Extinguishment of Public Right of Way No. BCC/589(:)

Ward: Lawrence Hill

Purpose of Delegated Report

1. To seek approval for the making and advertising of a public path extinguishment order under Section 118 of the Highways Act 1980 and to modify the Definitive Map and Statement under Section 53A of the Wildlife and Countryside Act 1981. The order is sought in respect of Public Footpath BCC/589.

Background

2. As Highway Authority the Council has power under Section 118 of the Highways Act 1980 to make orders relating to the extinguishment of footpaths and bridleways.

3. As Surveying Authority the Council has the power under Section 53A of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement.

4. The Highway Authority has power under Section 118 of the Highways Act 1980 to make orders relating to the extinguishment of footpaths and bridleways, taking into consideration the following legal tests:

> An extinguishment order under Section 118 may be made by the council if the Council, as Highway Authority, is satisfied that "*as respects a footpath [bridleway or restricted byway] in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use…"*

5. The purpose of this public path extinguishment order is to delete a public footpath (BCC/589), running from grid reference 361191 172027 in a generally north-easterly and northerly direction to grid reference 361231 172337, along the north bank of the River Avon.

6. The existing alignment of BCC/589 is obstructed in multiple locations owing to riverbank erosion and resulting collapse of the riverside path. It is therefore no longer serving a need for the public as sections of the route no longer exist. The location affords no suitable options for path diversion which meet the necessary statutory tests.

7. Whilst 'rollback' of public rights of way destroyed by coastal erosion is accommodated in legislation (the Marine and Coastal Access Act 2009), no

such legislation exists in the context of riverine erosion. Caselaw from 2000 (R (on the application of Gloucester County Council v SoSETR)) examines this issue in a similar context. It determines that once part of a public right of way is destroyed by riverbank erosion it ceases to exist. This Order may therefore be regarded as extinguishing the 'remaining' sections of the route which have not yet been eroded but which are impassable.

8. The existing alignment runs over land owned by Unit 9, Avon Meads, St Philips Causeway, BS2 0SP, and a mixed unit comprising businesses at Avon Meads, St Philips Causeway, BS2 0SP. These are identified as Greggs, Krispy Kreme, Costa Ltd, Unit 8, Unit 2A, Unit 3, Electricity Substation, McDonalds Restaurants Ltd, Unit 2B, Unit 7, Unit 4A, Unit 5, Unit 4, Unit 6, and Unit 1.

9. Officers have considered the application on the basis of the statutory tests under Section 118 and believe this is a reasonable application which is in the interests of the authority ("*on the ground that it is not needed for public use"*).

Procedure

10. If approval is given to making the order outlined above the diversion order will be advertised in accordance with the procedure laid down in the Highways Act 1980. If no objections are made to the order, the council may confirm it as an unopposed order.

11. Should objections or representations be received following formal advertisement of the order, a report will be submitted to the Public Right of Way and Greens committee for consideration as to whether to withdraw the order in the light of the objections or representations or to forward them to the Secretary of State for consideration.

Consultation

12. Informal consultation is being carried out with user groups which attend the Public Rights of Way Liaison Group as below:

    British Horse Society
    Civic Society
    Living Streets
    Open Spaces Society
    The Ramblers
    SERA

Conclusion

13. It is considered that the grounds for making an order under Section 118 of the Highways Act 1980 are satisfied in this case.

Appendices	Appendix A - Plan showing route of proposal

Policy Implications:	There are no specific policy implications arising from this report.
Resource Implications:	The costs of processing and advertising the necessary order can be met.
Recommendation:	(1) That the Service Director of Legal and Domestic Services be authorised by the Service Director of Transport to make and advertise a Public Path Extinguishment Order under Section 118 of the Highways Act 1980, to extinguish that length of public footpath BCC/589 shown marked A-B on the plan attached at Appendix A. (2) If no objections to the order made and advertised in accordance with recommendation (1) are received, that approval is given for the confirmation of that order as an unopposed order.
Local Government (Access to Information) Act 1985 Background Papers:	Highways Act 1980 obtainable from HMSO
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