



OFFICER REPORT TO LOCAL COMMITTEE (TANDRIDGE)

PUBLIC BRIDLEWAY 77 (CHALDON) PUBLIC PATH DIVERSION ORDER

24 June 2011

KEY ISSUE

This report seeks approval to submit a diversion order for Public Bridleway 77 (Chaldon) to the Secretary of State for the Environment, Food and Rural Affairs for determination.

SUMMARY

An order to divert part of Bridleway 77 (Chaldon) was made on 14 November 2007. One objection has been received and maintained. The objection relates largely to the width of the proposed alternative route.

The County Council cannot confirm opposed orders and committee authority is requested to submit the diversion order to the Secretary of State for the Environment, Food and Rural Affairs for determination.

Both the current definitive route and the proposed alternative route are shown on drawing number 3/1/335/H2 (attached as annex 1).

OFFICER RECOMMENDATION

The Local Committee (Tandridge) is asked to agree that:

the Surrey County Council Bridleway No. 77 (Chaldon) Public Path Diversion Order 2007 be submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination.

1 INTRODUCTION AND BACKGROUND

- 1.1 During the construction of Happy Valley Golf Club (now known as Surrey National Golf Club) in the late 1990s a number of potential improvements to the local rights of way network were identified. Amongst these improvements was the diversion of Bridleway 77.
- 1.2 With the cooperation of the Golf Club, Tandridge District Council and then Surrey County Council took steps to try and secure some of these improvements. However, it proved difficult to find a suite of proposals, which suited all the parties involved (including the various user groups and local residents who had an interest). Negotiations stagnated for several years but began again in February 2006. This latest round of negotiations resulted in agreement from the landowner, parish council and the British Horse Society to the principle of diverting the bridleway onto the alternative route shown on drawing number 3/1/335/H2 (annex 1).
- 1.3 Following an initial consultation, a diversion order was made on 14 November 2007 under section 119 of the Highways Act 1980. Notice of the Order was placed on site and in the local newspaper and copies were sent to the relevant statutory organisations.
- 1.4 Only one objection was received to the Order. Mrs Beatty, a local horse rider, is of the view that the alternative route is too narrow and that the Golf Club should remove the hedges that run either side of the route between points A to B. Mrs Beatty also raised concerns regarding the visibility of the notices which were posted on site.
- 1.5 The definitive route of Bridleway 77 currently commences at its junction with Bridleway 76 (known as Green Lane), which is shown as point A on drawing number 3/1/335/H2. It then runs across the back of a tee and a green to point C. A stile at point A and a fence and thick vegetation at point C obstruct the way. The Definitive Statement (which accompanies the Definitive Map and provides details of the width of a right of way and any limitations which may be placed on it) provides for the landowner to maintain a field gate and wicket gate at point A. Currently no such structures are in place.
- 1.6 The proposed alternative route of the path also begins at point A but runs to the corner of the burial ground at point B before rejoining the definitive route at point C. There are two existing posts in the ground at point A creating a pinch point. The pinch point would be unaffected by the diversion. However, if confirmed the order would not allow for any additional furniture (e.g. stiles, gates etc) on this section of the route. After the pinch point the alternative route widens to 3.5 metres until point B where it narrows slightly to 3 metres until it reaches point C. There is evidence to suggest that the public are already using the alternative route.

2 ANALYSIS

- 2.1 Section 119 of the Highways Act 1980 enables the County Council to divert a public bridleway either in the interests of the landowner, lessee or occupier of the land or of the public. In doing so regard must be had to the enjoyment of the public and the effect that the diversion would have on the land.

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Furthermore the alternative route must not be substantially less convenient to the public than the current definitive route.

- 2.2 In addition to the criteria set out in the Highways Act 1980 the County Council's policy states that, except in exceptional circumstances, diversion orders will only be made where they result in an improvement to the existing rights of way network for the public. The needs of less able users must also be taken into account.
- 2.3 In this case the proposed alternative route is well established and appears to already be enjoyed by the public. Although it is a little longer than the existing definitive route it is also less exposed being that much further from the nearest green and protected by the hedges, which abut it. It is understood that the hedges also offer benefits in terms of biodiversity and are likely to be protected by the Hedgerow Regulations 1997.
- 2.4 As mentioned above, the landowner is currently entitled to erect gates at point A. The effect of the diversion would remove this option and ensure that the route remains unrestricted in perpetuity.
- 2.5 Although in the view of officers the proposed diversion would be of benefit to the public, the order has been made in the interests of the landowner. It would have the effect of moving the bridleway off of the back of a golf green. If horses were to regularly use the current definitive route then they would cause significant damage to the surface of land used for golf.
- 2.6 Mrs Beatty's main objection is that the alternative route, and particularly that part which runs from A to B, is too narrow and that the adjacent hedges encroach onto the path. The Definitive Statement gives the width of the relevant part of the current bridleway as 8 foot (2.4 metres) although it also states that part of it runs over a 15-foot track (the extent of this track is no longer visible on the ground). The section of the alternative route from A to B runs between hedgerows giving it a less open feel than the definitive route, however at 3.5 metres it is significantly wider than the 2.4 metres recorded in the current definitive statement. The alternative route does later narrow to 3 metres between points B and C, but this section has a more open feel.
- 2.7 Ideally officers would normally try to secure a width of 4 metres for a new bridleway. However, given the above mentioned benefits of the alternative route (including the removal of the option of a gate at point A) the fact that the hedges are well established, and the legal limits of the current definitive route, it is considered acceptable in this case to consent to a slightly narrower path.
- 2.8 In addition to raising the issue of width, Mrs Beatty also raised concerns that the statutory on site notices were either missing or too difficult to see. Before making an order the County Council undertook an initial consultation, which included placing notices at each end of the path for a four-week period. As no objections were maintained at this stage, an order was made. This resulted in a further four-week statutory objection period. During this time a second notice and a plan (both A4 in size) were placed at either end of the path and checked regularly. In addition the notices were sent to all statutory consultees and published in a local newspaper.

- 2.9 During the two consultation periods respondents raised issues in relation to the maintenance of the alternative route. At present the alternative route is not recognised as a public right of way and therefore the County Council does not have the power to maintain it. Mrs Beatty claims that public rights have already been acquired over the alternative route. However she has been unable to provide any evidence to substantiate this claim. Should the diversion be successful then the County Council would be able to undertake maintenance works as and when resources allow.

3 OPTIONS

- 3.1 Submit the diversion order to the Secretary of State for the Environment, Food and Rural Affairs for determination. This is the officers preferred option
- 3.2 Rescind the diversion order and reopen the correct definitive route.
- 3.3 Rescind the diversion order and process a new diversion proposing a wider alternative route. This is unlikely to receive the consent of the landowner and may lead to the County Council being liable to pay compensation.

4 CONSULTATIONS

- 4.1 Notices were placed on site and statutory bodies and other interested parties were consulted prior to the making of the Order. Once the Order was made notice was served on statutory consultees as required by regulations. The Order was advertised on site, in a local newspaper, at Tandridge District Council offices and at Caterham Library for the statutory period. The notice and a plan showing the effect of the diversion also appeared on the County Council's website.

5 FINANCIAL AND VALUE FOR MONEY IMPLICATIONS

- 5.1 The Countryside Access budget has already met the costs of making and advertising the legal order. If the order is submitted to the Secretary of State the matter will be dealt with either by written representations, a hearing or an inquiry. In the case of a hearing or inquiry the County Council is likely to be liable for costs in the region of £1,000 which would be met by the Countryside Access budget.

6 EQUALITIES AND DIVERSITY IMPLICATIONS

- 6.1 The landowner is currently entitled to maintain a field gate and wicket gate at point A. Such restrictions to access would no longer be possible should the diversion order be successfully confirmed. This would make the route easier to use for most legitimate users.

7 CRIME AND DISORDER IMPLICATIONS

- 7.1 There are no crime and disorder implications.

8 THE HUMAN RIGHTS ACT 1998

- 8.1 Under section 6 (1) of the Human Rights Act 1998, 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. This includes the right to property, under Article 1 of the First Protocol to the Convention and the right to respect for private and family life and the home, under Article 8. In the officers' view this proposal has no human rights implications.

9 CONCLUSION AND RECOMMENDATIONS

- 9.1 The diversion would result in an improvement to the rights of way network for walkers, equestrians and cyclists. It would also be beneficial to the landowner. It is therefore recommended that the Surrey County Council Bridleway 77 (Chaldon) Public Path Diversion Order 2007 be submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination

10 REASONS FOR RECOMMENDATIONS

- 10.1 It is considered that diverting bridleway 77 (Chaldon) will rationalise the existing rights of way network by moving the definitive line of the route onto the line, which the public already appear to use. The landowner is in favour of the diversion as it will move the bridleway away from the tee area and the back of the green.
- 10.2 Officers are of the view that, for the reasons stated in paragraphs 2.1 to 2.9, the diversion order made on 17 November 2007 meets all the statutory criteria set out in section 119 of the Highways Act 1980 as well as the County Council's own policy on the making of diversion orders.

11 WHAT HAPPENS NEXT

- 11.1 All interested parties will be informed about the decision. If the recommendation is agreed the diversion order will be submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination. If it is decided not to submit the Order to the Secretary of State it will need to be rescinded.

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BACKGROUND PAPERS: All documents quoted in the report. File may be viewed upon request.

