chorley Borough Council (as landlord) and The Trustees of Fairview Youth and Community Centre (as tenant) dated 18 August 2005, recognises the presence of the footpath and shows on the map attached the “proposed realigned footpath” running along the south side of the Community Centre site. Recognition of the presence and future usage of the footpath on an amended route is thus acknowledged, albeit somewhat indirectly.

### IMPLICATIONS OF REPORT

11. This report does not have any implications in relation to the following areas:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal			

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DIRECTOR OF GOVERNANCE

<b>Background Papers</b>			
<b>Document</b>	<b>Date</b>	<b>File</b>	<b>Place of Inspection</b>
Letters from Lancashire County Council together with map	30 May 2007, 23 July 2007, 23 August 2007	862	Town Hall, Chorley

<b>Report Author</b>	<b>Ext</b>	<b>Date</b>	<b>Doc ID</b>
G Fong	5169	17 September 2007	