

**REPORT TO: ECONOMIC AND DEVELOPMENT INFRASTRUCTURE
COMMITTEE ON 15 JUNE, 2010**

**SUBJECT: PROPOSED PUBLIC PATH DIVERSION ORDER - SEAFIELD
ROAD/JUDY'S LANE, CULLEN**

BY: CHIEF LEGAL OFFICER.

1. REASON FOR REPORT

- 1.1 The purpose of this Report is to ask the Council to make a Public Path Diversion Order under Section 35 of the Countryside (Scotland) Act 1967 in order to divert part of a pedestrian public right of way at Judy's Lane in Cullen, as indicated by the plan (**Appendix attached**). The plan details the existing line of the public path shown cross-hatched and the plan following diversion is shown shaded.
- 1.2 This report is submitted to Committee in terms of G(8) of the Council's Administrative Scheme relating to Countryside Amenities and to Section 35 of the Countryside (Scotland) Act 1967.

2. RECOMMENDATION

- 2.1 That the Committee agree to instruct the Director of Environmental Services and the Chief Legal Office to make and implement the Order to ensure the continued existence of a pedestrian public right of way.**

3. BACKGROUND

- 3.1 Under the Countryside (Scotland) Act 1967 Section 35:-

“Where an owner, tenant or occupier of land crossed by a public path satisfies the general or district planning authority in whose area the land is situated that for securing the efficient use of the land or of other land held therewith or providing a shorter or more convenient path across his land, it is expedient that the line of the path across his land, or part of that line, should be diverted, the authority may by order (in this Act referred to as a “Public Path Diversion Order”) made by them and, subject to paragraph 2(1A) of Schedule 3 to this Act, submitted and confirmed by the Secretary of State:-

- (a) create, as from such date as may be specified in the order, any such new public path as appears to the authority requisite for effecting the diversion, and
- (b) extinguish, as from such date as may be so specified in accordance with the provisions of the next following sub-section, the right of way over so much of the path as appears to the authority requisite as aforesaid.”

- 3.2 The Council has been asked by Messrs. Stronachs, Solicitors, Aberdeen, acting on behalf of Milne Property Developments Ltd., incorporated under the Companies Acts (Company Number SC202064) and having their registered office at 119 High Street, Buckie, who are the owners of the land crossed by the pedestrian public right of way to make a Public Path Diversion Order.
- 3.3 On 15 April, 2009, Planning Permission was granted for the erection of 8 dwellinghouses on the land owned by Milne Property Developments Ltd.
- 3.4 Condition 9 of the permission is as follows:-

“The altered footpath on Judy’s Lane forming the ‘safe route to school’ shall be constructed as per the approved plan and to The Moray Council’s specification for occupation of the first dwelling”.

Following correspondence from Messrs. Stronachs and Emma Carle, Solicitor, and thereafter communications between Emma Carle and Neal Macpherson, Planning Officer, it was established that the best way to proceed was by way of a Public Path Diversion Order.

- 3.5 Notice of the intention to make the Order was published in The Edinburgh Gazette, The Banffshire Herald and The Banffshire Advertiser. Copies were also placed for public inspection at the Elgin Access Point, Buckie Access Point and Cullen Post Office. Objections were invited to be made over a period of 31 days until 29 March, 2010. No objections were received and accordingly, the Council can confirm the Order if it is minded to do so.

4.0 SUMMARY OF IMPLICATIONS

(a) Single Outcome Agreement/Service Improvement Plan

The diversion of the path will create an enhanced path that will contribute to and facilitate the SOA local outcome “people will be able to access sustainable travel”.

(b) Policy and Legal

This proposal complies with the requirement of the Countryside (Scotland) Act 1967.

(c) Resources (Financial, Risks, Staffing and Property)

None.

(d) Consultations

Neal Macpherson, Planning Officer has been consulted and is in agreement with the terms of this Report.

Iain Douglas, The Moray Access Manager has been consulted and is in agreement.

5.0 CONCLUSIONS

5.1 The Council are asked to agree as follows:-

To make a Public Path Diversion Order under Section 35 of the Countryside (Scotland) Act 1967.

Author of Report:	Emma Carle, Solicitor.
Background Papers:	N/A
Ref:	EC/P/124(f).