

REGULATORY COMMITTEE
14th NOVEMBER 2007

HIGHWAYS ACT 1980 – SECTION 119
APPLICATION TO DIVERT PART OF FOOTPATHS PURTON 96 AND 103

Purpose of Report

1. To consider the objections and comments received following the pre-Order consultation to an application received under Section 119 of the Highways Act 1980 to divert that part of Footpaths 96 and 103 as shown on the Plan attached at **Appendix 1**. Members are asked to consider whether the County Council should support the making of a Diversion Order. If Members should support the making of an Order officers will process the application and make the Order. If there are objections to the Order then officers will present the Order to the Committee to consider the objections received. If Members continue to support the Order it should be forwarded to the Secretary of State to decide whether the Order be confirmed or withdrawn. If Members do not support the making of the Order, the application will not be granted.

Background

2. In November 2006 Purton Parish Council wrote on behalf of one of their parishioners to the County Council asking for an obstruction to be removed on Public Footpath Purton 103. A letter was sent by the Council to the landowners, Mr. and Mrs. Mills of Restrop Lodge, informing them that the obstruction should be removed.
3. Mr. and Mrs. Mills contacted the Council applying to divert parts of Public Footpaths 96 and 103. They had recently acquired a parcel of land adjacent to their property which they have made into a domestic garden. They applied principally because of dog fouling on the routes. They proposed a diversion of B-C and then two options of extinguishing part of Footpaths A-C or A-B (96 and 103 respectively), as detailed on the attached map at **Appendix 1**.

Objections and Comments Received to the Pre-Order Consultation

4. In March 2007 the Council consulted with the District and Parish Councils, known user groups and statutory undertakers to ask for comment on the proposed diversion.
5. Agents acting for the former landowner wrote to the Council saying they were in favour of the diversion B-C onto their land provided that Mr. Mills would bear the cost. With regard to the two options, they would not accept the option of extinguishing A-C because it coincided with their existing vehicular right of way. However, as far as the County Council is aware this is a private right of access and therefore a matter for separate negotiation between the former landowner and Mr. Mills.
6. The Ramblers Association objected to the proposal as a whole because it would be substantially less convenient to the public. They also commented that although the owner has difficulty with dog fouling, the Ramblers Association do not believe that a diversion would solve that problem.

7. Three residents objected on the grounds that dog fouling should not be a reason to divert the route. Another comment was that the field appears to have a change of use, from agricultural to domestic and asked whether planning permission has been granted for this. The District Council has been contacted and has advised that no such permission has been applied for.
8. The Parish Council does not object to the diversion B-C, but does object to the A-C option being extinguished.
9. Mr. Mills contacted the Council by telephone making two comments:
 - Many people are using the way to get to Mud Lane
 - People let their dogs mess there.

Main Considerations for the Council

10. 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 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 to it, and which is substantially as convenient to the public.”*

11. The application does not meet the legal tests as set out above. Whichever path is extinguished (A-B or A-C) it will be substantially less convenient for the public to use, especially if they are approaching the path from the west. It would mean a much longer walk as they would have to take the B-C route (the diversion route) and then head southwards to get to point A.

Environmental Impact of the Proposal

12. None.

Financial Implications

13. The making of a Diversion Order is a discretionary duty for the Council and the applicant will have to meet the reasonable costs of making the order. If Members recommend making the order, once it is made, the papers will be forwarded to the Secretary of State for determination because there are objections. The objections could either be dealt with by written representations or a Public Inquiry. The cost to the County Council of a Public Inquiry could be in the region of £4,000. These costs would fall to the Council.

Options Considered

14. If Members consider that the diversion does not meet the legal tests as set out in paragraph 11 above, taking into account the objections received, the present routes could be retained.
15. If Members consider the diversion does meet the legal tests set out in Section 119 of Highways Act 1980, there would be no reasonable grounds for refusing to divert the path and the Council should make the Order which then would have to be submitted to the Secretary of State to decide whether to confirm the Order.

Reasons for Recommendation

16. Officers consider that the objection that states that the diversion will be substantially less convenient for the public to use is valid.
17. The Council could not consider a diversion for the reasons of dog fouling alone, please see paragraph 11 on the legal tests.
18. The objection with regard to the change of use of the field would have to be investigated via the District Council.
19. The comment made by Mr. Mills that the public only use the route to get to Mud Lane is not valid because the public have a legal right to use a public footpath to get from one place to another, i.e. to pass and re-pass over the route on foot.

Recommendation

20. That the application for a public path Diversion Order to divert part of Public Footpaths 96 and 103 be not granted.

GEORGE BATTEN

Director of Environmental Services

Report Author

KAY FORRYAN

Rights of Way Assistant

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 parties.