

MEETING:	REGULATORY SUB COMMITTEE
DATE:	15 NOVEMBER 2011
TITLE OF REPORT:	FOOTPATH MA32 (PART) MATHON PUBLIC PATH DIVERSION ORDER 2011
PORTFOLIO AREA:	Highways Transportation and Community Services

CLASSIFICATION: Open

Ward 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 footpath MA32 in the Parish of Mathon.

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 D369/265-32(i).

Key Points Summary

- The landowner Mr. G. J. Richards, owner of John Richards Nurseries applied for the diversion of part of footpath MA32, in the Parish of Mathon, in July 2004.
- The reason for proposing the diversion is to allow the land over which the footpath currently crosses to be used for an extension to the nursery which would then need to be fenced off from the public to safeguard the security of the site.
- The proposed diversion is not significantly longer than the existing route and follows the banks of a lake providing what might be considered to be a more attractive route.
- Pre-Order consultation and negotiations have been carried out and the proposal has general support.

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 grounds that it does not contribute sufficiently to the wider ambitions and priorities of the

Further information on the subject of this report is available from Chris Chillingworth

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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 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 the decision whether or not to make an Order.

Key Considerations

- 4 Mr. Richards made an application on 9th July 2004. The reason given for making the application was that having recently acquired the land over which the footpath runs he wished to extend his adjacent nursery to include part of this land.
- 5 Pre-Order consultation was carried out in 2006/7 but it was not progressed because of lack of resources available at that time. Due to more resources being put into progressing applications and an improved system, the application can now be taken forward.
- 6 The proposed route introduces no new structures and provides an attractive alternative around the edge of a small lake.
- 7 The proposal had general agreement and support when the proposal was originally considered during informal consultations carried out during 2006/7. There are no outstanding objections.
- 8 The applicant has agreed to pay for our administration, associated advertising costs, and for bringing the path into operation.
- 9 The Local Member, Councillor C.N.H. Attwood, has raised no objections to the application.
- 10 The proposed diversion meets the specified criteria 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; and
 - it would be expedient to proceed with the proposal given the effect it will have on public enjoyment of the footpath.

Community Impact

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

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Financial Implications

- 12 The applicant has agreed to pay the Council's costs in respect of making of a diversion Order and to pay associated advertising costs. The applicant will be charged the rate applicable in 2004 taking into account that they have carried out their own pre-order consultation (£400) and will be responsible for costs incurred in bringing the path into operation.

Legal Implications

- 13 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

- 14 Should an Order be made to divert part of footpath MA32, 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

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

Local Member Councillor C.N.H Attwood.

Mathon Parish Council.

Statutory Undertakers.

Appendices

- 16 Draft Order and Order Plan, drawing number D369/265-32(i).

Background Papers

- 17 None identified.