

<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 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH CH20 (PART) IN THE PARISH OF CLEHONGER AND FOOTPATH EB25 (PART) IN THE PARISH OF EATON BISHOP</b>
<b>PORTFOLIO AREA:</b>	<b>Highways and Transportation</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Stoney Street

### **Purpose**

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath CH20 in the parish of Clehonger and part of footpath EB25 in the parish of Eaton Bishop.

and

To agree to the formal abandonment of the previously made order, which was made in 1995 but received objections.

### **Key Decision**

This is not a Key Decision.

### **Recommendation**

i) **That a public path diversion order is made under Section 119 of the Highways Act 1980, as illustrated on drawing number: D19/88-201/130-25(i).**

and

ii) **That the, 'County of Hereford and Worcester, Footpath no CH20 Clehonger and Footpath No EB25 (part) Eaton Bishop Public Path Diversion Order 1995' made under Section 119 of the Highways Act 1980 in 1995 is abandoned.**

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

## **Key Points Summary**

- An application to divert the above paths was made in 1990
- An order was made to divert the path in February 1995.
- Objections were received from the Open Spaces Society and the Ramblers' Association.
- The order could not be confirmed due to the objections and was not forwarded to the Secretary of State for confirmation, as the OSS and RA objections were held to be valid points
- It is decided to pursue the making of a new order to address the objections
- A new route is proposed in conjunction with the current landowner and Natural England as the area is a Site of Special scientific interest.
- It is proposed that the costs of the diversion and associated works will be split between the Landowner, Natural England and Herefordshire Council
- The proposals were sent to pre-order consultation on 14<sup>th</sup> September 2010.
- The proposals received agreement from user groups.

## **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 Council and could refer the previously made order to the Secretary of State for a decision. However, it is felt that the objections made by the Open Spaces Society and Ramblers Association are valid and would render the Order impossible to confirm. This would not, therefore, resolve the fact that the current line of the path is obstructed by a large pond and is impassable for much of the year.

## **Reasons for Recommendations**

- 2 The previously made order to divert this path should not be confirmed because it has received a number of objections. It is felt that they provide a fatal flaw to the order and it is therefore incapable of being confirmed. The new public path order should be made because it is felt that it meets the criteria set out in s. 119 of the Highways Act (in that it is in the landowners interest and is not substantially less convenient to the public) and there have been no objections to this proposal 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 Mr Hayter, who was the landowner at the time, made the application on 12<sup>th</sup> of February 1990. The reasons given for making the application were that EB25 is obstructed by a pond and CH20 is impassable for much of the year due to it being wet and boggy.
- 5 An order to divert the path was made and advertised in 1995.
- 6 The order received objections from the Open Spaces Society (OSS) and the Ramblers' Association (RA). The objections were that:
  - they had not been consulted prior to the making of the order.
  - the order did not describe the route in sufficient detail to clearly identify the proposed route.
  - the works intended were not listed in detail .
  - the route would be better designed to exit onto the road in a different position.
  - the order notice was not placed in the correct location.
- 7 The land was sold to Mr & Mrs Hayes in 2002, who did not know of the problems with the right of way until they were made aware after the purchase of the property. Mr and Mrs Hayes are keen to resolve the problems.
- 8 It is felt that the difficulties with the order could not be overcome by referring the matter to the Secretary of State for modification and then confirmation as they render the order incapable of being confirmed.
- 9 A site visit between the current landowner, representatives of Herefordshire Council and Natural England enabled a new proposal to be mapped, which avoided the wetter areas of the site, thus avoiding the more sensitive regions of the Site of Special Scientific Interest (SSSI).
- 10 The proposals were sent to pre-order consultation in September 2010 and received general support
- 11 The local member, Cllr. D C Taylor holds no objections to the proposals.
- 12 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 is not substantially less convenient to the public.

## Community Impact

- 13 The Eaton Bishop and Clehonger Parish Councils were consulted as part of the process and do not hold any objections to the proposals.

## **Financial Implications**

- 14 The landowner, Mrs Hayes has agreed to pay for all advertising costs (£500-£800) for the proposed diversion. Due to the age of the application and the status of the land (SSSI), it is proposed that Herefordshire Council will waive the administration fee (£800) and Natural England will pay for the infrastructure needed to open up the proposed route (1400)

## **Legal Implications**

- 15 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. However, if an order to divert the path is not made, the existing legal line of the path will remain obstructed by the lake and the boggy area adjacent to the stream.

## **Risk Management**

- 16 If an order is made as proposed, it may receive objections which would necessitate it being referred to the Secretary of State for a decision, this would place an increased demand on officer time. However, this risk has been reduced by carrying out the pre-order consultation to which no objections were received.

## **Consultees**

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- Prescribed organisations as per Defra Rights Of Way Circular 1/09.
- Local Member – Cllr. D C Taylor
- Clehonger and Eaton Bishop Parish Councils.
- Statutory Undertakers.

## **Appendices**

18 Order Plan, drawing number: D19/88-20/130-25(i)

19 Draft order and Schedule.

## **Background Papers**

- None identified.