

<b>MEETING:</b>	<b>REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>7 DECEMBER 2010</b>
<b>TITLE OF REPORT:</b>	<b>HIGHWAYS ACT 1980, SECTION 26 AND SECTION 118. PROPOSED CONCURRENT PUBLIC PATH CREATION AND EXTINGUISHMENT ORDERS FOOTPATH FWD10 (PART) IN THE PARISH OF FOWNHOPE</b>
<b>PORTFOLIO AREA:</b>	<b>HIGHWAYS AND TRANSPORTATION</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Backbury

### **Purpose**

To consider proposals under the Highways Act 1980, section 26 and section 118, to make concurrent public path creation and extinguishment orders to alter part of footpath FWD10 in the parish of Fownhope.

### **Key Decision**

This is not a Key Decision.

### **Recommendation**

**That a public path order is made to create a section of path under Section 26 of the Highways Act 1980, and a further order is made to extinguish the ends of FWD10 where it has fallen into the river under Section 118 of the Highways Act 1980, as illustrated on drawing number: D249/149-D10(i).**

### **Key Points Summary**

- Public footpath FWD10 has been closed for some years due to the collapse of the bank towards the river making the footpath impassable.
- It is estimated that to reinstate the existing line of the path would require somewhere in the region of £120,000 of engineering works to stabilise the riverbank (this estimate may not include protection to prevent further collapse).
- Herefordshire Council wishes to alter the path in the interests of the public, away from the area of erosion, as the affected section forms part of a longer riverside walk popular with local people and visitors.

---

Further information on the subject of this report is available from  
Will Steel on (01432) 845980

- The eroded section of path is legally considered to have been extinguished and thus the alteration will have to be carried out by concurrent creation and extinguishment orders rather than a diversion order.
- The landowner is not opposed to the proposal in principle but may object to the orders on the grounds that his diversion applications (for footpaths FWD4 and FWD7) are not being dealt with at the same time.
- The landowner may be entitled to compensation in respect to the creation/extinguishment orders if made and confirmed.

## **Alternative Options**

- 1 Under Section 26 and Section 118 of the Highways Act 1980 the Council has the power to make creation and extinguishment orders. It does not have a duty to do so. The Council could reject the proposal on the grounds that it does not contribute sufficiently to the wider ambitions and priorities of the Council. However, if the proposal were to be rejected, this popular path would remain inaccessible to the public.

## **Reasons for Recommendations**

- 2 The public path orders should be made because it is felt that they meet the criteria set out in s 26 and s118 of the Highways Act and are felt to be in the wider public interest.

## **Introduction and Background**

- 3 Under s 26 of the Highways Act 1980, the Council has the power to make an order to create a path where it is expedient to do so. Under s118 of the Highways Act 1980, the Council has the power to make orders to extinguish a path where it is felt that it is not necessary for public use. The current line of the path FWD10 has suffered from a landslip which has effectively extinguished parts of it and rendered the remaining sections in Lea Brink woods impassable to members of the public. The creation/extinguishment is felt to be in the interests of the public because this is a popular route of river-side path from the village of Fownhope, which is currently impassable. These orders would open it up to public use. Before orders are made to extinguish and create footpaths 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 Herefordshire Council put forward the proposal in the interests of the public.
- 5 Pre-order consultation has been carried out by the Public Rights of Way department. The Open Spaces Society are 'reluctantly minded to accept that this is a pragmatic, cost effective proposal to obviate expensive works to re-instate the eroded path.' The Ramblers' Association welcome the changes to the footpath, however, are concerned that the slope is continuing to erode and will erode this proposed route, they therefore suggest that it should be moved further into the field. When asked, an engineer suggested that this erosion should not be an issue (at least, in the medium term) due to the topography of the land. The RA also opined that the path be moved to follow through the existing gate near to point 'C' on the order plan as the incline is shallower at this point. However, it is felt that, to keep the possible compensation costs to a minimum, the proposal should remain as indicated on the existing plan.

- 6 Whilst the landowner has acknowledged the need for a resolution to FWD10, it is possible that he may object to the orders if made. He has applied for diversions to paths FWD7 and FWD4 which he wanted to see made at the same time as these proposals. Although the FWD10 proposals have been prioritised as they are considered to be in the public interest, informal consultation has taken place regarding the FWD4 & FWD7 proposals. Significant objections were received to these and further consideration is required to see if an acceptable solution can be developed. The proposals for footpaths FWD4 and FWD7, as they stand, are solely in the interests of the landowner, not of the public and will be dealt with as a separate matter in due course. However, due to the length of time it has already taken to get to the current position with regards to FWD10, it is recommended that it is dealt with now and independently of the other proposals.
- 7 The Parish Council are keen to progress this matter and are in support of the amendment of the path. However, they would like these amendments to be linked with the FWD4 and FWD7 proposals. For the reasons given above this is not considered appropriate. The Amey PROW Manager attended a special Parish Council meeting to discuss these proposals on 12/11/2010. Whilst he recognised the local support for all the proposals he explained the difficulties in considering them at the same time as they currently stand and the need to progress FWD10 as it is clearly in the public interest.
- 8 The Public Rights of Way budget will bear the costs (administration costs, advertising fees and possible compensation costs) of this diversion.
- 9 The local member, Cllr. J Pemberton does not object to the proposals.
- 10 The proposed creation meets the specified criteria as set out in section 26 of the Highways Act 1980 in that: there is a need for this footpath and we are satisfied that it is expedient that the path should be created with regard to the additional convenience to the public and to the effect which the creation of the path would have on the rights of the persons interested in the land.
- 11 Under section 28 of the Highways Act, the landowner is entitled to claim compensation if he feels that the value of his interest in the land has depreciated and/or that he has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of the order.
- 12 The level of likely compensation has been assessed by the District Valuer (as an independent assessor) and is likely to be in the region of £600 plus £660 surveyors fees (plus legal costs and VAT).
- 13 If an order is made and confirmed to create a path as proposed, an extinguishment order is proposed, to extinguish the ends of the path through the wood that lead to the area of collapse. The extinguishment order meets the specified criteria as set out in section 118 of the Highways Act 1980 as the path would not be needed for public use if the creation order were to be confirmed.

## **Community Impact**

- 14 The route of this path is an important recreational route out of Fownhope village. It is detailed in a series of published walks around Fownhope and is therefore used by tourists too. The path has been closed for many years and it will be beneficial for the village community to open the path again. The Parish Council have expressed a desire to conclude the matter with considerable public support.

## **Financial Implications**

- 15 The landowner will be entitled to compensation if this proposed order is made and confirmed.

The cost of this compensation will come from the Public Right of Way budget which is held by the Amey Herefordshire contract (see point 10 above).

The cost of re-instating the existing path has been considered and an engineering report produced. It is anticipated that to reinstate the existing line of the path would cost in excess of £120,000 which is not financially viable within the present rights of way budget.

## **Legal Implications**

- 16 Under Section 118 of the Highways Act 1980 the Council has the power to make extinguishment orders. It does not have a duty to do so. Under Section 26 of the Highways Act 1980, the Council has the power to make creation orders, it does not have a duty to do so.

## **Risk Management**

- 17 Set out the risks, their consequences and any mitigating actions.
- a. If the orders are made as proposed, the landowner may be entitled to compensation, this has been estimated to be in the region of £1260 (plus legal costs, plus VAT). Any compensation which would become payable as a consequence of the making of these orders would come from the rights of way budget, held by Amey.
  - b. If the proposed orders are made, there is a risk that they will sustain objections, this would necessitate their referral to the Secretary of State for a decision, which could place an increased demand on officer time.
  - c. If the report is declined, the path will remain inaccessible to the public and they may be discouraged from visiting the area and use of the rights of way network.

## **Consultees**

- 18 The following organisations/individuals were consulted for their opinion to the proposals.
- Prescribed organisations as per Defra Rights Of Way Circular 1/09.
  - Local Member – Cllr. J Pemberton.
  - Fownhope Parish Council.
  - Statutory Undertakers.

## **Appendices**

- 19 Order Plan, drawing number D249/149-D10(i)

## **Background Papers**

- None identified.