

# HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH CU23 (PART) IN THE PARISH OF CUSOP

Report By: Head of Highways and Transportation

## 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 CU23 in the parish of Cusop.

## Reasons

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 does not alter the point of termination of the paths.
- The proposal is not substantially less convenient to the public.

## Considerations

- 1 This application was made in 1992, by a previous owner of the property 'Mousecastle'. The current owners took over the application in 1994. The applicant's reasons for the diversion are that the footpath has not been evident, let alone used for at least 35 years. The existence of a permissive path through Mousecastle Wood makes the diversion obvious. The legal line of the footpath is currently obstructed by a building, runs across a patio area and through the very steep garden of the property.
- 2 The application was approved by the Council in 1997. The order was never proceeded with due to problems with obtaining the permission of the 'Woodland Trust', which owns Mousecastle Wood through which the diversion was proposed to run.
- 3 Problems encountered with regard to obtaining permission for the diversion from the Woodland Trust have since been overcome, through the Woodland Trust granting it's permission, along with their approval for the installation of steps and drainage where required (appendix 2).
- 4 The strip of land E to F is unregistered. It is not owned by the Council, and is not part of the highway. It does not belong to the Moor Estate, the Woodland Trust, the applicants or the owners to the northern side. It is described on the 1840 parish tithe

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Further information on the subject of this report is available from Lisa Hughes Assistant Rights of Way Officer on (01432) 261721

map as 'waste'. The applicant has contacted the Land Registry in Telford and established that the land is unregistered. Although all reasonable steps have been taken to try to ascertain ownership of this portion of land, there is the risk of a compensation claim should this Order be made.

- 5 Since the application was made before administration costs were charged. The applicant has agreed to pay only the advertisement costs for two advertisements, as set out in a letter from the Hereford and Worcester County Council (HWCC) in October 1997 (appendix 3).
- 6 A recent consultation with user groups has not resulted in any objections.
- 7 The Parish Council have agreed to the proposal, the Local Member has not responded to the consultation.

## **Alternative Options**

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.

## **Risk Management**

There is a risk that the Order will be opposed, leading to additional demand on existing staff resources.

## **Consultees**

- Prescribed organisations as per annexe E of Department of the Environment Circular 2/93.
- Statutory undertakers.
- Local Member - Councillor Nigel Davies
- Cusop Parish Council

## **Appendix:**

Appendix 1: Order Plan, drawing number: D134/106-23.

Appendix 2: Agreement of Woodland Trust

Appendix 3: Letter from HWCC and agreement to pay advertising costs.

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## **Recommendation**

**That a public path diversion order is made under Section 119 of the Highways Act 1980, as illustrated on drawing number: D134/106-23 (appendix 1).**

## **Background Papers**

Draft Order and decision notice from 1997