

17 July 2013

Agenda Item:

**REPORT OF THE CORPORATE DIRECTOR (ENVIRONMENT AND
RESOURCES)**

**APPEAL DECISION BY THE SECRETARY OF STATE FOR ENVIRONMENT,
FOOD AND RURAL AFFAIRS REGARDING AN APPLICATION TO RECORD
A PUBLIC BRIDLEWAY IN CLIPSTONE AND WARSOP**

Purpose of the Report

1. To inform Committee of the decision by the Secretary of State for Environment, Food and Rural Affairs to allow an appeal against the Authority's refusal to make a Modification Order, to decide whether the Authority should apply to the Administrative Court for a judicial review of the decision, and to consider the stance to be taken by the Authority should this matter subsequently be referred to the Secretary of State as part of the Modification Order process.

Information and Advice

2. On 23 January 2013 Committee resolved not to accept a Modification Order Application made by Mr S Parkhouse to register a public bridleway along a privately owned track known as New Buildings Drive. The Drive connects to Peafield Lane (A6075) at its northern end and to Clipstone Bridleway No.8 at its southern end. APPENDIX A shows the route under consideration marked between points A-B. A series of photographs taken along the claimed route is shown as APPENDIX B1-4. A copy of the January 2013 Committee Report and corresponding resolution are shown as APPENDIX C.
3. Following Committee's decision, Mr Parkhouse made an appeal to the Secretary of State for Environment, Food and Rural Affairs under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981. Subsequently, an Inspector was appointed on behalf of the Secretary of State to review the case.
4. Having taken into consideration the available historic and user evidence, the Inspector has concluded that a public bridleway can be reasonably alleged to subsist. A copy of the Inspector's decision is shown as APPENDIX D.
5. Accordingly, the Inspector has allowed the appeal and therefore directs this Authority to make a Definitive Map Modification Order as per Mr Parkhouse's original application. The Inspector's decision to direct the Authority to make a

Modification Order can only be challenged by applying to the Administrative Court for judicial review of that decision. Committee must therefore decide whether or not to pursue this option. However, it should be noted that the decision cannot be challenged simply because of disagreement with the Inspector's view. For a challenge to be successful it must be shown that the Inspector has not followed the proper procedures or has acted outside his powers and has so fundamentally misinterpreted the law as to cause him to make an irrational decision.

6. Although the Committee's previous decision on this matter is at variance with the Inspector's view, his decision takes into account all the relevant evidence and appears to be a correct interpretation and application of the law. It is worth emphasising that the evidential threshold in these matters is comparatively low i.e. all that is required to be shown is that the right of way is reasonably alleged to subsist. In this case, the Inspector has concluded that there is no evidence to suggest that this test cannot be met.
7. Should Committee decide not to seek judicial review (and to therefore authorise officers to make a Modification Order as per the Secretary of State's direction), there remains a possibility that such an order would be objected to. If objections are received and not subsequently withdrawn (which appears likely), the Authority cannot confirm the order itself but must refer the opposed order to the Secretary of State for determination.
8. Committee's earlier decision to refuse the application would ordinarily suggest this Authority would take an opposing stance at any ensuing hearing or public inquiry (where, as a decision against officer recommendation, Members would need to present their case / give evidence). However, taking into account the further views now provided in the Inspector's decision, it is also open to this Authority to adopt a neutral stance at an inquiry (with officers giving evidence) should an opposed Modification Order be referred to the Secretary of State.

Reason/s for Recommendation/s

9. The recommendations set out in this report enable compliance with the Secretary of State's Direction and will also enable the authority to progress the relevant Modification Order in the most appropriate and practical manner.

Statutory and Policy Implications

10. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service 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) That Committee resolves not to apply to the Administrative Court for judicial review of the Inspector's decision, and authorises Officers to make a Modification Order as per the Secretary of State's Direction (such Order proposing the addition of a bridleway to the Definitive Map as per Mr Parkhouse's application).
- 2) That Committee resolves to take a neutral stance in the event that the Modification Order is referred to the Secretary of State for determination.

TIM GREGORY
Corporate Director (Environment and Resources)

For any enquiries about this report please contact:

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Definitive Map Officer

Constitutional Comments [SJE – 27/06/2013]

11. The decisions within this Report fall within the terms of reference of the Rights of Way Committee to whom the exercise of the Authority's powers relating to public rights of way have been delegated.

Financial Comments [SEM 03/07/13]

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

Background Papers

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 Modification Order Application case file.

Electoral Division(s) and Member(s) Affected

Rufford	Councillor John Peck
Warsop	Councillor John Allin

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