

Planning Committee

1st August 2019

Report to:

Planning Committee

Director Approving Submission of the report:

Deputy Chief Executive, Place

Ward(s) affected: Holbrook

Title:

Highways Act 1980 Section 118

Proposed Extinguishment of Footpath M317 (PART) – City of Coventry.

Is this a key decision?

No

Executive Summary:

The report outlines the investigations to extinguish part of footpath M 317 in the City of Coventry. This includes a discussion of consultations carried out in respect of the proposal and the legal tests to be considered for an extinguishment order to be made. The proposal has been put forward following an application that has been submitted by Mr Ian Giddings and Ms Deirdre Mooney, 22 Bantam Grove, Coventry CV6 2GN the owner of land crossed by a section of the path.

The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to extinguish the section of footpath concerned.

In accordance with Coventry City Council's constitution any matters which change the public rights of way network must be considered by the Planning Committee.

The Applicant's property search company has agreed to defray all expenses associated with the Order.

Recommendations:

Planning Committee are recommended to:

- (1) Authorise the City Solicitor to make the necessary Extinguishment Order for Public Footpath M317, (part), at Bantam Grove, City of Coventry pursuant to Section 118 of the Highways Act 1980 on the grounds that the City Council is satisfied that it is expedient to do so as the path is not needed for public use.
- (2) Authorise the public Notice of the making of the Order and in the event of there being no objections within the period specified, the Order be confirmed in the exercise of the powers conferred on the Council by the said Act.
- (3) Endorse that in the event that objections be received to the making of the Order that cannot be resolved, then the matter be forwarded to the Secretary of State for determination and Coventry City Council be responsible for the conduct of any hearing or public inquiry.

List of Appendices included:

Appendix A – Plan of Proposed Order
Appendix B – Highways Act 1980 Section 118

Other useful background papers:

None

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

1. Context (or background)

- 1.1 To seek authority for the City Solicitor to make an order for the permanent extinguishment of Public Footpath M317 (part) (as shown on the plan at Appendix A).
- 1.2 The Council received an application for a permanent extinguishment of part of this public footpath. The path is recorded on the Definitive Map and Statement held by the City of Coventry.
- 1.3 In accordance with Section 118(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so on the grounds that it is not needed for public use.
- 1.4. Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary of State will, in addition to the matters discussed at paragraph 1.3 above, have regard to:
 - Whether it is expedient so to do having regard to the extent (if any) to which it appears to him, or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public.
 - And having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way.
- 1.5. Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to in paragraph 1.4 above.

2. Options considered and recommended proposal

- 2.1 An application has been received from Mr Ian Giddings and Ms Deirdre Mooney, of 22 Bantam Grove, Coventry, CV6 2GN, requesting that the Council make an Order under Section 118 of the Highways Act 1980 to extinguish part of Public Footpath M317. The land crossed by the path to be extinguished is currently owned by a number of householders including Mr Giddings and Ms Mooney. The path also passes through the curtilages of Nos 20, 24 and 11 Bantam Grove, owned by Mr and Mrs Stoney, Mr and Mrs Jenkins and Mr and Mrs Powell. All landowners have provided their consent to the extinguishment of the extent of the affected footpath on their land.
- 2.2 The extent of the obstructed path came to light during consultations when Mr Giddings and Ms Mooney submitted a planning application to extend their property

which would have further obstructed the footpath. The existence and location of the footpath as recorded on the Definitive Map held by Coventry City Council was not identified by the search company undertaking the searches on behalf of Mr Giddings and Ms Mooney. Consequentially the search company have committed to defray the expenses involved in the extinguishment process.

- 2.3 The extent of the path to be extinguished is shown by a solid black line on the plan (Appendix 1) between points A to D and runs south, south eastwards for approximately 32 metres from its commencement in the front garden of No 11 Bantam Grove. From point B it turns in a south westerly direction and runs for approximately 34 metres through the property of No 24 and No 22 Bantam Grove and across the rear garden of No 20 Bantam Grove to point C whereupon it turns in a south easterly direction for approximately 10 metres to point D. In total it is approximately 77 metres in length.
- 2.4 It would appear that when the properties were built in the 1950s or 1960s the existence of the path was recognised and an alternative route provided. Unfortunately the authority at the time does not appear to have undertaken the necessary diversion process to legally deal with the presence of the path so whilst a suitable alternative had been provided the original path continued to exist and became comprehensively obstructed by the development of the houses at the end of Bantam Grove.
- 2.5 The alternative route that already exists on the ground is surfaced with earth and stone and is approximately 1.25 metres wide running between close bordered fences. The alternative path is registered as a public highway in the City of Coventry Highways Act 1980 S36 (6) list of highways maintainable at public expense and is to be added to the City of Coventry Definitive Map and Statement by means of the forthcoming Legal Event Order.

Reasons

Whether the extinguishment of the public footpath M317 (PART) meets the legal tests.

- 2.6 It is considered that the proposed extinguishment is expedient because the path is not necessary for public use.

The extent of the loss and inconvenience likely to arise either to members of the public generally, or to persons whose properties adjoin, or are near the existing public right of way as a result of the extinguishment of the footpath.

- 2.7 There are a number of residential properties currently affected by the existing path which could be difficult or impossible to sell if the path is not extinguished.
- 2.8 The path to be extinguished has not been available for use for many years. The alternative path that has been provided is approximately 64 metres in length and is

perfectly adequate as a replacement path and does not cause any inconvenience for path users.

- 2.9 There will be no increased effect on any of the properties bordering onto the alternative route as the circumstances of the alternative route will not change.

Results of Consultations Undertaken.

- 3.1 The Council conducted a pre-Order consultation. As part of the consultation statutory undertakers and statutory consultees were consulted. Responses to consultations were received from the Ramblers Association and the Open Spaces Society pointing out a minor error in the original plan which has been rectified and confirming that they do not object to the proposal. Of the statutory undertakers Cable and Wireless have responded that they have no objections. The only other response was from Plant Protection Cadent Gas Network. Initially Cadent Gas Network objected on the basis that the proposal may affect their ability to protect gas mains at Bantam Avenue. It has been pointed out to Cadent Gas Network that this is not the case; they would have the same rights to access any plant that they have now and a detailed examination of their network plans showed that the footprint of the path was not affected by any of their plant. They have subsequently withdrawn their objection. No other responses were received.

4. Timetable for implementing this decision

- a. The Order will be made as soon as practicable. After the Order is made there will be a statutory 28 day objection period.
- b. Should objections be received that cannot be resolved it can take more than six months before the matter is determined by the Secretary of State.

6. Comments from Executive Director of Resources

6.1 Financial implications

If the recommendation is approved, there will be no costs to the Council as the applicant's search company has committed to defraying all costs.

6.2 Legal implications

None

7. Other implications

- 7.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?**

N/A

7.2 How is risk being managed

N/A.

7.3 What is the impact on the organisation?

N/A

7.4 Equalities / EIA

Consideration has been given to the City Council's Rights of Way Improvement Plan in considering this application and preparing this report. Thus the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property and transport considerations. An assessment in relation to the Equalities Act 2010 has been carried out and it is considered that the alternative path will be as suitable as the path to be extinguished.

7.5 Implications for (or impact on) the environment

none

7.6 Implications for partner organisations?

none

Report author(s):

Name and job title: Alexander Le Marinel, Public Rights of Way Officer

Directorate: Place

Tel and email contact: 02476 972471

Alexander.lemarinel@coventry.gov.uk

Enquiries should be directed to the above person.

Contributor/approver name	Title	Directorate or organisation	Date doc sent out	Date response received or approved
Contributors:				
Karan Seager	Head of Traffic and Transportation	Place	09/07/2019	15/07/2019
Carolyn Sinclair	Governance Services Officer	Place	09/07/2019	09//07/2019
Names of approvers for submission: (officers and members)				
Other members				
Mark Andrews	Planning Team Manager	Place	09/07/2019	15/07/2019
Finance: Graham Clark	Lead Accountant	Place	09/07/2019	09/07/2019
Legal: Clara Thomson	Solicitor	Place	15/07/2019	17/07/2019
Other members: Cllr Patricia Hetheron	Cabinet Member (Public Services)		09/07/2019	

This report is published on the council's website:

www.coventry.gov.uk/meetings

Appendices

Appendix A

Plan of proposed extent of Extinguishment Order.

Appendix B

Coventry City Council may make an Extinguishment Order under Section 118 of the Highways Act 1980:

S118 Stopping up of footpaths, bridleways and restricted byways.

- (1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.

An order under this section is referred to in this Act as a “public path extinguishment order”.

- (2) The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (3) A public path extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.
- (4) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.
- (5) Where, in accordance with regulations made under paragraph 3 of the said Schedule 6, proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order, public path diversion order or rail crossing diversion order then, in considering—
 - (a) under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use, or

(b) under subsection (2) above to what extent (if any) that path or way would apart from the order be likely to be used by the public,

the council or the Secretary of State, as the case may be, may have regard to the extent to which the public path creation order, public path diversion order or rail crossing diversion order, would provide an alternative path or way.

(6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.

(6A) The considerations to which—

(a) the Secretary of State is to have regard in determining whether or not to confirm a public path extinguishment order, and

(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,

Include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.