

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

### **REFERRAL OF ORDERS MADE TO A) EXTINGUISH AN UNRECORDED FOOTPATH IN THE PARISH OF MANSFIELD AND B) TO CREATE FOOTPATH NO.49 AS A REPLACEMENT TO THE PLANNING INSPECTORATE.**

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

1. To approve the referral of the made Extinguishment Order and the concurrent Creation Order to the Planning Inspectorate for a decision on whether the Orders should be confirmed. The County Council have received one objection to the Extinguishment Order which has prevented the County Council from confirming the Extinguishment and Creation Orders. The Extinguishment Order can be seen on the map attached shown as **Plan A** and the Creation of Mansfield Footpath No.49 can be seen on the map attached shown as **Plan B**.

#### **Legal Background**

2. Under the terms of Section 118 of the Highways Act 1980, the County Council has the power to make a 'Public Path Extinguishment Order' where it appears, regarding a footpath or bridleway in its area, that it is expedient that the line of the path should be extinguished. This expediency refers to the interests of the owner, lessee or occupier of land crossed by the path, or of the public. Section 26 states that a local authority may create a footpath or bridleway where it believes there is a need for it, and that it is expedient to create it, having regard to the extent such a 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 the creation would have on the rights of persons interested in the land (having regard to the provisions for compensation for loss or damage as a result of the Creation Order).

#### **Background Information**

3. SDC Trailers manufacture Large Good Vehicle trailers both in Northern Ireland and locally in Mansfield. They have recently expanded operations at their Mansfield site, moving in to an old dairy processing site adjacent to their existing site off Quarry Lane. An unrecorded public footpath runs between these two sites from Bradder Way to Mansfield Footpath No.17, as shown on **Plan A**. To aid and assist with the recent expansion and operation of their sites, SDC Trailers applied to the County Council to 'divert' this unrecorded public footpath.

SDC Trailers agreed to pay for the legal and other associated costs and to organise the physical works to create a replacement footpath to a specification stipulated by the County Council. They have also agreed to pay for the resurfacing of a section of the existing Mansfield Footpath No.17, see **Plan C**. Following on from these initial discussions, Officers in the Authority's Countryside Access Team consulted with its statutory undertakers and consultees including local authorities, path user groups, utility companies and the local elected county members. At this stage no objections were received.

Officers proceeded and made two concurrent Orders and placed them on public deposit for six weeks. The Orders, an extinguishment and creation respectively, are

- The Nottinghamshire County Council (Mansfield Unregistered Footpath between The North Eastern corner of Bradder Way and Mansfield Footpath No.17) Extinguishment Order 2019
- The Nottinghamshire County Council (Mansfield Footpath No.49) Creation and Definitive Map and Statement Creation Order 2019

## **Responses to the made Orders**

4. The Extinguishment Order received one objection from a member of the public, Mr Tony Cheetham.

In summary, the main points made in Mr Cheetham's objection are:

- Alternative routes are longer
- Lack of street lighting
- Dangerous slippery path surface [on a connecting footpath]
- Footpath [No.17] parallel to railway is often overgrown with vegetation

No objections were made in response to the Creation Order.

5. In response to the objection, SDC Trailers agreed to pay for the full costs of new street lighting on the proposed created path, a contribution to the replacement of existing lighting on FP17 and the removal of lamp columns and associated infrastructure on the unrecorded path subject to the successful extinguishment. The County Council have proposed to replace a number of other light columns along FP17 as a separate project.

6. During the deposit of the Orders, the Countryside Access Team successfully bid for capital funding from the 2020 / 2021 Integrated Transport Measures budget to improve Mansfield FP17, Mansfield FP43 and an unrecorded public footpath from the Railway Footbridge to Princes Street. These footpaths serve residential areas and link with both employment sites and recreational facilities. FP17 is also used as a through route to Mansfield town centre. There are two Network Rail footbridges across the Robin Hood Line linking these public footpaths. It is proposed to provide an all-weather surfaced path along FP17 as well surfacing improvements and general tidying on FP43. Surfacing work will also be undertaken on an unrecorded path to Princes Street. To summarise, the work includes new dressing on top of the existing surfaces and in parts, the removal of weed infested surface, and the laying of new hardcore and surface dressing. The County Council will also be working with adjacent

landowners and businesses including Network Rail to generally tidy up the area adjacent to the paths. Please see **Plan D**.

7. Working with colleagues in NCC's Highways Development Control, the Countryside Access Team have asked for a TCPA section 106 contribution as part of a development proposed on nearby Sheepbridge Lane. A financial contribution would be used for surfacing improvements on Mansfield FP17 to the west of SDC Trailers towards Sheepbridge Lane.
8. In response to the objector's comments; the proposed extinguishment and creation is 200 metres longer if travelling directly between the top and bottom of Bradder Way. However, if a member of the public is travelling east and / or to link in with FP20 the south, the distance is negligible. If walking from the west, an alternative and shorter way would be to use FP17 and the old railway line owned and managed by NCC to Quarry Lane, see **Plan D**. SDC have agreed to pay for lighting the new path and provide a contribution to the proposed new lighting on FP17 by NCC. The new created path will be properly constructed with a stone base layer and an all-weather tarmac surface dressing. The linking paths will be resurfaced by NCC with a contribution from SDC Trailers. As part of the surfacing and generally tidying, NCC will work with adjacent businesses to cut back any encroaching vegetation.

### **Other Options Considered**

9. Following discussions with the objector, Mr Cheetham continues to hold his objection. The County Council has the two options set out here and in paragraph 10 below. It can choose not to proceed with the proposal, and no extinguishment and creation takes place. This would mean the unrecorded footpath stays on its current alignment and SDC Trailers will have to work around the path, and try and implement an alternative method of working between the two sites.

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

10. Alternatively, the Authority can refer the Order with the outstanding objection to the Secretary of State for confirmation. This would be dealt with by the Planning Inspectorate either by means of a public inquiry, a less formal public hearing or by an exchange of written representations. It is considered that the Extinguishment Order is in the interests of the landowner to enable SDC Trailers to carry out their operations safely and securely, and that it is expedient to create the alternative path which will add to the convenience of walkers, with the consent of the landowner, SDC Trailers, who are also covering the costs of the legal and physical works for the old and new paths respectively. They are also contributing to the wider access network in the locality of their Mansfield site.

### **Statutory and Policy Implications**

11. 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.

## **Financial Implications**

**12.** The legal costs of the extinguishment and creation are to be met by SDC Trailers. SDC Trailers are covering all the costs of the physical works to remove infrastructure associated with the proposed extinguished path and the creation of the new path. They are also contributing to a wider improvement scheme on paths in their locality. Sections 26 and 28 of the Highways Acts 1980 make provision for compensation to be paid to the landowner if it is shown that the value of an interest of a person in land is depreciated by the operation of a Creation Order. However, in this case the land is owned by the applicant, SDC Trailers, and will therefore will not be claiming any compensation for loss of their land as it is clearly in their interests and at their request.

## **Human Rights Implications**

**13.** Implementation of proposals within this report might be considered to have a minimal impact on human rights (such as the right to respect for private and family life and the right to peaceful enjoyment of property, for example). However, the authority is entitled to affect these rights where it is an accordance with the law and is both necessary and proportionate to do so, in the interests of public safety, to prevent disorder and crime, to protect health, and to protect the rights and freedom of others. The proposals within this report are considered to be within the scope of such legitimate aims.

## **Public Sector Equality Duty implications**

**14.** As part of the process of making decisions and changing policy, the Council has a duty 'to advance equality of opportunity between people who share a protected characteristic and those who do not' by thinking about the need to:

- Eliminate unlawful discrimination, harassment and victimisation;
- Advance equality of opportunity between people who share protected characteristics (as defined by equalities legislation) and those who don't;
- Foster good relations between people who share protected characteristics and those who don't.

**15.** Disability is a protected characteristic and the Council therefore has a duty to make reasonable adjustments to proposals to ensure that disabled people are not treated unfairly.

## **Implications for Sustainability and the Environment**

**16.** The Extinguishment and Creation Orders and the associated works will provide an improved and enhanced network of public rights of way with tarmac surfaced paths and more efficient and improved street lighting. The network provides sustainable access for those on foot to employment sites, links from residential housing to Mansfield's town centre, recreational walking opportunities and a safe off-road route to Mansfield's bus and railway station.

## **RECOMMENDATION**

- 1) It is RECOMMENDED that Committee resolve that the Orders be referred to the Planning Inspectorate, seeking their confirmation.

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

**For any enquiries about this report please contact:**  
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### **Constitutional Comments (SJE – 15/06/2020)**

17. 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 and cycle paths has been delegated.

### **Financial Comments (RWK 18/06/2020)**

18. There are no additional financial implications for the County Council arising out the report. SDC Trailers are to meet the legal costs of the extinguishment and creation orders, the costs of the physical works to remove infrastructure associated with the proposed extinguished path and the creation of the new path, and are contributing to a wider improvement scheme on paths in their locality. Any costs to be met by the County Council in improving the footpaths will be funded from the 2020 / 2021 Integrated Transport Measures budget.

### **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 Mansfield Unregistered Footpath Between The North Eastern Corner of Bradder Way and Footpath No.17 Extinguishment and Concurrent Creation Order Case File

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

- Stephen Garner
- Andy Sissons