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| MEETING: | REGULATORY COMMITTEE |
| DATE: | 4 MAY 2010 |
| TITLE OF REPORT: | HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH WZ1 (PART) IN THE PARISH OF WALTERSTONE |
| PORTFOLIO AREA: | REGENERATION |

CLASSIFICATION: Open

Wards Affected

Golden Valley South

Purpose

To seek Regulatory Committee approval for the making of an order through the powers of the Highways Act 1980, Section 119 to divert footpath WZ1 (part) in the parish of Walterstone.

Key Decision

This is not a Key Decision.

Recommendation

THAT Committee agree then an order to divert footpath Walterstone 1 (WZ1, part) under Highways Act, section 119 as illustrated on the attached plan (DWG No D394/397-1) should be made.

Key Points Summary

- An order was made in 1995 by Herefordshire and Worcestershire Council to divert WZ1
- The order was not confirmed as objections were received from the Ramblers' Association and Open Spaces Society.
- When the order was finally sent to the Secretary of State for confirmation in 2008 the Secretary of State declined to confirm due, in the main, to the long time since first making the order (see appendix1 for the Order decision).
- The applicant has made a fresh application to divert the path on a new line to avoid the objections that were received to the first order.
- There have been no objections at pre-order consultation stage to these proposals.

Further information on the subject of this report is available from
Will Steel, Public Rights of Way Manager (01432) 845980

Alternative Options

- 1 Under the Highways Act 1980, s119 the Council has a power to make diversion orders, it does not have a duty to do so. The Council could decide not to make this order, however, this may be perceived as acting unreasonably by the applicant as the failure of the first order was due in the main to the length of time between making the order and referring the matter to the Secretary of State. If the order was not made, the existing route (through the garden of the House of Windblown Clouds) of the path would require opening up.

Reasons for Recommendations

- 2 The recommendation is to make the order to divert the path WZ1 as illustrated on the attached plan. The reason for this recommendation is that the failure of the first order was due, in part, to the lengthy delay in referring the matter to the Secretary of State. This new line of the path has not engendered any objections at the pre-order consultation stage. The applicant wants to divert the path in order to take it out of his property and thus improve convenience to both walkers and himself.

Introduction and Background

- 3 Before an order is made to divert a footpath under the Highways Act it is necessary to gain a decision from the Regulatory committee as they have the delegated authority to make this decision.

Key Considerations

- 4 An application to divert path WZ1 was received from the landowner of House of Windblown Clouds, Mr Barnard, by Herefordshire and Worcestershire Council and a diversion order was consequently made under HA1980, s119. The effect of the diversion was to remove the path from the garden of the House. The order received objections from the Ramblers Association and Open Spaces Society due to the new route travelling down, then back up, a steep bank. The new route was also to be longer than the existing route. The new route also passed through a group of trees without a clearly defined route. They therefore concluded that the new route was substantially less convenient to the public.
- 5 The order was sent to Secretary of State for confirmation in 2008; the Inspector concluded that the proposed route was not as substantially convenient to the public (due to the passing of the route through a copse of trees). The Inspector also felt that it was not expedient to confirm the order as there had been a long time between receiving correspondence from the landowners and utility companies, and so therefore the rationale behind the statutory requirements had not been met. The Inspector made the decision not to confirm the order (see Appendix 1 – Order decision 24.03.08).
- 6 The applicant, after discussion with the then Rights of Way manager (Mr Rob Hemblade) decided to make a fresh application to divert the path. The new route avoids the copse of trees and does not travel as far down the slope as the first order. The application was prioritised as the failure of the first was due, in part to the delay.
- 7 The new proposals (as illustrated on the attached plan DRWG NoD394/397-1) have received no objections at pre-order consultation stage.
- 8 The Local Member, Cllr. J B Williams supports the proposals.

- 9 The neighbouring landowners (whose land the new route will partly pass through) have agreed in writing to the proposals and have signed a form to waive any claim for compensation or expenses.
- 10 The applicant, Mr Barnard has agreed to pay all advertising costs and costs for bringing the new route into being for this application.

Community Impact

- 11 The Longtown Group Parish Council has been consulted with the proposals and are satisfied with the intended route. However, they state that they would support the continued use of stiles and not pedestrian gates. This would not be possible as user groups and Council policy states that all new routes should only include furniture that will comply with the Disability legislation ie gates and not stiles.

Financial Implications

- 12 The applicant, Mr Barnard has agreed to pay for all advertising costs associated with this order along with works necessary in bringing the path into being. However, it was agreed with Mr Barnard that the Herefordshire Council should pay for all admin costs. These costs would be extracted from the Rights of Way budget which is currently held by Amey Herefordshire and are normally charged to applicants (£880).

Legal Implications

- 13 If the Committee resolves to make an order as suggested, the Order will be made under Highways Act 1980, s119.

Risk Management

- 14 If an order is made to divert path WZ1 as suggested within this report, there is a risk that the order will receive objections and would therefore require referral to the Secretary of state. However, this risk has been minimised by assessing user group and statutory consultant opinion at a pre-order consultation – to which no objections were received.
- 15 The making of diversion orders under HA1980, s119 is a power of the Authority and not a duty. The Committee could therefore decline to make an order and reject this report. However, this would necessitate the re-opening of the path through the garden of House of Windblown Clouds, impacting on the privacy and enjoyment of the landowners of the property.

Consultees

- 16 Prescribed organisations as per Defra Rights Of Way Circular 1/09
 - Statutory Undertakers
 - Longtown Parish council
 - Cllr. J B Williams
 - Neighbouring landowners, Mr & Mrs Herring

Appendices

17 Appendix 1 - Order Decision, 24.06.08

Background Papers

18 Plan, Drwg No: D394/397-1