

HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH (KB48) (PART) IN THE PARISH OF KIMBOLTON

Report By: Public Rights of Way Manager

Ward Affected:

Upton

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath (KB48) in the parish of Kimbolton.

Considerations

- 1 The application was made on 20/7/04, by Total UK. The reason was that a building extension obstructs the footpath.
- 2 An order was made on 1st June 2005 to divert the path under the Town and Country Planning Act 1990. Unfortunately the minimum width of the new route was omitted from the schedule due to a clerical error. A representation was received from the Open Spaces Society regarding the omission and requesting a signpost at the roadside. The representation was subsequently temporarily mislaid and the order was confirmed without any reference to the representation. After consultation with the Planning Inspectorate, it appears that the Council acted 'ultra vires' in confirming the order and therefore it is void.
- 3 The Council cannot request the Secretary of State to confirm (again) with modifications as the development is now substantially completed. The only course of action to rectify the mistakes made is to make a new order under the Highways Act 1980 to divert the route as per the original proposals.
- 4 The local member and the parish Council have been consulted and they agree to the proposals. The applicant has already paid for the original diversion order, confirmation and associated adverts in the paper in good faith.
- 11 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.

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 decide not to make this order on the grounds that it does not contribute sufficiently to the wider ambitions and priorities of the Council. However, this could be considered unreasonable under the circumstances and would result in a footpath, which is obstructed by the extension.

Risk Management

There is a risk that the Order will be opposed, leading to additional demand on existing staff resources.

Recommendation

That a public path diversion order is made under Section 119 of the Highways Act 1980, as illustrated on drawing number: D381/205-48 at the Council's expense.

Appendices

Appendix 1 - Order Plan, drawing number: D381/205-48

Appendix 2 - Original order, plan and confirmation

Appendix 3 - Letter of representation from Open Spaces Society