

Report of	Meeting	Date
Director of Policy and Governance	Council	20 September 2016

**FOOTPATH NO.1 CROSTON
PROPOSED CONFIRMATION OF PUBLIC PATH
EXTINGUISHMENT ORDER UNDER S.118 HIGHWAYS ACT
1980**

PURPOSE OF REPORT

1. To update members' on a longstanding issue of a public footpath which remains to be legally diverted subject of an earlier report to full Council on 6 November 2012 and to seek members' approval to confirm i.e. make permanent a Public Path Extinguishment Order as an unopposed order.

RECOMMENDATION(S)

2. That members note the completion of a public footpath dedication agreement on 24 May 2016 under Section 25 Highways Act 1980 between the landowners and Lancashire County Council adjacent to a ditch under the railway line at Croston as shown between the points A-B on the map attached as Appendix B.
3. Members approve the certification of the footpath diversion order made by Chorley Council under Section 257 Town and Country Planning Act 1990 in 1996 and confirmed in 2011 in light of the fact that the works requested by Lancashire County Council notified to the landowner have been completed following a satisfactory inspection by officers of the Public Rights of Way Team at Lancashire County Council. The section of footpath between the points A-B-C on the plan in Appendix C shall not be so certified as this section is subject of the extinguishment order.
4. Members approve the confirmation as an unopposed order of the public path extinguishment order made by Chorley Borough Council under Section 118 Highways Act 1980 on 14 May 2015 in respect of a short length of newly diverted Footpath No.1 Croston subject of the 1996 Order once the 1996 order has been certified in accordance with paragraph 3 above.
5. Members approve the placing of any notices required under legislation to effect the above including advertisement in the local press.

Confidential report Please bold as appropriate	Yes	No
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CORPORATE PRIORITIES

6. 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

7. Members approved the recommendations in an earlier report regarding the issues addressed in this update report which was submitted to full Council on 6 November 2012. The 2012 report is attached as Appendix A.
8. Planning permission was granted in 1988 by the Council for the Twin Lakes Industrial Estate at Croston. The site is affected by Public Footpath No. 1. A diversion was desirable away from the existing route within the Industrial Estate for reasons of public safety and site security. Whilst a public footpath is maintainable at public expense by Lancashire County Council (LCC) power to make footpath diversion orders under s.257 of the Town and Country Planning Act 1990 following the grant of planning permission rests with the Borough Council as local planning authority. Following an application in 1992 the Council's former Technical and General Services Committee authorised the making and advertising of a diversion order under s.257 of the 1990 Act. The order was made on 11 April 1996. The statutory process requires the making of the order followed by a consultation period during which statutory consultees may make representations about the order. If no objections are made the Order may be confirmed i.e. made permanent by Chorley Council. As long as the footpath meets the requirements of the diversion order e.g. it follows the route on the order map and is of the width specified in the order and is of satisfactory condition it is then certified. At this point the former footpath ceases to be a public right of way and the newly diverted route becomes the public footpath. Until this certification occurs the route through the Industrial Estate remains the legal footpath. No objections were received to the order as made. This was reported back to the Council's former Technical and General Services Committee on 5 June 1996 which authorised the confirmation of the order as unopposed.
9. The land within the Industrial Estate affected by the existing legal footpath and the proposed diverted route alongside the railway line is believed to be owned by Mr Keith Ruttle, his relatives or companies controlled by him.
10. A copy of the order and order map made on 11 April 1996 is appended to the 2012 report which is within Appendix A. The existing legal route through the Industrial Estate is shown by an unbroken black line running from Point "A" via Points "B", "C", "D" to Point "E". The proposed diverted route is shown by a broken black line running from point "A" via point "F" to Point "E" and adjacent to the railway line. In practice for many years the diverted route is the route as walked by local users, except that the route as walked does not veer westwards and cross a ditch at a point approximately halfway between the end of the buildings on the Industrial Estate and Point "F" as shown in the plan.
11. In October 2010 officers from LCC's Public Rights of Way Team met with a legal officer at the Council to advise that the 1996 diversion order had never been confirmed i.e. made permanent. Extensive searches in the Borough Council's archives failed to reveal any evidence of confirmation of the order.
12. No objections within the statutory timetable had been reported to members in 1996 (including from Railtrack as predecessor to Network Rail Infrastructure Limited). However by 2010 it was known that Network Rail as the owner of land adjacent to the proposed diverted route objected to the order. This was because their own risk management policy

calls for expensive trespass proof fencing to be erected alongside any land to which the public have legal access. It is understood from conversations with Network Rail's engineer that this is Network's Rail's own policy in response to risk of trespass rather than a regulatory requirement in legislation. In contrast Network Rail advise that only ordinary fences are required alongside a ploughed field to which the public would not have lawful access. Network Rail indicated to the Council that they would object to the confirmation of the order. However the opportunity to object passed (28 days from the publication of the Notice of the making of the order) and once the order was confirmed objections could no longer be made on the merits of the order but instead only the validity of the order could be challenged and that must be within six weeks of the date of the notice of confirmation. A challenge to the validity of the order may only be made on narrow legal grounds to the High Court that there has been procedural irregularity in the making of the order or that the order is outside the Council's powers under the Act. Since no objections had been received within the notice period following the making of the order following consultation with the Chair of Development Control Committee the Council confirmed the order in June 2011. No challenge was made by any of the statutory consultees which include County Highways, Peak & Northern Footpaths Society, Network Rail, The British Horse Society, the Ramblers' Association, Ordnance Survey and the Open Spaces Society. The period for challenge expired in August 2011.

13. A site visit took place on 5 September 2011 to inspect the diverted footpath and check if its condition was such that the 1996 diversion order could be certified as being complied with. In attendance were the effective landowner Mr Keith Ruttle, LCC's Public Rights' of Way Officer, an officer from the Environment Agency, a Croston Parish Councillor and a solicitor from Chorley Council's legal department. Remedial works identified during the site visit which were not controversial as far as the landowner was concerned were the widening at certain points of the footpath, cutting back and removal of trees, removal of Japanese Knotweed and removal of hardcore. However it became apparent that the route as walked does not reflect the proposed diverted route on the Order map. Members should note that the route as currently used does not go to a corner point at point F but cuts across to point E in a westerly direction, keeping to the north side of a deep ditch whereas from the order map in Appendix A it can be seen that the diverted route continues over the ditch south-west to point F then north-west re-crossing the ditch to point E. It should be mentioned in passing that the order map reflects the plans submitted by the landowner's agents in 1992. In order to bring the physical route into line with the route on the order map a 15 metre extension to the existing culvert would be required. The Environment Agency would have required a substitute waterside habitat to mitigate for the loss of the length of bankside habitat. Manhole covers for future inspections and a headwall detail at the outfall might have been required as well. These works would require planning permission. The landowner objected to these proposed works involving a culvert extension as excessive and unnecessary considering that the route as walked is acceptable. Croston Parish Council shared this view.

OPTIONS

14. The easiest solution would appear to be for Chorley Borough Council to make the order afresh under s.257 Town and Country and Planning Act 1990 with a slightly amended order map which shows the route as walked. The most extensive of the works described above would not then be necessary. However Network Rail would then be able to object to the merits of making of the fresh order which would lead to an inquiry. The costs of an inquiry are potentially considerable and the result uncertain. Network Rail would probably seek the erection of a security fence for the full length of the footpath alongside the railway which would represent a significant cost. Orders under s.257 can only be made prospectively to facilitate development and not retrospectively.

15. The landowner, LCC and the Borough Council agreed on an alternative proposal which was satisfactory to all three parties. The landowners agreed to a voluntary dedication of a footpath over their land under s.25 of the Highways Act 1980. This dedication agreement was completed on 24 May 2016. It is between the landowners and Lancashire County Council and Chorley Council was not a party. The route follows that as currently walked without crossing the ditch before point "F". The plan to the dedication agreement is attached as "Appendix B".
16. Notice must be given to the public in the local press before the public path creation order is confirmed and notice given to the Croston Parish Council, affected landowners and occupiers. Site notices must also be posted at the ends of the proposed new footpath. The list of statutory consultees is similar to that under s.257 of the Town and Country Planning Act 1990 but statutory undertakers which include Network Rail are not amongst the list of prescribed bodies whom must be served notice under s.25 Highways Act 1980. LCC have confirmed that the procedures were followed.
17. Now that the more limited works identified above are completed (removal of trees, hardcore and Japanese Knotweed and widening to 2 metres) the diversion order made under s.257 of the 1990 Act and confirmed in 2011 may be certified by the Borough Council. This leaves a small part of the newly diverted legal footpath crossing the ditch. Chorley Council has made an order under s.118 of the Highways Act 1980 to extinguish this small and unused length of footpath.
18. Chorley Council has the power under s.118 Highways Act 1980 to extinguish a footpath in its area on the grounds that it is not needed for public use. As the length subject of the extinguishment order is not currently walked by the public because it is bypassed by a more convenient alternative route the grounds are met. A notice procedure contained in Schedule 6 to the Highways Act 1980 must be followed. Objections may be made within 28 days from publication. If no objection is made or is withdrawn the extinguishment order may then be confirmed by the Council. Before the order is confirmed as unopposed the council must have regard to whether the path would be used in the absence of the order and also the effect of the extinguishment on land served by the footpath. Temporary circumstances preventing or diminishing the use of the footpath by the public should be disregarded. The length of path to be extinguished is not used at present because the public have no means of safely and easily crossing the ditch. There is in practice no land served by this length of footpath which it is proposed to extinguish.
19. The order under s.118 Highways Act 1980 was made on 14 May 2015. A copy is attached as "Appendix C". Notice was given to the various statutory consultees on 19 May 2015. Site notices were posted and a press notice appeared also on 19 May 2015. No objections were received to the making of the order so it is now open to members to confirm the order as unopposed i.e. make it permanent.
20. If the recommendation to confirm the public path extinguishment order is approved a longstanding legal process regarding a diverted footpath can be finally resolved. The County Council will then maintain the diverted route as a public footpath and ensure that it remains free and unobstructed. In the past the route has not been eligible for improvement grants because it did not enjoy the status of a public footpath. Once it becomes part of the public footpath network then bids for such funding should not be rejected because the footpath is not part of the public footpath network.

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		Policy and Communications	

COMMENTS OF THE STATUTORY FINANCE OFFICER

22. The Borough Council is responsible for advertising in the local press the confirmation of the extinguishment order under s.118 Highways Act 1980. However this is a one-off financial cost. Maintenance responsibility of public footpaths rests with Lancashire County Council.

COMMENTS OF THE MONITORING OFFICER

23. The legal issues are identified in the body of the report.

Background Papers			
Document	Date	File	Place of Inspection
1. Report to Planning Committee 1/09/92 2. Report to Technical and General Services Committee 05/06/96 3. Planning File Twin Lakes 4. Copy Dedication agreement dated 24 May 2016	1. 1/09/92 2. 05/06/96 3. 1988-98 4. 24/05/16	446	1. Town Hall 2. Town Hall 3. Planning Services Union Street 4. Town Hall

Report Author	Ext	Date	Doc ID
Alex Jackson	5166		