

# **DEVELOPMENT CONTROL AND REGULATION COMMITTEE**

**Meeting date: 29 September 2022**

**From: Executive Director – Economy and Infrastructure**

## **WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53** **APPLICATION TO ADD PUBLIC FOOTPATHS AT DEER PARK** **IN THE CITY OF CARLISLE**

### **1.0 EXECUTIVE SUMMARY**

1.1 *An application to add sections of public footpath at Deer Park in the City of Carlisle was presented to Members of this Committee on 13 April 2022, when it was resolved that an order be made under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, the effect of which, if confirmed, would be to add the sections of public footpath at Deer Park in the City of Carlisle marked A-C-D-E-F and H-J-(K)-O-N-C as shown on the map annexed at Appendix B to the County Council's Definitive Map and Statement of Public Rights of Way; and*

*It was further resolved that if there are no objections to the made Order Members authorise the Chief Legal Officer to confirm the Order.*

1.2 *A location plan is also attached at Appendix A.*

1.3 *The purpose of this report is for a decision to be made to proceed to the next stage of the process which would be to send the Order to the Secretary of State for the Environment, Food and Rural Affairs to determine whether the Order should be confirmed.*

### **2.0 POLICY POSITION, BUDGETARY AND EQUALITY IMPLICATIONS, AND LINKS TO COUNCIL PLAN**

2.1 *The relevant corporate theme is “To provide a safe and well managed highway network, secure infrastructure improvements and support local economic growth”.*

2.2 *This matter is a decision-making process of a quasi-judicial nature. There should be no policy or political consideration given and any potential financial implication should be ignored. It is merely a matter of weighing the strength of evidence and if that evidence is sufficient*

***to meet the burden of proof, then the legal framework must be applied to the evidence.***

### **3.0 RECOMMENDATION**

- 3.1 ***It is recommended that Members authorise Officers to send the opposed Order to the Planning Inspectorate for the Secretary of State for the Environment, Food and Rural Affairs to determine whether or not the order should be confirmed.***

### **4.0 BACKGROUND**

- 4.1 Following the resolution made by Members at its meeting on 13 April 2022 that an Order be made to add two sections of public footpath at Deer Park in the City of Carlisle to the Council's Definitive Map and Statement of Public Rights of Way, after the Committee had accepted that sufficient evidence had been produced to make the Order on the grounds that the two sections of public footpaths are reasonably alleged to subsist, notwithstanding the strong objection by the landowner challenging the user evidence, that Order was made on 17 May 2022 (copy attached as Appendix B).
- 4.2 One objection was received to the making of the Order during the statutory objection period from the landowner on the grounds that the evidence submitted does not meet the necessary "balance of probabilities" test for confirmation of the Order (copy attached as Appendix C).
- 4.3 As part of their objection the landowner has attached copies of documents they had previously been put forward when they were consulted on the proposed application, and which were included and considered by this Committee at its meeting on 13 April 2022.
- 4.4 The County Council does not have the power to confirm an Order when objections are received.
- 4.5 Where objections are received which are not withdrawn, the Order can only be confirmed by the Secretary of State.

### **5.0 LEGAL POSITION**

- 5.1 An application for a modification Order involves a two-stage process whereby the County Council makes the Order and then, if appropriate, confirms the Order if there are no outstanding objections to it or, where there are such objections, the Order can only be confirmed by the Secretary of State.
- 5.2 The Order was made pursuant to section 53(3)(c)(i) Wildlife and Countryside Act 1981 on the ground that there has been a discovery by the County Council ".....of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path."

- 5.3 In deciding whether a right of way subsists, it is necessary for the evidence to establish that, on a balance of probabilities, the right of way subsists. In deciding whether it is reasonable to allege that a right of way subsists, it is merely necessary for it to be shown that a reasonable person, having considered all the relevant available evidence, could reasonably allege that a right of way subsists. Therefore, the evidence necessary to establish that a right of way does in fact subsist is greater than that which is necessary to establish that a right of way is reasonably alleged to subsist.
- 5.4 At the confirmation stage of an Order, the only test to be applied is the higher one, namely whether a right of way has been shown to subsist on the balance of probabilities.

## **6.0 OPTIONS**

- 6.1 If the recommendation is accepted then the Order will be sent to the Planning Inspectorate for determination by the Secretary of State for the Environment, Food and Rural Affairs, most likely by the holding of a Public Inquiry.

## **7.0 ANALYSIS AND CONCLUSION**

- 7.1 The landowner strongly objected to the making of the Order with a detailed submission that was given due consideration in the Committee Report and at the meeting on 13 April 2022, when the committee resolved to make the Order. The subsequent objection received to the Order from the landowner, attached to this report as Appendix C, reiterates the earlier objection “in the strongest possible terms” and asserts the test for confirmation is not made out. However, no new information has been produced by the landowner and, as it would appear the landowner is unlikely to withdraw the objection, it is my opinion there is nothing in the objection that casts doubt on the assessment in the last Committee Report and the Council’s position that if no objections are made, the Order should be confirmed. Having reviewed the evidence and the objection I am satisfied that the test for confirmation continues to be made out.
- 7.2 Members are therefore advised that as the County Council cannot confirm an opposed Order, nor can they resolve not to proceed with an Order once it has been made, the only option is to send the Order to the Secretary of State for the Environment, Food and Rural Affairs to determine whether or not the order should be confirmed.

**Angela Jones**  
**Executive Director – Economy and Infrastructure**

*August 2022*

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## **APPENDICES**

- A – Location plan**
- B – Copy of made Order**
- C – Copy of Objection**

## **IMPLICATIONS**

Staffing: Nil  
Financial: Nil  
Electoral Division: Belah – Gareth Ellis

## **PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS** *[including Local Committees]*

Development Control and Regulation Committee meeting 2 December 2021  
Development Control and Regulation Committee meeting 13 April 2022

## **CONSIDERATION BY OVERVIEW AND SCRUTINY**

*Not considered by Overview and Scrutiny.*

## **BACKGROUND PAPERS**

*No background papers*

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