

REGULATORY COMMITTEE
6th FEBRUARY 2002

STEEPLE ASHTON: PROPOSED DIVERSION
OF FOOTPATH 25

Purpose of Report

1. To seek approval to the making of an Order under Section 119 of the Highways Act 1980 to divert Footpath 25 Steeple Ashton, as shown on the plan attached at **Appendix A**.

Background

2. During regular maintenance work, the Rights of Way Warden observed that the churchyard of St. Mary's Church, Steeple Ashton, had been extended over the line of Footpath 25. The Parochial Church Council was advised that it would be in its interest for the path to be diverted to outside the churchyard.
3. Resolving the issue of the footpath was not pursued until the Autumn of 2001 when the Churchwarden realised that the new churchyard would shortly be required for burials. The Churchwarden was most anxious that burials were not made on the route of the footpath.
4. A site meeting was arranged with the Churchwarden and a representative from the Parish Council to discuss the route of the path.
5. The path could be conveniently diverted to run alongside the new wall of the graveyard and as the diversion is only minor the views from the path would not be affected.

Comments on the Proposal

6. No statutory undertakers' equipment is affected by the proposal.
7. The Parish Council supports the diversion.
8. Mr. R. Cottle of Church Farm, who owns the land over which the new path will cross, does not object to the proposal.
9. No objections have been received from user groups regarding the proposed diversion.

Legal Position

10. Section 119 of the Highways Act 1980 provides for the diversion of footpaths and bridleways:-

"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 the land crossed by the path or way or of the public, it is expedient that the line of the path, or part of that line, should be diverted (whether onto land of the same 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.*

Sub-Section (2) states:-

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

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

Sub-Section (6) states:-

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 paragraphs (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 sub-section (5)(a) above."

Conclusions: Options Considered

11. The path could be left on the legal line. This would necessitate the erection of two fairly high stiles to allow walkers to climb over the new church wall, making the path less convenient for the less physically able members of society to use. The path is well used by local people as it affords good views of the architecturally interesting Manor House and is part of a circular village walk. Enforcement of the legal route would probably not be well supported by the village.
12. If the path were left in its present position it would reduce the area of the graveyard which could be used for burials. Walkers using the path could also potentially feel awkward walking along it whilst mourners were present.
13. Officers are informed that the public already use the proposed alternative.
14. It is in the interests of the owners of the churchyard to regularise the position of the path by a Diversion Order. Therefore, the criteria to make the Order are met.
15. The alternative route does not alter the termination points of the path.
16. Having regard to Section 119(6), Officers believe the Order would be capable of being confirmed as the proposed route is as substantially convenient to the public. The diversion would not affect the public enjoyment of the route, nor other land served by the existing right of way.
17. The Parochial Church Council will pay the County Council's costs for making the Order.

Recommendation

18. That approval be given to the making of an Order under Section 119 of the Highways Act 1980 providing for the diversion of Footpath 25 Steeple Ashton, with a width of 1.5 metres, as shown on **Appendix A** to this report.

Reason for Recommendation

19. To address the potential problems of a footpath running through a churchyard which is shortly to be used for burials. The proposal satisfies the legal criteria permitting a path to be diverted and the proposed route is equally convenient for the public to use.

RICHARD J. LANDER

Director of Environmental Services

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

Correspondence with the Parochial Church Council and other interested parties.

Environmental impact of the Recommendations contained in this Report:

None.