

**WYRE FOREST DISTRICT COUNCIL**

**PLANNING (DEVELOPMENT CONTROL) COMMITTEE 14 May 2009**

**APPLICATION FOR FOOTPATH DIVERSION ORDER – FOOTPATH 569(Part)(BEWDLEY) AT THE OUTLOOK, CLEOBURY ROAD, BEWDLEY**

<b>OPEN</b>	
<b>RESPONSIBLE OFFICER:</b>	<b>Director of Legal &amp; Corporate Services</b>
<b>CONTACT OFFICER</b>	<b>Sandra Clifford Ext. 2710</b>
<b>APPENDICES:</b>	<b>Appendix 1 Diversion Order Appendix 2 Plan</b>

**1. PURPOSE OF REPORT**

- 1.1 To seek approval to an application for a Footpath Diversion Order under Section 119 of the Highways Act 1980 and to authorise the Director of Legal and Corporate Services to make such Order.

**2. RECOMMENDATION**

- 2.1 **Authority be delegated to the Director of Legal and Corporate Services to take such steps as are necessary to make and (if unopposed) confirm a Footpath Diversion Order in relation to Footpath 569(part)(Bewdley) at The Outlook, Cleobury Road, Bewdley.**

**3. BACKGROUND**

- 3.1 Details of and the reasons for the application is given as follows:

- 3.1.1 An application was received from Mr and Mrs Paul Boni for Footpath 569(part) for a Diversion Order, pursuant to Section 119 of the Highways Act 1980. The Council has the power to determine such applications where it appears “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”.

- 3.2 The reasons for the application have been given as:-

- 3.2.1 The Applicants purchased the property, “The Outlook”, approximately 12 years ago. Their predecessors had owned the property for about 8 years. Neither the applicants nor their predecessors knew of the existence of the footpath (notwithstanding the usual searches having been completed) until it was brought to their attention by the County Council’s Countryside Access Enforcement Officer after a complaint. Prior to that no complaint had been made to the Applicants or, as far as they were aware, to their predecessors.

- 3.2.2 The Applicants are aware that the public have for many years used the route which is the requested diversion route. This route is convenient for walkers as it avoids crossing residential property and generally follows a field boundary which is always going to be much more accessible than a patch across a residential

curtilage which is bound to be tightly defined, will have gates/stiles and is generally less attractive than “open country” alternative.

- 3.2.3 The diversion applied for has already been accepted by the public as the route and has been maintained as such for many years. This application therefore merely requests regularisation.
- 3.2.4 The diverted route of the footpath crosses land not in the ownership of the Applicants. The owners of that land have consented to the diversion order being made.
- 3.3 The Plan attached shows the location of the existing footpath route by a black line between the points marked A and B.
- 3.4 The Plan attached shows the proposed diversion by a broken black line from point C to Point B. The diverted footpath rejoins the existing route at Point B.

**4. KEY ISSUES**

- 4.1 Initial consultation with all parties has already been undertaken. The Ramblers Association have indicated that they would “not be inclined to make an objection to legalise the situation which now exists in practice”. The County Council has also confirmed that it has no objection to the proposal

**5. FINANCIAL IMPLICATIONS**

- 5.1 The applicant has signed an agreement to indemnify the Council against all costs that may be incurred by it in full, as follows:
  - (i) Any compensation which may be payable in consequence of the coming into operation of the Order.
  - (ii) Any expenses which may become recoverable from the Council in consequence of the coming into operation of the Order.
  - (iii) The cost of any works, including removal or repositioning of any statutory undertakers apparatus in, on or under the highways to be diverted, necessary in consequence of the coming into operation of the Order, including reinstatement of the original path if temporarily diverted and,
  - (iv) the cost incurred by the Council (whether or not the Order is confirmed) in processing the application, making the Order, consulting the relevant bodies and in publishing statutory notices in connection with the Order.
- 5.2 There will be no financial implications for the Council in dealing with this application.

**6. LEGAL AND POLICY IMPLICATIONS**

- 6.1 Section 119 of the Town and Country Planning Act 1990 empowers the Council to make an Order authorising the diversion of a footpath, as mentioned above.
- 6.2 A series of protections exist for members of the public – the statute contains an obligation on the Council to advertise the diversion at several stages of the procedure, to consult with statutory bodies and others, and the public have an opportunity to object to any such diversion or stopping up. Ultimately (if there is an objection which is not withdrawn) the Order can be referred to the Secretary of State for a decision.

**7. RISK MANAGEMENT**

There are no risk management issues arising from this report.

**8. CONCLUSION**

- 8.1 that the Council will not be burdened with the cost of making the Diversion Order.
- 8.2 that the Committee resolve that the Director of Legal and Corporate Services make an Order and confirm the Order if it is unopposed.

**9 CONSULTEES**

- 9.1 Head of Planning Health and Environment

**10. BACKGROUND PAPERS**

- 10.1 Copy draft Order relating to the proposed Order