

**SURREY COUNTY COUNCIL**

**LOCAL COMMITTEE (MOLE VALLEY)**

**DATE: 5 SEPTEMBER 2018**



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

**SUBJECT: PUBLIC FOOTPATH No. 75, LEATHERHEAD – APPLICATION  
TO RESTRICT PEDESTRIANS AT CERTAIN TIMES**

**DIVISION: LEATHERHEAD**

**SUMMARY OF ISSUE:**

A request has been received from the Howard of Effingham Partnership Trust to close Public Footpath 75, Leatherhead at certain times of the day. Forty-six objections have been received to the proposal including from Effingham Parish Council, Effingham Residents' Association and the Ramblers. The footpath is well used by local residents and there is no suitable safe alternative route.

The Local Committee is asked to refuse the application.

**RECOMMENDATION:**

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

The request by the Howard of Effingham Partnership Trust to make a legal order to close Public Footpath 75, Leatherhead at certain times of the day is refused.

**REASONS FOR RECOMMENDATIONS:**

The County Council has powers under the Road Traffic Regulation Act 1984 to close public footpaths. In this instance, due to the number of objections that have been received, the lack of a suitable safe alternative route and the inconvenience it would cause to local residents the officer's opinion is that no such order should be made.

**1. INTRODUCTION AND BACKGROUND:**

1.1 The Howard Partnership Trust on behalf of Howard of Effingham School has applied to Surrey County Council to close Public Footpath No. 75, Leatherhead, where it crosses their land, at certain times of the school day and in the school holidays. The relevant section is shown between points A - B on drawing no. 3/1/51/H114 attached at **Annex A**. Planning permission has been received on appeal for a new school to be built across the road and therefore the closure would be for the next 2 – 3 years until the school moves to the new site. When the site is redeveloped the need to retain the footpath, possibly on its current line or an agreed alternative route, will be included in those plans. The application is for closure of the footpath during the hours term-time 7.30am – 6pm Monday to Friday and at other times during the school holidays for summer school. Before

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applying, the school carried out its own informal consultation with local residents and other interested parties.

- 1.2 The footpath, which runs across the school playing field, has long been a concern to the school with regard to the security of their students. They say the majority of people who use the footpath do not have any intention of behaving inappropriately. However, they have had a number of people entering the field via the footpath without respecting that they are walking through a school. Damage has been caused, and both students and staff have, on occasions been threatened. In addition, whilst many dog walkers shown consideration for the environment, not all dogs are kept on leads and there are regular incidents of dogs fouling on the school field. These have health and safety implications for students who use the field for sport and recreation. In order to mitigate the risk teaching staff spend time regularly checking the field and picking up dog faeces.
- 1.3 In order to clarify some confusion about where the footpath runs, the school has recently secured the perimeter fencing by their tennis courts and are looking into ways of making the access points clearer on both sides of the field. They say it is not practical to fence in the footpath in its entirety as the playing field, as a whole, is used for school activities. For many years the school has been seeking a solution that will satisfy both the school's duty of care to the children and the wishes of the local community. They had previously applied to either extinguish or divert the footpath, both of which were not acceptable to groups within the local community and were not proceeded with.
- 1.4 In order to be able to restrict the public walking on the footpath at certain times, a legal traffic regulation order would have to be made. The County Council as the Traffic Authority has the power to make a Traffic Regulation Order (TRO), under section 1, of the Road Traffic Regulation Act 1984 (subject to consultation and advertising requirements) where it considers it expedient: -
  - a) for avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising, or
  - b) for preventing damage to the road or to any building on or near the road, or
  - c) for facilitating the passage on the road or any other road of any class of traffic (including pedestrians), or
  - d) for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property, or
  - e) (without prejudice to the generality of paragraph (d) above) for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot, or
  - f) for preserving or improving the amenities of the area through which the road runs'
  - g) for any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality)
- 1.5 Under section 122 of the Road Traffic Regulation Act 1984 a duty is imposed on local authorities to exercise their TRO powers to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway. In the exercise of such powers local authorities are, so far as practicable, to have regard to –

- (a) the desirability of securing and maintaining reasonable access to premises;
- (b) the effect on the amenities of any locality affected and (without prejudice to the generality of this paragraph) the importance of regulating and restricting the use of the road by heavy commercial vehicles, so as to preserve or improve the amenities of the area through which the roads run;
- (bb) the strategy prepared under section 80 of the Environment Act 1995 (national air quality strategy);
- (c) the importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles; and
- (d) any other matters appearing to the local authority to be relevant.

1.6 Members are asked to consider the Council's duty under section 122 of the Road Traffic Regulation Act 1984, to conduct an adequate balancing exercise to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians).

1.7 If the footpath was closed the only alternative route for pedestrians would be to walk along Manorhouse Lane, which is narrow and has no footway. A plan showing the wider network of public highways is attached at **Annex B**.

1.8 A site visit for Members of this Committee was held on 31 July. Those able to attend were: Tim Hall, Hazel Watson, Clare Curran and Paul Kennedy. At the site visit Members walked the footpath and the linking FP 73 to Manorhouse Lane.

## **2. ANALYSIS:**

2.1 The making of a TRO would inconvenience a number of local residents who use the footpath to access local facilities as well as other walkers who use it as part of a recreational route.

## **3. OPTIONS:**

- 3.1 It is the Officer's recommendation that no Traffic Regulation Order be made.
- 3.2 If the Committee decides not to agree with the recommendation then a Notice of Intention to make a TRO restricting pedestrians during the hours specified in section 1.1 will be advertised in accordance with the regulations and a decision on whether to make an order be delegated to the Countryside Access and Operations Manager (Officer) in consultation with the divisional member, Local Committee Chairman and Vice Chairman (Members).
- 3.3 If a TRO was made and substantial (and relevant) objections received, or significant modifications proposed, the Officer with delegated authority in consultation with the Members, may refer the decision on whether the TRO be made back to the Mole Valley Local Committee.

**4. CONSULTATIONS:**

- 4.1 The following have been consulted: Guildford Borough Council, Mole Valley District Council, Effingham Parish Council, the Police, Open Spaces Society, The Ramblers, Mrs Julie Iles County Councillor, Mrs Clare Curran County Councillor, Effingham Residents Association, Legal Services and the utility companies. Advisory notices have been placed on site with details of the application inviting comments.
- 4.2 The Guildford Borough Council's Principal Planning Officer's comment was that the footpath should be restored as soon as the replacement school is opened and operational on the new site.
- 4.3 The Police have responded saying they accept that having a footpath at this location has its problems and that the proposal offers a seemingly reasonable compromise. However, they have two concerns:
- i. "If the proposal is to have a locked gate at certain times of the day, then a robust system of ensuring that the gate is subsequently unlocked will need to be considered, otherwise there is the potential for obstruction offences to be committed by the school.
  - ii. There is also the potential for an additional demand for police resources to enforce the TRO, which is unlikely to be a policing priority."

Objections

- 4.4 The County Council has carried out a preliminary consultation during which forty-six objections have been received.
- 4.5 Effingham Parish Council has consulted widely throughout the village. They state that there is a perception that the school has seriously underestimated the amount of pedestrian traffic along the footpath and that the imposition of a traffic order will meet serious opposition and create considerable resentment in the local community. The school will need to demonstrate that the risk is real and divulge the incidents and that the police concur that the risk is indeed real. They would need to demonstrate that all alternative solutions have been fully considered and investigated and that none of them are viable. If the cost is a key factor they would encourage them to apply to the Effingham Parish Council Community Fund for assistance. The vast majority of residents who have expressed their views would be happy to accept the enclosure of the footpath by a fence of a suitable height and transparency with suitable access gates for school activities and emergency vehicles. They say the footpath is a key connecting route between footpaths 119 and 119a. A nearby alternative route used with permission from Effingham Lodge Management Company can be withdrawn at any time. It is also narrow and not readily accessible by buggies or mobility scooters. Asking residents to detour further along footpath 119 and then down Manor House Lane, which is a narrow rural road with no footways, particularly at times of high vehicle traffic during the school run would be extremely dangerous. The use of footpaths within the village, are key to maintaining sustainability and healthy exercise in an area which already suffers from high vehicle traffic. They are anxious that no action should be taken that will force even more people into their cars for short journeys.

- 4.6 The Ramblers say the route is popular with walkers because it connects the path network in Effingham with the scenic areas of Oaken Wood and the nearby lakes, via a path on the west side of The Vineries. The Ramblers oppose all footpath closures. They are concerned it would set a precedent for other schools to initiate similar closures and it would cause considerable aggravation for people unfamiliar with the area. They also note that the path is used extensively by local residents as a walking route between different parts of the village. They say the withdrawal of access during school hours is not acceptable.
- 4.7 The Effingham Residents Association (EFFRA) has consulted with residents who have confirmed that the footpath is both well-used and necessary and is actually most used during the hours the school is proposing its closure. They say it is an essential part of the public footpath network linking different parts of the village. In particular, it is part of a walking route between the south and north of the village, which goes across the KGV playing fields using footpath 119 and then footpath 75 to reach the Lower Road and The Vineries or on via footpath 119A to Effingham and Bookham Commons. It is used by residents of all ages – including elderly residents without cars walking to the Vineries from the south of the village, young mothers going to baby and toddler groups at All Saints Church, Little Bookham, other residents using the church and residents walking to the Commons or KGV for recreation or dog walking. The EFFRA has received objections from representatives from all these groups. They believe that even a limited closure of the footpath would represent a serious safety issue and major inconvenience. The only safe alternative route involves a 0.75 mile detour via footpath 118 to Church Street and then along Lower Road. The other shorter alternatives are either unsafe or impractical. They suggest the school considers fencing in the footpath on both sides with gates for school access. This may cause some minor inconvenience to the school's use of the playing fields it would be a compromise that safeguards the safety of both students and residents. Solid fencing would be unacceptable for safety reasons.
- 4.8 In addition the EFFRA has submitted a document with 48 signatures of regular users of the footpath from both Bookham and Effingham with explanations of their use. They have expressed their concern about the possible closure of the footpath. They include parishioners of All Saints Church, young mothers pushing buggies to toddler groups, playing fields and playgrounds, Bookham residents for dog walking, Effingham residents accessing the bus stop on the Lower Road and walking to the Vineries. The EFFRA do not understand why the school is seeking measures to close the footpath when security issues around the rest of the eastern part of the school have not been addressed. They have submitted photos showing unfenced gaps. They feel the easiest solution is to put a fence and wide gate to the western side of the footpath, which could be opened when the school grounds are in use.
- 4.9 Reverend Mandy MacVean has written as the Rector of Effingham with Little Bookham Parish representing the congregation. She says she personally uses the footpath on a regular basis during school hours. She also has "a number of young Mums who come to the church during the week with young children in buggies. If the path were to be closed they would need to negotiate the traffic in Manor House Lane which is narrow and has no pavement. It would be extremely dangerous and no doubt require parents to drive to the church instead. When we are wanting to encourage people to exercise and leave their cars at home this seems counter-intuitive." We recognise the school's desire

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for security but feel that a chain link fence either side of the path with a gate would be just as secure and still allow those visiting the church to walk in safety.

- 4.10 The Open Spaces Society has responded by saying that it is the duty of the authority to use its powers under the Act to secure the 'expeditious, convenient and safe movement' of pedestrian traffic. "In that context, an order to exclude all user of a highway would appear to be a very unusual use of the powers conferred by the Act. They do not think it would be a correct use of the Act to make such an order.
- 4.11 Ms C Mahoney has objected saying there is no legal basis for making an Order under s.1 of the RTRA. She does not feel the application to close the footpath falls into any of the grounds in the Act. The only possible ground is paragraph (f) (see section 1.4 of this report) but says the applicants have not made a clear evidential case in support of that. Under Section 122 RTRA 1984 there must be a balance. Ms Mahoney quotes Section 122 RTRA 1984 and lists various factors which authorities must consider, when using their TRO powers. The authority must balance the factors set out in s122 with its duty to ensure the safe passage of pedestrians along the footpath under s 122(1). The applicant's reasons for closing the footpath do not fall clearly under any of the heads set out in s s122 2 (a) to (d). There has been no evidence submitted in support of the application. Accordingly, the safe passage of pedestrians along the footpath should be maintained and the footpath should remain open. Ms Mahoney has also sent a copy of a letter from Surrey Police confirming that there has been no crime at the Howard of Effingham School in the previous 6 months.
- 4.12 Other reasons for objecting include:
- a) Unless the school is intending to fence in this area completely on the north, west and southern sides, closing the footpath would not stop an attack on someone using the churchyard to gain access.
  - b) It is an ancient and important public footpath with no alternative and if it was to close it would cause very serious problems for residents' safety.
  - c) There are concerns that the restricted closure if agreed would result eventually in the footpath being closed permanently.
  - d) The school has made no effort to find alternatives it has not been properly marked out with signs, fences or anything else. The proposed solution with not solve the problems just move them elsewhere on the school boundaries.
  - e) Closure during the hours proposed would cut off safe access to the lower road and The Vinerie nursery forcing people to walk down Manor House Lane, which has no pavements, poor visibility and is unlit. Thus creating a new safety hazard particularly for those who are elderly or have young children.
  - f) No good reason for the closure is given by the school. The footpath goes across a small corner of the playing field and is well away from the school buildings. The school also make good use of the King

George Vth (KGV) playing field, which has full public access so privacy and security cannot be an issue.

- g) Access to the rugby club is also required for villagers. Local families use it to get to the scout hut for activities and those with young children use the footpath to get to the playground.
- h) KGV is a public field and residents of Effingham and Little Bookham should be allowed access from all corners of the field for their enjoyment.
- i) Other parts of the school grounds are completely open. There are several other places around the site where it is very easy to get into the school.
- j) A local resident has lived there for 20 years and has noticed that use of the lower part of the field by the school (Little Bookham Church end) is limited and virtually non-existent over the winter months. It is only used by students during their breaks during the summer term on hot days.
- k) Currently the students use KGV playing fields and access it via the rear gate at the school, which the teachers open and close when they go in and out. The same system could easily be used with large gates in a fence across the field.
- l) Due to the different land levels any type of team sport could not be played across the footpath.
- m) From the south the detour is along footpath 118, through St Lawrence Church graveyard, Church Street with steps, no pavement and on a bend. It is approximately 1.1km long.
- n) Any closure (even temporary) would cause unnecessary danger and hardship for the public. The roads are narrow with blind bends hence the danger to pedestrians – especially mothers with pushchairs.
- o) If security for the School is required they could simply erect a chain-link fence across the field with wide gates for emergency access and allow villagers to use the path as usual.
- p) People wanting to still access local businesses or the Church may seek alternative means of transport, such as by car, increasing congestion and pollution.
- q) One gentleman is in a wheelchair and uses the path every day to go to the Effingham shops. He says “it is not safe for him to use the road as cars go so fast”.

#### The Schools Reasons for the application

- 4.13 In response to the objections the school say they have received informal verbal support from within the school community and in particular the parent body. Since applying for the TRO they have been successful in a planning appeal for Howard of Effingham School to be rebuilt on Effingham Lodge Farm.

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Therefore, any limited closure of the footpath would only be required for the next 2 – 3 years until the new school is ready.

- 4.14 They have requested that the path is closed between 7.30am and 6pm because students begin arriving at school from around 7.40am and, particularly during the summer, some clubs and activities start from this time. A 7.30am closure would allow early rising dog walkers access to KGV across the field but give them time to be gone before the children start to arrive. We have all sorts of clubs and practices on the field after school most days which go on until 6pm when daylight allows. For the sake of simplicity, they decided to apply for a closure until 6pm all year around.
- 4.15 It is not that the footpath itself is used for sport, but the areas on either side are. Suggestions to fence off the footpath are simply not practical. If they could have a gate wide enough to allow grounds care vehicles and ambulances to access they would. To ensure security during the day, there would have to be periods when they needed to lock students out. This would clearly not be acceptable and could seriously compromise their safety should they need to get into school quickly for any reason. The school has trespassers on site on an almost daily basis. Most have no real ill-intent but some do. Staff and students have, in the past, been exposed to abuse, threats and attacks. These are not frequent occurrences but they have happened. The police have been called to incidents of threatening behaviour. Their concerns are not about what has happened in the past, but about preventing anything from happening in the future.
- 4.16 Members of the public have accessed the school field via the footpath and used it for a variety of reasons including camping and picnicking, on occasions with alcohol. In addition, whilst many dog walkers show consideration for the environment, not all dogs are kept on leads and there are regular instances of dog fouling.
- 4.17 The TRO would mean that they could install lockable gates at either end of the footpath to prevent access at times when children are on site. Their preference would be that the footpath were permanently closed because with any opening they are still vulnerable to trespassers who could cause mess and damage, as they do now. Nevertheless, in an attempt to find some middle ground, and on the advice of a local councillor, they have decided to seek a limited closure.
- 4.18 The school field is their only green space. It is used by community groups during holidays for play schemes and other activities. Concrete areas may be more secure but are much less appealing and less appropriate for the types of activities being undertaken. They School believe that it is even more important to ensure that the path is closed when holiday activities are taking place because there are fewer staff around to support should there be any incidents. The safety of the children and staff is their number one concern.
- 4.19 The School has been seeking a resolution to this issue for almost 20 years. They are continuing to seek this very necessary adaptation to ensure that they are doing as much as they possibly can to keep their students safe while they are in school. In their view it would be utterly remiss to simply accept the risk the footpath presents for as long as it takes for the new school to be built. In their view waiting for the new school would not be considered a good reason for taking no action should a serious incident occur.

**5. FINANCIAL AND VALUE FOR MONEY IMPLICATIONS:**

- 5.1 There would be no cost to the Countryside Access budget.
- 5.2 The cost of processing and making a TRO would be in the region of £1,500 including administrative and advertising charges. If a TRO were made these would be met by The Howard Partnership Trust.

**6. EQUALITIES AND DIVERSITY IMPLICATIONS:**

- 6.1 There would be no safe alternative routes for walkers during periods of closure.

**7. LOCALISM:**

- 7.1 There is strong local opposition to the proposal.

**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

**9. CONCLUSION AND RECOMMENDATIONS:**

- 9.1 Officers do not support the making of a TRO. There is strong local opposition to the proposal on the grounds set out in section 4.

**10. WHAT HAPPENS NEXT:**

- 10.1 All interested parties are informed of the decision. If the recommendation is agreed the file is closed.
- 10.2 Should Members decide to proceed with a TRO; a Notice of Intention to make an Order will be published in a local newspaper, on site and on the County Council's website. All interested parties and user groups will be notified in accordance with the Local Authorities Traffic Orders (Procedure) (England and Wales) Regulations 1996.
- 10.3 The Officer with delegated authority in consultation with the Divisional Member and the Local Committee Chairman/ Vice Chairman may decide whether to accede to any unresolved objections and decide whether the TRO may be made, with due regard to the provisions of the 1996 Regulations.

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10.4 Where substantial (and relevant) objections are received or significant modifications proposed, the Officer with delegated authority in consultation with the Divisional Member and the Local Committee Chairman/ Vice Chairman, may refer the decision on whether the TRO should be made back to the Local Committee. Alternatively, they could decide that a Public Inquiry be held by an independent inspector to decide the matter. The costs of this would be in the region of £3,000.

**Contact Officer:**

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**Consulted:**

Guildford Borough Council, Mole Valley District Council, Effingham Parish Council, Effingham Residents' Association, The Ramblers, Open Spaces Society, Mrs Clare Curran County Councillor, statutory utilities and Legal Services.

**Annex:**

**A** - Drg. No. 3/1/51/H114

**B** - Plan showing the wider highway network

**Sources/background papers:**

File for FP 75 Leatherhead – TRO application