

PLANNING AND REGULATION COMMITTEE – 21 January 2019

PUBLIC PATH ORDERS – CHANGE IN PRACTICE WHERE ORDERS ARE SUBJECT TO OBJECTION

Report by Strategic Director for Communities

Recommendation

1. The Committee is **RECOMMENDED** to NOTE that decisions to refer Public Path Orders to The Planning Inspectorate where objections have been made will be referred to the Committee only in those cases where: -
 - (a) the Strategic Director for Communities considers a case to be significantly contentious or of sufficient importance to warrant consideration by members; and/or
 - (b) concerns are raised by the local County Councillor.

Executive Summary

2. The Council has powers to make Public Path Orders to divert and extinguish public footpaths, bridleways and restricted byways under the provisions of the Highways Act 1980 and the Town and Country Planning Act 1990.
3. Applications may be made to the Council by landowners, developers, etc and a charge is made to cover the costs of processing them up to the Order-Making stage. Once an Order is made, it is within the public domain and the Council has no powers to recover its costs.
4. All applications must follow a rigid legislative process and the Council will determine whether to make the Order requested based on the legal tests contained in the relevant legislation.
5. Presently, any decision as to whether an Order is made, or the application rejected, is delegated to the Strategic Director for Communities. If an Order is made and no objections are received, the Order is confirmed and brought into effect. However, where an Order does receive an objection, the individual case is referred for consideration by this Committee to determine whether to either abandon the Order or authorise its referral to The Planning Inspectorate to determine.
6. This report outlines a change in this procedure so that such cases are not routinely referred to the Committee, thereby shortening the decision-making process.

Introduction

7. This report refers to Public Path Orders made in accordance with the following provisions: -
 - I. Highways Act 1980 section 26 creation of a footpath, bridleway or restricted byway by Order
 - II. Highways Act 1980 section 118 stopping up a footpath, bridleway or restricted byway that is not needed for public use
 - III. Highways Act 1980 section 119 diverting a footpath, bridleway or restricted byway in the interests of the owner, lessee or occupier of land crossed by the way or of the public.
 - IV. Highways Act 1980 section 118a / 119a stopping up or diverting a footpath, bridleway or restricted byway crossing a railway
 - V. Highways Act 1980 section 118b / 119b stopping up or diverting a footpath, bridleway or restricted byway for the purposes of crime prevention, or which crosses land occupied for the purposes of a school
 - VI. Highways Act 1980 section 119d diverting a footpath, bridleway or restricted byway for protection of sites of special scientific interest
 - VII. Town and Country Planning Act 1990 section 257 stopping up or diverting a footpath, bridleway or restricted byway affected by development
 - VIII. Town and Country Planning Act 1990 section 258 extinguishing a footpath, bridleway or restricted byway over land held for planning purposes
 - IX. Town and Country Planning Act 1990 section 261 temporarily stopping up a footpath, bridleway or restricted byway affected by mineral workings
8. Presently, it is standard practice for decision making on opposed orders to be referred to Committee for decision even where there is only a single objection. This is not mandatory under the scheme of delegation to officers. The Committee determines if it wishes to take the matter further. This can cause delays in addressing the matter due to the Committee cycle and the need for the responsible officer to compile a report and necessary papers.
9. All applications submitted to change the public rights of way network are given thorough consideration and reach the Order-making stage once the officer is satisfied that the legal tests are met to the Council's satisfaction in accordance with its policies and following a full informal consultation process that includes the local County Councillor.
10. Once an Order is made, it is advertised and held on deposit for receipt of any objections or representations for a four-week period. This puts the matter into the wider public domain. It is not unusual that objections are made to the proposed change and these are lodged for any reason that the individual sees fit and not necessarily to address the legal tests. As the law currently stands, the Council is in no position to ignore objections that it considers irrelevant or that do not address the legal tests or that take a position with which the Council does not concur and must, instead, refer the Order to the Planning Inspectorate. A process will then follow involving either, a written representation procedure, or the holding of a local hearing or a public inquiry.
11. The Council must bear the cost of any post Order-making activity including the preparation of bundles and Statements of Case to The Planning Inspectorate and attending any hearing or public inquiry.

12. In seeking to improve customer service to applicants and to speed the process, the blanket referral to Committee for every case is to be amended so that only those cases considered by the Strategic Director for Communities as being particularly contentious or would otherwise demand scrutiny by the Committee, are referred.

Legal Implications

13. There are no legal implications associated with this decision as this is merely an internal change to procedure.

Equalities Implications

14. There are no particular implications. Nevertheless, the Council is providing a service paid for, for the most part, by the applicant and this ought to be undertaken as expeditiously as possible.

Financial and Staff Implications

15. There is presently a cost impact in pausing the process whilst reports and papers are put together for consideration by the Committee as well as a delay caused by the Committee cycle. This is chargeable to the applicant as it is part of the Order-making process.
16. Nevertheless, there is an impact on officer time and an effect on the overall service to the customer (the applicant).
17. Amendment to this process would improve timescales and service where referral to the Committee for decision need not be made in every case where there are objections.
18. Any Order referred to the Secretary of State would be at a cost to the Council although this is only after there has been careful consideration of the legal tests set out in the relevant legislation.

Risk Management

19. Any implications in respect of this decision are very low risk. Where there is even a single objection to a public path order, the Council is not the final arbiter. The Order would have to be referred to the Secretary of State to be determined if it were to be confirmed, where any objection would be taken into consideration.

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Background papers: None

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