

**REPORT FOR DECISION**

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| Agenda<br>Item |  |
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**MEETING:** PLANNING CONTROL COMMITTEE

**DATE:** 20 NOVEMBER 2007

**SUBJECT:** APPLICATION FOR MODIFICATION OF DEFINITIVE  
MAP AND STATEMENT, CONISTON CLOSE,  
RAMSBOTTOM

**REPORT FROM:** IAN CROOK  
HIGHWAY NETWORK SERVICES MANAGER

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

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**TYPE OF DECISION:** EXECUTIVE (NON KEY DECISION)

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

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**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 Coniston Close, Ramsbottom

**OPTIONS AND RECOMMENDED OPTION:**

The Council must make an order if Members consider that evidence submitted with the application which (when considered with all other relevant evidence available 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 sufficient to support that a right of way subsists or is reasonably alleged to subsist and to authorise the Council Solicitor to make the necessary order to modify the Definitive Map and Statement.

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| <b>IMPLICATIONS -</b>   |  |
| <b>Corporate Aims/Policy Framework:</b>   | Do the proposals accord with the Policy Framework?<br>Yes  |
| <b>Financial Implications and Risk Considerations</b>   |  |
| <b>Statement by Director of Finance and E-Government:</b>   | The costs of maintaining Public Rights of way are met from the highways maintenance revenue budget, with an amount of £56k being allocated in 2007/08. Any maintenance works for the new path would need to be met from this budget. There is a risk that if any objections to the proposed order cannot be resolved there could be additional costs arising from the requirement to conduct a Public Inquiry; these would also need to be met from the highways revenue budget. |
| <b>Equality/Diversity implications</b>  | None   |
| <b>Considered by Monitoring Officer:</b><br>The Council has an obligation to properly investigate the issues claimed and to then make a careful and properly informed decision as to whether all the evidence shows that a right of way subsists or is reasonably alleged to subsist. Any determination should not be made on a prima facie basis but through the weighing of all available evidence and any legal principles which may have to be applied. |  |
| <b>Wards Affected:</b>  | Ramsbottom   |
| <b>Scrutiny Interest:</b>   |  |



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|--------------------------------------|-------------------------------|------------------------------|----------|
| Chief Executive/<br>Management Board | Executive<br>Member/<br>Chair | Ward Members                 | Partners |
|                                      |                               |                              |          |
| Scrutiny<br>Commission               | Executive                     | Committee                    | Council  |
|                                      |                               | Planning Control<br>20.11.07 |          |

## **1.0 BACKGROUND**

- 1.1 The Authority has received an application for the modification of the Definitive Map and Statement by adding to it a footpath at Coniston Close, Ramsbottom.
- 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/RAMS/DC/1 shows the claimed route at Coniston Close, Ramsbottom. Plan 2 PRW/RAMS/DC/2 shows the route within the surrounding area.
- 1.4 The path connects the cul-de-sac of Coniston Close with Stubbins Lane. The alternative route along Coniston Close, Heatherside Road, Ramsbottom Lane and Stubbins Lane is considerably longer. The path is partly unsurfaced, running down a gradient from Coniston Close before emerging at the side of a garage colony which provides a surfaced access on the footway of Stubbins Lane.

## **2.0 ISSUES**

### **Risk Management**

- 2.1 The inclusion of the path on the Definitive Map will lead to an increase in the number and length of public rights of way maintained by the Authority. The resources available for maintenance of the network will not increase.
- 2.2 The addition of a public right of way across private land can result in the relevant landowners being aggrieved by the new situation. The legislation prescribes the process for dealing with any application and makes provision for objections to be submitted once any Order to modify the Definitive Map and Statement is made.

## Equality Impact Assessment

- 2.3 An initial screening has been undertaken and the addition of the path to the Definitive Map will have a neutral impact on all groups as it would only give legal recognition to a path which it is claimed has existed on site since at least 1972.
- 2.4 The application was made after cut branches and vegetation were deposited on the line of the path. Fencing and a "Private Land" notice followed. All were installed by the owner of the land adjacent to the end of Coniston Close.
- 2.5 Appendix 1 provides a summary of evidence which has been collected since the application was received and a brief explanation of how that evidence was received. The following points are a basic explanation of the situation relating to the application.
- Sufficient numbers of people and years of use have been claimed to demonstrate the use of the path by "the public at large" for in excess of 20 years.
  - The Greater Manchester Fire Service own part of the land crossed by the claimed path. They object to the claim but have provided no evidence to further the investigation. Land that became obstructed, leading to the application being submitted, was owned by one owner from 1972 to 2006. In 2006 his grandson took over the land and prevented use by the public. There is no first hand evidence that the public were prevented from walking the claimed path during the period 1972 and 2006.
  - Those opposing the application state that a fence was erected during the 1980s. There is no first hand evidence that this fence ever obstructed the claimed path. The remains of a fence do exist on site, but its design is the same as that used around the "Firemans' Houses" and seems to have been erected in the late 1960s or early 1970s. There is no evidence that this fence was ever maintained and so prevented use of the claimed path once it had fallen into decay.
  - 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 obstructing vegetation and fencing would have to be removed by the owner or in default by the Council at the cost of the owner.
  - 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 CONCLUSION**

- 3.1 The Authority has properly discharged its investigatory obligations in this matter.
  - 3.2 The evidence available to the Council is sufficient to support that a right of way is reasonably alleged to subsist.
  - 3.3 That the Planning Control Committee accept the application.
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#### **List of Background Papers:**

Definitive Map and Statement.  
Equality Impact Assessment.

#### **Attachments:**

Plans 1, 2  
Appendix 1

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