

**REPORT FROM: NEIGHBOURHOOD SERVICES MANAGER**

**TO: EXECUTIVE**

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**FOOTPATH BETWEEN KNOTTS DRIVE AND ST. ANDREW'S CLOSE, COLNE**

**PURPOSE OF REPORT**

Colne and District Committee have recommended that a footpath across Council owned land is added to the definitive map of public rights of way.

**RECOMMENDATION**

That the Democratic and Legal Manager be authorised to enter an agreement with Lancashire County Council under Section 25 of the Highways Act 1980 to dedicate the footpath referred to in this report as a public right of way.

**REASONS FOR RECOMMENDATIONS**

- (1) To carry out the recommendation of Colne and District Committee in an efficient manner.
- (2) To ensure that the footpath is added to the definitive map and statement, and becomes maintainable at public expense.

**ISSUE**

1. Pendle Council owns an area of land known as the Knotts Lane Pond Site, which is situated between Knotts Lane and St Andrews Close in Colne. There is a footpath across the site which is shown on the map attached. The footpath has no recorded status as a public right of way. Colne and District Committee have requested that the footpath is added to the definitive map of public rights of way. This would have the effect of protecting the footpath under the Highways Act 1980 by placing a duty on the highway authority to assert and protect the rights of the public.

2. There are two options available for seeking to have the footpath recorded on the definitive map. The first option is for the Council to unilaterally dedicate the path as a public right of way, and then apply to have it added to the Definitive Map. The second option is to enter into a formal agreement with Lancashire County Council to create a public right of way. The advantage of the formal agreement, (i.e. the second option), is that the footpath would become publicly maintainable by the highway authority (i.e. by Lancashire County Council).

## **OPTION 1 – DEDICATION OF THE FOOTPATH AS A PUBLIC RIGHT OF WAY**

3. Any landowner can dedicate a public right of way across land in their ownership. Therefore the Council could dedicate a public right of way across the land by a formal Council resolution to this effect. However, the Council would still be responsible for maintaining the footpath. This responsibility would be transferred to any subsequent owners. If a public right of way is dedicated in this way then an application can be made to Lancashire County Council to have the footpath added to the Definitive Map. The process which the County Council has to follow for making Definitive Map Modification Orders is complex, and therefore costly. Typically the length of time for applications to be processed is measured in years. If the footpath is added to the definitive map in this way it would be recorded as a privately maintainable footpath.

## **OPTION 2 – ENTER INTO A SECTION 25 AGREEMENT**

4. Section 25 of the Highways Act 1980 enables a local authority to enter into an agreement with a person who has the necessary power to dedicate the land as a public right of way – i.e. the landowner. We take the view that Pendle Council as a local authority cannot enter into an agreement with itself as the landowner. Therefore, in this case an agreement would need to be between Lancashire County Council as the local authority and Pendle Council as the owner (parishes and town council are not eligible local authorities under Section 25). If a Section 25 agreement is made then the footpath would become maintainable at public expense and the County Council may automatically modify the Definitive Map to show the new public right of way.

5. A Section 25 agreement would be the most efficient way of having the footpath in question added to the Definitive Map. It would also have the advantage of making the footpath maintainable at public expense like the vast majority of other public footpaths.

6. If either Option 1 or 2 is selected we have recently experienced very long delays with any rights of way matters which need to be considered by Lancashire County Council's Legal Services department. This is likely to be no exception.

## **OPTION 3 – TAKE ACTION TO PREVENT THE CREATION OF A RIGHT OF WAY**

7. If the Committee decides that the footpath should not be dedicated as a public right of way then it is not sufficient to do nothing. Under Section 31 of the Highways Act 1980 there is presumption that the owner has dedicated a public right of way if the public have used a route as if it were a footpath for 20 years or more. Therefore by doing nothing the footpath would automatically become a right of way in a few year's time, and anyone could apply to LCC to have the path added to the Definitive Map. Section 31 does not apply if the landowner makes it clear to the public that it does not intend to dedicate a right of way. This can be achieved by installing and maintaining a small sign to this effect at either end of the path.

## **IMPLICATIONS**

**Policy:** None

**Financial:** It is possible that the County Council will ask for the existing footpath to be improved in some way under the terms of any agreement. The costs of such work will be met from existing budgets, unless we think that the works deemed necessary by the County Council is excessive, in which case the issue will be reported back to committee. There are no other costs apart from the staff time required.

**Legal:** The dedication of a public right of way would effectively prevent the land occupied by the new path being used for other purposes in the future. A decision to dedicate a public right of way, or to enter into a dedication agreement cannot be reversed or revoked.

**Risk Management:** The Council's liability to claims for slips and trips would be eliminated in the event of a Section 25 agreement coming into effect.

**Health and Safety:** None arising directly from this report.

**Sustainability:** The footpath enhances the transport network for pedestrians.

**Community Safety:** Arguably, the footpath could provide an escape route for a burglar, and the adjoining land could provide a hiding place for an attacker.

**Equality and Diversity:** None arising directly from this report.

## **APPENDICES**

Map attached.

## **LIST OF BACKGROUND PAPERS**

Minutes of Colne and District Committee of 31<sup>st</sup> March 2016