

**REPORT FOR DECISION**

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**MEETING:** PLANNING CONTROL COMMITTEE

**DATE:** 12 APRIL 2005

**SUBJECT:** APPLICATION FOR MODIFICATION OF DEFINITIVE  
MAP AND STATEMENT, MOUNT PLEASANT,  
NANGREAVES, BURY

**REPORT FROM:** MIKE CANNON, BOROUGH ENGINEER

**CONTACT OFFICER:** IAN CROOK, MANAGER, HIGHWAY NETWORK  
SERVICES

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**TYPE OF DECISION:** NON KEY DECISION

**REPORT STATUS:** FOR PUBLICATION

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**PURPOSE/SUMMARY:**

This report contains information regarding an application made under Section 53 of the Wildlife and Countryside Act 1981 for modification of the Definitive Map and Statement by adding to it a footpath at Mount Pleasant, Nangreaves, Bury.

**OPTIONS AND RECOMMENDED OPTION:**

The Council must make an order if Members consider that evidence which (when considered with all other relevant evidence to them) shows that a right of way which is not shown on the Definitive Map and Statement subsists or is reasonably alleged to subsist on land in the area to which the Definitive Map relates.

The Committee may determine that the evidence submitted in support of the application is sufficient to support that rights of way subsist or are reasonably alleged to subsist and to authorise the Council Solicitor to make the necessary order to modify the Definitive Map and Statement.

The Committee may determine that the evidence is insufficient to support that rights of way subsist or are reasonably alleged to subsist.

The recommended option is for Members to determine that the evidence is insufficient to support that a right of way subsists or is reasonably alleged to subsist and refuse the application.

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## IMPLICATIONS

### Financial Implications and Risk Considerations

See statement by Director of Finance & E Government.

### Corporate Aims/Policy Framework:

Do the proposals accord with the Policy Framework? **Yes**  
Improving Transport and the Environment

Are there any legal implications? **Yes**

**Considered by Monitoring Officer:** **Yes**

### Statement by Director of Finance and E-Government:

There are no direct financial implications for the Authority associated with the recommended option not to modify the Definitive Map and Statement. However, if this option is approved and the applicant subsequently appeals to the Secretary of State, there may be some costs associated with any Public Inquiry which would need to be met from the revenue budget provision for planning inquiry costs.

### Staffing/ICT/Property:

**Wards Affected:** North Manor

**Scrutiny Interest:** Economy, Environment and Transport

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## TRACKING/PROCESS

**DIRECTOR:** Environment & Development Services

Chief Executive/ Management Board	Executive Member/ Chair	Ward Members	Partners
Scrutiny Panel	Executive	Committee	Council
		Planning Control 12.4.05	

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## 1.0 BACKGROUND

1.1. The Authority received an application on 7 November 2003 for the modification for the Definitive Map and Statement by adding to it a footpath at Mount Pleasant, Nangreaves, Bury.

- 1.2. The application is made under Section 53 of the Wildlife and Countryside Act 1981 which provides for modification of the Definitive Map and Statement to be made where it is shown that a right of way subsists or is reasonably alleged to subsist. Rights of way can be acquired where they have been exercised without permission or restriction for a period of at least 20 years.
- 1.3. Plan 1, PRW/BURY/DC/1 shows the claimed route at Mount Pleasant, Nangreaves, Bury. Plan 2 PRW/BURY/DC/2 shows the route position within the surrounding areas.
- 1.4. The path connects the two distinct residential areas of Mount Pleasant which are split by a considerable gradient. Access between the two can be gained by a metalled byway. It is claimed that stone steps adjoining the byway offer a traffic free alternative. These steps form the southern section of the claimed path before it runs into an area of land at the gable end of Number 28 Mount Pleasant.
- 1.5. It has been stated by the owners of adjacent allotments (Peel Holdings (North) Limited) that the claimed path offers a private right of access to the allotments.
- 1.6. It is specifically claimed that the path runs "5 feet" from the gable end of Number 28 Mount Pleasant.

## **2.0 ISSUES**

- 2.1. Having received an application for modification of the Definitive Map and Statement, the Council in its capacity as Highway Authority have a duty to investigate the issues claimed and determine whether all the evidence available to it shows that a right of way subsists or is reasonably alleged to subsist.
- 2.2. The claim was made following the erection of a post and rail fence to secure an area of land abutting Number 28 Mount Pleasant. The fence was erected by the owners of Number 28 around land under their ownership. The fence also marks the area for an extension to their property for which planning permission has been granted.
- 2.3. Appendix 1 provides a summary of the evidence which has been collected since the application was received in November 2003 and a brief explanation of how that evidence was received. The following points are a basic explanation of the situation relating to the claim.
  - The applicant submitted evidence suggesting the claimed route has been in use by the public since the nearby former mill (now demolished) was built in the 1850s. It is possible that any use to access the mill was by permission of the mill owners.
  - Those that oppose the application state that the present and past owners of Number 28 have parked their cars on the land abutting the gable end making it impossible for the public to have walked unhindered along a line 5 feet from it. However, pedestrians could and still can walk the section

abutting the gable end at a distance greater than that of a parked car or the post and rail fence which is now in place.

- No evidence has been received or discovered to suggest that anyone has been challenged when walking on land abutting the gable end of No 28 until the area was fenced. Previous owners of the property have been under the impression that a right of way existed and have used the land in a way which did not restrict access.
- On site there is no definitive evidence of the route persons may take once they have left the steps at the top of the village. In fact, there are a few possible routes, leading to the nearby Public House, as extension to the path at the rear of 14-28 Mount Pleasant and abutting the gable end No 28 at a distance greater than that of a parked car or the post and rail fence which is now in place.

Any right of way must follow a defined line, even if not the one described in the application.

- Any order made for the modification of the Definitive Map and Statement may be subject to objection and if such objections can not be resolved then the issues must be referred to the Secretary of State who may require that a Public Inquiry is conducted.
- If an order is made and ultimately confirmed the claimed route will become a public footpath for use by the public on foot only, but the ownership of the land crossed by the route will not be affected. The owners of Number 28 would be unable to build their extension for which they have planning permission until the path was diverted or closed.
- If a decision is taken not to make an order, the applicant can appeal to the Secretary of State and again a Public Inquiry may follow.

### **3.0 CONSULTATIONS**

J Hammond, Director of Legal and Democratic Services  
C Swinnerton, Head of Legal Services  
M Owen, Director of Finance & E Government

### **4.0. CONCLUSION**

- 4.1 The Authority has properly discharged its investigatory obligations in this matter.
- 4.2 The evidence available to the Council is insufficient to show that the public habitually walked on the line specified in the application.
- 4.3 That the Planning Control Committee refuse the application.

**C M CANNON**  
**BOROUGH ENGINEER**

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**List of Background Papers:**

Definitive Map and Statement  
Application and supporting documents  
Documents taken into account by the Investigating Authority

**Enclosures:**

Plans 1 and 2  
Appendix 1

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