

**EAST HERTS DISTRICT**

**PROPOSED DIVERSION OF FOOTPATH 1 LITTLE MUNDEN AWAY FROM SCHOOL SITE**

Local Member: J M Pitman

Report of the Director of Environment

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1. **Purpose of the report**

To ask whether the Committee supports the processing of an application for an order to divert a path which currently runs through Little Munden School, as an exception to the policy of not normally promoting orders which are in the interest of landowners.

2. **Summary**

- Footpath 1 runs through the school buildings, between the old and new sections. It is clearly marked, and not obstructed (see photo below).



- School governors are anxious to see the path diverted, for the security of the children.
- A suitable route for a diversion appears to exist.
- Current County Council policy is not normally to promote landowner-benefiting diversions.
- Exceptions have been made in the past in cases where a footpath runs through school grounds and governors have pressed for a diversion.

### 3 **Conclusions**

If the Committee is persuaded that the present position of this path poses a threat to the security of the children at Little Munden School it would be appropriate for the Rights of Way Unit to commence processing the Governors' application for it to be diverted.



## 1. Background.

- 1.1 Footpath 1 is reputed to be an ancient coffin-way which links the villages of Dane End and Haultwick to the Parish Church of Little Munden and the adjacent school. Map 1 is an extract from the working copy of the Definitive Map.
- 1.2 When the path was surveyed in the early 1950s, prior to its depiction on the first Definitive Map, it ran next to the school as it was then. It was described as a well-used path, surfaced for its whole length from Dane End to the Church.
- 1.3 When the school was extended in the 1960s or 70s, the path was not diverted, but a covered walkway was left between the old and new parts of the school. Map 2 shows at a larger scale the position of the footpath in relation to the school.
- 1.4 In 1996 the Working Group on School Security established by the Secretary of State for Education recommended that: *If as a result of a security review, a school should identify a public right of way through its grounds as a significant security risk, the relevant local authority should consider seeking to change the right of way so as to eliminate or at least reduce that risk.*
- 1.5 In July 1997 the head teacher approached the County Council to ask for the path to be diverted. The Countryside Access Officer concerned suggested that the School put forward a proposal and contact user groups. He stated the Council's policy, but said that each case "will always be looked at on its merits."
- 1.6 Matters did not progress further than some initial consultation. John Barnes of the Herts Rights of Way Association indicated that he would oppose any proposal to divert the path. He stated, among other things, that: *In the interests of security and the prevention of foul play, it is my view that the more these institutions [i.e. schools] are open to the public at large, the better things will be .*
- 4.1 In January 2000, with a new vice-chair of Governors, the request for a diversion was revived. A letter dated that month stated that the Governors had been reviewing the security of the school premises. The formal letter of application for a diversion is attached. Governors believe that the continued existence of a public right to walk through the school puts the children at risk.
- 1.8 The local member, Councillor Jane Pitman, supports the Governors' application.
- 1.9 The Governors have not produced detailed proposals for the route of a diversion. It would seem reasonable that a route should follow Church Lane for a short way in front of the old school building. However, it may be desired to put at least part of the diverted route onto the land of the neighbouring

landowner, Mr Ivan Smith. There is currently a dispute between the school and Mr Smith about the precise boundary each one's land. Map 2 also shows a possible route for a diversion and the area of disputed boundary.

- 1.10 If the Committee takes the view that this application should be given priority, success is not guaranteed. Although the proposed diversion would seem to meet the main substantive requirement in s119 of the Highways Act 1980 that it should *not be substantially less convenient to the public*, users and neighbouring landowners will need to be consulted, and any of them could object.
- 1.11 Objections on publication of an order would be likely to lead to a local public inquiry.

## **2 Legal considerations**

- 2.1 A diversion order may only be confirmed if:
  - it is expedient in the interests of the owner of the land over which the path passes,
  - the diverted route will not be substantially less convenient to the public, and
  - it is expedient to confirm it having regard to the effect which
    - (a) the diversion would have on public enjoyment of the path 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
    - (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. (s119 Highways Act 1980).
- 2.2 Officers take the view that a diversion of the path onto Church Lane for a short distance would not be substantially less convenient to the public, nor would it have a significant adverse effect on the public's enjoyment of the path as a whole.

## **3. Policy considerations.**

- 3.1 The Environment and Planning Committee Resolution (April 1991) was that: "*[Public Path] Orders in the interests of landowners will not normally be promoted*". A change to this policy was agreed by the Cabinet on 18 December and will be considered under the County Council's new democratic processes.
- 3.2 The new policy on public path orders, if ratified, will state that: *Public Path Orders will normally be processed in the order in which applications are received, except in any of the following circumstances where an Order may be processed sooner:*

- *Where an Order would satisfy one or more of the key principles [see below]*
- *Where an application has been made to HCC in its capacity as planning authority*
- *Where the processing of an Order could save significant costs incurred in other Rights of Way functions*

The key principles are:

- i. Where public safety could be substantially improved*
- ii. According to the level of use; and*
- iii. Where the County Council's actions could result in a significant positive impact on the network.*

3.3 The Countryside and Rights of Way Act 2000 contains specific provisions relating to the diversion of paths through school premises. These provisions will not come into force until Regulations have been published – this will not be for at least another year. They allow for a diversion order to be made for the purpose of protecting pupils or staff from violence or the threat of violence, harassment etc. However, such an order may not be confirmed until regard has been had to all the circumstances, and in particular to “(a) any other measures that have been or could be taken for improving or maintaining the security of the school, and (b) whether it is likely that the coming into operation of the order will result in a substantial improvement in that security.”

3.4 In other words, the Act envisages that an assessment will have been carried out to gauge whether there is a security risk and whether the confirmation of a diversion order would be the most effective way of minimising it.

#### **4. Conclusions**

4.1 The Governors of Little Munden School have considered the safety and security of the children and the threat to that safety and security posed by the existence of the footpath through the school. They believe that in the interests of the security of the children, Little Munden footpath 1 should be diverted so that it does not run through the school premises.

4.2 If the Committee wishes to follow Government guidance and to take a consistent line with previous exceptions to Council policy, then this Report concludes that it would be appropriate to sanction the processing of an application for a diversion order.

#### **5. Financial Implications**

- 5.1 Regulations allow the County Council to recover from the applicant the full cost of processing an order up to its submission to the Secretary of State if it receives objections. Recent figures produced by the Rights of Way Unit indicate that this would be a minimum of £3000. The County Council would additionally expect the Governors to indemnify it against the cost of an inquiry, should one prove necessary. This could amount to an additional £4000. If a diverted route ran partly over Mr Smith's land, he would be entitled to claim compensation. The County Council as Highway Authority would require an indemnity from the Governors for any compensation which might become due to the landowner upon confirmation of a diversion order. Informal advice is that compensation for the loss of a very few square metres of land at the edge of a field would be minimal.

Background information used by the author in compiling this report.

Highways Act 1980

Report of the Working Group on School Security, 14 May 1996 (DfEE)

The Local Authorities (Charges for Overseas Assistance and Public Path Orders)

Regulations 1996

Countryside and Rights of Way Act 2000.