

<b>MEETING:</b>	<b>REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>6 JULY 2010</b>
<b>TITLE OF REPORT:</b>	<b>HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH MB4 (PART) IN THE PARISH OF MUCH BIRCH</b>
<b>PORTFOLIO AREA:</b>	

**CLASSIFICATION:** Open

### **Wards Affected**

Pontrilas

### **Purpose**

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath MB4 in the parish of Much Birch.

### **Key Decision**

This is not a Key Decision.

### **Recommendation**

**That Committee agrees to make a public path diversion order under Section 119 of the Highways Act 1980, to divert footpath MB4 (part), in the parish of Much Birch, as illustrated on drawing number: D374/274-4.**

### **Key Points Summary**

- An application was made in 2005 to divert footpath MB 4 in the parish of Much Birch for Health & Safety and privacy of new home.
- The proposals were sent to pre-order consultation to which there were no objections but comments from two organisations.
- The applicant amended his proposals in line with the suggestions made from the organisations.

### **Alternative Options**

- 1 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

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

grounds that it does not contribute sufficiently to the wider ambitions and priorities of the Council. If the order is not made, the path will continue to travel through the garden of 'The Underhills'.

## **Reasons for Recommendations**

- 2 The public path order should be made because it is felt that it meets the criteria set out in s 119 of the Highways Act and there have been no objections at pre-order consultation stage.

## **Introduction and Background**

- 3 Before an order is made to divert a footpath under the Highways Act 1980, it is necessary to gain a decision from the Regulatory Committee as they hold the delegated authority to make this decision.

## **Key Considerations**

- 4 Stephen Turner, who is the landowner, made the application on 12<sup>th</sup> of July 2005. The reasons given for making the application were, 'Health and safety during building works and some privacy to the home once complete'.
- 5 The applicant has carried out all pre order consultation. The proposal has general agreement - although the Open Spaces Society and the Ramblers Association both made suggestions, which the applicant has listened to and has then amended his proposals accordingly.
- 6 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order. The local member, Cllr. Smith supports the application.
- 7 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.

## **Community Impact**

- 9 The Parish Council have been consulted and support the proposals.

## **Financial Implications**

- 10 The applicant, Mr Turner, has agreed to pay for all administration and advertising costs associated with this order along with any works necessary in bringing the path into being.

## **Legal Implications**

- 11 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

## **Risk Management**

- 12 If an order is made to divert footpath MB4 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 undertaker opinion at pre-order consultation stage. The comments which were received by the Open Spaces Society and the Ramblers Association were then taken note of and the proposals amended accordingly. There were no objections.
- 13 The making of diversion orders under HA 1980, 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, the path would then remain through the garden of 'The Underhills', thus impacting upon the privacy and enjoyment of the landowners of the property.

## **Consultees**

- Prescribed organisations as per Defra Rights Of Way Circular 1/08.
- Local Member – Cllr. Smith
- Much Birch Parish Council.
- Statutory Undertakers.

## **Appendices**

- 14 Order Plan, drawing number: D374/274-4

## **Background Papers**

None.