



# **Footpath No. 37 (Woking) Public Path Diversion Order 2005**

## **Local Committee (Woking)**

**1 February 2006**

### **KEY ISSUE**

The County Council has a power to make Public Path Diversion Orders under Section 119 of the Highways Act 1980. Applications may be made in the interest of the owners, lessees or occupiers of land, and/or the general public. The County Council must be satisfied that it is expedient that the line of the path should be diverted. When an Order is confirmed criteria such as convenience and public enjoyment of the path must be satisfied.

### **SUMMARY**

In 1958 an Order made under the National Parks and Access to the Countryside Act 1949 diverted Footpath No. 37 from the field boundary track onto the route 'A'-'B'-'C' shown on Drawing No. 3/1/79/H26 attached. The public however have continued to use the track 'D'-'C'. The diversion order seeks to regularise the situation on the ground. One objection was received in the statutory period. The Council does not have power under the

Highways Act 1980 to modify an Order or to confirm an opposed Order.

## **OFFICER RECOMMENDATIONS**

The Committee is asked to agree that the Surrey County Council Footpath No. 37 (Woking) Public Path Diversion Order 2005 be sent to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

## **INTRODUCTION AND BACKGROUND**

- 1 An Order to divert Footpath No. 37 (Woking) was made under delegated powers in the interests of the owners of the land and the public on 28 July 2005. (**ANNEX 1**).
- 2 All statutory undertakers and other relevant bodies have been consulted. Woking Borough Council and the utility companies raised no objection to the Order. The Ramblers' Association have written in support of the Order. (**ANNEX 2**)
- 3 One objection was received. The objection by Mr Heggie has been sustained. In the objector's view the proposed new route is too narrow. Mr Heggie also believes there to be 'no benefit to the public'. A copy of his letter and e-mail are attached as (**ANNEX 3**). Mr Heggie's comments on encroachment relate to a section of the path which is not the subject of the Order. The Area Officer is aware of the situation and is dealing with the matter.
- 4 In 1958 an Order made under the National Parks and Access to the Countryside Act 1949 diverted Footpath No. 37 from the field boundary track onto the route 'A'-'B'-'C' shown on Drawing No. 3/1/79/H26. The public have not used the route 'A'-'B'-'C' and continued to use the track 'D'-'C'. The diversion order dated 28 July 2005 seeks to rectify the anomaly and re-instate the route 'D'-'C' as the definitive route.
- 5 The Order states that the path is to have a minimum width of 2 metres throughout. This is the Council's standard width for new public footpaths across the County. The 2 metre width will be achieved for the whole of the proposed route once the

fence has been moved and the stile taken out. The 1958 Order states that the width of the current definitive route is 'not less than 3 feet in width'. The proposed width of 2 metres (6 feet 6 inches) is, therefore, double.

- 6 The Council does not have the power to confirm an opposed order and it is requested that the Committee agree that the Order be sent to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

## **FINANCIAL IMPLICATIONS**

- 7 The Secretary of State will decide the matter by written representations or by asking the Council to convene a hearing or a public inquiry. The cost of preparing information to support the Order and convening a hearing or inquiry will be met from the Rights of Way budget.

## **ENVIRONMENTAL AND ECONOMIC IMPLICATIONS**

- 8 There are no significant environmental or economic implications.

## **EQUALITIES IMPLICATIONS**

- 9 There are no significant equalities implications.

## **THE HUMAN RIGHTS ACT 1998**

- 10 Section 6 of the Human Rights Act 1998 states that it is unlawful for a public authority to act in a way that is incompatible with a European Convention right. As far as possible the County Council must interpret primary legislation, such as the Highways Act 1980, in a manner that is compatible with the Convention. The Highways Act 1980 stipulates the procedure that is to be followed by Highway Authorities when dealing with applications pursuant to S119. Article 8 of the European Convention safeguards the right of the individual to respect for a private and family life. It is the officers' view that the human rights of the objector are not affected by the application and Article 8 is not engaged. This proposal does not have any human rights implications.

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BACKGROUND PAPERS: All documents quoted in the report

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No. of Annexes 3