

MEETING:	REGULATORY COMMITTEE
DATE:	16 SEPTEMBER 2011
TITLE OF REPORT:	THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL FOOTPATH SB7(PART) AND LTB14(PART) PUBLIC PATH DIVERSION ORDER 2011 AND FOOTPATH LTB14(PART) PUBLIC PATH EXTINGUISHMENT ORDER 2011
PORTFOLIO AREA:	Highways and Transportation

CLASSIFICATION: Open

Wards Affected:

Bringsty, Frome

Purpose

To consider an application under the Highways Act 1980, section 119, to make a Public Path Diversion Order to divert part of footpath SB7, in the parish of Stanford Bishop, and to divert part of footpath LTB12 in the parish of Linton and, under the Highways Act 1980, section 118, to make a Public Path Extinguishment Order to extinguish part of footpath LTB14, in the parish of Linton.

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: D279/230-12,351-7 and that a public path extinguishment Order is made under section 118 of the Highways Act 1980, as illustrated on drawing number D279/230-14.

Key Points Summary

- The landowner, Mr J F H Hawkins, applied for the diversion of part of Footpath LTB12 IN 1997.
- Footpath LTB12 has been obstructed by farm buildings for many years. The alternative route proposed avoids the farmyard.
- Informal consultations have taken place and there are no outstanding objections to the proposal apart from the observation that higher rights may exist on footpath SB7 which if so will not be diverted to the new route of the footpath. The landowner has been made aware of this and is satisfied that it be diverted as a footpath.

Further information on the subject of this report is available from
Chris Chillingworth, Assistant Rights of Way Officer (01432) 842100

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. Other options include alternative routes for the diversions or the removal of the farm buildings obstructing the path.

Reasons for Recommendations

- 2 The Public Path Orders should be made because it is felt they meet the criteria set out in Sections 118 and 119 of the Highways Act 1980 and Herefordshire Council's Public Path Order Policy. The objections received at pre-Order consultation stage are believed to have been overcome.

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 J F H Hawkins, the landowner, made the application on 3rd June 1997. The reason given for making the application was to legally position the path on the route which was followed by users. Although not stated, the other reason was to divert the footpath from its original line because it has been obstructed by farm buildings for many years.
- 5 The proposed diverted line of footpath SB7(Part) is more easily accessible as it is entirely on level ground and passes through just one field gate compared with two steep banks and two stiles on the existing route.
- 6 The proposed diverted line of footpath LTB12(Part) avoids the hazards of a path which passes through a farm yard; it will also have a kissing gate in place of a stile.
- 7 Due to the way the legislation operates, to achieve the desired changes on the ground, it is necessary to make two separate but concurrent orders, a diversion order under s119 and an extinguishment order under s118.
- 8 The applicant has carried out all pre-order consultations. The proposal has general agreement.
- 9 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's standard charge for making the diversion and extinguishment Orders.
- 10 The local members, Councillors TW Hunt and Councillor P.M. Morgan, have raised no objections to the application.
- 11 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 paths.

The proposal is not substantially less convenient to the public.

It would be expedient to proceed with the proposal given the effect it will have on public enjoyment of the paths.

- 12 Once the diversion LTB 12 has been approved, the criteria for s.118 of the Highways act in relation to LTB 14 will have been met in that the path will no longer be required for public use.

Community Impact

- 13 The Parish Council and local user groups have been consulted as part of the process and the proposal has general agreement. Councillors Hunt and Morgan have been consulted and do not object to the proposals.

Financial Implications

- 14 The applicants have agreed to pay the Council's standard fee for the making of a diversion and extinguishment Order and to pay associated advertising costs. As the application was made in 1997 the applicants will be charged the rate applicable at the time for administration (£600 for each of the two Orders). The applicant has also agreed to meet the cost of bringing the paths into operation.

Legal Implications

- 15 Under Sections 118 and 119 of the Highways Act 1980 the Council has the power to make a extinguishment and diversion Order, it does not have a duty to do so. The council could decide not to make the orders on the grounds that it does meet it's wider objectives.

Risk Management

- 16 If an Order is made to divert part of footpaths LTB12 and SB7, together with the extinguishment of part of footpath LTB14, as recommended within this report, there is a risk that the Order will receive objections and would then require referral to the Secretary of State which will increase the demands on officer time and resources. However extensive informal consultations and negotiations have taken place to minimise the risk of such objections

Consultees

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

Local Members- TW Hunt and PM Morgan

Brockhampton Group Parish Council

Statutory Undertakers

Appendices

- 18 Draft Orders and Order Plans, drawing numbers D279/230-12,351-7 and D279/230-14.

Background Papers

- 19 None identified.