

**SURREY COUNTY COUNCIL**  
**LOCAL COMMITTEE (TANDRIDGE)**



**DATE: 9 DECEMBER 2016**

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

**SUBJECT: PUBLIC FOOTPATH No. 415, DORMANSLAND –**  
**DIVERSION APPLICATION**

**DIVISION: LINGFIELD**

**SUMMARY OF ISSUE:**

This report seeks a decision on whether to make a legal order to divert Public Footpath No. 415, Dormansland. Two objections have been received.

The officer's recommendation is that an order should be made.

**RECOMMENDATIONS:**

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

A Diversion Order is made under section 119 of the Highways Act 1980, to divert Public Footpath No. 415, Dormansland onto the line shown A – D – E – F on Drg. No. 3/1/129/H13 and that if any objections are received and maintained to the Order that it is submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination.

**REASONS FOR RECOMMENDATIONS:**

Officers are of the view that the criteria for making a diversion order have been met. The alternative route will benefit the landowner as well as providing a useful, safer link in the rights of way network.

**1. INTRODUCTION AND BACKGROUND:**

The Application

- 1.1. Mr and Mrs K Atkinson of Moor Hall, Wilderwick Road, Dormansland have applied to divert Public Footpath No. 415 where it crosses their property. The proposed diversion is shown on Drg. No. 3/1/129/H13 attached at **Annex A**. A plan showing the wider rights of way network is attached at **Annex B**. Their reasons for wishing to move the footpath are to:
- Improve access to bridleway no. 409, thus removing the need to walk on Wilderwick Road, where there is no footway;

ITEM 11

- Remove confrontation due to loose dogs and reduce the attacks on sheep. They say that walkers, usually with dogs, wander all over the fields.
- 1.2. The definitive route currently runs from a stile at point A on Sandhaves Hill in a northerly direction across a grass field, used to graze sheep, to a stile at point B. It then continues along a field edge to a stile at Wilderwick Road, beside the entrance to Moor Hall. The total distance A – B – C is 335m. The proposed route would commence from point A where the current stile would be replaced by a kissing gate. It would continue around the field edge in a westerly and then northerly direction to culverts at points D and E. It would then continue in a more north-westerly direction around the field edge to a kissing gate at point F to meet Public Bridleway No. 409.
- 1.3. The applicants have agreed to pay the County Council's costs of processing their application and making a diversion order. They have also agreed to undertake all the necessary works to put the new route in on the ground. This would include clearing any vegetation and the installation of 2 culverts and 2 kissing gates. They would fence the proposed route leaving a width of 2.0 metres.

Objections

- 1.4. The adjoining landowners along the western boundary, Swites Limited, and Dormansland Parish Council have both objected to the proposed diversion.
- 1.5. Swites Limited, is incorporated specifically for ownership, stewardship and conservation of Moorhaves, Swites and Furzefield woods together with two small adjoining wild flower and native grassland meadows to the west. The area of approximately 60 acres supports a large area of ancient semi-natural and ancient replanted woodland. Its current ecological status is a Site of Nature Conservation Importance (SNCI). Swites Limited's objection is attached at **Annex C**. Their objections are summarised below:

Grounds of objection	Officer's comments
Inevitable disturbance to wildlife along the woodland edge corridor by people and their dogs being forced to use this diverted footpath.	There is already sheep fencing along the woodland/ field boundary. Another line of sheep fencing would be installed at a width of 2.0m. Although people and their dogs would be able to use the footpath they would not be able to enter the woodland.
A double fenced corridor beside dense woodland with kissing gates at each end is out of place and will detract from the unspoilt natural beauty of this open field walk situated in an Area of Outstanding Natural Beauty.	Many paths that cross land containing livestock are double fenced. If the landowners wished to they could fence in the current definitive route.
A new access to BW 409 is not necessary due to the existence of FP 416.	FP 416 is not a comparable alternative as it is 1km away to the west at its southern end and 500m at the northern end. A new access onto

	BW 409 would create a circular route for walkers incorporating FP 416.
The diversion is unnecessary because FP 415 is little used.	It is argued that the FP is little used because it goes to a busy narrow road with no connecting rights of way nearby. At the moment walkers are forced to walk along Wilderwick Road where there is no footway either northwards for 430m to the entrance of BW 409 or southwards for 274m to FP 413.
On the rare occasions when FP 415 is used walkers would need to travel 1053m instead of 335m to return to Wilderwick Road.	There is no reason why walkers would want to return to Wilderwick Road as there are no residential properties or linking routes between the entrances of FP 415 and BW 409.
FP 415 has been moved on a previous occasion at the landowners' request to a position to the side of the entrance to Moorhaves Business Centre. Why was this major re-routing not proposed at the time?	The northern section of FP 415 was diverted in 1990 at the request of the current landowners. This diversion moved the footpath out of the car parking area approximately 20 metres to the west off the driveway to Moor Hall. The County Council records do not show whether a greater diversion was discussed at that time.
The landowners were aware of FP 415 when the property was purchased 30 years ago.	According to our records the landowners have been in correspondence with the County Council since at least 2005 regarding walkers not sticking to the path, dropping litter and problems with dogs. The possibility of a diversion has been discussed with Countryside Access Officers in the past.
If double fencing is required to avoid disturbance to sheep the problem can be resolved by double fencing existing FP 415. The cost compares favourably with single fencing the much longer diversion route.	The landowners do not wish to fence in the current definitive route as it would make the fields smaller, make it difficult to move sheep around and be unsightly across an open field. The recorded definitive width across the field is only 3 feet. If this was to be double fenced it would make it extremely narrow for walkers.

- 1.6. Dormansland Parish Council's objection is attached at **Annex D**. They have objected on the following grounds:

Grounds of objection	Officer's comments
The proposed footpath would effectively create a new footpath rather than a diversion of the original one. A diversion starts and ends at	Under the legislation, a diversion must connect with the same highway or a highway connected to it. In this instance the diversion starts at the

<p>the same places as the original, just taking a slightly different route: this is not the case in the current proposal.</p>	<p>same point (point A) and then joins public bridleway no. 409, which is connected to Wilderwick Road. The proposal therefore meets the criteria for a diversion.</p>
<p>The landowner’s intention to fence both sides will adversely affect the public’s enjoyment of the countryside. Many footpaths cross or edge fields with sheep or cattle and dog owners are respectfully requested to ensure their dogs are kept on leads.</p>	<p>The footpath would be double fenced at a width of 2.0 metres. The double fencing would allow walkers to let dogs off the lead away from sheep. Unfortunately, at the moment not all walkers are keeping their dogs on the lead through the sheep field. It is considered that the increase in distance and the linking in with other rights of way would increase the public’s enjoyment of the footpath.</p>
<p>The Parish Council has been alerted to the inevitable disturbance to the wildlife which would result if the proposals were carried out.</p>	<p>The field is already fenced along its western boundary and therefore walkers or dogs would not be able to enter Swites Wood.</p>

- 1.7. The County Council Ecologist has looked at the objection submitted by Swites Ltd and has made the following comment: “Having read the information, I agree that there is likely to be an adverse impact on wildlife both by the creation of the diverted route but also any from any future tree and shrub management. Woodland edges, or ecotones, are very important parts of a woodland and creating a new footpath next to the woodland will adversely affect this part of the woodland habitat. Managing trees on a woodland edge is also problematic as it can cause windthrow by exposing trees to greater amounts of wind. The woodland is identified as ancient woodland and is also a Site of Nature Conservation Importance and is an irreplaceable habitat. If a new development was proposed next to an ancient woodland, a buffer zone of 15m would be required. It is likely that the additional fence line would be within the root impact zone with the potential to cause harm to the trees along the woodland edge. I also note that dormice and great crested newts are mentioned, both are European Protected Species. From the photographs, habitat suitable for dormice might be directly affected. As this has been raised in a response, it would probably be necessary to conduct a dormouse survey before proceeding. However, my recommendation would be not to proceed with this diversion, it may be that a less damaging route could follow the northern boundary’.

Comments on the objections

- 1.8. The proposed route would run beside Swites Wood for 620m at a width of 2.0 metres. The recorded definitive width of the footpath between points A – B is only 3 feet. The diversion would therefore provide a wider route for walkers. There is no possible northern boundary route that would benefit the landowner or be so convenient for walkers as the current proposal. The boundary of the field is already stock proofed so people and dogs are not able to enter the woodland area. There appears to be no public access in Swites Wood and therefore no disturbance to wildlife within its boundary. The Natural Environment and Rural Communities Act 2006 (NERC) places a duty on the County Council to ‘have regard’, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. After

having 'regard' to wildlife issues it is considered that the impact on wildlife would be minimal compared to improving safety for walkers. The diversion would take them off the busy, narrow road. It would create an important link in the rights of way network and provide the opportunity for a circular route by linking in with other public rights of way in Surrey and West Sussex. These routes can be seen on the plan attached at **Annex B**.

- 1.9. The Rights of Way Improvement Plan is a statutory document, which identifies changes that can be made in respect of the management and improvement of rights of way, in order to meet the Government's aim of better provision for walkers, cyclists, equestrians and people with mobility difficulties. It states in the Plan that where appropriate and feasible, the County Council will consider diverting existing routes to form a more coherent network and to increase the accessibility of the network for those less mobile. This proposed diversion meets those aims. The definitive route currently has 3 stiles on it, which can be a problem for less able walkers whereas the proposed route would have kissing gates.
- 1.10. The Plan also refers to the high level of road traffic in Surrey having several negative impacts on users of the rights of way network, who are by definition vulnerable road users. Where a path ends at a highway with no direct connection, vulnerable road users are forced to use the carriageway, which can act as a serious disincentive to use of the route. A main objective of the Plan for improving connectivity is to provide a continuous off-road circular route for health and recreation, particularly close to centres of population. This footpath is on the edge of East Grinstead and the proposed diversion would provide a better connected route.
- 1.11. Surrey Highways has been consulted and have commented that Wilderwick Road is a narrow 2-way road with significant traffic flows, particularly at peak hours, as drivers use it to access East Grinstead. The road has a number of bends and the speed limit is 40mph. Along the majority of the road there are hedges close to the carriageway edge with only very narrow verges. Given the conditions of high traffic flows and lack of verge width, and bends restricting visibility it is not in their view an appropriate road for pedestrians to walk along. However, they acknowledge that it is not dissimilar to very many other roads that link public rights of way.
- 1.12. The accident data from the last 5 years shows 3 recorded accidents on Wilderwick Road in the vicinity of the footpath entrance. Two involved vehicles losing control and coming off the road and the other involved a car hitting a pedestrian.

Reasons for officer recommendation:

- 1.13 Consideration of the application and the objections received has been a balancing exercise between biodiversity issues and highway issues including public safety. The proposed diversion meets both the criteria under the Highways Act and county policy. It would benefit the landowner as well as providing a more useful, wider, safer link in the rights of way network and therefore the recommendation is that a diversion order should be made.

**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.
- 2.3. The proposed diversion would meet 2 of the 5 main objectives in the Surrey Rights of Way Improvement Plan, which is a statutory document. These are: to improve connectivity of rights of way and reduce severance; and to improve accessibility to services, facilities and the wider countryside along rights of way.
- 2.4. The NERC Act 2006 places a duty on the County Council to have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.
- 2.5. Under the Equality Act 2010 the Council must consider the needs of those with mobility impairments when managing rights of way and access.

**3. OPTIONS:**

- 3.1. Make a Diversion Order and advertise it in accordance with the statutory procedures. If any objections are received and maintained, submit the order with the objections to the Secretary of State for determination. This is the Officer's preferred option.
- 3.2. Reject the application and the definitive route will remain where it is.

**4. CONSULTATIONS:**

- 4.1. All interested parties were consulted. The Ramblers responded saying "We have no objection to the proposal. Assuming the new path will be created in accordance with the usual standards required by Surrey County Council for a public footpath, it will – despite being longer than the path it will replace – make a significant contribution to improving the network of public rights of way in this area." Tandridge District Council officer response is that they have no objection "subject to the proposed new route being satisfactorily surfaced and clearly waymarked."

**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 it was decided to hold a Public Inquiry or Hearing the

County Council would be liable for costs in the region of £1,000, which would be met from the Countryside Access budget.

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

- 6.1 The existing route currently has 3 stiles on it, whereas the proposed route would have 2 kissing gates making access easier for less able walkers.

#### **7. LOCALISM:**

- 7.1 Public Footpath No. 415 is used purely as a recreational route. It does not provide access to an amenity such as a railway station, church, shop or school and therefore any increase in walking distance is seen as a benefit particularly as it would remove the need to walk on the road thus improving safety for local residents. The diversion would introduce a new off-road link, creating a new circuit with public rights of way to the west and into West Sussex.

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

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

#### 8.1 Crime and Disorder implications

The proposed diversion would reduce the incidents of trespass and the risks of dog attacks on sheep.

#### 8.2 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. In the officer's view this proposal has no human rights implications.

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

- 9.1 The Officer's recommendation is that a diversion order should be made.

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

A Diversion Order is made under section 119 of the Highways Act 1980, to divert Public Footpath No. 415, Dormansland onto the line shown A – D – E – F on Drg. No. 3/1/129/H13 and that if any objections are received and maintained to the Order that it is submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination.

<b>10. WHAT HAPPENS NEXT:</b>
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10.1 All interested parties will be informed about the decision.

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**Contact Officer:**

Debbie Prismall, Senior Countryside Access Officer Tel. 020 85419343

**Consulted:**

Advisory notices were placed on site, Tandridge District Council, Dormansland Parish Council, Open Spaces Society, The Ramblers, Legal Services, County Ecologist, Surrey Highways, Michael Sydney County Councillor, Swites Ltd, statutory utility companies.

**Annexes:**

Annex A – Drg. No. 3/1/129/H13  
Annex B - Location plan  
Annex C – Objection from Swites Ltd  
Annex D - Objection from Dormansland Parish Council

**Sources/background papers:**

Papers contained in file 3/1/129 Dormansland FP 415

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