

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	8 MAY 2012
TITLE OF REPORT:	HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH WBK5 (PART) IN THE PARISH OF WELSH BICKNOR AND PROPOSED PUBLIC PATH EXTINGUISHMENT ORDER AND CREATION ORDER FOOTPATH WBK1 (PART) IN THE PARISH OF WELSH BICKNOR.
PORTFOLIO AREA:	HIGHWAYS AND TRANSPORTATION

CLASSIFICATION: Open

Wards Affected

Kerne Bridge

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath WBK5 in the parish of Welsh Bicknor and to make associated, concurrent public path extinguishment and creation orders under Highways Act 1980 sections 118 and 26, to move footpath WBK1 in the parish of Welsh Bicknor.

Key Decision

This is not a Key Decision.

Recommendation

That public path orders are made under Section 119, 118 and 26 of the Highways Act 1980, as illustrated on drawing numbers: D411/405-1 and D411/405-5

Key Points Summary

- An application was made to move footpaths WBK1 and WBK5 by Mrs Rhoda Barnett, acting on behalf of the landowner, Mr J Vaughan of Courtfield Estate.
- The application was to divert WBK5 and associated concurrent orders to extinguish and create WBK1 in order to create a link from the footpath (currently a cul-de-sac) to the Common.
- The proposals were sent out to pre-order consultation to which there were a number of objections.

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

- The Parish Council agreed to the diversion of WBK5 only if the proposals to WBK1 were agreed by the landowner.
- The landowner will not support the proposals for WBK1 without the proposed diversion of WBK5.

Alternative Options

- 1 Under the Highways Act 1980, the Council has the power to make public path 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.

Reasons for Recommendations

- 2 The public path orders should be made because it is felt that they meet the criteria set out in the Highways Act 1980 and the Council's Public path order policy and although objections to the proposals have been received, they are felt to be in the wider public interest.

Introduction and Background

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

Key Considerations

- 4 Mrs Rhoda Barnett, made the application on behalf of the landowner (Mr J Vaughan) on 16th of May 2011. The reasons given for making the application were to enhance the security and privacy of Laundry Cottage and Courtfield House (WBK 5) and to provide a new circular route for local residents and legal access to the common of Coppett Hill,(WBK 1). The current route of WBK1 is a cul-de-sac and does not link with the common.
- 5 The applicant has carried out all pre-order consultation. The proposal has received objections from the Open Spaces Society and the Ramblers' Association.
- 6 The Open Spaces Society (OSS) has objected to the extinguishment of footpath WBK1 as, in their view, the legal test for an extinguishment order, that the path is not needed for public use, has not been met. He also objects to the diversion of footpath WBK5 as it is his opinion that higher rights may exist on the path which would remain in the current location if the footpath were moved. He suggests that the landowner could divert the path as a bridleway. The Byways and Bridleways Trust correspondent, although not objecting to the proposals, also suggested that higher rights may exist on footpath WBK5.
- 7 The OSS correspondent has provided some evidence to suggest that there may be higher rights on WBK5, however, the Rights of Way Manager did not feel there was sufficient evidence to justify rejecting this application.
- 8 The landowner is aware of this issue and has stated that he wishes to proceed with the diversion in spite of the issue of higher rights, he is aware that if higher rights are proven, they will remain *in situ*.
- 9 The landowner has stated clearly that he will only agree to the confirmation of the creation/extinguishment of WBK1 if the order for WBK5 is also confirmed at the same time.

- 10 Similarly, The Goodrich and Welsh Bicknor Group Parish Council will only agree to the confirmation of the diversion of WBK5, if WBK1 creation/extinguishment is confirmed at the same time.
- 11 It is necessary for all three of these orders to be able to stand independently of each other. However, should objections be lodged to any of the orders and it be necessary to submit it to the Secretary of State for determination, the Council would submit all the orders together and ask that either all are confirmed or none.
- 12 The applicant has agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order.
- 13 The local member, Cllr. Jarvis supports the application.
- 13 The proposed diversion of WBK5 meets the specified criteria as set out in Council policy and 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.
- 14 The proposed creation of WBK1 meets the specified criteria as set out in Council policy and section 26 of the Highways Act 1980.
- 15 The test for an extinguishment is that the footpath is 'not needed for public use' which is a difficult test to prove. However, by virtue of section 118(5) Highways Act 1980 the effect of the creation order in providing an alternative path can be taken into account in considering whether the existing path is needed for use. It could be considered, that if the creation of the route for WBK1 was capable of confirmation, then the existing route of WBK1 would not be 'needed' as it is a cul-de-sac and therefore an inferior route to the proposed route which will link with Coppett Hill common.

Community Impact

- 16 The proposals have been sent to the Local Member and the Parish Council, they both agree to the proposals.

Financial Implications

- 17 The applicant has agreed to pay all costs necessary for the making of this order.

Legal Implications

- 18 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

- 19 There is a high risk that these orders will be opposed as the OSS and Rambler's Association have expressed their objections already at pre-order consultation stage. This will mean that any objected order made will have to be referred to the Secretary of State for a decision. As it is likely that there will be more than one objection and more than one path is involved, this could possibly lead to a public inquiry. This will increase demands on both officer time and

financial resources. Committee needs to consider the benefit of the link that will be made to Coppett Hill which would evidently be popular with local residents (as requested by the Parish Council) and the benefit to the landowner, with the likelihood of a public inquiry and the costs which would be associated with this which would have to be met by Herefordshire Council.

Consultees

20

- Prescribed organisations as per Defra Rights Of Way Circular 1/09.
- Local Member – Cllr. J G Jarvis
- Goodrich and Welsh Bicknor Group Parish Council.
- Statutory Undertakers.

Appendices

21 Order Plan, drawing number: Dwg No: D411/402-1 (Creation & Extinguishment)

Order plan, drawing number: Dwg No: D411/402-5 (Diversion)

Background Papers

- None identified.