



## **OFFICER REPORT TO LOCAL COMMITTEE (TANDRIDGE)**

### **PUBLIC FOOTPATH No. 130 (GODSTONE) DIVERSION ORDER APPLICATION**

**24 June 2011**

#### **KEY ISSUE**

This report seeks a decision to reject an application to divert Public Footpath No. 130 Godstone, in light of the number of objections received.

#### **SUMMARY**

An application has been received from Mrs P Chernin – Venhovens of Leigh Mill House, Eastbourne Road, Godstone to divert Public Footpath No. 130 where it crosses her property. The definitive route runs between points A – B – C and the proposed route between points D – E – F, as shown on Drg. No. 3/1/26/H30 (attached as Annex 1). The application has been made for security reasons to move the footpath further away from her house. Twenty-three objections, including from the Parish Council and The Ramblers, have been received. The objectors consider that the proposed route is less convenient and attractive, and that other measures could be undertaken to improve privacy and security. Ten letters of support have also been received and Tandridge District Council has raised no objection.

#### **OFFICER RECOMMENDATIONS**

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

the application from Mrs Chernin-Venhovens to divert Public Footpath No. 130, Godstone as shown on Drg. No. 3/1/26/H30 is refused.

## 1 INTRODUCTION AND BACKGROUND

- 1.1 Mrs P Chernin – Venhovens of Leigh Mill House, Eastbourne Road, Godstone has applied to divert Public Footpath No. 130 where it crosses her property. The application has been made for security reasons to move the footpath further away from her house, and in particular her bedroom window. She says she finds it embarrassing and intimidating to have people walk past her bedroom window and there have been instances at night of a man staring in. These have been reported to the police, who she says suggested the possibility of diverting the path. Mrs Chernin-Venhovens planted a hedge outside the window approximately 15 years ago, which grew up to screen the path. The height of it has been reduced in recent years so that she can appreciate the view of the adjacent pond from the house. In support of her application she has agreed to; a width of 2.0 metres, no stiles (there would be a kissing gate at point 'D') and to surface the path to county council requirements.
- 1.2 The definitive route of Public Footpath No. 130 currently commences at its junction with Public Footpath No. 131 at point 'A' (on Drg. No. 3/1/26/H30). It runs in a south-easterly direction for 90 metres along the south-western side of the Pond and then between the Pond and Leigh Mill House. It then joins Public Bridleway No. 130A at point 'C'. The proposed route would commence at point 'D' and run along the northern bank of the Pond across a grass area and then cut across the pond on an existing causeway
- 1.3 All the statutory utility companies and prescribed organisations have been consulted. Tandridge District Council has raised no objection under officer's delegated powers, subject to the proposed new route being satisfactorily surfaced and clearly waymarked. Godstone Parish Council, the Ramblers, East Surrey Ramblers and 20 local residents have raised objections. Ten letters of support have been received.
- 1.4 The objections relate to the proposed route being less convenient and attractive than the definitive route and are summarised below:
- The present route affords delightful and open views across the pond whereas, the proposed route has more tree cover and thus a less open view.
  - The present route has been in existence for at least 160 years.
  - Previous owners of the mill have accepted the rights of the public to walk beside the property.
  - Just because the owners wish to have a view across the pond should not prevent the public being able to enjoy walking along the present delightful footpath.
  - The owner should allow the hedge to grow back up if concerned passers-by may look into property.
  - The owner could put up curtains, blinds or change the window glass to opaque.
  - If allowed to divert, it will set a precedent and open the floodgates for everyone else to apply to have their footpaths diverted.
  - The owners were aware of the footpath when they bought the property.
  - The proposed route is longer, less attractive, and harder to access for many people.
  - This short piece of path running between a pond and a mill is almost unique and should be left for the future enjoyment of the public.

- The north side of the pond, where it is proposed to reroute the path is a well-used safe haven for wildlife. The diversion would affect nesting birds.
- The definitive route is the most pleasant part of a circular route as it provides uninterrupted views across the pond.
- The Parish Council feel the grounds for the diversion are invalid.
- This path is something special with its lovely view over the millpond, its peaceful aspect and its historical associations.
- The diversion would take people away from the opportunity to see the old mill, the view across the entire pond and its wildlife and walk across the dam.

1.5 Ten letters of support have been received and the comments are summarised below:

- If the path is sympathetically constructed and well surfaced it should be equally attractive giving views over the historic millpond, which is an SSSI.
- The proposed route change is more scenic, has more interest and is safer.
- The proposed route is wider than the definitive route, there is no furniture, the views of the pond are maintained and the path has a far more open feel, as it is not abutted by a hedgerow.
- The proposed diversion quite delightful. You can still reach the same destination.
- I do not think it will be detrimental to any walkers.
- Uses path 300 times a year and supports the proposed change.
- Would avoid using stile which is not convenient for the aged and disabled
- Existing path is very narrow.
- FP 130 serves no purpose and would be replicated by the new path.
- There are already alternative routes to the East and West, which would shorten journeys.
- It should be regarded favourably as it meets the legitimate concerns of the house owner without creating disadvantages for the walking public.
- I feel uneasy walking so close to a private residence.

## 2 ANALYSIS

- 2.1 Section 119 of the Highways Act 1980 enables the County Council to divert a public footpath 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. 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. The stiles, which currently exist on the definitive route should not be there and therefore should not be taken into account when comparing ease of use for both routes.
- 2.3 The objections raised relate to convenience and enjoyment and thus do not meet the criteria for making a diversion order. If an order was made and objected to the County council would have to meet the costs of a public inquiry. Although clearly in the landowners interest the benefits to the public are very

subjective. The Officer's opinion is that in light of the number of objections the proposal is not an exceptional circumstance as required by policy. Following the receipt of objections a site visit was held in June 2010, which the landowner and her agent and 12 objectors attended. Both sides were able to put across their views. Following the meeting no objections were withdrawn.

### **3 OPTIONS**

- 3.1 Reject the application to divert. This is the Officer's preferred option. If Members resolve to refuse to make a Diversion Order the landowner can apply to Tandridge District Council to make one. If they decline she can apply to the Secretary of State.
- 3.2 Make a Diversion Order and submit it with the objections to the Secretary of State for determination.

### **4 CONSULTATIONS**

- 4.1 Notices were placed on site and statutory bodies and other interested parties including Tandridge District Council, Godstone Parish Council, The Ramblers, Open Spaces Society and all utility companies were consulted on the application.

### **5 FINANCIAL AND VALUE FOR MONEY IMPLICATIONS**

- 5.1 The applicant has agreed to meet the costs of making an order. If an order were made and objected to it would have to be submitted to the Secretary of State for determination. In light of the number of objections already made it is likely a public inquiry would be held rather than being dealt with by way of written representations or a Hearing. The County Council would be liable for costs in the region of £1,000, which would have to be met by from the Countryside Access budget.

### **6 EQUALITIES AND DIVERSITY IMPLICATIONS**

- 6.1 Although there are 2 stiles currently on the definitive route, these are not recorded in the Definitive Statement and therefore are illegal obstructions and should be removed. The Statement records a wicket gate at point 'A' and no structure at point 'B'. The definitive width is 2.4 metres, which is suitable for people to pass each other safely and easily. The proposed route would be 56 metres longer.

### **7 CRIME AND DISORDER IMPLICATIONS**

- 7.1 The landowner claims there have been instances of theft and people looking in her window. The diversion of the path would improve the landowner's privacy and possibly security.

### **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 this case, the

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diversion would move the path away from the adjoining property thus increasing the privacy and peaceful enjoyment for the landowner. In the officers' view this proposal has no human rights implications.

## 9 CONCLUSION AND RECOMMENDATIONS

- 9.1 There is significant local opposition to the proposed diversion from the Parish Council and other local walkers. It is therefore recommended that the application be refused.

## 10 REASONS FOR RECOMMENDATIONS

- 10.1 Officers are of the view that the criteria for making a diversion order have not been met.

## 11 WHAT HAPPENS NEXT

- 11.1 All interested parties will be informed about the decision.

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**BACKGROUND PAPERS:** File 3/1/26

