



**PUBLIC FOOTPATH NO. 40, EGHAM  
PROPOSED DIVERSION**

**SURREY COUNTY COUNCIL  
LOCAL COMMITTEE**

**19 JULY 2005**

**KEY ISSUE:**

The County Council has a power to make Public Path Diversion Orders under Section 119 of the Highways Act 1980. Applications may be made in the interest of the owners, lessees or occupiers of land, or the general public. The County Council must be satisfied that it is expedient that the line of the path should be diverted. When an Order is confirmed criteria such as convenience and public enjoyment of the path must be satisfied.

**EXECUTIVE SUMMARY**

An application has been received from Network Rail to divert Public Footpath No. 40, Egham. The diversion has been applied for in the interest of the public, as it will remove the need for walkers to cross the railway at the unprotected level crossing. It will have the additional benefit that train drivers will no longer need to sound their horns at this location. It is understood one of the landowners involved is objecting to the proposal. Members are asked to approve the making of a Diversion Order.

**Report by**

**Surrey Atlas Ref.**

HEAD OF PLANNING & COUNTRYSIDE

**RUNNYMEDE B.C. WARD(S)**

**COUNTY ELECTORAL DIVISION(S)**

**OFFICER RECOMMENDATIONS:**

Members are asked to agree that a Diversion Order under Section 119 of the Highways Act 1980 for Public Footpath No. 40, Egham as shown on Drawing No. 3/1/88/H13, be made, and either confirmed as an unopposed order, or if objections are received submitted to the Department of the Environment, Food and Rural Affairs for determination.

## PROPOSAL

- 1 Network Rail have submitted an application to divert Public Footpath No. 40, Egham as shown on Drawing No. 3/1/88/H13 (**ANNEX 1**). In their application they state it has long been the policy of Network Rail and its predecessors (supported and encouraged by Her Majesty's Railway Inspectorate and the Department for Transport) wherever possible, to seek the closure of all unprotected level crossings, particularly where a suitable alternative access route already exists or could easily be created, in order to improve conditions for the safe operation of the railway. In this instance, pedestrians would be able to cross the railway via Prune Hill level crossing which is protected by automatic half barriers and warning lights.
- 2 The diversion has been applied for in the interest of the public, as it will remove the need for walkers to cross the railway at the unprotected level crossing. It will have the additional benefit that train drivers will no longer need to sound their horns at this location, the noise of which is distressing for many local residents.

## LANDOWNERSHIP

- 3 The land between points 'A'-'B' on the Drawing is owned by RMC (UK) Ltd who have agreed to the diversion proposal. The land between points 'D'-'C' and 'C' to the railway line is owned by Wentworth Park Estate. The owner of the Estate through his solicitor has stated to a local resident that he is "not currently minded to accede to a diversion of the right of way as suggested". Under the provisions of the Highways Act the landowner may claim compensation for a diversion onto his land. These costs would be borne by the applicant. The owner of Rusham Cottage has also raised objections to moving the footpath nearer to his property. However, the proposed route would be at a distance from his boundary and would be double fenced between points 'C'-'D' to stop walkers straying off it. 'C – D' runs through woodland and is therefore screened from residential buildings. The residential properties on Wentworth Estate are some distance from the path.

## RESULT OF CONSULTATIONS

- 4 The statutory bodies and other interested parties have been consulted on the proposal. Elmbridge Borough Council, the Ramblers Association, Runnymede Ramblers, Egham Residents Association or the Whitehall Lane Residents Association has raised no objections. As a result of advisory notices placed on site 84 letters and emails in support of the proposal have been received, including one from Royal Holloway University of London who are situated near the path. All agree the diversion will be safer for walkers causing little inconvenience whilst removing the noise nuisance from train horns.

## FINANCIAL IMPLICATIONS

- 5 Network Rail have agreed to meet the costs of advertising a legal order estimated to be in the region of £1,200. If an order is made and objections are received causing a Hearing or Public Inquiry to be held, costs in the region of £1,000 will have to be met from the rights of way budget. If the owner of Wentworth Park Estate objects to an order he may claim compensation which would have to be met by the applicant. The costs of vegetation clearance, security fencing and any other works associated with implementing the proposed route on the ground will also have to be met by the applicant although it is understood other parties may have agreed to contribute to the costs.

## HUMAN RIGHTS ACT 1998

- 6 Under the Human Rights Act 1988, local authorities are required to act, as far as possible, in a way that does not breach rights contained in The European Convention on Human Rights and must interpret primary legislation, such as the Highway Act, in a manner that is compatible with the Convention, unless the requirements of the legislation mean that it could not have acted differently. Any interference with a convention right must be in accordance with the law.

The most commonly relied upon Articles of the European Convention are Articles 6, 8 and Article 1 of Protocol 1. These are specified in Schedule 1 of the Act.

Article 6 provides the right to a fair and public hearing. Officers must be satisfied that the application has been subject to proper public consultation and that the public have had an opportunity to make representations in the normal way and that any representations received have been properly covered in the report.

Article 8 of the Convention provides the right to respect for private and family life and the home. This has been interpreted as the right to live one's personal life without unjustified interference. Officers must consider whether the recommendation will represent such an interference.

Article 1 of Protocol 1 provides that a person is entitled to the peaceful enjoyment of his possessions and that no-one shall be deprived of his possessions except in the public interest. Possessions will include material possessions, such as property, and also user rights. Officers must consider whether the recommendation will affect the peaceful enjoyment of such possessions.

- 7 The diverted route will certainly bring the public onto private land that hitherto has not got a right of way over it. However, the route will be approximately 40 metres from Rusham Cottage and 300 metres from

residential properties on Wentworth Estate and fenced in order to stop people straying onto private land. The diversion is considered therefore not to have any Human Rights implications in relation to those private landowners.

## **ENVIRONMENTAL AND ECONOMIC IMPLICATIONS**

- 10 The diversion of the footpath will result in the removal of the whistle boards at this location thus improving the environment from noise nuisance. There are no significant economic implications.

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**BACKGROUND PAPERS:** Correspondence referred to in the report contained in file 3/1/88X.

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