

MEETING:	REGULATORY SUB- COMMITTEE
DATE:	27TH MARCH 2012
TITLE OF REPORT:	FOOTPATH LR12 (PART) PARISH OF LEDBURY PUBLIC PATH DIVERSION ORDER 2012
PORTFOLIO AREA:	Highways and Transportation

CLASSIFICATION: Open

Wards Affected

Ledbury

Purpose

To consider an application under the Highways Act 1980, Section 119, to make a Public Path Diversion order to divert part of footpath LR12 in the Parish of Ledbury.

Key Decision

This is not a Key Decision.

Recommendation

THAT a Public Path Diversion Order be made under Section 119 of the Highways Act 1980, as illustrated on drawing number : D413/221-12.

Key Points Summary

- The applicants Universal Beverages Ltd., applied for the diversion of part of footpath LR12, in the Parish of Ledbury, on the 5th July 2011.
- The reason for the diversion is that changes to the drainage system necessary for environmental reasons, which affect the area over which the footpath crosses, have made it difficult to reinstate it on its original line, mainly due to cost and maintenance considerations.
- The proposed diversion runs a few metres south of the original route, on the other side of a drainage channel, from which it will be fenced off, and maintains its original east – westerly direction; it is considered to be substantially as convenient to the public.
- Pre-Order consultation and negotiations have been carried out and the proposal has general support; only one potential objection has been received.

Further information on the subject of this report is available from
Chris Chillingworth, Public Rights of Way Officer on (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. To reinstate the path on its original line would require an additional crossing of the culvert; due to the new culvert position and the original path position this would require a long crossing with associated costs for construction and ongoing maintenance. 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 we believe the diversion proposal is reasonable.

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 and the 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 or not to make an order.

Key Considerations

- 4 Universal Beverages Ltd., applied for a diversion of part of footpath LR12 on 5th July 2011. The reason given for making the application was that the existing line of part of the footpath has been seriously compromised by essential drainage changes making it difficult to reinstate without associated costs of construction and ongoing maintenance. This would be at a time when the Company is seeking to reduce costs and avoid potential redundancies. In addition, the existing line would be close to a new access road used daily by heavy goods vehicles; although the path could be fenced off from the road, the noise and dust could be off-putting to the public using the footpath.
- 5 Pre-Order consultation and negotiations were carried out and the proposal has general agreement; it is proposed that the new path follows the direction of a new drainage channel from which it will be fenced. A representative from the Open Spaces Society has expressed a preference for a different route which is not considered to meet one of the key tests of being 'not substantially less convenient' when compared with the existing route.
- 6 The applicant has agreed to pay for administration and advertising costs and the cost of bringing the diverted footpath into operation.
- 7 Local Members, Councillors EPJ Harvey and PJ Watts, have raised no objections to the application.
- 8 The proposed diversion meets the specified criteria set out in Section 119 of the Highways Act 1980, and in particular that:
- 9 The proposal benefits the owner of the land,
- 10 The proposal is substantially as convenient to the public,
- 11 It would be expedient to proceed with the proposal given the effect it will have on public enjoyment of the path.

Community Impact

- 12 The Parish Council and local user groups have been consulted as part of the process and the proposal has general agreement and support with the exception of The Open Spaces Society. Councillors EPJ Harvey and PJ Watts have been consulted and have not objected to the proposal.

Financial Implications

- 13 The applicant has agreed to pay the Council's costs in respect of making a diversion order, to pay associated advertising costs, and to meet the costs of bringing the footpath into operation. Any costs that may be incurred in the determination of the order should objections be received, would have to be met by the Council.

Legal Implications

- 14 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

- 15 Should an order be made to divert part of footpath LR12, 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. Extensive informal consultations and negotiations have taken place to minimise the risk of such objections, however the Open Spaces Society have indicated that they may object to the Order.

Consultees

- 16 Prescribed organisations as per Defra Rights of Way Circular 1/09
- 17 Local Members Councillors EPJ Harvey and J Watts
- 18 Ledbury Town Council
- 19 Statutory Undertakers

Appendices

Draft Order and Order Plan, drawing number D413/221-12

Background Papers

None identified