

**REPORT FOR DECISION**

Agenda Item	
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**MEETING:** PLANNING CONTROL COMMITTEE

**DATE:** 17 FEBRUARY 2009

**SUBJECT:** APPLICATION TO MAGISTRATES COURT TO CLOSE  
TWO PARTS OF PUBLIC FOOTPATH NUMBER 47,  
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 proposals to make an application to the Magistrates Court to close two parts of Public Footpath Number 47, Prestwich.

**OPTIONS AND RECOMMENDED OPTION:**

That the Committee approve the application to the Magistrates Court to close two parts of Public Footpath Number 47, Prestwich in order to remove two unnecessary lengths of path which are shown on the Definitive Map and Statement as crossing the rear gardens of 32 properties.

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

<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>	
<b>Statement by Director of Finance and E-Government:</b>	Any costs associated with the closure process will be met from existing budgets for public rights of way. The proposed closure will not result in any additional expenditure commitments as no works are required for footpath diversions.
<b>Equality/Diversity implications</b>	None
<b>Considered by Monitoring Officer:</b> The proposal meets the criteria for a Stopping-Up Order application under s116 of the Highways Act 1980.	
<b>Wards Affected:</b>	St. Mary's
<b>Scrutiny Interest:</b>	

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

Chief Executive/ Management Board	Executive Member/ Chair	Ward Members	Partners
Scrutiny Commission	Executive	Committee	Council
		Planning Control 17/02/09	

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**1.0 BACKGROUND**

1.1 The Highway Authority has received a request from Assistant Director (Property and Technical Services) to pursue the closure of two parts of Public Footpath Number 47, Prestwich on the grounds that they are no longer necessary.

- 1.2 Section 116 of the Highways Act 1980 permits the closure of a public right of way or part of a public right of way by application to the Magistrates Court if it is unnecessary.
- 1.3 Plan 1 PRW/47/PRE/DC/1 shows the path at the rear of St Ann's Road and Ruskin Road, Prestwich. The two parts to be closed are shown as bold, solid lines, A to B and C to D.
- 1.4 Public Footpath Number 47, Prestwich covers a network of paths through Prestwich Clough. The relevant parts requiring closure run to the rear of houses on St Ann's Road and Ruskin Road.

## **2.0 ISSUES**

### **Risk Management**

- 2.1 The majority of the land affected is owned by the Council and has traditionally been let to householders on Ruskin Road and St Ann's Road, as extensions to existing gardens. Although the footpath has not been used for in excess of 60 years, there remains the potential for third parties to require it to be reinstated, so disrupting the longstanding use by householders. Thirty two extended gardens obstruct the path at numerous locations with fences, buildings, landscaping and vegetation.

It is possible that the Magistrates Court will not allow the closure.

### **Equality Impact Assessment**

- 2.2 It has been decided that this matter does not require an EIA as closure of the two parts of the path will not lead to a material change in the facilities available for use by the public.
- 2.3 Prestwich UDC, as predecessors in title to Bury MBC, authorised the enclosure of the affected land in 1940, for use as allotments. However, its use has changed to that of private gardens over time.
- 2.4 The Court will have to be satisfied that the existing path is unnecessary and that there are acceptable alternative routes available.
- 2.5 Public Footpath Number 47, Prestwich was created in 1953 by Prestwich Urban District Council following the requirement in the National Parks and Countryside Act 1949 for surveying authorities to produce definitive maps and statements to record the public rights of way. The path does not appear on the map of "Public Rights of Way approved by the Prestwich Urban District Council at a meeting held on the 9<sup>th</sup> June 1937".
- 2.6 The timing of the creation of garden extensions and the making of the definitive map and statement strongly suggests that the obstructed parts of Public Footpath Number 47, Prestwich have never been walked by the public in all the time the definitive map and statement has been in existence.
- 2.7 The Authority holds no record of the public expressing a wish to use the relevant parts of Public Footpath Number 47, Prestwich.

- 2.8 An attempt was made to resolve this matter in the late 1990s when orders were made for the closure of the continuation of Public Footpath Number 47 to the rear of Nos 38 to 58 Ruskin Road and the diversion of those sections currently under consideration. A Planning Inspector allowed the closure at a Public Inquiry in 1998 but refused the diversion due to inaccuracies on the order plan.
- 2.9 Despite the Planning Inspector's decision, neither the public nor user groups have requested that action be taken to reinstate the path.
- 2.10 The area to the north of the properties on St Ann's Road and Ruskin Road is managed by the Council as open space and many well used pedestrian routes exist which act as alternatives to the parts of the path to be closed. Two short sections of path are to be added to the definitive map and statement before the application to the Magistrates Court is heard in order to legally recognise those paths being used as an alternative to Public Footpath Number 47. The approximate locations of these paths are indicated on Plan 1.
- 2.12 Closure of the two parts of the path shown as bold solid lines on the attached plan, will allow the Council to manage the garden extensions without the complication of an unused and unnecessary public footpath and will finally resolve the situation for the residents affected. The first part, indicated as A to B on the attached plan is 188 metres in length. The second part, C to D is 135 metres in length.
- 2.13 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 land adjoining the highway.

### **3.0 CONCLUSION**

- 3.1 Two parts of Public Footpath Number 47, Prestwich shown as solid black lines on the attached plan, have been obstructed by approximately 32 allotments/gardens extensions for in excess of 60 years and before the creation of the definitive map and statement. They are not required by the public as Prestwich Clough provides numerous alternative paths and the continued presence on the legal records causes concern to the residents of St Ann's Road and Ruskin Road and creates complications for the management of the land by the Council. An application to the Magistrates Court to stop-up two parts of the path under Section 116 of the Highways Act 1980 is required to resolve this situation.
- 3.2 That the Committee authorise the Council Solicitor to make the application to the Magistrates Court to close two parts of Public Footpath Number 47, Prestwich shown as bold solid lines on the attached plan, under Section 116 of the Highways Act 1980.

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**List of Background Papers:**

Definitive Map and Statement.

Prestwich Public Rights of Way Map (9<sup>th</sup> June 1937)

**Attachments:**

Plan 1

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