

SURREY COUNTY COUNCIL		 SURREY COUNTY COUNCIL
LOCAL COMMITTEE (WAVERLEY)		
DATE:	11 March 2022	
LEAD OFFICER:	Daniel Williams	
SUBJECT:	PROPOSED DIVERSION OF FOOTPATH 70 (EWHURST)	
DIVISION:	EWHURST	
<u>SUMMARY OF ISSUE:</u>		
<p>This report seeks a decision on whether or not to make a legal order to divert Footpath 70 Ewhurst.</p> <p>Two objections were maintained following an informal consultation.</p> <p>The applicant has applied to divert Footpath 70 to provide privacy and security to her property. At present the path runs for 127 metres from its junction with footpaths 70 and 75, in a north easterly direction, to the south of the front garden of the property Wildwoods, to its junction with Footpath 71. The proposed new route takes the path in an easterly direction for 119 metres to where it joins Footpath 71, 68 metres south of the present junction.</p>		
<u>RECOMMENDATIONS:</u>		
<p>The Local Committee (Waverley) is asked to agree that:</p> <p>(i) A public path diversion order is made under section 119 of the Highways Act 1980 to divert Public Footpath No. 70 (Ewhurst) as shown on Drawing No. 3/1/.</p> <p>and</p> <p>(ii) If any objections are received and maintained to the order it should be submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination.</p>		
<u>REASONS FOR RECOMMENDATIONS:</u>		
<p>Officers are of the view that the criteria for making a diversion order have been met and that it is expedient that the line of the path or way, or part of that line, should be diverted.</p> <p>The proposed public path diversion order is in the interests of the landowner. In terms of its termination point the alternative is substantially as convenient for the public.</p>		

1. INTRODUCTION AND BACKGROUND:
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- 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 normally 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 was received from Ms Kristina Murrin, of Wildwood, Horsham Lane, Ewhurst, GU6 7SE, to divert part of Footpath 70 (Ewhurst) as shown on Drawing No. 3/1/9/H44A at Annex A. The definitive route is shown A – B by a solid black line and is 127 metres long. The length of the proposed diversion, shown A - C by a dashed black line, is 119 metres.
- 1.7 Ms Murrin purchased Wildwood in October 2020. In making her application, Ms Murrin says "The current footpath comes within 20m of our private residence. We are constantly having people diverting from the path and coming in to look around our garden disturbing our work and animals. As a prominent person from the world of politics and media this also creates a real security risk. The

suggested route is an existing 3m wide hard-core path which provides a better winter surface and little diversion”.

Objections and representations

1.8 Cranleigh Parish Council.

Grounds of objection	Officer's comments
<p>They say that although (Parish) Members understand the security issue, they cannot support the proposed diversion of footpath 70 as the property and land had been purchased with the knowledge of the footpaths and it would set a precedent for other paths in the wider area to be moved.</p> <p>Recently other footpath diversions have been agreed, which have caused distress and challenge by users of those footpath. Members expressed that they would need assurances that there would be no challenge from users of footpath 70 to the diversion.</p> <p>Members highlighted that even with the footpath diversion, the diversion re-joins footpath 70 close to the house, therefore question whether the diversion would mitigate the security issue.</p>	<p>This is not a relevant consideration under the current powers available to the Council outlined at para, 1.1-1.5.</p> <p>No details of this distress and challenge were provided.</p> <p>This is in contradiction to the applicant who outlines the problems of security in para. 1.7 above. This is not just a matter of fact, but also a matter of perception.</p>

1.9 Ms Jo Carmichael.

Grounds of objection	Officer's comments
<p>The diversion is less convenient. It is marginally longer but more worryingly it pushes walkers towards the area where the mobile homes and the Rottweiler is. This isn't going to be removed any time soon. Whilst it has been chained up on a long chain most times that I have walked past it is nevertheless disconcerting to have it barking at you and I know other walkers who have said they are reluctant to use the footpaths because they feel intimidated by the dog. Should a dog like that even be sited so close to a public footpath? It does feel as if it is intended to discourage people from using it.</p>	<p>The definitive route A-B is 127 metres long and the proposed route A-C is 119 metres long. The difference between B-C is 68 metres. The diversion will make the journey somewhat longer for those travelling northwards, but shorter for those travelling southwards.</p> <p>The dog in question is located on footpath 75 but is close to the proposed diversion. The applicant says that when the derelict barns are demolished this summer all farm machinery leaves the site and so does the guard dog, which is chained up. Should reports suggest that this has become an intimidating animal, the Council could undertake enforcement work to ameliorate the problem. Only one other report has been received from a member of the public regarding this issue. Any diversion should be considered as if</p>

<p>Mrs Murrin gave privacy as a reason for the diversion, but the house was almost totally screened from the footpath until a gap in the hedge was created and the remainder removed. That is an odd step to take if at that point she had no guarantee that the application would be confirmed.</p> <p>I appreciate she is concerned about thefts. Isolated properties with building works are prime targets but it would be unfair to allow thefts to add weight to the application or imply it has anything to do with the proximity of the public footpath.</p> <p>The footpaths have been made inconvenient in the last 18 months. I am concerned there will be ongoing issue over these paths whether the diversion is granted or not.</p>	<p>temporary issues or obstructions were not in place.</p> <p>This is in contradiction to the applicant who outlines the problems of privacy in their application and para. 1.7 above. This is not just a matter of fact, but also a matter of perception. Ongoing, significant works on this site will no doubt change the situation on the ground as it stands.</p> <p>This is in contradiction to the applicant who outlines the problems of security in para. 1.7 above. This is not just a matter of fact, but also a matter of perception.</p> <p>The condition of other paths is not a relevant consideration under the current powers available to the Council outlined at para, 1.1-1.5. The applicant notes that proper paths will be constructed as part of the development. Any diversion should be considered as if temporary issues or obstructions were not in place.</p>
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1.10 This item seeks a decision based upon this report. This is a non-Executive Function.

1.11 Delegated powers to officers, where relevant, are laid out in the February 2022 Constitution of the Council – Part 3, Section 3, Part 3A, No. EA198. Specific Delegations to Officers.

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 has been made to divert Footpath 70 in the interests of the landowner (to provide greater privacy and security to the applicant’s private residence).
- 2.3 The objections raised are discussed in paras.1.8 and 1.9.
- 2.4 The County Council’s policy states that, except in exceptional circumstances, a proposed diversion will only be considered if the new route is an improvement to the existing rights of way network for the public. Section 119 of the Highways Act 1980 does however enable the County Council to make a public path diversion order in the interests of the landowner, providing the new route is no less convenient or enjoyable for the public.
- 2.5 Footpath 70 is used mainly for leisure and dog walking, so users are unlikely to be inconvenienced by the small increase in length that the diversion may

cause for those travelling northwards. Those travelling southwards will have less far to travel. There will be no detrimental effect on views. It is substantially as convenient.

- 2.6 The Council has the power to make an order following any such an application in the interest of the landowner. This does not set a precedent. Any future application will be determined on its own merits. Any diversion should be considered as if any existing temporary issues or obstructions were not in place.
- 2.7 No biodiversity considerations are deemed to arise as a result of the proposal.

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 may be confirmed as an unopposed order under delegated authority subject to the criteria set out in section 119 (6) (a) to (c) of the Highways Act 1980. This is the Officer's preferred option
- 3.2 OR: Decide not to make the order and the definitive route for Footpath 70 will remain unchanged.

4. CONSULTATIONS:

- 4.1 All interested parties were consulted including user groups and local stakeholders. An informal notice was placed on site for 28 days from 9 August 2021.
- Cranleigh Parish Council objected to this proposal as detailed in part 1.8.
 - Ewhurst Parish Council has no objection to the proposed diversion.
 - Waverley Borough Council had no comments to make on the proposal.
 - The local Footpath Secretary of the Ramblers' Association does not believe this very minor diversion will inconvenience the walking fraternity and there will be no objection from the Ramblers.
 - No response was received from the Open Spaces Society or County Councillor Liz Townsend
- 4.2 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 between £2-3,000. 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:
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- 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 that will remain accessible in all weathers. It would not provide significant safety improvements, new additional paths, width, nor resolve existing rights of way improvement issues. No adverse impacts are foreseen.

7. LOCALISM:

- 7.1 No Localism issues have been raised nor are deemed to apply. The Borough Council has made no comment and Ewhurst Parish Council confirmed that it has no objection.

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 Officers are of the view that the criteria for making a diversion order have been met and that it is expedient that the line of the path or way, or part of that line, should be diverted.
- 9.2 The proposed diversion is in the interests of the landowner. In terms of its termination point the alternative is substantially as convenient for the public.
- 9.3 The Officer's recommendation is that a diversion order should be made.
- 9.4 The Local Committee (Waverley) is asked to agree that:
- A public path diversion order is made under section 119 of the Highways Act 1980 to divert Public Footpath No. 70 Ewhurst) as shown on Drawing No. 3/1/9/H44A.
 - If objections are received and maintained the order be submitted with the objections to the Secretary of State for determination.

10. WHAT HAPPENS NEXT:

- 10.1 All interested parties will be informed about the decision.
- 10.2 If the recommendation is approved an order will be made and advertised.

Contact Officers:

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 Daniel.williams@surreycc.gov.uk
 or
 Anne Woods, Countryside Access Officer
 Anne.woods@surreycc.gov.uk
 Tel. 020 8541 7081
 (Mondays and Tuesdays only)

Consulted:

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

Annexes:

Annex A – Drawing No. 3/1/9/H44A
 Annex B - Surrey County Council's Policy for Processing Public Path Orders

Sources/background papers:

Papers contained in file 3/1/9 Footpath 70 (Ewhurst) available for inspection by contacting the Officer.

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