

REGULATORY COMMITTEE
30th JULY 2008

HIGHWAYS ACT 1980 – SECTION 119
BERWICK BASSETT: PROPOSED DIVERSION OF BRIDLEWAY NO.7 (PART) AND
BRIDLEWAY NO.11 (PART)

Purpose of Report

1. To:
 - (i) Report on the objection received by the County Council, following an informal consultation exercise, regarding proposals to divert Bridleway No.7 Berwick Bassett (part) and Bridleway No.11 Berwick Bassett (part), as shown on the plan attached at **Appendix 1**.
 - (ii) Seek approval for a Public Path Order to be made to divert Bridleway No.7 Berwick Bassett (part) and Bridleway No.11 Berwick Bassett (part), as shown on the plan attached at **Appendix 1**.

Background

2. The plan attached at **Appendix 2** shows the location of Bridleway No.7 and Bridleway No.11 Berwick Bassett.
3. On 22nd February 2007, the landowner made an application to Wiltshire County Council to divert Bridleway No.7 (part) and Bridleway No.11 (part), under Section 119 of the Highways Act 1980.
4. Wiltshire County Council carried out an initial consultation regarding the proposals on 13th December 2007, which resulted in one objection from the Ramblers Association (see correspondence attached at **Appendix 3**).

Main considerations for the Council

5. Section 119 of the Highways Act 1980 provides for the diversion of footpaths, bridleway and restricted byways.

Sub-section 1 states:

“Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one which 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 or 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 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), the public right of way over so much of the path or way as appears to the council requisite as aforesaid.*

An order under this section is referred to in the Act as a ‘public path diversion order’.”

6. Officers consider that the diversion proposals meet the legal test set out within this section of the Act. This first test, relates to the order-making stage and Officers are satisfied that the diversion has been applied for in the interests of the landowner for the following reason:
- The definitive routes presently pass adjacent to areas of wild bird cover, set aside under a Countryside Stewardship Scheme. It would be beneficial to divert the bridleways away from these areas to avoid disturbance to populations of rare birds inhabiting these areas.
 - The present definitive line in places passes over cultivated land, whereas the proposed diversion passes entirely over land not subject to cultivation. The landowner will no longer have to reinstate the paths following crop disturbance, within his duty of maintenance, and the productivity of his land will be improved.
7. 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 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”.*
8. The above legal test is met as set out below (see **Appendix 1**)
- (i) Bridleway No. 7 Berwick Bassett:
- Path termination Point A remains the same
 - Point B is altered to Point C which is a new termination point on the same highway, (i.e. Bridleway No. 11)
 - Termination Point E is transferred to Point F and its junction with Bridleway No. 11 is retained when Bridleway No. 11 is simultaneously diverted from D-E to D-F
 - Path termination Point G remains unaltered.
- (ii) Bridleway No. 11 Berwick Bassett:
- Point D remains unaltered
 - Termination Point E is transferred to Point F which retains its junction with Bridleway No. 7, if Bridleway No. 7 is simultaneously diverted as proposed.

9. Section 119 (6) below sets out the second legal test applicable at the confirmation of an order:

“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 the 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 new 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)”

10. Officers consider that the diversion route is not substantially less convenient to the public for the following reasons:

- (i) A total length of path of approximately 920 metres is replaced with a length of approximately 1,000 metres. The diversion adds approximately 80 metres to the distance of the paths, which is not considered to be substantially less convenient to the public, particularly when considered in the general context of the overall lengths of these paths and the greater distance that people using them will be walking or riding during their overall route.
- (ii) The new route is steep in two places, but the Rights of Way Warden for the area has confirmed that this is acceptable for use by the public.
- (iii) Gates are necessary on the definitive line to prevent stock, kept on adjoining land at certain times of the year, from entering the cultivated areas. The proposed diversion will not be subject to such limitations as no gates are required, (other than those already existing at points A and G), to prevent the ingress and egress of stock.
- (iv) The diversion route will not be subject to disturbance from cultivation as parts of the definitive line are now. This is not on its own a reason for diversion, as the landowner has a duty to restore a definitive line following disturbance such as ploughing and cropping within 14 days and the Highway Authority has a duty to enforce reinstatement. However, paths which are not subject to disturbance from a ploughing and cropping cycle generally remain easier to walk throughout the year.
- (v) The making of a Public Path Diversion Order allows a width of three metres to be recorded as a legal width for the bridleways, where diverted, within the Definitive Map and Statement, where none is recorded at present, which is in the public interest.

Additionally, it is not considered that the proposals will adversely effect the public enjoyment of the path as a whole and views of the surrounding countryside are not diminished by the diversions.

11. Additionally the applicant has confirmed that he is the only landowner/party with a legal interest in the land and therefore no compensation costs or expenses are envisaged.

Comments on Objections

12. The Ramblers Association has objected to the proposed diversion on the grounds that the diversion is believed to be substantially less convenient to the public than the current definitive line (see correspondence attached at **Appendix 3**).
13. The Ramblers Association is concerned that the landowner has obstructed the definitive line of the right of way and the line of the path is not waymarked (the proposed diversion has already been waymarked). Whilst Officers accept that this has occurred in the past and accept that obstruction is not a good reason to divert a path, negotiations are taking place with the landowner to ensure that the definitive line remains open and available for public use until such time as a legal Diversion Order has been confirmed. Diversion must not be used as an alternative to the Highway Authority and the landowners carrying out their duties of maintenance.
14. The Ramblers Association has also expressed concern regarding:
- The wild birds inhabiting the area (they have stated that may need to seek further advice on this matter).
 - Crop disturbance to a right of way is not a valid reason to divert a path.
 - Both sections of the new right of way are significantly downhill of the current definitive line, therefore, “much better” views of the surrounding countryside are difficult to achieve.
15. Officers do not consider that the proposed diversion route is substantially less convenient for the public for the reasons set out at paragraph 10. Officers therefore consider that a Public Path Diversion Order should be made under Section 119 of the Highways Act 1980, as the legal tests have been met and there are benefits to both the landowner and the public in diverting the path.

Environmental Impact of the Recommendation

16. The proposed diversion of the bridleways would be beneficial to wild birds. The present definitive line passes adjacent to areas of wild bird seed mixture, set aside to encourage wild birds to feed and nest. The area has one of the largest populations of Tree Sparrows in Wiltshire, a very rare species. The diversion of the bridleways would avoid disturbance to the birds.

Risk Assessment

17. Parts of the new diversion route are steep. However the Rights of Way Warden for the area has confirmed that the alternative route is satisfactory for both walkers and horseriders.

Financial Implications

18. The making of a Public Path Diversion Order is a discretionary duty for the Highway Authority rather than a statutory duty. Therefore the landowner has agreed to meet the reasonable costs of the County Council in making an Order, which are the costs of staff time, advertising and making the route available for use by the public.

19. The applicant has confirmed that he is the only landowner/party with an interest in the land over which the right of way is to be diverted, therefore no compensation costs or expenses are envisaged.

Options Considered

20. Officers have considered the possibility of retaining the definitive routes of the paths. However the proposed diversion meets the legal tests and would achieve benefits for both the landowner and the public. Officers therefore see no reason why a Diversion Order should not be made.

Reasons for Recommendation

21. Officers are recommending that the bridleways should be diverted as the legal tests of making and confirming a Diversion Order under Section 119 of the Highways Act 1980 are met, as set out in this report.

Recommendation

22. That a Public Path Diversion Order be made and duly advertised under Section 119 of the Highways Act 1980 to divert Bridleway No.11 Berwick Bassett (part) and Bridleway No.7 Berwick Bassett (part) and if
- (i) no objections are received to the making of the Order, the Order be confirmed, or
 - (ii) objections are received, the order be referred to the Regulatory Committee for consideration of the objections.

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Rights of Way Officer

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

None