

REPORT FROM: NEIGHBOURHOOD SERVICES MANAGER

TO: WEST CRAVEN COMMITTEE

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PRIVATE STREET LEGISLATION: MOSS SIDE, BARNOLDSWICK

PURPOSE OF REPORT

To clarify the highway status for Moss Side, Barnoldswick.

RECOMMENDATION

- (1) That residents of Moss Side approach Lancashire County Council to establish whether highway rights exist on Moss Side between points B and C on the plan attached.

REASON FOR RECOMMENDATION

- (1) To clarify whether Moss Side is for public use.

BACKGROUND

1. Minute 169(c) from the West Craven Committee on 28 March 2017 reads:

“Access to Long Ing Development Site

As requested at the last meeting, the Planning, Building Control and Licensing Services Manager submitted a report on the options to prevent access to the Long Ing development site other than from the approved access. He also reported that he had written to the developer reporting complaints from local residents about nuisance and inconsiderate behaviour, highlighting the correct access point and asking that anyone working on the development be notified of this before they visited the site. The developer had apologised for the behaviour and inconvenience to local residents.

However, it was noted that there was still the issue of private street works on Moss Side.

RESOLVED

- (1) That the Planning, Building Control and Licensing Services Manager be asked to ensure that the case officer obtain a method statement about how the site would be managed during development in accordance with Condition 5 of the appeal decision.

- (2) That the Neighbourhood Services Manager be asked to submit a report on the situation with existing private street works on Moss Side.”

2. Minute 11 from the West Craven Committee on 9 May 2017 reads:

“Private Street Works, Moss Side

This issue had come about as a result of the new housing development at Long Ing. Residents on Moss Side had had problems with workmen attempting to access the site from their street and were not sure about their legal rights on this unadopted highway.

RESOLVED

That the Neighbourhood Services Manager be asked to report back to the next meeting on private street legislation regarding access from developers or future householders.

REASON

To clarify the legal position for residents living on an unadopted street.”

ISSUE

3. Some of the Contractor’s workers had been using Moss Side as a point of access to the development site and the residents wanted clarification as to whether there was public access to Moss Side.
 4. The status of Moss Side in terms of highway law must first be established.
 5. According to Lancashire County Council’s records, Moss Side is classed as unadopted highway. A highway is an area of land which the public at large have the absolute right to “pass and repass without let or hindrance”. The unadopted part simply means that such a highway is not maintained at public expense.
 6. By statutory definition, a private or unadopted street is a road not maintainable at public expense. However, a private road is not necessarily a road to which the public does not have access. Nor is it a road exempt from law.
 7. Some private roads are highways, but not all, and the position is not always easy to determine. A private road can either become a highway through statutory procedures after which it becomes an adopted road (ie a road maintainable at public expense), or through the common law process of dedication and acceptance.
 8. A way becomes a highway when:
 - the owner dedicates it to the public as a highway, by allowing them to use it; and
 - the public accepts the dedication, by using the way.
- Then, after a period of time (the length of which depends on the circumstances), a public right of way arises; or a highway is created.
9. The first part of Moss Side (A–B on the plan provided) has seemingly been dedicated as highway and used for a period of time where it can be assumed that it is highway.

10. However, it seems doubtful that the second part of Moss Side (B–C on the plan provided) has been dedicated as highway because the “public at large” has never had reason to go up there. This is contrary to Lancashire County Council’s highway records and as such should be challenged by the residents of Moss Side.

CONCLUSION

11. The second part of Moss Side (B–C on the plan provided) appears to be a private street and not a highway. This contradicts Lancashire County Council’s highway records and the residents need to approach Lancashire County Council to seek clarification on the point of whether highway rights exist on Moss Side between points B and C on the plan attached. If necessary, they may make an appropriate formal application to modify Lancashire County Council’s highway records.

IMPLICATIONS

Policy: None arriving directly from the report.

Financial: None arriving directly from the report.

Legal: As set out in the report.

Risk Management: None arriving directly from the report.

Health and Safety: None arriving directly from the report.

Sustainability: None arriving directly from the report.

Community Safety: None arriving directly from the report.

Equality and Diversity: None arriving directly from the report.

APPENDICES

Appendix. Plan.

LIST OF BACKGROUND PAPERS

None.



- Districts**
- Other District/Unitary Authority
 - Lancashire Districts

Moss Side Barnoldswick



Date: 20/09/2017

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