

| | |
|-------------------------|---|
| MEETING: | REGULATORY SUB-COMMITTEE |
| DATE: | 29 JANUARY 2013 |
| TITLE OF REPORT: | HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER BRIDLEWAY WV5 (PART) IN THE PARISH OF WOLFERLOW |
| PORTFOLIO AREA: | HIGHWAYS AND TRANSPORTATION |

CLASSIFICATION: Open

Wards Affected

Bringsty

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of bridlepath WV5 in the parish of Wolferlow.

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: D425/423-5

Key Points Summary

- A proposal for a diversion was received from the Parish Footpaths Officer, Tom Fisher.
- The legal line of WV5 is currently unavailable due to being out of repair.
- The proposed route has been used by the public for a number of years.
- The landowners have given their consent to the proposals.
- The diversion is considered to be in the public interest and is therefore to be funded by the public rights of way department.
- A pre-order consultation has been carried out, to which one objection was received from the Open Spaces Society.

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.

Reasons for Recommendations

- 2 The public path order should be made because it is felt that it meets the criteria set out in s119 of the Highways Act and the Council's Public path order policy and although an objection to the proposals has been received, it is felt to be in the wider public interest.

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 Fisher, who is the Parish Footpaths Officer, proposed the diversion. The reason given for making the application was to open up the bridleway for public use as it is currently unavailable.
- 5 Pre-order consultation has been carried out by the Public Rights of Way department. The proposal has general agreement, however one objection has been received from the Open Spaces Society.
- 6 The objection received was due to the path passing *'either through or very close to dramatically unsightly dumped farm detritus and passes along a farm access track to gain access to this unsightly mess'*. The objector offered an alternative route, however this has been declined by the landowner as it would not be in the interests of his current farming practices. It is felt that the order can be successfully defended if the matter went to the Planning Inspectorate for a decision as the 'detritus' is not a permanent feature and therefore could be moved.
- 7 The proposed diversion is deemed to be in the public's interest and will therefore be carried out by the public rights of way department at no cost to the landowner. This is because to reinstate the existing right of way is estimated to cost around £2657.70 (for clearance of route). There would also be additional annual expenditure required to trim seasonal vegetation on the existing route which is not required on the proposed route much of which follows a surfaced track. The cost for a diversion is around £2000 and is therefore, a more cost effective method of opening up WV5.
- 8 The local member, Cllr. G R Swinford, has no objections to the proposals.
- 9 The proposed diversion meets the specified criteria as set out in Council policy and section 119 of the Highways Act 1980 in particular that:
 - The proposal is considered to be in the interests of the public..
 - The proposal does not alter the point of termination of the paths.
 - The proposal is not substantially less convenient to the public.

Community Impact

- 10 A pre-order consultation has been carried out, to which the Parish Council replied that they

support the proposals.

Financial Implications

- 11 The proposed diversion is considered to be in the public interest and will be funded by the Public Rights of Way department.

Legal Implications

- 12 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

- 13 The risk of making an order as proposed is that it is likely that the Open Spaces Society will object to the order which will require the matter to be referred to the Secretary of State for a decision. This could result in a public inquiry which will place increased demands on officer time and resources.

Equality Implications

- 14 The proposed new route has gentle gradients and follows a farm track for part of the route. Where the proposed route passes a boundary line, the access will be through gates to British standard. The existing route has similar gradients to the proposed, however, follows the track for a shorter distance than the proposed route. As such, the proposal is considered to comply with the requirements of the Equality Act 2010.

Consultees

15

- Prescribed organisations as per Defra Rights Of Way Circular 1/09.
- Local Member – Cllr. G R Swinford
- North Bromyard Group Parish Council.
- Statutory Undertakers.

Appendices

- 16 Order Plan, drawing number: D425/423-5 and Order and Schedule.

Background Papers

- None identified.