

REGULATORY COMMITTEE
9th OCTOBER 2002

**NETTLETON: PROPOSED DIVERSION OF FOOTPATH 49
AND STOPPING UP OF PART OF FOOTPATH 16**

Purpose of Report

1. To seek approval for an application to the Magistrates' Court for an Order under Section 116 of the Highways Act 1980 to divert Footpath 49 and stop up part of Footpath 16, Nettleton.

Background

2. The property the subject of this proposal is known as The Barn, West Kington Wick, Nettleton, and is owned by Mr. and Mrs. S. Chapman. It was acquired as an agricultural barn with planning permission to convert to a dwelling in 1998.
3. The front garden of the property effectively now has three public footpath routes over it, in very close proximity. The routes are shown on the attached plan (**Appendix 1**) as follows:-

(i) **B-C (solid line)**

The route of public footpath 16 as originally recorded in the Definitive Map in 1952 and shown on this route in error.

(ii) **B-A (solid line)**

The true route of the public footpath, being the actual historical, used route, and subject of a successful claim under Section 53 of the Wildlife and Countryside Act 1981. This route has also therefore now been added to the Definitive Map as public footpath 49, Nettleton.

(c) **B-C (broken line)**

A route provided as a headland diversion, along and inside the property boundary, with access onto the highway at point A through a newly provided wooden gate.

Legal position

4. Section 116 of the Highways Act 1980 provides for the stopping up or diversion of highways:-

"(1) Subject to the provisions of this section, if it appears to a Magistrates' Court, after a view, if the Court thinks fit, by any two or more of the Justices composing the Court, that a highway (other than a trunk road or a special road) as respects which the highway authority have made an application under this section:

- (a) is unnecessary or
- (b) can be diverted so as to make it nearer or more commodious to the public;

the Court may by order authorise it to be stopped up or, as the case may be, to be so diverted."

"(3) If an authority propose to make an application under this section for an order relating to any highway (other than a classified road) they shall give notice of the proposal to:

- (a) if the highway is in a non-metropolitan district, the council of that district; and
- (b) if the highway is in England, the council of the parish (if any) in which the highway is situated or, if the parish does not have a separate parish council, to the chairman of the parish meeting; and
- (c) if the highway is in Wales, the council (if any) of the community in which the highway is situated;

and the application shall not be made if within two months from the date of service of the notice by the authority notice is given to the authority by the district council or by the parish or community council or, as the case may be, by the chairman of the parish meeting that the council or meeting have refused to consent to the making of the application."

5. Sub-section 5 states:

"(5) An application or order under this section may include two or more highways which are connected with each other."

Proposal

6. That the Authority makes an application to the Magistrates' Court, pursuant to Section 116 of the Highways Act 1980, to achieve the following:-
- (i) The extinguishment of the route shown with a solid line B-C on **Appendix 1** on the grounds that it is unnecessary for public use (Section 116(1)(a)). This section of footpath has never actually existed on the ground and was shown in error in this position on the Definitive Map.
 - (ii) The diversion of the route shown with a solid line B-A on **Appendix 1** onto the route shown with a broken line B-C, on the grounds that the alternative route is more commodious to the public (Section 116(1)(b)). It is considered that the small diversion required would put the route onto a sensible line, as a headland path, along and inside the property boundary. This better defined route is much more likely to be used by the public without the fear, trepidation or embarrassment of having to walk through the middle of someone's garden or straying off the route and committing trespass.

Reasons for Proposal

7. The end result can be achieved by using Section 116 in the following manner:-
- (i) The stopping up and diversion can proceed as the requirements can be met (paragraph 4 (1)).
 - (ii) Consent for the proposals has been received as required by both the District and Parish Councils (paragraph 4 (3)).
 - (iii) Both the diversion and stopping up can be accommodated in the one Order or application (paragraph 5).
8. In addition to the District and Parish Council consents, a full consultation exercise has been carried out and no objections have been received to the proposals.

RICHARD J. LANDER

Director of Environmental Services

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

Correspondence with Parish and District Councils

Environmental impact of the Recommendation contained in this Report:

None