

HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH MM3 (PART) IN THE PARISH OF MUCH MARCLE

Report By: Public Rights of Way Manager

Wards Affected:

Old Gore

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath MM3 in the parish of Much Marcle.

Considerations

1. The application was made on 20th March 1998, by Mr. T. Weston, of H. Weston & Sons Cider Ltd., who is the landowner. The reasons for the application are to take the path out of the Weston's cider factory and provide a safer route for users.
2. A recent planning application (DCSE2006/3252/F) for the erection of a new loading bay, located across the footpath, is currently under consideration. However, it would not be possible to divert the footpath under the Town & Country Planning Act 1990 due to the extent of the proposal. Further, a building cannot be constructed over a highway maintainable at public expense unless a licence is granted by the highway authority to permit such a construction (s. 177, Highways Act 1980). Due to the nature of the activities associated with a loading bay, and the consequent potential for interference with the convenience of people using the footpath, a licence would not be issued.
3. The Council has carried out pre order consultation. The statutory undertakers and Much Marcle Parish Council raised no objections to the proposed route. The local member, Cllr John Edwards, has been consulted and supports the application.
4. A series of discussions have taken place with the Ramblers' Association, the Open Spaces Society, and the applicant, over the proposed diversion route. Both the Open Spaces Society and the Ramblers' Association preferred a route to the east of the factory, however; the landowner is not in favour of this proposal. On inspection it was felt that the route put forward by the user groups was inferior to that put forward by the applicant in terms of views, there is a large bund supporting the factory, and safety, the exit point onto the county road (C1262) has impaired visibility for crossing. Both user groups also stated that they would object to any proposal that lead to any additional walking along the county road (C1262) to join the footpath from neighbouring footpath MM11. This proposal meets their concerns on this matter.
5. Following a site visit, a series of measures have been agreed with the applicant to provide a route between the two county roads (C1262 and C1294) that provides new gates to replace existing stiles, clear separation of the footpath from the industrial activities of the factory, and new ditch crossings. The applicant has also agreed to

carry out any drainage work required should a section of the proposed route be prone to waterlogging.

6. The applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order.
7. 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 does not alter the point of termination of the paths.
 - The proposal is not substantially less convenient to the public.
8. It is the view of the Public Rights of Way Manager that the proposal has considerable advantages over the current situation. The proposed route will improve safety for users of the path, better enable Weston's to carry out development works and provides an improved amenity for walkers.

Alternative Options

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.

Risk Management

There is a risk that the Order will be opposed, particularly considering the fact that both the Ramblers' Association and the Open Spaces Society have stated their reservations about the proposal. This could lead to additional demand on existing staff resources.

Consultees

- Prescribed organisations as per annexe E of Department of the Environment Circular 2/93.
- Local Member – Cllr. J Edwards.
- Much Marcle Group Parish Council.
- Statutory Consultees

Recommendation

That a Public Path Diversion Order is made under Section 119 of the Highways Act 1980, as illustrated on drawing number: D319/277-3(iv).

Appendices

Order Plan, drawing number: D319/277-3(iv).