

<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 FWB6E (PART) IN THE PARISH OF FOWNHOPE</b>
<b>PORTFOLIO AREA:</b>	<b>HIGHWAYS AND TRANSPORTATION</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Backbury

### **Purpose**

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath FWB6E in the parish of Fownhope.

### **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 the attached plan (DWG: D355/149-6E).**

### **Key Points Summary**

- An application was received in June 2005 from the then landowner of 29 Scotch Firs, Fownhope to divert footpath FWD6E.
- The adjacent landowner of the woodland, The Wyndham Lewis Trust has agreed to the proposals and to the dedication of a footpath to link FWB6E to FWD10.
- There have been no objections to the pre-order consultation.
- The parish council and the local member support the application.

### **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 (01432) 845980

Council. However this could be construed as being unreasonable.

## **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 Mrs Westmorland, who was the landowner, made the application on 24<sup>th</sup> June 2005. The reasons given for making the application were 'to reflect the accepted position on the ground following a route which is and has been used by the public for upwards of 37 years'.
- 5 Mrs Westmorland has since passed away and the property and application were then taken over by her daughter and son-in-law, Mr and Mrs Baker of The Forge, Rushall.
- 6 The property was then sold to Mr & Mrs Kemp and a sum of money from the sale was commuted in anticipation of the diversion of the path.
- 7 The applicants have carried out all pre order consultation. The proposal has general agreement and the adjoining landowner, The Wyndham Lewis Trust, whose property is also affected by the application, agrees with the proposals.
- 8 Mr and Mrs Baker have agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order. The other affected landowner, the Wyndham Lewis Trust have given their written consent that they will not claim compensation, if this diversion Order is made and comes into operation.
- 9 The Wyndham Lewis Trust have agreed to dedicate a further path (as depicted on the attached plan DWG: Dedication/149-6E) to alleviate any concerns the user groups may have had. The dedicated route is indicated on the attached plan (W-X-Y-A) and will link to the diverted route (Y-A-C).
- 10 The local member, Cllr. J E Pemberton does not object to the proposals.
- 11 The proposed diversion meets the specified criteria as set out 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.

The processing of these proposals has been carried out according to Council policy and procedure.

## **Community Impact**

- 12 The Parish Council were consulted and agree to the proposals. The successful making of the

order will formalise what has been used by the local community for a number of years.

## **Financial Implications**

- 13 The applicants have agreed to pay all associated costs including advertising and any works necessary in bringing the path into use.

## **Legal Implications**

- 14 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**

- 15 There is a risk that any order made may sustain objections which would increase the pressure on officer time. However, this is unlikely as the pre-order consultation has not received any objections.

## **Consultees**

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

## **Appendices**

Plans indicating proposed diversion and dedication.

## **Background Papers**

- None identified.