

HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER BRIDLEPATH CO1 AND FOOTPATHS CO1A AND CO4 IN THE PARISH OF COLLINGTON; FOOTPATHS ER3 AND ER26 IN THE PARISH OF EDWYN RALPH

Report By: Public Rights of Way Manager

Wards Affected:

Bringsty

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path order to divert parts of bridlepath CO1 and footpaths CO1A and CO4 in the parish of Collington and parts of footpaths ER3 and ER26 in the parish of Edwyn Ralph.

Considerations

- 1 Thornbury Group Parish Council made the application on 31st January 1990. The original application included changes to ten paths in total and was made on behalf of a number of landowners, in the parishes of Thornbury, Edwyn Ralph and Collington. The reasons given for making the application were that the proposed reorganisation of the paths would improve the rights of way network in the area, in terms of user safety and convenience and of land management practices. Some landowners also felt that the proposals would benefit them by increasing their privacy and security.
- 2 The original application was made for one extinguishment Order under section 118 of the Highways Act 1980 and one creation Order under section 26 of the Highways Act 1980; each of the extinguishment and creation Orders would include a number of paths, thus reducing the advertising costs incurred. It was intended that the two Orders should be considered concurrently, in order for the proposals to result in the desired diversion of the paths. It was agreed that the costs incurred by the Parish Council would be for the advertising fees only. The Parish Council organised that these costs would be recharged to the landowners concerned, on a pro rata basis. Correspondence about the proposals was mainly with the late Miss Patience Mostyn, who had volunteered to act as a representative for all of the landowners in this matter.
- 3 It is possible to include a number of paths in any one creation or extinguishment Order, provided that the legal tests are met for each path. However, the risk of failure of individual proposals is increased, in that an objection to the proposal for one path may result in the whole Order not being confirmed. There is also a risk that as the two Orders must be considered on their own merits, the creation Order could be successful, whilst the extinguishment Order was not confirmed. This would not result in a diversion, as it would simply create new paths without removing any existing ones. Following the failure of a similar rationalisation scheme at Ombersley, for which

concurrent creation and extinguishment Orders had been made, Miss Mostyn was advised in October 1992 that individual diversion Orders for each of the proposals was more likely to result in success (see letter dated 27th October 1992-Annex A.) In effect, a diversion Order is a concurrent creation and extinguishment; the creation of a new path cannot come into operation without the existing route being extinguished. However, the extent to which a path can be diverted is limited by the legal tests as laid out in section 119 of the Highways Act 1980.

- 4 This was a significant amount of correspondence following this, about the procedure to be used and the costs involved; individual diversion proposals attracted greater costs to the landowners concerned. By 2004, a Definitive Map Modification Order application had been made in respect of one path and separate diversion applications had been made for a number of the other proposals. As a result of this, the proposals now outstanding for consideration are as follows:
 - The proposed diversion of bridlepath CO1 and footpaths CO1A and CO4 at The Bank, Collington; it was proposed that an additional new section of bridleway be created in conjunction with this diversion, to link to county road B4212 (see Order Plan dwg no D121/94-1/1A/4)
 - The proposed diversion of footpaths ER3 and ER26 at Upper House Farm, Edwyn Ralph (see Order Plan dwg no D121/133-26/3)
- 5 The landowner of Upper House Farm contacted the Council in 2004 via solicitors; at that stage, they wished to continue with a diversion application. Correspondence with the Ramblers' Association suggested that there might be issues with processing this proposal as part of a package; they indicated that they had concerns about reorganisation of groups of rights of way via applications such as this (see letter dated 28th January 2004-Annex B.) No further correspondence about the proposed diversions has been received from the landowners of either Upper House Farm or The Bank since 2004.
- 6 It is not felt that either of these proposals would meet the legal tests for a diversion under section 119 of the Highways Act 1980 in their current form, for the reasons that are given in section 9 below. If this application were rejected or withdrawn, the landowners would be able to make new applications for a diversion in their own right, if they so wished. These would be processed under the current policy and procedures and at current costs.
- 7 Thornbury Group Parish Council were contacted in June 2004, to ask that they consider withdrawing the application as made in January 1990 (see letter dated 2nd June 2004-Annex C.) The application was not withdrawn at the time; letters sent to the Parish Council between 2004 and 2006 did not result in any further progress in determining the application. The Parish Council was sent a copy of this report on 16th June 2008 for comment. Following a meeting of Thornbury Group Parish Council on 26th June 2008, the current Parish Clerk advised us that the Parish Council have considered the report. They have agreed that the application should be rejected, given that the proposals are not felt to meet the legal tests and that the landowners would be able to make a new application in their own right, if they so wished (see email from the Clerk to Thornbury Parish Council-Annex D.)
- 8 The local member, Councillor T Hunt, has also been sent a copy of this report. He supports the recommendation that the application be rejected, given the risk of failure of both proposals in the event that a single, combined Order were to be made. It is recognised that if this application were rejected, the affected landowners could

reapply for diversions in their own right, which may have a greater chance of success.

- 9 The proposed diversion does not meet the specified criteria as set out in section 119 of the Highways Act 1980 in that:
 - The proposals are considered to be substantially less convenient to the public, as they would result in paths that are a significantly longer and less direct route between the start and end points of the proposed diversions.

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. If this application were not rejected, it would be necessary to carry out pre-Order consultation on the remaining proposals, with a view to processing them further. There is a significant risk that a formal objection will be submitted, if one Order were to be made that included two separate diversion proposals; this could lead to additional demand on existing staff resources.

Risk Management

There is a risk that the landowners of The Bank and Upper House Farm may still wish to divert the paths and may be unhappy if this application were rejected. However, they would be able to reapply for a diversion in their own right; although this would result in further delays, the likelihood of success of the individual proposals may be increased.

Consultees

- Local Member – Councillor T Hunt
- Thornbury Group Parish Council.
- The Ramblers' Association-were consulted on original proposals in 1990 and on proposed diversion of footpaths ER3 and ER26 in 2004
- Statutory Undertakers- were consulted on original proposals in 1990

Recommendation

That a public path diversion order is not made under Section 119 of the Highways Act 1980, as illustrated on the attached plans Dwg no D121/94-1/1A/4 and Dwg no D121/133-26/3 and that the application is rejected.

Appendices

Order Plan 1: Drawing number: D121/94-1/1A/4-Proposed diversion of bridlepath CO1 and footpaths CO1A and CO4 and creation of new bridleway at The Bank, Collington

Order Plan 2: Drawing number: D121/133-26/3-Proposed diversion of footpaths ER3 and ER26 at Upper House Farm, Edwyn Ralph

Annex A: Letter to Miss Patience Mostyn, dated 27th October 1992

Annex B: Letter from the Ramblers' Association about the proposed diversion of footpaths ER3 and ER26 at Upper House Farm, dated 28th January 2004

Annex C: Letter sent to Thornbury Group Parish Council dated 2nd June 2004

Annex D: Email response dated 26th June 2008 from Clerk to Thornbury Group Parish Council