

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

**DATE:** 28 JUNE 2013  
**LEAD OFFICER:** DANIEL WILLIAMS, COUNTRYSIDE ACCESS OFFICER (LEGAL DEFINITION)

**SUBJECT:** PUBLIC FOOTPATH No. 140B (GODSTONE)  
 DIVERSION ORDER APPLICATION

**DIVISION:** GODSTONE DIVISION

**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. 140B (Godstone) to the Secretary of State for determination. The Committee must also decide whether the Council should actively support the order.

One objection to the order was received within the relevant 28 day period. Two further objections were received after the end of this period.

**RECOMMENDATIONS:**

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

- i). The Surrey County Council Footpath 140B (Godstone) Public Path Diversion Order 2012 be referred to the Secretary of State for determination and that the Council should support the order.

**REASONS FOR RECOMMENDATIONS:**

An application was received from Mr and Mrs Cronk to divert Public Footpath No. 140B where it crossed their property, and property belonging to Mr and Mrs Clowes. The definitive route runs between points A-B-C-D-E and the proposed route between points G-F-E, as shown on Drg. No. 3/1/26/H32 (Annex B). The application was made for security and privacy reasons to move the footpath further away from their house and also out of adjacent garage buildings. The applicants also state that walkers will benefit by more open surroundings away from buildings, improved views and the replacement of two stiles by kissing gates.

The SCC Diversion Order was made on 8 February 2012. One objection was received within the 28 day notice period from Mrs Duignan. Her objections, in summary, are: that she had not been properly consulted prior to the making of the order; that the order route is too close to her property; that the ordnance survey base map contains inaccuracies; that her property is already impacted by two rights of way and that a compromise route should be considered.

Two further objections, from the Parish Council and a resident on Eastbourne Road were received after the 28 day notice period had elapsed.

Two emails of support were received and three local residents completed a survey that they supported the order. Tandridge District Council raised no objection.

## **1. INTRODUCTION AND BACKGROUND:**

- 1.1 In November 2011 Mr and Mrs Cronk (originally of Harts Lane Cottage, Harts Lane, Godstone) applied to divert Public Footpath No. 140B where it crossed their property. The application (see annex A) was made for security and privacy reasons, to move the footpath further away from their house and also out of adjacent garage buildings which were constructed over the definitive route sometime before they purchased the property. During intervening years the public have been informally using an alternative route which passes over their land slightly to the northwest and also over land owned by Mr and Mrs Clowes of Hartsridge. The applicants state that users will benefit by a walk through more open surroundings away from buildings, with improved views and the removal of two stiles and their replacement by kissing gates, therefore improving accessibility for the public.
- 1.2 In support of the application they agreed:
  - i. a width of 2.0 metres between E-F-G,
  - ii. no stiles (there would be kissing gates at points 'G' and 'F').
  - iii. to grade the bank around 'F' to a shallower gradient
  - iv. to clear remaining hedge and vegetation around 'F' and 'G'
  - v. to surface under gates at 'F' and 'G' using 150mm depth of compacted stone.
- 1.3 The definitive route of Public Footpath No. 140B currently commences at its junction with Harts Lane at point 'A' (on Drg. No. 3/1/26/H32- see annex B). It runs in a mostly northerly direction for 100 metres along a driveway to the western side of number 8 Harts Lane to point 'B' where it is obstructed by garage buildings to the west of Harts Lane Cottage. It then continues in a north-north-easterly direction for 10 metres to point 'C' where it is obstructed by a fence and hedge. Following this the route continues in the same direction for 50 metres to point 'D' where a stile is located. The route then turns north-easterly for 110 metres to point 'E'. The diverted route is 59 metres shorter than the definitive route and runs in a north-north-westerly direction from Harts Lane, 36 metres east of No. 1 for 234 metres past the hedge line at point 'F' to point 'E'.
- 1.4 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 diverted. Tandridge District Council raised no objection under officer's delegated powers, subject to the proposed new route being satisfactorily surfaced and clearly waymarked. The Ramblers, Godstone Preservation Society and Godstone Parish Council did not object. No response was received from the Open Spaces Society. One objection received during this period was withdrawn shortly afterwards.

- 1.5 No objections were sustained during the first round of consultations so a diversion order was made(see annex B) under Officer's delegated powers on 8 February 2012 and advertised on 16 February 2012. 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, E and G (on drawing 3/1/26/H32), on the Surrey webpage and was posted for viewing at Tandridge District Council and Oxted Library for the same period. Directly affected landowners were also served with a copy of the order as were the residents of Harts Lane and various interest and user groups.
- 1.6 Following the making of the order only one (sustained) objection was received within the relevant 28 day period; from Mrs Duignan, owner of Cherry Tree Cottage (and surrounding lands), Eastbourne Road, on the basis that:
- She as (adjacent) landowner was not consulted on the proposed diversion prior to the making of the order.
  - Therefore she could not object to it and require that it go before Local Committee for scrutiny before the order was made.
  - She was not informed directly when the order was made.
  - Point G on the plan is too close to her boundary.
  - The order plan based on Ordnance Survey mapping shows inaccuracies.
  - Her property is already impacted by two public rights of way.
  - It would have a detrimental impact on the value of her land in terms of public liability, security risk and privacy. Up to 700 metres of her land would be affected.
  - The boundary fencing alongside the proposed diversion is poor with a number of gaps allowing the public to stray off the footpath. New fencing would incur a considerable expense.
  - A compromise route further away from her property should be considered.
  - The diversion would permit the owners of Harts Lane Cottage to divert the footpath to the distant perimeter of their boundary, thus passing on loss of land valuation, security risk and privacy to another landowner.
- 1.7 One other objection from a resident of Harts Lane was received during this period but was later withdrawn.
- 1.8 Two other objections were received after the 28 notice period. Committee has no duty to consider these objections but they are reported below.
- i. Mrs Cynthia Turner of Redcot, Eastbourne Road, Godstone commented that:
- She was disappointed that the Council had not seen fit to advise her of the diversion earlier.
  - The proposal will affect her privacy and security.
- ii. Godstone Parish Council did not object during the formal 28 day period but objected more than 6 months after the end of the notice period. They believed there was a more acceptable alternative route (identical to that suggested by Mrs Duignan) which should be considered. This is shown 'H' to 'F' on the plan in annex C .
- 1.9 Two letters/emails of support were also received after the formal notice period.

- 1.10 Mr and Mrs Leonard are the new owners of Harts Lane Cottage and confirm that they fully support the application to divert the footpath. They believed it to be in the public interest because:
- The route is in the open, offering better views
  - It removes the current footpath from a driveway which has shared vehicular use.
  - The proposed new entrance from Harts Lane is on a wider part of the road with good sight lines.
  - If the diversion is not successful they will wish to erect fencing along the footpath for privacy.
- And in the owner's interest because:
- It increases privacy and security.
  - Allows greater flexibility in landscaping the ground around the house.
  - Avoids the need to introduce screening.
- 1.11 They note that the residents of nos. 5-8 Harts Lane have been granted permissive rights over the southern perimeter of their land so are not negatively impacted by the footpath's dislocation. Residents of nos. 2-4 and Pasternak Farm will benefit by the closer location of the diverted route. Other residents will not be materially affected. The owner of Hartsridge will be a main beneficiary as the diversion removes the footpath from their land entirely.
- 1.12 Mr Leonard also commented on the objections of Mrs Duignan:
- Footpath 140B leads to/from her land but does not impact the entry/exit point.
  - It is infrequently used and the diversion will not generate an increase in numbers.
  - The diversion is entirely on his land and well away from hers- the only tangible detriment is to his land.
- 1.13 Mr and Mrs Clowes of Hartsridge, Godstone support the diversion on the basis that the public use their drive to access the designated path causing damage to a gate.
- 1.14 Three local residents of Harts Lane also confirm that they supported the order, whilst one other neither supported nor objected to it.
- 1.15 This is a non-executive function requiring a decision from the committee members.

## **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 two stiles which currently exist on the definitive statement will be

replaced by two kissing gates on the statement accompanying the proposed route. The proposed route is also more open with wide views and does not at any point share its extent with a vehicular access. This constitutes an overall improvement for the public in terms of enjoyment and accessibility.

- 2.3 The objections raised relate to privacy, security, liability, convenience, administrative errors and the existence of alternative routes.
- 2.4 **Privacy:** It seems likely that neither Mrs Duignan's (nor Mrs Turner's) privacy would be significantly compromised by the proposed diversion given that the entrance of this path to her land is unchanged and that the closest point of the proposed route is about 175 metres away from her built property at Cherry Tree Cottage. Given the slight brow of the hill, the hedges between the properties (which in some places includes a triple 'post and wire' fence and ditch) it seems unlikely that they would easily see or be troubled by users deviating from the diverted route.



View northeastwards towards Cherry Tree Cottage and Redcot, from between F and G on plan 3/1/26/H32. (16 May 2013)

- 2.5 **Security:** The land owned by Mrs Duignan is already crossed by two rights of way, edged by the A22 Eastbourne Road along the whole of its eastern side and partly unfenced along its southern edge with Harts Lane. This diversion constitutes a negligible contribution to public access around her property. The same is even more true for Mrs Turner at Redcot who has no common boundary with the land containing the proposed diversion. The closest point is about 170 metres distant. There is no reason to conclude that the proposed route is likely to give rise to additional security risk or criminal intent given the description in 2.4.

- 2.6 **Liability:** Given that this diversion does not enter her land it will have no impact on her personal liability.
- 2.7 **Convenience:** The exit of this route onto Harts Lane has been moved 190 metres to the east. This will increase the amount of road used by pedestrians walking to it from the western end of Harts Lane whilst reducing the distance from the east. The landowner has granted personal permissive rights across their land to those residents of 5-8 Harts Lane to reduce the impact on their personal use. Given that there is no nearby footpath link in either direction there is no obvious loss of connectivity. The new footpath will be 2 metres in width compared to a current legal width of 5' (1.5m) and two stiles will be replaced by easy access kissing gates. The overall impact is deemed positive from the point of view of the wider public.
- 2.8 **Administrative errors:** Initial consultations were undertaken with statutory undertakers, user groups, the Parish and District Councils, local residents of Harts Lane and directly affected landowners. There is no statutory 'requirement' for users, landowners or even Councils to be consulted at this stage but we find such practice useful. No objections were received and therefore a Diversion Order was made using delegated powers. In addition to statutory consultees, the notice advertising the order appeared on site, in the local press, on our website and at the local District Council and libraries. It is correct that Mrs Duignan was not contacted directly at either stage (as an adjacent landowner). The Council agrees this was an oversight from our normal procedures but can confirm that there is no statutory requirement for us to inform adjacent landowners at either stage. She did become aware of the Order before the end of the formal notice period by viewing it on-site at point 'G'. She then made an objection within the time allotted. Further time was allowed for her to expand on her objection which she duly did. It is very unlikely then that she could successfully argue that she has suffered any prejudice in this matter should it be referred to the Secretary of State and a public inquiry ensue. Her neighbour Mrs Turner has no common boundary with the land and is not directly impacted by the diversion; there is therefore no reason why she should have been consulted directly about this proposal at any stage.
- 2.9 **Alternative routes:** The alternative route E-F-H suggested by Mrs Duignan and the Parish Council was considered by the applicant and is known to the current landowner. They did not wish to consider this alternative. It is possible that such an alternative would attract objections from adjacent residents on Harts Lane.
- 2.10 **Mapping errors:** Mrs Duignan suggests that the woodland boundary veers off incorrectly on drawing 3/1/26/H32. This understanding is incorrect- the base mapping used is provided from very accurate current surveys provided by the Ordnance Survey.
- 2.11 **Boundaries and Fencing:** It is not known to whom the boundary fencing/hedges belong but it would take significantly more effort to enter Mrs Duignan's land from the proposed route through the hedgeline than from the existing rights of way crossing her land, from the A22 or from Harts Lane.
- 2.12 Following the receipt of clear and detailed objections from Mrs Duignan, various discussions were held between her and the Council and the landowner. As a consequence of this an additional round of informal, non-statutory consultations

were then held with local residents and interested parties to ensure that we had a clear idea of local opinion regarding the order. This provoked the receipt of a new objection from the Parish Council. No other objections were received.

- 2.13 The Authority was unable to resolve<sup>1</sup> these remaining 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. Or...
- 3.2 To decline support of the order, in which case it will be rescinded. The applicant may then apply for an alternative diversion route or approach Tandridge District Council to make a new order. If they decline the applicant may apply to the Secretary of State.
- 3.3 If the order is declined, we will have a duty to undertake enforcement action to make the current definitive route available to the public. This will include demolition of garages at Harts Lane Cottage. Such works may fall fairly low down our priority statement<sup>2</sup>.

### **4. CONSULTATIONS:**

- 4.1 See paras 1.4 and 2.8

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

- 5.1 The applicant agreed to meet the costs of making an 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 £1,000, which would have to be met from the Countryside Access budget.

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

- 6.1 The two stiles on the current route will be replaced by kissing gates on the proposed route. The definitive width will be increased from 5' (1.5m) to 2m. The proposed route E-G is 59 m shorter in length than the definitive route E-A. These particulars meet our requirement to have regard to the Rights of Way Improvement Plan.

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<sup>1</sup> Para. 5.19 of the "DEFRA Rights of Way Circular 1/09 – Guidance for Local Authorities version 2 October 2009" confirms that "*Authorities should try to resolve any representations and objections which are duly made*".

<sup>2</sup> See "*Rights of Way Statement for Surrey, January 2010*" for details of how we prioritise enforcement work.

## **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 para. 2.7.

## **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	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 Rights Act 1988	Set out below.

### 8.1 Crime and Disorder implications

The diversion of the path would improve the landowner's privacy and security by moving the path out of their gardens and outhouses. The adjacent landowner Mrs Duignan argues that the proposed diversion would pass on the security risk to her property, but she does not explain how this would happen given the distance of the diversion from her built property and the physical separation of the path from her land by hedge and fence. Given the existing rights of way and major highways adjacent to her property it is not considered that the diversion would have any material impact upon her land or property

### 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 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 away from Harts Lane Cottage thus increasing the privacy and peaceful enjoyment for the landowner whilst having no obvious negative impact on adjacent property. In the officers' view this proposal has no human rights implications.

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

- 9.1 Officers are of the view that the criteria for making the diversion order in the first place were met and that the objections received to it were not significant.

9.2 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.

9.3 Despite the one sustained objection made within the notice period and the other objections outside of it, Committee are recommended to support referral of the order to the Secretary of State for determination and to direct that the Council supports the order.

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

10.1 All interested parties will be informed about the decision by letter and what the next steps will be, such as alternative diversion 'authorities' or referral to the Secretary of State where relevant.

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<b>ANNEXES:</b>	Annex A – Application for diversion order from Mr Cronk, dated 17 November 2011. Annex B – Copy of Footpath 140B (Godstone) Public Path Diversion Order 2012 including plan 3/1/26/H32. Annex C – Copy of plan 3/1/26/H32ALT showing alternative routes and extent of Mrs Duignan's land.
<b>SOURCES / BACKGROUND PAPERS:</b>	File 3/1/26/140B and all contents, including the application, all correspondence and objections, responses to consultations, the diversion order, site and aerial photographs and assorted mapping can be viewed by appointment.