

REGULATORY COMMITTEE
6th MARCH 2002

HAM: PROPOSED DIVERSION OF
FOOTPATH 6

Purpose of Report

1. To seek approval to the making of an Order under Section 119 of the Highways Act 1980 to divert a section of Footpath 6 Ham, as shown on the plan attached at **Appendix 1**.

Background

2. In 1998, Mrs. Phillips of Manor Farm House obtained planning permission to relocate the access to her property. One of the conditions to be complied with, specified by Kennet District Council, was the regrading of the roadside bank between the old and new access ways in the interest of road safety.
3. Footpath 6 passes along the old access way.
4. In association with the works to create the new access way, Mrs. Phillips constructed a wall, three feet high, across the right of way, on which plants are growing. It was not possible to easily climb the wall.
5. Notice was served on Mrs. Phillips to ensure the unblocking of the right of way. The notice was eventually complied with.
6. The path leads from the road via steps made of packing cases, before crossing the front lawn of the farm house.
7. The path could be conveniently diverted to run along the new access way only feet away from its original position.

Comments on the Proposal

8. No Statutory Undertakers' equipment is affected by the proposal.
9. The Parish Council has no objection to the diversion.
10. No objections have been received from User Groups regarding the proposed diversion.

Legal Position

11. 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

12. The path could be left on the legal line. As the path now has steps, it is less convenient for the more infirm or elderly user. Officers understand the path is used by the older dog walkers in the village who prefer to walk along the surfaced drive.
13. The legal line passes very close to the house and potentially users could feel awkward walking across the front lawn, possibly invading the privacy of the householder.
14. Officers are informed that the public has already begun to use the proposed alternative.
15. It is in the interests of the owner of the property to divert the path. Therefore, the criteria required to make the Order are met.
16. The alternative route does not alter the termination points of the path.
17. 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.
18. The landowner will pay the County Council's costs for making the Order.

Recommendation

19. That approval be given to the making of an Order under Section 119 of the Highways Act 1980 providing for the diversion of Footpath 6 Ham, with a width of 1.5 metres, as shown on **Appendix 1** to this report.

Reason for Recommendation

20. To divert the path in the interests of the landowner onto a line as substantially convenient to the public. The proposal satisfies the legal criteria permitting a path to be diverted.

RICHARD J. LANDER

Director of Environmental Services

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

Correspondence with the landowner and other interested parties.

Environmental impact of the Recommendations contained in this Report:

None.