

5 HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH CS4 (PART) IN THE PARISH OF CASTLE FROME

Report By: Head of Highways and Transportation

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 CS4 in the parish of Castle Frome.

Key Decision

This is not a Key Decision

Considerations

- 1 This application was made in November 1997. The applicant's reasons for the diversion are to take the path out of the garden of Moorend Farm. The applicant is also very keen to stress the importance of security to his private wildlife reserve which is based around the ponds and has been built up over the years. Due to resources this application has not been processed as quickly as it might have been, however the applicant has been fully advised of progress on a regular basis.
- 2 The proposal differs from that originally suggested shown on drawing number D306/79-4 (appendix 2) , because Birchend Farm is no longer in the ownership of the applicant. The new owner of Birchend Farm has applied for a separate diversion under the Town and Country Planning Act 1990.
- 3 The applicant has agreed to erect gates on the proposed route where necessary.
- 4 The applicant has agreed to pay for advertising and to reimburse in full the Council's costs incurred in making the diversion order.
- 5 A consultation with user groups has been undertaken. The Malvern Hills District Footpath Society initially objected because they were unhappy that the new proposal did nothing to address the issue of an obstruction at Birchend farm, however they did not sustain their objection when the situation regarding a TCPA diversion at this site was explained. The Ramblers Association continues to object to the proposal because of the pleasure the variety of ponds and buildings provides, and that in spite of a prolonged presence by one of their representatives, the ducks and any waterfowl did not appear to be disturbed by his being there. This department has considered this objection, but feels the key tests set out in Section 119 of the Highways act have been met by the applicant and the objections are therefore considered irrelevant.

Further information on the subject of this report is available from Lisa Hughes Assistant Rights of Way Officer on (01432) 261721

- 6 The Parish Council has agreed to the initial proposal, but did not respond to the amended proposal. The Local Member has not responded to the consultation.

Alternative Options

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.

Risk Management

There is a risk that the Order will be opposed, leading to additional demand on existing staff resources.

Consultees

- Prescribed organisations as per annexe E of Department of the Environment Circular 2/93.
- Statutory undertakers.
- Local Member - Councillor R M Manning.
- Stretton Grandison Group Parish Council.

Recommendation

That a public path diversion order is made under Section 119 of the Highways Act 1980, as illustrated on drawing number: D306/79-4(i) (appendix 1).

Reasons

The proposed diversion meets the specified criteria as set out in section 119 of the Highways Act 1980 in 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.

Appendix:

Appendix 1: Order Plan, drawing number: D306/79-4(i).

Appendix 2: Original route proposed by applicant, drawing number: D306/79-4.