

<b>MEETING:</b>	<b>REGULATORY SUB-COMMITTEE</b>
<b>DATE:</b>	<b>19 JULY 2012</b>
<b>TITLE OF REPORT:</b>	<b>HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH AY1 (PART) IN THE PARISH OF AYMESTRY</b>
<b>PORTFOLIO AREA:</b>	<b>HIGHWAYS AND TRANSPORTATION</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Frome

### **Purpose**

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath (AY1) in the parish of Aymestry.

### **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: Dwg No: D368/20-1

### **Key Points Summary**

- An application was made to divert footpath AY1 on 15<sup>th</sup> of June 2004.
- The applicant carried out a pre-order consultation in November 2011.
- The proposals received general agreement except for one notable objection from the Open Spaces Society.
- The existing path is currently obstructed by woodland (owned by the Forestry Commission).
- There would be a financial burden to re-instating the existing line.
- The landowner has agreed to pay the costs associated with the order.

### **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. If this option is taken, the existing legal line should be reinstated. However, after inspection it has been deemed impossible to reinstate the legal line due to the slope created from the creation of the forest track. The only other possible alternative is to divert the path to

another location.

## Reasons for Recommendations

- 2 The public path order should be made because it is felt that it meets the criteria set out in s 119 of the Highways Act and the Council's Public Path Order Policy. Although an objection to the proposal has been received, it is not considered to raise any issues that should prevent confirmation of the order.

## Introduction and Background

- 3 Before an order is made to divert a footpath under the Highways Act 1980, it is necessary to gain a decision from the Regulatory Sub-Committee as it holds the delegated authority to make this decision.

## Key Considerations

- 4 Mr J Probert and Sons, who are the landowners, made the application on the 15<sup>th</sup> of June 2004. The reason given for making the application was that there was concern for the health and safety of members of the public walking through the busy farmyard. The route follows the fence-line in the main due to agricultural management.
- 5 The existing route of AY1 is currently obstructed through land owned by the Forestry Commission. The route which users are currently walking, travels up a staircase of steep steps, then along the forestry track at the top of the slope, however the legal line of the path travels diagonally up the slope but is obstructed by woodland (consisting of trees, shrubs and undergrowth) and is impossible to reinstate due to the slope created when the forest track was built.
- 6 The applicant has carried out all pre order consultation (via an agent). The proposal has general agreement. However, there is one notable objection from the Open Spaces Society representative. He has objected on the grounds that 1) the section between the stile and point B is attractive, 2) the western end meets up with the entrance to the forest on the opposite side of the road and 3) the farmyard is easy to use as it is wide and cattle shouldn't therefore cause a problem. However in response 1) The section that the representative mentions is not on the legal line – the legal line travels up a steep bank and is obstructed by trees and undergrowth, 2) the western end does not meet up with the forest on the opposite side of the road as this is private land and there is no public right of access and 3) cattle are regularly moved across and through the yard as well as tractors, which could be hazardous to the public.
- 7 The applicant has agreed to pay for advertising and to reimburse, the Council's costs incurred in making the diversion order.
- 8 The local member, Cllr L O Barnett, who has been consulted, has no objections to the proposals.
- 9 The neighbouring landowner, the Forestry Commission has agreed to the proposals in writing.
- 10 The proposed diversion meets the specified criteria as set out in Council policy and in section 119 of the Highways Act 1980 in particular that:
  - The proposal benefits the owner of the land crossed by the existing path.
  - The proposal does alter the point of termination of the paths, but only to another point on the same highway.

- The proposal is not deemed to be substantially less convenient to the public.

## **Equalities Impact**

- 11 The proposed new route has similar gradients to those found on the existing route. The existing route passes through a field gate and over a stile, the proposed route passes through three pedestrian gates thus making the footpath more accessible. As such, the proposal is considered to comply with the requirements of the Equality Act 2010.

## **Community Impact**

- 12 The parish council was consulted as part of the pre-order consultation and had no objections to the proposals.

## **Financial Implications**

- 13 The applicant has agreed to pay for the advertising and administration costs associated with the making of this order, however, he will only be charged the administration costs applicable at the time of application (£400). Should objections be received to any order and the order be referred to the Planning Inspectorate for determination, then the Council would have to meet the additional costs incurred in this process.

## **Legal Implications**

- 14 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**

- 15 If an order is made as proposed it is likely that it will be opposed (particularly as the Open Spaces Society have already objected at pre-order consultation stage), this will necessitate the matter being referred to the Planning Inspectorate for a decision. This could result in a public inquiry which would place increased demands on officer time and resources. However, for the reasons mentioned in paragraph 5 it is felt that if an order is made, there is a good chance of it being confirmed by the Secretary of State.

## **Consultees**

- Prescribed organisations as per Defra Rights Of Way Circular 1/09.
- Local Member – Cllr. L O Barnett
- Aymestry Parish Council.
- Statutory Undertakers.

## **Appendices**

- 17 Order Plan, drawing number: D368/20-1 and Order and Schedule.

## **Background Papers**

- None identified.