



**11 July 2017**

**Agenda Item:7**

## **REPORT OF CORPORATE DIRECTOR – PLACE**

### **CONSIDERATION OF A REQUEST UNDER SECTION 119 OF THE HIGHWAYS ACT 1980 FOR THE DIVERSION OF BINGHAM FOOTPATHS NO.15 AND NO.17**

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

1. To consider a request made by Toot Hill School, Bingham for the diversion of Bingham Footpaths No.15 and No.17, as shown on the map attached as **Plan A**.

#### **The legal tests to be applied**

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 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.
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.

#### **Proposal details**

4. The County Council has received an application from Toot Hill School to divert two public footpaths across their school site (**Plan A**). Toot Hill School is an academy school and they own the freehold of the land.
5. The school would like to divert Bingham Footpaths No.15 and No.17 to the edge of the school playing fields away from school buildings and sports fields. The diversion proposal is to enable Toot Hill School to provide a safe and secure environment for its pupils and to prevent members of the public accessing the school's playing fields. Toot Hill School cite a number

of incidents taking place on their site including threats to pupils, dog fouling on the school fields and disruption to school sporting activities.

6. The definitive line of Bingham Footpath No.15 passes between school buildings and along the edge of the school field on the western side of the site. Bingham Footpath No.17 crosses through the middle of the same large school field along the top of a small embankment which essentially splits the field in two. The path then joins Footpath No.15 on the edge of the same playing field.
7. To enable the school to manage their site more efficiently and to safe guard pupils they would like to divert the public footpaths to the perimeter of the site (**Plan A and Plan B**). Footpath No.17 would be diverted along the edge of the playing field with a width of five metres between an existing hedgerow and a proposed green two metre high fence. Toot Hill School have agreed to maintain the grass surface and the adjacent hedgerow. Footpath No.15 would be diverted along the eastern side of the school site, in-between tennis courts and the school running track. The path would be fenced in with a width of three metres where possible but not less than 1.5 metres at pinch points.
8. As part of the diversion proposal Toot Hill School have said they will formalise and dedicate two 'unofficial' paths (marked on **Plan A**) through the school's eastern boundary fence providing direct access on to Footpath No.15 from the adjacent housing estate known locally as the Bird estate.
9. As part of the diversion application Toot Hill School have said they will undertake and pay for all works required to bring the proposed diverted paths up to a suitable standard for the safe passage of members of the public on foot. The School have also offered to provide and dedicate a link from the proposed diverted Footpath No.17 to Bingham Town Council's managed and owned Linear Park. The Linear Park is a former railway line which enables members of the public a traffic free walk and a safer alternative to crossing the A52 at-grade to reach a number of public rights of way to the south of the town.

## **Responses to consultation**

10. Following Toot Hill School's diversion application, the County Council consulted with a number of organisations and bodies including, local authorities, path user groups, utility companies and the local elected member. The County Council also consulted a number of 'Bird Estate' residents whose properties abut or are near to the proposed diversion of Footpath No.15. The responses are below;
11. NCC Conservation – no objection
12. Rushcliffe Borough Council – no objection
13. Bingham Town Council – no objection
14. Nottinghamshire Ramblers' Association – no objection
15. Nottinghamshire Footpath Preservation Society – no objection

16. Three local residents – no objection
17. Eight local residents – objecting. Objections were received from eight local residents living close to Toot Hill School. In summary the objections were;
  - a. Concerns with the appearance of the fencing proposed to be used to secure the school buildings and sports fields from the public footpaths. There were also issues raised relating to the enclosure of the path where the public would have to walk between fencing / hedging rather than experiencing the open feel as currently experienced.
  - b. The lack of lighting and CCTV. Footpath No.15 currently passes close to the school buildings and light emits from the school's existing lighting. There are no plans to light the diverted paths.
  - c. The diversions would limit access to the Leisure Centre facilities located within the school site. If approaching the Leisure Centre from the west members of the public would use the alternative route via adopted footways. There is currently no formal access from the bird estate to the Leisure Centre.
  - d. The loss and feel of open space.
  - e. Loss of accessibility in and around the school site.

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

12. It is expedient that Bingham Footpaths No.15 and No.17 are diverted in the interests of the landowner as it will divert the paths to the edge of the school site therefore improving the management and safety of the school. The termination point for the path is on the same highway and the path will not be substantially less convenient to the public as a result of the paths being diverted.
13. If committee decides to approve the making of an order, the order will be on deposit for six weeks. If there are no objections during this period the order will be confirmed and when work is completed to physically open up the paths the diversion takes effect.
14. If there are unresolved objections at the end of the six week deposit, the Authority can either end the process and no diversion takes place or refer the order for determination to 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**

15. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working 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**

It is recommended that Committee either;

- a) direct Officers to make a legal order to divert Bingham Footpaths No.15 and No.17

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

**For any enquiries about this report please contact:**

Neil Lewis  
Team Manager Countryside Access  
[neil.lewis@nottscc.gov.uk](mailto:neil.lewis@nottscc.gov.uk), 0115 977 3169

**Constitutional Comments [RHC 21/6/2017]**

- 1) Planning & Licensing Committee is the appropriate body to consider the contents of this report

**Financial Comments [RWK 19/06/2017]**

- 2) There are no specific financial implications arising directly from this report.

**Background Papers and Published Documents**

- Case file.

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

- Councillor Francis Purdue-Horan
- Councillor Neil Clarke