

Special Highways Committee

2 September 2019

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



Joint Report of Ian Thompson, Corporate Director of Regeneration and Local Services and Helen Lynch, Head of Legal and Democratic Services

Electoral division(s) affected:

Murton

Purpose of the Report

1. To consider 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 Farm. The Council's Constitution requires the Committee to decide whether to make an Order, as the proposal has attracted objection from the Ramblers Association.

Executive summary

2. An application has been received from Mr Lamb of Hesledon Moor East to extinguish a section of Public Footpath No. 27 on the grounds that it is not needed for public use. A consultation on the proposed extinguishment resulted in an objection from the Ramblers Association.

Recommendation

3. The application proposal is in accordance with the Council's policy and the statutory framework on the extinguishment of public rights of way.
4. It is recommended that the Committee agrees to the making of a Public Footpath Extinguishment and Definitive Map Modification Order for part 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 that the Corporate Director of Resources be informed accordingly.

5. The Order shall subsequently be confirmed as an unopposed Order or referred to the Secretary of State for determination in the event of objections.

Background

6. The Lamb family run both an agricultural business and a funeral service from the property at Hesledon Moor East. They have concerns about security at the site, and safety for any member of the public using the Public Footpath. The path is very rarely used and they have therefore applied to extinguish it.
7. Public Footpath No. 27 Murton Parish runs in a roughly southerly direction from Footpath No. 18, through the yard at Hesledon Moor East, to join Footpath No.26, before heading east and eventually finishing near the A19. It is part of a network of public rights of way to the south and east of Murton. An extract of the Definitive Map of Public Rights of Way for County Durham is at Appendix A.
8. An application to extinguish the section of Public Footpath No. 27 between Footpath No. 18 and Footpath No. 26 was received in March 2019. The relevant statutory provision for the extinguishment of a public path on the grounds that it is not needed for public use is section 118 of the Highways Act 1980. The proposed extinguishment is shown at Appendix B.
9. The Act gives authority to a Council to make a Public Path Extinguishment Order if it appears to the Council that it is expedient on the ground that the path in question is not needed for public use. The Council also needs to consider, when confirming such an order as unopposed, that it is expedient to do so having regard to the extent to which the path would, apart from the Order, be likely to be used by the public, and having regard to the effect which the extinguishment would have on the land crossed by the path. The Council must also have regard to the content of any ROW Improvement Plan (ROWIP). There is no current ROWIP for County Durham. Guidance is given in Annex 2 of DOE Circular 2/93 which advises that in making orders which entail closure of part only of a footpath, care should be taken to avoid creation of a cul-de-sac in the remainder.

10. Public Footpaths Nos. 18 and 26 provide an alternative route for Pedestrians, avoiding the farmyard areas. The applicant has offered to carry out improvements to Public Footpath No. 26 if his application is successful. However, this is a voluntary offer and no weight can be afforded to it in the consideration of this application.
11. Consultations on the proposed Extinguishment Order have been carried out with the Local Members, Murton Parish Council, the Ramblers' Association and other user groups. A copy of the consultation letter is at **Appendix C**.
12. An objection was received from Mr Blackburn on behalf of the Ramblers' Association. This objection is at **Appendix D**. There were no objections from the other consultees.
13. The objection is on the grounds that it is Ramblers' Association policy to oppose extinguishments. The probable historic nature of the path and its potential to pre-date the farm buildings is also mentioned. The objector has also indicated that a diversion of Public Footpath No. 27 on a route to the South of the farm buildings might be acceptable to them.

Response to objection and assessment of the application

14. The objector has not addressed the legal test of whether the footpath is unnecessary for public use and has not offered any evidence to suggest that the path is needed for public use to justify refusal of the application. Most public rights of way are historic, but that in itself does not mean that the path cannot be considered for extinguishment in accordance with the legislation. The suggestion of a diversion rather than an extinguishment was discussed with the applicant, but he felt that a diversion would be too close to his buildings, and would also not be used by the public as it would duplicate Footpath Nos. 18 and 26.
15. As there is a perfectly adequate alternative route in footpaths 18 & 26, it is considered that the section of path in question is not needed for public use. The proposal would result in a reduction of the network by only approximately 220 metres. In terms of the test for confirmation of an unopposed Order, it is considered that the section of path in question is unlikely to be used by the public, and the extinguishment would not have a negative effect on the landowner, who is the applicant.

Options

16. The only alternative to an extinguishment of the footpath is 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. This option has been considered by the applicant and rejected. The application for members for determination is for extinguishment and not diversion.

Conclusions & Recommendation

17. In conclusion it is considered that the statutory tests for making of the extinguishment order and thereafter confirmation as an unopposed order, are met. Therefore, it is recommended that an Extinguishment and Definitive Map Modification Order should 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.

Process for a public path order (for information)

Should Members resolve that an Extinguishment Order be made in accordance with the recommendation above, this is merely the start of the legal process. In particular, once an Extinguishment Order has been made, it must be publicised and anyone will have an opportunity to formally object to it. Should objections be received, the Extinguishment Order would have to be referred to the Secretary of State who would usually hold a Public Inquiry before making a decision upon whether or not to confirm the Order. If no objections are raised, the Council can confirm the Order as unopposed.

Attached Documents to report

Document A	Extract from Definitive Map of public rights of way
Document B	Extinguishment proposal plan
Document C	Consultation letter
Document D	Objection

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Appendix 1: Implications

Finance	The applicant will cover the costs associated with this proposal as described in the report
Staffing	Part of routine officer responsibilities
Risk	Low
Equality and Diversity / Public Sector Equality Duty	N/A
Accommodation	None
Crime and Disorder	Not applicable
Human Rights	All those affected by the proposal will have the opportunity to submit objections and to present their case to an Inspector appointed by the Secretary of State for the Environment in the event of objection at the formal order making stage.
Consultation	As detailed in the report at paragraph 11
Procurement	None
Disability Issues	The unaffected paths offer routes which will be as accessible as the proposed extinguishment.
Legal Implications	The Order can be contested through a statutory process so a legal challenge is unlikely to be appropriate