



WOKING JOINT COMMITTEE

DATE: 24 JUNE 2015
LEAD OFFICER: DEBBIE PRISMALL, SENIOR COUNTRYSIDE ACCESS OFFICER

SUBJECT: PUBLIC FOOTPATH NO. 4 (WOKING) PUBLIC PATH DIVERSION ORDER 2014

AREA: GOLDSWORTH EAST AND HORSELL VILLAGE

SUMMARY OF ISSUE:

The County Council is not empowered to confirm opposed Orders. This report seeks a decision to refer the Diversion Order for Public Footpath No. 4 (Woking) to the Secretary of State for determination. The Committee must also decide whether the Council should actively support the Order.

Three objections to the Order were received within the relevant 28 day period.

RECOMMENDATIONS:

Woking Joint Committee is asked to agree that:

The Surrey County Council Footpath 4 (Woking) Public Path Diversion Order 2014 be referred to the Secretary of State for determination and that the Council should support the order.

REASONS FOR RECOMMENDATIONS:

For many years, Footpath 4 (Woking) has been off-line. Surrey County Council in agreement with the landowners processed a Diversion Order to divert the footpath onto the route that has been used on the ground.

Surrey County Council made a Diversion Order under the Highways Act 1980 and Wildlife and Countryside Act 1981 on 19 November 2014.

The County Council has received three objections to the Order, the main objection being the presence of barbed wire on the fence line facing the proposed new route.

The committee are requested to support the confirmation of the order for these reasons:

- The definitive line through the field is waterlogged for much of the year.

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- The landowner grazes cattle in the field and walkers do not always want to go through fields with livestock in.
- The width of the proposed footpath is 4m. The minimum normally required is 2m.
- There is barbed wire on the path facing side of the proposed route, but as the width of the path is 4m, and there are rails on the fence jutting out further than the wire, officers do not consider this to be a 'nuisance'.
- The proposed route is the path that has been used on the ground by the public for many years and is a wide surfaced track.
- Reinstating the definitive line of the footpath would require the County Council to install a new footbridge at public expense a few metres from the bridge that is currently being used by the public. (An agreement had been reached between the landowner and County Council about future maintenance of the existing bridge if the path is to be diverted onto it).

1. INTRODUCTION AND BACKGROUND:

- 1.1 In 2004, it came to the County Council's attention that Footpath 4 (Woking), in the vicinity of Deep Pool Farm near Horsell Common was off line. The definitive line runs adjacent to the surfaced track south of the pond at Deep Pool Farm, and should cross the River Bourne a few metres to the east of where people cross at the moment, continuing on through a field. The public have for many years been using the surfaced track that runs south of the pond at Deep Pool Farm, across the bridge over the Bourne owned by Horsell Common Preservation Society, and then continuing along the surfaced track to where it meets up with the definitive line again. The definitive line was unavailable for the public to use due to the lack of a footbridge over the Bourne at the correct location, and being obstructed at various points by fencing.
- 1.2 The definitive route of Public Footpath No. 4 currently runs from point 'A', 71 metres south east of its junction with Footpath No. 5 (Woking) and proceed in a south easterly direction for 196 metres to point 'D' as shown on Drawing no. 3/1/79/H58 (see Annex 1 and 2). The total distance 'A'-'D' is 196m. The diverted route would run from point 'A', 71 metres south east of its junction with Footpath No. 5 (Woking) and proceed in a south easterly direction for 85 metres to point 'B' then in a south easterly and north easterly direction for 26 metres to point 'C', then proceed in a generally south south easterly direction for 107 metres to point 'D' as shown on Drawing no. 3/1/79/H58. The total distance 'A'-'B'-'C'-'D' is 218 metres.
- 1.3 Restoring the footpath to its definitive line would require a new footbridge to be installed at public expense, and limitations in the form of kissing gates installed in the fenceline to manage stock. The field to the south of The Bourne where the definitive line runs is often waterlogged throughout the year. The proposed route goes over the existing cart bridge, has no limitations and has a surfaced track.
- 1.4 A deed of covenant has been made between the County Council and interested parties about the future maintenance of the bridge should the footpath be diverted onto it.
- 1.5 An informal consultation on the proposed diversion was carried out in August 2014. All the statutory utility companies and prescribed organisations were initially consulted and notices were also put on site at each end of the route to be

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diverted. The Ramblers did not object, and no response was received from Woking Borough Council and the Open Spaces Society.

Organisations / individuals consulted: Woking Borough Council, The Ramblers, Open Spaces Society, site notices, Southern Gas Networks, National Grid, UK Power Networks, Thames Water, Affinity Water, BSkyB, Cable and Wireless, BT Openreach, Virgin Media, www.linesearchbeforeudig.co.uk

- 1.6 As no objections were received during the first round of consultations, a Diversion Order was made (see annex 3) under Officer's delegated powers on 19 November 2014 and advertised on 28 November 2014. This was followed by a 28 day notice period during which objections or representations could be made. The notice also appeared in the local press, on site at points A and D (on drawing 3/1/79/H58), on the Surrey webpage and was posted for viewing at Woking Borough Council offices and Woking Library for the same period. Directly affected landowners were also served with a copy of the Order as were the various interest and user groups.

Organisations / individuals served with a copy of the Order: Colin Kemp - County Councillor, Legal Services, Woking Borough Council, The Ramblers, Open Spaces Society, Byways and Bridleways Trust, Network Rail, Premier Planning Consultancy, Horsell Common Preservation Society (landowner), Mrs. White (landowner), site notices, notices at Woking Library and Woking Borough Council Offices

- 1.7 Following the making of the Order, three sustained objections were received within the relevant 28 day period; from Ms Kate Ashbrook of the Open Spaces Society, Mr Andrew Heggie of Quills, South Road, Woking and Mr. Timothy Hayter of Holly Cottage, Horsell Birch, Woking. The reasons for their objections are outlined below.

- 1.8 The Open Spaces Society objected on the grounds that:

- They think the order has been made only in the interests of the landowner and is substantially less convenient for the public.
- The width provided is inadequate
- There is barbed wire on the path side of the fence

- 1.9 Mr. Andrew Heggie objected on the grounds that:

- Public enjoyment of the path will be affected as the route will be fenced on both sides and not open.
- Mr. Heggie said that in one place the width has been restricted to 2 metres
- There is barbed wire on the public side of the fence.
- Mr. Heggie made a comment about the definitive map and statement which relates to a section of the path just to the south east of the diversion.

- 1.10 Mr. Timothy Hayter objected on the grounds that:

- The path will be fenced off and no longer open, and is narrow in places.

- 1.11 This is a non-executive function requiring a decision from the committee members to submit the Order to the Planning Inspectorate for determination.

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. The proposed route is free of limitations, surfaced and is drier than the definitive route. This constitutes an overall improvement for the public in terms of accessibility.
- 2.3 The objections raised relate to the proposed footpath being less open and fenced in, not enough width being provided, and barbed wire on the public side of the fence.

Comments on the objections:

- 2.4 **Proposed Footpath being less open and fenced in:** Landowners are entitled to fence in a right of way in order to manage stock, as long as the legal width is available for use.
- 2.5 **Width:** The width of the proposed route is 4 metres along its whole length, apart from the bridge which is 3.6 metres. The County Council's usual practise is to require 2 metres for a new footpath, and therefore this is twice the required width. Mr Heggie refers to the path being restricted to 2 metres at one point – this is not the case for the section of the path that it is proposed to be diverted. Mr. Heggie is referring to a section of the path that is to the south east of point D on the plan, and is not part of the proposed diversion.
- 2.6 **Barbed wire:** There is barbed wire on the public side of the fence, but there are also rails on the public side of the fence, which extend out further the wire. It is the Officer's opinion that due to this, and the proposed footpath being twice the required width, that this is not a 'nuisance' to the public (Section 164 Highways Act 1980).
- 2.7 Making the definitive route fully accessible would require the County Council to install a new footbridge at public expense a few metres to the east of the existing bridge. It is estimated that the cost of a new footbridge would be around £13,500. The proposed route has no limitations such as gates, but the definitive route would require kissing gates to be installed in the fence line to enable stock management. The proposed line is surfaced while the definitive line runs through a field that is waterlogged for much of the year.
- 2.8 The County Council has corresponded with the objectors and the landowner to try to resolve the issues. The Authority was unable to resolve the objections and is therefore unable to confirm the Order itself.

3. OPTIONS:

- 3.1 To support the Order and its referral to the Secretary of State for determination. This is the Officer's preferred option.
- 3.2 If the Order is declined, we will have a duty to ensure the definitive route is reopened, and construct a new footbridge.
- 3.3 To decline support of the Order, in which case it will be rescinded. The applicant could then apply for an alternative diversion route or approach Woking Borough Council to make a new Order, as they also have powers to make an order under the Highways Act. If they decline the applicant may apply to the Secretary of State.

4. CONSULTATIONS:

- 4.1 Notices were placed on site, and statutory bodies and other interested parties including Woking Borough Council, The Ramblers, Open Spaces Society and all utility companies were consulted on the application. No objections were raised during the consultation period. Legal Services have been consulted on this report.

Organisations / individuals consulted: Woking Borough Council, The Ramblers, Open Spaces Society, site notices, Southern Gas Networks, National Grid, UK Power Networks, Thames Water, Affinity Water, BSkyB, Cable and Wireless, BT Openreach, Virgin Media, www.linesearchbeforeudig.co.uk.

5. FINANCIAL AND VALUE FOR MONEY IMPLICATIONS:

- 5.1 Surrey County Council has agreed to meet the costs of making the Order. If submitted to the Secretary of State for determination, the matter may be dealt with by way of written representations, hearing or public inquiry. If the latter was to occur then the County Council would be liable for costs in the region of £2,000, which would have to be met from the Countryside Access budget.
- 5.2 If the Order is not confirmed then Surrey County Council will have to restore the footpath to its definitive line, which would include building a new footbridge at the cost of approximately £13,500 plus the full cost of any ongoing maintenance works. If the footpath is diverted over the existing bridge then Surrey County Council has an agreement to contribute 33% towards any future maintenance works. These costs will be met from the Countryside Access budget.

6. RISK MANAGEMENT:

- 6.1 There are no significant risk related issues

7. LOCALISM:

- 7.1 This diversion has an impact upon 'public' rights, but in practice will be mostly used by local residents. It is deemed that the impact upon the local community will be minimal for the reasons outlined in paragraph 2.2.

8. EQUALITIES AND DIVERSITY IMPLICATIONS:

- 8.1 The proposed route is free of limitations, and is surfaced whereas the definitive route would require limitations in the form of kissing gates to be licensed in the fence line (as they are not listed as a limitation in the Definitive Statement), and would run through a field that is waterlogged for much of the year. The proposed route is not significantly longer than the definitive route. This constitutes an overall improvement for the public in terms of accessibility. These particulars meet our requirement to have regard to the Rights of Way Improvement Plan. Rights of Way Improvement Plans are intended to be the main way in which local highway authorities identify the changes that need to be made to the local rights of way network to make it more useful and accessible to the public.

9. 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.
Human Resource/Training and Development	No significant implications arising from this report.

10. CONCLUSION AND RECOMMENDATIONS:

- 10.1 Officers are of the view that the criteria for making the Diversion Order in the first place were met.
- 10.2 The Order is expedient in the interests of the parties named in the Order and is no less convenient to the public as a whole nor in terms of any land it crosses or serves.
- 10.3 Despite the three sustained objections made within the notice period, the Committee are recommended to support referral of the Order to the Secretary of State for determination.

11. WHAT HAPPENS NEXT:

- 10.1 All interested parties will be informed about the decision by letter and what the next steps will be.

Contact Officer:

Joanne Porter, Countryside Access Assistant
020 8541 9576

Consulted:

Colin Kemp - County Councillor, Legal Services, Woking Borough Council, The Ramblers, Open Spaces Society, site notices, Southern Gas Networks, National Grid, UK Power Networks, Thames Water, Affinity Water, BSkyB, Cable and Wireless, BT Openreach, Virgin Media, www.linesearchbeforeudig.co.uk

County Council Cabinet Member

Mike Goodman, 01276 489680

Annexes:

1. Drawing no. 3/1/79/H58
2. Public Footpath No. 4 (Woking) location plan
3. Public Footpath No. 4 (Woking) Diversion Order 2014
4. Public Footpath No. 4 (Woking) Diversion Order 2014 photos

Sources/background papers:

File 3/1/79 Woking Footpath 4 Diversion File

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