

HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH AV1B (PART) IN THE PARISH OF AVENBURY

Report By: Public Rights of Way Manager

Wards Affected:

Bromyard

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath AV1B in the parish of Avenbury.

Considerations

- 1 Mr Cynthia Fenn, who is the landowner, made the application on 8th September 2008. It was decided in August 2007 that a diversion would be the most cost-effective long-term solution to resolve the safety hazard that had arisen on the path, due to the construction of a large lake. The construction of the lake has resulted in part of the path running along a narrow corridor of land between the earth bund retaining the lake and the bank of the River Frome. Slippage of part of the bund has caused part of the path and the riverbank to collapse into the river, effectively closing it for use.
- 2 Prior to submission of a full application, the applicant carried out pre-Order consultation. Their initial route proposal (see Annex A) raised a number of concerns from the Ramblers' Association and Open Spaces Society; of particular note were the need to widen the path where it crossed a slope to make it convenient for use, the number of changes of direction of the proposed route, its proximity to a barbed wire fence and the need for drainage where it crossed a very boggy area immediately to the south of the lake. The original proposal had the general agreement of the Environment Agency and Malvern Hills District Footpath Society; no objections were received from statutory undertakers.
- 3 A site visit was made with Council's Land Drainage engineer, to consider the options for drainage of the boggy area. This area of land is located underneath a slope on which some sort of slippage has occurred; the exact cause is not known, as no geological report has been obtained. The Land Drainage engineer advised that further slippage could render any drainage measures ineffective; this could result in significant future maintenance liabilities for the Council.
- 4 To avoid the boggy area and resolve the other issues raised by the user groups, an alternative route that follows a vehicular access track along the top of the hill was proposed. This was discussed at a site meeting with the landowner and representatives of the Ramblers' Association and Open Spaces Society. The revised route has their general agreement, as well as that of the Malvern Hills District Footpath Society. Avenbury Parish Council supports the proposal; it was not felt necessary to re-consult other parties. There are no other affected landowners.

- 5 This application is being prioritised, due to the safety risks associated with the existing line of the path. This path is likely to be particularly well used as it forms part of the Herefordshire Trail, which is a route promoted by the Ramblers' Association. The applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order.
- 6 The local members, Councillor Seldon and Councillor Hunt, support the application.
- 5 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, as a diversion would cost significantly less than the works required to reinstate the path on its existing line.
 - The proposal does not alter the point of termination of the path.
 - 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 Defra Rights Of Way Circular 1/08.
- Local Members – Councillor Seldon and Councillor Hunt
- Avenbury Parish Council.
- The Environment Agency
- Malvern Hills District Footpath Society
- Statutory Undertakers

RECOMMENDATION

That a public path diversion order is made under Section 119 of the Highways Act 1980, as illustrated on drawing number: D392/18-1B

Appendices

Order Plan, drawing number: D392/18-1B

Annex A: Plan showing original route proposal