

Highways Committee

14 June 2007

Public Footpath No 9
Mickleton Parish



Proposed Public Path
Diversion Order

Report of John Richardson, Corporate Director, Environment

1.0 Purpose of Report

1.1 To re-consider an application to divert part of Footpath 9 Mickleton.

2.0 Background

- 2.1 On 21 June 2005 the Highways Committee agreed for an Order to be made to divert part of the Footpath 9, Mickleton (copies of all relevant papers are attached). An application had been made by the landowners, Mr and Mrs Mitcalf of Cote House Farm, Mickleton. The Committee considered the application as there was an outstanding objection from Miss J Bird of the Open Spaces Society.
- 2.2 An Order was made on 3 November 2005 and Miss Bird sustained her objection. Legislation requires that in such cases the County Council must send the Order to the Secretary of State for the Environment, Food and Rural Affairs for confirmation. The Secretary of State will then appoint an independent inspector to make a decision on his/her behalf.
- 2.3 The appointed inspector considered the matter by means of a written exchange of correspondence. Her decision was to not confirm the Order due to a technical error in the map which accompanied the Order. However, she did accept the diversion met the salient points relating to all the other relevant statutory tests.
- 2.4 The technical error on the original Order plan arose because the route of Footpath 9 Mickleton crosses two Definitive Map sheets and the line of the path as drawn on the separate sheets does not join up where they meet. The location map at **Document A** illustrates this. The plan contained with the 2005 Order (**Document B**) endeavoured to make sense of this anomaly by joining the paths and as a result inadvertently made a slight realignment of the path on the eastern sheet. The inspector decided that this meant, with respect to the eastern sheet of the Definitive Map, the Order did not result in the definitive route being stopped up.

- 2.5 The applicants still wish to pursue the proposal and Miss Bird has indicated that she would still object despite the substance of the Inspector's decision. The District and Parish Council have been re-consulted and the Parish Council has stated that it continues to support the proposal.
- 2.6 The proposed diversion substantially follows the line of the original request but has been modified slightly to take account of the need to link with the remaining section of Footpath 9 which will not be diverted (see **Document C**). The grounds for making a Diversion Order also remain the same in that the owners wish to move the path away from the farmyard and surrounding buildings which they regularly use as a holding area for cattle and sheep. The footpath also crosses a hay meadow which would benefit from the path being diverted.

3.0 Legal Framework

- 3.1 The relevant statutory provision for the diversion of a public path is Section 119 of the Highways Act 1980. A Diversion Order can be made by the Council if it appears it is expedient to do so in the interests of the owner/occupier of land or in the interests of the public, or both. In this case the Order would be in the interests of the landowners.
- 3.2 The Council must also be satisfied in making a Diversion Order that the ends of the diverted path are on the same or a connected highway and are substantially as convenient to the public.
- 3.3 The Council also has a duty to have due regard to the needs of agriculture, forestry and the desirability of conserving flora, fauna and geological and physiographical features.
- 3.4 Before an Order is confirmed, the Council or Secretary of State must, in addition to considering the above criteria, also be satisfied that the path will not be substantially less convenient to the public as a result of the diversion and that confirmation is expedient having regard to the effect of the diversion on public enjoyment of the path as a whole, and on land crossed by the existing path or to be crossed by the new one.
- 3.5 The confirming authority should also have regard to any material provisions of any Rights of Way Improvement Plan. A Rights of Way Improvement Plan has not yet been prepared which would affect the land crossed by Footpath 9, Mickleton.
- 3.6 The briefing note in **Document D** describes the statutory framework.

4.0 Objections

- 4.1 The Open Spaces Society's (OSS) representative has not yet provided any written details concerning her continued objection to the proposed diversion. However she originally objected on the ground that a large part of the diverted route involves crossing a low lying area prone to waterlogging. The objector also submitted that it would be less enjoyable than the present route. She further stated that in following the present route, stepping stones have been placed across the beck at a higher point in the second field thus facilitating the use of this route and similar but larger stones could be placed on the south side of the stile leading from the farmyard to remedy any problem there with running water.
- 4.2 The correspondence from the OSS during the course of written representations to the Inspector also emphasised there was little evidence that the farmyard area has been regularly used as a holding area for cattle and sheep and the author had gained the impression that the buildings may be renovated in the future.

Response

- 4.3 *This remains substantially the same as that for the original application in that it is submitted the two fields crossed by Footpath 9 which are the subject of this diversion are on a hillside running up behind the farmyard and consist of rough pasture land with a syke flowing off the hillside following the contours of the land. This creates a boggy waterlogged terrain in certain areas and it is felt that the proposed route is no more waterlogged or difficult to walk than the current line of Footpath 9.*
- 4.4 *Indeed the proposed route takes the walker away from a very wet area in the first enclosure to the south of Kirk View. In the second field, the syke is more clearly discernible due to the contours of the land and soft rushes growing along its course. This has to be crossed whatever route is taken and it is not apparent that the proposed route is more boggy. Given the nature of the terrain, it is also difficult to see how most walkers would find the stones noted by the objector.*
- 4.5 *The applicants have always stated that buildings at Kirk View and land directly abutting are used on a regular basis for holding stock.*

5.0 Conclusions

- 5.1 The Committee must decide whether it appears that, in the interests of the landowner, the public or both, it is expedient that the line of Footpath 9, Mickleton be diverted.

- 5.2 The owners have stated they use the farmyard to hold high densities of stock on a regular basis and that the path should be diverted to secure the safe management of stock being held in the area. They also realise that if the route was diverted this would be of benefit should they wish to improve or change the use of the buildings at some point in the future. They also feel the more direct route across the hay meadow would assist in the management of the field under the Environmentally Sensitive Area scheme.
- 5.3 If the Committee is satisfied that the proposed Diversion Order would be expedient in the interests of the landowners, then it should also form a judgement on the convenience of the path as a result of the diversion and its expediency having regard to the effect the diversion would have on the public's enjoyment of the path as a whole and on the land crossed by the path.
- 5.4 Given the general rough nature of the pastureland, the contours of land followed by both routes and the need to cross the boggy syke in the second enclosure no matter which route is followed, it is not felt that the diversion route is substantially less convenient nor would it affect the public's enjoyment of the path as a whole. Indeed it could be suggested that a more direct route across the fields is more convenient for the public to follow and arguably less boggy.
- 5.5 The technical issue with respect to the Definitive Map can be resolved by remaking an Order which accurately depicts the line of the Definitive Map as is shown at **Document C**. Although this appears to be an illogical plan it does deal with the inspector's sole reason for rejecting the Order made in November 2005.

6.0 Recommendation

- 6.1 Although that Order was not confirmed the contents of the inspector's decision do vindicate the County Council's previous decision and reasoning to support the proposal.
- 6.2 Therefore, for the reasons set out above, it is recommended that the Committee agrees to the making of a Diversion Order under the provisions of Section 119 of the Highways Act 1980.

Background Papers

Papers – File E/Countryside/ 6/18/32

Report (Item No A1) and minutes of the Highways Committee on 21 June 2005