

JOINT COMMITTEE (WOKING)



DATE: 10 NOVEMBER 2021

LEAD OFFICER: CATHERINE VALIANT COUNTRYSIDE ACCESS OFFICER

SUBJECT: PROPOSED DIVERSION OF FOOTPATH 94 (BYFLEET)

DIVISION: THE BYFLEETS

SUMMARY OF ISSUE:

This report seeks a decision on whether to make a legal order to divert Footpath No. 94 (Byfleet)

Thirteen objections have been maintained to an informal consultation.

The applicant states that the diversion is in the interest of the public. Officers are of the view that the criteria for making a diversion order (that it is expedient in the interests of the public), have not been met. At present the path takes a direct line close to a historic property. The proposed alternative is longer. Representations have been made from members of the public that the diversion would have an adverse effect upon the public's enjoyment. Thirteen objections were received from members of the public and representatives of user groups. No exceptional circumstances are deemed to apply. Representations were also made in support of the diversion.

The officer's recommendation is that no order be made on the grounds that it is not expedient to divert the way in the interests of the public.

RECOMMENDATIONS:

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

No diversion order is made under section 119 of the Highways Act 1980 to divert Public Footpath No. 94 (Byfleet) as shown on Drawing No. 3/1/179/H3A.

1. INTRODUCTION AND BACKGROUND:

Legal position

- 1.1 Section 119(1) of the Highways Act 1980 enables the County Council to make a public path diversion order if it appears to the council that, 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.
- 1.2 Subsequently, if any order is to be confirmed (which should not influence committee's decision at this stage), the confirming authority must be satisfied (at s. 119(6) of the 1980 Act) not just that the diversion is expedient as regards the above, but also that it will not be substantially less convenient to the public and expedient to confirm with regard to the effect which:
 - a) the diversion would have on public enjoyment of the path or way as a whole,
 - b) the coming into operation of the order would have as respects other land served by the existing public right of way, and
 - c) any new public right of way created by the order would have as respects the land over which the right is so created, and any land held with it.
- 1.3 In addition to the criteria set out in the Highways Act 1980 the County Council's policy (annex B) states that, except in exceptional circumstances, proposed diversions will only be considered if the new route is an improvement to the existing rights of way network for the public. The needs of less able users must also be considered.
- 1.4 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 its functions, to the purpose of conserving biodiversity.
- 1.5 The Equality Act 2010 establishes, at section 149, the public sector equality duty. This provides that a public authority (or anyone) performing a public function must have due regard to the need to:
 - Eliminate discrimination, harassment, victimisation prohibited by the Equalities Act.
 - Advance equality of opportunity between persons sharing a 'protected characteristic' and persons who do not share it;
 - Foster good relations between persons with a protected characteristic and persons without it.

The application

- 1.6 An application has been received from Mr Steve Piltz on behalf of Byfleet Estate to divert part of public footpath 94 (Byfleet) shown on drawing No. 3/1/179/H3b at Annex A. The definitive route is shown A-B with a solid black line and is 220 metres in length. The proposed route is shown A-C-D-E with a dashed line and then members of the public would continue to point B along Public Bridleway 95 (Byfleet). The distance A-C-C-D-E-B is 250 metres in length. Section A-B is currently subject to a temporary closure whilst drainage works take place. In support of the application Mr Piltz states:
 - a. The current closed and diverted path is accessed from a kissing gate on the north-west boundary of Byfleet Manor.

- b. It follows a route enclosed by vegetation, brambles, and debris (now cleared) and was inaccessible to all but the most physically able. The kissing gate at A had been vandalised and the route also used by horses and cyclists. It was used once per year by the local Ramblers group. Most walkers used Mill Lane.
- c. Footpath 94 is wholly on private land over which there is a recognised right of way.
- d. The route passes in front of the old dairy and in front of Byfleet Manor entrance gates across two vehicular access drives.
- e. The owner of the Estate accepts the duty to maintain the route but believes it would be safer for pedestrians if diverted to run along the proposed route on a purpose constructed footpath, suitable for disability users with only one crossing of the access road (at C-D).
- f. It has been agreed with Surrey County Council (SCC) that a large mobility kissing gate will be supplied by SCC and installed by the landowner at A if the application is successful. Gates as C and D will be kissing gates, the cost of which will be met by the landowner.
- g. A new permanent path of rolled stone will be laid between A-C. D- E will remain as grass. Grass is not sustainable and soon turns to mud, although we would prefer bark chippings which dog walkers prefer.
- h. The proposed route will be separated from the vehicular access lane, known as Back Lane, as a safety feature with fencing to match the existing estate style railings.
- i. The amended application also provides some benefit to the landowner by the separation of pedestrians and vehicles.
- j. The proposal is shorter than the existing path, along a protected route safe from traffic [note: the full length of the walked path between A and B if the diversion was successful would be 30m longer at 250m].
- k. The current route does not have good vistas of either the historic walls or the Jacobean house. The revised route will not result in the loss of vistas or amenity but will provide a safe, secure route with good vistas across the estate. The estate will maintain it to a good standard.
- l. The applicant also states that the privacy and security of the local property owners is of primary concern.

Objections and representations

The current proposal for the diversion of Footpath 94 is the third route for which informal consultations have been carried out. The previous two consultations, each for slightly different routes, were carried out on 22 February 2021 and on 23 March 2021. Due to the number of objections received to both previous proposals, the landowner has proposed a third alternative diversion route which can be seen on the attached drawing. The third round of consultation for the latest proposal was carried out on 10 August 2021, to which 13 objections have been maintained. These are outlined in the boxes below:

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1.7 Mr and Mrs Lovell and Mark Percy

Grounds of objection	Officer's comments
It is effectively an extinguishment of an historic way.	Any diversion includes the extinguishment of one way and its replacement with another elsewhere.
There is no direct link from C to footpath 95 and bridleways 128 and 95.	This also true now and is not relevant to the diversion application.
There is no point having a kissing gate at A but not at C, D and B.	The landowner has a right to place a gate here. It is agreed they will provide a wider gate at A than is currently there should an order be made and confirmed. It is correct however that gates at C and D will only be of the wicket variety.
There is nothing preventing a future landowner erecting a high fence or hedge to obscure views of the Manor.	This would be true even if no diversion were proposed.
The path already lies outside the Manor Walls so there is no significant privacy improvement from the proposal.	The landowner does claim that moving the path further from their property will improve the privacy and security of local property owners.
It is not in the interest of the public and is less convenient and enjoyable.	The applicant argues that it is in the interest of the public. This is a view to which no agreement has been reached.

1.8 Open Spaces Society (Kate Ashbrook)

Grounds of objection	Officer's comments
1. The application is not in the benefit of the public.	The applicant argues that it is in the interest of the public. This is a view to which no agreement has been reached.
2. It does not meet test of s. 119 of the Highways Act 1980 because it is substantially less convenient to the public and has an adverse effect on enjoyment.	See above.
3. It takes walker 2 side of a triangle so is longer.	The proposed route is approximately 30 metres longer.
4. Views of the historic Grade II listed building would be lost.	Close up views will be lost, although there is no indication views will be lost entirely.
5. A surfaced route is not a substitute for a pleasant grassy path.	The applicant argues that the surfaced route will make the route more widely accessible for users. Some users argue that a natural grass route is preferable. This is a view to which no agreement has been reached.

1.9 Terry O'Connor

Grounds of objection	Officer's comments
1. Cannot see how this provides an improvement for the public and there are no exceptional circumstances which warrant Surrey going against its own policy.	The applicant argues that it is in the interest of the public. This is a view to which no agreement has been reached. No exceptional circumstances have been identified.
2. The path provides no improvement for those travelling between A and the bridge at B.	The proposed route is longer and further from the Manor House, although some have suggested it would have an improved surface.

1.10 Ramblers (Brian Reader)

Grounds of objection	Officer's comments
The diversion is not in the interests of the public and will adversely affect their enjoyment.	The applicant argues that it is in the interest of the public. This is a view to which no agreement has been reached.

1.11 Mr and Mrs Adamson

Grounds of objection	Officer's comments
1. There is no benefit compared to the existing route, the route is longer, and we have missed the views of the Manor House.	The proposed route is approximately 30 metres longer and further from the Manor House along much of its length.
2. SCC policy is to consider a diversion only if it is an improvement to the public network. There are no exceptional circumstances not to follow policy.	It is agreed there are no exceptional circumstances. The improved surface could be argued to be a public benefit however.

1.12 Wendy Cottrell

Grounds of objection	Officer's comments
Objection relates to the laying of a hard surface and the removal of trees. The grass verge is preferred.	The hard surface will be an improvement for some users, other users will prefer a natural surface. The incidental removal of trees is not a relevant consideration.

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1.13 Kate Weston-Laver

Grounds of objection	Officer's comments
3. The amended path should go straight across to point B, a little in front of the wall but further from it, so that it is more direct, as per the original path	This alternative has not been proposed by the applicant and is not the subject of this application.
4. The original path was left very overgrown and covered over by the landowner and would still be in constant use were it not for that.	The application should be considered as if the original route was open and free for use.

1.14 Eleanor Grady

Grounds of objection	Officer's comments
1. The prohibition of use of footpath 94 would impact on enjoyment and leisure of local people who have walked this for years. It is important decisions are made for the many.	The applicant argues that it is in the interest of the public. This is a view to which no agreement has been reached. Some users attach value to the historic routes they have always used and their characteristics.
2. The requested diversion is in fact a misnomer as what is requested is the permanent closing off of an historic footpath.	All diversions constitute the extinguishment of part of a way and the creation of an alternative.
3. Whilst recognising the owner's investment into the Manor House, recent years have seen a great deterioration in the variety and age of habitat available around Manor House. This has taken place along footpath 95 and Mill Lane.	This objection is not specifically related to or a consequence of the diversion of footpath 94.

1.15 Mr Howe

Grounds of objection	Officer's comments
1. The route between A – B has been in public use for many years and previous owners have accepted it with no problems. Asks what reason is put forward for this alteration/	The applicant argues that it is in the interest of the public. This is a view to which no agreement has been reached. The Council must take these responses into account when deciding whether it is expedient to divert.

2. Likes to walk on an unmade-up path	The hard surface will be an improvement for some users, other users will prefer a natural surface.
3. Likes to look at one of our historic buildings.	Close up views of the Manor House will be lost, although there is no indication views will be lost entirely.

- 1.16 In addition to the objections received there were several other comments received in response to the consultations.
- 1.17 Mrs Marion Malcher, Rights of Way Officer for the Byfleet, West Byfleet and Pyrford Residents Association noted that there were concerns from residents but did not expand upon them.
- 1.18 Carolyn Chubb said she had no objection to the proposed diversion but had concerns about the two kissing gates currently in place due to their narrow nature. She said the diversion should be conditional upon these being improved. It is understood that the applicant has agreed at least that the gate at A be replaced.
- 1.19 Mike Forbes had no objection to the proposal, stating that if the old path was reinstated it would mean three stiles, making it impossible for people with heavy dogs, pushchairs, invalid carriages or walking impairments. He welcomed a 'paved' surface and the replacement of the two kissing gates and did not understand the proposal of the Ramblers to defend ancient paths where logic favours the new route.
- 1.20 Penny Weiss (a resident at Manor House Cottage which also has a shared boundary with footpath 94)) supported the application stating that it was "a small diversion, reasonable and in the interests of the public, a more convenient route and provide better access for pushchairs via a kissing gate rather than a route with four stiles. She also noted that there has been a large increase of footfall in recent times, with increased littering and intrusion onto their property.
- 1.21 Andrew Weiss supported the application because the current route involves climbing over 4 sets of stiles whereas the revised route would not involve climbing over fences and would provide disabled access. He also said the new route would allow better views whilst providing the property with enhanced security. He also noted that the original footpath was often overgrown with stiles in a poor state of repair
- 1.22 The Byfleet Angling Association supports the application. They say the new route for the path will be much more suitable for anglers and the disabled, than the old path. The old path is rough and uneven, has two roads and a driveway to cross, and consists of three stiles to negotiate. The proposed path has an even surface to walk on and ties up with the existing path down to the Green Bridge crossing the River Wey. This path will still pass across the front of the Manor House and there is no loss of amenity for the walkers.
- 1.23 Claire Calder supports the application and considers that it offers a better view and amenity. She says it will protect the listed wall of the Manor House and the privacy of the residents who will be living there eventually, and that it will also protect the privacy of those who currently reside at Manor Cottage. She considers the current alternative is very adequate and comfortable.

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- 1.24 Jan McDermott supports the proposed change to move this footpath away from the front of the Manor House and Manor Cottage. She says it seems a suitable solution which will enhance the access and no longer impede on the privacy of the residents of both properties and feels that the offer from the owner of the Manor House to fund and install a disabled kissing gate should be taken up and form part of the agreement.
- 1.25 Lyn & Paul Cozens believe the proposed changes to be quite reasonable and support the amendment to this path.
- 1.26 Fiona Syrett expresses support for the diversion. She thinks it's a much nicer path for walkers, offering a better view whilst also affording the Manor House residents a little more privacy. It should also give more protection to the wall itself which is listed. She also hopes that the kissing gates will be replaced with more accessible ones. There are two - one from Manor Farm and one along the new footpath which are too narrow for pushchairs and wheelchairs.
- 1.27 Krista Rooney supports the movement of path 94 by the Byfleet Manor House as she feels the new route is better for residents and will protect the new owner's privacy. This route now goes nearer to the River Wey which is a lovely scenic route.
- 1.28 Nina Forman supports the change that has been requested for Footpath number 94, past Byfleet Manor. They walk there often, and the requested change has been in temporary operation during works on the house. On all grounds, it is a sensible permanent change to make.
- 1.29 David and Kathryn Young are in full support to adjust the route of footpath 94. They say the temporary path, that was created during the works at the manor house, is a much more sensible route. The original route was very rarely used anyway.
- 1.30 Mr & Mrs Parkin have a dog and are always walking in the area. They have lived here for 27 years and even when they could use the footpath in front of Byfleet Manor and Manor Cottage, they never felt the need to walk on that footpath when they have a nice wide footpath in front of Byfleet Manor and Manor Cottage. They strongly oppose the reinstating of the footpath right in front of these properties as there is absolutely no need for two footpaths.
- 1.31 Tessa Westlake fully supports the proposed diversion. She says the modified route is not very different to the original and is, in her view, an improvement. It provides a more natural route from Mill Lane across the river, taking you straight to the bridge instead of up towards the Manor and then back on yourself. As it passes further away from the Manor House's high surrounding wall, the view of the Manor House is not impeded and so more easily enjoyed. She says the modified route has been in use for some time and has worked very well. She has been walking and running in the area since long before work on the Manor House began, and cannot remember seeing very many people, if any, using the original route by the walls. She does not think that the slight diversion to the footpath will cause any problem or be to the detriment of the area. People will be able to enjoy the area pretty much as they always have, and she understands that the owners of the Manor House are prepared to provide disabled access gates.
- 1.32 Mr Bovill supports the request to change the route of the footpath. He says that since the extensive restoration works have been in progress, the footpath closest to the Manor has been varied slightly, for safety and for practical purposes. He believes that it is a very small change, of no practical difficulty for those who walk in the area, and

the re-routed pathway gives a much more scenic view of the Manor and its front wall and approach.

- 1.33 David Walsh fully supports the proposed diversion. He prefers the surface of the new path and considers his modified route now gives you a far superior view of the historic walls and house, whereas the existing route gives only limited visibility. He understands that the owners of the Manor House are also willing to change the current gates to become disabled access kissing gates rather than standard kissing gates, which would have a huge benefit to a wide range of residents in the village who come to visit the area. He says the definitive route impedes on the privacy of Manor Cottage, that this area floods quite badly and has as never seen anybody using it.
- 1.34 Bernice believes the diversion makes it much safer when walking from Manor Farm estate to Wisley via the iron bridge both for walkers and vehicle access to the properties nearby. She understands that part of this rerouting will also be improving the gates for better access.
- 1.35 Marian Nash has enjoyed walking past Byfleet Manor during lockdown and watching the renovations. She has no objection to the temporary measure and am happy for it to continue as the permanent route of the footpath.
- 1.36 Archie Turner approves of the temporary change to FP94 becoming permanent. He says It makes sense not only for walkers but also for those residents of the Manor House and adjacent properties.
- 1.37 Sue Glasgow has used temporary route on many occasions and fully supports making this a permanent route. It has enhanced the view of this lovely building without imposing on the privacy of the occupants of both the Manor House or Manor Cottage.
- 1.38 Erik Falck-Therkelsen has been a regular user of this area for a number of years and fully supports the proposed amended route.
- 1.39 Rachel Rowlands believes the proposed route is nicer, gives a better view of the Manor House and gives privacy to the residents of Manor Cottage. She says the area of the definitive route is known for flooding.
- 1.40 Evgeny Kuteev is resident at Home Farm and supports the diversion. He says there has been a noticeable drop in the numbers of people wandering up this part of the road since the original footpath was closed providing much better security.
- 1.41 Marc Anderson has used this footpath for several years and considers that the current temporary route offers a better perspective from which to view the Manor and other buildings as well as firmer ground on which to walk during the winter. The proposed addition/replacement of gates which allow greater mobility access would also be very much welcomed.
- 1.42 Rev. Dr John Mc Cabe likes the new route and is conscious of the generosity that lies behind it
- 1.43 Alan Smith does not see any reason not to change the route of footpath 94 close to the manor house.
- 1.44 Alan George prefers the new 'temporary' path, which he says gives you a far superior view of the historic walls and house, whereas the existing route gives only limited visibility.

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- 1.45 Rosalie Evans supports the diversion, which gives walkers a better view of the historic walls and Manor House, and the planned incorporation of disabled access kissing gates.
- 1.46 Cllr Mary Bridgeman, the Ward Councillor for Byfleet and West Byfleet, supports the diversion. She believes the proposed route is much safer, in that the new footpath has a proper surface which is much safer for the elderly members of the community, gives better views of the Manor House, and improves security for the properties close to the Definitive route. She cannot recall anyone ever using the old section of the footpath which she says floods quite badly and has always been neglected and very muddy in the past.
- 1.47 This item seeks a decision based upon this report. This is a non-Executive Function.

2. ANALYSIS:

- 2.1 The legal position to be considered is outlined in section 1.1-1.5 of this report.
- 2.2 The application was made on the basis that a public path diversion order should be made as it would be expedient in the interests of the public. This is therefore the key consideration regarding expediency and whether an order should be made.
- 2.3 The primary reason raised by seven of the objectors is that this application does not provide any benefits to the public. They point to the fact that the route is longer and consider it less enjoyable due to the loss of views of the house and being routed over a hard surface compared to the current grass.
- 2.4 A further reason cited by objectors was that because of the above it did not meet the Council's own policy that, except in exceptional circumstances, proposed diversions will only be considered if the new route is an improvement to the existing rights of way network for the public.
- 2.5 The officer's view is that these reasons are sufficient to conclude that It would not be expedient to make a public path diversion order in the interests of the public.
- 2.6 Committee will want to consider whether they believe that the longer route, the change from natural surface and the loss of close-up views of the Manor and grounds are sufficient reasons to conclude that the diversion is not expedient in the interests of the public. They will want to balance the views of the objectors with those of the supporters that have been submitted and consider whether they outweigh the objectors' views and the County Council policy. They may decide that in fact the diversion is expedient in the interests of the public and that a public path diversion order should be made.
- 2.7 References have been made, in some of the comments from supporters of the diversion, that the new route would be more accessible as the definitive route has stiles along it. It should be noted that none of the stiles along the definitive route have any right in law to remain and that the application should be considered as if it was open to use and unobstructed.
- 2.8 It is the officer's belief that the two opposing sides are finely balanced: the benefit of the improved surface for some must be weighed carefully against what some perceive as the loss of amenity. A proportion of users consider the proposal less enjoyable and

less convenient, including representatives of key pedestrian user groups, whilst letters of support have been received from local residents.

- 2.9 Committee will want to carefully consider the matter before deciding.
- 2.10 An application to divert a footpath might also been made if it is expedient in the interests of the landowner. This would be against the County Council's policy on the subject, however legislation states that an order could be made for the benefit of the landowner, so Committee may also want to consider this.
- 2.11 The applicant has claimed that the privacy and security of local property owners is improved, not just that of the applicant's client. Any benefit which the landowners might gain appears minimal given the very small likely traffic movements to and from the property and the existing substantial walls and hedges between the path and the properties in question. It is the officer's view that it would also not be expedient to make an order based on a diversion being in the interests of the landowner.
- 2.12 No biodiversity considerations are deemed to arise because of the proposal nor have been raised.

3. OPTIONS:

- 3.1 Make a Public Path Diversion Order and advertise it in accordance with the statutory procedures. If objections are received and maintained the Council may submit the order with the objections to the Secretary of State for determination or it may decide not to proceed any further and to rescind the Order. If no objections are received the order can be confirmed as unopposed order under delegated authority subject to the criteria set out in section 119 (6) (a) to (c) of the Highways Act 1980.
- 3.2 OR: Decide not to make the order and the definitive route for Footpath 94 will remain unchanged. This is the Officer's preferred option. Officers will seek its full reinstatement.

4. CONSULTATIONS:

- 4.1 All interested parties were consulted including user groups and local stakeholders. Both the Ramblers and the Open Spaces Society objected to this proposal as detailed in part 3. Woking Borough Council had no comments to make on the proposal. This report has been viewed and approved by Surrey Legal Services.

5. FINANCIAL AND VALUE FOR MONEY IMPLICATIONS:

- 5.1 The applicant has agreed to meet the costs of making an order, estimated normally around £2,000. If an order is made and then 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 £1500 - £2000 which would have to be met from the Countryside Access budget. At the current time we cannot reclaim these costs from the applicant.

6. EQUALITIES AND DIVERSITY IMPLICATIONS:

6.1 It is the objective of Surrey County Council to have due regard to all public users of the highway. The proposed route would provide an even surface, remove gates or other less accessible structures has a gentle gradient, is less likely to become overgrown and provides alternative views. It would not provide significant safety improvements, new additional paths, width, nor resolve existing rights of way improvement issues.

7. LOCALISM:

7.1 No Localism issues have been raised nor are deemed to apply. The Borough Council have raised no objection. There is no Parish Council. The Local Residents Association were consulted and have not objected.

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

9. CONCLUSION AND RECOMMENDATIONS:

9.1 The Officer's recommendation is that no diversion order should be made.

9.2 The Local Committee (Woking) is asked to agree that:

No diversion order is made under section 119 of the Highways Act 1980 to divert Public Footpath No. 94 (Byfleet) as shown on Drawing No. 3/1/179/H3A.

10. WHAT HAPPENS NEXT:

10.1 All interested parties will be informed about the decision.

Contact Officer:

Catherine Valiant, Countryside Access Officer.
Tel. 07976 394660

Consulted:

Advisory notices were placed on site, See section 4 for more details.

Annexes:

Annex A - Drawing No. 3/1/79/H3A.

Annex B - Surrey County Council's Policy for Processing Public Path Orders

Annex C – Public Rights of Way Priority Statement

Sources/background papers:

Papers contained in file 3/1/179 footpath 94 (Byfleet) available for inspection by contacting the Officer.

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