

REPORT OF ACCESS & RIGHTS OF WAY MANAGER

SUBJECT: DELEGATION OF AUTHORITY TO OFFICERS TO MAKE PUBLIC PATH CREATION ORDERS AND PUBLIC PATH EXTINGUISHMENT ORDERS

Purpose of Report

Members are asked to authorise senior National Park Authority officers to delegate authority to individual members of staff to make Public Path Creation Orders & Public Path Extinguishment Orders.

Background

The power to make Public Path Creation Orders & Public Path Extinguishment Orders is provided by Section 26 & Section 118 respectively of the Highways Act 1980. These specific powers were later conferred on the National Park Authority by the Environment Act 1995. These powers are little used by local authorities as other powers such as Public Path Diversion Orders and Public Path Creation Agreements are the main procedures by which new public rights of way are created or existing routes diverted. Generally, Creation Agreements and Diversion Orders are made with the cooperation of interested parties, notably the owners and occupiers of the land affected. Consequently the power to make Creation Agreements and Diversion Orders has already been delegated to officers. Since 1996 the National Park Authority has made 24 Creation Agreements and 68 Diversion Orders.

Creation Orders are used when an owner of land cannot be identified or when an agreement cannot be reached with the landowner with regard to the creation of a footpath. Stringent legal tests on the need for a public right of way and its benefit to the public are required to be met by the local authority in order for the procedure to be successful. Creation Orders and Extinguishment Orders are often used in combination to effectively deliver a diversion when the criteria for a successful Diversion Order could not be met. The most common scenarios where a Creation Order may be needed is when a part of the Pembrokeshire Coast Path is lost due to coastal erosion necessitating the establishment of an alternative route, to provide a strategic missing link in a network of public rights of way or upgrade the status of a route from public footpath to bridleway.

If such improvements cannot be secured by agreement with the respective landowner then the National Park Authority has recourse to its compulsory powers in the form of a Creation Order. The procedure for making any Public Path Order requires an Order to be drafted signed and sealed by the National Park Authority, bilingual public notices need to be served on interested parties, published in the local press and posted on site. A statutory period of consultation follows and if there are no written objections, the National Park Authority can proceed to confirm the Order in accord with the notification requirements outlined above.

Given the protracted nature of the procedure and in order to minimise delay, it is proposed that officers be delegated the power to make Orders rather than seek Members' approval for each case. Approval is also sought for officers to be delegated powers of entry to land under Section 293 of the Highways Act 1980, which relates specifically to the survey of land in connection with making of Order.

Comparisons

Public Path Creation Orders are rarely made but have been used with success by other local authorities in Wales, notably in the establishment of the Wales Coast Path.

Options

Legislation made provision for Creation Orders where an agreement could not be reached with regard to the creation of a public right of way. Options are therefore limited where this course of action is considered. Compulsory purchase of land is an option but seldom needed if the establishment of a public right of way is the objective.

Financial considerations

The National Park Authority has a statutory obligation to pay compensation to a landowner when a Creation Order comes into operation. The Authority has sought guidance from the Valuation Office Agency specifically in respect of the rates of compensation for the creation of public paths. This guidance ensures that a fair rate of compensation is paid to landowners and enables the Authority to be consistent in its dealings with landowners. Compensation can be agreed or determined by arbitration or tribunal. The Order making procedure would also entail officer time and the advertisement of two public notices in the local newspaper would incur costs.

Risk considerations

If formal objections are received in respect of the making of a Creation Order then the Order cannot be confirmed by the National Park Authority and must either be withdrawn or referred to the Welsh Government who would appoint an inspector to determine the Order. An inspector has the discretion to convene a public inquiry or hear the case by written representations. Officers must therefore be confident that the legal tests for making an Order can be met. This scenario would introduce a delay in the procedure with the timescale largely being determined by the Welsh Government. The application of compulsory powers could adversely affect the National Park Authority's working relationship with some landowners with regard to the management of public rights of way.

Compliance

Public rights of way have a significant role to play in delivering the second statutory purpose of National Parks to provide opportunities for people to enjoy the special qualities of the National Park. Public rights of way also make a significant contribution to the duty to foster the economic and social well-being of resident communities. Public rights of way also provide opportunities for healthy exercise contributing to several well-being objectives of the National Park Corporate Plan and providing clear linkages to the Well-being of Future Generations Act 2015. The power to make Creation Orders can preserve the continuity of the Coast Path or provide a strategic missing link in a network of public rights of way.

Human Rights/Equality issues

The statutory procedures entailed make provision for landowners to object to an Order and claim compensation if it is shown that the value of their interest in land has depreciated or they have suffered damage by being disturbed in their enjoyment of the land (Section 28 of the Highways Act 1980).

Biodiversity implications/Sustainability appraisal

Biodiversity implications are taken into consideration when making a Creation Order.

Welsh Language statement

No issues

Conclusion

The delegation of authority to officers to make Public Path Orders will help to expedite the procedure and achieve the desired outcome with the minimum of delay.

Recommendation

That Members authorise the Chief Executive (National Park Officer) to delegate appropriate individual members of staff the authority to make Public Path Creation Orders under Section 26 of the Highways Act 1980; Public Path Extinguishment Orders under Section 118 of the Highways Act 1980 and exercise powers of entry to land under Section 293 of the Highways Act 1980.

Background Documents

Highways Act 1980

(For further information, please contact Anthony Richards, Access & Rights of Way Manager 01646 62484 anthonyr@pembrokeshirecoast.org.uk)

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