

EXECUTIVE BOARD DECISION



REPORT OF: Executive Member for Growth and Development

LEAD OFFICERS: Director of Growth and Development

DATE: Thursday 12 November 2020

PORTFOLIO(S) AFFECTED: Growth and Development

WARD/S AFFECTED: Ewood;

KEY DECISION: N

SUBJECT:

Arkwright Fold Petition

1. EXECUTIVE SUMMARY

Blackburn with Darwen BC has a duty to maintain all Public Rights of Way (PROW). We notified residents of our intention to undertake maintenance on Public Footpath 106, which is at the rear of Arkwright Fold, Blackburn. Since this notification the residents have submitted an objection petition to halt the works.

2. RECOMMENDATIONS

That the Executive Board recognises the legal duty of the Council to maintain these routes and approves of the planned maintenance on this public footpath.

3. BACKGROUND

Blackburn with Darwen BC are the surveying authority responsible for maintaining all rights of way within the borough that hold the status of "maintainable at the public expense".

The right to pass and repass belong to the public at large not the authority. This path has been on the list for enforcement for some considerable time and as other cases have been resolved, it has moved up the enforcement list.

A national walking group has raised the obstructions on this path, the path has long-standing obstructions and should be returned to use. If the council takes no action, any member of public or walking group can serve notice on the authority at which point the authority will have one month to serve official notice on persons causing obstruction. Any application received by landowners to divert, change or extinguish the right would likely be met with objection from the statutory bodies and thus fail.

We have written to residents and are removing vegetation to reveal obstructions. Dealing with these obstructions, it allows the authority to progress the work in a measured and planned way. If the authority refuses to deal with the issue, the authority will be open to a legal notice and will have a much shorter time scale in which to serve notice and remove obstructions.

With regards to the path not being able to be used for a period of time. The legal position on obstructed paths is:

- A public right of way is held by a legal order and once created the rights can only be withdrawn with a further legal order to remove or change the right. The common saying to describe this is “once a right of way always a right of way”. There is no legal way of removing the right of way by lack of use or taking possession of the land.

Relevant court case where member of public served notice on the authority for failing to undertake its statutory duty.

In a court case in 2010, Herrick v Kidner and Somerset County Council, the judge made some important comments on the interpretation of the words ‘significantly interferes’. He said that ‘any structure erected within the legal extent of the footpath, and which prevents public passage or the enjoyment of amenity rights over the area of its footprint, significantly interferes with the exercise of public rights of way.’

He also said that in his view ‘interfere [with the right of passage] means to get in the way of, in other words, the structure must impede the right of passage or prejudice other amenity rights, either generally or in particular. There is no reason to confine interference to physical interference. An object can get in the way of right of passage or other amenity rights because of its psychological impact’.

What this means is that the whole width of the right of way in question should be available for public use and that a structure erected on the highway, for example, gates which suggest you are entering a private drive and which act as a psychological deterrent, could be the subject of an order under this legislation.

4. KEY ISSUES & RISKS

If we do not undertake the planned maintenance the national walking group can serve notice on the authority at Magistrates court under section 130A Highways Act 1980. At which point the authority will have one month to serve official notice on persons causing obstruction. Any application received by landowners to divert, change or extinguish the right would likely be met with objection from the statutory bodies and thus fail.

If we fail to deliver upon this legal notice the issue will progress to Magistrates court which will result in financial and reputation cost to the authority.

5. POLICY IMPLICATIONS

N/A

6. FINANCIAL IMPLICATIONS

Dependent upon legal action

7. LEGAL IMPLICATIONS

The Council as highways authority has a duty to protect public rights including the removal of obstructions under section 130 Highways Act 1980.

Risk of legal action from the national walking group that raised the obstruction issue under Section 130A of Highways Act 1980.

8. RESOURCE IMPLICATIONS

N/A

9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below.

Option 1 Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision.

Option 3 In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision.

10. CONSULTATIONS

All residents were informed of our intention to undertake this essential maintenance.

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

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DATE:	November 2020
BACKGROUND PAPER:	