

6 HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATHS BF17 (PART) AND FOOTPATH LH25 (PART) IN THE PARISH OF BRIMFIELD AND LITTLE HEREFORD

Report By: Rights of Way Manager

Wards Affected:

Upton

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert (parts of) footpaths BF17 and LH25 in the parishes of Brimfield and Little Hereford.

Considerations

- 1 An application for a public path diversion order was made in July 1997. Solicitors acting on behalf of the owners of 'Nun Upton', Little Hereford put forward the reasons, 'to make the route less intrusive into the client's property and to make it more convenient to the general public'. The proposal is shown on drawing number D289/236-25/59-17 (appendix 1).
- 2 The proposal was subject to pre-order consultation, objection was raised by the Open Spaces Society because they felt the diversion need not be so extensive in order to increase privacy for the property. The applicant was informed of this in June 2000, along with a plan showing the alternative suggested by the Open Spaces Society (appendix 2). No record of a reply exists. On the 12th October 2000, the Council wrote to the Open Spaces Society asking if they would reconsider their objections (appendix 3). The OSS responded in January 2001, stating that they would definitely object to the proposal as set out, should it be proceeded with (App. 4).
- 3 The Council made a site visit on the 19th January 2001, and the findings were outlined in a letter to the applicant dated 31st January 2001 (appendix 5). This concluded that the proposal did not meet two of the tests required under Section 119 of the Highways Act 1980:
 - a) The path should not be substantially less convenient to the public as a result of the diversion, and
 - b) The Highway Authority must have regard to the effect, which the diversion would have on public enjoyment of the path as a whole, and to the effects of agriculture and forestry.

For these reasons the applicant was informed that formal rejection of the proposal would be sought unless a proposal, which would satisfy the stated tests, was submitted within 28 days.

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

- 4 A letter was received from the applicant dated 7th February 2001 (appendix 6) arguing against points made in the letter to him, the letter gave no indication of a willingness to amend the proposal.
- 5 Points made by the applicant were answered in a letter dated 5th July 2002 (appendix 7) and the applicant was informed that since the Council had received no alternative proposal, it had no option but to seek formal rejection of the application.
- 6 No further communication from the applicant in response to the Council's letter of 5th July 2002 has been received.
- 7 The Parish Council and local councillor (Cllr. J Stone) were consulted on 21st September 2004 stating our reasons for requesting a rejection and asking for their comments. (appendix 8) A letter received from the Parish Council stated that the Parish Council did not agree with the rejection of the proposals as they stated that the existing footpath is ploughed and the alternative is not, making it more convenient to the public (appendix 9). However, it is not possible under the Highways Act 1980 to take into account existing obstructions on an existing right of way when deciding the relevant convenience of the route as it is unlawful for the landowner to have ploughed the path in the first instance. Cllr J Stone is in agreement with the views of the Parish Council.
- 8 A final letter was sent to the applicant on 20th October 2005 requesting a site visit to discuss the proposals with a 28 day time limit for reply if the applicant was still interested in making an order to divert the path (appendix 10). There has been no response.

Alternative Options

The council could support the proposal, which, if the objections were sustained, could lead to a public inquiry and associated demands on resources.

Risk Management

There are no risks.

Consultees

- Prescribed organisations as per annexe E of Department of the Environment Circular 2/93
- Statutory undertakers
- Brimfield & Little Hereford Parish Council.
- The Local Member, Cllr J Stone

Recommendation

That the application made under Section 119 of the Highways Act 1980 is rejected because The proposed diversion does not meet the specified criteria as set out in section 119 of the Highways Act 1980 in that it is less convenient to the public.

Appendices

Appendix 1: Drawing number D289/236-25/59-17

Appendix 2: Letter dated 2nd June 2000 informing applicant that the proposed changes were not acceptable. Plan attached with a route marked on which would be acceptable to the user groups consulted, applicant requested to amend the proposed route.

Appendix 3: Letter dated 12th October 2000 to Open Spaces Society asking if they will withdraw their objections to the proposal.

Appendix 4: Letter dated 3rd January from the Open Spaces, reaffirming objection to proposal with associated plan.

Appendix 5: Letter dated 31st Jan 2001 informing applicant that proposal does not meet two of the required tests for diversion. Given 28 days to send in alternative

Appendix 6: Letter from applicant dated 7th February 2001 querying points made in letter of 31st January.

Appendix 7: Letter dated 5th July 2002 answering queried points and stating that the Council will be seeking rejection of the application.

Appendix 8: Letter to Brimfield and Little Hereford Group Parish Council dated 21st September 2004.

Appendix 9: Letter from Brimfield and Little Hereford Group Parish Council stating their reasons for supporting the proposals dated 22nd October 2004

Appendix 10: Letter to Applicant dated 20th October 2005.

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