

Item 17

**PUBLIC FOOTPATH NO. 113 (CHOBHAM)
PROPOSED DIVERSION ORDER**

**SURREY COUNTY COUNCIL'S
LOCAL COMMITTEE (SURREY HEATH)**

8 DECEMBER 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, and/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

The definitive route of Footpath No. 113 (Chobham) runs through fields adjacent and south of Mill Bourne and regularly floods in winter. Consequently the public have been using a route on higher ground and closer to the Mill Bourne marked 'D' – 'E' – 'C' on Drawing No. 3/1/81/H51 attached. The diversion order seeks to regularise the situation on the ground. Three objections were received and two have been withdrawn. The Council does not have power under the Highways Act 1980 to modify an Order or to confirm an opposed Order.

OFFICER RECOMMENDATIONS

The Committee is asked to agree that the Surrey County Council Footpath No. 113 (Chobham) Public Path Diversion Order 2004 be sent to the Secretary of State for Environment, Food and Rural Affairs for modification and confirmation.

INTRODUCTION

- 1 An Order to divert Footpath No. 113 (Chobham) was made under delegated powers in the interests of the owners of the land and the public on 8 December 2004. (**ANNEX 1**).
- 2 All statutory undertakers and other relevant bodies have been consulted. Surrey Heath Borough Council, Chobham Parish Council, the Ramblers' Association and the utility companies raised no objection to the Order.
- 3 Three objections were received. Two were withdrawn. The objection by the Horsell Common Preservation Society has been sustained. In the objector's view the proposed new route is 'too narrow and bordered by a poorly maintained fence

with barbed wire'. The Horsell Common Preservation Society also believe there to be 'no public benefit in the proposed diversion'. A copy of their letter and a letter from Barlow Robbins Solicitors is attached as **ANNEX 2**.

- 4 The proposed route along the riverbank (shown as 'D'-'E'-'C' on Drawing No. 3/1/81/H51 has existed on the ground and been used by the public for a number of years. It is on higher ground than the definitive route ('A'-'B'-'C') and offers a drier surface since the definitive route lies in the flood plain and can be extremely wet in winter. The proposed diversion will have a minimum width of 2 metres throughout which is the standard width adopted by the Council on new paths. Since making the order the fencing has been renewed and the Environment Agency has cleared the river bank. The objector has been made aware of these works but has declined to withdraw the objection.
5. Part 3 (Limitations and Conditions) of the order contains an error. The kissing gate is located at point 'E' on Drawing No. 3/1/81/H51 and not point 'D' as stated in the order. The Council does not have the power to modify an order, once made and it is requested that the Committee agree that the order be sent to the Secretary of State for Environment, Food and Rural Affairs for modification and confirmation.

FINANCIAL IMPLICATIONS

- 5 Mr C Woodbridge of Burnside Nursery, Philpot Lane, Chobham and Mrs A Parker of Sunfield Farm, Philpot Lane, Chobham have agreed to contribute towards the cost of advertising the Order. The Secretary of State will decide the matter by written representations or by asking the Council to convene a hearing or a public inquiry. The cost of preparing information to support the order will be met from the Rights of Way budget.

ENVIRONMENTAL AND ECONOMIC IMPLICATIONS

- 6 There are no significant environmental or economic implications.

EQUALITIES IMPLICATIONS

- 7 There are no significant equalities implications.

THE HUMAN RIGHTS ACT 1998

- 8 Section 6 of the Human Rights Act 1998 states that it is unlawful for a public authority to act in a way that is incompatible with a European Convention right. As far as possible the County Council must interpret primary legislation, such as the Highways Act 1980, in a manner that is compatible with the Convention. The Highways Act 1980 stipulates the procedure that is to be followed by Highway Authorities when dealing with applications pursuant to S119. Article 8 of the European Convention safeguards the right of the individual to respect for a private and family life. It is the officers' view that the human rights of the objector are not affected by the application and Article 8 is not engaged. This proposal does not have any human rights implications.

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BACKGROUND PAPERS:	All documents quoted in the report