

<b>MEETING:</b>	<b>REGULATORY SUB- COMMITTEE</b>
<b>DATE:</b>	<b>8 MAY 2012</b>
<b>TITLE OF REPORT:</b>	<b>HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH HM11 (PART) IN THE PARISH OF HOPE MANSELL</b>
<b>PORTFOLIO AREA:</b>	<b>HIGHWAYS AND TRANSPORTATION</b>

**CLASSIFICATION:** Open

## **Wards Affected**

**Penyard**

## **Purpose**

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath HM11 in the parish of Hope Mansell.

## **Key Decision**

This is not a Key Decision.

## **Recommendation**

**THAT A Public Path Diversion Order be made under section 119 of the Highways Act 1980, as illustrated on drawing number: D408/189-11**

## **Key Points Summary**

- The applicants Mr and Mrs FW Jeffrey originally applied for the diversion of part of footpath HM11, in the Parish of Hope Mansell, in September 2010.
- Footpath HM11 has long been obstructed by old farm buildings; the proposed diversion order would, if made, and subsequently confirmed, establish on a legal footing the path currently used to avoid these buildings.
- Informal consultations have taken place and there are no outstanding objections to the proposal; the Parish Council had no objections and none was received from the local Member.

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

## **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. 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 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 The 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 and Mrs FW Jeffrey, who own the land over which the existing line of the footpath passes, made the application on 3<sup>rd</sup> September 2010. Mr E Freeman who owns the adjacent field on which it is proposed to divert the footpath has agreed to the footpath being diverted across his land without claiming compensation. The reason for the application is to give a legal basis to the diversion which the applicants had allegedly been led to believe by Hereford and Worcester County Council in 1979/1980 to have taken place.
- 5 The applicants were led to believe by Hereford and Worcester County Council some years ago that the diversion currently applied for was put in place at that time; a stile was supplied by the Parish Council for the footpath and a finger post erected where the 'diverted' footpath met the road, confirming them in their belief that the 'diversion' was in existence.
- 6 The applicant has carried out all pre-order consultations. The proposal has general agreement.
- 7 The proposed diversion meets the specified criteria as set out in section 119 of the Highways Act 1980 in particular that:
  - i) The proposal benefits the owner of the land crossed by the existing path.
  - ii) The proposed new termination point of the path is substantially as convenient as the existing termination point.
  - iii) The proposal is not substantially less convenient to the public.
  - iv) It would be expedient to proceed with the proposal given the effect it will have on public enjoyment of the footpath.

## **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 Bramer has been consulted and has not objected to the proposals.

## **Financial Implications**

- 9 The applicant has agreed to pay for advertising and for the cost of works but in view of the background to this application the Council advised the applicants in March 2010 that they would not be expected to pay the Council's other costs incurred in making the diversion order. The other affected landowner, Mr E Freeman, has given his written consent that he will not claim compensation if this diversion order is made and comes into operation.

## **Legal Implications**

- 10 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**

- 11 Should an order be made to divert part of footpath HM11 as recommended within this Report, there is a risk that that the order will receive objections and would then require referral to the Secretary of State which will increase the demands on officer time and resources. Extensive informal consultations and negotiations have taken place to minimise the risk of such objections.

## **Equality Implications**

- 12 The proposed new route facilitates wider access by the public as it will have a kissing gate at either end in place of the existing stiles. Access along the route is over a predominantly flat field with no increase in gradient when compared with the existing route. As such, the proposal is considered to apply with the requirements of the Equality Act 2010.

## **Consultees**

Prescribed organisations as per Defra Rights Of Way Circular 1/09

Local Member – H. Bramer

Hope Mansell Parish Council

Statutory Undertakers

## **Appendices**

Order Plan, D408/189-11 and Order and Schedule

## **Background Papers**

- None identified