

DERBYSHIRE COUNTY COUNCIL

REGULATORY LICENSING AND APPEALS COMMITTEE

16 JANUARY 2017

REPORT OF THE DIRECTOR OF LEGAL SERVICES

THE DERBYSHIRE COUNTY COUNCIL (FOOTPATH FROM GLOSSOP ROAD (A626) TO PUBLIC BRIDLEWAY NO. 109 AT BANKWOOD GATE – PARISH OF CHARLESWORTH) MODIFICATION ORDER 2010

1. Purpose of the Report

- 1.1 Members are asked to note the submission of this Order to the Secretary of State and to determine the stance to be taken by the Council regarding the confirmation of the Order.

A copy of the Order plan showing the location of the route is attached to this report.

2. Information and Analysis

- 2.1 On 13 March 2001 a report was submitted to the Committee seeking the determination of an application made by Georgina Carr, under the Wildlife and Countryside Act 1981, as described above. The recommendation was to make an order to add a footpath from Glossop Road to Long Lane, Bankwood. This recommendation was approved by the Committee.
- 2.2 The Order was made on 16 September 2010. On 23 September 2010 notice of the Order was published on site, in the Buxton Advertiser and Tameside Reporter. On 21 September 2016 copies of the notice and the order were sent to the statutory consultees. Three objections and one representation were received to the making of the Order. In cases where objections are received to an Order the matter may only be determined by the Secretary of State.
- 2.3 The Planning Inspectorate, who administers these matters, requires the Council, on submission of the Order, to state whether it supports the confirmation of the Order. The matter may thereafter be dealt with by way of written representations, a hearing or a local public inquiry. Committee is requested to determine what stance the County Council is to take in this matter. Three options are available – to support the confirmation of the Order, to oppose it, or to take a neutral stance.

- 2.4 Following re-examination of the application prior to submission to the Planning Inspectorate for determination, Officers consider that due to the ambiguity regarding the route claimed, the evidence is not persuasive enough to demonstrate that on the balance of probabilities the Order route subsists. It is therefore proposed that the Council should take a neutral stance.
- 2.7 Whilst it is possible that this matter could be dealt with by way of written representations it is the view of officers that it is more likely that the Inspector appointed by the Planning Inspectorate to deal with this matter will arrange either a hearing or a public inquiry.
- 2.8 It is usual for the Council at a public inquiry to present the case either in support or objection to confirmation of the Order by calling and cross-examining witnesses and to make legal submissions. Responsibility for the Order remains with the Council where a neutral stance is adopted, but the Council's participation at inquiry will be limited to setting out the background to the making of the Order, and the Council's reasons for adopting a neutral stance. The Council is legally represented at inquiry and the legal representative will assist the Inspector on points of law or procedure which may arise during the course of the inquiry. Such assistance may still be offered to the Inspector where the Council is taking a neutral stance.
- 2.9 A hearing is a 'round-table' discussion of the case; a less formal setting where the parties will discuss the evidence for and against the confirmation of the Order. The participation of the Council in such a forum, having taken a neutral stance, is less clear but it is anticipated that this would again be limited to providing assistance to the Inspector on points of law or procedure which may arise during the course of the inquiry. Such assistance may still be offered to the Inspector where the Council is taking a neutral stance.

3. Considerations

Legal and Human Rights Considerations

- 3.1 In addition to the legal considerations contained within the body of the report it is noted that paragraph 7 of Schedule 15 to the Act provides that:

"(1) If any representation or objection duly made is not withdrawn the Authority shall submit the order to the Secretary of State for confirmation by him.

(2) Where an order is submitted to the Secretary of State under sub-paragraph (1), the Secretary of State shall [subject to sub-paragraph ("A),] either –

(a) cause a local inquiry to be held; or

(b) afford any person by whom a representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the Secretary of State for the purpose.

[(2A) The Secretary of State may, but need not, act as mentioned in sub-paragraph 2(a) or (b) if, in his opinion, no representation or objection which has been duly made and not withdrawn relates to an issue which would be relevant in determining whether or not to confirm the order, either with or without modifications.]”

4 Other Considerations

4.1 In preparing this report the relevance of the following factors has been considered: financial, prevention of crime and disorder, equality of opportunity, personnel, environmental, health, property, and transport considerations.

4.2 None of these factors are considered to be relevant for the purpose of this report.

5. Background Papers

Director of Legal Services file 874

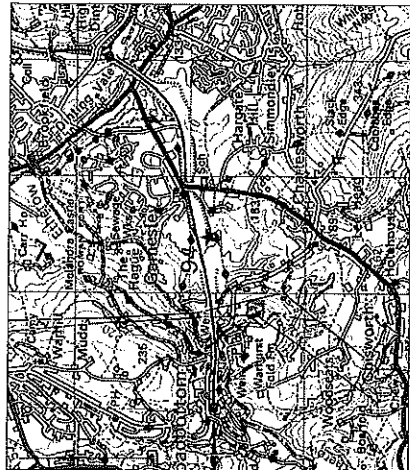
6. Officer recommendation

That the Committee

6.1 notes the submission of the Derbyshire County Council (Footpath from Glossop Road (A626) to Bridleway No. 119 at Bankwood Gate – Parish of Charlesworth) Modification Order 2010 to the Secretary of State for determination; and,

6.2 approves the adoption of a neutral stance with regard to the Confirmation of the Order.

**John McElvaney
Director of Legal Services**



Wildlife and Countryside Act 1981 S.53
 The Derbyshire County Council
 (Footpath from Glossop Road
 (A626) to Public Bridleway
 No. 109 at Bankwood Gate -
 Parish of Charlesworth)
 Modification Order 2010

KEY

- Footpath to be added ———
- Existing bridleways —+—+—
- Existing footpaths - - - - -

Plan Ref: PE/GM/X2962/Order/2010



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 Fax (01629) 585143

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