



OFFICER REPORT TO LOCAL COMMITTEE (TANDRIDGE)

PUBLIC FOOTPATH No. 131 (GODSTONE) DIVERSION ORDER APPLICATION

30 September 2011

KEY ISSUE

This report seeks a decision to make a legal order to divert Public Footpath No. 131 Godstone.

SUMMARY

An application has been received from Mr and Mrs Gregory of 'The Glebe House', Leigh Place Lane, Godstone to divert Public Footpath No. 131 where it crosses their property. The definitive route runs between points A – D – E - C and the proposed route between points A – B - C, as shown on Drg. No. 3/1/26/H31a (attached as Annex 1). The applicants would like to move the footpath further away from their house and swimming pool for safety and privacy reasons. Following the receipt of a number of objections to the original application, the landowners' have amended their proposal. As a result most objections have now been withdrawn although at least two still remain. None of the objectors appear to want the definitive route re-opened but would like an alternative currently walked route. The proposed route is considered by Officers to be the best route for the public.

OFFICER RECOMMENDATIONS

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

A Diversion Order is made under section 119 of the Highways Act 1980, to divert Public Footpath No. 131, Godstone onto the line shown A – B – C on Drg. No. 3/1/26/H31a and that if any objections are received and maintained to the Order that it is submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination.

1 INTRODUCTION AND BACKGROUND

- 1.1 Mr and Mrs A Gregory of 'The Glebe House', Leigh Place Lane, Godstone have applied to divert Public Footpath No. 131 where it crosses their property. Their main concern with its current location is that it runs very close to the house and in particular the swimming pool. Although the pool is walled off, they experience regular instances of children climbing over the wall into the pool area. In addition to their application, Mr and Mrs Gregory have offered to surface the muddy sections of the footpath to the north of point 'A', towards the Church, which is unchanged by the proposal.
- 1.2 The definitive route of Public Footpath No. 131 currently commences at the bottom of a slope (point 'A') and runs southeasterly across a field to run alongside a garden and swimming pool boundary wall. It continues around the wall to its junction with Public Footpath No. 132 at point 'C' (on Drg. No. 3/1/26/H31a). This route has become overgrown through lack of use in recent years. In practise the public follow a trodden path, which runs approximately in a straight line between points 'A' – 'E'. The proposed route would commence at point 'A' and run up the slope across the field to point 'B', through a copse area to rejoin its definitive route at point 'C'. The landowners would undertake all the works necessary to install the new route, which includes grading the banks at points 'A' and 'C' and clearing a path through the copse between 'B' and 'C'. They originally applied to divert the footpath further to the north linking in with points 'A' and 'C' at either end, which received a number of objections.
- 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 and Open Spaces Society have raised no objections. Godstone Parish Council originally objected but has since withdrawn.
- 1.4 The objectors have indicated they would prefer a diversion onto the currently walked line between points 'A' – 'E'. It is understood this route has been used as an alternative for some years. They say that there is not sufficient reason grounds for relocating the path and that the landowners could move their swimming pool instead. One objector has asked that if the new route was going to be fenced that it should only be fenced on its southern side.

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.

- 2.3 The Officer's opinion is that the proposed route is a better line for the public than the definitive route, taking them away from the property boundary wall. The Definitive Statement records a stile and barrier at point 'E'. None currently exist on the ground, although the landowners would be entitled to install them at that point. The diversion would not have any structures along it. There are good views from the proposed route, which you do not get for the majority of the definitive route. The proposed route is more direct and would have a legal width of 2.0 metres. Following the receipt of objections to the original proposal a site visit was held in November 2010, which the landowners and a number of objectors attended. Following the meeting the landowners agreed the current proposal as a compromise, which resolved most of the objections. The landowners are not willing to divert onto the used route 'A' – 'E' as it would not take the public away from their swimming pool area.

3 OPTIONS

- 3.1 Make a Diversion Order and advertise it in accordance with the statutory procedures. If any objections are received and maintained submit the order with the objections to the Secretary of State for determination. This is the Officers' preferred option.
- 3.2 Reject the application.

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 applicants have agreed to meet the costs of making an order and to undertake the works for creating the proposed route on the ground. They have also offered to surface sections of the same path further to the north, which are unaffected by the diversion but become very muddy in the winter. If an order were made and objected to it would have to be submitted to the Secretary of State for determination. If it was decided to hold a public inquiry or 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 There are no significant equality or diversity implications.

7 CRIME AND DISORDER IMPLICATIONS

- 7.1 The landowners claim there have been instances of children climbing into their swimming pool area. 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 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 Although a small number of objections still remain no one has indicated that they wish to retain the definitive route. The Officer's opinion is that the proposed route is a better line for the public than the definitive route.

10 REASONS FOR RECOMMENDATIONS

- 10.1 Officers are of the view that the criteria for making a diversion order have 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

Version No. Date:18.07.11 Time: Initials: DP No of annexes:1