

**14<sup>th</sup> December 2021**

**Agenda Item: 7**

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

### **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 determine whether to refer the 'made' Diversion Order to the Secretary of State with a request that the Order be confirmed. Such an order, once made, is open for public consultation, though it does not take legal effect until it is confirmed. The County Council have received 12 objections to the Diversion Order which has prevented the County Council from confirming the Order itself, and the Council must therefore decide whether not to proceed, or, if the tests set out below are met, to seek confirmation of the Order by the Secretary of State. The Diversion Order can be seen on the map attached shown as **DOCUMENT B**.

#### **Legal Background**

2. Under 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 using the path. 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 opposed 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.

It must also be expedient to confirm the Order having had regard to the effect which the diversion would have on the public enjoyment on the path, which coming into operation of the order would have in respect to the 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.

## Background Information

3. 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 for his young family and increase the security of his property by relocating the footpath towards the garden boundary – see **DOCUMENT A**. The applicant, in support of his application, has concerns with the proximity of the existing path to the rear of his property and garden, and that there are no defined boundaries between the garden and path.

The Order proposal was taken to the Planning and Licensing Committee on the 10<sup>th</sup> December 2019 due to an objection from The Newark and Sherwood District Council. The meeting approved the recommendation to make an Order to divert Southwell Footpath No.69 on an alternative alignment, see **DOCUMENT B**. On 6<sup>th</sup> January 2020 an Order was made to divert Southwell Footpath No.69 per Committee's Resolution. Following a six-week deposit, the public consultation came to a close on 28<sup>th</sup> February 2020 having received a total of 12 objections. A summary of the objections can be seen in paragraph 4 and in **DOCUMENT C**.

## Summary of responses to the Order Consultation

4. Below, the 12 objections have been summarised;
  - FP69 is the most direct route
  - The current alignment of FP68 is less steep than what is proposed
  - FP68 is very muddy and the new alignment off FP68 will be muddy
  - New alignment may disturb wildlife
  - References to land in Southwell Neighbourhood Plan
  - Designated as 'Main Open Area' in Local Plan
  - The diversion will remove the short cut
  - No community benefit
  - Fear that more of the 'open land' will be adopted as garden
  - Increase route length from Burgage Lane to Newark Road
  - Fear of footpath extinguishment
  - Existing FP69 not on correct alignment
  - Path in conservation area
5. Following consideration of the Order, Officers, the Chair of the then Planning and Licensing Committee and the local elected member, Councillor Jackson recommended a site visit to discuss and observe the proposal on site.

The site visit was delayed due to the Pandemic but on 7<sup>th</sup> October 2021 Officers and Committee members met on site to discuss and assess the Diversion proposal. This report follows up on that site view in order that members can discuss and decide whether to submit the Order for determination and confirmation by the Secretary of State.

## Conclusion

6. In response to the objectors' points in paragraph 4 and **DOCUMENT C**, 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 go through. NCC's Ecologist has confirmed that if the original alignment is left undisturbed, this will very quickly re-vegetate and there would be minimal loss of habitat in the Local Wildlife Area. Additionally, there is no designated public access into the 'Main Open Area' and the area identified in Southwell Neighbourhood Plan, and the proposed route would still have views over the site. Furthermore, the path is not being extinguished but diverted and would still preserve the local Rights of Way network. Finally, the link between Shady Lane (FP70) and FP68 will still be there albeit on a slightly different alignment but marginally longer (by 18 metres) than the original alignment, and the existing FP69 was moved to its current legal alignment a few years ago as part of a separate Planning Application to erect a low fence.
7. With reference to the assertion that there is no community benefit, the proposal meets the Highways Act 1980 s119 test in that diversion is in the interests of the landowner. The land is in the ownership of the landowner; the southern boundary being the Potwell Dyke. The land immediately adjacent to the house is akin to a formal garden, and officers understand that there are no proposals to formally alter the land following the diversion but merely to move the path farther away towards the garden boundary in the interest of better managing his land, to reduce health and safety issues for his young family and to increase the security of his property. As such, the community benefit assertion does not affect consideration of the proposed diversion in terms of the legal tests. The fact that the proposal is in a designated Conservation area is not relevant to the legal tests under S.119.
8. It is acknowledged that the alternative path, Southwell FP68 which runs along the bottom of the applicant's land, does get muddy during wet weather. However, as this is an important route within the Town, the Countryside Access Team will be employing Via's Highway Engineers to carry out a detailed and comprehensive design. The brief is to look at the drainage and provide appropriate surfacing taking into account the local environment. This work will be undertaken independently and separately to the outcome of the diversion proposal and is not relevant to determining whether to seek confirmation of the diversion order.

## Other Options Considered

9. 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 diversion takes place. Therefore, this would mean that Southwell FP69 stays on its current alignment.

## Reason/s for Recommendations

10. Alternatively, the Authority can refer the Order with the outstanding objections 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 Diversion Order 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. 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.

## **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 charge for making the Order is prescribed by legislation and is met by the applicant. The costs of presenting, co-ordinating and the holding of an inquiry, hearing or written representations are, unless otherwise recovered from another party following a public inquiry, met by the County Council.

## **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.

## **RECOMMENDATION**

- 1) It is RECOMMENDED that the Order be referred to the Secretary of State seeking their confirmation.

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

**For any enquiries about this report please contact:**  
Stephanie Lock, Rights of Way Officer, 0115 977 4990

### **Constitutional Comments [SJE – 01/12/2021]**

This decision falls within the Terms of Reference of the Planning & Rights of Way Committee to whom responsibility for the exercise of the Authority's regulatory functions relating to public rights of way has been delegated.

### **Financial Comments [RWK 15/11/2021]**

The financial implications are set out in paragraph 12 of the report. The legal costs of making any order will be funded by the applicant. Any costs incurred by the County Council in presenting, co-ordinating and holding an inquiry, hearing or written representations, or any works undertaken on FP68, will be funded from existing budgets.

### **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**

- Southwell Councillor Roger Jackson