

**REPORT OF THE CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)****CONSIDERATION OF A REQUEST UNDER SECTION 119 OF THE HIGHWAYS ACT 1980 FOR THE DIVERSION OF TWO CLAIMED FOOTPATHS AT ELSTON****Purpose of the Report**

1. To consider a request made by Mr R. Lockwood of F.E. Lockwood & Son, Lineham House Farm, Elston for the diversion of two footpaths claimed by the Ramblers' Association which cross his property. The report also deals with an alternative diversion proposal, and Committee is requested to determine which of these proposals should proceed to the Order making stage. A map showing the routes claimed by the Ramblers' Association and the diversion proposals is shown as Plan A.

**The landowner's proposal**

2. Following a meeting at Lineham House Farm to discuss the implications of the Ramblers' Association claims, Mr Lockwood requested that the paths be diverted to the route indicated on Plan A. In support of his proposal, he states that "it only deviates slightly from the claimed path and being on the margin defines the route more clearly." This realignment would also "make it easier for arable cultivation and cropping." At the junction with Mill Road, Mr Lockwood's proposal would exit his field adjacent to a private residence called 'Kindersley.'

**The legal tests to be applied**

3. Under the terms of Section 119 of the Highways Act 1980, the County Council can 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 objected 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.
4. 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.

5. Under Section 40 of the Natural Environment and Rural Communities Act 2006, the County Council is required to have regard to the conservation of biodiversity in exercising its functions, which includes those set out in the Highways Act 1980.

### **The alternative proposal**

6. The diversion proposal put forward by officers of the Countryside Access section is aimed at satisfying the tests set out in section 119 of the Highways Act 1980, and taking into account the interests of all affected parties. These include the occupiers of the property known as 'Field View,' which is crossed by one of the claimed paths, Mr Lockwood as the farmer of the field in question, the potential users of the diverted route, and the occupiers of 'Kindersley.' The proposal also has regard for the County Council's duty to take biodiversity into account when carrying out its functions.
7. Given the wording of Section 119, officers believe that there is a presumption that a diversion order must ordinarily endeavour to alter a path's point of termination as little as possible. As can be seen from Plan A, the officers' proposal is closer to the original point of termination than that proposed by Mr Lockwood by approximately eight metres. Path users would pass through the hedgeline adjacent to the end of the footway alongside Mill Road, allowing them to cross safely. Creating a gap in the hedge at this point would also be less disruptive from an ecological point of view, as indicated below.
8. Although officers recognise that it would be expedient to divert the claimed paths onto the edge of the field farmed by Mr Lockwood as this would be in the interests of land management, they do not believe that that expediency extends to the whole of Mr Lockwood's proposal. Between points A and B on Plan A, Mr Lockwood would have to reinstate a cross-field 70 metres long to a width of 1 metre if his proposal was implemented, compared to 110 metres between points A and D in the case of the officers' alternative. Between points B and C, Mr Lockwood would have to leave a field edge path 20 metres long to a width of 1.5 metres. Mr Lockwood's proposal would therefore necessitate keeping 100 square metres uncultivated for the benefit of public access, compared to 110 square metres in the case of the officers' proposal. The officers believe that this difference is not substantial enough to warrant accepting this part of Mr Lockwood's proposal, particularly in light of its more significant alteration of the path's point of termination. Officers also believe that it is debatable whether it could be regarded as 'expedient' to divert the path to run alongside the property boundary of a private residence, and although it is difficult to quantify this point, diverting the path alongside someone's property in this way could adversely affect the enjoyment of the path as a whole, even if only to a small degree and only for certain users.

9. In response to the officers' proposal, Mr Lockwood has stated that this "would impede modern agricultural practices," but has not specified why this should be the case. Reinstating a cross-field path to allow public access is a standard procedure where a right of way crosses a field, and would be required even with regards to Mr Lockwood's own proposal.
  
10. Mr Lockwood has also stated that the officers' proposal would require "an additional access point to be created through well-established hedgerows," but this is also the case with Mr Lockwood's own proposal. He also states that the officers' "proposed access point onto Mill Road is impractical and potentially hazardous due to a grass bank and lack of a footpath adjacent to the highway." There is little height difference, however, between the hedge and the bottom of the grass bank, and at the bottom of the bank there is a metalled footway on which path users can stand whilst waiting to cross Mill Road. Officers do not believe, therefore, that their proposal is in any way "potentially hazardous" as is being claimed.

### **Responses from consultees**

11. Letters have been sent out to the standard list of consultees, including the local member and the Parish and District Councils, asking for their views on the diversion proposals. A letter was also sent to the occupiers of 'Kindersley.'
12. The response from the District Council stated that "no preference was expressed by any party."
13. The Parish Council's response was that they supported Mr Lockwood's proposal, but no reasons were given for this preference.
14. The Nottinghamshire Footpaths Preservation Society stated that they were "fairly happy with either diversion proposal," but would "marginally favour" the officers' proposal as "it is closest to the original route and terminates nearest the village."
15. The response from the County Council's Nature Conservation Unit expressed a preference for the officers' proposal due to the presence of trees in the hedgeline at Mr Lockwood's proposed termination point. The officers' proposal would therefore "result in more minimal habitat loss."
16. The occupiers of 'Kindersley' responded that Mr Lockwood's proposal would intrude on their privacy, and given that the claimed right of way is being diverted in part to protect the privacy of the occupiers of 'Field View,' similar consideration should be given to their interests. They also expressed concern that "a public footpath at such proximity would devalue our property," and that walkers exiting the field at Mr Lockwood's proposed termination point "would do so at the worst possible point on a blind corner," and therefore "from a road safety point of view"

they felt that the officers' proposal was better. Their final point was that at Mr Lockwood's proposed termination point "there are mature trees (used by nesting birds) that would need to be removed."

## **Conclusion**

17. In order to be able to accept Mr Lockwood's diversion proposal, a number of legal tests would have to be met. It would be necessary to show that it was in his interests as the owner of the land in question, whilst having regard to public enjoyment. Diverting the claimed paths so that they run along the field edge for most of their length rather than across the field satisfies the 'interests of the owner' test, but this test is also satisfied by the officers' proposal. Removing the western path from the grounds of 'Field View' is also satisfied both by Mr Lockwood's and the officers' proposals.
18. For the final section of the western path, both Mr Lockwood's and the officers' proposals would require Mr Lockwood to reinstate a cross-field path after ploughing and keep it free from crop, the only difference being that the final section of Mr Lockwood's proposals returns the path to the field edge. Although in both cases, there would be no effect on other land served by the claimed path if a Diversion Order was to be made and come into operation, and no adverse effects on the land over which the new path would be established, thus satisfying these two legal tests, the basic 'expediency' test for diverting the path to the line specifically requested by Mr Lockwood is not believed to be met, as Mr Lockwood has not specified why he would be unduly inconvenienced by having to reinstate an additional 10 square metres of cross-field path, which is all that would be required if the officers' proposal was to be accepted.
19. Two other legal tests to be considered involve the "substantially as convenient" test and the presumption against altering a point of termination of a path to a greater degree than is necessary, and the need to have regard to public enjoyment of that path. Mr Lockwood's proposal does not satisfy the first of these tests, as it alters the point of termination to a greater degree than that which is considered necessary in the interests of expediency. With regards to the second test, Mr Lockwood's proposal, according to the occupiers of 'Kindersley,' would bring path users to "the worst possible point on a blind corner," whereas the officers' proposal has no such road safety implications. It is also the proposal preferred by the Nottinghamshire Footpaths Preservation Society, being closer to the original route and nearer to the village, and therefore, unlike Mr Lockwood's proposal, capable of satisfying the 'public enjoyment' test.
20. The final factor to be considered involves the County Council's duty to have regard to the conservation of biodiversity. Mr Lockwood's proposal would result in greater habitat loss than that favoured by officers, and therefore adversely affect the County Council's legal responsibilities in relation to nature conservation.

## **Statutory and Policy Implications**

21. This report has been compiled after consideration of implications in respect of finance, equal opportunities, 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) It is RECOMMENDED that the Committee accepts that part of Mr Lockwood's diversion proposal between Carrgate Lane and point A on Plan A, but turns down the part between points A, B and C for the reasons set out in the report.
- 2) It is RECOMMENDED that the Committee accepts the officers' diversion proposal between points A and D on Plan A and authorises the making of a Diversion Order for a route from Carrgate Lane via point A to point D for the reasons set out in the report.

**Tim Hart**  
**Senior Definitive Map Officer**

**For any enquiries about this report please contact: Tim Hart on 0115 9774395**

## **Constitutional Comments [SJE – 07/12/12]**

22. This decision falls 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 has been delegated.

## **Financial Comments [DJK – 12/12/12]**

23. The contents of this report are duly noted; there are no financial implications.

## **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.

Footpath diversions at Elston – case file.

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

Farndon and Muskham      Councillor Sue Saddington

ROW 89 Diversion of Two claimed Footpaths at Elston  
5 December 2012