

**SURREY COUNTY COUNCIL**

**LOCAL COMMITTEE (GUILDFORD)**

**DATE: 25 MARCH 2015**



**LEAD OFFICER: DEBBIE PRISMALL  
SENIOR COUNTRYSIDE ACCESS OFFICER**

**SUBJECT: PUBLIC FOOTPATH No. 206, ALBURY –  
DIVERSION APPLICATION**

**DIVISION: THERE**

**SUMMARY OF ISSUE:**

This report seeks a decision to reject an application to divert Public Footpath No. 206 Albury, in light of the objections received.

**RECOMMENDATIONS:**

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

The application from the owners of 'Mardons' to divert Public Footpath No. 206, Albury as shown on Drg. No. 3/1/52/ H31a is refused.

**REASONS FOR RECOMMENDATIONS:**

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

**1. INTRODUCTION AND BACKGROUND:**

1.1 An application has been received from Marian Scrutton and Anthony Wreford, owners of "Mardons", to divert Public Footpath No. 206, Albury where it crosses their property. The definitive route runs between points A – B and the proposed route between points A – C – E – D. Alternatively, if walkers would prefer a link back to point B, the applicants have agreed to a diversion onto the line A – C – E – B. The proposals are shown on Drg. No. 3/1/26/H31a (attached at **Annexe 1**). The applicants would like to divert the footpath in their own interests to enlarge the 'home field' through which the footpath runs, prevent dogs straying onto their property, increase general security as well as increasing public enjoyment by providing longer views, removing two existing kissing gates and protecting the public from livestock. They state they are anxious to generally improve access for the public, and as part of that process have already replaced fencing and cleared encroaching vegetation on the adjoining Public Footpath No. 219. The proposed route would run between wooden post and rail fencing with unfenced sections at either end with benches or logs provided for walkers to enjoy the view.

1.2 The footpath joins Public Footpath No. 219 at the western end, which in turn runs parallel to Public Byway Open to All Traffic (BOAT) No. 507 (Ride Lane).

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The BOAT runs through a steep hollow making access to the continuation of the Footpath No. 206 difficult. The applicants have agreed to provide steps in the slope from point B to the bottom of the hollow. Footpath No. 219 has two obstructions (corrugated iron pig enclosure and a wire fence) recorded in the Definitive Statement for rights of way. Although they do not currently exist on the ground the landowner has a right to have them there. The applicants own the land involved and have agreed to rescind their rights to the obstructions and stiles.

### Objections

- 1.3 Four objections have been received to the proposed diversion from: Mr M and Mrs M Clarke, Mr M Connolly and Mrs S Darling. Mrs Clarke is objecting as she says the footpath must be an ancient path as it runs so straight from Mayor House, past Mardons, past Shophouse Cottage, and continues across Shophouse Lane. She also feels if 'security' was accepted as a reason for diverting it could be a precedent to move other paths running close to property. She says that Footpath No 219 runs much nearer to the house than Footpath No. 206, which is a vital path after rainfall when Ride lane becomes impassable on foot. Mrs Clarke is also concerned that the diverted path, which has an earth surface, will become muddy and says the definitive route does not suffer as it is grass. Mrs Clarke states that the current kissing gates do not 'encumber' use and that disabled access is a non starter as the rest of the footpaths are not accessible. She also states that the land was used agriculturally until recently, with cattle in both fields, without the need to erect any fencing along FP 206.
- 1.4 Mr Clarke has objected saying the proposal should be resisted. He has lived in Farley Green in Row Lane since 1965 and has walked the path in question many times over the years. He has never been aware of any problem over walkers straying from the path, which has always run straight across the field. At certain times in Spring it has offered a quite idyllic view. He is not convinced of the reasons for the diversion.
- 1.5 Mr Connolly says he uses the path occasionally and objects to the proposed diversion. The existing path is about 80 metres from the property and the re-routing would move it a further 10 metres. It is all on level ground so would make no difference to the house's security. He believes the principal purpose is to enhance the value of the property. He has concerns the diverted route would be screened by trees and that there is nothing in the proposal to improve access. A row of new trees has already been planted along the border of Footpath No. 219, which will obscure all views from that stretch of path.
- 1.6 Mrs Darling has objected saying that as a general rule she believes that public rights of way are part of the framework of the countryside and as such should only be diverted for substantive safety reasons. She also says the footpath is of historic interest in that it links and is a direct line between two very old houses – Mayor House farm and Shophouse Farm. To divert it would render it meaningless on a map and leave it no more than a walker's convenience. The argument of security does not stand up: the new owners knew of the existence of the footpath when they purchased the property; the designated footpath is already some 90 yards from the house; another footpath to the west is slightly closer; if it were agreed very many footpaths in Surrey would be vulnerable to diversion on grounds of precedent. Other sections of the footpath make access for people with physical impairment difficult to use, therefore the removal of

kissing gates from the definitive route would make no difference. There is no need to divert the path as the landowners could remove the gates as they are going to fence it in. The County Council volunteers are already going to install steps either side of the BOAT to improve access along Footpath No. 206. The same views are available from the current definitive route so there is no improvement. The owners have removed an old and large hedge and large trees, which formed part of the boundary between two fields; this is to the detriment of wildlife and the Surrey landscape.

#### Applicant's response to the objections

- 1.7 The applicants have agreed to ensure the diverted route is properly levelled and grassed over so it should not be muddier than the definitive route. They have already marked out the proposed diversion and have observed that the vast majority of habitual walkers choose to use it. They have no plans to grow high hedges or put up fences other than those of the type they have already erected and possibly a stock fence if they decide to keep animals. They will keep the new hedge alongside Footpath No. 219 to a manageable level but have not agreed to a prescribed height or width. They state that they removed an old holly hedge to expose some beautiful and hitherto stifled trees and plan to plant more native species in line with these. The diversion takes the path only a few yards from its current course and as such is not spoiling any ancient route connecting local farmhouses as it will continue to do so. They would prefer the path to be in the next field and for the trees to form a natural barrier between the two. They believe there is no detriment to users and that if fenced carefully they can remove all the gates. They have also offered to help repair a stile, provide steps to the BOAT and not to reinstate stiles on Footpath No. 219. It was for these improvements and the agreement to end the diversion at point B that The Ramblers, who originally objected, withdrew their objection. The applicants written comments in response to the objections are attached at **Annexe 2**.

## **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 and/ 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. In this case the proposed diversion to move the path further away from their house is clearly in the landowner's interest. Regarding enjoyment of the route and convenience to the public, although the proposed route is only 20 metres longer than the existing and would contain no structures, it is more circuitous than the existing straight line. The objectors would prefer to keep the historic straight line. They have concerns that the current views will be lost through planting and are not convinced of the reasons for the diversion. Following correspondence with the objectors and site meetings with Mrs Clarke and Mrs Darling, the objections are maintained.
- 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 removal of two kissing gates although a benefit is

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not significant. One of the gates does not appear in the Definitive Statement. The applicants have agreed to provide steps either side of the BOAT to improve access to Footpath No. 206. Although this offer is appreciated, it is a task that volunteers will undertake anyway on behalf of the County Council if the diversion does not go ahead.

- 2.3 The County Council's Public Rights of Way Priority Statement lists the processing of applications for diversions from landowners as number 5 of 8 priorities. This work is undertaken when applicants agree to pay the full costs of processing and where significant public benefit is secured in line with county policy.
- 2.4 In light of the comments made by the objectors, it is considered that the application is not an exceptional circumstance and would not result in an improvement to the existing rights of way network for the public. The diversion would therefore not meet county policy. In addition, if an order were made and objected to and a Public Inquiry held the County Council would have to meet those costs.

### **3. OPTIONS:**

- 3.1 Reject the application to divert. This is the officer's preferred option.
- 3.2 Make a diversion order and if objections are sustained 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 Guildford Borough Council, Albury Parish Council, The Ramblers, Open Spaces Society and all utility companies were consulted on the application. Although the Ramblers originally objected they have since withdrawn their objection following the applicants' agreement to end the proposed route at point B and to construct new steps to Ride Lane. Guildford Borough Council made no comment and Albury Parish Council raised no objection. Legal Services have been consulted on this report.

### **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. If an order were made and objected to it would have to be submitted to the Secretary of State for determination. If a Public Inquiry or Hearing were held costs in the region of £1,000 would have to be met from the Countryside Access budget.

### **6. EQUALITIES AND DIVERSITY IMPLICATIONS:**

- 6.1 There are no significant equality or diversity implications.

### **7. LOCALISM:**

- 7.1 Four local residents have objected to the proposed diversion as detailed in section 1 above. Albury Parish Council has raised no objection.

### **8. OTHER IMPLICATIONS:**

Area assessed:	Direct Implications:
Crime and Disorder	No significant implications arising from this report
Sustainability (including Climate Change and Carbon Emissions)	No significant implications arising from this report
Corporate Parenting/Looked After Children	No significant implications arising from this report
Safeguarding responsibilities for vulnerable children and adults	No significant implications arising from this report
Public Health	No significant implications arising from this report

### 8.1 The Human Rights Act 1998

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 further away from the adjoining property thus increasing the privacy and peaceful enjoyment for the landowner. In the officer's view this proposal has no human rights implications.

## **9. CONCLUSION AND RECOMMENDATIONS:**

9.1 Objections have been received to the proposed diversion from four local residents. In light of the objections, it is considered that there is no significant improvement to the public in accordance with county policy for processing landowner-led diversions. It is therefore recommended that the application be refused.

## **10. WHAT HAPPENS NEXT:**

10.1 All interested parties will be informed of the decision.

### **Contact Officer:**

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### **Consulted:**

Keith Taylor - County Councillor, Legal Services, Guildford Borough Council, Albury Parish Council, The Ramblers, Open Spaces Society, utility companies, site notices.

### **Annexes:**

1. Drg. No. 3/1/52/H31a
2. Applicants' Statement

### **Sources/background papers:**

File 3/1/52 Albury FP 206 Diversion file

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