

HIGHWAYS ACT 1980 - SECTION 119
PUBLIC PATH DIVERSION ORDER - FOOTPATH 21 URCHFONT

Purpose of Report

1. To consider the objections received following the making of an order under Section 119 of the Highways Act 1980 to divert that part of Footpath 21 Urchfont as shown on the plan attached at **Appendix 1**. Members are requested to consider the objections in order to decide whether or not the County Council continues to support the making of the order. If Members continue to support the order it should be forwarded to the Secretary of State with the Council's recommendation that the order be confirmed. If Members no longer support the order it should be withdrawn.

Background

2. In July 2005 Humberts wrote to the County Council as follows:

*"Please find enclosed a copy of a plan (**Appendix 1**) showing two proposed footpath diversions at Wedhampton. The existing footpaths to be deleted are shown in red dotted line (A-B and D-E-F on the plan) and the proposed replacement stretches are shown in green (A-C-B and D-G-H-I on the plan).*

The proposed diversions are part of a wider farm rationalisation scheme at Manor Farm involving the removal of farm traffic from the village of Wedhampton and to renovate and develop the southern farm buildings into the main farm complex.

The present route of the footpath leads between two existing farm buildings in the middle of the proposed complex (D-E on the plan). The proposal is to replace this section of footpath with one which skirts the edge of the newly planted woodland strip (H-G on the plan). It starts at the road junction where it connects with the existing Countryside Stewardship footpath which has been created alongside the A342. The proposed path then follows around the back of a complex of buildings. The result will be no significant change in the length of the route.

The second diversion is to make use of a proposed section of access track across arable land (B-C on the plan) rather than the existing route which runs directly across the field (B-A on the plan). Whilst this will increase the length of the route marginally, it will make the route more convenient for the walker by providing a permanent well surfaced route."

3. It has been confirmed that the access track will have less than 10 vehicular movements per day on average and significantly less on most days. The track will not be fenced.
4. Both the Parish Council and the Ramblers' Association have no objection to the proposed change. The local representative for the Ramblers' Association commented *"It was good to see such easy stiles/gates in the area and the farmer had left a path through the maize for walkers, which was certainly novel."* The farm Manager does seek to have a good relationship with local walkers.

Objections to the Order

5. Two objections have been made to the order. The Byways and Bridleways Trust objects to the width of 0.6 metres specified for the replacement width. The legally defined width for this path is only 0.6 metres and this was transferred to the diversion order. Should the order be referred to the Secretary of State, it could be with the recommendation that a more sensible and suitable width of 2.0 metres be included.
6. Mr. Batt of High Lodge, The Cartway, Wedhampton has objected to the order and comments *"... and the method of having the path already diverted with diversion signs, a major obstruction which has already closed part of the footpath."* A copy of Mr. Batt's letter is available for inspection in the **Members' Room**.
7. Urchfont and Wedhampton have a very active walking group and it is believed this group waymarked the alternative route. The Definitive route is available for use. At the southern end of the path by the A342 an embankment has recently been formed when earthmoving equipment moved soil that was in danger of causing the collapse of a nearby old brick wall. The embankment has not been removed pending the outcome of the diversion application but will need to be removed if the footpath is not diverted. The landowner did not deliberately seek to block the path and the embankment can be walked over.

Main Considerations for the Council

8. Section 119 of the Highways Act 1980 provides for the diversion of footpaths and bridleways. Sub-section (1) states:

"Where it appears to a council as respects a footpath or bridleway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same ownership or of another owner, lessee or occupier), the council may, subject to sub-section (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order:

- (a) create, as from such date as may be specified in the order, any such new footpath or bridleway as appears to the council requisite for effecting the diversion, and*
- (b) extinguish, as from such date as may be so specified in accordance with the provisions of sub-section (3), the public right of way over so much of the path or way as appears to the council requisite as aforesaid."*

Sub-section (2) states:

"A public path diversion order shall not alter a point of termination of the path or way:

- (a) if that point is not on a highway; or*
- (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public."*

9. The application meets the legal tests as set out above. The diversion at the southern end of the path will enable the landowner to renovate and develop the buildings. The alternative route affords improved views and is more attractive. The northern section will remove the need to reinstate the path after ploughing and cropping and the alternative is an all-weather surface suitable for all users. Both routes are as substantially convenient for the public to use.

Environmental Impact of the Recommendation

10. None.

Financial Implications

11. The making of a diversion order is a discretionary duty for the Council but the applicants have confirmed they will meet the reasonable costs of making the order. If Members do continue to support the order the papers will be forwarded to the Secretary of State for determination. The objections could either be dealt with by the written representation means or a Public Inquiry. The cost to the County Council of a Public Inquiry would be met from the rights of way budget and is likely to be in the region of £1,200. There is adequate provision for this cost within the budget if necessary.

Options Considered

12. If Members consider that the diversion does not meet the legal tests as set out in paragraph 8 above, taking into account the objections received, the present routes could be retained.
13. If Members consider the diversion does meet the legal tests as set out in Section 119 of the Highways Act, there would be no reasonable grounds for refusing to divert the path and the Council should recommend that the Secretary of State confirm the order.

Reasons for Recommendation

14. Officers consider that the objection regarding the width can be readily resolved by requesting the Secretary of State to use his powers to change the width referred to in the order to 2.0 metres.
15. The objection by Mr. Batt does not address the legal tests to be taken into account in either deciding to make or confirm an order under Section 119 of the Highways Act 1980.

Recommendation

16. That the public path diversion order to divert part of Footpath 21 Urchfont be forwarded to the Secretary of State with the recommendation from the County Council that it be confirmed subject to the width for the alternative paths being increased to 2.0 metres.

GEORGE BATTEN

Director of Environmental Services

Report Author

BARBARA BURKE

Senior Rights of Way Officer

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

Consultations with statutory consultees, District and Parish Councils and other interested persons