



OFFICER REPORT TO LOCAL COMMITTEE (WAVERLEY)

PUBLIC FOOTPATH No. 81 (THURSLEY): DIVERSION ORDER APPLICATION

16 SEPTEMBER 2011

KEY ISSUE

The County Council has a power to make Public Path Diversion Orders under Section 119 of the Highways Act 1980. In doing so it must be satisfied that in the interests of the public or of the owner, lessee or occupier of the land crossed by the way, it is expedient that the line of the way should be diverted. When an Order is confirmed criteria such as convenience and public enjoyment of the path must also be satisfied.

SUMMARY

Surrey County Council received a diversion application from Mr and Mrs Broste. The effect of the diversion would be to divert Public Footpath No.81 Thursley from point "A" and "D" to points "A", "B" and "C" shown on Drawing No. 3/1/14/H47 (Annexe A). The reason given for the application is to avoid disturbance of animals. Advisory notices were placed on site. Five objections to the proposal have been received and upheld.

OFFICER RECOMMENDATIONS

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

The application from Mr and Mrs Broste to divert Public Footpath No. 81 Thursley as shown by Drawing No. 3/1/14/H47 is refused

1 INTRODUCTION AND BACKGROUND

- 1.1 Mr and Mrs Broste, who are represented by their agent Mr Tsiknas of RWGA, have submitted an application to divert Footpath No 81 Thursley from its

definitive route which travels in a north westerly direction, across the field owned by the applicants and shown as point "A" to "D" on Drawing Number 3/1/14/H47. The proposed route would travel in a generally westerly direction along the fencing adjacent to the field boundary, shown as points "A", "B" and "C" on Drawing No. 3/1/14/H47.

- 1.2 The application was made in the interest of the landowner who seeks to avoid the disturbance of the animals grazed in the field. The applicant has fenced either side of the definitive route to avoid the public trespassing. The result of the fencing splits the field in half and restricts the availability of the grazing area.

2 CONSULTATIONS AND OBJECTIONS

- 2.1 Consultations with user groups and utility companies were carried out. The Ramblers on inspection of the proposal observed that the new route made the Greensand Way slightly shorter. They requested that the tree surrounded by the bench installed by the landowner be removed from the proposed route, as it would narrow the available access as the tree grew in years to come. They objected to the diversion unless the tree was removed. The landowners agreed to remove the tree. The objection was removed.
- 2.2 The Open Spaces Society, on inspection, observed that the path around points "B" and "C" could be eroded during heavy periods of rain and believed that the landowner should be asked to provide a suitable hard surface in line with specifications suggested by the Countryside Access Officer. The Open Spaces Society would not object if this was agreed to. The landowners have agreed to the request.
- 2.3 Notices were placed on site. Five objections were received to the proposed diversion.
- 2.4 Linda Powell objected to the proposed diversion on the grounds that having used the route regularly for 10 years or more she had rarely seen any stock in the field. Only recently have horses occasionally grazed the field. However the adjacent field quite often has sheep, cattle and horses grazing in it. The proposed alternative route takes the path equally close to this adjacent field, which is under the same ownership. If the route is diverted it will only succeed in disturbing the animals in the adjacent field. Diversions approved on the grounds of disturbing animals will set a dangerous precedent, which will result in more applications to divert footpaths. It is clearly not possible to re-route footpaths or BOATS (or indeed roads with noisy traffic on them) to avoid grazed fields nor is it necessary. The objector disputes that walkers disturbs animals.
- 2.5 Mr and Mrs Burnell live in Smallbrook Lane and object to the proposed diversion on the grounds that it is a pointless and entirely unnecessary exercise. The only outcome being the destruction of an often used, time honoured and much loved route, which leads directly to the church at the heart of the village. They describe it as an intrinsic part of the beautiful setting in which they feel lucky to live. They see no valid reason for moving the footpath and consider it an insensitive and ultimately futile move, which would detract from rather than enhance the area. It would render the many guides used by ramblers inaccurate and by removing the farmhouse area from the route would also detract from the pleasure people experience on their walks.

- 2.6 Mr and Mrs Beachey also live in Smallbrook Lane, object to the proposed diversion on the grounds that the footpath is part of, and referred to in the Greensand Way. It forms part of the route from St Michaels and All Angels Church to Smallbrook Farm. Walkers going in the direction of the Devil's Punchbowl would miss the view completely. The diverted route would also add an unnecessary dogleg to the journey, walking past the most direct route to the church, to then have to double back on oneself. Along with more than 100 miles of Greensand Way, the definitive route is featured in numerous walking guides and maps, some of which identify the farm buildings at Smallbrook as a specific point of interest to be noted. As the existing footpath has historical and aesthetic relevance and importance, there is no reason to divert it for the sake of what is, a minor inconvenience for the landowner (as it has been for several hundred years).
- 2.7 A site visit was arranged and attended by Mr Tsiknas, the applicant's agent and Mr Broste, in support of the application. Also Mr and Mrs Brunell and Mr and Mrs Beachey, who were objecting to the application. Linda Powell although invited did not attend. Both routes were walked and discussed. Mr Tsiknas voiced concerns on behalf of his client that the Footpath came out on Smallbrook Lane opposite the property of Mr and Mrs Broste resulting in people having full view into the house. The objectors disputed this. They believed that Footpath No 91 Thursley, which runs along Smallbrook Lane, in front of his property, posed more of an intrusion to the landowner's privacy than Footpath 81. It was also commented on that Mrs Broste had been concerned when a group of walkers had stopped in the field to "picnic" and had asked one of her neighbours to move the walkers on. The objector's children use the footpath for Church, the route being visible to the parents from their home. They see no reason to move the path for the sake of it being an inconvenience to the landowner. Mr Beachey commented that planning permission was granted to Mr Broste to build a stable, which blocks the view of the landscape. Had he been aware of the intention to also divert Footpath No 81 Thursley he would have objected to the planning application and regrets not having done so. There are concerns that the landowners intend to move away having altered the landscape for the remaining residents. The objectors are not willing to withdraw.

3 COMMENTS ON THE OBJECTIONS

- 3.1 The proposed diversion does not conform with County Policy, which states, "*Except in exceptional circumstances the proposed diversion will only be considered if the new route is an improvement to the existing network for the public*". There is no real benefit to the public in regards to the proposed diversion, the only benefit being to the landowner. The application was made on the grounds of avoiding disturbance of animals, but animals graze in the adjoining field. On site it is clear that the definitive route, which is fenced either side, obstructs the landowner's use of the whole field. The definitive route approaches the landowner's home at its junction with FP 91 Thursley, point "D" on Drawing No. 3/1/14/H47. This was a point of contention as to the ability to see into the landowner's home. Walking the route there was very little view of the inside. It is the officer's opinion that approaching walkers would appear more intrusive from inside the house. The definitive route is well used by the local residents, who object to the proposed diversion.

4 FINANCIAL AND VALUE FOR MONEY IMPLICATIONS

- 4.1 The applicant has agreed to pay the advertising and administrative costs associated with the making of an Order and to undertake any necessary works on the proposed route. If objections are made and maintained and this led to a public inquiry or hearing, costs in the region of £1,000 would have to be met from the Countryside Access budget.

5 EQUALITIES AND DIVERSITY IMPLICATIONS

- 5.1 The proposed route would have no particular benefit to the public.

6 CRIME AND DISORDER IMPLICATIONS

- 61 There are no crime and disorder implications

7 THE HUMAN RIGHTS ACT 1998

- 7.1 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 increase the peaceful enjoyment for local residents. In the officers' view this proposal has no human rights implications.

8 CONCLUSIONS AND REASONS FOR RECOMMENDATIONS

- 8.1 The application received from Mr and Mrs Broste does not demonstrate that it is, an improvement to the existing network or in the interests of the public, expedient to divert Public Footpath No. 81 Thursley (as shown on Drawing Number 3/1/14/H47). For this reason it is recommended that an order, under Section 119 of the Highways Act 1980, should not be made.

9 WHAT HAPPENS NEXT

- 9.1 All interested parties will be informed of the Committee's decision. If the recommendation is agreed and the Diversion Order is not made, the definitive route will remain. If the recommendation is disagreed the Order will be made and advertised. If objections are upheld the matter would be submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination.

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