

REGULATORY COMMITTEE
14th JULY 2004

OAKSEY: DIVERSION OF PUBLIC FOOTPATHS 12 (PARTS)
AND 13 (PARTS)**Purpose of Report**

1. To seek approval to the making of an Order under Section 118 of the Highways Act 1980 to extinguish parts of public footpaths 12 and 13 Oaksey, conditional upon the completion of a Creation Agreement providing new footpaths under Section 25 of the Act, by way of dedication by the landowner.

Background

2. On 22nd August 2003 an application was received by the County Council for the diversion of parts of public footpaths 12 and 13 Oaksey by the owners of Dean and Street Farms. A location plan of the proposals is attached at **Appendix 1**.
3. The landowners, Oakdean Partnership, are anxious to resolve certain anomalies in the present definitive routes and, at the same time, improve the efficiency of farming operations.
4. Proposals maps are attached at **Appendices 2 and 2A**.
5. The definitive legal line of footpath 12 leaves the main village road at point A and continues north through an old stone barn with a corrugated iron roof. This effectively means that the route is obstructed and for some considerable time walkers have used the alternative route C-V-Z-B. No trace of the legal route A-B appears physically on the ground. The used route is accessed by a gate at point C and a stile at point Z. A very old wooden public footpath sign, directing pedestrians to Wick Road, is also in place at point C.
6. It is considered there is almost certainly a common law dedication of the route C-V-Z-B as a public footpath as it has been overtly provided by the landowners in substitution for the route A-B and it has been accepted (used) by the public.
7. No physical sign of the section of the legal route B-D-R-S-E appears on the ground, with no access through the hedge at point D and no opening or ditch crossing at point R. The proposed route B-T-F-E is accessible by way of an open gate at point T and a stile at point F. This route is a headland route for its complete length and does not bisect any arable fields as the legal route does.
8. The minor diversion between points G-H, on footpath 13, is required to reposition the route from an arable field on to an existing hardened grass farm track, which appears to be the used route.
9. The new route J-M-N-P (**Appendix 2A**) is again required to unencumber arable fields, providing a more easily used predominantly headland route along an existing hardened grass farm track between points M and N, with gates at points N and P and a bridge in place over the ditch at point P.

Main Considerations for the Council

10. Most of the lengths of new footpaths are routes that the public have used for many years. It is quite probable that such routes have already come into being as public footpaths by way of Common Law Dedication (Express Dedication), as referred to in paragraph 6.
11. In view of this, it is considered that the most appropriate way to proceed to legally obtain the commonly used routes is for the landowner(s) to formally dedicate these routes as public footpaths, pursuant to Section 25 of the Highways Act 1980.
12. Section 25(1) states:-

"A local authority may enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a footpath or bridleway over land in their area."
13. The landowners have agreed to voluntarily offer the new routes for dedication as public footpaths by way of an agreement and this in itself does not necessitate the making of an Order requiring Members' approval.
14. When the new public footpaths are legally in place on completion of the dedication referred to above, it is considered that the old routes will be unnecessary for public use.
15. It is proposed to extinguish these routes under Section 118 of the Highways Act 1980. Sub-section (1) sets out the requirements for making such an order:-

"(1) Where it appears to a Council as respects a footpath or bridleway in their area (other than one which is a trunk road or special road) that if expedient that the path or way should be stopped up on the ground that it is not needed for public use, the Council may by Order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed Order, extinguish the public right of way over the path or way."
16. The criteria for confirming a Section 118 Order are contained under Sub-section (2):-

"(2) The Secretary of State shall not confirm a public path extinguishment Order, and a Council shall not confirm such an Order as an unopposed Order, unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the Order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way"
17. It is considered, as outlined above, that the proposals contained in the proposed Creation Agreement and Extinguishment Order rationalise the rights of way over the farm to provide routes that are unobstructed and easier to identify and use.
18. A small additional diversion of the currently used route (unnumbered footpath) from between points V and Z on to a new route between X and Z is also required to remove the used route from the concrete farmyard area on to a meadow headland route which will improve public safety.

19. A public consultation exercise was carried out on 14th April 2004 which included statutory and non-statutory consultees, public utilities and Parish and District Councils. No adverse comments or objections have been received. Some minor amendments to the proposed routes were suggested by the local Ramblers Group to the benefit of both users and landowners. These were accepted and are incorporated into the proposals.
20. Proposed extinguishments of rights of way are covered by the Authority's present Rights of Way Policy No. 14:-

"The County Council will, in view of the limited resources available, no longer consider applications for diversion/extinguishment of public rights of way unless there are exceptional circumstances for which prior Committee approval is required."

21. The proposals are considered to provide routes which reflect those used and preferred by the public. The proposed routes are predominantly headland paths which are out of arable (cropped) fields and are considered easier to locate and physically walk as they are on drier ground. As part of the proposals the landowners intend that, wherever new field boundaries and ditch crossings are necessary, timber kissing gates and footbridges will be installed in order to improve access for the less able.
22. The proposals also resolve the anomaly of the legal route of public footpath 12 being obstructed by the stone barn, referred to in paragraph 5, and this, together with the benefits outlined in paragraph 17, provide the exceptional circumstances which warrant the making of the Order.

Environmental Impact of the Recommendation

23. None.

Risk Assessment

24. All new kissing gates and bridges will be to British Standards design as currently employed by the Authority. There is also some health and safety gain in that the new route X-Z removes the route from the concrete farmyard area and hardened grass farm tracks form part of the routes between G-H, F-E and M-K.

Financial Implications

25. There are no financial implications as the landowners have agreed to pay all the Authority's costs of making the Order and Agreement.

Options Considered

26. To enforce reversion of the original definitive lines of the paths.
27. Make the Order and Agreement.

Reasons for Recommendation

28. It is considered appropriate to make an Extinguishment Order at this time for the following reasons:-
- (i) The proposed Creation Agreement provides a network of preferable routes;
 - (ii) It gives the opportunity to address and resolve the obstruction of the legal line of footpath 12 by the barn just north of point A on **Appendix 2**;
 - (iii) The proposals meet the requirements of the relevant legislation as set out in paragraphs 12-16;
 - (iv) There is considerable public benefit in the proposals which meet the requirements of the relevant policy as set out in paragraph 20;
 - (v) No objections have been received to the proposals;
 - (vi) All of the Authority's costs will be met by the landowners.

Recommendation

29. That approval be given to the making of an Order under Section 118 of the Highways Act 1980 extinguishing parts of public footpaths 12 and 13 Oaksey, to be confirmed on the completion of the Creation Agreement for the new paths.

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The following unpublished documents have been relied on in the preparation of this Report:

None