

Countryside and Rights of Way Panel - Friday 16 June 2023

Audit and Standards Committee – 11 July 2023

(1) Delegation of Surveying Authority Functions to Derbyshire County Council in respect of a cross-boundary Application – Addition of Footpath from Violet Lane along the County Boundary, Stapenhill

(2) Update to Scheme of Delegation re: Handling of S53 Applications under the Wildlife and Countryside Act 1981

Recommendations

- a. That, pursuant to Section 101 of the Local Government Act 1972, Staffordshire County Council delegates to Derbyshire County Council its functions as surveying authority in respect of an application made to Staffordshire County Council pursuant to section 53 of the Wildlife and Countryside Act 1981 to add to the Definitive Map of Public Rights of Way a public footpath which commences in Staffordshire, runs along the county boundary between the parish of Stapenhill in Staffordshire and the parish of Swadlincote in Derbyshire and then crosses into Derbyshire, and is shown A-B on the plan at Appendix 2.
- b. That the Panel supports the proposal to authorise the Director for Corporate Services to delegate this Council's surveying authority powers in respect of any cross-boundary application to the appropriate neighbouring Council as and when such action would prove beneficial both in terms of the effective use of resources and processing of the S53 application.
- c. That the Panel supports the proposed deletion of the word 'properly' from the Director for Corporate Services existing delegation in relation to s53 applications under the wildlife and Countryside Act 1981 as indicated in this report.
- d. That the proposed changes to the Scheme of delegation be referred to the audit and standards committee for consideration.

Report of John Tradewell, Deputy Chief Executive and Director for Corporate Services

Summary

1. Under the County Council's Constitution this Panel is authorised to carry out the duties of the County Council in respect of S53 of the Wildlife and Countryside act, 1981. In addition the Constitution enables this Panel to delegate its functions to another Authority.
2. This Panel is being asked to approve the delegation of its surveying authority powers in respect of a cross boundary application for the addition of a footpath from Violet Lane along the county boundary, Stapenhill, to Derbyshire County Council.
3. The opportunity is also being taken to seek approval to updates to the Scheme of delegation in relation to S53 applications.

Report

Cross-boundary Application – addition of footpath from Violet Lane along the County Boundary, Stapenhill

4. An application has been made to Staffordshire County Council under section 53 of the Wildlife and Countryside Act 1981 for the addition of an alleged public footpath from Violet Lane in the Parish of Stapenhill Staffordshire along the county boundary into the Parish of Swadlincote in the county of Derbyshire to join an existing public right of way.
5. An application has also been made to Derbyshire County Council under Section 53 of the Wildlife and Countryside Act 1981 for the addition of a public footpath for the same route, by the same Applicant.
6. A copy of the application for the alleged public footpath in both Staffordshire and Derbyshire is attached at Appendix 1. A plan showing the location of the alleged footpath is attached at Appendix 2.
7. User evidence has been submitted in support of both applications. The applications have been submitted by the same member of the public, and the user evidence submitted in support of the application route is identical.
8. Therefore, the delegation of functions (the Councils functions as the 'surveying authority') to Derbyshire County Council in respect of the alleged footpath is considered to be the most practicable and efficient way of dealing with the applications which, if successful, will form a public right of way along the county boundary route and crossing the county boundary between Staffordshire and Derbyshire. The part of the route

which runs along the county boundary would be shown on the Definitive Map and Statement for both Staffordshire and Derbyshire.

9. The 'surveying authority' functions include: all statutory procedures relating to the investigation, determination and all post-determination matters including all relevant statutory procedures relating to any appeals pursuant to schedule 14 of the Wildlife and Countryside Act 1981; making and confirming any necessary Definitive Map Modification Orders; submissions to the Secretary of State and any resulting public inquiries, hearings or written representations.

Proposed updates to Scheme of Delegation in relation to Applications submitted under S53 of the wildlife and Countryside Act 1981.

10. Elsewhere on this agenda I have submitted proposals to amend the processes for dealing with S53 applications to assist in addressing the current backlog. It is possible that that backlog includes more cross boundary applications similar to the one reported above. I am therefore asking authority to delegate this Council's surveying authority powers in respect of any cross-boundary application to the appropriate neighbouring Council as and when such action would prove beneficial both in terms of the effective use of resources and processing of the S53 application.
11. Whilst compiling this report I have taken the opportunity to review my existing delegated power in respect of S53 application.
12. I am currently authorised to:

*To determine applications for Modification Orders under the Wildlife and Countryside Act 1981 unless, after consultation with the local County Councillor(s) for the area concerned and the Director for Economy, Infrastructure and Skills, they decide that the matter in question ought **properly** to be determined by the Countryside and Rights of Way Panel.*

13. Members are asked to approve the deletion of the word 'properly' as I am concerned that it implies that there are some criteria that inform the decision as to which matters should or should not "properly" be determined by the Panel. In reality the decision is based on the important consideration of whether the relevant local member(s) want the matter to be determined by the Panel.

Resource and Financial Implications

14. The costs of determining applications are met from existing provisions.

15. Staffordshire Council has a statutory duty to keep the Definitive Map under review and undertake the making of legal orders when required. Reasonable costs will be met by Derbyshire County Council from their existing budgetary provision to investigate and determine these claims.
16. Staffordshire Council may be asked to contribute to advertising costs if an order is subsequently published and provide officer support should any resulting order require determination this would be managed through existing revenue budgets.
17. Additional resource and financial implications if decisions of the surveying authority are challenged by way of appeal to the Secretary of State for Environment, Food and Rural Affairs or a further appeal to the High Court for Judicial Review.

Risk Implications

18. The risk to Staffordshire Council would be if Derbyshire County Council determined their part of the application route in advance of Staffordshire determining the connecting application as this would create an anomalous route on the map. As the evidence supplied in support of both the applications is the same it is sensible for one authority to determine both applications. Derbyshire have agreed to determine the application in its entirety if Staffordshire formally delegates its functions to them to investigate the connecting section within Staffordshire.

Equal Opportunity Implications

19. There are no direct equality implications arising from this report.

List of Background Documents/Appendices:

Background File - 025450

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