



**OFFICER REPORT TO LOCAL COMMITTEE
(WAVERLEY)**

**PUBLIC FOOTPATH NO. 233 CHIDDINGFOLD – PROPOSED
DIVERSION**

17 December 2010

KEY ISSUE

This report seeks agreement to make an order to divert Public Footpath No. 233, Chiddingfold under section 119 of the Highways Act 1980.

SUMMARY

An application has been received from the owner of Coombe Farm House for an order to divert that part of Public Footpath No. 233, Chiddingfold running from its junction with the area of grassland to the north of Stable Cottage, Coombe Lane in a generally southerly direction through the gardens of Stable Cottage and Coombe Farm House for 120 metres to run from its junction with Ridgley Road to the west of the surgery for 136 metres to its junction with the definitive route 20 metres north of the field boundary as shown on Drawing No. 3/1/4/H23 (see Annex A).

OFFICER RECOMMENDATIONS

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

The Surrey County Council Footpath No. 233 (Chiddingfold) Public Path Diversion Order 2010 is made and, if one or more objections are received and maintained, the order be submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination.

1 INTRODUCTION AND BACKGROUND

- 1.1 The definitive route of Footpath No. 178 (Chiddingfold) runs through the gardens of Stable Cottage and Coombe Farm House where it is obstructed by a vegetable patch and a swimming pool. The owners of Stable Cottage and Coombe Farm House say that route has not been used for some time ('at

least 45 years'). In 2003 planning permission for a detached building to provide a doctor's surgery together with ancillary works on land off Ridgley Road, Chiddingfold was granted. The surgery occupies the land to the east of Stable Cottage and Coombe Farm House. During the planning process for the surgery agreement was secured from the landowner to make a strip of land to the west of the plot available and to divert Public Footpath No. 233, Chiddingfold onto this land. Prior to making a diversion order the Council seeks to secure written agreement from all the landowners affected by the proposal. In this particular case, despite several requests, the persons owning the land to the south of the doctor's surgery have not completed and returned the consent forms although they have indicated verbally that, in principle, they are not opposed to the proposed diversion.

- 1.2 Mr Edgar, owner of Coombe Farm House, was reluctant to proceed without this agreement but in December 2009 he signed and returned the formal application for a diversion order.
- 1.3 Prior to making an order the Council consults a number of organisations. During these preliminary consultations Mr Ralph Holmes of the Open Spaces Society indicated that the Society was likely to object to the proposed diversion.

2. ANALYSIS

- 2.1 Mr Holmes says that the land over which the proposed diversion runs is 'tatty' and he has asked whether the area could be landscaped. A copy of Mr Holmes' letter dated 17 July 2010 (Annex A) has been sent to the landowners and they have declined to landscape the site. Mr Holmes has been advised of the intention to bring a report to the Surrey County Council Local Committee (Waverley) and has submitted a letter confirming the Open Spaces Society's objection to the proposed diversion (letter dated 13 November 2010, Annex A). Mr Holmes refers to the stile at point 'D', the brambles on the proposed route, the muddy surface, the fence and hedge to the west and the double stile at the entrance to the field to the south of the proposed diversion. If the order is made and confirmed, the stile at point 'D' will be replaced by a gate (the existing gate will be utilised) and a gap, and the brambles will be cleared. The land over which the proposed diversion runs is in the vicinity of large trees. It is believed to be drier than the rest of the site and unlikely to become as muddy. The path will be included in the vegetation clearance programme and it will be monitored. The landowners have cleared the overhanging vegetation and the council has powers under the Highways Act 1980 to remove overhanging vegetation should it be necessary. The double stiles to the south are not the subject of this diversion and are being dealt with as a separate matter.
- 2.2 Before making a diversion order under section 119 of the Highways Act 1980 (the Act), the Council must be satisfied that the proposed diversion is expedient and, before confirming the order, the Council must also be satisfied that the proposed diversion 'will not be substantially less convenient to the public' and that it is expedient to confirm it 'having regard to the effect which:
 - (a) the diversion would have on public enjoyment of the path or way as a whole,
 - (b) the coming into operation of the order would have as respects other land served by the existing public right of way, and

- (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it’.

There is no definition of ‘expedient’ in the Act but it is defined as ‘something that is useful or convenient in a particular situation’ in the English dictionary. In the officers’ view the proposed diversion meets the tests set out in the Act. The proposed diversion is easy to find and follow and is not substantially less convenient to the public. The proposed diversion is only 16 metres longer than the definitive route and is unlikely to have a detrimental effect on public enjoyment of the path as a whole. The definitive route already runs over land in the ownership of those persons who own the land south of the surgery and the effect of the diversion is likely to be minimal.

3 OPTIONS

- 3.1 Under the Highways Act 1980 (the Act), the Council has a duty ‘to assert and protect the rights of the public to the use and enjoyment of, and to prevent so far as possible the stopping up or obstruction of, all their highways’. Under section 143 of the Act the council has a power to remove a structure or other obstruction from a right of way. In certain circumstances a landowner may apply to the Council for an order to divert a right of way. A diversion order may be made at the Council’s discretion. In this case, the definitive route runs through a fence, a swimming pool, a vegetable patch and two gardens and the route has not been used for some time. The landowners have applied for a diversion order and have agreed to pay the Council’s costs in the matter.
- 3.2 If no objections to the order are made the Council can confirm the order as an unopposed order. If one or more objections are made and maintained the order must be submitted to the Secretary of State for determination. The third option is to rescind the order.

4 CONSULTATIONS

- 4.1 The statutory undertakers, Waverley Borough Council, Chiddingfold Parish Council, the Ramblers, the British Horse Society, the Cyclists Touring Club and the Open Spaces Society were consulted. The Parish Council support the proposed diversion. No objection was received from the Ramblers and Waverley Borough Council and no comments were received from the British Horse Society and the Cyclists Touring Club. The Open Spaces Society has indicated that they are likely to object to the order. If the Committee resolves to make the order, notice of the making of it will be served, as required in Schedule 14 of the Act. The Order will also be advertised on site and in a local newspaper for the statutory period.

5 VALUE FOR MONEY AND FINANCIAL IMPLICATIONS

- 5.1 The applicant has agreed to pay the costs incurred by the County Council in making and advertising a legal order. If any objections are made and maintained, and the Order submitted to the Secretary of State, a public inquiry may be held. Costs for an inquiry are in the region of £1,000 and will be met from the Countryside Access Budget.

6 EQUALITIES AND DIVERSITY IMPLICATIONS

- 6.1 The equalities and diversity implications have been considered and the diverted path will not be any less convenient than the definitive route. The existing gate at point 'D' will be re-aligned and the stile removed.
- 6.2 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 peaceful enjoyment of one's possessions under Article 1 of the First Protocol to the Convention and the right to respect for private and family life under Article 8. In this case, the diverted path will be removed from the gardens at Stable Cottage and Coombe Farm House and will run partly over land designated for this purpose when planning permission for the surgery was granted and partly over land which is already subject to a right of way. In the officers' view this proposal has no human rights implications.

7 CRIME AND DISORDER IMPLICATIONS

- 7.1 The proposed diversion does not present any crime and disorder implications.

8 CONCLUSIONS AND REASONS FOR RECOMMENDATIONS

- 8.1 Members are asked to agree the making of the Diversion Order and, should one or more objections be received and maintained, the onward submission of the order to the Secretary of State for the Environment, Food and Rural Affairs for determination.

9 REASONS FOR RECOMMENDATIONS

- 9.1 The proposed diversion meets the tests set out under the Act, is expedient and will not be substantially less convenient to the public. The Parish Council supports the proposal. The surface of the path is not envisaged to be an issue and will be monitored. If the order is confirmed encroaching vegetation will be cleared and the path will be included in the council's maintenance programme. The Council does not have power to require landowners to landscape sites and the stiles Mr Holmes objects to are outside the scope of the order. If no objections are made, the Order can be confirmed under officers' delegated powers.

10 WHAT HAPPENS NEXT

- 10.1 All interested parties will be informed about the decision. If the recommendation is agreed the Diversion Order will be made.

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