

Bath & North East Somerset Council

MEETING:	Regulatory (Access) Committee	
MEETING DATE:	27 th July 2010	AGENDA ITEM NUMBER
TITLE:	Abbotts Barn Farm, Hinton Blewett	
WARD:	Mendip	
List of attachments to this report:		
Appendix 1 – Order and Order Map		
Appendix 2 – Objections received against Order		
Appendix 3 – Map of surrounding area		
Appendix 4 – Photographs		
Appendix 5 – Decision Risk Assessment		
Appendix 6 – Equalities Impact Assessment		

1 THE ISSUE

- 1.1 To consider objections received against the Bath and North East Somerset Council (Public Footpath CL12/9 (part), Abbotts Barn Farm, Hinton Blewett) Public Path Diversion Order 2010 (“the Order”) (see **Appendix 1**) and to decide whether to abandon the Order or to send it, along with objections received, to the Secretary of State (“the SoS”) for determination.

2 RECOMMENDATION

- 2.1 The officer recommendation is that the Regulatory (Access) Committee (“the Committee”) formally resolve to submit the Order, along with objections received, to the SoS for determination.

3 FINANCIAL IMPLICATIONS

- 3.1 The Applicant has paid Bath and North East Somerset Council’s (“the Council”) standard administration charge of £800 for the making of the Order and the cost of advertising the making of the Order in the Chew Valley Gazette. The Applicant must cover the costs of any subsequent newspaper adverts and also the cost of bringing the new route of the path into a condition suitable for public use, if the Order is confirmed.

- 3.2 If the Committee decides to send the matter to the SoS for determination, then the Council would have to meet the costs of preparation for any public inquiry, hearing or written representations that subsequently take place. The Council will also have to cover the cost of providing the location for any public inquiry or hearing.

4 HUMAN RIGHTS IMPLICATION

- 4.1 The Human Rights Act incorporates the rights and freedoms set out in the European Convention on Human Rights into UK law. So far as it is possible, all legislation must be interpreted so as to be compatible with the convention.
- 4.2 The Committee is required to consider the proposals in accordance with the principle of proportionality. The Committee will need to consider the protection of individual rights and the interests of the community at large.
- 4.3 In particular, the convention rights which should be taken into account in relation to this application are Article 1 of the First Protocol (protection of property), Article 6 (the right to a fair hearing) and Article 8 (right to respect for family and private life).

5 THE LEGAL BACKGROUND

- 5.1 The Council has a discretionary power with regard to Public Path Orders under section 119 of the Highways Act 1980 ("the Act"). On 6th April 2010, the Committee resolved to authorise the making of a Public Path Diversion Order.
- 5.2 As objections have been duly made and sustained, the Council may not confirm the Order. The Council should therefore:
- a) make a formal resolution not to proceed with the Order,
 - or
 - b) send the Order, together with the objections, to the SoS for determination.
- 5.3 Before Confirming an Order the SoS must be satisfied that;
- the diversion is expedient in the interests of the person(s) stated in the Order (in this case the landowner),
 - the point of termination of the path is not altered other than to another point on the same highway, or a highway connecting with it, and which is substantially as convenient to the public.
 - the path will not be substantially less convenient to the public as a consequence of the diversion,
 - due regard has been given to the effect the diversion will have on public enjoyment of the path as a whole,
 - due regard has been given to the effect of the diversion on other land served by the existing path and on land affected by any proposed new path, taking into account the provision for compensation,

- due regard has been given to farming, forestry and the keeping and breeding of horses, as well as the Council's wider responsibilities to consider biodiversity and the needs of those with disabilities.

6 PPO POLICY

6.1 In addition to the legislative considerations detailed in section 5 above, the Order should also be considered in relation to the Council's adopted Public Path Order Policy. The Policy sets out the criteria against which the Council will assess any Public Path Order, these expand on and are in addition to the tests set out in the legislation. The criteria are:

- Connectivity
- Equalities Impact
- Gaps and Gates
- Gradients
- Maintenance
- Safety
- Status
- Width
- Features of Interest

6.2 The Policy stresses that the Council will seek to take a balanced view of the proposals against all the criteria as a whole.

6.3 The proposals should also be considered in relation to the Joint Rights of Way Improvement Plan 2007 – 2011.

7 LEGISLATIVE CONSIDERATIONS

7.1 Three objections were received against the Order and these can be read in full at **Appendix 2**. The points raised in the objections are considered, along with a wider assessment of the Order's compliance with the legislative tests and the PPO Policy criteria, below.

7.2 The general effect of the Order is to divert the section of public footpath CL12/9 which runs between points A and D, and which is delineated by a solid black line on the Order Map at **Appendix 1** ("the Existing Footpath"), onto a new line running between points A, B, C and D, and which is delineated by a broken black line on the Order Map at **Appendix 1** ("the Proposed Footpath"). The Existing Footpath is obstructed by a hedge and fence and members of the public are currently using the Proposed Footpath instead; it should be noted that members of the public have previously used a permissive route which followed a line which ran somewhere between the Existing and Proposed Footpaths. A map showing public footpath CL12/9 in relation to the wider public rights of way network is attached at **Appendix 3** and photographs of the Existing and Proposed Footpaths are attached at **Appendix 4**.

- 7.3 **Expediency.** The Order has been made in the interests of the owner of the land over which the Existing and Proposed Footpaths run (“the Landowner”) and it must therefore be shown to be expedient in their interests for the path to be diverted. It should be noted at this point that the Existing Footpath runs over a driveway and through the garden of Abbott’s Barn Farm.
- 7.4 In the application form, the Landowner states that the reason for seeking the diversion of the footpath is; *“To afford a level of privacy to property as currently ramblers/dog walkers follow the fence line close to the property. Also dog walkers cause a nuisance to our dog, quite often letting their dog off leads to run in our field. We would therefore like to move the footpath a little further away from our house”*. The Existing Footpath runs through the garden of Abbott’s Barn Farm and passes approximately 15 metres from the residential dwelling. The diversion would take the footpath outside of the garden and mean that the footpath passes 35 metres away from the house at the nearest point that one is visible from the other.
- 7.5 Additionally, the Existing Footpath runs immediately adjacent to a swimming pool which has been recently constructed. Diversion of the public right of way would mean that the Landowner could construct a wall around the swimming pool to further improve privacy; without prior diversion of the Existing Footpath the wall would constitute an unlawful obstruction.
- 7.6 Objector 2 (John Ives on behalf of the Open Spaces Society) states that; *“As regards the issue of privacy there are contrasting views on which I would be quite happy to put (to) an Inspector”*. The Objector has not expanded on this point or detailed why the Order would not be in the interests of the Landowner.
- 7.7 Objector 3 (Mrs R Walker on behalf of the Hinton Blewett History Group) states that; *“The distance of this path from the house is still sufficient not to pose a privacy issue. However, the applicant chose to locate a swimming pool alongside the path.”* As stated above the footpath passes within 15 metres of the house and runs through the middle of the property’s garden; the location of the Existing Footpath does therefore appear to constitute a privacy issue. Diverting the Existing Footpath away from the swimming pool would be in the interests of the Landowner irrespective of when it was built and this is the legislative test under consideration.
- 7.8 Having given full consideration to the objections, the Order appears to be in the interests of the Landowner and this test should therefore be considered to have been met.
- 7.9 **Point of Termination.** The Order would not alter the current points of termination and this test should therefore be considered to have been met; no objections were received on this point.
- 7.10 **Convenience.** The Order would increase the distance which users would have to walk by approximately 17 metres; this represents a 17% increase on the current section of footpath which is approximately 100 metres long.
- 7.11 The nature and location of the footpath within the wider rights of way network is such that the majority of users are likely to be using the path as part of a longer recreational walk rather than as a means of getting from one point to another. The 17 metre increase in the length of their walk is therefore likely to represent a much smaller percentage increase in their overall walk.

- 7.12 The diversion is not 'substantially less convenient' for the public and this test is considered to have been met; no objections were received on this point.
- 7.13 **Enjoyment.** The proposed diversion would take the footpath no more than 19 metres away from the existing legal route. The Proposed Footpath enjoys substantially the same terrain, and views across the countryside to the east, as the Existing Footpath.
- 7.14 Objector 1 (Nigel Scutt on behalf of Hinton Blewett Parish Council) states that; *"...one of the pleasurable perceptions of walking a path derives from knowing that it has about it an element of history; that it has been trodden by many generations of ancestors or others from a particular community; that it has been the public's 'desire-line' for centuries through being the shortest or most natural route between two points; that it is part of a nexus of paths put in place through usage many years ago."*
- 7.15 The Existing Footpath, which formally ran through a field, now runs over a driveway and through the garden of Abbott's Barn Farm. Consequently the Proposed Footpath, which runs through a field, would appear to share more physical characteristics with the historic nature of the path than the Existing Footpath. If diverting this footpath from its historic alignment could be held to be unduly impinging upon the public's enjoyment of the way then almost all public right of way would be incapable of being diverted and this is clearly not the intention of section 119 of the Act.
- 7.16 The Proposed Footpath deviates from the Existing Route by no more than 19 metres and any perceived loss of enjoyment as a result of not walking the historic line of the footpath is not considered to be so great as to justify not diverting the footpath; this test is therefore considered to have been met.
- 7.17 **Affected Land.** The Order is not considered to have an adverse affect on the land onto which the footpath is proposed to be diverted and the Existing Footpath does not provide the sole or primary means of access to any parcels of land. This test is therefore considered to have been met and no objections were received on this point.
- 7.18 **Other legislative considerations.** In considering the merits of the Order, the Council must give due regard to the effect on farming, forestry and the keeping and breeding of horses. The Landowner has confirmed that the diversion would not adversely affect farming operations and that the land is not currently used for forestry or the keeping and breeding of horses.
- 7.19 None of the land affected by the proposals is subject to a particular biodiversity designation and the diversion is not likely to adversely affect biodiversity.
- 7.20 The Existing and Proposed Footpaths follow routes which are largely comparable in terms of terrain and navigability for the visually impaired; the diversion is likely to have a neutral effect on members of the public with disabilities.
- 7.21 These considerations do not provide grounds that suggest the Order should not be confirmed and no objections were received on these points.

- 7.22 Objector 1 states that; *“...the authority should weigh our view properly in the balance, which it has not done: instead, it has written our view off on the basis that, since the view can be taken that statutory criteria can be said to have been met and that the effect on public enjoyment is not (in the view of the authority when they do not have the benefit of the view of the Parish Council) significant, there is not scope whatsoever for entertaining the view that the order should not be made, even when it is the Parish Council which articulates that view.”*
- 7.23 Section 119(6) of the Act states that; *“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 cases may be, they are satisfied that...”* the tests detailed in paragraph 5.3 above have been met. The SoS and the Council must give full consideration to any objections or representations received in relation to the Order but ultimately it is for the SoS and the Council to be satisfied that the tests have been met. This is consistent with the judgement in *R (Hargrave and Hargrave) v Stroud District Council (CA) [2002] EWCA Civ 1281* (“the Hargrave Case”) to which Objector 1 refers.
- 7.24 **Other common law considerations.** Objector 1 states that the Council; *“...has unreasonably fettered itself by setting its mind against the views of the Parish Council”* and refers to the Hargrave Case in this respect.
- 7.25 The judgement in the Hargrave Case states that an Authority must not fetter its discretion. At the meeting on 6th April 2010, the Committee considered all of the evidence and representations received in relation to the proposed diversion. Objector 1’s objection to the initial proposals were reproduced in full and considered in the report to the Committee. Having considered the objection and all other factors, the Committee considered that all legislative tests and policy considerations had been met and that an Order should be made. The Committee’s resolution stated that if objections were made to the Order then it should be referred back to the Committee. In doing so the Council is looking afresh at the proposed diversion and has not therefore fettered its discretion.
- 7.26 Objector 3 states that; *“One can learn a lot about the history of a settlement from the alignment of footpaths within the local network of routeways. Abbots Barn (farm) is a well documented, historical property that was associated with Keynsham Abbey which was founded in the 12th century...By highlighting the historical issues that concern the History Group it is hoped that the committee will appreciate the heritage importance of the path when making their decision.”*
- 7.27 If the Existing Footpath was diverted, the Definitive Map and Statement and the Order itself would provide a historical record of the original alignment of the footpath if it was required for historical research as suggested by Objector 3.

8 POLICY CONSIDERATIONS

- 8.1 The Public Path Order Policy expands on, and is in addition to, the tests set out in the legislation; therefore some of the policy criteria have already been considered in section 7 above.

- 8.2 **Gaps and Gates.** The proposals do not contain any limitations on the Proposed Footpath, however two gates which are already in situ would be authorised to control the egress and ingress of livestock; these conform to the principle of 'least restrictive access'.
- 8.3 **Other policy considerations.** The proposals would have a neutral affect on the connectivity of the rights of way network, equalities considerations, gradient of the path, maintenance liability, public safety, status and width of the right of way or access to features of interest on the public footpath.
- 8.4 The proposals are therefore considered to have met the criteria set out in the Council's Public Path Order Policy and no objections were received on these points.

9 RISK MANAGEMENT

- 9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance, and is attached at **Appendix 5**.

10 EQUALITIES

- 10.1 An equalities impact assessment has been carried out in relation to these proposals and is attached at **Appendix 6**.

11 CONSULTATION

- 11.1 Ward Councillor; Parish Council; Service Users; National and Local User Groups; Local Residents; Affected Landowners; Statutory Undertakers.
- 11.2 Notices were erected and maintained on site and posted on the Council website for 28 days, as required by the legislation.
- 11.3 As stated above, 3 objections were received against the Order and these are reproduced at **Appendix 2**.

12 ISSUES TO CONSIDER IN REACHING THE DECISION

- 12.1 Customer Focus; Sustainability; Property; Human Rights; Health & Safety.

13 ADVICE SOUGHT

- 13.1 The Council's Monitoring Officer (Council Solicitor) and Section 151 Officer (Strategic Director - Support Services) have had the opportunity to input to this report and have cleared it for publication.

14 CONCLUSIONS

- 14.1 The Order meets the legislative tests and policy considerations and the objections do not provide grounds for abandoning the Order.
- 14.2 It is therefore recommended that the Committee formally resolve to send the Order, along with objections received, to the SoS for determination.

Contact person	Graeme Stark
Background papers	Public Path Order File (held by PROW team 01225 477650). Public Path Order Policy Joint Rights of Way Improvement Plan 2007 – 2011 Bath & North East Somerset Council Corporate Plan 2008-2011
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