

Highways Committee

22 November 2011



Hartop Lane and other Byway Applications in Weardale and Teesdale

Wildlife and Countryside Act 1981 Definitive Map Modification Orders

Joint Report of Ian Thompson, Corporate Director of Regeneration & Economic Development and Colette Longbottom, Head of Legal & Democratic Services

Purpose of the Report

- 1 To reconsider a decision to make a Definitive Map Modification Order to add a byway known as Hartop Lane to the Definitive Map and Statement of Public Rights of Way and to report on all the applications determined by the Highways Committee on 3 March 2011.

Background

- 2 On 3 March 2011 the Highways Committee determined that 6 routes in Weardale and Teesdale should be recorded as public byways. These are shown in **Appendix A**.
- 3 The Highways Committee has the delegated responsibility for considering applications to modify the Definitive Map and Statement.
- 4 Following the decision of the Highways Committee on 3 March 2011 the landowners for 4 of the 6 routes sought an Opinion from a leading Counsel and were advised to issue interim injunction proceedings to prevent the Council making the Orders. Therefore it was agreed with the solicitors acting on behalf of the landowners that the Council would not proceed to make the Orders until it had sought its own further Advice from Counsel. This has now been received and is attached at **Appendix B**.
- 5 In brief, the 2 main legal arguments raised by the landowners are:
 - a Rights for mechanically propelled vehicles would have been extinguished for all the applications due to them being non-complaint with the relevant regulations (this 'the Winchester argument' was detailed in paragraphs 12-15 of the 3 March 2011 report and attached as **Appendix C**).
 - b There are no subsisting applications left to determine for Routes 1, 2 and 3 as, following a Public Inquiry, the decision made by the Inspector

on behalf of Secretary of State to confirm the Orders for for routes 1 and 2 was quashed by the High Court and Route 3 was not confirmed by the Inspector ('the functus officio argument').

- 6 Although the landowners' advice only referred to Routes 1 to 4, the Winchester argument would also be relevant to Routes 5 and 6 (different landowners).

Recommendations and reasons

- 6 The most recent Advice obtained by the Council, as found at **Appendix B**, states that the Orders should be progressed as determined by the Committee on 3 March 2011. However, excepting Hartop Lane (Route 3) where he agreed with the landowners' Counsel that due to the Inspector having previously not confirmed the Order for this route that there is no longer an outstanding application to determine, he did not agree with either the Winchester or the functus officio arguments put forward for the other routes.
- 7 This Advice has been forwarded to the landowners (Routes 1 to 4). The landowners' solicitors have indicated it is likely they will now be instructed to bring proceedings for an injunction to prevent the Council from making the Orders.
- 8 The threat of an injunction is considered to be genuine, particularly as the same landowners have previously made applications to the High Court to quash earlier orders. Therefore to avoid any application for an interim injunction on an *ex parte* basis (ie without the attendance of one of the parties; this is generally done as an emergency measure to prevent one party from taking immediate action and which would be more costly for all parties), the Orders will not be made before 31 January 2012.
- 9 In light of the above information, it is recommended that:
- (a) the decision of the Highways Committee of 3 March 2011 to make an order to add a Public Byway to the Definitive Map and Statement of Public Rights of Way for Hartop Lane (Route 3) is withdrawn
 - (b) The information referring to the other routes is noted.

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Appendix 1: Implications

Finance

Not applicable to the decision

Staffing

None

Equality and Diversity

None

Accommodation

None

Crime and disorder

None

Sustainability

None

Human rights

The County Council, as Surveying Authority, has to make a decision in accordance with the law and in particular the provisions of the Wildlife and Countryside Act 1981. Given these legal criteria, a decision to make an order would be lawful despite any other rights of individuals.

Localities and Rurality

None

Young people

None

Consultation

Decision based on legal advice from Counsel

Health

None