

AGENDA

Regulatory Committee

Date: **Tuesday 4 May 2010**

Time: **2.00 pm**

Place: **The Council Chamber, Brockington, 35 Hafod Road,
Hereford**

Notes: Please note the **time, date** and **venue** of the meeting.

For any further information please contact:

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If you would like help to understand this document, or would like it in another format or language, please call Pete Martens, Committee Manager Planning & Regulatory on 01432 260248 or e-mail pmartens@herefordshire.gov.uk in advance of the meeting.

Agenda for the Meeting of the Regulatory Committee

Membership

Chairman	Councillor Brig P Jones CBE
Vice-Chairman	Councillor JW Hope MBE
	Councillor CM Bartrum
	Councillor DJ Benjamin
	Councillor PGH Cutter
	Councillor SPA Daniels
	Councillor JHR Goodwin
	Councillor RC Hunt
	Councillor PJ McCaull
	Councillor A Seldon
	Councillor JD Woodward

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AGENDA

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1.	<p>APOLOGIES FOR ABSENCE</p> <p>To receive apologies for absence.</p>	
2.	<p>NAMED SUBSTITUTES (IF ANY)</p> <p>To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.</p>	
3.	<p>DECLARATIONS OF INTEREST</p> <p>To receive any declarations of interest by Members in respect of items on the Agenda.</p>	
4.	<p>MINUTES</p> <p>To approve and sign the Minutes of the meeting held on 6th April, 2010.</p>	1 - 4
5.	<p>HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH WZ1 (PART) IN THE PARISH OF WALTERSTONE</p> <p>To consider an application for the making of an Order through the powers of the Highways Act 1980, Section 119 to divert footpath WZ1 (part) in the parish of Walterstone.</p>	5 - 18
6.	<p>PROCEDURAL ARRANGEMENTS</p> <p>To note the procedural arrangements for the meeting.</p>	19 - 20
7.	<p>EXCLUSION OF THE PUBLIC AND PRESS</p> <p>In the opinion of the Proper Officer, the following items will not be, or are likely not to be, open to the public and press at the time they are considered.</p> <p>RECOMMENDATION: that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below</p>	
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HEREFORDSHIRE COUNCIL

BROCKINGTON, 35 HAFOD ROAD, HEREFORD.

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HEREFORDSHIRE COUNCIL

MINUTES of the meeting of Regulatory Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Tuesday 6 April 2010 at 2.00 pm

Present: Councillor Brig P Jones CBE (Chairman)
Councillor JW Hope MBE (Vice Chairman)

Councillors: CM Bartrum, PGH Cutter, SPA Daniels, JHR Goodwin, RC Hunt, A Seldon and JD Woodward

108. APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillors DJ Benjamin and PJ McCaull.

109. NAMED SUBSTITUTES (IF ANY)

There were no named substitutes present at the meeting.

110. DECLARATIONS OF INTEREST

There were no declarations of interest made at the meeting.

111. MINUTES

RESOLVED: THAT the Minutes of the meeting held on 9th March 2010 be approved as a correct record and signed by the Chairman.

112. NON-CONFORMITIES DUE TO AMENDMENTS OF THE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE CONDITIONS

A report was presented by the Licensing Officer suggesting the action that could be taken in respect of certain licensed vehicles following the adoption of the revised hackney carriage/private hire vehicle licence conditions. The new conditions were agreed on 31st March 2010 but there were a number of vehicles which did not comply fully with them.

The report included a table which set out the approximate number of vehicles which were affected, the relevant licence condition, and the recommended timescale or other action necessary to comply. In answer to a question, the Licensing Officer explained that 'grandfather rights' would only apply to individual vehicles until they were replaced.

Having considered the proposals put forward by the Licensing Officer, the Committee agreed that they should be accepted.

RESOLVED: THAT

- (a) **The strategy for managing the non-compliances in accordance with the table included in the report be accepted; and**
- (b) **Authority be granted to officers to agree timescales for non-compliances based on the table of timescales and actions included in the report.**

113. PROCEDURAL ARRANGEMENTS

The Committee noted the procedural arrangements for the following items to ensure that Officers and applicants received a fair hearing.

114. EXCLUSION OF PUBLIC AND PRESS

RESOLVED: THAT under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Schedule 12(A) of the Act.

115. APPLICATION FOR A NON-STANDARD PRIVATE HIRE VEHICLE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Principal Lawyer and the Licensing Officer referred to agenda item No. 8 and presented a report about an application for a hybrid electric vehicle which did not comply with the Council's licensing condition 4.1 in that it had three passenger seats instead of four. The applicant said that he was aiming more at the luxury end of the market for weddings, business use and executive travel to airports etc rather than standard private hire use. The Licensing Officer said that in view of the fact that this was an electric hybrid vehicle with minimal air pollution impact, the Head of Service wished to encourage its use as a private hire vehicle as an exception to the conditions.

Having considered the matter, the Committee concurred with the view of the officers and agreed that an exception could be made to the licence conditions and decided that an exception could be made to the Council's licensing policies because the vehicle complied with policies regarding the promotion of greener transport and encouraging the reduction of pollution. The Committee decided that a contrary decision would be unfair and disproportionate.

RESOLVED: THAT an application to deviate from the standard condition number 4.1 (C) for the number of passenger seats in respect of Lexus LS600HL registration number VX08 BXB be granted.

116. APPLICATION FOR A DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Principal Lawyer and the Licensing Officer referred to agenda item No. 9 and said that an applicant for a dual hackney carriage/private hire licence had not attended the meeting. The Committee decided to defer consideration of the application until the next meeting.

117. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE – TO DETERMINE WHETHER A MATTER REGARDING A DUAL DRIVER'S LICENCE. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Principal Lawyer and the Licensing Officer referred to agenda item No. 10 and provided the Committee with the reasons which had necessitated the need for a driver to have his dual hackney carriage/private hire licence suspended and the matter being referred to the Committee. The applicant provided the Committee with details of the circumstances which had led to a police investigation and said that his bail had been cancelled and that no further action was being taken. He provided the Committee with a detailed explanation of the events which had led to his arrest. In view of this and the driver's previous excellent record, the Licensing Officer recommended that his licence should be reinstated.

Having considered all of the facts put forward by the Licensing Officer and the driver, the Committee was satisfied that he was a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that his hackney carriage/private hire driver's licence should be reinstated.

118. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE – TO DETERMINE WHETHER A MATTER REGARDING A DUAL DRIVER'S LICENCE. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

A report was presented by the Principal Lawyer and the Licensing Officer at agenda item No 11 which set out the circumstances which had led to a driver having his dual hackney carriage/private hire licence suspended, and the matter being referred to the Committee.

The representative of the driver had submitted additional information the day before the meeting. The Chairman said that there had been insufficient time to fully consider the additional information and the driver was given the opportunity to defer consideration of the case to enable members and officers to read the papers. The driver asked for his request for reinstatement to still be considered by the Committee. The Chairman agreed to this and the Principal Lawyer explained the main points to be taken into consideration in determining the application for the licence to be reinstated. The Licensing Officer dealt with the key-points summary in the report and explained why the officers had recommended that the licence should not be reinstated. The driver's representative presented the case for the reinstatement of the licence. He drew attention to the fact that following a previous suspension of the licence which had been confirmed by the Committee, it had subsequently been reinstated by the Magistrates following the driver lodging an appeal with them. The Police had decided to take no further action in respect of allegations made against the driver towards the end of last year and he said that there was no reason why the suspension of the licence should continue. He questioned certain aspects of the approach of the officers together with their integrity and felt that the Committee should only consider the evidence which had been presented to them after the Magistrates' Court ruling, and that the evidence put forward against his client from before that date should be disregarded because of the inaccuracies it contained. The Principal Lawyer said that the Committee did have the power to take into consideration all the legal aspects prior to the Magistrates' Court ruling if it so wished.

The driver's adviser wished to expand upon a number of points and referred to the judgement by the Magistrates and questioned the views of the officers. Councillor A Seldon felt that there was potentially much more information that the Committee needed to be aware of and suggested that further consideration of the matter should be deferred to enable this to be done. The Committee concurred with this view.

RESOLVED: THAT consideration of the application to reinstate a hackney carriage driver's licence be deferred to give the Committee time to consider the issues raised and the additional information which had been referred to in support of the licence being reinstated.

The meeting ended at 3.53 pm

CHAIRMAN

MEETING:	REGULATORY COMMITTEE
DATE:	4 MAY 2010
TITLE OF REPORT:	HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH WZ1 (PART) IN THE PARISH OF WALTERSTONE
PORTFOLIO AREA:	REGENERATION

CLASSIFICATION: Open

Wards Affected

Golden Valley South

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 WZ1 (part) in the parish of Walterstone.

Key Decision

This is not a Key Decision.

Recommendation

THAT Committee agree then an order to divert footpath Walterstone 1 (WZ1, part) under Highways Act, section 119 as illustrated on the attached plan (DWG No D394/397-1) should be made.

Key Points Summary

- An order was made in 1995 by Herefordshire and Worcestershire Council to divert WZ1
- The order was not confirmed as objections were received from the Ramblers' Association and Open Spaces Society.
- When the order was finally sent to the Secretary of State for confirmation in 2008 the Secretary of State declined to confirm due, in the main, to the long time since first making the order (see appendix1 for the Order decision).
- The applicant has made a fresh application to divert the path on a new line to avoid the objections that were received to the first order.
- There have been no objections at pre-order consultation stage to these proposals.

Further information on the subject of this report is available from
Will Steel, Public Rights of Way Manager (01432) 845980

Alternative Options

- 1 Under the Highways Act 1980, s119 the Council has a power 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 as the failure of the first order was due in the main to the length of time between making the order and referring the matter to the Secretary of State. If the order was not made, the existing route (through the garden of the House of Windblown Clouds) of the path would require opening up.

Reasons for Recommendations

- 2 The recommendation is to make the order to divert the path WZ1 as illustrated on the attached plan. The reason for this recommendation is that the failure of the first order was due, in part, to the lengthy delay in referring the matter to the Secretary of State. This new line of the path has not engendered any objections at the pre-order consultation stage. The applicant wants to divert the path in order to take it out of his property and thus improve convenience to both walkers and himself.

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 WZ1 was received from the landowner of House of Windblown Clouds, Mr Barnard, by Herefordshire and Worcestershire Council and a diversion order was consequently made under HA1980, s119. The effect of the diversion was to remove the path from the garden of the House. The order received objections from the Ramblers Association and Open Spaces Society due to the new route travelling down, then back up, a steep bank. The new route was also to be longer than the existing route. The new route also passed through a group of trees without a clearly defined route. They therefore concluded that the new route was substantially less convenient to the public.
- 5 The order was sent to Secretary of State for confirmation in 2008; the Inspector concluded that the proposed route was not as substantially convenient to the public (due to the passing of the route through a copse of trees). The Inspector also felt that it was not expedient to confirm the order as there had been a long time between receiving correspondence from the landowners and utility companies, and so therefore the rationale behind the statutory requirements had not been met. The Inspector made the decision not to confirm the order (see Appendix 1 – Order decision 24.03.08).
- 6 The applicant, after discussion with the then Rights of Way manager (Mr Rob Hemblade) decided to make a fresh application to divert the path. The new route avoids the copse of trees and does not travel as far down the slope as the first order. The application was prioritised as the failure of the first was due, in part to the delay.
- 7 The new proposals (as illustrated on the attached plan DRWG NoD394/397-1) have received no objections at pre-order consultation stage.
- 8 The Local Member, Cllr. J B Williams supports the proposals.

- 9 The neighbouring landowners (whose land the new route will partly pass through) have agreed in writing to the proposals and have signed a form to waive any claim for compensation or expenses.
- 10 The applicant, Mr Barnard has agreed to pay all advertising costs and costs for bringing the new route into being for this application.

Community Impact

- 11 The Longtown Group Parish Council has been consulted with the proposals and are satisfied with the intended route. However, they state that they would support the continued use of stiles and not pedestrian gates. This would not be possible as user groups and Council policy states that all new routes should only include furniture that will comply with the Disability legislation ie gates and not stiles.

Financial Implications

- 12 The applicant, Mr Barnard has agreed to pay for all advertising costs associated with this order along with works necessary in bringing the path into being. However, it was agreed with Mr Barnard that the Herefordshire Council should pay for all admin costs. These costs would be extracted from the Rights of Way budget which is currently held by Amey Herefordshire and are normally charged to applicants (£880).

Legal Implications

- 13 If the Committee resolves to make an order as suggested, the Order will be made under Highways Act 1980, s119.

Risk Management

- 14 If an order is made to divert path WZ1 as suggested 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 consultant opinion at a pre-order consultation – to which no objections were received.
- 15 The making of diversion orders under HA1980, s119 is a power of the Authority and 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 House of Windblown Clouds, impacting on the privacy and enjoyment of the landowners of the property.

Consultees

- 16 Prescribed organisations as per Defra Rights Of Way Circular 1/09
- Statutory Undertakers
- Longtown Parish council
- Cllr. J B Williams
- Neighbouring landowners, Mr & Mrs Herring

Appendices

17 Appendix 1 - Order Decision, 24.06.08

Background Papers

18 Plan, Drwg No: D394/397-1

333800

333900

334000

334100

PROPOSED EXTINGUISHMENT A ————— B

PROPOSED DIVERSION A ····· C ····· D ····· E ····· B

PUBLIC FOOTPATH - - - - -

PUBLIC BRIDLEWAY + + + + +

BYWAY OPEN TO ALL TRAFFIC T T T T T

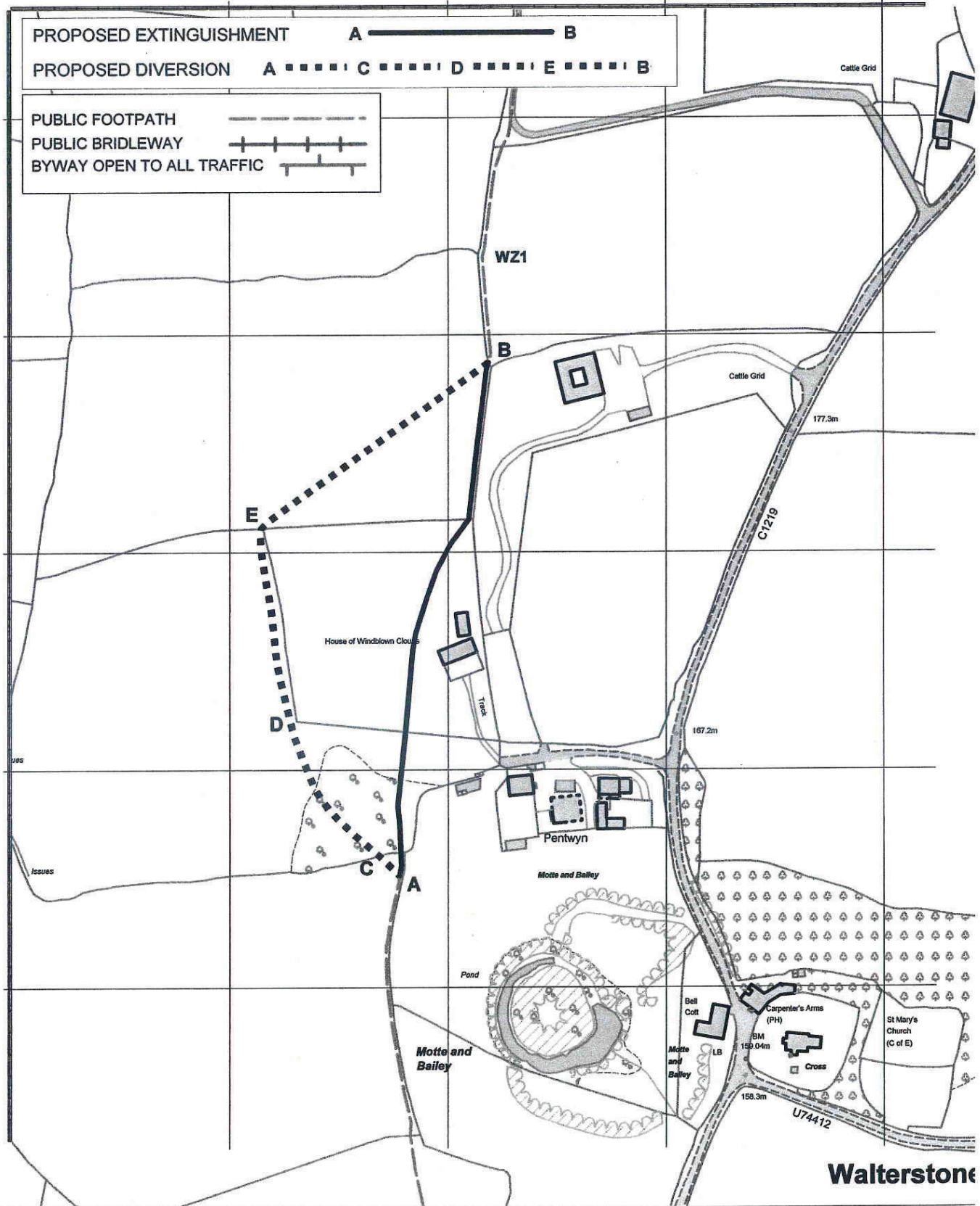
225400

225300

225200

225100

225000



Walterstone



LOCATION PLAN - PARISH OF WALTERSTONE
PROPOSED DIVERSION OF
PUBLIC FOOTPATH WZ1
 DWG No: D394/397-1
 SCALE 1:2500

Herefordshire Council
 Public Rights of Way
 PO Box 41
 Leominster
 HR6 0ZA
 Tel.: (01432) 260000
 Fax.: (01432) 260579

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Order Decision

Site visit on 24 June 2008

by **Sue Arnott FIPROW**

an Inspector appointed by the Secretary of State
for Environment, Food and Rural Affairs

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.
gov.uk

Decision date:
08 July 2008

Order Ref: **FPS/W1850/4/3**

- This Order is made under Section 119 of the Highways Act 1980 and is known as the County of Hereford and Worcester (Footpath No WZ1 (Part) Walterstone) Public Path Diversion Order 1995.
- The Order is dated 30 March 1995 and proposes to divert a section of public footpath to the north west of Walterstone.
- There were 2 objections outstanding when Herefordshire Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is not confirmed.

Preliminary Matters

1. The Order was made in 1995 by Hereford and Worcester County Council. Since then, jurisdiction for highway matters for the area covering Walterstone has passed to Herefordshire Council (HC).
 2. Given the length of time since this Order was made, the lack of any recent information to confirm the present position of the relevant landowners or the statutory undertakers is a source of concern. The only submission from the applicant appears to be the application form dated 1991; the owners of the land crossed by the proposed route indicated their support for the diversion in 1993; and the statutory undertakers responded to consultations also in 1993.
 3. Whilst I draw no particular conclusion from the delay in forwarding this case to the Secretary of State, I cannot presume that the situation remains the same in all respects as in 1995 when the Order was made. The proposed diversion needs to be considered in present-day circumstances, not those that existed over thirteen years ago.
 4. When visiting the site I was unable to walk along the section of footpath in question between the points shown as B and C on the Order map. Although I found stiles in the fences at both locations, passage was blocked by hedge growth and trees and at C a sign stated "Private House: footpath this way »". I was, however, able to walk the majority of the proposed route (shown as A-F-E-D on the Order map) since, with the exception of A-F, this is now waymarked as a public right of way. The line A-F is not accessible; there is a barbed-wire fence across it near A (although the path is currently marked via a gate near B) and, as far as I can judge, the proposed path A-F runs through a small group of trees and bushes surrounded by nettles and thistles.
-

5. At first glance it may appear that the Order has largely come into operation in practice, if not in law, and one might draw the conclusion that the landowners and utility companies have nothing further to say on the diversion. However, the objectors have recently re-asserted their position and confirmed that their objections still stand.
6. Where public path extinguishment orders are concerned, Section 118(6) of the Highways Act 1980 (the 1980 Act) requires that any temporary circumstances preventing or diminishing use of the path in question be disregarded when determining the likely use that might be made of it. The same instruction does not appear in Section 119 under which this Order is made but, as far as I am able, I propose to adopt the same principle when considering this diversion.

The Main Issues

7. The requirements of Section 119 of the 1980 Act are that before confirming the Order I must first be satisfied that:
 - (a) it is expedient in the interests of the owner of the land crossed by the footpath that the right of way in question should be diverted;
 - (b) the new route to be provided will not be substantially less convenient to the public;
 - (c) it is expedient to confirm the Order having regard to:
 - (i) the effect of the diversion on public enjoyment of the path as a whole, and
 - (ii) the effect the coming into operation of the Order would have with respect to other land served by the existing path and the land over which the new path would be created together with any land held with it, having had regard to the provision for compensation.
8. Paragraph 9 of Schedule 6 to the Countryside and Rights of Way Act 2000 inserts into the 1980 Act a requirement that I should have regard to any material provision in a rights of way improvement plan prepared by any local highway authority whose area includes land over which the Order would create or extinguish a public right of way. However the plan for this area has not been finalised and no issues arising from the draft plan have been raised.

Reasons

Whether it is expedient in the interests of the owner of the land crossed by Footpath WZ1 that the right of way in question should be diverted

9. On the application form in 1991 the applicant¹ stated that the reason for the requested diversion was to gain privacy in the newly created private property. In addition HC submits that the diversion would increase the property value and thus benefit the landowners.
10. The objectors argue that the effect of the footpath should have been taken into consideration when planning permission was granted for conversion of the barn

¹ The application form lists both Mr and Mrs Barnard as applicants. However the Order refers to the "owner" in the singular and I have therefore referred to the 'applicant' in the singular here for consistency.

to a dwelling. They point out that privacy and seclusion are not noted in Section 119 of the 1980 Act, nor is there any reference to diverting paths to enhance property values. They submit that these are not reasons for altering the line of a longstanding definitive footpath.

11. The definitive map records the line of Footpath WZ1 as almost touching the north western corner of the original building. Although I have no information as to the internal layout of the house, it seems reasonable to conclude that the proximity of the path would indeed be intrusive and that a diversion to take the path further from the house would be desirable.
12. From the little I could see of section B-C on my site visit, the profile of the path seems to have changed considerably from what I assume to have been a pasture field surrounding the barn. Retaining the garden landscaping and planting might be in the owner's interests (although this has not been argued) but would not necessarily justify the proposed diversion to A-F-E-D.
13. In my view, a property's value may well increase as a result of diverting a public footpath but that factor alone is not sufficient to justify an Order.
14. As I have already indicated, I cannot assume that the applicant is still the owner of the property crossed by section B-C when seventeen years have passed since the diversion was first requested. Nevertheless it is difficult to conceive of a way that the Order would not be in the interests of the present owner (and occupier) of the converted barn.
15. I am satisfied that the Order was properly made in 1995 in the interests of the owner as stated. However I have doubts about the expediency of confirmation today in 2008 in the absence of any assurance of the present owner's position. What may have been expedient in the early 1990s cannot be assumed to be expedient today without supporting evidence and I am not satisfied this has been adequately demonstrated.

Whether the new route to be provided would be substantially less convenient to the public

16. HC considers that the proposed route would not be substantially less convenient to the public although it is slightly longer. It does not regard the slope of the 'new' path as onerous in the overall context of the route.
17. The objectors disagree, arguing that both the additional distance and the steep gradient of section E-D cause a substantial inconvenience. In addition, they argue that no account has been taken of the requirements of the Disability Discrimination Act 1995.
18. In my view the question of convenience depends to a large extent on the user, particularly the purpose of the journey and the capabilities of the people walking the path in question. In terms of length, I do not consider the extra distance as significant in this context. Since there is no defined width for the existing right of way, I regard a two-metre wide new path² as an improvement.

² The Order Schedule states the width of the 'new' footpath as being "a minimum of 2 metres in width". Since that leaves open the question of its maximum width, if the Order were to be confirmed I would propose a modification to remove the words "a minimum of".

19. The Order specifies three locations where stiles, gates or gaps would limit use of the path although two of these lie at the start and finish of the section to be diverted and appear to relate to both present and proposed routes. In fact an additional limitation would need to be incorporated if the fence currently across section A-F is to be retained. That would result in the same number of fence crossings on both present and proposed routes and therefore no difference in that respect in terms of relative convenience.
20. Although I find it hard to be quite certain about the slope of the present route when I have not had the opportunity of walking along it, my observations from B and C suggest that the rise from A to D via B and C is much more gradual than via the alternative now in use via A-F-E-D. Comparing the two routes in isolation I would say that the 'new' is less convenient in terms of its gradient but put into the context of the whole path I consider it is not substantially so.
21. However, my interpretation of the Order map suggests to me that the line drawn between A and F runs directly through a group of trees on a short but steep bank. Nettles and thistles can easily be cut but the trees themselves clearly provide shelter for grazing sheep and their removal may not have been intended. With no further details of this particular section, I cannot accept that a footpath along A-F would be at all convenient for the public because of the ground conditions and trees.
22. That being the case, I consider the new route (as shown on the Order map) would be substantially less convenient for the public.

The effect the diversion would have on public enjoyment of the whole path

23. The Council submits that the public's enjoyment of this footpath may increase since the views from the 'new' path would be better than the existing line, being on the western side of the garden boundary hedge. Also, it would remove the likelihood of the public feeling embarrassed at having to walk through a private garden. I am told Footpath WZ1 now forms part of a route promoted as the Monnow Valley Walk although I have no further details.
24. The objectors make no comment on this aspect of the proposed diversion.
25. I agree with the Council that the views are likely to be better from section E-F than B-C but without having walked the latter it is difficult to be certain. The views from B-C may be obstructed by trees and shrubs but it is higher than E-F and might possibly afford long-distance views along the valley. Whether or not that is the case, walkers are able to appreciate similar views both north and south of the section of Footpath WZ1 in question so that I consider the effect on public enjoyment would be minimal.
26. As regards the privacy issue, I accept that generally people feel uncomfortable about walking very close to private houses where they feel they are intruding on the personal space of the occupiers, even where a public right of way is acknowledged. In the present case, I would accept that may be true of a part of the Order route as it passes the house, but not necessarily the whole of the garden between B and C.
27. Overall I accept there may be some benefits to the public from removing the footpath from the immediate vicinity of the house. Whilst the effect on views is

uncertain, I find no significant detrimental effects on public enjoyment of the whole of Footpath WZ1 are likely to arise from the proposed diversion.

The effect the coming into operation of the Order would have with respect to the land served by the existing path and the land over which the new path is created together with any land held with it, account being taken of the provisions as to compensation

28. No adverse effects on the land in question have been drawn to my attention. Compensation issues have not been raised but, when the Order was applied for, the proposed route was to run over land belonging to Pentwyn Farm, not the applicant. The Order therefore states that the owner of the land crossed by the (existing) footpath had agreed to defray any compensation that may be payable as a consequence of the Order coming into operation.
29. This may still be the case but there is no information before me to confirm that the present owner of the converted barn is willing to make that undertaking. However it could be that since the majority of the proposed 'new' route has been in operation for some years, compensation may no longer be applicable. Nevertheless the lack of certainty is a reason for caution.

Whether it is expedient to confirm the Order

30. Whilst I accept that the proposed diversion would not significantly affect public enjoyment of Footpath WZ1 in its entirety, the lack of up-to-date and comprehensive information seriously compromises the evidence in support of other aspects of the Order. With no recent communication to confirm the present landowners' positions, I cannot be assured that the Order would be in the interests of the landowner, or that any compensation matters that might arise would be satisfactorily resolved. Without more recent consultation with the relevant utility companies, I am not satisfied that the rationale behind the statutory requirements has been met, even if the order-making authority fully complied when the Order was made. Further, I consider the proposed route as shown on the Order map would be substantially less convenient to the public, primarily because of unresolved issues relating to section A-F.
31. HC acknowledges that this Order is not ideal but felt obliged to submit it for confirmation to the Secretary of State because of the time that had passed since it was made by the former Authority.
32. Taking all these matters into account I cannot agree that it would be expedient to confirm this Order in the absence of so many relevant facts.

Conclusion

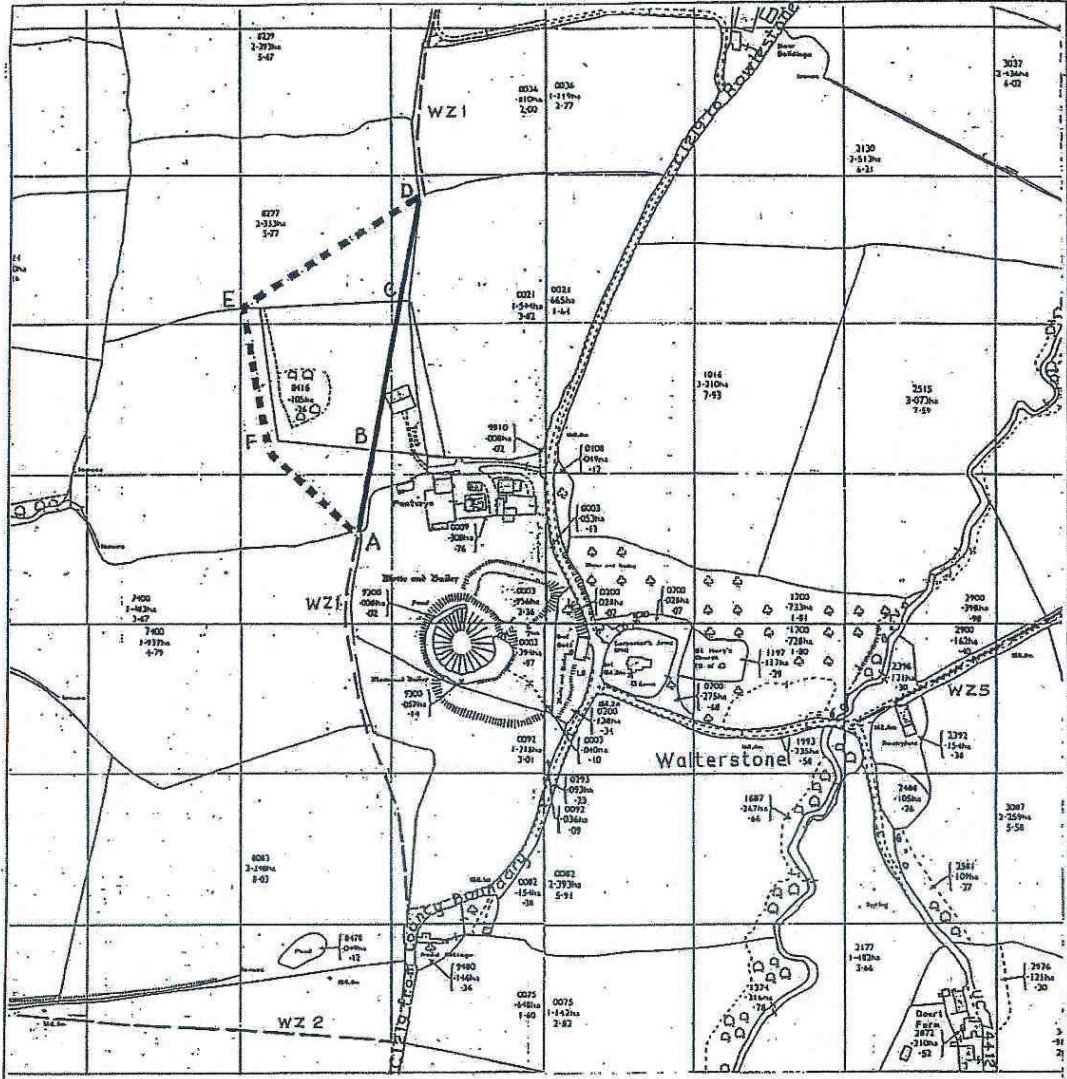
33. Having regard to all matters raised in the written representations, I conclude the Order should not be confirmed.

Formal Decision

34. The Order is not confirmed.

Sue Arnott

Inspector



Map reduced - not original scale

PROPOSED EXTINGUISHMENT A B C D
 PROPOSED DIVERSION A B C D
 EXISTING RIGHTS OF WAY - - - -

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BASED ON O.S. SHEET Nos 3324, 3325, 3424 & 3425



HEREFORD AND WORCESTER COUNTY COUNCIL		DRAWN		SCALE		Dr. Mariyn Hayes County Engineer and Planning Officer County Hall, Spetchley Road, Worcester WS2 2EP
PARISH OF		DATE		1:2,500		
WALTERSTONE		12-1-93		DRG. No.		
PROPOSED DIVERSION OF FOOTPATH No. 1 (PART)		CHECKED		397/1		1
		DATE				
		12-1-93				

REGULATORY COMMITTEE
LICENSING APPEAL PROCEDURE

1. Introduction by Legal Advisor to the Committee.
2. Licensing Officer outlines the case.
3. Applicant (or his solicitor) sets out his case.
4. Questions asked by the Committee or Licensing Officer or Applicant.
5. Applicant (or his solicitor) asked if he would like to make further comment or representation, or if he requires time to comment or investigate (if so, Chairman defers application).
6. In dealing with each application, the applicant (and any representative) should also withdraw should be asked to withdraw when they have finished their presentation. All officers, other than the Legal Adviser to the Committee, should also withdraw. It would be preferable for the applicant and officers to await the decision at different locations.
7. If either the applicant or the officer are needed to furnish additional information, they should all be invited back before the Committee. When the additional information has been furnished, they should all be asked to leave again.
8. The Committee can then reach a decision in the usual way, but in the absence of parties.
9. The applicant and officers will then be invited to return. The Chairman will announce the decision. The Chairman should also say that the decision will be communicated in writing in due course, and that the applicant will be informed of any right of appeal (if the decision is one of refusal).
10. When the first applicant is finished, that applicant should leave. Deal with the second and subsequent applications in the same way.

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