

HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH MA16 (PART) IN THE PARISH OF MATHON

Report By: Public Rights of Way Manager

Wards Affected:

Hope End

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath MA16 in the parish of Mathon.

Considerations

- 1 Mr and Mrs Philpotts (who are the landowners of Ferney Cottage) made the application on 30th August 2007. Their reasons for making the application were in connection with the sale of their property, which has become necessary due to personal circumstances. They feel that the presence of a public footpath that runs through the garden and in close proximity to the house at Ferney Cottage may negatively affect the sale. The proposed diversion route has been in use as a permissive path for some years.
- 2 The applicants have carried out all pre order consultation. The Open Spaces Society representative has raised several issues; these include:
 - The wetness of the area of ground adjacent to the fence line between points B and C
 - The width of the section of path between points A and C, which passes through a corridor formed by a fence and a hedgerow
 - The kissing gate at point C, which they feel to be too narrowThe issues with regard to the wet ground and path width have been resolved to the Open Spaces Society's satisfaction; copies of the correspondence between the Public Rights of Way department and their local representative are attached (see annexes A and B.) It is intended that the issue about the gate design will be resolved before any Order is made, as it should be relatively simple to rectify. The proposal has general agreement of the Ramblers' Association, Malvern Hills District Footpath Society, Cyclists Touring Club and Mathon Parish Council. The adjoining landowner has given his consent and agreed not to claim any compensation (see annexes C and D;) his property is also affected by the application.
- 3 Both the Open Spaces Society and the Malvern Hills District Footpath Society have indicated that they would view the diversion proposal more favourably if the landowner were to also dedicate a new section of footpath; this would run along the access drive to Ferney Cottage and link footpath MA16 with county road C1162. The Malvern Hills District Footpath Society have suggested that this proposed new section of footpath may already have become a right of way due to uninterrupted usage. The landowner is willing to add this section of path to the Definitive Map via a

creation agreement, if the diversion is successful. This would save Council resources, because processing a dedication agreement is significantly less costly than processing a Definitive Map Modification claim. As a result, it has been decided to prioritise the processing of the diversion application, alongside which the dedication is being processed. The dedication agreement has been drafted and signed by the landowners, but not sealed to bring it into operation.

- 4 The applicants have agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order. They have also been asked to sign a maintenance agreement in respect of the retaining wall that forms a revetment on one side of the section of path between points A and C; if the diversion is successful, this will bind them and their successors in title in meeting the costs of any works required to the wall. If the dedication agreement is brought into operation, Herefordshire Council will meet the costs of advertising the agreement and installing a roadside signpost.
- 5 The local members Councillor Mills and Councillor Stockton support the application.
- 6 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 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, leading to additional demand on existing staff resources.

Consultees

- Prescribed organisations as per annexe E of Department of the Environment Circular 2/93.
- Local Members – Councillor R Mills and Councillor RV Stockton
- Mathon Parish Council.
- Statutory Undertakers

Recommendation

That a public path diversion order is made under Section 119 of the Highways Act 1980, as illustrated on drawing number: D384/265-16

Appendices

Order Plan, drawing number: D384/265-16

Annex A-Letter to Open Spaces Society representative, dated 11th January 2008

Annex B-Letter from Open Spaces Society representative, dated 21st January 2008

Annex C-Draft Order and Schedule, signed by adjoining landowner

Annex D-Affected landowner compensation indemnity form, signed by adjoining landowner