

MEETING:	REGULATORY SUB COMMITTEE
DATE:	29 MAY 2012
TITLE OF REPORT:	HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH AP29 (PART) IN THE PARISH OF ASHPERTON
PORTFOLIO AREA:	HIGHWAYS AND TRANSPORTATION

CLASSIFICATION: Open

Wards Affected

Frome

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath AP29 in the parish of Ashperton.

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: D420/13-29

Key Points Summary

- The landowner, Mr Gittings applied for a public path diversion order on 25th of January 2012.
- The existing line of the footpath travels through a garage.
- Malvern Hills District Council indicated the incorrect position of the footpath as part of the planning permission process for the garage, allowing it to be built in 1993.
- The landowner has carried out a pre-order consultation to which no objections were received.

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
Susan White, Assistant 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 This report is being considered by the Regulatory Sub Committee because they have the delegated authority to make the decision whether or not to make an order.

Key Considerations

- 4 Mr Gittings, who is the landowner, made the application on 25th of January 2012. The reasons given for making the application were, 'Malvern Hills District Council incorrectly showed the line of footpath running down the eastern boundary hedge, putting a stile and sign in the wrong position and passing the planning application for the garage on the footpath which is shown on today's ordinance survey map'.
- 5 The applicant has carried out all pre order consultation. The proposal has general agreement and the adjoining landowner Mr E Davies, whose property is also affected by the application has agreed in writing to the proposals.
- 6 The applicant will pay half the cost of making the proposed order (ie half the administration and half of the advertising costs) as the error was, at least in part, due to the advice given to him from the local authority in 1993.
- 7 The proposed width of the path is 1.5m not 2m as is usually specified, this is due to the constraints on the ground.
- 8 The local member, Cllr. P M Morgan supports the application.
- 9 The proposed diversion meets the specified criteria as set out in Council policy and in 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 alters the point of termination of the path but only to another point which is substantially as convenient.
 - The proposal is not substantially less convenient to the public.

Equalities Impact

- 10 The proposed new route has similar gradients to those found on the existing route. As such, the proposal is considered to comply with the requirements of the Equality Act 2010. An existing stile will be replaced by a gate thus improving access.

Community Impact

- 11 Ashperton Parish Council has been consulted as part of the pre-order consultation process and have no objections to the proposals.

Financial Implications

- 12 The applicant has agreed to pay half the costs associated with this order, including half the administration costs and half of the advertising costs. This arrangement is specific to this particular case, because the local authority was arguably responsible for providing incorrect advice at the time the garage was built.

Legal Implications

- 13 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

- 14 There is a risk that this order, if made as proposed, will receive objections thus necessitating referral to the Secretary of State for a decision. This could result in a public inquiry which would place increased demands on PROW officer time and resources. However, this is unlikely, as the proposals have been sent to pre-order consultation and no objections were received.

Consultees

15

- Prescribed organisations as per Defra Rights Of Way Circular 1/09.
- Local Member – Cllr. P M Morgan
- Ashperton Parish Council.
- Statutory Undertakers.

Appendices

- 16 Order Plan, drawing number: D420/13-29 and Order and Schedule.

Background Papers

- None identified.