

**26<sup>th</sup> April 2016****Agenda Item:5****REPORT OF CORPORATE DIRECTOR - PLACE****PROPOSAL: PUBLIC BRIDLEWAY CREATION ORDER AT BEVERCOTES  
PIT WOOD****Purpose of the Report**

1. To inform Committee about a Public Path Creation Order (made in March 2015) relating to Bevercotes Pit Wood which has been made and subsequently objected to. The main purpose of the Order is to record a public bridleway into and around the Wood on existing paths and tracks. The wood, a former colliery site, is now owned by Nottinghamshire County Council and is leased to the Forestry Commission for 999 year term. The site was restored by Nottinghamshire County Council and the Forestry Commission working in partnership through the 'Greening the Coalfield' project. Public access to the wood is currently permitted on foot only. A plan of the site is shown at Appendix 1.
2. The Order was made following a request by horse riders wishing to use the wood for off-road recreational riding. A series of photographs highlighting features around the wood are shown at Appendix 2.

**Information and Advice**

3. Nottinghamshire County Council has powers under Section 26 of the Highways Act 1980 to make Public Path Creation Orders for footpaths and bridleways. When determining such matters the authority must have regard to the extent to which the path being created would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area, and to the effect it would have on the rights of persons interested in the land (i.e. the landowner or tenant).
4. Consideration must also be given to the provisions contained in Section 28 of the Highways Act 1980 where compensation can be claimed by persons with an interest in the land who are disadvantaged by the creation of rights of way (i.e. such as a loss in land value).
5. Equestrian access into the wood would be made at point 'D' by the creation of a public bridleway along Gravel Pit Lane (an existing access track) which then connects to West Drayton Bridleway No.2.
6. Three new definitive footpath links (from points A,B,C) are also proposed which provide additional pedestrian access into the wood.

## Consultation

7. As is standard procedure prior to the Order being made, consultation was carried out with interested parties including Nottinghamshire County Council's Property Division who were believed to be the only affected landowner. As no comments or objections were received, the Order was made and then publicised with notices being posted on site and in the local newspaper. Publicising the Order in this way provides an opportunity for people to raise formal objections. However, during this objection period it emerged that two other landowners had an interest in the affected land i.e. the Forestry Commission (as lease holders to the wood) and George Woodcock and Son (owners of Gravel Pit Lane).
8. Consequently, George Woodcock and Son of Haughton Park House Farm, Bothamsall **objected** to the Order on the following grounds:
- *Failure by the County Council to notify them of the making of the Order*
  - *Danger to horse riders owing to a steep dyke running alongside the proposed route which cannot be fenced off*
  - *Disturbance of pheasant pens by the passing public*
  - *Horses rearing and bolting when shooting is taking place on adjacent land*
  - *Potential theft or damage to premises, farm machinery, fuel and crops if gates cannot be kept locked*
  - *Danger to the public posed by farm machinery*
  - *There is already sufficient public access over our land*
9. The Forestry Commission also **object** to the Order on the following grounds:
- *The Commission does not wish to see any bridleways created as it needs to retain complete control in order to effectively manage the site for various users*
10. The occupiers of The River House, Avenue Lodge, West Drayton also **object** to the order on the following grounds;
- *We live very close to these proposals and can foresee people coming past our property.*
  - *We already get people walking, riding and cycling past our property (a private road).*
  - *There is a shoot on this land and there could be dangerous consequences*
  - *We are disappointed that we have not been informed by letter of this proposal being neighbours to the bridleway*
  - *There is already a perfect walking area situated in the old Bevercotes Pit area*
11. Letters of **support** were received from 19 horse riders and from the British Horse Society (East Midlands Region). The main points raised were;
- Safety – riders currently use the existing road network. The local roads are narrow and have blind bends. Speeding traffic is posing a danger to on-road horse riders. This proposal would provide a safe off-road route.
  - Bevercotes Pit Wood is currently underused as a public amenity

- The proposal would benefit nearby livery yards
  - An historic bridleway which crosses the site was never recorded on the definitive map
  - The proposal would require little resource to implement
  - The proposal would benefit horse riders and cyclists for enjoyment of the countryside
12. However, regardless of the pros and cons of the proposal, some technical issues which came to light after the making of the Order, effectively render it invalid, namely;
- As per paragraph 7 above, not all landowners were notified of the making of the Order as is required under Schedule 15(3)(2)(b)(i) of the Wildlife and Countryside Act 1981.
  - Land belonging to a government department (such as the Forestry Commission) cannot be subject to a Creation Order made under the Highways Act 1980 (S.26) unless an agreement under S.327(2) is made. No such agreement was in place when the Order was made, and there appears no prospect of any agreement being forthcoming as the Commission are actively opposed to the Order.
13. Furthermore, in light of the discovery that the land is not solely owned by the County Council, no consideration was given to potential claims for compensation from other landowners/tenants due to the creation of public rights of way (para. 4) as is required by the statutory test.

### **Reason(s) for Recommendation(s)**

14. In situations where a Creation Order has been made and no objections are received, it is normally the case that the authority will exercise its statutory powers and confirm the Order. However, owing to the technical points identified in paragraphs 12 and 13, it is recommended that the Order is not confirmed.
15. To keep Committee members, objectors and supporters informed about the reasons for not progressing the Creation Order.

### **Other Options Considered**

16. Some horse riders claim there is an unrecorded 'historic' bridleway leading into the Bevercotes Pit Wood from Lound Hall. This raises the question as to whether an alleged public bridleway ought to be recorded on the definitive map. However, archive research into this matter was carried out by Officers in 2007 who found insufficient evidence to support the making of a Modification Order to record a public bridleway.

### **Statutory and Policy Implications**

17. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

## **RECOMMENDATION/S**

1) It is **recommended** that Committee resolve **not** to confirm the Order referred to in the report namely; The Nottinghamshire County Council (Bothamsall Footpath Nos. 2 & 5 and Footpath Nos. 3 & 4) Creation and Definitive Map and Statement Modification Order 2015.

**Neil Hodgson**  
**Interim Service Director Highways**

**For any enquiries about this report please contact:**  
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Definitive Map Officer

### **Constitutional Comments (SJE 14/03/2016)**

18. This decision falls within the Terms of Reference of the Planning and Licensing Committee to whom, by virtue of Full Council Resolution 2014/027, responsibility for the exercise of the Authority's regulatory functions relating to public rights of way has been delegated.

### **Financial Comments (SES 15/03/16)**

19. There are no specific financial implications arising directly from this report.

### **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- Bevercotes Pit Wood Creation Order case file

### **Electoral Division(s) and Member(s) Affected**

- Tuxford      Councillor John Ogle