

18th November 2014**Agenda Item:****REPORT OF SERVICE DIRECTOR, HIGHWAYS****CONSIDERATION OF A PROPOSED CREATION AGREEMENT FOR A
PUBLIC FOOTPATH AT GREASLEY****Purpose of the Report**

1. To consider a proposal to accept the dedication of a public footpath at Greasley by means of a Creation Agreement. The route in question is as shown on the map attached as Plan A. A location plan is attached as Plan B.

Legal background

2. Section 25 of the Highways Act 1980 empowers the authority to enter into an agreement with a landowner for the dedication by that person or corporation of a footpath or bridleway over land in their area. The authority must consider the needs of agriculture, forestry and nature conservation before exercising their powers under this section. Section 40 of the Natural Environment and Rural Communities Act 2006 additionally requires the authority to have regard to the conservation of biodiversity in exercising its functions.

Proposed details

3. Broxtowe Borough Council has offered to enter into a Creation Agreement with the County Council for the dedication of a public right of way on foot between Chestnut Drive and an unnamed path near Corbiere Avenue in the Parish of Greasley as shown on Plan A. An aerial plan is attached as Plan C. The unnamed connecting path is well used surfaced route for which the County Council is currently consulting on with a view to making a Modification Order to record this path as well and it not anticipated that any objections will be made to its inclusion. The Creation Agreement is a result of discussions between the local County Council elected member, the local District elected member and the Building Maintenance department at Broxtowe Borough Council.
4. The unrecorded path, that goes through a garage site and is owned by Broxtowe Borough Council, was blocked by a metal post and rail fence erected by the Borough Council a number of years ago. Despite this obstruction members of the public continued to use the path by ducking between the metal rails of the fence (see photos in Appendix A). A number of local school children from Kimberley School contacted the local District Councillor for her help in opening up the path by removing the obstruction and recording the path as a public right of way. Following a discussion with the Housing Repairs Officer from Broxtowe

Borough Council and an officer from the County Council's Countryside Access team it was agreed that, rather than pursue a Definitive Map Modification Order, a Creation Agreement evidencing the dedication of a public footpath would be entered into by the District Council as this would still ensure that it was recorded on the Definitive Map and Statement but would do so more quickly, more efficiently and more certainly than pursuing the Definitive Map Modification Order process (and the difference in procedure would not affect whether the path was maintainable at the public expense).

5. Policy A1-13 of the Authority's current Rights of Way Improvement Plan states that Creation Agreements will only be considered where there is a clear public benefit to be gained from the proposed path, with the path normally only being accepted as maintainable at the public expense where the path is of strategic public benefit and requires no additional expenditure by the Authority to bring the path into a fit state for public use. It is considered that, due to demand for this route, it is considered to be of clear public benefit. It also represents, in terms of the surrounding rights of way network, a very valuable link between residential properties, Kimberley School, local services and recreational facilities.
6. Following consideration of the route and the local area, officers have concluded that the proposed route would have no adverse effects on agriculture, forestry, nature conservation or biodiversity.

Other Options Considered

7. As this function is a power and not a duty, the Authority could decline to enter into the dedication agreement. However, while this would avoid any maintenance liability resting with this Authority, this would also have the potential to cause the landowner to not wish to dedicate public rights over the land, thus preventing or delaying the protection of a useful and desirable route.
8. However, if the Authority declined to enter into the dedication agreement, it would, because members of the public state that they have used the route previously, then need to investigate all available relevant evidence with a view to potentially making a Definitive Map Modification Order. This alternative process would take considerably longer, would require considerably more resources and would likely result in the same outcome, i.e. a legal protected public right of way on foot.

Reason/s for Recommendation/s

9. Entering into a Creation Agreement is the quickest and most efficient of the available options for securing the continuing protection of a public right of way on foot along this route and, for the reasons set out in paragraph 5 above, would be in accordance with Policy A1-13 of the Authority's 2007 Rights of Way Improvement Plan.

Statutory and Policy Implications

10. 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 only), the public sector equality duty, safeguarding of children and vulnerable adults, 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 authorises the entering into of the required Creation Agreement, in a form approved by the Group Manager (Legal & Democratic Services), so as to accept the dedication of a public right of way on foot as a highway maintainable at the public expense, for the reasons set out above.

Andrew Warrington
Service Director, Highways

For any enquiries about this report please contact:

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Constitutional Comments (SJE – 28/10/2014)

11. This decision falls within the Terms of Reference of the Planning & 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 and cycle paths has been delegated.

Financial Comments (SEM 27/10/14)

12. 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.

- None

Electoral Division(s) and Member(s) Affected

- Nuthall, Councillor Philip Owen