

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	27 NOVEMBER 2012
TITLE OF REPORT:	HIGHWAYS ACT 1980, SECTION 26 AND SECTION 118, PROPOSED PUBLIC PATH EXTINGUISHMENT AND CREATION ORDERS, FOOTPATH MM25 IN THE PARISH OF MUCH MARCLE
PORTFOLIO AREA:	HIGHWAYS AND TRANSPORTATION

CLASSIFICATION: Open

Wards Affected

Old Gore

Purpose

To consider an application under the Highways Act 1980, section 118, to make a public path extinguishment order and Highways Act 1980, section 26, to make a public path creation order to alter part of footpath MM25 in the parish of Much Marcle.

Key Decision

This is not a Key Decision.

Recommendation

That public path creation and extinguishment orders are made under the Highways Act 1980, as illustrated on drawing number: D429/277-25

Key Points Summary

- A suggestion for an alteration of the path was made by Mr Mike Everitt of Malvern Hills District Footpath Society in May 2012.
- The reason for the proposal is to correct a Definitive Map anomaly where there is a discontinuity at the county boundary between Public Footpath MM25, Much Marcle and Gloucestershire footpath GDY/4/2.
- A decision was made to pursue the proposal as concurrent creation and extinguishment orders in the public interest.
- The landowners have agreed with the proposals providing that there is no cost to them.
- A pre-order consultation has been carried out to which there were no objections.

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

Alternative Options

- 1 Under Sections 26 and 118 of the Highways Act 1980 the Council has the power to make creation/extinguishment orders. It does not have a duty to do so. The Council could reject the proposal on the grounds that it does not contribute sufficiently to the wider ambitions and priorities of the Council.

Reasons for Recommendations

- 2 The public path orders should be made because they meet the criteria set out in s26 and s118 of the Highways Act and the Council's public path order policy and there have been no objections at pre-order consultation stage. The proposals are felt to be in the wider public interest as they resolve an anomaly and enable the public to use the network of public rights of way with greater confidence.

Introduction and Background

- 3 This report is being considered by the Regulatory Committee because they have the delegated authority to make the decision whether or not to make the orders.

Key Considerations

- 4 Mike Everitt of Malvern Hills District Footpath Society proposed the creation/extinguishment orders, to provide a legal link with the Gloucestershire path over the County Boundary.
- 5 The landowners have agreed to the diversion with the proviso that they will not be responsible for any costs associated with the orders.
- 6 The creation/extinguishment will be funded entirely by the public rights of way department as the proposals are deemed to be in the public interest as it will create a 'through route' instead of a cul-de-sac path. However, it is necessary to install a footbridge across the stream at the site of the County Boundary, this will be installed and paid for by Gloucestershire County Council.
- 7 Pre-order consultation has been carried out by the Public Rights of Way department. The proposals have general agreement.
- 8 The local member, Cllr. B A Durkin, supports the proposals.
- 9 The proposals meet the specified criteria as set out in Council policy and section 118 and section 26 of the Highways Act 1980.

Community Impact

- 10 A comprehensive pre-order consultation has been carried out by the Public Rights of Way department, this included Much Marcle Parish Council, who have no objections to the proposals.

Financial Implications

- 11 The application is considered to be in the public interest and so the administration costs and advertising fees will all be met by the Public Rights of Way Department.

Legal Implications

- 12 Under Sections 26 and 118 of the Highways Act 1980 the Council has the power to make creation and extinguishment orders. It does not have a duty to do so.

Risk Management

- 13 There is a risk that these orders, if made, may receive objections which would require the matter to be referred to the Planning Inspectorate for a decision. This could give rise to a public inquiry which would place increased pressure on officer time and public rights of way resources. Extensive pre-order consultations have taken place to minimise the risk of any objections.

Equalities Impact

- 14 Both the existing and proposed routes are very similar in terms of gradient, length, surface condition and absence of structures. As such, the proposal is considered to have no Equalities impact and to comply with the requirements of the Equality Act 2010.

Consultees

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- Prescribed organisations as per Defra Rights Of Way Circular 1/09.
- Local Member – Cllr. B A Durkin
- Much Marcle Parish Council.
- Statutory Undertakers.

Appendices

- 16 Order Plan, drawing number: D429/277-25 and Order and Schedule.

Background Papers

- None identified.