

MEETING:	REGULATORY SUB COMMITTEE
DATE:	16 SEPTEMBER 2011
TITLE OF REPORT:	FOOTPATH WG23(PART) AND 23A(PART) WELLINGTON PUBLIC PATH DIVERSION ORDER 2011 AND FOOTPATH WG23(PART) WELLINGTON EXTINGUISHMENT ORDER 2011
PORTFOLIO AREA:	Highways and Transportation

CLASSIFICATION: Open

Wards Affected

Wormsley Ridge

Purpose

To consider an application under the Highways Act 1980, Section 119, to make a Public Path Diversion Order to divert part of footpaths WG23 and WG23A and, under Section 118, to make an extinguishment order to extinguish part of footpath WG23, all in the parish of Wellington.

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: D335/400-23,23A(i) and that a public path extinguishment order is made under section 118 of the Highways Act 1980 as illustrated on drawing number D335/400 - 23(ii).

Key Points Summary

- The landowners Lafarge Redland Aggregates Limited, (now Tarmac Limited) originally applied for the diversion of parts of footpaths WG23 and WG23A, in the parish of Wellington, in May 2000.
- Footpaths WG23 and 23A have been obstructed for many years due to quarry workings. The proposal provides clear footpaths through the site.
- Pre-Order consultation and negotiations have been carried and the proposal has general support

Alternative Options

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

- 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. However as the proposal allows for unobstructed access and has general support, this could be considered unreasonable.

Reasons for Recommendations

- 2 The Public Path Orders should be made because it is felt that they meet the criteria set out in Sections 118 and 119 of the Highways Act 1980 and Herefordshire Council's Public Path Order Policy.

Introduction and Background

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

Key Considerations

- 4 Lefarge Redland Aggregates Limited, the original landowners (now Tarmac Limited), made an application on 16th May 2000. The reason given for making the application was to legally establish the current permissive route as an official diversion. The route was designed to avoid conflict with large mobile plant associated with mineral extraction operations. The applicant has carried out all pre-Order consultations.
- 5 Pre order consultation was carried out at that time but it was not progressed further because it was about to be superseded by an application under Section 270 of the Town and Country Planning Act 1990. In the event however this did not materialise and the original application was then unable to be progressed because of lack of resources available at that time.
- 6 A revised application was subsequently received in 2010 with a new proposed diversion route to take account of quarrying operations that had taken place. Further Pre-Order consultation has been carried out to take account of the changes.
- 7 The alternative route now proposed avoids many of these workings and also the main access road through the quarry. The proposed route is free from gates and stiles, and includes an attractive long section around the edge of a lake for which Tarmac has agreed to provide lakeside seats.
- 8 The proposal has general agreement and support. and informal consultation and negotiations have resulted in there being no outstanding objections .
- 9 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's standard charge for making the orders.
- 10 The Local Member, Councillor AJM Blackshaw has raised no objections to the application.
- 11 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 under s118 both under the Highways act 1980.
- 12 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.

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.

- 13 The proposed extinguishment, when considered concurrently with the diversion, meets the specified criteria as set out in Section 118 of the Highways Act 1980, and in particular that the section of path affected is not needed for public use.

Community Impact

- 14 The Parish Council and local user groups have been consulted as part of the process and the proposal has general agreement and support. Councillor Blackshaw has been consulted and has not objected to the proposal.

Financial Implications

- 15 The applicant has agreed to pay the Council's standard fee for the making of a diversion Order and to pay associated advertising costs. The applicant will be charged the rate applicable in 2010 (£800) for each of the two Orders, plus an extra £100 for the additional path involved. The applicant has also agreed to meet the cost of bringing the paths into operation.

Legal Implications

- 16 Under section 118 and 119 of the Highways Act 1980 the Council has the power to make extinguishment and diversion Orders. It does not have a duty to do so.

Risk Management

- 17 If an Order is made to divert part of footpaths WG23 and WG23A , together with the extinguishment of part of footpath WG23, 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 could 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

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

Local Member AJM Blackshaw.

Wellington and Marden Parish Councils.

Statutory Undertakers.

Appendices

- 19 Draft Orders and Order Plans, drawing numbers D335/400-23, 23A(i) and D335/400-23(ii).

Background Papers

- None identified.

Further information on this report is available from Chris Chillingworth, Assistant Rights of Way

Officer on 01432 842100