

MEETING:	REGULATORY COMMITTEE
DATE:	5TH OCTOBER 2010
TITLE OF REPORT:	HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH CD83 (PART) IN THE PARISH OF CRADLEY
PORTFOLIO AREA:	

CLASSIFICATION: Open

Wards Affected

Hope End

Purpose

To seek Regulatory Committee approval for the making of an order through the powers of the Highways Act 1980, Section 119 to divert footpath CD83 (part) in the parish of Cradley.

Key Decision

This is not a Key Decision.

Recommendation

THAT Committee agree to make an order to divert the footpath CD83 (part) under Highways Act, section 119 as illustrated on the attached plan (DRWG No D326/99-83(ii)).

Key Points Summary

- An application to divert footpath CD83 (part) was received in February 1999.
- A pre-order consultation was sent out to user groups and statutory undertakers in 2002, to which there were no objections.
- Ordnance Survey redrew the mapping around The Mallings necessitating the plan to be re-drawn and therefore re-consulted, again there were no objections.
- The proposals then remained in the backlog of diversions until 2010 when it was felt that as such a length of time had elapsed since the last consultation, they should be consulted again.
- There was one objection from the Open Spaces Society, they requested that the line was slightly straightened to remove an unnecessary change of direction.

Further information on the subject of this report is available from
Will Steel on (01432) 845980

- The applicant agreed to the amendments and the objection was removed.

Alternative Options

- 1 Under the Highways Act 1980, s119, the Council has powers to make diversion orders, it does not have a duty to do so. The Council could decide not to make this order, however, this may be perceived as acting unreasonably by the applicant due to the consultations being made 3 times and the length of time taken to reach decision making stage.

Reasons for Recommendations

- 2 The recommendation is to make an order to divert the footpath CD83 as illustrated on the attached plan (DRWG No D326/99-83(ii)) and applied for by the landowner of The Mallings, Cradley in order to increase the privacy and convenience of the property. The proposals have been sent to consultation three times to which only one objection was received, however, the proposals were amended and the objection was then removed. It is therefore unlikely that the proposals would sustain objections if an order was made. The applicant has agreed to pay the costs associated with the making of this order.

Introduction and Background

- 3 Before an order is made to divert a footpath under the Highways Act, it is necessary to gain a decision from the Regulatory Committee as they have the delegated authority to make this decision.

Key Considerations

- 4 An application to divert path CD83 (part) was received from the landowner of The Mallings, Cradley, Mr Townsend, in 1999.
- 5 The order was sent to pre-order consultation with statutory undertakers and user groups in 2002, to which there were no objections.
- 6 Whilst drawing up the paper-work ready to make the order, it was discovered that the Ordnance Survey had re-drawn the mapping around the diversion site and it was decided that it was necessary to re-consult with users and statutory undertakers (2003). There were no objections to this consultation.
- 7 Due to staffing issues the file remained within the backlog of diversions until it reached the top of the list and the applicant was approached to see if he still wished to divert the path in February 2010. Mr Townsend was still keen to progress the matter.
- 8 It was decided that, as the consultations were carried out some 7 years previously, it would be necessary to send them out again.
- 9 There was only one objection to the proposals which was from the Open Spaces Society (OSS) representative, who requested a slight variation to the proposals so that there were no 'counter-intuitive changes of direction'. The applicant agreed to the request and the OSS have now agreed to the removal of the objection.
- 10 In the view of the officers the key criteria in section 119 of the Highways Act 1980 have been met in that the new route is more convenient to the landowner, it is not substantially less convenient to users and it does not alter any termination points.

Community Impact

- 11 Cradley Parish Council do not hold any objections to the proposals and neither of the Local Members, Cllr. Mills (at the time) and Cllr. Stockton had any objections.

Financial Implications

- 15 The applicant, Mr Townsend has agreed to pay for administration and advertising costs plus costs of any works necessary in bringing the path into being. However, he will only be charged the price of the admin costs at the time of application ie £600, not the current rate of £800. Mr. Townsend will also not be charged for the repeated consultations. Any costs beyond this will be met by the public rights of way budgets

Legal Implications

- 16 If the Committee resolves to make an order as suggested, the Order will be made under the Highways Act 1980, s 119. Herefordshire Council have the appropriate powers to make an order.

Risk Management

- 17 If an order is made to divert footpath CD83 as recommended within this report, there is a risk that the order will receive objections and would therefore require referral to the Secretary of State. However, this risk has been minimised by assessing user group and statutory undertaker opinion at pre-order consultation stage, to which the only objection received has been adequately resolved.
- 18 The making of diversion orders under HA1980, s119. is a power of the Authority not a duty. The Committee could, therefore decline to make an order and reject this report. However, this would necessitate the re-opening of the path through the garden of 'The Mallings', impacting on the privacy and enjoyment of the landowners of this property.

Consultees

- 19 List Prescribed organisations as per DEFRA Rights of Way Circular 1/09

Statutory undertakers

Cradley Parish Council

Cllr. Mills

Cllr. Stockton

Appendices

- 20 None

Background Papers

- 21 Plan, DRWG No: D326/99-83(i)