

**REPORT FOR DECISION**

Agenda Item	
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**MEETING:** PLANNING CONTROL COMMITTEE

**DATE:** 23 DECEMBER 2008

**SUBJECT:** APPLICATION FOR MODIFICATION OF DEFINITIVE  
MAP AND STATEMENT, REAR OF NUMBERS 20 TO 30  
CHURCH LANE, PRESTWICH

**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 byway open to all traffic at the rear of Nos. 20 to 30, Church Lane, Prestwich

**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 insufficient to support that a right of way subsists or is reasonably alleged to subsist and to refuse the application.

<b>IMPLICATIONS -</b>	
<b>Corporate Aims/Policy Framework:</b>	Do the proposals accord with the Policy Framework? Yes
<b>Financial Implications and Risk Considerations</b>	See Paragraphs 2.1, 2.2 and 2.3
<b>Statement by Director of Finance and E-Government:</b>	If the route was included on the Definitive Map the costs of maintenance would need to be met by the Authority from the existing budget. No additional resources would be made available in the budget.
<b>Equality/Diversity implications</b>	None
<b>Considered by Monitoring Officer:</b> It would seem that the evidence submitted does not meet the requirements of an application pursuant to the Wildlife & Countryside Act 1981 as there is no evidence of use by the public at large and the route claimed does not connect at both ends with highways carrying vehicular rights.	
<b>Wards Affected:</b>	St. Mary's
<b>Scrutiny Interest:</b>	

**TRACKING/PROCESS EXEC DIRECTOR: Env & Development Services**

Chief Executive/ Management Board	Executive Member/ Chair	Ward Members	Partners
Scrutiny Commission	Executive	Committee	Council
		Planning Control 23 December 2008	

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## **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 byway open to all traffic at the rear of Nos. 20 to 30, Church Lane, Prestwich
- 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 by the public at large without permission or restriction for a period of at least 20 years.
- 1.3 This application relates to a Byway Open to All Traffic (BOAT). To successfully claim such a status, the applicant must show a right of way by motorised vehicle has been acquired by the public at large.
- 1.4 Plan 1 PRW/PRE/DC/1 shows the claimed route at the rear of Church Lane, Prestwich. Plan 2 PRW/RAMS/DC/2 shows the route within the surrounding area.

## **2.0 ISSUES**

### **Risk Management**

- 2.1 The inclusion of the BOAT on the Definitive Map would 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.
- 2.3 If a decision is taken not to make an order, the applicant can appeal to the Secretary of State and a Public Inquiry may follow.

### **Equality Impact Assessment**

- 2.4 It has been decided that this matter does not require an EIA as whatever decision is taken will not lead to a material change in the facilities available for use by the public.
- 2.5 The application was made after the redevelopment of Tulle Court commenced on land abutting the route.

- 2.6 The application is for a Byway Open to All Traffic (BOAT) to be added to the Definitive Map. A BOAT can be used by the public at large on foot, cycle, horse and in a motorised vehicle.
- 2.7 The statements submitted by the applicant have been written by residents of Church Lane who use the relevant route as access to their property. This may indicate that the residents have private vehicular rights, but for the purposes of the application the evidence should come from members of the public who have used the route on foot, cycle, horse or in a motorised vehicle. Furthermore the claimed route for motor vehicles must connect at both ends with highways carrying vehicular rights.
- 2.8 There is no evidence to suggest that the public at large have used the route in motorised vehicles. Pedestrians may have used the route as part of a footpath link to Tulle Court but this is irrelevant for an application for a BOAT as use by motorised vehicles needs to be shown. Possible use by pedestrians was taken into account during the planning stage of the Tulle Court redevelopment and the path linking from the rear of No.28 Church Lane was closed under Section 257 Town and Country Planning Act 1990. Therefore, any pedestrian rights have been extinguished. No objections were raised to this closure order.
- 2.9 The submitted statements claim the route to be at least 4 metres in width, as marked by the setts and kerbs forming the surface. Site visits where the width of setts and kerbs were measured and measurements from Ordnance Survey Maps indicate that the route is 2.4 metres in width and is not affected by the adjoining development.
- 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 insufficient to support that a right of way is reasonably alleged to subsist.
- 3.3 That the Planning Control Committee refuse 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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