

MEETING:	REGULATORY SUB COMMITTEE
DATE:	13 DECEMBER 2011
TITLE OF REPORT:	THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL FOOTPATH BE15 (PART) BRILLEY PUBLIC PATH DIVERSION ORDER 2011
PORTFOLIO AREA:	PLACE BASED COMMISIONING

CLASSIFICATION: Open

Wards Affected

Castle

Purpose

To consider an application under Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath BE15 in the parish of Brilley.

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: D404/58-15

Key Points Summary

- After purchasing the affected land the applicants applied for this diversion in July 2009. After moving to the property the landowners became aware that the route of the footpath being walked on the ground is not the route shown on the current definitive map.
- The landowners have since converted outbuildings into 3 separate dwellings and would have ideally liked to have diverted the path as part of these works under the Town & Country Planning Act. The works carried out which affected the legal route of the path (i.e fencing and landscaping) were not deemed as “being necessary to enable the development to take place” the test to be met under the Town & Country Planning Act, hence this application for a Highways Act diversion order.
- The proposed diversion route is the one which walkers have been using for a number of years on a permissive basis. The current legal route contains 4 stiles whilst the proposed route contains 2 pedestrian gates and no stiles. The proposed route is therefore more convenient to path users of all abilities.

- Pre-order consultation and negotiations have resulted in there being no outstanding objections to the proposal

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.

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 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 a decision whether or not to make an order.

Key Considerations

- 4 The landowners made an application on 28th July 2009. The reason for making the application was to officially divert the footpath to the route which has been walked on the ground for a number of years.
- 5 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's standard charge applicable at the time of application (£800 in 2009) for making the diversion order.
- 6 The local member, Councillor J W Hope has raised no objections to this application.
- 7 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. Works have been carried out by the landowner following suggestions made by the Ramblers Association and Open Spaces Society in order to improve access for all along the route.

Community Impact

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

Financial Implications

- 9 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 2009 (£800). The applicant has also agreed to meet the cost of bringing the paths into operation.

Legal Implications

- 10 Under section 119 of the Highways Act 1980 the Council has the power to make a diversion order. It does not have a duty to do so.

Risk Management

- 11 If an order is made to divert part of public footpath BE15 as recommended with this report, there is a risk that the order will receive objections. This 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 in order to minimise the risk of such objections.

Consultees

- 12 Prescribed organisations as per DEFRA Rights of Way Circular 1/09.

Local Member J W Hope

Brilley Parish Council

Statutory undertakers

Appendices

- 13 Order plans (number D404/58-15)

Background Papers

- none identified

Further information on this report is available from Vincent Playdon, Public Rights of Way Officer on 01432 842111