

MEETING:	REGULATORY COMMITTEE
DATE:	4 JANUARY 2011
TITLE OF REPORT:	HIGHWAYS ACT 1980, SECTION 119, PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH EE6 (PART) IN THE PARISH OF EARDISLEY
PORTFOLIO AREA:	Highways and Transportation

CLASSIFICATION: Open

Ward Affected

Castle

Purpose

To consider an application under the Highways act 1980, Section 119, to make a public path diversion order to divert part of footpath EE6 in the parish of Eardisley...

Key Decision

This is not a Key Decision.

Recommendation

THAT a public path diversion order is made under Section 119 as illustrated in drawing number D344/126-06

Key Points Summary

- The landowner applied for the diversion of Footpath EE6 in 2001.
- The footpath currently runs through the garden and along the front of the property.
- The proposal is to divert part of the footpath a short distance so that it runs parallel to the original path through a field on the other side of the property fence.
- Informal consultations have been carried out and no objections have been received from the consultees.
- An objection was received from a member of the public who became aware of the proposals but this is not considered to be sufficient to prevent confirmation of an Order if sustained.

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

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 decide not to make an Order.

Reasons for Recommendations

- 2 The Public Path Order should be made because it is felt that it meets the criteria set out in Section 119 of the Highways Act 1980 in that it is in the interests of the landowner and is not substantially less convenient to the public.

Introduction and Background

- 3 This report is being considered by the Regulatory Committee because it has the delegated authority to make the decision whether or not to make an Order.

Key Considerations

- 4 Mr C. Evans, the landowner, made the application on 10th October 2001. The reason given was that the footpath passes through his garden which can be off-putting to persons using the path and also intrudes upon the owners' privacy, whereas a small diversion to the other side of their garden fence would enable the path to run through a field within the applicant's ownership and avoid the problem.
- 5 The current path runs along a gravel track. The proposed new route runs across well drained grass pasture and is considered to be a reasonable surface for users.
- 6 Field gates are required at points X and Y on the proposed new route. As these are solely for the purpose of livestock control, they will be authorised separately under s147 Highways Act 1980, should the Order be confirmed and they are not proposed to be included as limitations within the Order.
- 7 The applicant has carried out all pre-Order consultations. The proposal has been agreed by all the consultees including user groups and the parish council. The Local Member has also been consulted and has raised no objections.
- 8 A member of the public became aware of the proposal and wrote in with an objection to it on the basis that it would mean a change in alignment of the footpath which is an example of an ancient straight track or ley which linked places of worship and trading in the villages of Winforton and Eardisley. It is not considered that this objection would be upheld if the Order were made and submitted to the Secretary of State. The officers' responded to the person in question in writing but received no response. It is not clear whether there would be a formal objection to an Order if made in light of these comments.
- 9 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's standard charge for making the diversion Order.
- 10 The proposed diversion meets the specified criteria as set out in Section 119 of the Highways Act 1980, and 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 as it provides an acceptable alternative to passing through the garden in front of the house and is likely to be preferred by user groups.

Community Impact

- 11 There is no significant community impact

Financial Implications

- 12 The applicants have agreed to pay the council's standard fee for the making of a diversion order (£800) and to pay the associated advertising costs. The applicant has also agreed to meet the costs of bringing the new path into a suitable condition. Should objections be lodged to an Order and the Order submitted for determination to the Secretary of State, then the Council would be required to meet the costs incurred.

Legal Implications

- 13 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

- 14 If an order is made to divert Footpath EE6 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. However, extensive informal consultations have taken place to minimise the risk of such objections.

Consultees

Prescribed organisations as per Defra Rights of Way Circular 1/09

Local Member Councillor J W Hope

Eardisley Group Parish Council

Statutory Undertakers

Appendices

Draft Order and Order Plan, drawing number: D344/126-06

Background Papers

None identified.