

MEETING:	REGULATORY SUB COMMITTEE
DATE:	28 JUNE 2011
TITLE OF REPORT:	HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH MB16 (PART) AND MB18 (PART) IN THE PARISH OF MUCH BIRCH
PORTFOLIO AREA:	HIGHWAYS AND TRANSPORTATION

CLASSIFICATION: Open

Ward Affected

Pontrilas

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpaths MB16 and MB18 in the parish of Much Birch.

Key Decision

This is not a Key Decision.

Recommendation

That a public path diversion order is made under Section 119 of the Highways Act 1980, as illustrated on drawing number: D323/274-16/18

Key Points Summary

- The existing legal line of footpath MB16 is currently obstructed by farm buildings which have been in place for many years.
- An application was made by the Prudential Assurance Company Ltd. (landowner) to divert the footpath MB16, in September 1998 on behalf of the tenant farmer. The application was made on the grounds of safety through the farmyard.
- The Duchy of Cornwall bought the estate and took over the application, citing their reasons as 'physical obstruction of the existing path, health and safety, security and bio-security'.

Further information on the subject of this report is available from
Susan White, Assistant Rights of Way Officer on (01432) 842106

- The proposals were sent to pre-order consultation in March 2006. There were objections from the Open Spaces Society and the Ramblers' Association. The objections were regarding the relative convenience of the proposed path due to the use of stiles and steps on the route.
- New proposals were drawn up to avoid the use of stiles.
- The new proposals were sent to pre-order consultation in September 2010.
- The Ramblers' Association and Open Spaces Society have objected again.

Alternative Options

- 1 Under Section 119 of the Highways Act 1980 the Council has the power to make diversion orders, It does not have a duty to do so. The Council could reject the application on the grounds that it does not contribute sufficiently to the wider ambitions and priorities of the Council. However this would mean that the legal line of MB16 would remain obstructed.

Reasons for Recommendations

- 2 The public path order should be made because it is felt that it meets the criteria set out in s119 of the Highways Act and the Council's Public Path order Policy. Despite the objections at pre-order consultation, the proposed route is not considered to be substantially less convenient than the legal line.

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 Sub Committee as they have the delegated authority to make this decision.

Key Considerations

- 4 The Prudential Assurance Company Ltd. (the landowner at the time), made the application in September 1998. The application was made on the grounds of user safety through the farmyard.
- 5 The Duchy of Cornwall bought the estate from the Prudential and filled in a new application in April 2003.
- 6 The applicant agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order. The applicant will be charged the cost of admin at the time of application and the current advertising costs.
- 7 Pre-order consultation of the proposals was carried out in March 2006. The proposal received objections from the Open Spaces Society and the Ramblers' Association. These correspondents felt that the proposals were not as substantially as convenient as the existing route of the right of way.
- 8 After negotiation between the rights of way department, the tenant and the Duchy of Cornwall, a new proposal was initiated and pre-order consultation was carried out in September 2010.
- 9 The Open Spaces Society has objected to the proposals as they feel that diverting on the grounds of 'safety' is not a valid reason as they feel that the public benefits from walking through farmyards and that it gives them a 'better knowledge of farming practices'. They also

feel that the existing path (A-B) is on more or less level ground, however, the proposed route (A-D-F) is on sloping ground. The representative also opined that MB16 may have higher rights, however, the evidence provided by the respondent is insufficient to make a claim for higher rights at the present time and has declined to provide further evidence.

- 10 The Rambler's Association commented that climbing over a stile and down a flight of steps at point A onto the 'road' may be hazardous. However, it is intended to replace this stile with a pedestrian gate. It is not possible to remove the steps but they will be improved to create a gentler incline with a turn to reduce the hazard. The Ramblers' Association were also not keen to alter the route from D to the next fenceline as they felt that there were 'various points of interest along the existing section of footpath'. However, it is felt that F-E offers equivalent if not identical points of interest and enjoyment for the public. The Rambler's Association also feel that the proposed route of A-B is significantly longer than the existing route. However, if travelling from B-E the proposed route is significantly shorter than the existing route. They also felt that the gradient of the path was steeper in the proposed route.
- 11 It is noted that the proposed route may be considered to be less than ideal, however the existing path was obstructed by buildings some years ago and the current landowner and tenant are attempting to address these problems with the diversion. They wish to move the path away from the farm buildings and yards to ensure public safety. Stiles will be replaced with pedestrian gates and the steps altered to improve the existing path. The relative length of paths may be lengthened or shortened depending on the direction taken by the user. It is felt that the main issue of convenience rests with the slope of the proposed route of path in comparison with the existing. However, the slope of the proposed route is similar to those that users of the path will encounter in the area given the position of the site within the wider context of the landscape.
- 12 The proposed diversion meets the specified criteria as set out in section 119 of the Highways Act 1980 in that:
- The proposal benefits the owner of the land crossed by the existing path.
 - The proposal is not substantially less convenient to the public.

Community Impact

- 13 The Parish Council responded to the consultation that the proposals are 'reasonable, fair to farmer and walkers and sensible given the lay of the land and health and safety concerns'. The previous local member, Cllr Smith supported the Parish Council's opinion.

Financial Implications

- 14 The applicant (Duchy of Cornwall) has agreed to reimburse in full, Hereford Council's costs in making the diversion and to pay all necessary advertising costs.

Legal Implications

- 15 Under Section 119 of the Highways Act 1980 the Council has the power to make diversion orders. It does not have a duty to do so

Risk Management

- 16 If an order is made, as set out in the order plan, drawing no: D323/274-16/18 there is a risk that the proposals may receive objections which would then necessitate the matter being sent

to the Secretary of State for a decision. This would provide additional pressure on officer time. Whilst this risk has been minimised by sending the proposals to pre-order consultation, the objections from the Ramblers and the Open Spaces Society may well be maintained.

Consultees

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- Prescribed organisations as per Defra Rights Of Way Circular 1/09.
- Local Member – Cllr. R H Smith
- Much Birch Parish Council.
- Statutory Undertakers.

Appendices

18 Order Plan, drawing number: D323/274-16/18

Background Papers

- None identified.