

<b>MEETING:</b>	<b>REGULATORY SUB COMMITTEE</b>
<b>DATE:</b>	<b>18 SEPTEMBER 2012</b>
<b>TITLE OF REPORT:</b>	<b>HIGHWAYS ACT 1980, SECTION 118. PROPOSED PUBLIC PATH EXTINGUISHMENT ORDER FOOTPATH CW24A (PART) IN THE PARISH OF COLWALL.</b>
<b>PORTFOLIO AREA:</b>	<b>HIGHWAYS AND TRANSPORTATION</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Hope End

### **Purpose**

To consider an application under the Highways Act 1980, Section 118, to make a public path extinguishment order to extinguish part of the width of footpath CW24(A) in the parish of Colwall.

### **Key Decision**

This is not a Key Decision.

### **Recommendation**

THAT a public path extinguishment order is made under section 118 of the Highways Act 1980, as illustrated under drawing number D422/95-24A(iv).

### **Key Points Summary**

- Footpath CW24A follows the route of an old County road which was closed by court order in 1923. The footpath rights along it were retained but they occupy the full width of the original road, up to 10m in places.
- It is proposed that most of the width of the path be extinguished but leave sufficient width for public use (minimum of 2 metres).
- The width of the path to be extinguished includes that where an outbuilding is partly obstructing the path.
- Pre-order consultations have been carried out and the majority of consultees have no objections to the application.

## **Alternative Options**

- 1 Under section 118 of the Highways Act 1980, the Council has the power to make extinguishment 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 to be unreasonable.

## **Reasons for Recommendations**

- 2 The public path order should be made because it is felt that it meets the criteria set out in section 118 of the Highways Act 1980. Whilst extinguishments are not generally consistent with Herefordshire Council's Public Path Order Policy, in these particular circumstances it is felt that there is no significant impact on the Public Rights of Way network..

## **Introduction and Background**

- 3 This 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 CW24A follows the course of an old county road. The road was stopped up by a Quarter Sessions order in 1923. The order retained footpath rights along the old road. As no width was specified in the order, the width of the footpath remains the same as the old road, which is up to 10m in places
- 5 At some point a barn / outbuilding was constructed within the original width of the road and the public walked a line in an adjacent paddock to the south of the barn; this walked line would appear to be still within the historical width. Correspondence with the County Surveyor in 1982 appeared to condone the arrangement
- 6 When the situation was brought to the attention of the current Landowner, Mr H Stovold, he was happy to seek a remedy through the proposals outlined in this report.
- 7 It is proposed that part of the width of the footpath be extinguished which would include that occupied by the outbuilding, while leaving the remainder, a minimum of 2 metres in width, available for pedestrian use.
- 8 The owner of the paddock over which the unextinguished part of the footpath will run has raised no objections.
- 9 The owner of the land over where it is proposed to extinguish the footpath has agreed to pay half of the Council's costs including those for advertising and ground works. (This has been agreed with the landowner in consideration of the fact that the then County Council appeared to condone the current situation in correspondence in the 1980s..)
- 10 Pre-order consultation has been carried out and although the proposal has general agreement and support, a representative of the Open Spaces Society has proposed that to compensate for the reduced width available to the public should this order be confirmed, he has asked for changes to be made to existing structures along the entire path (including its continuation west of that included in the order), by providing pedestrian gates to BS5709:2006 at every boundary crossing. It is considered, however, that this would not only be outside the scope of the present order but would also conflict with the landowner's need to control the movement of his

stock.

- 11 The Local Member, Councillor Attwood, has been consulted and supports the application.
- 12 The proposed extinguishment meets the specified criteria set out in section 118 of the Highways Act 1980, and in particular that it would be expedient on the grounds that some of the existing width of the footpath is not needed for public use.

## **Community Impact**

- 13 The Parish Council and user group representatives have been consulted as part of the process and the proposal has general agreement and support . Councillor Attwood has been consulted and is in support of the proposal.

## **Financial Implications**

- 14 The landowner has agreed to pay 50% of the Council's costs including those for administration, advertising, and the cost of bringing the path into operation on the ground.

## **Legal Implications**

- 15 Under section 118 of the Highways Act 1980 the Council has the power to make an extinguishment order but does not have a duty to do so.

## **Risk Management**

- 16 Should an order be made to extinguish part of the width of footpath CW24A, as recommended in this report, there is a risk that the order will receive objections and would then require referral to the Secretary of State which would increase the demand on officer time and resources. However, extensive informal consultations have been carried out to minimise the risk of such objections.

## **Equality Implications**

- 17 The proposal allows sufficient width along the path for pedestrian use; there is a kissing gate at both ends which will improve accessibility for the public. As such, the proposal is considered to comply with the requirements of the Equality Act 2010.

## **Consultees**

- 18 Prescribed organisations as per Defra Rights of Way Circular 1/09.  
  
Local Member CNH Attwood.  
Colwall Parish Council.

## **Appendices**

- 19 Order and order plan D422/95-24A(iv).

## **Background Papers**

- None identified.