

meeting **RIGHTS OF WAY COMMITTEE**

date **15 DECEMBER 2010** agenda item number **5**

CONSIDERATION OF AN APPLICATION FOR AN ORDER TO TEMPORARILY DIVERT REMPSTONE BRIDLEWAY NO. 11 TO ENABLE THE SURFACE WORKING OF MINERALS IN ACCORDANCE WITH PLANNING PERMISSION AS GRANTED

Purpose of the Report

1. To approve the making of an order to temporarily divert Rempstone Bridleway No. 11 to enable the surface working of minerals in accordance with planning permission.
2. The effect of such an order would be to divert the public bridleway for the duration of mineral working in accordance with the terms of the planning permission, and to then cause the bridleway to revert to its original line following the restoration of the site, also in accordance with the terms of the planning permission.

Legal Framework

3. A Bridleway is a highway over which the public have a right of way on foot and on horseback or leading a horse, and which includes an entitlement for use by cyclists.
4. The Nottinghamshire County Council is empowered by Section 261 of the Town and Country Planning Act 1990, where it has granted planning permission authorising the extraction of minerals by surface working, to make an order under Section 257 of that Act, to either close or divert a public right of way temporarily where it is satisfied that
 - a) such an order is required to enable the planning permission to be implemented as granted; and
 - b) the original line of the right of way can be restored to a condition not substantially less convenient to the public.

Background

5. The line of Rempstone Bridleway No. 11 is shown by a solid black line on **Plan A** and is a 3 metre wide bridleway which runs over a grass field heading from Ashby Road in a generally northerly direction towards a dead-end near the boundary of the deconsecrated St. Peter's Church.
6. On 8 June 2010, Planning and Licensing Committee resolved to grant planning permission to Cemex to vary their permission for extraction of sand and gravel, works associated with that extraction, and the restoration of the site to agriculture and wetland nature conservation at their East Leake quarry. Following amendments to Legal Agreement, planning permission was granted on 15 September, 2010. None of the variations, however, detrimentally affect the proposed temporary line of the right of way.
7. Whilst the current bridleway provision is dead-ended and appears to be, at present, one of the less popular routes, it does exist as a public right of way for the benefit and use of the public, and is used by them. On that basis, and having regard to the extent of the mineral workings on the site, officers considered it more appropriate to seek to ensure that there remained a continuing similar provision during the works and agreed with Cemex that an alternative route would need to be provided. This alternative route is shown on **Plan A** by a dashed black line to the east of the current legal line.
8. The duration of the works affecting the land, and therefore the duration of the diversion are dictated by the works themselves within the parameters of the planning permission, including the restoration of the site. On that basis, and whilst the diversion may end sooner (and therefore the bridleway may revert to its original line sooner) the planning permission provides that this would be no later than mid September 2013.

Legal Procedure

9. An order made under Section 257 works as a two-stage process, and the order is not effective until such time as it is confirmed. Firstly, the order is made and notices are published inviting objections and representations over the following 28 days, regarding confirmation of the order. If no objections are made to confirmation of that order it may then be confirmed by the Authority. At that point, the order can take effect.
10. If objections are received which are not then withdrawn, then we would need to consider whether confirmation of the order was still sought, having regard to those objections. If outstanding objections remain and cannot be resolved, then the Order would need to be referred to

the Secretary of State for determination, if it remained the Authority's wish to confirm the order and to temporarily divert the right of way. This process may include a public inquiry. For an objection to be relevant, however, it would need to address the basis for making of the order in terms of procedural technicalities or the prescribed criteria referred to in paragraph 4 above.

11. The form of order that is proposed here would not automatically take effect as soon as it is confirmed, however. It would be drafted so as to only take effect following confirmation and certification that the alternative route is acceptable to this Authority. Until that happens, the bridleway would not be diverted and the original legal line would need to remain open and available for use. Obstruction of a highway in this way would constitute a criminal offence, for which this Authority is empowered and charged with taking action.

Statutory and Policy Implications

12. This report has been compiled after consideration of implications in respect of finance, equal opportunities, personnel, crime and disorder and those using the service and where such implications are material, they have been described in the text of the report.

Financial Implications

13. The full costs of the works required as part of the temporary diversion and the subsequent restoration of the line are the primary responsibility of the applicant. The applicant has also agreed to meet the Authority's costs in connection with the making of the order (which includes the Authority's legal, administrative and advertising costs). Should any objections be received in response to the making of the order, there is the potential that this would lead to a public inquiry. The applicant is aware of this and has agreed that any costs arising as a result of this (being costs incurred as a result of their application under Section 257) would also be recoverable from them.

RECOMMENDATION

14. It is RECOMMENDED that Committee approves the making of an order as set out above and authorises:-
 - (a) the confirmation of that order if no objections are received or if any objections received are subsequently withdrawn; or
 - (b) a further report be brought before this Committee if, in the opinion of the Head of Legal Services, the objections sufficiently bring into question the basis for the making of the order; or, alternatively

- (c) the order be immediately referred to the Secretary of State for determination if, in the opinion of the appropriate rights of way officer/s, in consultation with the Head of Legal Services, the objections are irrelevant but will not be withdrawn.

NEIL HUNT

Head of Planning Services

Comments of the Service Director - Finance

The contents of this report are duly noted; the financial comments are contained in the report. [DJK – 18/11/10]

Legal Services' Comments

The matters set out in this report are matters for which Rights of Way Committee has responsibility by virtue of the Full Council decision of 24th September, 2009. [SJE – 18/11/2010]

Background Papers Available for Inspection

1. Planning Permission 8/07/02187/CMA dated 5 June 2009
2. Planning Permission 8/10/00190/CMA dated 15 September 2010

Electoral Division(s) and Member(s) Affected

Soar Valley

Councillor Lynn sykes

Report Author / Case Officer

Jane Baines
0115 9774802

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