

REGULATORY COMMITTEE
21st MAY 2008

**PURTON: PROPOSED DIVERSION OF PUBLIC FOOTPATH 104 UNDER SECTION 119
HIGHWAYS ACT 1980 TO A NEW ROUTE WHICH WILL BE DESIGNATED
AS A PUBLIC BRIDLEWAY**

Purpose of Report

1. To:
 - (i) Report on the objections received by the County Council, following an informal consultation exercise, to proposals to divert the public right of way shown in the Definitive Map as Public Footpath No. 104, Purton at Mud Lane, Restrop, to a new route that is to be designated as a Public Bridleway, as shown on the plan attached at **Appendix 1**.
 - (ii) Seek approval for an Order to be made to divert Public Footpath No. 104, Purton at Mud Lane, Restrop, under Section 119 Highways Act 1980, to a new route that is to be designated as a Public Bridleway, as shown on the plan attached at **Appendix 1**.

Background

2. Public Footpath 104 at Restrop, Purton, passes along an ancient sunken lane, known as Mud Lane, with fields either side. It provides a route between the end of the unclassified road which serves Restrop Farm, and a wider network of public footpaths and bridleways which give access to the scheduled ancient monument of Ringsbury Camp and the countryside to the west of Purton.
3. The path appears to have gradually fallen into disuse from the 1950's onwards, after a period of temporary closure when a mains water pipe was installed across it. Since then, it is understood that the path has become increasingly inaccessible due to lack of use, and it now suffers from some substantial obstructions, which will be both difficult and costly to remove. For many years, there was no local will to keep the path in a good state of repair, due to an unwillingness to challenge a reluctant landowner who was suffering from poor health.
4. It is understood that the matter was effectively left in abeyance until such time as the ownership of the lane changed. This occurred late in 2001, since when there have been a number of requests from both local people and from Purton Parish Council for the path to be brought back into use. The extent of the work needed as a result of the years of neglect and the estimated cost of approximately £50,000 involved have, to date, resulted in no progress having been made towards re-opening the path.
5. Discussions with the new landowner early in 2005, and the continuing lack of sufficient financial resources available to the County Council to carry out the re-instatement work needed, led to the landowner voluntarily constructing a new Permissive Bridleway on the route that it is now proposed to create a public bridleway to replace the path along Mud Lane. The intention was to create a path that could immediately be used by walkers, horseriders and cyclists and, should it prove over a trial period to offer an acceptable alternative to Mud Lane itself, could be made a Public Right of Way as a permanent replacement for path 104.

6. Whilst the Definitive Map and Statement of Public Rights of Way show Path 104 as a Public Footpath, the County Council received an application on 18th March 2005 from a member of the public claiming that there is sufficient historic evidence for a Definitive Map Modification Order to be made to upgrade the path to a Public Bridleway.
7. An initial assessment of the evidence suggests that the path was in the past used as a public way along which horses were ridden and animals were driven, such that it should properly be recorded as a Public Bridleway. The application has not yet been processed, but both the applicant and the owner of the land over which the path passes have both accepted that as part of the changes to the route of the path that are now proposed, the new path should be created as a public bridleway to replace the current footpath. In order to provide an unbroken route for horseriders and cyclists, a short section of Public Footpath 103 will need to be upgraded to a Public Bridleway; the land is in the same ownership as the current Footpath 103 and the proposed new bridleway and the proposal has the owner's consent.
8. In June 2007, officers met with the landowner to discuss the long-term future of Footpath 104 and the Permissive Bridleway. It was agreed that the landowner would approach Purton Parish Council to seek its views on a proposal that the Permissive Bridleway should become a Public Bridleway to replace path 104.
9. On 5th July 2007, the Ramblers' Association served a formal Notice under Section 130A of the Highways Act 1980, seeking the removal of obstructions from Footpath 104. On receipt of such a Notice, the County Council as Highway Authority is required to serve within one month its own Notice upon those persons it believes to be responsible for the obstructions, stating the action that it proposes to take to secure their removal. Failure on the part of the Highway Authority to follow the statutory procedure, or to secure the removal of the obstructions, enables the server of the original Notice to apply, within six months, to the Magistrates' Court for an Order to be made requiring the Highway Authority to secure their removal by a specified date.
10. After further discussion over the following four months with the Ramblers' Association and ongoing discussions with Purton Parish Council and the landowner, it became evident that there were a variety of views about the merits of the proposed path changes. It was agreed with the Parish Council that the most appropriate means of taking the matter forward was for the County Council to commence wider consultations with a view to making the Public Path Orders that would be needed to make the changes.
11. The initial consultation was issued on 9th January 2008. On 28th January the Ramblers' Association advised by e-mail that it no longer wished to pursue the Section 130A procedure through the Magistrates' Court (although the Association has written separately to object to the proposed path changes).

Reasons for the Proposals

12. The proposals have been put forward for the following reasons.
 - (i) Footpath 104 along Mud Lane has not been accessible, either as a footpath or bridleway for many years. It is obstructed by a number of fallen trees and by substantial overgrowth and undergrowth along much of its length of small trees and brambles, and is crossed by a mains water pipe just below the surface of the lane and also by a raised cross-track over a culvert which links the fields either side. The cross-track can be clearly seen on the plan at **Appendix 1**, whilst the water pipe passes under the lane some 10 metres to the east of the cross-track.

- (ii) Clearance and re-instatement of the path along the lane, to provide a safe and convenient bridleway for the shared use of walkers, horseriders and cyclists, will be extremely difficult. The fallen trees, over and under growth will need to be cut back and lifted out of the lane, and substantial engineering works will be needed to protect the water pipe and to raise and build up the surface either side of the culvert that carries the cross-track to provide a safe crossing area for horseriders and cyclists.
- (iii) The works needed to clear and make an accessible bridleway along the lane will not address the safety issues of shared use by walkers, horseriders and cyclists. Measured from the top of the banks either side, the lane has a width of 6-8 metres for much of its length. At the base of the lane it will be difficult to achieve a useable width of more than two metres, with no easy way for users to move out of one another's path should they meet.
- (iv) The works needed to make Mud Lane accessible as a bridleway will not be able to overcome the problems of extensive flooding to which it is subject after and during periods of heavy rain, when it is not unusual for long stretches of standing water to accumulate to a depth of two to three feet or more. The name "Mud Lane" is believed to be in recognition of the difficult conditions which prevail through the winter months because of its low-lying position in the immediately surrounding landscape.
- (v) There is an active and apparently expanding badger sett on the northern edge of the lane. Further expansion is likely to require measures to either protect the lane from damage by the badgers or to move them away from the area, under licence to be issued by the Environment Agency.
- (vi) The Permissive Path, which was opened for use in April 2005, has proved to be well-used by walkers and horseriders and occasionally used by cyclists, without any apparent difficulties having arisen. In contrast to Mud Lane, it has a useable width of between four and six metres, is well drained and level, and provides a safe, good quality path which can be easily used throughout the year by walkers and riders of all abilities. It is accepted that use of the Permissive Path instead of Footpath 104 requires an extra distance to be walked or ridden of approximately 60 metres but this is considered to be a minor inconvenience when considered against the comparative ease of accessibility of the two options.

Results of The Consultation Exercise

- 13. Prior to making the decision on whether or not Orders should be proposed in respect of the changes outlined above, the Rights of Way Officers carried out an initial consultation regarding these proposals amongst user groups, statutory consultees and other interested parties on 9th January 2008.
- 14. Objections were received from The Ramblers' Association, the Open Spaces Society and from the Purton Historical Society as well as from a number of local people who were not directly consulted about the proposals but who are understood to have been made aware of them by one or more of the parish councillors. Support for the proposals has been expressed by the local County Council Member, Mrs. Dixon, Purton Parish Council, the British Horse Society and by a (lesser) number of local people who have also been made aware of them. The applicant for the Definitive Map Modification Order to upgrade Footpath 104 to a Bridleway has stated that he would not be inclined to object to the proposals provided that the Parish Council and local users of the paths are happy with them.

15. It should be noted that the support from Purton Parish Council has been influenced by an offer from the landowner to enter into a covenant with the Parish Council that, if the public right of way is moved out of Mud Lane, would allow local people to access the lane to enjoy and study its history. The County Council will not, and cannot legally be, a party to the proposed covenant.
16. Copies of all of the correspondence received from objectors and supporters, together with an example of the essentially standard letter sent in response to objectors (minor variations were required to some responses to take account of the specific points raised by individual objectors), are available for inspection in the **Members' Room**. A summary of the responses, together with Officers' comments, is attached at **Appendix 2**.

Main Considerations for the Council

17. Section 119 of the Highways Act 1980 sets out a two-stage test which must be satisfied. The legal requirements to be met at the Order making stage are set out below. Section 119(1) provides:
- “ where it appears to a Council as respects a footpath, bridleway or restricted byway in their area...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 or of another owner, lessee or occupier) the Council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order -*
- (a) *Create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the Council requisite for effecting the diversion; and*
- (b) *Extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the Council requisite as aforesaid.”*
18. Section 119 (2) of the Highways Act 1980 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 not 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”.*
19. The proposed diversion route is shown on the attached plan at **Appendix 1**. The path to be extinguished runs between points A and B. The diversion route commences at point B on the plan through points C, D and E to point F where it meets an unclassified road that provides a direct connection to point A. The proposed new bridleway is approximately 440 metres in length, as opposed to approximately 380 metres of the present definitive route and the unclassified road. Officers consider that this additional length is substantially as convenient to the public.

20. Section 119 (6) below sets out the second test, which must be met at the order confirmation stage:

“The Secretary of State shall not confirm a public path diversion 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 the diversion to be effected by it is expedient as mentioned in sub-section (1) above and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which -

- (a) the diversion would have on public enjoyment of the path or way as a whole;*
- (b) the coming into operation of the order would have as respects other land served by the existing public right of way; and*
- (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it;*

so, however, that for the purposes of paragraph (b) and (c) above the Secretary of State, or as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) above.”

21. It is considered that the proposed diversion route will not affect the public enjoyment of the path as a whole.
22. The proposed new route, which is already in use as a permissive bridleway, follows a level grass-surfaced and well drained path which has a useable width of between 4 and 6 metres. The path was created as a permissive bridleway in April 2005 and has since been in frequent use by walkers, horseriders and occasional use by cyclists, without any apparent problems having arisen.
23. The existing route, even if it were to be cleared of obstructions, follows a sunken lane which has a central low point in the surrounding landscape, has a useable width of approximately two metres, and serves as a wet ditch during the winter months, becoming severely flooded in periods of prolonged wet weather. Shared use by walkers, horseriders and cyclists can be expected to cause damage to the surface which is likely to make the path inconvenient to use for much of the year. The British Horse Society has stated that it considers that shared use of such a narrow sunken route with no easy means of escape will be dangerous. However, officers are aware there is amongst the objectors to the proposed diversion a strongly held view that the historic nature of the lane gives it an appeal of its own that should be preserved but would be lost if the path were to be diverted to the new route.
24. The issues for consideration at the Order making stage are whether it is expedient in the interests of the landowner or of the public that the Order should be made. However, Members are advised to take into account the second stage of the test before determining whether the Order should be made.

25. The Committee is therefore required to consider whether or not the convenience of the proposed diversion route, safety of users and ease of maintenance together outweigh the desire to preserve local history for public enjoyment. The Rights of Way Improvement Plan which is being prepared requires an analysis to be undertaken of the existing rights of way network taking into account the present and likely future needs of path users, and for such provision to be made as the authority considers necessary. The agenda is one of modernisation, taking into account the particular needs of less able users. While appreciating that this does not suggest that the historical value of the rights of way network should be disregarded, officers take the view that on this occasion, the majority of present and future users will be better served by the proposed diversion route.
26. The creation of the new route is subject to certification by the local Rights of Way Warden and a new route will not be accepted until the Highway Authority is satisfied that the diversion route is provided to a suitable standard, fit for use by the public.
27. The landowner, Mr. Moseley, has confirmed that he is the only landowner over whose land the proposed diversion passes, therefore no compensation costs are envisaged.
28. If the Order is made and formal objections are received, the matter will be referred back to Committee for further consideration.

Environmental Impact of the Recommendation

29. There are no significant environmental implications arising from the recommendations set out within this report.

Risk Assessment

30. There are no risks arising from the recommendation set out within this report.

Financial Implications

31. The making of a public path diversion order is a discretionary duty for the Highway Authority rather than a statutory duty. Provision has been made within existing budgets for the costs involved in processing the application, including advertising costs.
32. The proposed new path is already in use and has been constructed by the landowner at his own expense to a standard that is already acceptable to the County Council as Highway Authority. The new path will, however, need to be formally certified by the County Council as acceptable. Officers do not expect that there will be any significant additional expense to the Council.
33. Mr. Moseley has confirmed that he is the only landowner affected by the proposals; therefore, no compensation costs or expenses are envisaged.
34. The cost to the County Council, and therefore to the public, of re-opening the existing path along Mud Lane and the work needed to make it accessible as a bridleway are not a relevant consideration when assessing whether or not the new path will be substantially as convenient to the public and public enjoyment of the path as a whole and whether it is expedient to make the Order in the interests of the public.

Options Considered

35. To make a Diversion Order that seeks to divert Footpath 104 and designates the new path as a Public Bridleway.

36. To re-open the existing path along Mud Lane and to make a Definitive Map Modification Order to upgrade it to a Public Bridleway.

Reasons for Recommendation

37. Officers consider that the proposed diversion will provide a more easily useable, all year round route for all users with improved safety and enjoyment than would the existing path, even if the existing path were to be made available as a public bridleway.

Recommendation

38. That an Order be made and advertised under Section 119 of the Highways Act 1980 to divert Public Footpath Purton 104 as shown on the plan attached at **Appendix 1**, from A-B to a new line B-C-D-E-F which will be designated as a public bridleway.

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

None