

DERBYSHIRE COUNTY COUNCIL

Meeting of the Licensing and Appeals Delegation Sub-committee

29 September 2017

Report of the Director of Legal Services

THE DERBYSHIRE COUNTY COUNCIL (BRIDLEWAY AND BYWAY OPEN TO ALL TRAFFIC ALONG BACK LANE – DARLEY DALE) MODIFICATION ORDER 2016

1. Purpose of the Report

To seek approval for the Director of Legal Services to adopt a partly neutral stance with regard to the above Order at public inquiry on 16 January 2018.

2. Information and Analysis

- 2.1 The Regulatory – Licensing and Appeals Committee approved the making of the above Order on 27 July 2015.
- 2.2 Following the making and advertising of the Order, the County Council received objections from recreational motorists claiming that the bridleway section of the Order route carries public vehicular rights and objections from others that the Byway Open to All Traffic (BOAT) part ought to be recorded as a bridleway.
- 2.3 Accordingly the matter was referred to the Government's Planning Inspectorate (PINs) on 30 May 2017 and they have since decided that the matter will be decided by a public inquiry to be held on 16 January 2018.
- 2.4 The County Council now has to send its Statement of Case to PINs. This document will set out the principal arguments that the Council will rely on at the inquiry. However, while the Council's officers can comfortably support confirmation of the bridleway part of the Order because that decision was based on the balance of probabilities, the byway open to all traffic decision, being based on the lesser 'reasonably alleged' evidential test, means that officers will need to adopt a neutral stance regarding confirmation of that aspect of the Order. This is because the Inspector at

the Inquiry will be testing the evidence of both sides and basing his or her decision on the balance of probabilities.

3. Legal and Human Rights Considerations

- 3.1 Under the Wildlife and Countryside Act 1981 the Council is obliged to make a Modification Order as soon as reasonably practicable on the occurrence of certain specified 'events'. These events include:
- 3.2 Section 53(3)(c)(i) - the discovery by the Council of evidence which (when considered with all other relevant evidence available) shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.
- 3.3 If, having made and advertised an order, it attracts objections, the matter gets forwarded to the Secretary of State who will then normally appoint an inspector to conduct a public inquiry. The inspector's decision whether to confirm the order will be based on 'the balance of probabilities', i.e. under s53(3)(c)(i) a higher burden of proof would be required by the inspector at an inquiry than required by the Council when considering whether to make the order.

Other Considerations

- 3.6 In preparing this report the relevance of the following factors has been considered: financial, prevention of crime and disorder, equality of opportunity, human rights, personnel, environmental, health, property, and transport considerations.
- 3.7 None of these factors are considered to be relevant for the purpose of this report.

4. Background Papers

Legal Services file 36485

5. OFFICER'S RECOMMENDATION

That the Committee authorises the Director of Legal Services to adopt a neutral stance with regard to confirmation of the byway open to all traffic (BOAT) part of the above Order when it is determined at Public Inquiry on 16 January 2018.

John McElvaney
Director of Legal Services