

# REPORT FOR DECISION

**MEETING:** PLANNING CONTROL COMMITTEE

**DATE:** 17 NOVEMBER 2009

**SUBJECT:** APPLICATION FOR MODIFICATION OF DEFINITIVE MAP AND STATEMENT, LAND AT COCKEY MOOR ROAD, RADCLIFFE

**REPORT FROM:** IAN CROOK, TEMPORARY CHIEF ENGINEER

**CONTACT OFFICER:** DAVID CHADWICK, PUBLIC RIGHTS OF WAY OFFICER

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

**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 public footpath on land adjacent to Cockey Moor Road, Radcliffe.

**OPTIONS & 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 accept the application.

**IMPLICATIONS:**

**Corporate Aims/Policy Framework:** Do the proposals accord with the Policy Framework? Yes

**Financial Implications and Risk Considerations:**

**Statement by Director of Finance and E-Government:** If the route is included on the Definitive Map any required costs of maintenance will need to be met by the Authority from the existing budget. No additional resources would be made available

**Equality/Diversity implications:** See paragraph 3.1

**Considered by Monitoring Officer:**

**Are there any legal implications?**

**Staffing/ICT/Property:** No implications

**Wards Affected:** Radcliffe North

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

**TRACKING/PROCESS**

**EXECUTIVE DIRECTOR:  
ENVIRONMENT AND DEVELOPMENT SERVICES**

Chief Executive/ Management Board	Executive Member/Chair	Ward Members	Partners
Scrutiny Commission	Executive	Committee	Council
		<b>17 November 2009</b>	

**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 public footpath on land adjacent to Cockey Moor Road, Radcliffe.

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 Plan 1 PRW/RAD/DC/1 shows the claimed route on land adjacent to Cockey Moor Road, Radcliffe.

## **2.0 RISK MANAGEMENT**

- 2.1 The inclusion of a public footpath 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 to accommodate this change should it take place.
- 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.

## **3.0 EQUALITY AND COHESION IMPACT ASSESSMENT (ECIA)**

- 3.1 An ECIA initial screening form has been completed (Appendix 1). It has been decided that a full impact assessment is not required.

## **4.0 ISSUES**

- 4.1 The application was made after fencing was erected preventing access to and from the footpath at its junction with the footway of Cockey Moor Road, thus preventing use of the path.
- 4.2 The applicant provided evidence forms from 32 local residents, all claiming to have used the claimed route.
- 4.3 The application is sufficient in the following aspects –
  - i) Five evidence forms confirm over 20 years use of the claimed route.
  - ii) Twelve residents provided letters indicating over 20 years use of the claimed path after all residents in the immediate area were asked for any relevant information.
  - iii) Three evidence forms and two letters from residents indicated knowledge and use of the route for several years, but it was not clear whether this was in excess of 20 years for each individual.

- iv) The landowner, the Trustees for the Earl of Wilton Estate, based their objection to the application on the fact that the "long term tenant" of the relevant land ploughed the area on a regular basis thus preventing continuous use of the path by the public. A short discussion with the tenant, Mr Fairclough discovered that he had tenanted the land for between 12 and 15 years (by 2009). This does not preclude anyone claiming use of the route before 1994 and much of the evidence gathered relates to usage from before that time. In addition, Mr Fairclough's grandson has submitted an evidence form claiming 10 years use of the path from 1988 to 1998.
- v) Six "objections" have been received, making reference to the relatively recent obstruction of the path and its overgrown nature. Evidence from the claimant and residents supports this view, but this does not affect the considerable body of evidence of use of the path before it became unusable.
- vi) The claimed path is shown on the current and on past Ordnance Survey maps and a gap was deliberately left between the properties on Cockey Moor Road at the time they were built to accommodate access. Whilst an application relates only to actual use of a path by the public, these two facts do add support to the fact that a path could subsist or reasonably be alleged to subsist.

## **5.0 CONCLUSION**

- 5.1 The Authority has properly discharged its investigatory obligations in this matter.
- 5.2 The evidence available to the Council is sufficient to support that a right of way is reasonably alleged to subsist.
- 5.3 That the Planning Control Committee accept the application and the Council Solicitor is requested to make the relevant Modification Order.

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### **List of Background Papers:**

#### **Attachments:**

Appendix 1 – ECIA Initial Screening Form

**Contact Details:** Ian Crook                      0161 253 6309  
David Chadwick                      0161 253 5821