

FOOTPATHS ED5 (PART) & ED6 (PART) IN THE PARISH OF EARDISLAND – PROPOSED PATH RESTORATION FOLLOWING RIVER EROSION

Report by: Head of Engineering and Transportation

Wards Affected

Golden Cross.

Purpose

To consider the most appropriate option for addressing the loss of parts of public footpaths ED5 and ED6 in the parish of Eardisland.

Key Decision

This is not a Key Decision

Recommendation

THAT

- 1) no further action be taken to implement the creation and extinguishment proposals for public footpaths ED5 and ED6 shown on Plan in Appendix 1 to this report on the grounds that the revised route would not be sustainable or economically viable;**

and

- 2) the Committee gives further consideration to the Alternative Option 1 described in this report following a site visit and consultations.**

Reasons

Parts of the existing public footpaths have been lost through erosion by the River Arrow or else are in danger of erosion. Some remaining sections of the paths are now inaccessible from a public right of way. The Council has powers under the Highways Act 1980 to re-establish a route for the public on foot by creating new lengths of public footpath.

Considerations

1. Public Footpaths ED5 and ED6 in Eardisland follow, for part of their lengths, the bank of the River Arrow. In three sections the paths have suffered serious erosion and have been 'lost' into the river. This has prevented public access along substantial sections of the paths and has led to significant local demand for the Council, as Highway Authority, to take action to restore public access to the riverside route.

2. The path passes through Arrow Bank Caravan Park. For several years the route of the path shown on the Definitive Map of Rights of Way has been partially obstructed by some caravan pitches within the site and has been subject to gradual erosion. An alternative “permissive” path has been way-marked through the site avoiding any pitches and some of the erosion points. The Council assisted in establishing this non-statutory alternative route.
3. With an increase in the extent of erosion, particularly during the severe winter of 2000, key points of access to the path were lost. The Council used its powers under the Road Traffic Regulation Act 1984 to introduce a temporary closure order on the path for public safety. That Order has since expired but is no longer required because the path has ceased to exist in law at some points.
4. Following the loss of access to the route, the Council received several representations from local residents and path users requesting action to restore the public footpaths. The paths had provided a local amenity walk with pleasant views across the river.
5. The Council initiated investigations into the possibility of recreating a public right of way on foot to restore public access along this section of the riverside. A report from the Council’s former consultants, Halcrow, provided advice on the potential rate of future erosion of the river bank and the estimated costs of re-instatement work. Their report concluded that one section of path could not be reconstructed and that bank restoration elsewhere could cost in excess of £90,000. In any event, these sections of former path no longer exist in law. The rate of erosion is difficult to assess but could be in the region of 100 to 250mm per year. The landowner has suggested a much faster rate of erosion.
6. As an alternative to reinstating the former line of the path, a scheme has been prepared which would create new sections of public footpath to “by-pass” the lost sections whilst staying close to the riverbank. The new sections would be 5 metres wide, allowing for at least 20 years of use before they were in turn eroded away by the river. The short “stub ends” of path remaining up to the eroded sections would be extinguished, leaving a single, continuous public path. The proposals are illustrated on the plan attached as Appendix 1, and have formed the basis for consultation with land-owners and other interested parties.
7. Because of the potentially complex legal nature of these proposals and recent relevant cases, a number of questions were put to Counsel regarding these issues. Counsel advice confirms that once part of a path falls into a river, then that part of the path ceases to exist, leaving ‘stub-ends’ at the bankside.
8. Under Section 26 of the Highways Act 1980, Herefordshire Council as Highway Authority has powers to create a Public Right of Way where it appears to the authority that there is a need for one.
9. Under Section 118 of the Highways Act 1980, the Council has powers to extinguish public rights of way where it appears that a way is not needed for public use.
10. There are three landowners affected by the proposals, all three of whom have been formally consulted. Two of the landowners concerned have stated that they are happy to donate land for the footpath provided that the footpath is restored along its length and not merely in their field (The Mound) and that the bank is strengthened to prevent further erosion. However, the proposals do not include bank strengthening, which is not considered to be a sustainable solution.

Further information on the subject of this report is available from
SUSAN WHITE, PUBLIC PATH ORDER OFFICER on 01432 260571

11. The other landowners, who own and operate Arrow Bank Caravan Park, replied through their solicitors that they will oppose the creation order.
12. Under Section 28 of the Highways Act 1980, if a public footpath is created the landowner may be entitled to compensation if it is shown that the value of an interest in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of his land. The authority making the order shall pay compensation equal to the amount of the depreciation or damage.
13. The land over which the proposed route will pass has been valued by the District Valuer. The valuation is contained in the accompanying confidential report. There is provision within the relevant legislation for any valuation by the Highway Authority to be contested by an application to the Lands Tribunal.
14. In addition to any costs arising from compensation, some works would also be required and are estimated to cost in the region of £1,500.
15. The total potential costs of the scheme are significant, particularly for a route that is likely to be subject to further erosion and which is of purely local significance.
16. Eardisland Parish Council has responded to the consultations for these specific proposals by stating that they consider the matter should be decided between Herefordshire Council and the land-owners. However, they do not consider that the proposed diversions are far enough away from the river bank to prevent the same scenario happening again and they point out that the actual walked route of the path has been in existence for some 25 years (the Parish's estimate) and is different to what is proposed. The Local Member, Cllr J Goodwin, supports this response. The existing way-marking of the permissive route has not been provided for the 25 years suggested by the Parish Council but use of the route could have taken place before the signs were installed.
17. The representative of the Ramblers Association has suggested that a more sensible approach would be to create public footpath rights on the alignment of the current waymarked route, with some associated realignments where the path passes through or close to areas of erosion.
18. The Open Spaces Society supports the proposals and is keen to see the path reinstated.
19. In view of the potential costs, limited life and lack of expressed support for the proposal in this form, there are insufficient grounds to recommend pursuing the scheme.
20. Under Section 26 of the Highways Act 1980 the Council has the power to make creation orders but it does not have a duty to do so. Failure to take any further action on this matter would mean that the existing path would be unusable due to erosion. The public would still be able to walk those sections of the paths not eroded, if they wished, provided they do not commit trespass in doing so.
21. However, there would be the option of investigating the viability of an alternative scheme as described in Alternative Option 1 below.

Financial Considerations

The potential costs of compensation together with the works necessary to lay out new paths and extinguish existing paths would have to be financed from within the Council's annual

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revenue budget for the maintenance of Public Rights of Way. This budget is under severe strain and it would be necessary to reduce or cease other maintenance and promotional projects to release the necessary funding.

Alternative Options

Alternative Option 1 – Create a public footpath on or close to the alignment of the current way-marked route

The Council has supported a non-statutory route for access on foot through the caravan park for many years. This route avoids some of the worst erosion risks and does not currently physically interfere with existing caravan pitches. The route also uses an existing footbridge across a ditch which would otherwise need the installation of a new bridge on the line of the Definitive Footpath. The suitability of the existing bridge for public use would need to be established and incorporated into final cost estimates for the physical path works required. It is not likely that these costs would exceed the £1,500 estimated for the original proposal.

The Council could use the powers available under Section 26 of the Highways Act 1980 to create a public right of way following this route, with some adjustments at either end where erosion remains a potential problem. The "redundant" sections of the existing public footpath would be extinguished under Section 118 of the Highways Act 1980 as they would no longer be required for public use.

Evidence from former users of paths ED5 and ED6 suggests that these paths were popular with residents of and visitors to the village of Eardisland. The Parish Council had previously requested that Herefordshire Council should "do all that is legally possible to get the footpath reopened". There is no alternative route available to paths ED5 and ED6 offering comparable levels of convenience and enjoyment.

The Council would still be liable to pay compensation to land-owners adversely affected by the proposals but these costs could be substantially less than those associated with the previous proposal if the interference with caravan pitches is avoided. Further investigations would be required to establish the potential for expansion of the site facilities within existing permissions and the impact this could have on the route of a new footpath.

If Members are minded to pursue this option, it is recommended that a site visit be arranged and that formal consultations be repeated on the basis of the revised scheme.

Alternative Option 2 – Extinguish the remaining "stub ends" and inaccessible sections of public footpaths ED5 and ED6 under Section 118 of the Highways Act 1980 as being no longer required for public use.

This proposal would lead to strong objections with a high probability of a Public Inquiry, incurring significant costs for the Council. This option is not recommended.

Risk Management

It is likely that an Order for the scheme as proposed would be opposed by one or more landowners, leading to a Public Inquiry and additional demand on existing staff resources. The financial implications could have a significant impact on the existing Public Rights of

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Way Service.

If the Council decides to take no action, there is likely to be continuing pressure on the Council for action but there is only a small risk of successful challenge to such a decision.

Consultees

Prescribed organisations as per annexe E of Department of the Environment Circular

Local Member, Cllr J Goodwin

Eardisland Parish Council

Landowners;

Mr & Mrs McCarthy

Dr & Mrs Ingham and Mr Goodchild

Background Papers

Order Plan D345/125-5/6(v)

Halcrow Report: Public Rights of Way – Eardisland Footpaths ED5 and ED6 (part)