

meeting **RIGHTS OF WAY COMMITTEE**

date **21 APRIL 2010**

agenda item number

6

REPORT OF CORPORATE DIRECTOR (COMMUNITIES)

CONSIDERATION OF AN APPLICATION UNDER SECTION 26 OF THE HIGHWAYS ACT 1980 TO CREATE A PUBLIC FOOTPATH IN THE PARISH OF EVERTON

Purpose of the Report

1. To consider an application made by Everton Parish Council to create a public footpath which would then be recorded on the Definitive Map and Statement for the Parish of Everton.
2. The effect of the application, if accepted, would be to create a public footpath along a route from Eel Pool Road along the old Mattersey Road to the existing footbridge over the River Idle.

Background

3. In January 2005, the County Council was contacted by Everton Parish Council who made an application for a Creation Order to create a footpath along the old Mattersey Road from its junction at Eel Pool Road to the footbridge over the River Idle. A map of the general area is shown as **Plan A** while the route under consideration is shown on **Plan B** marked between points A and B. As part of the application procedure, the Parish Council also contacted the owner of the land, Mr Shuldham to notify him that an application had been made. Evidence has also been submitted to the County Council in support of the application from 88 members of the public, mainly living in Mattersey or Mattersey Thorpe.
4. The footpath for which the application has been made goes along what was the old main road that came out of Mattersey to the north and then crossed over the River Idle over what was a narrow stone bridge and then continued northwards to Everton. In the 1940s the County Council decided to build a new road bridge and road to the west of the old stone bridge. It was the view of the County Council at this time to leave

the old stone bridge in place but just restrict it for pedestrian use only, as long as it was economic to do this.

5. In 1952 the River Trent Board were dredging the River Idle and this revealed that the middle 2 tiers of the old stone bridge had no foundation and the whole bridge was in imminent danger of collapse. An assessment was made of its condition and following on from this a decision was made that the old stone bridge had to be demolished and that an application would be taken to the Magistrates Court to stop up all highway rights over just the bridge. By this time the new bridge and new Mattersey Road to the west had been opened.
6. In early 1954 representations had been made to the County Council for the provision of a footbridge in place of the old bridge, but it was decided that in view of the cost of providing one and the proximity of the new bridge that all rights should still be stopped up. Therefore in July 1954 the stopping up order was taken to the Magistrates Court who considered the objections to the order, but came to the decision that the highway over what was the old bridge was unnecessary and it was legally stopped up.
7. However, an appeal was made against the Magistrates Court decision and it was taken back to the Appeal Committee of the Quarter Sessions in February 1956 where it was decided that 'a further crossing of the river at the site of the old bridge is necessary'. The Stopping up Order was amended which resulted in only a footway being retained across where the old bridge used to be. A new footbridge was constructed by the County Council in 1956 which is still in place to day.
8. This resulted in there being a vehicular highway from Abbey Road in Mattersey to the footbridge, a footway over the bridge and then a vehicular highway from the northern end of the bridge to Eel Pool Road.
9. In the late 1980s there were problems with part of the old Mattersey Road running north from the footbridge to Eel Pool Road, with travellers frequently occupying the old road. A report was taken to Environment Committee on 6 September 1989 to recommend the stopping up of Old Mattersey Road between Eel Pool Road and the footbridge over the River Idle and that if it was stopped up then the Eel Pool Road end could then be gated. The report also stated that a small gate could be left in the fence to allow pedestrians, cyclists and horses to use the old Road and footbridge over the Idle into Mattersey. However, the recommendation was to stop up all of the Old Mattersey Road with no mention of retaining any footpath rights.
10. A further report was then taken to Environment Committee a month later on 15 November 1989 to amend the recommendation to stop up the old Mattersey Road but preserving footpath rights along the length

of it. The plan attached to the report also indicated that public footpath status was to be retained. Notices advertising the stopping up of old Mattersey Road were prepared dated 8 January 1990 which again stated that the stopping up was subject to the reservation of footpath rights along the whole of the road.

11. However, when this was taken to the Magistrates Court on 20 February 1990 the text of the Stopping up Order was for the stopping up of the old Mattersey Road without the reservation of footpath rights, although the plan for the Order did indicate that the footpath rights were going to be retained. It does appear from the plan that the footbridge over the River Idle was not included in the stopping up, although the distance quoted in the Order of 310 metres would bring the stopping up into the centre of the bridge, although this was described as being 'approximate'.
12. This then resulted in there being a vehicular highway from Abbey Road in Mattersey to the footbridge, a footway over the bridge and then a private road from the northern end of the bridge to Eel Pool Road.
13. The northern section of the old Mattersey Road was bought by Mr Shuldham and it was confirmed to him by the County Council in 1992 that all rights had been stopped up along the Old Mattersey Road. Mr Shuldham still allowed the old Mattersey Road to be used by members of the public, has planted trees in what were the highway verges and has done repairs to the surface of the old road.
14. In 2001 Mr Shuldham made a Statutory Declaration for the land which he owns which included the Old Mattersey Road. This declaration helps to prevent public rights being acquired under presumed dedication.

The Current Situation

15. The footpath for which the application has been made goes along the tarmac section of the old road although in most places grass has grown over it as shown on **Photograph A**. On the northern part the path exits on to Eel Pool Road through a purpose made gap in some post and rail fencing. At the southern end of the path there is ramp up the abutment of the footbridge. There is evidence that there is some slippage on the embankment with some fissures opening up. These have been filled in the past by Mr Shuldham. The path then goes through 2 metal barriers at the northern end of the bridge over the River Idle, as shown on **Photograph B**.
16. To the south of the footbridge is an adopted road called Church Lane, which then joins Abbey Road. To the north the route joins Eel Pool Road mid way between Everton Footpath No. 23 and Everton Bridleway No. 22B. Close to the junction of Mattersey Road and Eel

Pool Road is the start of Everton Byway No. 16B. Everton Footpath No. 23 is a short path that does not connect directly with any other public right of way, but just cuts the corner of Mattersey Road and Eel Pool Road. Byway No. 16B and Bridleway No. 22B both link on to quite a dense network of paths.

17. The footbridge over the River Idle was built by the County Council and appears in the Bridges Register. Since its construction in 1950s minor maintenance has been carried out on it. Although the footbridge is not part of the creation application it does create the link over the River Idle and then down the adopted road to Mattersey. Therefore a principal bridge inspection was carried out in February 2010 by the County Council. The conclusion was that 'the structure is in overall good-fair condition. There are some minor defects to the bridge which appear not to have any significant detrimental affect to the integrity of the bridge or its load carrying capacity'.

Legal and Policy Framework

18. Nottinghamshire County Council is empowered by Section 26 of the Highways Act 1980 to make a Public Path Creation Order for a footpath or bridleway in circumstances where the prescribed legal criteria are met. Consideration also has to be given to the provision contained within Section 28 of the Highways Act 1980 for compensation of landowners, tenants and other persons with an interest in the land, if the footpath or bridleway is created.
19. Section 26 of the Highways Act 1980 enables a local authority to make a Creation Order for a public footpath, bridleway or restricted byway in cases where there is a need for the path in question. In determining whether to make a Creation Order, the authority must have regard to the extent to which the path 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 the effect which the creation of the path would have on the rights of persons interested in the affected land, taking into account any compensation payable to such persons.
20. The authority must also consider the needs of agriculture, forestry and nature conservation before making its decision. 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.
21. The Rights of Way Improvement Plan policy A5-8 states that where there are substantial benefits to be gained and the benefits are relative to the expected costs, the County Council will consider a Creation Order.

Evidence in support of the application

22. When the application was made for the Creation Order, 13 letters of support and a petition were submitted to the County Council. This petition was held at the Mattersey Post Office and was signed by 69 people. The front page of the petition listed 5 reasons in support of the application which were:
- The path would make a link with Everton Footpath 23 and Bridleway 22B
 - The path would make a safe link to Mattersey away from the main road
 - The path is already used by the public
 - The path is a safer link to Mattersey Church and the Post Office
 - The path is a short, safe walk for Mattersey residents.
23. However, it was noted that a number of the people who had signed the petition appeared to be temporary residents at Mattersey College and so everyone on the petition was contacted to see if they would like to submit additional information giving their reasons in support of the application. The County Council received replies from 38 people who were mainly residents in Mattersey or Mattersey Thorpe. These letters of support gave many of the same reasons that had been on the front page of the petition, with the most popular reasons being that it was a more enjoyable walk and safer walk than the road and that it linked up with other paths.
24. Although the route itself is in the parish of Everton it is closer to the village of Mattersey. The application was made by Everton Parish Council but it is also supported by Mattersey Parish Council.

Consultations

25. Consultation has been carried out with all relevant authorities, user groups and affected landowners and the only objection has come from Mr Shuldham the owner of the route. He rebuts the 4 points made in the petition from the Parish Council.
- There is a well maintained footway between Everton and Mattersey that is safe to use and that walking along Eel Pool Road has no footway at the side.
 - The overwhelming use of the Old Road is by people just using it for walking their dogs.
 - The access down old Mattersey Road is still allowed and that Mr Shuldham has no intention of discontinuing the present permissive basis of its use.

Section 26 tests

26. In order for the County Council to be able to justify the making of a Creation Order the key test is whether such a path is needed after taking into account all of the relevant tests. The desirability of creating a route is not a relevant consideration. One important factor in considering the need is that there was a Environment Committee decision on 15 November 1989 that footpath rights be retained along the Old Mattersey Road, and even though this was not carried out at the Magistrates Court the intention of the committee was that the rights should be retained because they were deemed to be necessary. Since there have been no further decisions from County Council committees concerning this route, then it could be presumed that the decision of the Environment Committee still stands that there is a need for a footpath along the old Mattersey Road.
27. One further test to be satisfied is, would the creation of the route add to the convenience of either persons living in the area or a substantial section of the public? One important feature is that there is a tarmac footway on the western side of the new Mattersey Road which is set back from the road. If the Post Office in Mattersey and the High Street in Everton are taken to be the centre of the villages, then to get from Mattersey to Everton using the footway alongside the new Mattersey Road the distance is 100 metres shorter than using the old Mattersey Road and then footpath No. 23 through the wood. Therefore the created route would not add greatly to the convenience of people walking between Mattersey and Everton.
28. When considering the issue of convenience it is also necessary to consider if the creation of a footpath along the old Mattersey Road would mean better access to the Rights of Way network. Again starting from Mattersey Post Office, the old Mattersey Road route would give convenient access to Bridleway No. 22B, which is on the other side of Eel Pool Road. However to get to Byway 16B from the Post Office, the new Mattersey Road would be more convenient than the old Mattersey Road. It is therefore considered that the old Mattersey Road would not add greatly to the convenience of people living in the area due to the presence of the footway alongside the new Mattersey Road.
29. The other test is would the route add to the enjoyment of a substantial section of the public? Of the 52 people that provided detailed information in support of the Creation Order, 30 of them said that it was more enjoyable than walking along the road and that it was their favourite short walk. The route along the old Mattersey Road is not adjacent to any road and is a traffic free route and members of the public have commented on the fact that it feels safer than using the footway alongside the new Mattersey Road. The application is supported by both Everton and Mattersey Parish Councils who have also stated that the route is enjoyed by people from both parishes. It is

therefore considered that the Creation Order would add to the enjoyment of a substantial section of the public.

30. The second factor to be considered is the effect which the creation would have on the relevant landowners. As already stated the route is already being used by the public and is separate from the adjoining fields. The old Mattersey Road is sometimes closed off by the owner when he is moving stock from one field to another. The creation proposal was assessed by the County Council's Corporate Property Division so they could give an indication as to any potential claim for compensation. The response was that 'the land is used only as an access and the proposed path would not affect this. I would suggest that the compensation would be nil or a purely nominal figure'.
31. The final factor to consider is the affects of the proposal on agriculture, forestry and nature conservation. The proposal will not affect any statutory or locally designated nature conservation sites nor will it have any impact on any protected species, and since none of the land over which the route runs is farmed and there will be no impact on agricultural use.
32. It should be noted that whilst Mr Shuldham has stated that he has no intention of stopping access down the old Mattersey Road, it does not mean that the public have a legal right to use it. It is possible that circumstances may change, such as a change in the ownership of the land resulting in of the permissive access being withdrawn.

Legal Implications

33. If the recommended Creation Order is made, Members should be aware that there is a right of objection to the Order which, if exercised, would mean that the proposed footpath could not be confirmed by the County Council as a public right of way and without confirmation the Order would not be affective. There is no legal obligation to refer an objected Order to the Secretary of State for determination, and Members would therefore need to decide, if these circumstances arose, whether the Order should be referred. This would form the subject of a separate Committee report. If the Creation Order is to be made then all interested parties will be informed of the decision.
34. If an objected Order were to be referred and subsequently confirmed by the Secretary of State, the County Council would carry out the necessary works on site to physically establish the proposed route. This would be infilling the fissures north of the footbridge and erecting a footpath signpost on Eel Pool Road. The County Council would also be liable for compensation claims from the affected landowner.
35. If Members decide not to authorise the making of a Creation Order, then all the interested parties will be advised of this outcome. There is no right of appeal against such a decision.

Statutory and Policy Implications

36. 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.

RECOMMENDATION

37. It is RECOMMENDED that the Committee approves the making on a Creation Order under Section 26 of the Highways Act 1980 to create a footpath from the River Idle Footbridge along the old Mattersey Road to Eel Pool Road.

TIM MALYNN

Corporate Director (Communities)

Legal Services' Comments

The matters set out in this report are matters for which Rights of Way Committee have responsibility by virtue of the Full Council decision of 24 September 2009. [SJE – 29/03/10]

Comments of the Service Director - Finance

The contents of this report are duly noted; it relates to a footpath application and has no direct financial implications. [DJK – 31/03/10]

Background Papers Available for Inspection

Office case file

Electoral Division(s) Affected

Misterton Councillor Liz Yates

Report Author/ Case Officer
Angus Trundle
0115 9774961

PSP.AT/RH/ROW22
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