

<b>MEETING:</b>	<b>REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>9TH FEBRUARY 2009</b>
<b>TITLE OF REPORT:</b>	<b>HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH EH18 (PART) IN THE PARISH OF EWYAS HAROLD</b>
<b>PORTFOLIO AREA:</b>	<b>ENVIRONMENT and CULTURE</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Golden Valley South

### **Purpose**

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath EH18 in the parish of Ewyas Harold.

### **Key Decision**

This is not a Key Decision.

### **Recommendation**

**That a public path diversion order is not made under Section 119 of the Highways Act 1980, as illustrated on the attached plan D273/142-18 and that the application is rejected.**

### **Key Points Summary**

- Herefordshire Council have received an application to divert a public footpath which is currently open and useable to the public.
- User groups have indicated that they would object to the proposal if a stile instead of a gate were installed on the route. It is Herefordshire Council policy to always insist on the installation of a gate as oppose to a stile when a route is diverted, unless there are exceptional circumstances. This is to ensure compliance with the Disability Discrimination Act.
- It has not been possible to reach an agreement to put in a gate.
- The applicants have indicated (by non-response) that they do not wish to proceed with this application.

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Further information on the subject of this report is available from  
**Rob Hemblade Interim Parks, Countryside and Leisure Development Manager on (01432) 261981**

## Alternative Options

- 1 The council could support the application. However this is likely to lead to objections which may result in a public inquiry.

## Reasons for Recommendations

- 2 The applicants have indicated, through their non-response that they do not wish to proceed any further with this application. Herefordshire Council have received only conditional acceptance of the route from user groups.

## Introduction and Background

- 3 Mr Rands, who was the landowner of Golden Grove, made an application to divert public footpath EH18 (part) on the 22<sup>nd</sup> April 1997. The reason given for making the application was, 'to avoid the unnecessary inconvenience and embarrassment which would be caused by walkers passing through the garden of Golden Grove'.
- 4 The proposals were sent to pre-order consultation in 1997 to user groups, the local member of the time, Cllr J B Williams and to the Parish Council.
- 5 The Parish Council agreed to the proposals. The Ramblers Association and the Open Spaces Society raised objections on the grounds that the diversion would remove the termination point of the path away from the termination point of the path on the other side of the road.
- 6 The house was sold to Mr and Mrs Seymore who completed a fresh application in May 2004.
- 7 The applicants agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order. They also secured the written agreement of the neighbouring landowner, Mr Addis (whose land the proposed route would cross).
- 8 The proposals were sent out again to pre-order consultation again, as such a length of time had elapsed since the first. Proposals were sent to user groups, statutory undertakers, the local member (Cllr. J Williams), parish council and affected landowners.
- 9 There were no objections from statutory undertakers. The parish Council supported the proposals. The Open Spaces Society stated that they were not minded to object to the proposals subject to a gate being installed at the junction with the road. The Ramblers Association objected on principle of moving the path away from the path continuing on the other side of the road. Cllr. J Williams did not hold any objections.
- 10 Herefordshire Council's Highways department raised concerns about the poor visibility at the point the proposal meets the county road but were not minded to object.
- 11 The landowner, Mr Addis of Upper Prill, although agreeing to the diversion, was resolute in his opinion to only have a stile at the roadside (point C), not a kissing gate despite further negotiation by the Area Rights of Way Officer at that time, Paul Ratcliffe. The applicant was advised that the application would be unable to proceed further without the landowners' consent to the installation of a gate.
- 12 In December 2007, Mr & Mrs Seymour discussed the situation with Assistant Rights of Way Officer, Mrs. Sian Barnes. They suggested that they might alter the route so that it exits from

their land rather than Mr Addis's land. They agreed that they would arrange a site visit with themselves, Mr Addis and Mrs. Barnes early in 2008. However, no further correspondence was received, despite a letter being sent in March 2008 requesting a reply within 6 weeks, or it would be assumed that the applicants did not wish to proceed with the diversion, and the application would be sent to Regulatory Committee for rejection.

## **Conclusion**

- 13 Under section 119 of the Highways Act, 1980, a council may make an order to divert a footpath if it is satisfied that it is expedient to do so in the interests of the landowner. However the proposed route should not be substantially less convenient to the public. In this particular case because the proposed route does not meet Herefordshire Council policy, and as there are likely to be sustained objections to the proposal, there is no public benefit to proceeding with an order to divert the footpath.

## **Community Impact**

- 14 There is no community impact

## **Financial Implications**

- 15 There are no financial implications in the rejection of this application.

## **Legal Implications**

- 16 There are no legal implications in rejecting this application, as under s 119 of the Highways Act Herefordshire Council has a power to make orders not a duty to do so. The existing route is already open and useable to members of the public.

## **Risk Management**

- 17 There is no risk in rejecting the order as 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.

## **Consultees**

- Prescribed organisations as per DEFRA Rights Of Way Circular 1/08.
- Local Member – Cllr. J Williams
- Ewyas Harold Group Parish Council.
- Statutory Undertakers

## **Appendices**

Order Plan, drawing number: D273/142-18

## **Background Papers**

- None identified.