

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	24 JANUARY 2012
TITLE OF REPORT:	HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH KC16A (PART) IN THE PARISH OF KINGS CAPLE
PORTFOLIO AREA:	HIGHWAYS AND TRANSPORTATION

CLASSIFICATION: Open

Wards Affected

Old Gore

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath KC16A in the parish of Kings Caple.

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: D412/206-16A

Key Points Summary

- The landowner, Mr Jenkins, made an application to divert the footpath, KC16A in April 2011.
- The applicant has carried out a pre-order consultation of the proposals to which there were no objections.
- The existing public right of way is currently obstructed by a building.

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 Council.

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

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 there have been no objections at pre-order consultation stage.

Introduction and Background

- 3 Before an order is made to divert a footpath under the Highways Act 1980, it is necessary to gain a decision from the Regulatory Sub-Committee as it holds the delegated authority to make this decision.

Key Considerations

- 4 Mr H D Jenkins, who is the landowner, made the application on the 25th of April 2011. The reason given for making the application was to formalise the permissive route which has been in use for a number of years.
- 5 The applicant has carried out all pre order consultation. The proposal has general agreement, although the Open Spaces Society correspondent has requested that the proposed route be waymarked and the stile removed and a gate installed which is agreed by the applicant.
- 6 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order.
- 7 The local member, Cllr. B A Durkin has no objections to the proposals.
- 8 The proposed diversion meets the specified criteria as set out in Council policy section 119 of the Highways Act 1980 in particular 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.

Community Impact

- 9 The Parish Council has been consulted as part of the process and they responded that they had no objections to the proposals.

Financial Implications

- 10 The applicant has agreed to pay for the administration, advertising costs and the costs of any works.

Legal Implications

- 11 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

- 12 If an order is made to divert footpath KC16A as recommended within this report, there is a risk that the order will receive objections and would therefore require referral to the Secretary of

State which will increase the demands on officer time and resources.

- 13 The making of diversion orders under HA1980, s119. is a power of the Authority not a duty. The Committee could, therefore decline to make an order and reject this report. However, this would necessitate the re-opening of the path, part of which now passes through the buildings.

Consultees

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- Prescribed organisations as per Defra Rights Of Way Circular 1/09.
- Local Member – Cllr. B A Durkin
- Kings Caple Parish Council.
- Statutory Undertakers.

Appendices

- 15 Order Plan, drawing number: D412/206-16A and Order and Schedule.

Background Papers

- None identified.