

<b>MEETING:</b>	<b>REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>2 NOVEMBER 2010</b>
<b>TITLE OF REPORT:</b>	<b>HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH WC89 (PART) IN THE PARISH OF WHITCHURCH</b>
<b>PORTFOLIO AREA:</b>	<b>HIGHWAYS AND TRANSPORTATION</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Kerne Bridge

### **Purpose**

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath WC89 in the parish of Whitchurch.

### **Key Decision**

This is not a Key Decision.

### **Recommendation**

**That a public path diversion order is made under Section 119 of the Highways Act 1980, as illustrated on drawing number: D327/410-89**

### **Key Points Summary**

- An application was made by Blasemere Ltd. in 1999 to divert footpath, WC89.
- The application was then put onto the list of diversions to be carried out and has only recently reached the top of the list.
- The current route of WC89 is obstructed by the amusement park including a building, fencing and fairground rides.
- The proposed route follows the track to the caravan park.

### **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 grounds that it does not contribute sufficiently to the wider ambitions and priorities of the

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Further information on the subject of this report is available from  
Will Steel, Rights of Way Manager on (01432) 842106

Council. This means that the existing legal line would remain obstructed by the amusement park and buildings.

## **Reasons for Recommendations**

- 2 The public path order should be made because it is felt that it meets the criteria set out in s119 of the Highways Act and the Council's public path order policy.

## **Introduction and Background**

- 3 This report is being considered by the Regulatory Committee because they have the delegated authority to make the decision whether or not to make an order.

## **Key Considerations**

- 4 Blasemere Ltd., made the application on 19<sup>th</sup> February 1999. The reasons given for making the application were to avoid dissecting the fairground site and to improve the general approach to the river walk.
- 5 Pre-order consultation has been carried out by the Public Rights of Way department. The proposal received objections from the Parish Council, Open Spaces Society and the Ramblers Association, however, after site visits to discuss the proposals, the objections have been removed.
- 6 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order. However, the applicant will be charged the costs at the time of application in 1999, not the current charges.
- 7 The local member, Cllr. Jarvis does not object to the application.
- 8 The proposed diversion meets the specified criteria as set out in Council policy and in section 119 of the Highways Act 1980 in particular that:
- The proposal benefits the owner of the land crossed by the existing path.
  - The proposal is not substantially less convenient to the public.

## **Community Impact**

- 9 The Parish Council and local user groups have been consulted as part of the process, there were a number of objections, all which have been resolved. Cllr. Jarvis has been consulted and does not object to the proposals.

## **Financial Implications**

- 10 The applicants have agreed to pay all costs involved in making this proposed order and to pay associated advertising costs. However as the application was made in 1999, the applicants will be charged the rate applicable at the time (£600), not the current costs (£800).

## **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 WC89 as recommended within this report, there is a risk that the order will receive objections and would therefore require referral to the Secretary of State which will increase the demands on officer time and resources.
- 13 The making of diversion orders under HA1980, s119. is a power of the Authority 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 amusement park, part of the path however, passes through the buildings.

## **Consultees**

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- Prescribed organisations as per Defra Rights Of Way Circular 1/09.
- Local Member – Cllr. Jarvis
- Whitchurch Parish Council.
- Statutory Undertakers.

## **Appendices**

- 15 Order, Schedule and Order Plan, drawing number: D327/410-89

## **Background Papers**

- None identified.