

REPORT FOR DECISION

Agenda Item	
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MEETING: PLANNING CONTROL

DATE: 27 FEBRUARY 2007

SUBJECT: APPLICATION TO MAGISTRATES COURT TO CLOSE
PUBLIC FOOTPATH NUMBER 91, RAMSBOTTOM

REPORT FROM: IAN CROOK
HIGHWAY NETWORK SERVICES MANAGER

CONTACT OFFICER: IAN CROOK
HIGHWAY NETWORK SERVICES MANAGER

TYPE OF DECISION: EXECUTIVE (NON KEY DECISION)

**FREEDOM OF INFORMATION/
STATUS:** This paper is within the public domain

SUMMARY:

This report contains information regarding proposals to make an application to the Magistrates Court to close Public Footpath Number 91, Ramsbottom.

OPTIONS AND RECOMMENDED OPTION:

That the Committee approve the application to the Magistrates Court to close Public Footpath Number 91, Ramsbottom in order to remove an unnecessary path which is shown on the Definitive Map and Statement crossing 16 properties.

That the Council Solicitor is authorised to make an application to the Magistrates Court.

IMPLICATIONS -

**Corporate Aims/Policy
Framework:**

Do the proposals accord with the Policy
Framework? Yes

Financial Implications and Risk Considerations

The closure of the footpath is not considered to carry any significant risks.

Statement by Director of Finance and E-Government:

Any legal or other costs associated with the closure order will need to be met from existing highway budgets. The draft capital programme includes £50000 p.a. for the PROW improvement plan. Any development of an alternative route in the future would need to be considered and prioritised against other potential schemes.

Equality/Diversity implications None

Considered by Monitoring Officer: Yes

Staffing/ICT/Property:

Wards Affected: North Manor

Scrutiny Interest:

TRACKING/PROCESS EXEC DIRECTOR: Env & Development Services

Chief Executive/ Management Board	Executive Member/ Chair	Ward Members	Partners
Scrutiny Commission	Executive	Committee	Council
		Planning Control 27.2.07	

1.0 BACKGROUND

1.1 Plan 1 PRW/91/RAMS/DC/1 shows the path to be closed as dashed lines A-B-C.

The alternative routes are shown as bold, solid lines A-D-B-F-G-C and A-D-E-C.

1.2 Plan 2, PRW/91/RAMS/DC/2 shows a possible alternative route as a dotted line A-B. This is to be considered as part of the Rights of Way Improvement Plan at a future date.

- 1.3 An application under Section 116 of the Highways Act 1980 permits the closure of a right of way by application to the Magistrates Court if it is unnecessary.

2.0 ISSUES

Risk Management

- 2.1 The closure of the footpath is not considered to carry any associated risks.

Equality Impact Assessment

- 2.2 An initial screening has been undertaken and the closure will have a neutral impact on all groups.
- 2.3 Public Footpath Number 91, Ramsbottom runs through 16 properties built over 40 years ago at addresses on Newcombe Road, Haworth Avenue, Trinity Green, Howe Drive and Summerseat Lane.
- 2.4 Although footpath connections were provided and subsequently adopted by the Highway Authority, it would appear from the Authority's records that the relevant diversion/closure orders were not made.
- 2.5 The residents of 21 Newcombe Road have requested that the matter be resolved by making a closure order to remove the path from the Definitive Map and Statement as the situation has prevented the sale of their property.
- 2.6 The powers available to the Authority to resolve the situation are limited due to the fact that the properties are long since completed and any obvious diversion routes have already been adopted by the Highway Authority. Previous Counsel opinion on such situations is that application to the Magistrates Court under Section 116 of the Highways Act 1980 for an order to stop up the footpath is the only way of achieving the desired outcome.
- 2.7 The Court will have to be satisfied that the existing path is unnecessary and that there are acceptable alternative routes available.
- 2.8 The Authority holds no record of anyone wishing to exercise their rights to use the path which has been obstructed for over 40 years. Footpath routes through the site and the footways of the adopted highway provide alternatives to the path. Therefore, both criteria identified in paragraph 2.7 appear to be met.
- 2.9 Unlike closure orders under Section 118 of the Highways Act 1980 or Section 257 of the Town and Country Planning Act 1990, prior consultation with user groups is not required. However, notice of any proposed application to a court must be given in the London Gazette, in a local newspaper and on the path or way concerned. It must also be served on the owners and occupiers of all lands adjoining the highway.

Furthermore, any person who uses the highway, and any person aggrieved by the making of the Order has the right to be heard at Court when the application is made. The right is made clear in the published Notice.

- 2.10 The occupiers of the sixteen properties crossed by the path have been consulted on the proposed application for closure and no objections have been raised.
- 2.11 Upon inspecting the site, it became clear that there may be a possibility of creating a footpath following the stream running between Trinity Green and Bay Tree Grove/Howe Drive. This would create a pedestrian only route of approximately 700 metres from Garden City to the junction of Newcombe Road and Summerseat Lane, effectively joining Holcombe Brook with Summerseat.

This possibility is to be included in the Authority's Rights of Way Improvement Plan for investigation in the future.

3.0 CONCLUSION

- 3.1 Public Footpath Number 91, Ramsbottom has been obstructed by 16 properties for over 40 years. The public have used the alternative highways for this period of time but no closure order was made in order to delete the unnecessary path from the Definitive Map and Statement. An application to the Magistrates Court to stop-up the path under Section 116 of the Highways Act 1980 is required to resolve the situation.
- 3.2 That the Committee authorise the Council Solicitor to make the application to the Magistrates Court to close Public Footpath Number 91, Ramsbottom under Section 116 of the Highways Act 1980.

List of Background Papers: Definitive Map and Statement.
Equality Impact Assessment.

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