

**SURREY COUNTY COUNCIL****LOCAL COMMITTEE (WAVERLEY)****DATE: 13 MARCH 2020****LEAD OFFICER: DANIEL WILLIAMS  
COUNTRYSIDE ACCESS OFFICER****SUBJECT: FOOTPATH Nos. 64 and 65 (ELSTEAD) PROPOSED DIVERSION****DIVISION: WAVERLEY WESTERN VILLAGES****SUMMARY OF ISSUE:**

This report seeks a decision on whether to make a legal order to divert Footpaths Nos. 64 & 65 (Elstead).

Three objections have been received to an informal consultation.

The officer's recommendation is that an Order should be made on the grounds that it is in the interests of the public.

**RECOMMENDATIONS:**

**The Local Committee (Waverley) is asked to agree that**

- A diversion order is made under section 119 of the Highways Act 1980 to divert Public Footpath Nos. 64 and 65 (Elstead) as shown on Drawing No. 3/1/8/H20a, 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.

Sections of the current definitive route of Footpath 64 have fallen into the River Wey, and diverting a section of the path five metres to the west will mean that it will continue to run parallel to the river, and diverting another section away from the river bend will prevent further loss of the path to the river.

The diversion of Footpath 65 is to the route currently used on the ground.

**1. INTRODUCTION AND BACKGROUND:**

- 1.1 Correspondence on file from 1981 indicates that there has been an ongoing issue with the line of Footpath 64 (Elstead) where it runs between Farnham Road and Fulbrook Lane due to the erosion of the riverbanks by the River Wey. It was recognised at that time that the definitive route of Footpath 64 at the northern bend of this section of the river near Footbridge 1 on Annex 3 was likely

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to have fallen into the river. It is thought that an informal alternative route to the west was provided by the landowner at that time and no legal order was made.

- 1.2 Erosion occurred near the southern bend and repairs were carried out in 1992 to prevent further erosion, however further erosion occurred on the northern bend in 1994. Repairing the river bank was discussed but it was decided that the estimated cost of £50,000 would be too high.
- 1.3 Discussions about a legal diversion began in 1994 but despite protracted discussions between the previous landowner, Surrey County Council, Ramblers, Parish Council and Environment Agency, no agreement could be made to divert the footpath. It appears that a new parallel route was established by the landowner but no legal order was made.
- 1.4 The matter was left to lie for several years until 2010 when further erosion to the southern bend brought attention to the matter again. It was also noted that sections of the walked route were no longer on the definitive line.
- 1.5 In 2014, heavy rains caused the collapse of a section of the bank at the southern bend and a temporary closure order was made for this section of the path as it was felt that it was now dangerous to the public due to the narrowness of the walked path between the stock fencing and the steep river bank edge.
- 1.6 The new landowner provided a permissive route linking Footpath 64 and 65 along the field edge approximately 215 metres north of Farnham Road (between point A and E on Drawing No. 3/1/8/H20a). Correspondence began with the landowner, and a survey was carried out in July 2016 to ascertain the situation on the ground in regards to the definitive line of the path, the walked line and the river bank. The survey showed that the definitive line of the path had fallen into the river at both bends. Approximately 20 metres at the southern bend and approximately 35 metres at the northern bend had fallen into the river.
- 1.7 Discussions began with the landowner about how to resolve this longstanding issue, and a consultation was carried out in July 2017 to divert Footpath 64 away from the river and onto the permissive route provided by the landowner. There were numerous objections to these proposals from the public, user groups and the Parish Council as they all wanted to keep a route alongside the river.
- 1.8 Surrey County Council decided not to make a diversion order for this proposed route due to the number of objections. It was also felt that the proposals hadn't considered the effect the diversion would have on public enjoyment of path as required under the legislation. Discussions began again with the landowner and Parish Council to try to come up with alternative solutions.
- 1.9 After several site visits with the landowner and Parish Council discussing different options, the proposals outlined in Drawing No. 3/1/8/H20a were drawn up. The proposals sought to balance the public interest and landowner's interest in regard to Footpath 64. The proposals keep a path alongside the river, but 5 metres to the west of its current line around the southern bend. It is then proposed to run along the current walked route before turning southeast where the proposed path would run along the edge of the wooded area to Footpath 65. This route was suggested by the landowner as it is drier than other possible routes.

- 1.10 It was decided to divert Footpath 64 away from the northern bend of the river as if it was to continue north around the northern bend then this would involve having to move or replace the two existing footbridges 5 metres to the west as part of the diversion. Footbridge 1 on Annex 2 is very close to the edge of the river bank in its current location and it could be washed away. Not diverting the footpath 5 metres to the west here would save Surrey County Council money by not having to move and maintain these bridges. The section of definitive path where it heads away from the river towards Fulbrook Lane is very wet and boggy at most times of the year so it is in the public interest to divert away from this section.
- 1.11 The proposals regarding Footpath 65 are to divert the Footpath onto the current walked route. The proposed diversion between H and J runs on the other side of the fence to the definitive route and is on slightly higher and drier ground which would be an improvement for the public as the definitive route between H and J can get very wet underfoot.
- 1.12 The landowner decided against agreeing to the proposals outlined in Drawing No. 3/1/8/H20a despite taking part in discussions that informed the proposals. It was decided to go ahead with an informal consultation for proposals outlined in Drawing No. 3/1/8/H20a despite the landowner not agreeing, as it was felt that the matter had been unresolved for 40 years and a permanent solution to the issues along Footpath 64 needed to be found.
- 1.13 The informal consultation including user groups took place during September / October 2019. Three objections to the proposals were received. The objections were received from Mrs Julie Edwards who is the landowner, Mr David Ross from the Ramblers and Mr David O'Connell who is a local resident. Support for the proposals was received from the Parish Council, and the Ramblers offered no objection to the diversion of Footpath 65. The Ramblers also view the proposal for A – B – D as an improvement on the current situation, but don't want to lose the route from B – C.
- 1.14 It is in the public's interest to make the order as at the moment they cannot walk along the river as there is a temporary closure due to the danger caused by the erosion of the river bank. The proposals will enable the public to still walk along a section of the river to get from Farnham Road to Fulbrook Lane. The proposals also divert the footpath away from a very wet boggy section of path between B and C onto drier land. The section H – I – J is also on higher, drier ground than the definitive line H – J.
- 1.15 It is considered that it would benefit the landowner to make the order as the proposals for Footpath 64 would extinguish the section of footpath that overlooks their garden and runs alongside some of their buildings. The proposals for the section between H and J would in the Officers' view benefit the landowner's interest as they would prefer the public to walk on the Fulbrook Lane side of the fence. However the landowner does not agree.
- 1.16 Objections to the proposals are summarised below:

Mrs Edwards' objections:

Grounds of objection	Officer's comments
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<p>As sections of Footpath 64 have fallen into the river those sections have been extinguished and cannot be diverted, and there should therefore be an extinguishment and creation order.</p>	<p>It is the Officer's view that the County Council can make a diversion order under section 119 of the Highways Act 1980.</p> <p>To extinguish a right of way it has to be demonstrated that the route is no longer needed for public use, and it would be hard to argue that this is the case for the section of Footpath 64 that is proposed to be diverted. It is apparent that local people place a high value on this route and from comments from the Parish Council and members of the public there is a public need for it.</p> <p>A public path creation order can be made under section 26 of the Highways Act 1980 if it appears to the local authority that there is a need for a footpath and that it would add to the convenience or enjoyment of the public. As the footpath already exists then it can be argued that a creation order will not add to the convenience or enjoyment of the public.</p> <p>A diversion order may be made if it appears to the council that it is in the interests of the owner, lessee or occupier of the land, or of the public</p>
<p>Mrs Edwards proposed a permissive path along the river rather than going through a legal process.</p>	<p>A permissive path is not a permanent solution, and it can be withdrawn at any time by the landowner, or subsequent landowner of the land. It would be detrimental to the public if this permission is subsequently withdrawn.</p>
<p>Concern about the future if the River Wey continues moving at its current rate, which may cause any new definitive route to be in danger of falling into the river again.</p>	<p>The officer's view is that by diverting the path away from the northern bend of the river as shown on the plan, it resolves the issue for the future. The dynamic nature of the river is recognised and the new alignment between A and B will ensure that there is a footpath available for the foreseeable future.</p>
<p>Mrs Edwards would prefer the current permissive route between A and E to</p>	<p>Officers consulted on this route in July 2017 and it was clear from the responses received that it was unacceptable from the public's user</p>

become the new definitive route for Footpath 64.	groups and parish council's points of view. This proposal would cause a significant loss of enjoyment to the public. There is still a need for a route close to the river – public enjoyment of a route is one of the criteria used when assessing proposed diversions.
Concerns about the proposed width of the path	The usual practise is to ask for 2 metres width if this is available.

Mr Ross's objection:

<b>Grounds of objection</b>	<b>Officer's comments</b>
While the Ramblers support the coming into effect of route A – B – D, they would also like to see a continuation of Footpath 64 north to point C	Maintaining a route from point B – C would mean moving the 2 footbridges north of point B five metres to the west so that there is not as much risk of them being lost to the river in the future. They would also need to be maintained in the future. The path running away from the river up to point C is also very wet and boggy for most of the year.

Mr O'Connell's objection:

<b>Grounds of objection</b>	<b>Officer's comments</b>
Concerns that the current temporary closure should not have been made as use of the footpath should be at the users risk.	Surrey County Council can make an order to temporarily prohibit traffic if it is satisfied that there was a likelihood of danger to the public. The County Council was satisfied that there was a likelihood of danger to the public due to the erosion of the riverbank and the narrowness of the remaining path between the stock fencing and steep river bank edge. There were also concerns that the bank had been undermined at this point and could collapse.  The temporary closure is not relevant to the proposals to divert Footpath 64.
The path should just be diverted onto the existing used route	Sections of the existing used route are also in danger of being washed

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	away by the river, especially one of the footbridges at the northern bend
The proposed diversion, particularly of Footpath 65 in in the landowner's interest rather than the public interest.	<p>A diversion order can be made under section 119 of the Highways Act 1980 if it appears to the council that is in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted.</p> <p>While the council considers the diversion is in the landowners interest, it is certainly in the interest of the public to divert the footpath to enable them to walk this popular route.</p>

- 1.17 The proposed diversion meets both the criteria under the Highways Act and county policy. It would provide a solution to a problem that has been ongoing for 40 years and provides a riverside route for the public to enjoy into the future, and therefore the recommendation is that a diversion order be made.

### **2. ANALYSIS:**

- 2.1 Section 119 of the Highways Act 1980 enables the County Council to divert a public footpath if it appears to the council that it is in the interests of the landowner, lessee or occupier of the land crossed by the path or way or of the public, it is expedient that the line of the path should be diverted. 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 NERC Act 2006 places a duty on the County Council to have regard, so far as is consistent with the proper exercise of the functions, to the purpose of conserving biodiversity.
- 2.4 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 Decide not to make the order and the definitive route for Footpath 65 will remain where it is. The definitive route for Footpath 64 will also remain where it is, although a temporary closure will have to remain in place at Surrey County Council's expense while another solution is found.
- 3.3 Other solutions for Footpath 64 could include:
- Extinguishing the footpath, but it would need to be demonstrated that there is no longer a need for the Footpath. The evidence is that there is a need for the path and it is very week used by the public.
  - Diverting the footpath along the permissive route that has been provided by the landowner. There was an informal consultation on this option in 2017 and many objections were received from local people and user groups.

#### **4. CONSULTATIONS:**

- 1.18 All interested parties were consulted including user groups and local stakeholders. Elstead Parish Council responded saying 'I should like to formally record Elstead Parish Council's support of this proposed diversion to FP64'. The Ramblers view was that the proposal for A – B – D was an improvement on the current situation, but don't want to lose the route from B – C.

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

- 5.1 The Countryside Access Team will meet the costs of making the Order, estimated at £2,000. 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.
- 5.2 If a diversion order is made and objected to by the landowner the County Council could be liable to pay them compensation. The cost would be assessed by an independent valuer who would weigh up the disbenefit as opposed to the benefits of moving the footpath for the landowner.
- 5.3 If the order is not made then Surrey County Council will have to renew the temporary closure that is in place along Footpath 64 annually at a cost of approximately £1000 a year, as well as maintaining the infrastructure that goes with the closure such as Heras fencing. The footbridges at the northern bend of the river would also need to be repaired.

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

- 6.1 The Definitive Rights of Way Statement for Footpath 65 records one stile that would be affected by the diversion. It is proposed that there will be a gate on the new route instead of a stile where it crosses into the wooded area, making access easier for less able walkers.

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- 6.2 The Definitive Rights of Way Statement for Footpath 64 records one stile that would be affected by the diversion. The proposed new route would have no limitations such as a stile or gate, making access easier for less able walkers.

### **7. LOCALISM:**

- 7.1 Footpath Nos. 64 and 65 are mainly used as recreational routes. They do not provide access to an amenity such as railway station, church, shop or school. The diversion of Footpath 64 is seen as a benefit as it would ensure that a popular local route alongside the River Wey will be maintained into the future.

### **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	N/a
Safeguarding responsibilities for vulnerable children and adults	N/a
Public Health	N/a

#### 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. 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 (Waverley) is asked to agree that**

A diversion order is made under section 119 of the Highways Act 1980 to divert Public Footpath Nos. 64 and 65 (Elstead) as shown on Drawing No. 3/1/8/H20a, 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.

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

- 10.1 All interested parties will be informed about the division

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**Contact Officer:**

[www.surreycc.gov.uk/waverley](http://www.surreycc.gov.uk/waverley)

Joanne Porter, Countryside Access Assistant, Tel/ 020 8541 9576

**Consulted:**

Advisory notices were placed on site, David Harmer County Councillor, Elstead Parish Council, The Ramblers, Open Spaces Society, Waverley Borough Council. TRF/ACU, Cycling UK. British Driving Society, British Horse Society, Mrs Julie Edwards landowner, statutory utility companies

**Annexes:**

Annex A - Drawing No. 3/1/8/H20a

Annex B – Location Plan

Annex C – Plan showing points of interest

**Sources/background papers:**

Papers contained in file 3/1/8 Elstead Footpath 64 and 3/1/8 Elstead Footpath 65

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