

Committee	Lead Cabinet Member for Transport and Environment
Date	5 December 2005
Report By	Director of Transport and Environment
Title of Report	Petition requesting that the necessary repairs be made to public footpath Hastings 190 at St Mary's Terrace in order that the footpath can be reopened for use.
Purpose of Report	To advise of a petition requesting that the necessary repairs be made to public footpath Hastings 190 in order that the footpath can be re-opened for use.

RECOMMENDATION

To advise the petitioners that the necessary repairs will be undertaken at the earliest opportunity and that this is likely to be at the start of the new financial year.

1. Financial Appraisal

1.1 The cost of the works to repair the wall, estimated at £4,500, will have to be met from the Rights of Way revenue budget as it falls outside of the Area Highways Agreement with Hastings Borough Council. The current year's revenue budget is committed and it is therefore not possible to undertake the work until early in the new financial year. The budget available for maintenance of the 2500 miles of public rights of way in East Sussex has been £50,000 in recent years. These works would therefore constitute a significant proportion of those funds.

2. Supporting Information

2.1 At the County Council meeting on 11 October 2005 Councillor Daniel presented a petition to the Chairman requesting that the necessary repairs be made to public footpath Hastings 190 in order that the footpath can be reopened for use.

2.2 A copy of the petition is available in the Members' room. Standing Orders provide that where the Chairman considers it appropriate, petitions are considered by the relevant Committee or Lead Member and that a spokesperson for the petitioners be invited to address the Committee. The Chairman has referred this petition to the Lead Cabinet Member for Transport and Environment.

3. Comments / Appraisal

3.1 Public footpath Hastings 190 comprises a short flight of steps leading between St Mary's Terrace and a private street which in turn provides access to footpath 189 to Millward Road. The footpath was closed in May 2004 for public safety reasons due to severe cracking in the retaining wall on the southern side of the steps.

3.2 The footpath was closed by Hastings Borough Council's Highways Engineer following an assessment by the Borough's Structural Engineer. All highways within the Hastings Borough, including footpaths, are managed by the Borough Council under an agency agreement on behalf of the County Council as Highway Authority. This matter however has subsequently been passed to the County Council as major structural works

such as these are considered to fall outside of that agreement.

3.3 There is a generally accepted presumption that structures which do not directly support the highway do not fall to the highway authority to maintain. In this case, since the wall supports the land alongside the steps rather than the steps themselves, that presumption would indicate that it is the adjoining landowners on either side of the path who derive benefit from the wall, and thus the responsibility for the repairs falls to them.

3.4 The land on the side of the defective wall, the southern side, is owned by the owner of number 11 St Mary's Terrace. The land forms an off road parking area for the property and even relatively recently the owner has parked a vehicle on this plot.

3.5 In correspondence with the County Council the owner has denied responsibility for the wall and has presented the property deeds, which do not specify ownership or maintenance responsibility for the wall. An independent report by a chartered surveyor has also failed to ascertain responsibility.

3.6 It is unlikely that responsibility could ultimately be determined without a legal ruling by the courts.

4. Conclusion and Reason for Recommendation

4.1 It is necessary that both the County Council and the Borough Council act carefully in determining matters such as this, which can potentially create precedents for future cases with significant cost implications.

4.2 There is little doubt, however, that the complication of both Councils having been involved in differing capacities, and the further confusion as to the ownership of the wall, have led to an unfortunate delay in re-opening the path. This has clearly resulted in the understandable frustration of the residents.

4.3 The landowner has made it clear that he does not intend to meet or contribute to the cost of the works. It would therefore be necessary for the County Council to meet those costs initially regardless of whether it seeks to retrieve them subsequently.

4.4 An estimate of £4,500 has been provided to undertake basic repairs to the wall.

4.5 I recommend that the works should be undertaken at the beginning of the new financial year.

BOB WILKINS
Director of Transport and Environment

Contact Officer: Matthew Harper 01273 482324

Local Member: Councillor Daniel

BACKGROUND DOCUMENTS

Independent Chartered Surveyors Report.
Photographs and plan.