

MEETING:	REGULATORY COMMITTEE
DATE:	6TH OCTOBER 2009
TITLE OF REPORT:	FOOTPATH BM13 IN THE PARISH BODENHAM
PORTFOLIO AREA:	ENVIRONMENT & CULTURE

CLASSIFICATION: Open

Wards Affected

Hampton Court

Purpose

To seek the views of the Regulatory Committee as to whether they would consider an application to either divert or extinguish all or part of Public Footpath 13 in Bodenham or seek the removal of the obstructions.

Key Decision

This is not a Key Decision.

Recommendation

THAT Committee express their views on the options set out and in particular comment on whether they would consider a diversion application as set out in option b

Key Points Summary

- Footpath in question is currently blocked by a building
- Asking the Committee to consider a number of options to open the footpath
- Part of councils ongoing duty is to ensure Public Rights of Way are open and usable

Alternative Options

All options are set out below

Further information on the subject of this report is available from
Rob Hemblade, Interim Parks Countryside and Leisure Development Manager on (01432) 261981

Reasons for Recommendations

The Council does not usually use their powers to divert a footpath onto landowner' property if the landowner in question objects. Therefore the view of the Committee in this particular case is required.

The Regulatory Committee made a decision not to support a similar application in March 2004 in regards to footpaths in Eardisland. However, in that particular case, the Council would have been responsible for all associated costs.

Introduction and Background

1. The report is on the agenda because the Councils Standing Orders state that decisions relating to S.119 of the Highways Act 1980 should be referred to the Regulatory Committee for a decision.
2. A section of footpath 13 in the parish of Bodenham is currently blocked between points A –B as shown on the attached plan by a workshop and a residential dwelling. The owners of the property did not realise the path was blocked until 2003 when, following the receipt of a complaint, officers started looking into the matter and brought it to their attention. The owners of the property disputed the fact that the path ran through their property and referred to a property search that had been carried in 2001 when they purchased the house. The search was subsequently found to be inaccurate and the owners are pursuing compensation from the search company.
3. A number of approaches have been made to the adjoining landowners to divert the footpath out from 44 Brockington Drive onto the adjoining property which is a private retirement estate. To date the trustees of the estate have refused to accept the proposal to divert the footpath despite a substantial compensation offer from the solicitors acting for the search company. There is currently an impasse

Key Considerations

A number of options are available to resolve the issue

- a. The obstructions are removed from the legal line. This would involve removing a brick workshop and garden wall. This option will be opposed by the elderly landowners as it will cause considerable stress and considerably depreciate the value of the house.
- b. Herefordshire Council use their powers under S.119 of the Highways Act 1980 to divert the footpath onto the adjoining land against the wishes of the trustees. This would result in paying compensation to the trustees who would oppose such a proposal and may seek to resolve the matter through a public inquiry or the courts. Solicitors acting for the interested parties have agreed this would be done at no cost to the council either for the diversion or the compensation. This option is likely to have the support of statutory consultees such as the Ramblers Association
- c. Extinguish the full length of footpath 13 between points C – D. The council are likely to receive objections if an extinguishment order was made which may be upheld by the Secretary of State. This option would have the added advantage of taking the footpath out of the gardens of two other properties

Community Impact

Herefordshire Council have received a number of complaints about the path being obstructed and there is a legal duty on the Council to ensure all public rights of way are unobstructed and available for use. If the Committee support either option b or c, consultation will be carried out with the local community.

Financial Implications

None noted.

Legal Implications

The S.119 and S.26 of the Highways Act 1980 provides appropriate powers for the Council to divert a Public Right of Way onto another landowner's property. S.28 allows a landowner to claim compensation for a footpath created on their land.

Legal Services have been consulted and support the recommendation.

Risk Management

There is no risk at this stage

Consultees

- Local Member – Councillor Keith Grumbley
- Mike Jones – Legal Services

Appendices

- Plan showing footpath BM13

Background Papers

None identified.