

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	24 JANUARY 2012
TITLE OF REPORT:	HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH MR21 (PART) IN THE PARISH OF MARDEN
PORTFOLIO AREA:	Highways and Transportation

CLASSIFICATION: Open

Wards Affected

Sutton Walls.

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath MR21 in the parish of Marden.

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: D325/261-21

Key Points Summary

- The landowners of the existing route, Mr and Mrs Gough, applied to divert the footpath in February 1999.
- The reasons were to bypass the obstruction on the right of way rather than having to remove it. ‘
- The current legal line of the right of way is obstructed by a sawmill shed.
- The proposed diversion was sent out to pre-order consultation.
- The landowner of the proposed route has objected 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. The Council could reject the application on the

Further information on the subject of this report is available from
Sue White, Public Rights of Way Officer (01432) 842106

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

Reasons for Recommendations

- 2 The public path order should be made because it is felt that it meets the criteria set out in s 119 of the Highways Act and the Council's Public path order policy and although objections to the proposals have been received, it is felt to be in the wider public interest as it is the only viable option for re-opening the route of MR21.

Introduction and Background

- 3 Before an order is made to divert a footpath under the Highways Act, it is necessary to gain a decision from the Regulatory Sub-Committee as they have the delegated authority to make this decision.

Key Considerations

- 4 Mr and Mrs Gough, who are the landowners of the existing route of MR21, made the application on 6th of February 1999. The reason given for making the application was to 'avoid Herefordshire Council's powers to remove any obstruction on a right of way' because the existing route is obstructed by a working sawmill shed. The application arose due to enforcement action.
- 5 The pre-order consultation has been carried out by the Public Rights of Way department. The proposal has general agreement. However, after carrying out a land registry search, it was discovered that the applicant does not own the land on which they wish to divert the path. The landowner was then contacted and has stated that he does not support this diversion and is likely to object to the proposals.
- 6 The Ramblers' Association expressed their feeling that a stock proof fence should segregate the proposed route from the dogs which live at Nine Wells. There are currently 'Beware of the dogs' signs at either end of the existing route.
- 7 The Open Spaces Society were not minded to object to the proposals subject to the path being signposted at point C and waymarked as necessary.
- 8 Although the landowner of the proposed route of the path has objected to the proposals, there is no other alternative route for the path as all the land surrounding Nine Wells is owned by the same land owner. The only other option would be to open the existing legal line of the path. This would require the closure of the sawmill due to safety reasons. The proposed route will not adversely affect the landowner as it will follow an existing track around the outside of the properties.
- 9 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order. However, the applicant will only be charged the administration costs which were applicable at the time of application.
- 10 The local member, Cllr. Guthrie has no objections to the proposals.
- 11 The proposed diversion meets the specified criteria as set out in Council policy and section 119 of the Highways Act 1980 in particular that:
 - The proposal does not alter the point of termination of the paths.
 - The proposal is not substantially less convenient to the public.

- It is expedient having regard to the effect on the land over which the proposed new path will run.

Community Impact

12 The Parish Council has been consulted and has no objections to the proposals.

Financial Implications

13 The applicant has agreed to pay for the costs associated with this order, this includes the defraying of any compensation likely to become payable in the event of the order being made as proposed.

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. However, it does have a duty to secure the removal of any obstructions to a right of way and thus if a diversion order is not possible then the Council would be required to seek the removal of the saw mill buildings.

Risk Management

15 If an order is made as so recommended then there is a risk that the order may receive objections, particularly from the land owner as listed by the land registry. If the order is then confirmed, the landowner may be entitled to compensation, however, the applicants have signed a form which indemnifies the Council from any possible compensation claim.

Consultees

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- Prescribed organisations as per Defra Rights Of Way Circular 1/09.
- Landowners
- Local Member – Cllr. Guthrie
- Marden Parish Council.
- Statutory Undertakers.

Appendices

17 Order Plan, drawing number: D325/261-21 and Order and Schedule.

Background Papers

- None identified.