

<b>MEETING:</b>	<b>REGULATORY SUB COMMITTEE</b>
<b>DATE:</b>	<b>13 DECEMBER 2011</b>
<b>TITLE OF REPORT:</b>	<b>FOOTPATH EA6 (PART) EASTNOR PUBLIC PATH DIVERSION ORDER 2011</b>
<b>PORTFOLIO AREA:</b>	<b>PLACE BASED COMMISSIONING</b>

**CLASSIFICATION:** Open

## **Wards Affected**

Ledbury

## **Purpose**

To consider an application under the Highways Act 1989 Section 119, to make a Public Path Diversion Order to divert part of footpath EA6 in the Parish of Eastnor.

## **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 D338/129-6**

## **Key Points Summary**

- The landowner, Eastnor Castle Estates Co., applied for the diversion of part of footpath EA6, in the Parish of Eastnor, in July 2000.
- The reason for proposing the diversion is that the existing footpath is obstructed by pheasant rearing sheds.
- The proposed diversion is not significantly longer than the existing 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

Further information on the subject of this report is available from  
Chris Chillingworth, Rights of Way Officer, on 01432 842100

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 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 Eastnor Castle Estates Co. applied for a diversion on 12<sup>th</sup> July 2000. The reason given for making an application was to move the footpath away from pheasant rearing sheds.
- 5 Pre-Order consultation was not carried out until December 2010 mainly because of lack of resources available at the time the application was made.
- 6 The proposal has general agreement and support; all potential objections have, we believe, been overcome through negotiation. However, the Byways and Bridleways Trust representative has commented on the possibility that bridleway rights may exist over the path to be diverted. These alleged rights are unproven but if subsequently found to exist would be unaffected by this diversion order resulting in the existence of two rights of way over the land- the original route as a bridleway and the new route as a footpath. The landowner has been made aware of this potential problem but wishes to proceed with the application as it stands.
- 7 The applicant has agreed to pay for administration and advertising costs and the cost of bringing the diverted footpath into operation.
- 8 The Local Members, Councillors P J Watts and E P J Harvey, have raised no objections to the application.
- 9 The proposed diversion meets the specified criteria set out in Section 119 of the Highways Act 1980, and in particular that:
- 10 The proposal benefits the owner of the land
- 11 The proposal is not substantially less convenient to the public.
- 12 It would be expedient to proceed with the proposal given the effect it will have on public enjoyment of the path.

## **Community Impact**

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

## **Financial Implications**

- 14 The applicant has agreed to pay the Council's administration costs in respect of making a diversion Order, to pay associated advertising costs, and to meet the costs of bringing the diverted footpath into operation.

## **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 Should an Order be made to divert part of footpath EA6, 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**

- 17 Prescribed organisations as per Defra Rights of Way Circular 1/09.  
Local Members Councillors PJ Watts and EPJ Harvey.  
Eastnor Parish Council  
Statutory Undertakers.

## **Appendices**

- 18 Drawing number D338/129-6.

## **Background Papers**

- 19 None identified.