

**BRINKWORTH: PROPOSED DIVERSION OF PART OF
PUBLIC FOOTPATHS 43 AND 44**

Purpose of Report

1. To seek approval to the making of an Order under Section 119 of the Highways Act, 1980 to divert part of public footpaths 43 and 44, Brinkworth.

Background

2. Some years ago a temporary diversion was agreed, on the line now the subject of the proposed order, to cater for property boundary realignment and additional woodland planting in the vicinity. The route is shown as a broken line on the attached plan (**Appendix 1**).
3. The newly provided route has been readily accepted by the public, without any objection, and with no requirement to use the original definitive lines.
4. Further improvements to the diversion route have now been completed, comprising of widening between points E and F to a minimum of 2 metres and the replacement of two stiles with self-closing wooden gates. Other stiles not considered necessary have been removed entirely.
5. The proposed new route is a cross-field path between A and E, a headland path between E and C and fenced both sides with rustic post and rail between E and F.

Main Considerations for the Council

6. The diversion is proposed under Section 119 of the Highways Act, 1980. Sub Section (1) sets out the requirement for making such an Order:

“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 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.....”

7. Sub Section (6) sets out the requirements to confirm such 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 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

8. Proposed diversions of rights of way are covered by the Authorities Policy No. 14.

"The County Council will, in view of the limited resources available, no longer consider applications for diversion/extinguishment of public rights of way unless there are exceptional circumstances for which prior Committee approval is required."

Environmental Impact of the Proposal

9. None.

Risk Assessment

10. There is a three wooden sleeper bridge giving access to the way, over a ditch at point F. However, all stiles have been replaced with gates or eliminated.

Financial Implications

11. None, all the Authority's costs in the matter have been agreed to be paid by the applicant.

Options Considered

12. (a) Enforce re-provision of the original definitive lines of the paths.
- (b) Allow the current situation to continue.
- (c) Make an Order.

Reasons for Recommendation

13. It is considered that it is appropriate to make a diversion order at this time for the following reasons:
- (i) It is in the interest of the landowners as set out in Paragraph 6.
 - (ii) The diversion route meets the requirements for confirmation as set out in Paragraph 7.
 - (iii) It is considered there are “exceptional circumstances”, as required in Paragraph 8:
 - (a) The diversion route is accepted and used by the public at large.
 - (b) It has been constructed to a good standard with no stiles and generous width.
 - (c) A full public consultation exercise has been carried out, including Parish and District Councils, Public Utilities and User Groups both statutory and non-statutory and no objections have been received.
 - (d) The provided and used route will be fully legally available if the Order is confirmed and the Definitive Map can be altered accordingly to record this and will unencumber land crossed by the existing routes.
 - (e) All the Authority’s costs to be paid by the landowner.

Recommendation

14. That an Order be made under Section 119 of the Highway Act, 1980, diverting parts of public footpaths 43 and 44, Brinkworth on to the routes shown as broken lines on **Appendix 1**.

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

None