

REPORT FOR DECISION

MEETING: PLANNING CONTROL

DATE: 24th JANUARY 2012

SUBJECT: DECISION MAKING ON APPLICATIONS TO DIVERT,
EXTINGUISH OR CREATE PUBLIC RIGHTS OF WAY
USING THE HIGHWAYS ACT 1980 OR THE TOWN
AND COUNTRY PLANNING ACT 1990

REPORT FROM: IAN LORD, SERVICE MANAGER – TRAFFIC & ASSET

CONTACT OFFICER: DAVID CHADWICK, TEAM LEADER RIGHTS OF WAY

**TYPE OF
DECISION:** COMMITTEE

**FREEDOM OF
INFORMATION/
STATUS:** This paper is within the public domain

SUMMARY:

This report contains a proposal to allow delegated decisions to be made by Officers with regard to applications to divert, extinguish or create public rights of way, using sections 118 and 119 Highways Act 1980 and section 257 Town and Country Planning Act 1990.

OPTIONS AND RECOMMENDED OPTION:

Recommended option:-

That the Committee delegates its functions in respect of applications to divert, extinguish or create public rights of way, using sections 118 and 119 Highways Act 1980 and section 257 Town and Country Planning Act 1990 to the Executive Director of Environment and Development Services.

Alternative option:-

To maintain the status quo

IMPLICATIONS -

Corporate Aims/Policy Framework:

Do the proposals accord with the Policy Framework? Yes

Financial Implications and Risk Considerations

Consultation and advertising costs for changes to PROW are met from the Highways revenue budget, but there may be other costs incurred as a result of any proposed diversions. In many cases these additional costs are met by the applicant, but if this is not the case, or the Council will be responsible for costs, then it will be necessary to identify that appropriate budget provision exists to meet these costs.

Statement by Director of Finance and E-Government:

If decisions on PROW are delegated they will be made in line with the Officer Delegation Scheme set out in the Council Constitution. This requires that the officer taking the decision must satisfy him/herself on relevant matters, including the facts and options available and the financial, staffing and legal implications of the decision.

Equality/Diversity implications See paragraph 3.1

Considered by Monitoring Officer: Accords with relevant legislation

Wards Affected: All

Scrutiny Interest:

TRACKING/PROCESS EXEC DIRECTOR: Env & Development Services

Chief Executive/ Management Board	Executive Member/ Chair	Ward Members	Partners
Scrutiny Commission	Executive	Committee	Council
		Planning Control 24/01/2012	

1.0 BACKGROUND

- 1.1 The Highways Act 1980 allows for the diversion, extinguishment and creation of public rights of way. The Town and Country Planning Act 1990 allows for diversions or extinguishments to allow developments (with planning permission) to take place.
- 1.2 Decisions on whether to proceed with advertising these proposed changes are made by the Planning Control Committee in accordance with the Council constitution. There have been eleven such applications considered by the Planning Control Committee in the last five years. In each case the officer's recommendation has been accepted.

2.0 RISK MANAGEMENT

- 2.1 The Council must be able to demonstrate that appropriate powers were used to reach decisions regarding applications for diversions, extinguishments and creations of public rights of way. The Council will be able to show that a full and correct decision making process has been followed by using delegated powers and will be able to rebut any challenges.

3.0 EQUALITY ANALYSIS

- 3.1 The Equality Analysis process has been completed and the contents of this report have no effect upon equality.

4.0 ISSUES

- 4.1 Management of Public rights of way is part of the Council's highways function and as such it does not fit well into any of the existing Council committee remits. It is unlikely that Members on the Planning Control Committee will have a working knowledge of public rights of way legislation.
- 4.2 Eleven applications have been presented to the committee in the last five years. In every case the decision to follow the officer's recommendation has been unanimous.
- 4.3 The application process is complicated, with statutory delays to allow for preliminary consultations, advertising of the diversion or extinguishment Order and confirmation of that Order. The removal of delays created by the timetable for the Planning Control Committee will remove one of the delays in the process and help to deliver a more efficient service.
- 4.4 Those applications made under the Town and Country Planning Act 1990 will already have been considered via the planning permission process which must be completed to establish the need to divert or close a public right of way to allow a development to take place. To then take a report to Committee for permission for the required diversion or closure appears to duplicate the decision making process.
- 4.5 It is suggested that the decision to authorise the advertisement of a proposed closure or diversion be delegated to officers. This would mirror the process for traffic regulation orders. In a similar way to the latter

process, Ward Members would be advised of the proposal and given an opportunity to comment prior to the delegated decision being taken.

- 4.6 The Planning Committee is also asked to provide decisions upon applications for adding new public rights of way to the Definitive Map through the use of the Wildlife and Countryside Act 1981. This is when an applicant will attempt to provide sufficient user evidence to show that a public right of way should be created. There have been four such applications in the last five years. They are often controversial as they aim to create public rights of access over private land, usually to the annoyance of the landowner and/or local residents creating considerable debate. As a result it is intended that such applications will continue to be submitted to the Planning Control Committee for a decision as the meeting offers a formal opportunity for the opposing sides to have their say in the matter.
- 4.7 Any decisions which are currently taken by the Planning Committee can in turn be delegated by it to officers. If approved by the Committee, the new arrangements come into existence and any necessary changes to the constitution will be made by Democratic Services.
- 4.8 This proposed change does not affect the process to be used for Gating Orders which the Council may make in the future.

5.0 CONCLUSION

- 5.1 That applications to divert, close and create public rights of way made under the Highways Act 1980 and Town and Country Planning Act 1990 should be decided by officers through delegated powers in order to allow efficient use of time and resources for officers and Members and to speed up the application process as a whole.

List of Background Papers:

Attachments:

Contact Details: David Chadwick 0161 253 7226
