

10 December 2019

Agenda Item: 5

## **REPORT OF THE CORPORATE DIRECTOR (PLACE DEPARTMENT)**

### **PROPOSAL TO DIVERT A PUBLIC FOOTPATH IN THE PARISH OF SOUTHWELL UNDER SECTION 119 OF THE HIGHWAYS ACT 1980**

#### **Purpose of the Report**

1. To consider a proposal for the diversion of Southwell Footpath No.69 to the line proposed by officers as shown on **Plan B**.

#### **Legal Background**

2. Under the terms of Section 119 of the Highways Act 1980, the County Council has the power to make a 'Public Path Diversion Order' where it appears, regarding a footpath or bridleway in its area, that it is expedient that the line of the path, or part of it, should be diverted. This expediency refers to the interests of the owner, lessee or occupier of land crossed by the path, or of the public. Section 119 also stipulates that a Diversion Order shall not alter a termination point of the path in cases where that point is in a highway, otherwise than to another point on the same highway, or a highway connected with it, and which is substantially as convenient to the public. Subsection (6) also states that the Secretary of State shall not confirm an opposed Order referred to him for determination, and a council shall not confirm an unopposed Order, unless he or they are satisfied that the diversion to be effected by the Order is expedient, and that the path will not be substantially less convenient to the public in consequence of the diversion.
3. It must also be expedient to confirm the Order having regard to the effect which the diversion would have on public enjoyment of the path as a whole, which the coming into operation of the Order would have as respects other land served by the existing path, and which the new path created by the Order would have as respects the land over which it is created.
4. Under Section 40, Natural Environment and Rural Communities Act 2006, Committee is also required to have regard to the conservation of biodiversity in exercising its functions, which includes those under the Highways Act 1980.

#### **Background Information**

5. In May 2019 the County Council received an application from the landowner Mr Heath to divert part of Southwell Footpath No. 69. The application was submitted by the landowner in order

for him to better manage his land, reduce any health and safety issues and increase the security of his property by relocating the footpath towards the garden boundary. No other landowners are affected by the proposal to divert the public right of way. The landowner will pay for the diversion Order and any work required on the ground to enable the diversion of the public footpath.

6. The diversion proposal of Southwell Footpath No. 69 commences from a point approximately 93 metres west from its junction with Footpath No.68. The footpath continues in a northerly direction, through grassland adjacent to the wooded area on the western boundary, to re-connect with the remainder of Southwell Footpath No.69 as shown on **Plan A**.
7. The County Council consulted with a number of organisations and bodies including, local authorities, path user groups, utility companies and the local elected county member. Two objections were received to the diversion proposal as shown on **Plan A**. The objections were submitted by Newark and Sherwood District Council and the Southwell Town Council.

### **Responses to consultation**

8. In summary, Southwell Town Council's objections were;
  - a. Concerns that the existing paths FP68 and FP70 become slippery and dangerous during the winter, therefore the existing line of Southwell FP69 provided an alternative and if the path was diverted users would have to use the slippery sections of FP68
  - b. The diversion would be a loss of amenity to the town of a well-used footpath.
9. To summarise, Newark and Sherwood District Council's objections were;
  - a. National Planning Policy Guidance encourages protection, enhancement and safe use of Green Infrastructure.
  - b. Southwell Neighbourhood Plan notes that "Public Rights of Way... [contribute] not only to the Green Infrastructure but also, where relevant, to open spaces..." The Plan also makes it clear that the policy "seeks to conserve and enhance the... extent of PROWs...".
  - c. There is already a new post and wire fence enclosing the applicant's garden which clearly demarcates the path and prevents accidental straying off the identified route.
10. Upon receiving the two objections, the County Council conducted a site meeting with the landowner and the Southwell Town Council Chair and Vice Chair to discuss the proposal with a view to agreeing an amended diversion route and the subsequent withdrawal of their objection. A new alignment and amended diversion route was discussed and proposed as shown on **Plan B**.
11. This second diversion proposal of Southwell Footpath No.69 comes off Footpath No.68 approximately 25 metres west of the junction where the legal line of Footpath No.69 meets Footpath No.68. The proposal then gently curves through the grassland in a north westerly direction until it meets the wooded area on the western boundary of the land and then proceeds north to reconnect with the remainder of Southwell Footpath No. 69.

12. Southwell Town Council presented this amended diversion proposal to their meeting on the 4th September 2019 where they discussed and agreed not to object to this new proposal.
13. The new proposal was presented to Newark and Sherwood District Council's Planning Committee meeting on 11th of September 2019. The District Council object to this new diversion proposal. To summarise, Newark and Sherwood District Council's objections to the second proposal were;
- a. The footpath is in a Main Open Area and any diversion would reduce public enjoyment of this site. Although such designations are not necessarily publicly accessible, this MOA has a public footpath through it and there is no policy support for reducing public access where present.
  - b. Re-routing the footpath would involve forging a new path across sensitive urban grassland in a designated Local Wildlife Area.
  - c. Any proposed diversion would involve the loss of potentially significant tree(s) in the Southwell Conservation Area.
  - d. Following construction of a post-and-wire fence to prevent accidental trespass on private garden land, there is no compelling reason to move the footpath from one part of the meadow to another.
  - e. National Planning Policy Guidance encourages protection, enhancement and safe use of Green Infrastructure.
  - f. Southwell Neighbourhood Plan notes that "Public Rights of Way... [contribute] not only to the Green Infrastructure but also, where relevant, to open spaces..." The Plan also makes it clear that the policy "seeks to conserve and enhance the... extent of PROWs...".
14. In response to these points, the proposed new route would not require the loss of any trees and would go through the same area of grassland that the existing paths goes through. NCC's Ecologist has confirmed that if the original alignment is left undisturbed, this will quickly re-vegetate and there would be minimal loss of habitat in the Local Wildlife Area. There is no designated public access into the 'Main Open Area' and the proposed route would still have views over the site. The path is not being extinguished, but diverted and would still preserve the Rights of Way network.

### **Reason/s for Recommendation/s**

15. In order to make a diversion Order proposing, upon confirmation of that Order, to divert part of Southwell Footpath No.69, it must be demonstrated that the legal tests have been met. Diverting Southwell Footpath No.69 would be in the interest of the landowner as it will improve the management of his land, reduce the risk of health and safety issues for the landowner and improve privacy for the landowner's family. The proposal also satisfies the test that the termination points of the path will still be the same. Officers therefore consider that it would be expedient to divert part of Southwell Footpath No.69 to the second diversion proposal

agreed with Southwell Town Council. Officers also consider that the diversion will not be substantially less convenient to members of the public and will not reduce the public enjoyment of the path. It will still provide a suitable alternative to using Southwell Footpaths 68 and 70.

16. If the Committee decides to approve the making of a legal Order, the Authority is required to serve notice of the proposal upon the landowner, the Town and District Councils, as well as a wide number of statutory consultees, to place a notice at council offices in the locality, and to advertise it both on site and in the local newspaper to allow the public and all stakeholders to make any objections or representations. If no objections to the Diversion Order are made, then the Order will be confirmed by officers on behalf of the County Council in accordance with paragraph 2B.3 of Committee's Code of Best Practice, and recorded on its new legal alignment on Nottinghamshire's Definitive Map and Statement.
17. If there are unresolved objections at the end of the six-week deposit, the County Council can either end the process there by deciding not to proceed with the diversion proposal (and no diversion therefore takes place) or it can refer the Order for determination by the Secretary of State for the holding of either a public inquiry, hearing or to be dealt with by written representations.

## **Statutory and Policy Implications**

18. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance 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, smarter working, sustainability and the environment 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;
  - a) direct Officers to make a legal Order to divert part of Southwell Footpath No.69 and to bring a further report back to Committee should objections be received to that Order and not withdrawn.

**ADRIAN SMITH**  
**Corporate Director – Place**

**For any enquiries about this report please contact:**  
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## **Constitutional Comments (SJE – 28/11/2019)**

19. This decision falls within the Terms of Reference of the Planning & Licensing Committee to whom responsibility for the exercise of the Authority's regulatory functions relating to public rights of way has been delegated. Should committee decide to make a diversion Order and

no objections are received to that Order, In accordance with paragraph 2B.3 of the Committee's Code of Best Practice, officers may confirm an unopposed Order

**Financial Comments (RWK 28/11/2019)**

20. There are no specific financial implications arising directly from the report. As stated in paragraph 5 the landowner will pay for the diversion Order and any work required on the ground to enable the diversion of the public footpath.

**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.

- The Southwell Footpath No.69 Diversion Order Case File

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

- Councillor Roger Jackson