

<b>MEETING:</b>	<b>REGULATORY COMMITTEE</b>
<b>DATE:</b>	<b>1 FEBRUARY 2011</b>
<b>TITLE OF REPORT:</b>	<b>HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH DO11 (PART) IN THE PARISH OF DORSTONE</b>
<b>PORTFOLIO AREA:</b>	<b>Highways and Transportation</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Golden Valley North

### **Purpose**

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath DO11 in the parish of Dorstone

### **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 drawing number: D364/119-11**

### **Key Points Summary**

- An application was made to divert footpath DO11 in February 2004 by the owners of 'Primrose Hill'.
- DO11 travels through the building of Primrose Hill.
- The proposed diverted route will travel through a neighbouring garden and paddock to which the landowners agree.
- The applicants have agreed to pay costs.
- No objections have been received to the proposals.

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Further information on the subject of this report is available from  
Will Steel Public 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 reject the application on the grounds that it does not contribute sufficiently to the wider ambitions and priorities of the Council.

## **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, it is necessary to gain a decision from the Regulatory Committee as they have the delegated authority to make this decision.

## **Key Considerations**

- 4 Mr Birchenough, who is the landowner, made the application on 9<sup>th</sup> February 2004. The reasons given for making the application were that the landowner felt that the definitive map had been drawn incorrectly in that the path travels through their house, 'Primrose Hill'. However this is not the case as it would appear the house has been extended over the line of the footpath sometime in the past.
- 5 The applicant has carried out all pre order consultation. The original proposal was amended following comments from user groups and the adjoining landowner and resubmitted for consultation. There were no objections from the subsequent consultation and the adjoining landowners, Mr and Mrs Berman, have agreed to the amended proposals.
- 6 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order.
- 7 The local member, Cllr. Price, does not object to the proposals.
- 8 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**

- 9 Dorstone Parish Council has been consulted and accepts the proposals as set out in the Drawing No: D364/119-11(i).

## **Financial Implications**

- 10 The applicants have agreed to pay all necessary advertising and administration costs.

## **Legal Implications**

- 11 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 the order was not made as suggested, the existing right of way would remain obstructed by the building.

## **Risk Management**

- 12 There is a risk that any subsequent diversion order made may receive objections which may result in a public inquiry. This would increase the pressure on staff time. However, this risk has been minimised by the pre-order consultation to which there were no objections.

## **Consultees**

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

## **Appendices**

Order Plan, drawing number: D364/119-11(i)

## **Background Papers**

- None identified.