

REPORT FOR DECISION

Agenda Item	
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MEETING: PLANNING CONTROL

DATE: 19 OCTOBER 2010

SUBJECT: APPLICATION TO MAGISTRATES COURT TO CLOSE PUBLIC FOOTPATH NUMBER 40, ST ANDREWS, RADCLIFFE AND PART OF PUBLIC FOOTPATH NUMBER 41, ST ANDREWS, RADCLIFFE

REPORT FROM: TEMPORARY CHIEF ENGINEER

CONTACT OFFICER: DAVID CHADWICK
TEAM LEADER RIGHTS OF WAY

TYPE OF DECISION: EXECUTIVE (NON KEY DECISION)

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

SUMMARY:

This report contains information regarding proposals to make an application to the Magistrates Court to close Public Footpath Number 40, St Andrews, Radcliffe and part of Public Footpath Number 41, St Andrews, Radcliffe.

OPTIONS AND RECOMMENDED OPTION:

That the Committee approve the application to the Magistrates Court to close Public Footpath Number 40, St Andrews, Radcliffe and part of Public Footpath Number 41, St Andrews, Radcliffe in order to remove unnecessary sections of path which are shown on the Definitive Map and Statement crossing properties on Hampson Fold, Lowe Street, Mosley Street and Park Grove.

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

IMPLICATIONS -

Corporate Aims/Policy Framework:

Do the proposals accord with the Policy Framework? Yes

Financial Implications and Risk Considerations

Legal costs associated with the application and advertising costs are estimated to be around £1300.
See section 2 re risks associated with this proposal

Statement by Director of Finance and E-Government:

The costs of £1300 will be met from the highways revenue budget.

Equality/Diversity implications

None

Considered by Monitoring Officer:

Yes

Staffing/ICT/Property:

Wards Affected:

Radcliffe West

Scrutiny Interest:

TRACKING/PROCESS

EXEC DIRECTOR: Env & Development Services

Chief Executive/ Management Board	Executive Member/ Chair	Ward Members	Partners
Scrutiny Commission	Executive	Committee	Council
		Planning Control 19.10.10	

1.0 BACKGROUND

1.1 Plan PRW/40/SA/DC shows the paths to be closed as bold, solid lines, D – C – B and A – C.

1.2 An application under Section 116 of the Highways Act 1980 permits the closure of a right of way by application to the Magistrates Court if it is unnecessary.

2.0 RISK MANAGEMENT

- 2.1 The Magistrate may refuse to make the closure orders. This would have to be resolved before the redevelopment of the Red Bank House site.

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 Public Footpath Number 40 St. Andrews, Radcliffe and part of Number 41 St. Andrews, Radcliffe run through properties built over 40 years ago at addresses on Hampson Fold, Lowe Street, Mosley Street and Park Grove.
- 4.2 Although a footpath connection was provided and subsequently adopted by the Highway Authority, it would appear from the Authority's records that the relevant diversion/closure orders were not made.
- 4.3 The proposed demolition of Red Bank House and the intended redevelopment of the site has brought the matter to officers' attention and brought about the need for the situation to be rationalised.
- 4.4 The powers available to the Authority to resolve the situation are limited due to the fact that the properties are long since completed and any obvious diversion routes have already been adopted by the Highway Authority. Previous Counsel opinion on such situations is that application to the Magistrates Court under Section 116 of the Highways Act 1980 for an order to stop up the footpath is the only way of achieving the desired outcome.
- 4.5 The Court will have to be satisfied that the existing paths are unnecessary and that there are acceptable alternative routes available.
- 4.6 The Authority holds no record of anyone wishing to exercise their rights to use the paths which have been obstructed for over 40 years. Footpath routes through the site and the footways of the adopted highway provide alternatives. Therefore, both criteria identified in paragraph 4.5 appear to be met.
- 4.7 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 lands adjoining the highway.

Furthermore, any person who uses the highway, and any person aggrieved by the making of the Order has the right to be heard at Court when the application is made. The right is made clear in the published Notice.

4.8 The occupiers of the properties crossed by the paths have been consulted on the proposed application for closure and no objections or comments have been made.

5.0 CONCLUSION

5.1 Public Footpath Number 40, St Andrews Radcliffe and part of Public Footpath Number 41, St Andrews, Radcliffe have been obstructed by properties on Hampson Fold, Lowe Street, Mosley Street and Park Grove for over 40 years. The public have used the alternative highways for this period of time but no closure order was made in order to delete the unnecessary paths from the Definitive Map and Statement. An application to the Magistrates Court to stop-up the path under Section 116 of the Highways Act 1980 is required to resolve the situation.

5.2 That the Committee authorise the Council Solicitor to make the application to the Magistrates Court to close Public Footpath Number 40, St Andrews, Radcliffe and part of Public Footpath Number 41, St Andrews, Radcliffe under Section 116 of the Highways Act 1980.

List of Background Papers: Definitive Map and Statement.

Contact Details: Ian Crook 0161 253 6309
David Chadwick 0161 253 7226
