

AIRDRIE CLOSE & WEST QUAY DRIVE, YEADING - PETITION REQUEST TO 'STOP UP' ADOPTED PUBLIC FOOTPATH

Cabinet Member	Councillor Keith Burrows
Cabinet Portfolio	Cabinet Member for Planning, Transportation and Recycling
Officer Contact	John Fern Planning, Environment, Education and Community Services
Papers with report	Appendix A

HEADLINE INFORMATION

Purpose of report	To inform the Cabinet Member that a Petition has been received asking for the adopted public footpath that runs between Airdrie Close And West Quay Drive, Yeading to be 'stopped up'.
Contribution to our plans and strategies	The request can be considered as part of the Council's Road Safety Programme
Financial Cost	Approximately £200 for consultation. There would be substantial additional costs involved to 'stop up' the highway.
Relevant Policy Overview Committee	Residents' and Environmental Services
Ward(s) affected	Yeading

RECOMMENDATION

That the Cabinet Member;-

- 1. Meets and discusses with petitioners their request for the adopted public footpath to be 'stopped up'.**
- 2. Subject to the outcome of 1 above, considers the Petitioners request together with the advice given in the report by Officers and the Councils Legal Team and instructs Officers to carry out an informal consultation with residents to establish a wider residential view and report the results to the Cabinet Member.**

INFORMATION

Reasons for recommendation

To allow the Cabinet Member the opportunity to discuss with the petitioner the concerns over the Council's legal obligation as the Highway Authority to protect the rights of the public to use the adopted public highway.

Alternative options considered

There are no alternatives to consider as the Council will have taken all appropriate steps to ensure that the views of all persons who may be affected by a decision have been consulted before taking the appropriate action.

Comments of Policy Overview Committee(s)

None at this stage.

Supporting Information

1. A Petition with 32 Signatures was submitted to the Council under the following heading *“Residents petition to keep the footpath between 7 & 8 Airdrie Close, Yeading fenced off”*.
2. The Glencoe Estate was developed in around 1995 and Airdrie Close was adopted in early 1996 together with a footpath that joins Airdrie Close with West Quay Drive. Other such footpaths throughout the estate were also adopted at the same time.
3. The footpath has a tarmac surface and street lighting at the Airdrie Close end and was constructed to provide residents in various roads and closes on the Glencoe Estate access to West Quay Drive and Marina Approach together with the Marina’s with residential moorings and restaurant.
4. It is understood that at some time in the past, due to anti social behaviour along the path, residents erected a wooden fence across the path thereby blocking its use to the public.
5. In April 2011 the Council received correspondence from Solicitors on behalf of the lead Petitioner asking for the footpath to be ‘stopped up’. This was to enable the lead petitioner who lives adjacent to the footpath to purchase the land and incorporate it within his property.
6. The Council replied at that time that they did not wish the footpath to be stopped up and thanked the writer for bringing the matter of the obstruction to the Council’s attention. They said that every effort would be made to re-open the path as they have a duty to protect the rights of the public to the use and enjoyment of any highway. The overgrowth would be cut right back which would open up the way and make it safe and accessible.
7. In July 2011 the Council has also received a letter of support for the stopping up of this footpath from John McDonnell the Member of Parliament for Hayes & Harlington a copy of which is attached at Appendix A.
8. Although this footpath has been blocked by residents there is prima facia evidence of use in the past. Officers were of the view that the footpath is necessary and should be retained for the benefit of the wider public. The footpath is a convenient route which links the estate roads to the north of the footpath to West Quay Drive, Marina Approach and the Marina with its residential moorings and restaurant.
9. The Petition Hearing was heard at the Civic Centre on 12th October 2011. At the hearing the petitioner voiced that the matter had been presided over by a Council Committee some years earlier however he was not in possession of any exact details at that time. The Cabinet Member asked that officers investigate the history to the petitioners claims and that the petition be re-submitted to a future hearing once this information has been received

10. Following the hearing officers investigated the history to the petitioner's claims and a search was conducted of Council records however no trace of any formal request to 'stop up' the footpath could be found. The petition was therefore re-submitted to a future petition hearing on 22nd February 2012.
11. The Petition Hearing was heard at the Civic Centre on 22nd February 2012. At the hearing the petitioner was informed of the fact that no trace of any Committee Minutes had been found relating to the matter.
12. The petitioner presented the Cabinet Member with a letter from the Council dated 2nd November 1998 showing that the matter was to be presided over at the Environmental Committee on 15th December 1998. Following this further information the Cabinet Member asked that officers investigate this further and that the petition be re-submitted to the next petition hearing in March 2012.
13. Investigation by officers has found that following a report by officers to the Environmental Committee held at the Civic Centre on 15th December 1998 listing residents concerns about this footpath in Airdrie Close and listing it within paragraph 16.5 of their report the Committee resolved that – 'when funds become available, approval be given to initiate the formal closure procedure for the footpaths listed in paragraph 16.5 of the officers report'.
14. Following this new information being brought to light officers have now obtained further Legal advice on the matter. There are three options available to the Council: -
- a) Start procedures through the Courts to stop up the adopted public highway. This could leave the Council open to criticism and possible Judicial Review on the grounds that it is not reasonable to do so until all relevant considerations have been taken into account. The decision would be based on the view of those in the Petition and not the wider public who may be affected The Committee Report previously authorising the stopping up was based on evidence dating back to 1998 and not that of the present time. The views of the owner of the land would also not have been sought. Given the lapse in time since the previous committee report, it is reasonable for the Council to look at the matter afresh taking into account all relevant considerations now in play.
 - b) Take action to open up the footpath. Once again this could leave the Council open to criticism and possible Judicial Review on the grounds that it is not reasonable to do so until all relevant considerations have been taken into account. It is important that the views of the land owner and the wider community are consulted on before taking these steps particularly in light of the fact that the highway has been blocked for a considerable amount of time.
 - c) Consult with the land owner and all the residents who would be affected by any decision and based on the results of the consultation, advise the Cabinet Member to direct that officers should either take the necessary steps to open up the footpath OR to take the necessary action to instigate the procedure to 'stop up' the adopted public highway – this would ensure that the wider public are consulted together with the owner and utility companies. The results would be up to date and the Council will have taken everything into account and be able to make an informed decision.
15. As a result officers are of the opinion that option c) above would ensure that everything has been taken into account when considering this matter and that the Council will have acted correctly and reasonably in determining the matter.

Planning

There are no planning issues.

Safety, Security and Crime

There is no evidence of any anti-social behaviour on this footpath. The footpath when re-opened will be cleared back to ensure it is safe and accessible. The Local Safer Neighbourhood Officers will also be informed.

Financial Implications

The financial implications of consultation can be met from existing highways budgets. Should the decision be taken to re-open the footpath and undertake clearance of undergrowth then this can also be met from existing highways budgets; However there is no identified budget for 'stopping up' the highway, and therefore a budget would need to be identified and any necessary approval processes undertaken to allocate it if this is undertaken.

EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES

What will be the effect of the recommendation?

The decision will have taken into consideration the views of all residents who may be affected and the Council will have carried out its statutory duty to assert and protect the public's right to use adopted public highway.

Consultation Carried Out or Required

No consultation required.

CORPORATE IMPLICATIONS

Legal

The Council has various powers to stop up an adopted public highway. In this particular case, the Council would have to apply to the Magistrates Court for an order to stop up the footpath in accordance with Section 116 of the Highways Act 1980. In deciding whether or not to 'stop up' the way the Court would need to be satisfied that the way was 'unnecessary' for public passage. This report shows that officers are able to demonstrate that they will have taken all appropriate action to ensure that the views of the public have been taken into consideration and that the Cabinet Member will be able to make an informed decision in line with Section 116 of the Highways Act 1980.

Following the informal consultation exercise, should the Council decide to apply to the Court to stop up the highway, officers should obtain further legal advice as to the procedures to be followed and in particular the requirements for formal statutory consultation.

BACKGROUND PAPERS

Appendix A

Plan
Photographs of the footpath