

MEETING:	REGULATORY SUB COMMITTEE
DATE:	26 APRIL 2011
TITLE OF REPORT:	HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH ZC123 (PART) IN THE PARISH OF LEOMINSTER
PORTFOLIO AREA:	HIGHWAYS AND TRANSPORTATION

CLASSIFICATION: Open

Wards Affected

Leominster South.

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath ZC123 in the parish of Leominster.

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: D390/226-123

Key Points Summary

- The proposed route of the path was marked out some years ago and the existing line of the right of way has not been used for some years.
- An application was originally made to divert footpath ZC123 under the Town and Country Planning Act 1990 in order to develop the farm buildings into dwellings.
- The proposals were sent to pre-order consultation to which comments were received from the Ramblers Association and the Open Spaces Society which were answered by the applicant.
- There were no objections to the proposals.

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

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, if the order is not made as recommended then the existing path will 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 s 119 of the Highways Act and the Council's Public path order policy and there have been no objections at pre-order consultation stage. The existing legal line of the public right of way is currently obstructed by a fence and a retaining wall.

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 Committee as they hold the delegated authority to make this decision.

Key Considerations

- 4 John Ruck, who is the applicant, made the application in 2007. The reasons given for making the application were that a representative of Herefordshire Council had redirected the footpath on the ground but not the legal line of the path.
- 5 Mr Ruck originally made an application to divert the path under the Town and Country Planning Act 1990 as part of permitted development of the site. However the development was substantially completed before an order could be made. As a consequence Mr. Ruck has been required to re submit an application to move the path under the s.119 of the Highways Act.
- 6 The applicant has carried out all pre order consultation. The proposal has general agreement although both the Open Spaces Society and the Ramblers Association made comments relating to works required on the proposed route, however, this work has since been carried out and the affected landowners , whose properties are also affected by the application, have agreed to the proposals.
- 7 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order. The other affected landowners have given their written consent to the proposals and the applicant has signed an agreement to defray any compensation that may become payable as a consequence of the making of this order.
- 8 The local member, Cllr. McCaull and Cllr. Hunt were consulted. Cllr. Hunt supports the application and no objections have been received from Cllr. McCaull.
- 9 The proposed diversion meets the specified criteria as set out in Council policy section 119 of the Highways Act 1980 in particular that:
 - The proposal benefits the owners of the land crossed by the existing path.
 - The proposal is not substantially less convenient to the public.

Community Impact

9 Leominster town council were consulted and stated that they do not hold any objections to the proposals.

Financial Implications

10 The applicant has agreed to pay all costs necessary for the making of this order.

Legal Implications

11 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

12 There is a risk that if made, the order may receive objections, however, this is unlikely as there were no objections to pre-order consultation.

Consultees

13

- Prescribed organisations as per Defra Rights Of Way Circular 1/09.
- Local Members – Cllr. R C Hunt and Cllr. P J McCaull
- Leominster Town Council.
- Statutory Undertakers.

Appendices

14 Order Plan, drawing number: D390/226-123(i) and Order and Schedule.

Background Papers

- None identified.