

DURHAM COUNTY COUNCIL

At a Meeting of **Highways Committee** held in the Richardson Suite, The Glebe Centre, Murton on **Monday 2 September 2019 at 11.00 a.m.**

Present:

Councillor C Kay in the Chair.

Members of the Committee:

Councillors D Bell, G Bleasdale, S Dunn, K Hopper, S Hugill, J Maitland, O Milburn, S Morrison, A Napier, J Rowlandson, P Sexton, J Shuttleworth and J Turnbull.

Also Present:

Councillors J Maitland and A Napier.

1 Apologies for Absence

Apologies for absence were received from Councillors J Considine, D Hicks, K Liddell, R Ormerod, A Simpson, K Thompson and M Wilson.

2 Substitute Members

There were no substitute members present.

3 Declarations of Interest, if any

There were no declarations of interest in relation to any items of business on the agenda.

4 Proposed diversion of Public Bridleway No. 29, Murton Parish – Town and Country Planning Act 1990 Section 257

The Committee considered a joint report of the Corporate Director of Regeneration and Local Services and Head of Legal and Democratic Services regarding the proposed diversion of public bridleway no. 29 (Murton Parish) under Section 257 of the Town and Country Planning Act 1990 (for copy see file of Minutes).

The Access and Rights of Way Team Leader informed the Committee that the bridleway proposed for diversion became a public right of way in 2004 when it was legally created as part of the reclamation of the site and north-easterly direction across the site commencing in nearby South Hetton and roughly followed the line of the former mineral railway.

In July 2019 full planning permission was granted for phase one of the development of the Jade Business Park, a major economic project in East Durham to bring employment to the site of the former Hawthorn Colliery which was reclaimed after the closure of the pit in 1991.

An application to divert the bridleway was received in May 2019 under the Town and Country Planning Act which provides for a local authority to make a public path diversion order providing it is satisfied that to do so would enable development to be carried out in accordance with planning permission. The existing route of bridleway 29 would conflict with the development of phase one of the Jade Business Park and the proposed diversion was the minimum necessary to enable the development to proceed. The Committee were informed that the proposed diversion would follow a southerly route around the outside of the southern edge of the development which had been observed on the site visit prior to the meeting. The Committee noted through their site visit that the proposed diversion would maintain the integrity of the route and keep path users away from the development area and minimise potential interaction with vehicles. The Access and Rights of Way Team Leader referred to the initial groundworks that had commenced on site, noted during the site visit and explained that the work had been carried out following a temporary closure order and should the application be rejected at any stage, the bridleway would have to be reinstated.

One objection to the proposal had been received from the Ramblers Association. Their objection was on the basis that the proposed diversion was significantly longer and may be an inconvenience to walkers. No objections were received from any of the other consultees which included the local councillors, local user groups, Murton Parish Council and the British Horse Society.

In terms of the objection received the Committee were informed that it was felt that the statutory test had been satisfied. The development could not proceed without diverting the public bridleway. The proposed diversion was approximately 263 meters longer than the current route and was the minimum diversion feasible to avoid the development site. It was considered that the additional distance did not make the alternative route unsuitable, given that it was a recreational route more than 3km long between South Hetton and 2.5km between South Hetton and Murton therefore an additional 263 metres was not deemed significant to people walking for recreational purposes.

Alternative options had been considered. It was not considered feasible to retain the route through the development site and there was no safe way of accommodating the public bridleway due to the size and access requirements of phase one of the business park development. A diversion to the north was considered but this would potentially require moving again in the future as the development of the site progressed. A much larger diversion to the south of the site

was also considered, however, this was felt to be beyond the scope of a diversion order under the provisions of section 257 of the Town and County Planning Act.

The Committee then heard from Councillor A Napier, one of the local Councillors for the area.

Councillor Napier provided an insight into the history of the site where upwards of 2,500 people were once employed, during the mining era. The Committee heard how unemployment in East Durham rose to nearly 35% following the pit closure programme. Thirty years on, the economy in the area had never recovered to the level it had once enjoyed, prior to the pit closure programme. Councillor Napier felt that facts made it all the more imperative to access the site and have it developed as quickly as possible.

Councillor Napier explained that had it not been for the global economic crash in 2008, the site would have been developed. The opportunity present today was another chance to meet the aspirations of the area. Planning approval had been agreed, funding was secured, and the first phase of the site was ready to be developed which would bring much needed employment to the area.

Councillor Napier asked the Committee to support the recommendations. Councillor Napier also appealed to the representative from the Ramblers Association to reconsider and withdraw their objection and give due consideration to the history of the site and what it would mean for Hawthorn, Murton and East Durham.

Councillor Napier explained that two supervised walking groups both of which operated from the Glebe Centre at Murton had offered no objections to the diversion and could not understand why the Ramblers Association had chosen to object to the proposal. No other user groups had raised objections. Councillor Napier explained that the employment and economic benefits associated with the development were plain to see. There would be in the region of 2000 jobs created on the site, culminating in much needed employment and future employment for the children and grandchildren of those who had worked within the mining industry.

Councillor J Maitland supported the comments made by Councillor Napier and explained that the route of the diversion was one of the original paths in the area. Jobs were vital for not only Murton but the surrounding area.

The Committee then heard from the representative of the Ramblers Association who explained that it gave him no pleasure to be the only objector to the proposal. The main objection was that the track to be diverted had been in place for a considerable amount of time both as a public bridleway and one-time, mineral railway. The path was also detailed on a 1970's historic map of the area. The Ramblers Association felt it was a great shame that the path could not be preserved for those reasons. The diversion was a significantly longer route. The Association did not wish to be in the position of standing in the way of bringing jobs

to the area and were very much aware of the importance of jobs in the area and understood how mining areas had suffered with employment. The Association felt that some way of preserving the path and its history, through story boards about the colliery and the area would have benefitted the area considerably. Under the circumstances, for the reasons outlined, the Ramblers Association wished to maintain their objection.

The Access and Rights of Way Team Leader advised the Committee that they could not reconsider the planning decision.

The Committee then heard from a representative speaking on behalf of the applicant. The representative thanked the Access and Rights of Way Team Leader for his succinct presentation and the endorsements from the two local Councillors. The applicant explained that the key issue related to the nature of the site. The site had always been an employment site, as a coking and coal preparation site which had sat vacant for the last 20 years. The applicant had been contracted by the local authority to assist with the marketing and development of the land to bring in much needed employment, which they had been very successful in doing. The applicant explained that part of the development had been pre-let. However, that pre-let would disappear if the current objection was sustained. There was a key timeline related to the project and substantial costs would be incurred if there was any deferment of the development. This combined with the current potential and other letting interest would ultimately mean that an extraordinary opportunity would be lost for the area. The applicant referred to the cultural heritage, mentioned by the Ramblers Association and explained that they were very alert and receptive to those issues which could hopefully be dealt with by way of separate dialogue as to how the heritage of the site could be promoted to enable benefit to all users. In summing up, the applicant explained that the bridleway could never be sustained through the middle of the site as it would create a danger for users. The diversion onto the National Cycle Network was screened from the development and was very much considered a pleasant route. In terms of the diversion, a mere, additional 263 metres of a 3km walk was not deemed excessive. The applicant clearly endorsed the views pronounced for the need to divert the bridleway, highlighting that it was being moved to a better location with no rights being extinguished. The applicant also confirmed that the diversion was supported by the equestrian movement.

Councillor J Shuttleworth supported the recommendation and explained that the statutory test had been met and there were sound economic and employment reasons to divert the footpath.

Councillor S Dunn explained that the proposal under consideration was for phase one of the development and suggested that other routes may require diversion in the future. Councillor Dunn fully supported the proposal before the Committee, however, he felt a more holistic approach could have been taken in providing for the future expansion of the Jade site. Councillor Dunn echoed Councillor Napier's request to the Ramblers Association to reconsider their objection.

Moved by Councillor J Shuttleworth and **Seconded** by Councillor J Turnbull.

Resolved

That a Diversion and Definitive Map Modification Order be made in respect of Public Bridleway No. 29 Murton Parish, under the provisions of section 257 of the Town and Country Planning Act 1990 and section 53(A)(2) of the Wildlife and Countryside Act 1981, and subsequently either confirmed or referred to the Secretary of State for determination.

5 Proposed extinguishment of part of Public Footpath No. 27, Murton Parish - Highways Act 1980 Section 118

The Committee considered a joint report of the Corporate Director of Regeneration and Local Services and Head of Legal and Democratic Services regarding a proposal to extinguish part of Public Footpath No. 27 Murton Parish by public path order (Highways Act 1980 Section 118) at Hesledon Moor East (for copy see file of Minutes).

The Access and Rights of Way Team Leader informed the Committee than an application had been received from the owner of Hesledon Moor East to extinguish a section of Public Footpath No. 27 on the grounds that it was not needed for public use. A consultation on the proposed extinguishment had resulted in an objection from the Ramblers Association. The public footpath No. 27 Murton Parish ran in a southerly direction from Footpath No. 18, through a yard at Hesledon Moor East, to join Footpath No.26, before heading east and eventually finishing near the A19. The path was linked to a network of public rights of way to the south and east of Murton. Members walked the length of the path proposed for extinguishment during a site visit prior to the meeting.

The Access and Rights of Way Team Leader explained that the proposal would result in a reduction of the network by approximately 220 metres. In terms of the test for confirmation of an unopposed Order, it was considered that the section of path was unlikely to be used by the public, and the extinguishment would not have a negative effect on the landowner, who was the applicant. Public Footpaths Nos.18 and 26 provided an alternative route for pedestrians, avoiding farmyard areas.

The Committee were informed that in terms of an alternative, the only alternative to an extinguishment of the footpath would be a Diversion Order, under the provisions of section 119 of the Highways Act, in the interests of the landowner and on the grounds of privacy and security. However, this option had been considered by the applicant and rejected.

In conclusion the Access and Rights of Way Team Leader explained that it was considered that the statutory tests for making of an extinguishment order and thereafter confirmation as an unopposed order, were met.

Councillor Napier, speaking as one of the local Councillors was speaking in support of the application. Councillor Napier explained that there was clear evidence that the path was not used for public use. The two businesses located at the farm had endured a significant amount of anti-social behaviour, theft and arson attacks. Given that a perfectly adequate alternative route had been identified, Councillor Napier appealed to the Ramblers Association to withdraw their objection. Councillor J Maitland echoed the concerns expressed by Councillor Napier and had walked the alternative path on many occasions, which was far a more pleasant and enjoyable recreational route which was not overly lengthy.

The Committee then heard from the representative of the Ramblers Association who appreciated that the applicant may find it inconvenient for a public footpath to run through the middle of his farm, however, there were many similar situations where this type of situation arose. The Ramblers Association also felt that anti-social behaviour was not of good enough reason to extinguish a footpath, as there were many other paths across the network that encountered similar issues. The route was also significantly longer as opposed to walking straight through the farm. The Ramblers Association appreciated that the applicant was going to improve the short section of Footpath No. 26, however, the general view remained that there was a clear route through the farm buildings, and it was not a difficult path to take.

The Committee then listened to representations from the applicant who explained that they had sought the extinguishment for a number of reasons. The applicant explained that the footpath would have been closed on health and safety grounds had it been any other business or industry, particularly with the movement associated with livestock, tractors and wagons etc. The businesses on site had seen an increased fire risk in the area and highlighted that there had been four fires over recent times. The applicant told the Committee how they had to park trailers at either end of the footpath to secure property during the evening, not to block the footpath, but to block access to off road vehicles which had also caused issues. The Police had advised the applicant to pursue closure of the footpath given the issues being encountered.

The Access and Rights of Way Team Leader explained to the Committee that there was an obvious motivation for the applicant to pursue the footpath extinguishment, however, the Committee were reminded that it was not a qualifying criterion that could be used to close the path, the relevant legal test being whether the path was needed for public use. The Committee were also informed that the applicant had offered to carry out improvements to public footpath no. 26, should the application be successful. However, this was a voluntary offer and no weight could be afforded to it in the consideration of the application. It was very rare for the County Council to support and indeed, proceed with extinguishment orders. However, in this case it

was felt that the objector had not addressed the legal test of whether the footpath was unnecessary for public use and had not offered any evidence to suggest that the path was needed for public use to justify refusal of the application. In this case there was a perfectly adequate alternative route in footpaths 18 and 26, and it was considered that the section of path in question was not needed for public use.

Councillor J Shuttleworth felt that the statutory tests for the making of the extinguishment order had been met, given the information presented by way of the report and following the comments made at the meeting.

Councillor P Sexton explained that in this particular case, he found it very difficult to understand why a footpath user would want to walk through a middle of a working farm which contained plant machinery, livestock and dogs, particularly when there was a more amenable and perfectly adequate alternative route that footpath users could enjoy.

Councillor S Dunn commented that he fully understood why the Ramblers Association wanted to preserve public footpaths and bridleways and supported their aspirations to increase and improve them. Personally, Councillor Dunn felt that it was inappropriate for footpaths to lead through farms not only for the safety of footpath users but also for workers on site. It was also important to note the potential increased crime risk in this case. Councillor Dunn felt that the proposed extinguishment in this case was valid as the current part of the footpath wasn't particularly needed. There was also no evidence of any meaningful use. As a side issue Councillor Dunn felt that the County Council should implement a Rights of Way Improvement Plan detailing aspirations for improvement which could lead to beneficial and strategic improvements to the public path network.

The Solicitor for Planning and Development acknowledged the point made by Councillor Dunn in relation to the Rights of Way Improvement Plan but explained that it was not within the remit of the Committee for the matters under consideration and suggested that this be dealt with as a separate matter by way of dialogue with relevant officers at a later date.

Moved by Councillor J Shuttleworth, **Seconded** by Councillor P Sexton and

Resolved

That an Extinguishment and Definitive Map Modification Order be made in respect of Public Footpath No. 27 Murton Parish, under the provisions of section 118 of the Highways Act 1980 and section 53(A)(2) of the Wildlife and Countryside Act 1981, and subsequently either confirmed or referred to the Secretary of State for determination.