

Extract from the Development Control Committee held on 12th October 2018

DC.98/18 WAVERLEY VIADUCT

The Regeneration Manager submitted report ED.36/18 – Waverley Viaduct which considered an application for the creation of a public footpath on private land on the northern side of the viaduct.

The Carlisle Waverley Viaduct Trust (CWVT) wanted to create the path so as to join the two footpath networks on either side of the Viaduct. The Regeneration Manager outlined the history of the structure which had closed in 1969, and had become the site of anti-social behaviour, with several applications for palisade fencing at either side of the Viaduct being permitted in an effort to prevent further vandalism taking place.

The Development Manager summarised the background of the creation of the CWVT which had been formed when a number of key signatories to a petition to open the Viaduct had come together to form a Trust. Such a body was able to apply for funding and grants to carry out works to the structure which the Council was precluded from. CWVT had submitted an application for Planning Permission for the path, which had been approved by the Committee at its meeting of 27 April 2018 that consent had led to the application before Members.

The Legal Services Manager stated that Public Path Creation Orders (PPCOs) were not a matter that the Committee regularly dealt with, as such applications were usually determined by Cumbria County Council, was the City Council to consider that the PPCO was needed, it had the requisite powers to make the Order.

The two primary factors which Members needed to consider in determining the application were set out in Section 26(1) of the Highways Act 1980 as follows:

- a) the extent to which the new public right of way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
- b) the effect which the creation would have on the rights of persons interested in the land crossed by the public right of way, taking account of the provisions as to compensation in Section 28 of the 1980 Act.

These two factors were to be weighed in the balance.

Accordingly, the Legal Services Manager instructed Members to give thought to whether they felt the footpath was needed and the impact of the balance of public and private rights. Were the Committee to approve the PPCO, the Council would make the Order which would be open to public consultation for 28 days, if no objections to the Order were forthcoming during that time the matter would then be brought back to the Committee where Members would be asked to confirm the Order. Should any objections to the Order be submitted the matter would be considered at a Public Inquiry after which the Secretary of State's decision would be final.

The Regeneration Manager explained that the PPCO was not needed for the entirety of the path, only a small section on the northern side which was shown on the plan in

appendix 4 as the green hatched area, the CWVT had the necessary agreements with the relevant landowners for the construction of the remainder of the path. The cost of the PPCO process had the potential to be significant, especially if a Public Inquiry was required, the Regeneration Manager advised Members to give careful consideration to that aspect of the proposal.

The Corporate Director of Economic Development added that the CWVT had agreed that the making of the Order should not cost the Council money, and that the Trustees had undertaken to fund the process.

The Legal Services Manager advised the Committee that in addition to the costs of the PPCO process, there were potential additional costs related to compensation to the relevant landowner and the costs related to the construction of the path, all of which the CWVT had stated it was prepared to pay. On that basis, she recommended that were the Order to be approved the Council undertake an agreement with the CWVT to secure all necessary monies, upfront, in order to protect the Council's financial position.

The Committee gave consideration to application.

A Member asked why Cumbria County Council had not determined the application. The Legal Services Manager advised that both Councils had the same power, on this occasion the application had been made to the City Council.

Another Member asked why the matter was being considered by the Committee? The Legal Services Manager responded that, as detailed in the Legal comments in the report, the decision was a Council (not Executive) function, being listed in Schedule 1 to the Local Government (Functions and Responsibilities) (England) Regulations 2000 (as amended) ("The Functions Regulations"). The Council's Scheme of Delegation provided that the exercise of powers relating to the regulation of the use of highways and public rights of way as set out in Schedule 1 to the Functions Regulations be delegated to Development Control Committee.

A Member considered that the report had been clear and concise, and demonstrated that the benefits to the public of the PPCO outweighed the impact to the landowner which she felt would be minimal. In her view, it was right that the path would run alongside the embankment, and given that Committee had granted Planning Permission for the path she felt it appropriate that it approve the PPCO. Whereupon the Member proposed that Officers be authorised to make the Public Path Creation Order and commence the statutory 28 day consultation period, subject to the applicant's written agreement on the issue of payment of costs and compensation and the payment of sufficient funds on account. The proposal was seconded.

Another Member commented that the need for the path had long been established and the proposal had widespread public support. He hoped that the CWVT would be prepared to pay the Council upfront for administering the process as he was concerned that costs may rise and he did not wish to see the Council put in a position where it had to bear costs.

The Corporate Director of Economic Development understood that the CWVT were prepared to enter into an agreement with the Council, and that Legal Services would negotiate directly with the Trust on the matter.

A Member commented that he also supported the application, in his view, the land where the path was proposed to be sited was not fit for agricultural use, as a result he failed to see how the landowner would suffer any detriment as a result of the footpath being created. He asked whether it was possible to establish the reasons for landowner's objections.

The Legal Services Manager responded that it was not appropriate to speculate on the reasons for the landowner's objection to the PPCO, however, further detail on that point may come to light in the event of the landowner submitting an objection to the making of the Order.

Another Member sought confirmation that the submission of an objection to the making of the PPCO by the landowner would result in matter being put to a Public Inquiry.

The Legal Services Manager advised that any objection to the making of the Order would necessitate a Public Inquiry to determine the matter.

The Member further considered that a legal agreement was of limited value if it was not backed-up, he felt it was very important that the Council was certain that it would receive the necessary funding from the CWVT, he asked whether it was possible for the agreement to be underwritten.

The Legal Services Manager appreciated the Member's concern, she explained that the Council in its agreement with the Trust would request that all necessary monies would be paid upfront, and that work on the making of the Order would not commence until the funds had been received. Additionally, she advised that Trusts were able to be disbanded, in order to prevent the Council from incurring any costs related to the making of the Order, consideration would be given as to whether it was more appropriate to make the agreement with individual members of the Trust so as to safeguard the Council's position.

The Chairman noted that a proposal to authorise Officers to make a Public Path Creation Order and commence the statutory 28 day consultation period, subject to the applicant's written agreement on the issue of payment of costs and compensation and the payment of sufficient funds on account had been put forward and seconded. The proposal was put to the vote and it was:

RESOLVED – That Officers be authorised to make a Public Path Creation Order and commence the statutory 28 day consultation period, subject to the applicant's written agreement on the issue of payment of costs and compensation and the payment of sufficient funds on account.