

REPORT FOR DECISION

MEETING: PLANNING CONTROL COMMITTEE

DATE: 20TH JULY 2010

SUBJECT: APPLICATION FOR MODIFICATION OF DEFINITIVE MAP AND STATEMENT, LAND AT MILE LANE, RADCLIFFE

REPORT FROM: IAN CROOK, TEMPORARY CHIEF ENGINEER

CONTACT OFFICER: DAVID CHADWICK, PUBLIC RIGHTS OF WAY OFFICER

TYPE OF DECISION: EXECUTIVE (NON KEY)

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

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 Mile Lane, Bury

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 draft 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 insofar as part of the application is concerned.

IMPLICATIONS:

Corporate Aims/Policy Framework:

Do the proposals accord with the Policy Framework? Yes

Financial Implications and Risk Considerations:

See para 2.0 for details of risks associated with this proposal

Statement by Director of Finance and E-Government:

The cost of maintaining the additional footpath would need to be met from existing resources. There is the potential that the authority will have to meet one-off enquiry & legal costs if objections or appeals are made as a result of the decision.

Equality/Diversity implications:

See paragraph 3.1

Considered by Monitoring Officer:

Yes

Wards Affected:

Church

Scrutiny Interest:

Economy, Environment and Transport

TRACKING/PROCESS

**DIRECTOR: EXECUTIVE DIRECTOR
ENVIRONMENT AND DEVELOPMENT SERVICES**

Chief Executive/ Management Board	Executive Member/Chair	Ward Members	Partners
Scrutiny Commission	Executive	Committee	Council
		20th JULY 2010	

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 Mile Lane, Bury.
- 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/BURY/DC/1 shows the claimed route on land adjacent to Mile Lane, Bury

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. It has been decided that a full impact assessment is not required.

4.0 ISSUES

- 4.1 The application was made after outline planning permission was granted on land abutting Mile Lane Health Centre. The proposed development would obstruct the claimed route.
- 4.2 The claimed route is across a grassed area and has had a concrete flagged surface for several years until these flags were removed in 2009. A clear trodden route remains.
- 4.3 The applicant provided evidence forms from 31 local residents, all claiming to have used the claimed route.
- 4.3 The application is sufficient in part:

i) The evidence forms claimed a route across the grassed area (shown as A to B on Plan 1) and then onwards across the car park of Mile Lane Health Centre (B to C). Whilst interviews and evidence from those submitting evidence forms confirmed that one specific route across the car park could not be shown to subsist or reasonably alleged to subsist, the route across the grassed area, along a path that had been flagged for several years had sufficient usage to warrant a Modification Order.

ii) Twenty residents have confirmed use of the route across the grassed area in excess of twenty years. Some claim to have used the route since the surrounding houses were built in 1971.

iii) The landowners, Dr K. Kotegoankar, and Mr Latimer of Latimer Lee Solicitors have objected to the application, stating that the flagged route has been used by "permission" and that the Council did not recognise the route as a public right of way when it sold the land to them in 1999.

iv) No evidence was held by or knowledge known to the Authority in 1999 as to any usage of the route by the public and it was not disclosed at the time of sale. The current application has required the matter to be investigated now.

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 on part of the route the subject of the application.

5.3 That the Planning Control Committee approve the application and the Council Solicitor is requested to draft the relevant Modification Order in respect of that part of the application route found to subsist or is reasonably alleged to subsist (A to B on Plan 1)

List of Background Papers:

Attachments: Plan 1

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