

PROPOSED DIVERSION OF REDLYNCH FOOTPATH 17

Purpose of Report

1. To:
 - (i) Consider and comment on the objection received to an Order, made under Section 119 of the Highways Act 1980, proposing to divert a section of Redlynch Footpath 17.
 - (ii) Recommend that the Order be forwarded to the Secretary of State for the Environment, Food and Rural Affairs.

The proposed diversion is shown on the plan attached at **Appendix A**.

Background

2. An application was made on 14 July 2008, by Robert Andrews, to divert part of Footpath 17 Redlynch. Mr. Andrews owned the land over which both the existing path and his proposed new route pass. On his application form he gave the following reasons for the application and the benefit to both himself and the public:

“The application is to follow the edge of the land and not go straight across it, as it currently is. The advantages to users is the reduction of a stile and the introduction of a kissing gate, also the new proposed route will be fenced off from any livestock.”

3. Officers had a meeting on site with the applicant and they came to the agreement that the width of the new path would be 3 metres compared to the usual 2 metres as the path was going to be fenced on both sides.
4. An initial consultation was undertaken in August 2009 and no adverse comments were made to the proposal.
5. The ownership of the land changed in late August, early September 2009 and the new landowner, Mr. Richard Budworth, confirmed his desire to take over with the application. Mr. Budworth has, after discussion with the author of this report, indicated he would prefer no stiles or kissing gate on the proposed alternative route for the path, put for it to be open and easy to access for all users. There is a hedge running parallel to the existing line of the footpath, shown by a solid black line marked A-B on the plan attached at **Appendix A**. It is Mr. Budworth's intention to remove this hedge line.
6. On 1 October 2009 an Order was made providing for the diversion of part of Footpath 17, in accordance with the application. The alternative path has a width of 3 metres.

7. One objection was received to the making of the Order from Mr. A.P. Spires, a resident of Redlynch. Mr. Spires stated in an e-mail dated 13 November, 2009:

“I strongly believe that as soon as this path is enclosed, it may become unsafe – it will certainly be unpleasant. I can assure you this path is used daily and quite often at night as it forms the best link between Bohemia and Lover.”

Mr. Spires believes maintenance of paths around this area is already very poor and a 3 metre wide path will not provide any advantages in this regard. He also feels that the advantages of removing two stiles is “countered by the prospect of walking a further 50 metres along a dull corridor”.

Main Considerations for the Council

8. Wiltshire Council has the power to make Orders to divert public paths under Section 119 of the Highways Act 1980. The Order may be made in the interest of the landowner but can only be confirmed if the new path or way will not be substantially less convenient to the public, having regard to the effect of the diversion on the public enjoyment of the path or way as a whole.
9. The Council has received an objection to the proposed Order and Members have to decide whether they still wish to support the Order or formally resolve not to proceed with it.
10. Section 119(1) of the Highways Act 1980 states that:

“Where it appears to a Council as respects a footpath, bridleway or restricted byway 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 (whether on to land of the same or of another owner, lessee or occupier), the Council may, subject to subsection (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, bridleway or restricted byway as appears to the council requisite for effecting the diversion, and*
- (b) *extinguish, as from such date as may be [specified in the order or determined] in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the Council requisite as aforesaid.*

An Order under this section is referred to in this Act as a “public path diversion order”.

11. Section 119(2) of the Highways Act 1980 states:

“A public path diversion order shall not alter a point of termination of the path or way:

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

12. The Committee must now consider the second test under Section 119(6) which must be met at the Order confirmation stage.

“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.*

13. The Council has to have regard to The Disabilities Discrimination Act 1995. Section 21 of this Act states:

(1) Where a provider of services has a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which he provides, or is prepared to provide, to other members of the public, it is his duty to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to change that practice, policy or procedure so that it no longer has that effect.

(2) Where a physical feature (for example, one arising from the design or construction of a building or the approach or access to premises) makes it impossible or unreasonably difficult for disabled persons to make use of such a service, it is the duty of the provider of that service to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to:

- (a) remove the feature;*
- (b) alter it so that it no longer has that effect;*
- (c) provide a reasonable means of avoiding the feature; or*
- (d) provide a reasonable alternative method of making the service in question available to disabled persons.*

14. The author of the report notes that an existing stile at Point A is to be replaced with a “kissing gate”. The stile at Point B is to be removed altogether. Since the alternative footpath is to be enclosed from the adjoining field, officers do not now feel, having regard to Section 21 of the Disabilities Discrimination Act 1995, that a “kissing gate” is required at Point A. A gap in the fence line will ease access for users.

15. Turning again to Section 119(6) officers consider that the alternative route will not be substantially less convenient to the public, taking into account public enjoyment on the path as a whole. The proposed alternative route is only 50 metres longer and will have a generous width of 3 metres. A 3 metre width will not create a tunnel effect and officers do not feel that public enjoyment of the whole path would be detrimentally affected by the diversion. A wide fenced path could give surety to blind or partially sighted persons wishing to use the way. The fence and proposed route would also separate users from potential conflict with any animals which may be in the enclosure.

Environmental Impact of the Recommendation

16. There are no significant environmental implications arising from the recommendations set out within this report.

Risk Assessment

17. There are no risks arising from the recommendation set out within this report.

Financial Implications

18. The making of a public path diversion Order is a discretionary duty for the Highway Authority rather than a statutory duty. Provision has been made within existing budgets for the costs involved in processing the application, including advertising costs.
19. The proposed new path is already in use and has been constructed by the landowner at his own expense to a standard that is already acceptable to the Council as Highway Authority. The new path will, however, need to be formally certified by the Council as acceptable. Officers do not expect that there will be any significant additional expense to the Council in providing the new path.
20. Mr. Budworth has confirmed that he is the only landowner affected by the proposals, therefore, no compensation costs or expenses are envisaged.
21. If the Committee decides to refer the Order to the Secretary of State with the request that it should be confirmed, the Secretary of State must decide the most appropriate method of reaching his decision. In cases where there are few objections to an Order and these are of a relatively straightforward nature, it is often appropriate to make the decision after an exchange of written representations or by means of a Hearing. Provision has been made within existing budgets to cover this.

Options Considered

22. The following options have been considered:
 - (i) Not to continue with the Order.
 - (ii) That the Order be referred to the Secretary of State for determination with the recommendation that it be confirmed, subject to the deletion of the reference in the Schedule to the Order to the "kissing gate" at SU2079419717.

Reasons for Recommendation

23. The proposed diversion meets the test contained in Section 119 of the Highways Act 1980.

Recommendation

24. That:

- (i) The Committee resolve not to continue with the Order,or
- (ii) The Order be referred to the Secretary of State for determination with the recommendation that it be confirmed subject to the deletion of the reference in the Schedule to the Order to the “kissing gate” at SU20794197.

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

None