

5 HIGHWAYS ACT 1980, SECTION 119, PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH LW4 (PART) IN THE PARISH OF LLANWARNE

Report By: Head of Highways and Transportation

Wards Affected

Pontrilas

Purpose

To consider an application under the Highways act 1980, section 119, to make a public path diversion order to divert part of footpath LW4 in the parish of Llanwarne.

Key Decision

This is not a key decision

Considerations

1. An application was made in September 1987 by Major Sevenoaks of The Old Coach House, Llanwarne, also on behalf of Mr and Mrs Darby of The Old Rectory, Llanwarne. The County Engineer and Planning Officer of Hereford and Worcester County Council (HWCC) decided to make the Order under delegated powers, but there was a delay in making the order. The applicants were informed in 1994 (appendix 2) and again in 1996 (appendix 3) that if they wished the diversion to proceed, the Council would need written confirmation from the Landowner, Mr Birchley to have the path diverted onto his property. In 1994 the applicants returned a conveyance that they thought might fulfil the necessary legal agreement for the new footpath. Legal guidance indicated that the conveyance was not fit for this purpose.
2. The applicants seemed to believe that the diversion was complete since the new route was provided and the old route stopped up, even though no order had been made. The route proposed is currently in use with a Hereford and Worcester County Council (HWCC) footpath signpost and stile at the western end. It is an enclosed pathway at a width of 3 metres running between the adjoining landowners and is well defined and clear.
3. Despite further correspondence the landowners consent has never been agreed in writing. In September 1997 the Rights of Way section of HWCC drafted a report to recommend that the application be not proceeded with. This report was never sent out to the local member but in October 1997, the Director of Environmental Services decided to go ahead with making the order without landowner consent. Revised route descriptions were drawn up and sent to Director of Administrative and Legal Services (DALs) of HWCC, and the local District Council consulted over the last part of 1997 and early 1998. Despite this action the Order was never made by DALs. There are no documented reason as to why this order was never made.

Further information on the subject of this report is available from Susan White Assistant Rights of Way Officer on (01432) 260572

4. Current obstructions along the legal line are highlighted on the attached map (appendix 4)
 - 1: Obstruction by small shrubs and a vegetable bed.
 - 2: Obstruction by a stock-proof fence (boundary fence between The Old Coach House and The Old Rectory) and a hedge of young beech.
 - 3: Obstruction by young apple tree.
 - 4: Obstruction by a 0.25m high rail barrier and a drop of 0.5 metres from the tarmac surfaced car park.
 - 5: Remainder of path runs across a lawn to exit at a stock-proof boundary fence which obstructs it.

It is noted that between points 1,2,3 and 4 there is a fowl run with a high fence of netting.
5. Since 2003 numerous attempts have been made to obtain the landowners consent or to confirm that the applicants will indemnify the Council against any possible claim for compensation, including two registered letters and a telephone conversation with the occupier of the property in the latter part of 2003. To date there has been no response to the repeated attempts to obtain this permission (appendix 5).
6. In June 2004 Mrs Darby and Mr and Mrs Sevenoaks were informed that since the landowners written permission has not been received the Rights of Way Section could not proceed with the application and would recommend its rejection (appendix 6). No reply or comment has been received.

Alternative Options

The Council could make the order, but runs the risk of a compensation claim being made against it. A valuation of the land in question was estimated by the Valuation & Industrial Agency in 1997. This figure may now to be much greater.

Risk Management

If the applicants refuse to open up the legal line of the path, the Council may have to resort to enforcement action to secure public access.

Consultees

Local Member Cllr J P Hart and County Engineer and Planning Officer, both gave their support to the making of the order in 1988 before the problem of landowner consent was raised. Statutory undertakers were also consulted in 1988.

Cllr Davis was consulted on 3rd September 2004 with a copy of this draft report. He telephoned 30th September to say that he would try to contact Mr Birchley (landowner). Lisa Hughes has since spoken to Cllr Davis who has not been able to contact the landowner. He pointed out that the local public had been walking the diverted route for years not knowing

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any different. He wondered whether the problem could be resolved with a modification order. However, this application for a diversion requires resolution and therefore it is felt necessary to reject it for the reasons set out above. If the parish council or landowners applied for a modification order in the future then that would be considered under separate legislation.

Recommendation

That the application be rejected.

Reasons

The applicants do not have the permission of the landowner onto whose land they wish to divert the footpath (as shown in order plan D52/245-4 in appendix 1).

Appendices

Appendix 1: Order plan D52/245-4

Appendix 2: Letter to applicants dated 9th June 1994

Appendix 3: Letter to applicants dated 9th October 1996

Appendix 4: Obstructions on legal line

Appendix 5: Letter to Landowner in 2003

Appendix 6: Letter to applicants dated 2nd June 2004