

TRAFFORD COUNCIL

Report to: PLANNING COMMITTEE

Date: 13th November 2014

Report for: Decision

Report of HEAD OF HIGHWAYS

Report Title

APPLICATION FOR AN ORDER TO STOP UP PART OF THE UNRECORDED PUBLIC RIGHT OF WAY AT DENESWAY adjacent to the eastern boundary of 101 Moss Lane, Sale.

Summary

To seek the approval for the making of an Order for the extinguishment of part of the footpath at Denesway, Sale to allow the implementation of the planning permission approved under application 82033/FULL/2013.

Recommendation

- 1 That the Council make and advertise an Order under S257 of the Town and Country Planning Act 1990 to have part of the unrecorded public right of way referred to in this report stopped up.**
- 2 That if objections to the Order are received, the Director of Legal & Democratic Services, in consultation with the Head of Highways Environment, Transport & Operations Service, be authorised to decide on behalf of the Council whether the objections should be dealt with by written representation procedure or at a local public enquiry.**

2. Reason for recommendation:

- 2.1 An Order is necessary under S257 the Town and Country Planning Act 1990 to have part of an unrecorded public right of way stopped-up, to enable the implementation of a Planning Consent for the change of use from open land to private garden area enclosed by the erection of fencing and vehicle access gates.

3. Background

- 3.1 The applicant, Mr P Donnelly, resident at 101 Moss Lane, has been granted planning permission (ref: 82033/FULL/2013) for change of use of open land to form private garden area associated with dwelling house and erection of 2m high fencing with vehicle access gates.
- 3.2 The current application has been made to stop up a 39m length of unrecorded right of way as shown on the attached plan, as **Addendum 1**. The route which is proposed to be stopped up will change in use from open land to enclosed private garden and the Planning Consent granted for this proposal will require this route to be stopped up before implementation.

4. Summary of Investigations

- 4.1 Denesway connects The Avenue and Moss Lane in Sale. Only the southwest section of Denesway is adopted, with no public vehicular access between the north and south sections.
- 4.2 Definitive Footpath No. 26, Sale leads in a straight line directly from the end of the northern adopted footway of Denesway to Cecil Avenue and is the main pedestrian route between these roads. This footpath has a bituminous macadam surface and is illuminated by street lighting, maintained by the Highway Authority, and is unaffected by the proposed stopping up application. A review of old maps, circa 1910, has revealed that this footpath still follows the same alignment as it has for over 100 years.
- 4.3 Highway and Ordnance Survey plans of the northern section of the route show it named also as Denesway. The route is sufficiently wide as it leaves Cecil Avenue to provide vehicular and pedestrian access for 101 Moss Lane. South of the entrance to 101 Moss Lane, the path is shown reducing to a width suitable for pedestrian use only. This route is not adopted, nor is it shown on the Definitive Rights of Way map. The route is clearly shown on Highway and Ordnance Survey plans and is part of a publicly accessible open space.
- 4.4 The Highway Authority is satisfied that it is necessary to stop up the unrecorded Public Right of Way shown on the attached plan, **Addendum 1**, and being a length

of approximately 39 metres, and width from 1.8m to a maximum 3.5m to enable the implementation of the development for which planning permission has been granted because the proposed development will involve the change of use from open land to private garden area enclosed by the erection of fencing and vehicle access gates.

- 4.5 The condition of the unrecorded Public Right of Way was assessed by site inspection in May 2014. Photographs are included in **Addendum 2**. From Cecil Avenue to the gateway of 101 Moss Lane, the route appeared to be unmetalled with no visible gullies or kerbs, nor is there street lighting at this location. South of the entrance to 101 Moss Lane, the route of the unrecorded Public Right of Way is again unmade, and covered in parts by what appears to be recently deposited top soil overgrown with naturally occurring vegetation of differing forms. There was no obvious evidence this area has been recently used. However excavation works carried out on 29th July 2014 to remove parts of the soil heap uncovered a kerb line formed of stone setts on the line of the path indicated on highway records and ordnance survey plans. Residents claim that the path was well used prior to it being made unusable by the recent deposition of top soil over it. Public consensus is that the route is a public right of way with one resident claiming that the Council have placed stone on the surface in the past following complaints about its condition. There is some evidence of walked tracks through the wooded area from Cecil Avenue to the west. These tracks would not be affected by the proposed stopping up application.
- 4.6 According to Highway Records over the last 5 years, there has been no evidence of complaints from the public that access has been blocked to any routes at this locality, However local residents claim that Trafford have maintained the path in the past following complaints about its condition.
- 4.7 North of the access to 101 Moss Lane there is a pedestrian gate from Denesway to the garden of 101A Moss Lane. The gate appears unused, but the proposed stopping up application does not affect the accessibility to this gate.
- 4.8 A survey of usage of paths in this location was undertaken in April 2014. The paths were monitored at peak periods in the morning and afternoon and a quieter period in mid-morning. The survey revealed that Definitive Footpath No.26, Sale is used by over 98% of users, predominantly pupils of Ashton on Mersey School. The remaining less than 2% of users followed the unmade worn tracks through the wooded area. During the survey periods no users appeared to use the land owned by the applicant which is subject to this stopping up order. It was therefore concluded that the Stopping up Order seems unlikely to be detrimental to public usage of this area.
- 4.9 If there are objections to the Order, which cannot be resolved by negotiation and subsequently withdrawn, then the matter will be submitted to the Secretary of State for determination, who may or may not confirm the Order after hearing evidence by way of Local Public Inquiry or written representations.

Schedule

4.10 The following footpath is proposed to be stopped up.

Denesway

Proposal to stop up 39 metres of unrecorded footpath adjacent to the easterly boundary of no. 101 Moss Lane, Sale, shown as a black line between point A and point B on Addendum 1 (attached)

5. Financial Implications:

- 5.1 The applicant, Mr Donnelly has agreed to bear Highway and Legal fees related to the application.
- 5.2 If the Order needs to be determined by way of a Public Inquiry, the Applicant has confirmed that he will be responsible for presenting the case in support of the extinguishment either at Local Public Inquiry or in written representations. The Council will only facilitate the Inquiry, and adopt a neutral position.

6. Conclusions:

- 6.1 It is necessary for an Order under the Town and Country Planning Act 1990 s257 to be made and advertised to allow the planning consent (82033/FULL/2013) to be implemented.

Further information from;

Asset & Development

P Kelly Extension: 2566

Proper Officer for the purposes of L.G.A. 1972, s.100D
Environment, Transport, and Operations Services
Background Papers: Town and Country Planning Act 1990

Addendum 1- Plan of Stopping-up of part of un-recorded Public Right of Way indicated between points **A** and **B** adjacent to 101 Moss Lane: dated 1st October 2014.

Addendum 2- Photographs

Addendum 2

