

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	16 SEPTEMBER 2011
TITLE OF REPORT:	HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER BRIDLEWAY CD18 (PART) IN THE PARISH OF CRADLEY
PORTFOLIO AREA:	HIGHWAYS AND TRANSPORTATION

CLASSIFICATION: Open

Wards Affected

Hope End

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of bridleway CD18 in the parish of Cradley

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: D396/99-18.

Key Points Summary

- Mr A Cripwell applied to divert bridleway CD18 in the parish of Cradley in January 2009.
- The neighbouring landowner, who is also affected, has agreed in writing to the proposals.
- The applicant has carried out a pre-order consultation, to which there were no objections, however, some comments were raised.
- The Local Members do not hold any objections to the proposals.
- The applicant has agreed to pay all necessary costs associated with the making of the order.

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

Further information on the subject of this report is available from
Susan White, Assistant Rights of Way Officer on (01432) 842106

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 the Council's Public path order policy 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 1980, it is necessary to gain a decision from the Regulatory Sub-Committee as they hold the delegated authority to make this decision.

Key Considerations

- 4 Mr Cripwell, who is the landowner, made the application on 5th of January 2009. The reasons given for making the application were for 'convenience and safety'.
- 5 The applicant has carried out all pre order consultation. The proposal has general agreement and the adjoining landowner, The Duchy of Cornwall, whose property is also affected by the application has agreed in writing to the diversion.
- 6 The Ramblers' Association, although not objecting to the proposals did request that the route was amended so that after passing through the field gate at point D, it would rise up to higher ground near to the pond and then retain 'a better view of the brick oast-houses and farmhouse'. However, the applicant did not feel that this was desirable as it would require the path to be nearer to the house (see point 11, below). The proposed route still retains good views of the buildings.
- 7 The British Horse Society has requested that the field gate at point D conform to the British Standard and be openable to mounted horse-riders. The CTC have requested that the path be mown 2-3 times /year because it forms part of the AONB cycle route. The applicant has confirmed that he is happy to maintain the route, although this is an informal agreement.
- 8 The OSS were not minded to object as long as the proposed route is free from detrimental technical defects, not less than 3m in width and any gates were bridleway gates, to the British Standard.
- 9 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order. The other affected landowner has given their written consent that they will not claim compensation, if this diversion Order is made and comes into operation.
- 10 The local members, Cllr. Johnson and Cllr. Attwood do not hold any objections to the proposals.
- 11 Most of the comments from the user groups have been taken into account, ie the width will not be less than 3m, any gates will be to British standard and the landowner has agreed, informally, to maintain the vegetation on the route. However, it was not felt that the Ramblers' Associations' comments to amend the route should be adopted as there are good views of the farm-buildings from the proposed route and that the deviation as suggested by the Ramblers' would introduce a counter-intuitive change of direction which would be detrimental to other user groups.

- 12 The proposed diversion meets the specified criteria as set out in Council policy ie the condition is as substantially as convenient as the original, it is more direct, the width will be set for a bridleway (ie 3 m) and the route still retains views of the original buildings. It also satisfies section 119 of the Highways Act 1980 in particular that:
- The proposal benefits the owner of the land crossed by the existing path.
 - The proposal does not alter the point of termination of the paths.
 - The proposal is not substantially less convenient to the public.

Community Impact

- 13 Cradley Parish Council has been consulted and agrees to the proposals.

Financial Implications

- 14 The applicant, Mr A Cripwell has agreed to pay the administration and advertising costs associated with this order, and to pay for any works necessary to bring the proposed route into being.

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

Risk Management

- 16 There is a risk that if a diversion order was made as proposed, it may receive objections which would require the matter to be sent to the Secretary of State for a decision, this would have an impact upon Officer time and resources, however, this has been mitigated by carrying out a pre-order consultation to which there were no objections.

Consultees

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- Prescribed organisations as per Defra Rights Of Way Circular 1/09.
- Local Members – Cllr. Attwood and Cllr. Johnson
- Cradley Parish Council.
- Statutory Undertakers.

Appendices

- 19 Order Plan, drawing number: D396/99-18 and Order and Schedule.

Background Papers

- None identified.