

**Committee: Planning**

**Agenda Item**

**Date: 20<sup>th</sup> August 2014**

**5**

**Title: Town and Country Planning Act 1990,  
Section 249: Application to Remove Public  
Rights of Way for Motor Vehicles along  
Byway 25 (Jacks Lane), Takeley and Little  
Canfield.**

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**Item for decision**

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### **Summary**

1. This report is about an application that the District Council is proposing to make to the Secretary of State for Transport for an Order under Section 249 of the Town and Country Planning Act 1990. The effect of the Order will be to restrict the use of Byway 25 to private vehicular rights and exclude the public from using any mechanically propelled vehicles, inclusive of cars and motorbikes.
2. The report explains the procedure which has to be followed, and gives details of the initial statutory local consultation that has been undertaken. The report incorporates guidance that the Council has received to help the Committee understand the likely timescale and the application process.

### **Recommendation**

3. That the District Council, via the Planning Committee, in its capacity as the local planning authority resolves:
  - i) to improve the amenity of this part of the Parishes of Takeley and Little Canfield by the length of Byway 25 shown between points A to E on the attached plan ceasing to have any public right of way for mechanically propelled vehicles, inclusive of cars and motorbikes, and
  - ii) to make an application to the Secretary of State for Transport for an appropriate Order, with the provision for any necessary structures, under Section 249 of the Town and Country Planning Act 1990.

### **Financial Implications**

4. The District Council does not have any funding for this proposal. The proposal will have to compete for funding from the Highways Panel unless alternative sources can be found.

## Background Papers

5. None.

## Impact

6.

Communication/Consultation	The Council has carried out initial consultation with the local highway authority and parish councils as required under Section 249(8) of the 1990 Act. Further statutory consultation will be carried out by the Secretary of State once the application for the Order has been lodged.
Community Safety	There are local concerns that Byway 25 is not safe for use by pedestrians, cyclists and horse riders due to the condition of its surface.
Equalities	The current condition of Byway 25 does not make it suitable for use by people with disabilities.
Health and Safety	There are local concerns that Byway 25 is not safe for use by pedestrians, cyclists and horse riders due to the condition of its surface.
Human Rights/Legal Implications	If the Order is made, it will become an offence for anyone to drive a motor vehicle along the byway.
Sustainability	The purpose of the Order will be to improve local connections for pedestrians, cyclists and horse riders.
Ward-specific impacts	Takeley and The Canfields.
Workforce/Workplace	Officer time in preparing this report, including liaison with colleagues at Essex County Council.

## Situation

7. A request has been made to the District Council in its capacity as the local planning authority to apply to the Secretary of State for Transport for an Order under Section 249 of the Town and County Planning Act 1990. The effect of

the Order will be to restrict the use of Byway 25 to private vehicular rights and exclude the public from using any mechanically propelled vehicle, inclusive of cars and motorbikes. Although referred to commonly as a “pedestrianisation” order, the local planning authority can specify in its application what rights should exist. The Order can be repealed at a later date. Under Section 249(1) of the 1990 Act, the local planning authority has to have resolved to adopt a proposal for improving the amenity of part of their area before making the application. The proposal has to involve the public ceasing to have any right of way with vehicles over a highway in that area which is neither a trunk road nor a principal road.

8. The application is submitted to the National Transport Casework Team (NTCT), which acts on behalf of the Secretary of State.

#### Location

9. Byway 25 (Jacks Lane) runs from Smiths Green Lane in Takeley (north of Maggotts Cottages) south-east to Jacks Green, from where it runs east through the Priors Green housing development, crossing Burgattes Road in two locations. The byway then continues eastwards past open fields ending at Frogs Hall Road. A plan which the County Council has prepared showing Byway 25 and its relationship to Priors Green is attached to this report.

#### Reason for applying for the Order

10. Byway 25 dates from the Middle Ages, and is of local environmental and historical interest. The byway used to be used for farm access, but is now part of the local route network at Priors Green, crossing Burgattes Road at points C and D on the plan. The community centre, primary school and a number of houses are located close to the byway. Byway 25 is frequently used by 4x4 motor vehicles and scrambler / quad motorcycles, making its surface unsuitable for use by local pedestrians, cyclists and horse riders. The byway surface is heavily rutted, leading to pooled standing water in places. At crossing points C and D it is possible to walk only a few metres along the byway in either direction before it becomes unsafe to continue.

#### Consultations

11. Before making the application, Section 249(8) of the 1990 Act requires that the local highway authority and parish councils are notified. This has been done, and the following representations have been received:

*Essex County Council:* There are various products on the market that can help reduce certain users from accessing the lane, however they cannot be made fool proof to prevent complete unavailability to one user whilst allowing access by another. Advice given on these products.

Stress that the County Council’s budget for Public Rights of Way (PROW) works inclusive of byway maintenance and improvements will be limited. No guarantee that, following a successful application, the County Council would

be in a position to carry out works that would be deemed necessary to the District Council, as any works would be in keeping with the maintenance strategy of the County Council regarding PROW across the whole of the County.

*Takeley Parish Council:* Fully supports for the reasons explained in the report. Includes 7 Emails from local residents in support of the Order, and one from the local County Council member, Councillor Susan Barker. The residents' representations refer to instances of noise disturbance, to the churning up of the surface of the byway and to near misses between motor vehicles and pedestrians. The Parish Council says that it has also received support from local cycling, riding and walking groups and from Countryside Properties (the developer of Priors Green).

*Little Canfield Parish Council:* Due to the development of Priors Green, Jacks Lane now runs through a heavily populated area. It would potentially be a useful resource for walkers and the community but the surface is unsuitable for pedestrians due to rutting by quad bikes and 4x4s. The byway is not required or utilised for access purposes by any user. The Parish Council would, therefore, welcome the closing of the byway to vehicles.

*Takeley Primary School:* Support the application. Believe that it is vital to restrict vehicle access to Jacks Lane to make it safe for pedestrians and therefore our school children. This route would create a safe alternative route for children to walk to / from school.

12. Once the application has been submitted to the NTCT there will be a further 28 day consultation period on any draft Order that is issued, plus a six week High Court challenge period.

### Timescale

13. The Council has been provided with guidance notes from the NTCT on how to make the application. The notes advise that once the details of an application have been agreed it can take a minimum of 5 months to make an Order provided there are no objections.
14. If objections are received that cannot be resolved within a reasonable timescale, it will normally be necessary for the Secretary of State to hold a local inquiry. In such cases the period before a decision is taken will be considerably longer, possibly a year or even longer in some cases. Any objections that the Secretary of State receives will be copied to the District Council so that it may negotiate with the objector if it wishes with a view to resolving the objections.

## Risk Analysis

15.

Risk	Likelihood	Impact	Mitigating actions
That the application for the Order is not successful.	2. There is some risk as the Secretary of State will have to weigh up any objections to the Order against the environmental case for making the Order.	2. It is unlikely that the surface condition of Byway 25 would improve if motor vehicles continue to use it.	Work closely with the County Council in its capacity as the local highway authority in drawing up and submitting the application for the Order.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.