

EASTERN AREA PLANNING COMMITTEE
23 JULY 2009

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

Purpose of Report

1. To:
 - (i) Report on the objection received by Wiltshire County Council, following the making of an Order to divert Bridleway No.7 Berwick Bassett (part) and Bridleway No.11 Berwick Bassett (part), as shown on the plan at **Appendix 1**.
 - (ii) Seek approval for the abandonment of the Order described in paragraph (i) above.

Background

2. The applicant, Mr. White, is the landowner. The address of the site is Manor Farm, Berwick Bassett, West Selkley, Marlborough, which has a grid reference of 12071 73334 at the mid-point of the route. A location plan is attached at **Appendix 2**.
3. An Order was made on 10 September 2008 to divert Bridleway No.7 Berwick Bassett (part) and Bridleway No.11 Berwick Bassett (part) after the matter was presented to the Regulatory Committee of Wiltshire County Council on 30 July 2008. A copy of the Order and the Regulatory Committee Report with associated Minutes are available in the **Members' Room**. The Regulatory Committee resolved:

To make and duly advertise a Public Path Diversion Order 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.*

4. When recommending that Members of the Regulatory Committee resolve to make the Order officers considered that the legal tests, set out in sub-sections 119 (1) and (2) of the Highways Act 1980 for the making of an Order, were met. These tests require consideration to be given to whether the diversion application is made in the interests of the landowner and whether the termination points of the path remain the same. The Committee Members were made aware that should there be objections to the Order, the more stringent tests, set out in sub-section 119 (6) of the Highways Act 1980, would be applied in deciding whether or not the Order should be confirmed.
5. Following the making of the Order an objection was lodged within the statutory period. The Order does not take effect until it is confirmed and can be abandoned by the Council at this stage.

Main Considerations for the Council

6. An objection was received from members of the public on the grounds that the diversion is substantially less convenient to the public. The main points raised were that:
 - the proposed diversion route was generally over more difficult terrain incorporating steep slopes,
 - there are gullies (large natural features formed by surface water draining from the hillsides) which cross the proposed diversion route and are not apparent on a map but which become progressively more difficult and tiring to walk across,
 - there are hazardous cross-falls in a number of places, and
 - the diversion was substantially longer than the existing route.

A full copy of the objection letter which incorporates photographs of the diversion route is available in the **Members' Room**.

7. Two Rights of Way Officers examined the site on 19 May 2009 and they agree with the points made by the objectors. They concur that the diversion is substantially less convenient to the public and does not meet the legal test required for confirmation set out in Section 119(6) of the Highways Act 1980. A report detailing the findings of the site visit is available in the **Members' Room**.
8. The case officer has measured the existing and proposed routes with a True-Line™ Highways Measuring Wheel. The proposed diversion route is 154 metres longer, not 80 metres as stated in the Regulatory Committee Report. The measurements were scaled up from the map and therefore did not take into account the steep inclines and undulations of the proposed route.

9. The legal test for confirmation of an Order is more stringent than the legal test for the making of an Order. Section 119(6) of the Highways Act 1980 sets out the legal test applicable at the confirmation of an Order which is stated in the extract below:

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 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;.....”

10. The Rights of Way Officers who visited the site on 19 May 2009 agree with the objectors that whereas the existing route is reasonably flat and level, the proposed diversion incorporates very steep slopes, gullies and hazardous cross-falls in a number of places. These are difficult to negotiate for the average walker or horse-rider, as shown in photographs within the objectors' report which is available in the **Members' Room**.
11. As well as being over far more difficult terrain, the proposed diversion is longer than the existing route. Whilst it is accepted that the views of the surrounding countryside are not diminished by the diversions, the extra length coupled with the severity of the terrain amount to a route that is substantially less convenient to the general public. Additionally, it is considered that the proposals may adversely affect the public enjoyment of the path due to the physical effort of tackling the steep inclines.
12. It is open to the Council to abandon the Order at this stage. Alternatively, the Order could be referred to the Secretary of State for determination at a Public Inquiry, at an informal hearing or by written representations. Rights of Way Officers, who have visited the site, advise that the Council should abandon the Order as the proposed diversion route does not meet the requirements of the relevant legislation.
13. There is a legal requirement for an existing route to be open and free for use whilst a diversion is being considered. The following was stated in the Regulatory Committee Report:

... 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. However, the removal of obstructions has not occurred and there are still five virtually unworkable gates and barbed wire across the legal route.
15. The landowner has now accepted the case officer's views on the unsuitability of the diversion and has agreed to remove all obstructions from the existing legal route thereby restoring it to a flat and useable bridleway.
(Correspondence between the landowner and the case officer is available in the **Members' Room**).

Environmental Impact of the Recommendation

16. Consultation has taken place with the County Ecology Officer and Natural England's Area Advisor and there would be no substantial environmental or ecological impact in abandoning the Diversion Order in favour of opening up the existing legal route.

Risk Assessment

17. There are no substantial risks associated with opening up the existing legal route for use as it is a reasonably flat route.

Financial Implications

18. If the Order is abandoned, Wiltshire Council bears the costs to date of processing the application. The cost for advertising is estimated at approximately £300. The cost of officer time in assessing the application would still have been incurred by the Council in the event that the Order had not been made.
19. If the Order went to the Secretary of State for determination at a Public Inquiry, at an informal hearing or by written representations, the costs to the Council could be up to £5,000.

Options Considered

20. That:
 - (i) The Order is abandoned.
 - (ii) The Order is referred to the Secretary of State who will then determine the Order by means of a Public Inquiry, an informal hearing or written representations.

Recommendation

21. That the Public Path Order to Divert Bridleway No.11 Berwick Bassett (part) and Bridleway No.7 Berwick Bassett (part) be abandoned.

Reasons for Recommendation

22. The proposed route is substantially less convenient for the general public thereby failing the legal test for confirmation laid out in Section 119 of the Highways Act 1980.

TRACY CARTER

Service Director (Operations)

Report Author

Tim Chinnick

Rights of Way Officer

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

Correspondence from objectors and the landowner

Report of site visit on 19 May 2009 by Rights of Way Officers