

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

Delegated Authority to (1) Make Public Path and Definitive Map Modification Orders, (2) Determine Applications to Divert or Extinguish Public Paths and (3) Determine Formal Applications to Modify the Definitive Map and/or Statement

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To consider asking Full Council to delegate the Service Director Highways and Planning authority to make public path and definitive map modification orders; to determine formal and statutory applications to divert or extinguish public paths; and to determine applications to modify the definitive map and/or statement.

2. BACKGROUND INFORMATION

- 2.1 At present Planning Committee's approval is needed to: (1) make a public path or definitive map modification order; (2) determine formal and statutory applications to divert or extinguish a public path; and (3) determine a statutory application to modify the definitive map and/or statement.
- 2.2 Public path orders are used to create, divert or extinguish public footpaths, public bridleways and restricted byways. These are usually made under the Highways Act 1980 or the Town and Country Planning Act 1990.
- 2.3 A formal application to divert or extinguish a public path takes the form of a letter to the relevant officer detailing the proposal.
- 2.4 Or an owner or occupier can apply to extinguish or divert a public path that crosses his or her land under sections 118ZA and 119ZA of the Highways Act 1980 respectively.
- 2.5 Also a school proprietor can apply for a special extinguishment or special diversion order under sections 118C and 119C of the Highways Act 1980 respectively to protect pupils.

- 2.6 If the local authority have not determined an application served under section 118ZA, 119ZA, 118C or 119C within four months, they may be directed to do so within a specified time by the Secretary of State.
- 2.7 Under section 119D of the Highways Act 1980 public rights of way can be diverted by the highway authority for the protection of sites of special scientific interest.
- 2.8 A definitive map modification order seeks to make alterations to the definitive map and/or statement, the legal record of public rights of way that all local authorities with responsibility for public rights of way are required to hold and keep under continuous review. They are made either (1) in consequence of a public path order or (2) to amend or delete incorrect particulars or to correct omissions.
- 2.9 Statutory applications to modify the definitive map and/or statement are made under section 53(5) and Schedule 14 of the Wildlife and Countryside Act 1981. An applicant may make representation to the Secretary of State for Environment, Food and Rural Affairs if his or her application is undetermined twelve months after certification. There is no such right to make representation when non-statutory applications are refused. However, there would be nothing to stop the applicant from subsequently making a statutory application should he or she so wish.
- 2.10 Reference to legislation not yet in force is made in anticipation of it being so shortly.

3. OPTIONS FOR CONSIDERATION

- 3.1 To grant delegated authority to (1) make public path and modification orders, (2) determine formal and statutory applications to divert or extinguish public paths and (3) determine applications to modify the definitive map and statement.
- 3.2 Not to grant delegated authority to (1) make public path and definitive map modification orders, (2) determine formal and statutory applications to divert or extinguish public paths and (3) determine applications to modify the definitive map and statement.

4. ANALYSIS OF OPTIONS

- 4.1 Currently, if the Service Director Highways and Planning wishes to make either a public path or definitive map modification order Planning Committee's approval must first be obtained. The order must then be advertised on site and in a local newspaper. If no objections and/or representations are duly lodged, North Lincolnshire Council can confirm the order. Otherwise the order must be returned to Planning Committee for subsequent direction. The usual outcome of the latter is referral of the order to the Secretary of State.

- 4.2 In effect, objectors have four opportunities to comment on the order-making process: twice in committee and during advertisement (following the order's making and confirmation). It is crucial that the public can subject orders to proper scrutiny.
- 4.3 However, were the Service Director Highways and Planning able to decide whether to make orders instead of Planning Committee, those orders that when advertised attract no objections would be confirmed without Planning Committee having to consider them at all. The majority of orders are not contested because either the order is uncontentious or officers have allayed would-be objectors' fears beforehand. The number of public rights of way reports considered by Planning Committee would therefore be substantially reduced to no one's detriment.
- 4.4 This is because objectors would not be denied a right of appeal. The law allows a minimum of four weeks for objections in the case of public path orders and a minimum of six weeks in the case of definitive map modification orders. Only contended orders would be brought before Planning Committee. And from this point onwards the system would be as it is now.
- 4.5 Nor should determination by the Service Director Highways and Planning prejudice applications to divert and extinguish public paths under sections 118ZA, 119ZA, 118C and 119C of the Highways Act 1980. This is because section 121D of the Highways Act 1980 provides a right of appeal to the Secretary of State if the local authority refuses to (1) make an order, (2) confirm an unopposed order or (3) submit an opposed order to the Secretary of State; whilst section 121C defines the circumstances in which a local authority may decline to determine an application.
- 4.6 Similarly an applicant wishing to modify the definitive map and/or statement under section 53(5) of the Wildlife and Countryside Act 1981 has a right of appeal to the Secretary of State within 28 days of receipt of notice that the authority do not intend to make an order.
- 4.7 The only exception to the delegation would be where an applicant believes the diversion or extinguishment of a public path is necessary under section 257 of the Town and Country Planning Act 1990 to enable the implementation of planning permission already granted under Part Three of that Act.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

5.1 Financial

5.1.1 From within the existing budget of the Environment Team.

5.2 Staffing

5.2.1 From within the existing complement of the Environment Team.

5.3 Property

5.3.1 None.

5.4 IT

5.4.1 None.

6 OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17-CRIME AND DISORDER, RISK AND OTHER)

6.1 Statutory

6.1.1 None.

6.2 Environmental

6.2.1 None.

6.3 Diversity

6.3.1 None

6.4 Section 17-Crime and Disorder

6.4.1 None.

6.5 Risk

6.5.1 None. The public will retain a right of appeal through the normal statutory processes and, in the case, of contended orders, will be able to address members prior to confirmation.

7. OUTCOMES OF CONSULTATION

7.1 Not applicable.

8. RECOMMENDATIONS

8.1 It is recommended members request of Full Council that the Service Director Highways and Planning be granted delegated authority to: (1) make public path orders (creation, diversion and extinguishment) under sections 26, 118, 118A, 118B, 119, 119A and 119B of the Highways Act 1980 and section 257 of the Town and Country Planning Act 1990; (2) determine formal and statutory applications to make extinguishment and diversion orders (under sections 118, 118ZA, 118C, 119, 119ZA,

119C and 119D of the Highways Act 1980); and (3) determine applications to modify the definitive map and/or statement, including applications served under section 53(5) of the Wildlife and Countryside Act 1981.

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Background Papers used in the preparation of this report: None