

**Report to:** Corporate Issues Scrutiny Committee

**Date:** 15<sup>th</sup> October 2007

**Report of:** Director of Legal and Democratic Services

**Report No:** 16

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**Report Title:** **Public Inquiry into a Modification Order to establish a public footpath along Darcy Lever Railway Cutting**

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**Non Confidential:** This report does **not** contain information which warrants its consideration in the absence of the press or members of the public.  
*(delete as approp)*

**Purpose:** To provide Members with information.

**Recommendations:** To note the report.

**Decision:** To note the report.

**Background Doc(s):** N/A

**Summary:** This report details the costs and officer time spent on the public inquiry into the public footpath claim.  
*(on its own page with background docs)* There are no background documents.

## **1. Background Information**

1.1 A public inquiry was held over two days, Tuesday 8<sup>th</sup> and Wednesday 9<sup>th</sup> May 2007, into a Modification Order made under S53 of the Wildlife and Countryside Act 1981 to add a claimed public footpath to the Definitive Map and Definitive Statement for Bolton.

1.2 The Modification Order had been made following a claim made on behalf of the Darcy Lever Residents Association that there was enough evidence of long usage of a footpath by the public along the disused former railway cutting at Darcy Lever to warrant the recording of the footpath as a public right of way on the Definitive Map and Statement for Bolton. The application for the Order had been accompanied by witness evidence forms completed by over a dozen local people. The pre-order consultation process showed that, in addition to attracting much support locally, the application was strenuously opposed by the landowner, Blackthorn Homes (Bolton) Ltd., a development company which had applied for planning permission to develop on the land and was going through the planning inquiry process.

1.3 In the light of the degree of local interest in the planning process and of the relevant statutory requirement that the evidence for the Order needed to show that a right of way “subsists or is reasonably alleged to subsist”, Counsel’s opinion was sought on the merits of the application for the Modification Order prior to a report being presented to Planning and Highways Committee. Counsel’s view was that the evidence on paper alone was insufficient to show that a right of way subsisted but was sufficient to establish that a right of way was reasonably alleged to subsist. She therefore advised that a Modification Order be made on that basis so that all the evidence could be tested at a public inquiry.

1.4 The landowners submitted an objection to the Order which then, in accordance with statutory requirements, had to be sent to the Secretary of State for a decision as to how the Order would be examined. In the circumstances he informed Legal Services in a letter dated 12<sup>th</sup> February that he felt it appropriate to hold a public inquiry rather than a hearing or dealing with the matter by way of written representations.

## **2. Pre – Public Inquiry Preparation.**

2.1 An order-making authority is instructed by the Planning Inspectorate to make the practical arrangements for the holding of an Inquiry. The costs are detailed in the Appendix to this report.

2.2 The holding of the Public Inquiry had to be advertised in the Bolton News at a cost of £330.10 + VAT.

2.3 In addition to arranging the matters referred to in paragraphs 1.3 – 2.2 above, Solicitor time was spent in preparing a witness statement for the Council’s footpath officer and assisting with the preparation of statements for the applicant and for local people who wanted to give evidence at the Inquiry.

2.4 Instructions were sent to Counsel for a pre-inquiry conference with her, to be attended by the solicitor dealing with the matter, the Council’s footpath officer and its chief witness (the applicant). During the conference there was discussion about a judicial decision made subsequent to Counsel’s original advice, making it incumbent on an order-making authority to show, at public inquiry stage, that it supported the Order on the more stringent basis that the footpath actually subsisted. In the light of video evidence and further witness evidence which had been received since the original resolution to make the Order, a resolution was sought from the Executive Member under emergency powers, to support the Order on that stricter basis.

### **3. Public Inquiry**

3.1 The Public Inquiry lasted two full days. The Council called eight witnesses, the objector called four witnesses and six members of the public spoke in support of the Order. At the site visit following the inquiry, the Inspector required the presence only of the Council's footpath officer, the objector, the applicant and any member of the public who wished to attend.

3.2 The Inspector ultimately decided that there was insufficient evidence to show that a right of way subsisted and that the landowner's demonstration of lack of intention to dedicate the path rebutted any presumption of dedication. The Order therefore was not confirmed.

### **4. Financial Considerations**

4.1 There was no application for costs by the objector's solicitors. Each party therefore bore their own costs of the Public Inquiry. The Planning Inspectorate (and therefore ultimately, the tax payer) met the costs of the Inspector including travelling expenses and two nights local accommodation.

4.2 The details of the costs incurred by the Council and the time spent by Council officers in connection with the Public Inquiry are set out in the Appendix accompanying this report. The total cost of the Public Inquiry for the Council amounts to £17,537.87.

### **5. Comments**

5.1 Following the Public Inquiry the solicitor dealing with the matter received compliments by letter and email from the applicant and secretary of the local residents association, for the work both she and Counsel had put into the attempt to persuade the Inspector at the Public Inquiry to confirm the Order. There appeared to be satisfaction with the way the Council's case for the Order was handled and that residents had been able to have their say in what had been a matter of great concern locally.

### **6. Legal Considerations**

6.1 If a valid application, supported by evidence, for a Modification Order to modify the Definitive Map and Statement for Bolton by adding a claimed footpath, is made to the Council under the Wildlife and Countryside Act 1981, then the Council is bound to make a decision on whether or not to make the Order. There is a right of appeal to the Secretary of State against a decision not to make an Order.

6.2 If, having made an Order, there is any objection, the Order-making Authority must submit the Order to the Secretary of State who will decide whether to hold a Public Inquiry or other means of enabling objections to be heard. The Council can decide to take a neutral stance at a Public Inquiry if it does not actively support the Order but representation of the Authority will still be required to introduce the Order to the Inquiry and assist with clarification. Further a neutral Order-making authority will still be required to make arrangements for holding the Inquiry locally. Each party will meet their own costs, the Order-making authority meeting those of actually hosting the Inquiry.

### **7. Recommendations**

7.1 The Corporate Issues Scrutiny Committee is recommended to note the report.

**APPENDIX**

£ £

**1. COSTS OF SETTING UP THE PUBLIC INQUIRY**

|  |                        |
|--|------------------------|
| 1. Technician's time and use of equipment for practice run | No fee                 |
| 2. Use of Reception Room 9:00am – 17:00pm for two days     | 680.80                 |
| 3. Use of microphones and PA system for two days           | 165.00                 |
| 4. Use of video recorder /DVD player for one day           | 17.03                  |
| 5. Use of multi-media system for one day                   | 57.50                  |
| 6. Use of display board for two days                       | 16.50                  |
| 7. Use projector screen for one day                        | 20.63                  |
| 8. Lunch with coffee for two days                          | 91.00                  |
| —  |                        |
| <b><u>TOTAL</u></b>  | <b><u>1,048.46</u></b> |

**2. COUNSEL'S FEES**

|  |                         |
|--|-------------------------|
| 1. Perusing papers & advising in Conference:<br>prep. 1.5 hours; con 2 hrs (incl. VAT) | 822.50                  |
| 2. Brief on Inquiry (incl. VAT)  | 5,287.50                |
| 3. Refresher (incl. VAT)   | 1,468.75                |
| <b><u>TOTAL</u></b>  | <b><u>7, 578.75</u></b> |

**3. COUNCIL'S DISBURSEMENTS**

|   |                      |
|---|----------------------|
| 1. Advertisement in The Bolton News announcing the<br>holding of the Public Inquiry (incl. VAT) | 387.88               |
| 2. Photocopying   | 30.92                |
| <b><u>TOTAL</u></b>   | <b><u>418.80</u></b> |

**4. COUNCIL OFFICER TIME**

|   |                         |
|---|-------------------------|
| 1. Rights of Way Team Leader @ 18.06 hrs. | 622.19                  |
| 2. Solicitor time @ 167.35 hrs.           | 7,869. 67               |
| <b><u>TOTAL</u></b>                       | <b><u>8, 491.86</u></b> |
| <b><u>GRAND TOTAL</u></b>                 | <b><u>17,537.87</u></b> |