

PETITION ASKING FOR THE ADOPTED PUBLIC FOOTPATH BETWEEN AIRDRIE CLOSE AND WEST QUAY DRIVE, YEADING TO BE 'STOPPED UP'

Cabinet Member(s)	Councillor Keith Burrows
Cabinet Portfolio(s)	Cabinet Member for Planning, Transportation and Recycling
Officer Contact(s)	John Fern Planning, Environment, Education and Community Services
Papers with report	None.

1. HEADLINE INFORMATION

Summary	To update the Cabinet Member on the Petition received asking for the adopted public footpath that runs between Airdrie Close And West Quay Drive, Yeading to be kept closed.
Contribution to our plans and strategies	The request can be considered as part of the Council's Road Safety Programme
Financial Cost	The cost of re-opening the footpath can be met from existing budgets.
Relevant Policy Overview Committee	Residents' and Environmental Services
Ward(s) affected	Yeading

2. RECOMMENDATION

That the Cabinet Member;-

- 1. Meets and discusses with petitioners their request for the adopted public footpath to be kept closed and informs them of the consultation results.**
- 2. Notes that when deciding whether or not to open up the adopted footpath, officers will take into account all relevant considerations including the consultation results and the views of petitioners.**

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Reasons for recommendation

The recommendation reflects the Cabinet Members position for dealing with petitions and the Highways Authorities obligation to protect the rights of the public to use the adopted public highway.

Alternative options considered / risk management

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.

Policy Overview Committee comments

None at this stage.

3. INFORMATION

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 which has a tarmac surface and street lighting 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 kept fenced off. 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 closed 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 received a letter of support for the permanent closure of this footpath from John McDonnell the Member of Parliament for Hayes & Harlington.

8. Although this footpath has been blocked by residents there is prima facia evidence of use in the past. 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. 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 close the footpath could be found. The petition was therefore re-submitted to a future petition hearing on 22nd February 2012.
11. At the Petition Hearing on 22nd February 2012 at the Civic Centre the petitioner was informed 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 obtained further Legal advice on the matter which gave three options available to the Council: -
 - a) Start procedures 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.
 - 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.
 - c) Consult with the land owner and all the residents who would be affected by any closure or opening up of the highway before making a decision.
15. As a result officers were of the opinion that option c) above would ensure that everything would have been taken into account when considering the matter and that the Council would have acted correctly and reasonably in determining the matter.
16. At the Petition hearing on 21st March 2012 the petitioner was informed that the Council would conduct a consultation exercise with all the residents and occupiers of the Glencoe Estate

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that would be affected by the closure of this footpath in order for the Cabinet Member to have taken everything in to account when listening to the petition.

17. A consultation exercise was carried out with 400 questionnaires being delivered to houses and commercial premises within the nearby vicinity of the footpath. The closing date for the consultation was 21st May 2012.
18. Of the 400 questionnaires delivered 131 were returned. 66 wished the footpath to remain open for use. 56 wished the footpath to be permanently closed. 21 expressed no view on the matter and 1 was returned unfilled.
19. Two letters were also received on the subject, one from the owner of the sub soil (Bovis Homes Ltd) who wished the footpath to stay open and adopted and the responsibility for its maintenance to rest with the Council. The second from a disabled resident who wished it to remain open for his ease of use in obtaining access to the Marina.
20. Although the result was relatively evenly balanced the consultation did show that the majority were in favour of opening the footpath and showed that the footpath is required for use by members of the public.

Financial Implications

The financial implications of consultation were met from existing highways budgets. If the decision is taken to re-open the footpath and undertake clearance of undergrowth then this can also be met from existing highways budgets.

Alternatively if it was decided to close the footpath, it should be noted that there is no specific budget for 'stopping up' public highways, and therefore a budget would need to be identified and any related approval processes undertaken to allocate it if this were to be undertaken.

4. EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES

What will be the effect of the recommendation?

The recommendation will enable the Cabinet Member to listen to the petition in accordance with the Council's constitution.

The decision on any further actions to be taken is one that must be taken by officers who will have taken into consideration the views of all residents who may be affected. If officers decide to open up the footpath, the public will be able to use the highway for passage. Should officers decide not to open up the footpath, officers would need to instigate procedures to formally stop up the highway.

Consultation Carried Out or Required

Consultation was carried out on 400 of the residential properties within the Glencoe Estate that would be affected by the decision.

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Cabinet Member meeting with Petitioners – 20 June 2012

5. CORPORATE IMPLICATIONS

Corporate Finance

Corporate Finance has reviewed this report and concurs with the financial implications as stated. Please note if a decision to close the footpath is made an additional budget would need to be identified, which would need to be done through the related approval processes.

Legal

This petition followed a request by the lead petitioner's solicitors for the Council to keep the footpath fenced off. Council officers responded that they intended to take action to open up the footpath for public use. As a result of this, the lead petitioner submitted the petition that is the subject of this report requesting that the Council do not take action to open up the footpath.

Section 130 of the Highways Act 1980 imposes on the Council a legal duty to assert and protect the public's right to use and enjoy the highway. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 provides that the executive is not permitted to exercise any functions under Section 130 of the Highways Act 1980. Therefore the decision on whether to open up the footpath is one that may only be taken by officers of the Council. Cabinet Members should not influence the decision making process of officers.

In exercising the Council's functions under section 130 of the Highways Act 1980, officers must ensure that the views of the public, including the land owner and utilities companies, have been taken into consideration. In this case, officers will take into account the views of the petitioners as well as the views of the wider public as evidenced by the consultation responses.

Section 137 of the Highways Act 1980 provides that it is a criminal offence for any person to willfully obstruct the free passage along a highway.

Relevant Service Groups

Not affected.

6. BACKGROUND PAPERS

None.