

SURREY COUNTY COUNCIL**LOCAL COMMITTEE (TANDRIDGE)****DATE: 20 SEPTEMBER 2019****LEAD OFFICER: DANIEL WILLIAMS
COUNTRYSIDE ACCESS OFFICER****SUBJECT: PUBLIC BRIDLEWAY No. 29, WOLDINGHAM –
PARTIAL WIDTH EXTINGUISHMENT APPLICATION****DIVISION: WARLINGHAM****SUMMARY OF ISSUE:**

This report seeks a decision to approve an application to extinguish part of the width of Public Bridleway No. 29 Woldingham.

RECOMMENDATIONS:

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

The application from the owner of 'West Stables' to extinguish part of the width of Public Bridleway No. 29, Woldingham as shown on Drg. No. 3/1/35/H5 is approved.

REASONS FOR RECOMMENDATIONS:

Officers are of the view that the criteria for making a Partial Width Extinguishment Order under section 118 of the Highways Act 1980 have been met.

1. INTRODUCTION AND BACKGROUND:

- 1.1 An application has been received from Mr A R Clarke of West Stables, Marden Park Farm, Woldingham, to extinguish part of the width of Public Bridleway No. 29, Woldingham where it runs along the north-side of the properties known as 'Eastfields', 'West Stables' and 'Fox Barn' on land in the ownership of their neighbour opposite, Mr H Watson, 'The Shires', Marden Park Farm. The application route runs between points A – B as shown on Drg. No. 3/1/35/H5 (**Annex 1**). Mr Watson has given his written agreement to the proposal.
- 1.2 The application seeks to reduce the width of the bridleway between points A – B to 4.0 metres from its current legal width of between 6.7 – 4.0 metres. This would allow the owners of 'West Stables' and 'Fox Barn' to park outside their properties without parking on the line of the public bridleway, as they have been doing since 1994.
- 1.3 Public Bridleway No. 29 was originally a public footpath on the Rights of Way Definitive Map and Statement. It was diverted from its original line north of "The Shires" to run between the former farm buildings by the Ministry Of Transport in 1966. In 1995, the County Council received an application under s. 53 of the Wildlife and Countryside Act 1981 which required us to determine

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whether higher rights existed. After examining the evidence a Definitive Map Modification Order upgrading footpath 29 to bridleway was made in 2001 and confirmed in 2002 by an Inspector appointed by the Secretary of State. At the same time a Public Path Partial Width Extinguishment Order was made and confirmed, reducing the width of the bridleway down to between 6.7 – 4.0 metres. (Order at **Annex 2**).

1.4 In support of his application Mr Clarke has stated that:

- (i) The bridleway was badly managed by the developers because no consideration was given to the parking requirements for the two properties. If thought through it should have made provision. Ironically the revised bridleway between the buildings included the essential footings underpinning two houses, which in a previous SCC communication said if requested they should be removed (now removed from the bridleway in the last partial extinguishment).
- (ii) The area proposed for partial extinguishment has not been used by horse riders nor pedestrians for around 25 years.
- (iii) During this period there has not been one complaint due to cars being parked in the area proposed for partial extinguishment. In effect what their application seeks to do is to formalise what has been in existence for over twenty years.

1.5 **Objections**

Advisory notices were placed on site and an informal consultation with the statutory bodies and other interested parties was carried out. The local British Horse Society (BHS) has no objection to the partial width extinguishment provided the width on the Definitive Statement for the whole length between the Shires and Fox Barn, West Stables and Eastfields is recorded as 4 metres and that this width is delineated on the ground itself. The BHS does not mind whether this is by a single white line or some of the cobbles replaced with coloured cobbles to show the width, or some other method, as long as the width is clearly marked.

1.7 Two objections have been received and maintained to the partial width extinguishment from Ms Janeen Herring and Ms Nicky Hodgetts. Their reasons for objecting are set out below. A site meeting was held with them, one other, Mr Clarke and Anne Woods Countryside Access Officer on 7 May to try and resolve their concerns.

1.8 Ms Herring has objected on the following grounds:

- a) That there is not enough room for a 4.0 metre gap to be left for the safe passage of horses. This section of track is extremely important, if horse riders were unable to get through it would mean detouring on to the 40mph Woldingham Road.
- b) If parking was permitted the situation would then be open to abuse – with more and more cars being parked in the small area which is used by walkers, cyclists and horse riders.

- c) It seems there is access to parking “up the track” for the applicant....maybe there is a case for this land to be better utilised, reduction of garden etc. It was noted that parking was available some distance in Church Road. This situation is not new and existed at the time of purchase.
- d) Parking spaces are not necessary for the ‘bin lorry’... they reverse up the bridleway pick up the bins and go. Yes they block the way, but only for a minute.

1.9 Ms Hodgetts has objected on the following grounds:

- a) This footpath is a well documented and advertised footpath. I use it on a regular basis. The path adjacent to Eastfields, West Stables and Fox Barn has not been used since the residents of these properties have taken to parking their vehicles on the footpath/ bridleway, thus technically obstructing the footpath and in fact breaking the law, I believe, section 34(1) of RTA 1988.
- b) Eastfields has allocated parking for 3 vehicles to the side of its property, West Stables I believe has parking at the rear, and Fox Barn has a garage. I would suggest that there is in fact no need to allow these residents to park their vehicles on a footpath, and would tentatively suggest that it is more of a self interest request to ensure saleability of their houses and/or increase the value of their houses. Surely in an era where footpaths are diminishing, handing over half a footpath for unnecessary parking is not in keeping with the priorities of the purpose of footpaths or affecting the environment in a positive way.
- c) These residents purchased their properties knowing the parking situation, why should it be for Surrey County Council to hand over something belonging to us for the sole financial benefit of individuals.
- d) If the decision is taken to allow this, it will set a dangerous precedent of allowing individuals to gain financially for the extinguishment of footpaths.

1.10 **Applicant’s comments on the objections:**

- (i) The parking of cars has never been an issue for 25 years, there have been no formal complaints/ objections to SCC and we have never received a complaint nor an expression of concern from riders, walkers or neighbours in that time.
- (ii) These are only perceived problems arising from the application, but not a problem in reality and therefore not grounds for objection. This is in many respects a greater width than many bridleways in the area, horse riders have never had an issue riding past including the full hunt with dogs. (Mr Clarke has supplied photos of the hunt on the bridleway riding past the cars). He understands there has been the odd occasion in the past, where almost certainly the recycling truck and delivery vehicles, who have a right of way, would have blocked the bridleway for a short time with minimal inconvenience.

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- (iii) West Stables at the rear is not accessible for other than 4 wheel drive (high) vehicles. It is an unmade up bridle path with water diverters. It is also not possible for delivery, trade and utility vehicles.
- (iv) There is a right of way for the residents of Fox Barn and West Stables over the bridleway in the deeds.
- (v) The bridleway doesn't 'belong' to SCC or the public, it belongs to the owner of the land.
- (vi) There is absolutely no financial motive, I don't own the land and the owner has no intention of selling it. He is however, willing to give formal permission to park on it and that is one of the reasons for initiating the application. The only reason is simply 'peace of mind' and to formalise a situation that has happily existed for 25 years. We have a right of access and if not obstructing the passage of horses and walkers, which we have not, there has been absolutely no issue with parking. We've worked hard to have a symbiotic relationship with the horse community.
- (vii) Ms Hodgett's 'objection' is based on a 'point of principle' ('hand over something belonging to us all for the sole financial benefit of individuals') which is not true and we would submit as a 'point of principle' it should not be admissible.
- (viii) The 'objection' by Ms Herring does not claim that the area for partial extinguishment 'is needed for public use'. It has not been used by the public for 25 years (No negative comment nor complaint) and indeed at the meeting she happily agreed that ongoing parking as she saw it would be acceptable (as did Ms Hodgetts).

2. ANALYSIS:

- 2.1 Section 118 of the Highways Act 1980 enables the County Council to make an order where it appears expedient that a path or way should be stopped up on the ground that it is not needed for public use.
- 2.2 In this instance, it is the officer's view that a greater width than 4.0 metres is not needed for public use. The County Council's practise is to seek a minimum width of 4.0 metres for any new public bridleway. This allows horse riders, cyclists and pedestrians to pass each other easily. That the County Council has received no complaints from horse riders about cars parking on the section to be reduced seems to support this position. No future applications to reduce the width to any narrower than 4.0 metres would be accepted. The effect of an order on the land would be to allow the landowner to continue granting private rights for adjoining householders to park on the area to be extinguished.
- 2.3 The legislation then states that "The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way....."

- 2.4 Section 34(1) of the Road Traffic Act 1988 (RTA 1988) provides that anyone driving a mechanically propelled vehicle, for example a motor car, on (amongst other places) a road that is a footpath, bridleway or restricted byway is guilty of an offence unless it can be shown that they have lawful authority to do so. In this instance the residents have a private “right of way together with all others having the like right at all times and for all purposes over the roadway...” in their property deeds.

3. OPTIONS:

- 3.1 Make a Partial Width Extinguishment Order and if objections are sustained submit it with the objections to the Secretary of State for determination. This is the officer’s preferred option.
- 3.2 Reject the application. (Members should cite their reasons so that they can be minuted).

4. CONSULTATIONS:

- 4.1 Notices were placed on site and statutory bodies and other interested parties including Tandridge District Council, Woldingham Parish Council, The Ramblers, Cycling UK, The British Horse Society, Open Spaces Society and all utility companies were consulted on the application. Legal Services have been consulted on this report.
- 4.2 The British Horse Society has no objections to the partial width extinguishment provided the bridleway remains at 4.0 metres and has requested that the edge of the 4.0 metres is delineated on the ground. They said this would ensure that visitors or future owners of the properties are clear where parking is permitted. They have asked that either a single solid white line is painted or some of the cobbles replaced with coloured cobbles to delineate the width.
- 4.3 The applicant and landowner do not agree to a white line saying it would be both inappropriate as it is not tarmac and aesthetically would be out of keeping with the former farmyard setting. They also state it would be unnecessary as cars have been parked there for well over 20 years. They are agreeable to re-laying (to the satisfaction of the Highway Authority) some of the drive using another colour brick installed every 50 centimetres along the full length of the 4 metre line to denote the width of the bridleway. The British Horse Society are agreeable to this.
- 4.4 A couple of other comments were received during the informal consultation process. Only one person stated that when no cars were parked on the bridleway they used the full width. Concerns were also raised regarding a possible gating of the route and whether an application to reduce the width on the other side of the track could be made in the future. In response, it is the Council’s practice to require a minimum width of 4.0 metres so no further application would be accepted. A gate would not be allowed as it would not meet the criteria for licencing such structures.

5. FINANCIAL AND VALUE FOR MONEY IMPLICATIONS:

- 5.1 The applicant has agreed to meet the costs of making an order and to undertake to delineate the width extent of the bridleway on the ground as outlined above. If an order were made and objected to it would have to be

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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 Woldingham Parish Council and Tandridge District Council have raised no objections.

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 partial width extinguishment would allow parking spaces for the adjoining properties. In the officer's view this proposal has no human rights implications.

9. CONCLUSION AND RECOMMENDATIONS:

9.1 It is considered that a width greater than 4.0 metres is not needed for the public bridleway and therefore the application should be approved.

10. WHAT HAPPENS NEXT:

10.1 All interested parties will be informed of the decision.

Contact Officer:

Daniel Williams, Countryside Access Officer
Tel. 020 85419343

Consulted:

Becky Rush - County Councillor, Legal Services, Tandridge District Council, Woldingham Parish Council, The British Horse Society, Cycling UK, The Ramblers, Open Spaces Society, utility companies, site notices.

Annexes:

1. Drg. No. 3/1/35/H5
2. 2001 Partial Width Extinguishment Order

Sources/background papers:

File 3/1/35 Woldingham BW 29 Partial Width Extinguishment file

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