

LOCAL COMMITTEE (WAVERLEY)**DATE: 11 MARCH 2022****LEAD OFFICER: DANIEL WILLIAMS, SENIOR COUNTYSIDE ACCESS OFFICER (LEGAL DEFINITION)****SUBJECT: PROPOSED DIVERSION OF FOOTPATHS 599 & 600 (WITLEY) AND PART EXTINGUISHMENT OF FOOTPATH 601 (WITLEY)****DIVISION: WITLEY****SUMMARY OF ISSUE:**

This report seeks a decision on whether to make legal orders to divert Footpaths 599 & 600 (Witley) and extinguish part of Footpath 601 (Witley)

The applicant has applied to divert footpaths 599 & 600 (Witley) to provide privacy and security for the new property he is building on the site of former farm buildings. At present the definitive line of the footpaths run close to the new buildings. The proposed new route takes the paths further to the east. The diversion of Footpath 599 would result in a path 98 metres longer than the existing Definitive route, whilst that of FP600 would result in a path 79 metres longer than the existing Definitive route. The diversion of these two paths would leave a short section of FP601 (71m in length) as a dead end, serving no purpose to the public and the application has therefore included the extinguishment of this section.

Six objections have been maintained from members of the public and the Open Spaces Society. Reasons for objecting include the opinion that the diversion would have an adverse effect upon the public's enjoyment of the route, and for some of the neighbouring residents their objection relates to the affect the diversion would have on their own privacy and security. Eight representations in support of the proposal have also been received.

RECOMMENDATIONS:

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

- (i) Orders are made to divert Footpath 599 & 600 (Witley) and to extinguish part of Footpath 601 (Witley) as shown on Drawing No. 3/1/16/H44D, in Annex A.
- (ii) If any objections are received and maintained to the orders they should be submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination.

REASONS FOR RECOMMENDATIONS:

The criteria which need to be met to enable public paths to be diverted or extinguished are set out in the legislation. The officer believes these criteria have been met and that an Order to divert and extinguish the footpaths as described can therefore be made.

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 that it is expedient to confirm the order 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 Section 118(1) of the Highways Act 1980 enables the County Council to make a public path extinguishment order if it appears to the council that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use.
- 1.4 Subsequently, if any order is to be confirmed the confirming authority must be satisfied that it is expedient to do so having regard to the extent (if any) to which it appears 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.
- 1.5 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.
- 1.6 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.
- 1.7 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

- 1.8 FP599,600 & 601 (Witley) were added to the Definitive Map on 11 August 2014, following a successful claim made under s.14 of the Wildlife and Countryside Act 1981 that public rights had been acquired over the paths.
- 1.9 In June 2019 Winkford Farm, through which FPs 599, 600 & 601 (Witley) run, was sold. In June 2020, Mr. Miro Walker, (the new owner), applied for a Public Path Order to alter the routes of these footpaths as they pass through his property to provide privacy and security for the new residential property that was being built on the site of the former derelict farm buildings.
- 1.10 The initial application proposed to divert that section of Public Footpath 599 and 600 shown A – B – C on Drawing No. 3/1/16/H44A (Annex B) by a solid black line; a length of 228 metres. The length of the proposed replacement route, shown A - D - C by a dashed black line, was to be 316 metres. If the diversion application were to be successful, then the section of FP601 shown by a solid black line B – D would no longer be required, and its extinguishment was included in the application. The sections of Footpaths 599, 600 & 601 in question are currently subject to a temporary closure on the grounds of public safety during the redevelopment of Winkford Farm, with an alternative route (in a different location to that suggested for the permanent diversion) being provided.
- 1.11 During the consultation phase of the application changes were made to the proposed route of the diverted footpaths to try to accommodate some of the concerns and objections raised. The final route onto which it is proposed to divert the path is shown in the plan reference 3/1/16/H44D at Annex A.

Objections and representations

- 1.12 The current proposal for the diversion of Footpath 599 & 600, and extinguishment FP601, is the second for which informal consultations have been carried out. The first consultation, for a slightly different route as shown on Drawing No. 3/1/16/H44A, was carried out on 8 June 2021 and resulted in 20 objections, mainly from local residents concerned about the effect the diversions would have on their own privacy and security. Following site meetings and discussions with objectors, Mr Walker amended the proposed new routes and following a further consultation in October 2021, 13 people withdrew their objections. In order to try to resolve some of the concerns maintained by the remaining 7 objectors, further minor changes were made to the route of the proposed new route in January 2022 and the final route for the proposed diversion was marked out on site and shared with the remaining objectors. It is shown in Drawing No. 3/1/16/H44D. Following this final alteration one person subsequently withdrew their objections. This left 6 objections maintained, and these are outlined below, together with comments by the officer:

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1.13 Mr Milton – Open Spaces Society

Grounds of objection	Officer's comments
<p>Maintains his objection unless the width of the proposed new route is shown on the plan as 4 metres minimum or 6 metres if used for farm vehicular traffic. He also requires the surface detail to be shown on the plan.</p>	<p>The proposed widths are not normally shown on the Order Plan but are included in the wording of the Diversion Order. In this instance the diverted paths will be 4m wide and will not be shared with farm vehicular traffic.</p> <p>The Applicant has signed a Works Agreement (Annex C) that specifies surfacing requirements for the proposed new route, the works for which must be completed and approved before a Diversion Order is confirmed.</p>

1.14 Mr Boote

Grounds of objection	Officer's comments
<p>There are countless properties with public rights of way passing through them or very nearby, which the owners accept. Security is an issue for every owner which is to be dealt with without resorting to changing public rights of way. As to privacy, one can understand why the owner might wish the footpaths to be pushed as far away from his house as possible. However, footpath diversions (and more so for extinguishments) are to be considered primarily in relation to the interests and convenience of the public, rather than those of the landowner.</p>	<p>Under S.119 Highways Act 1980, the County Council may make a Diversion Order in the interest of the landowner, providing the proposed route is no less convenient or enjoyable for the public. (See Point 1.1. & 1.2 above)</p>
<p>I do not enjoy the temporary route as much as the existing paths, which I have walked regularly for many years</p>	<p>The temporary route that is currently being used has been put in as part of the temporary closure of paths during the construction of the new property. They are in a different location to the proposed new routes for the public footpaths.</p>
<p>Surrey County Council would have the responsibility of keeping the proposed routes clear of vegetation, but with its stated lack of funds and resultant prioritising of such work, the chances of SCC meeting this responsibility are remote.</p>	<p>The proposed route is to be surfaced and is therefore unlikely to require vegetation clearance. The landowner would be responsible for clearing any vegetation overhanging or encroaching from land adjoining the footpath. SCC would have ongoing general maintenance responsibility.</p>
<p>Winkford Farm occupies a prominent position in an exceptional rural landscape on high ground with 360 degree views. The planning consent obtained from Waverley BC specifies the precise site for the development (clearly marked in red on Waverley's plan). Approved development within this "site" is in many ways</p>	<p>Such planning issues are not relevant to the consideration of this application submitted under the Highways Act 1980.</p>

<p>to be welcomed. However, outside the “site”, the existing agricultural and rural setting is to be disturbed as little as possible. Indeed so far as I am aware there is no planning consent for any such development or change of use from agricultural land outside the approved “site”. The existing routes of the three footpaths were confirmed in the planning approval from Waverley and all were accommodated in the design layout within the “site”.</p>	
<p>The proposed route going out to point C re-joins FP600 too far to the north. If it was to re-join at or near to where the temporary route re-joins FP600 that would be more acceptable. Much is made of the views to the north and the Hog’s Back, but what this ignores is the importance of the views to the west. These were specifically mentioned in the planning application for the new dwelling. Taking the northerly and westerly views together provides a magnificent wide vista which would largely be lost under the current proposal.</p>	<p>The extent to which views are lost has been considered. Views are not entirely lost because of the proposal, there is a restriction in the view for a short distance.</p>
<p>The proposed route from point A to point D (on FP599) loops unnecessarily far to the east-south-east before turning north, albeit it less than under the earlier proposal. This section of the route should follow a more direct line from A to D. Apart from other factors this should obviate the need for any hedging being planted along this section in order to screen neighbours to the south.</p>	<p>This route was chosen to allow the applicant to create a wildlife pond inside the fenced boundary of the path.</p>
<p>As regards possible hedging or other screening, this would need careful consideration to avoid views being blocked, for example if any hedges were not cut regularly to a low enough height. Also, adequate width would be required for any hedges and their maintenance, which might mean the route of the footpath would need to be moved. A further highly undesirable possibility would be if hedging was planted on the inside of the proposed route and on the outside. This would result in the public walking inside a tunnel of hedges with serious loss of views and a total lack of open space.</p>	<p>The County Council would not consent to planting within the width of the footpath, which will be recorded on the Definitive Statement as 4m. There is no proposal as part of this application to plant hedges alongside the new line of the path.</p>

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1.15 Mr & Mrs Houston (Winkford Lodge, Church Lane)

Grounds of objection	Officer's comments
<p>The route of the existing public path is established, and we do not support its redirection. Moreover, Mr Walker was aware of this at the time of his purchase and planning application.</p>	<p>Under S.119 Highways Act 1980, the County Council may make a Diversion Order in the interest of the landowner, providing the proposed route is no less convenient or enjoyable for the public. (See Point 1.1. & 1.2 above)</p>
<p>Our privacy (to Winkford Lodge) would be impinged if the path were to be moved closer to our boundary</p>	<p>The proposed path is 28m closer to the boundary with Winkford Lodge. There is a further approximate 50m between the path and the boundary. Winkford Lodge itself is then over 100m further east from the boundary.</p>
<p>In viewing the plan of the original buildings and the latest plans for the new house (as shown in your attachments), it is evident that the new layout has been pushed to the very edge of the footpath. The former buildings were set some distance back from the path. We are unclear why, if Mr Walker is so concerned, rather than moving the path, he shouldn't simply move his house back to the original line(s). That said, as far as any new amendments to the layout of the house, and his proposal to build a barn and a pond are concerned, we would expect these to be addressed fully by the planners and, no doubt, we will be given an opportunity to consider such variations once the details are presented. Instinctively, we believe a pond would be out of keeping and we fail to understand why it shouldn't be located within the 'domestic' curtilage.</p>	<p>Such planning issues are not relevant to the consideration of this application submitted under the Highways Act 1980.</p>
<p>In our opinion, the entire field adjoining our land should continue to be 100% agricultural. By redirecting the pathway, we believe that: It will render the outer part of the field commercially unviable. The inner part of the field will inevitably become 'domesticated'. None of the revisions appear to recognise the fact that the land lies in an Area of Outstanding Natural Beauty</p>	<p>Such planning issues are not relevant to the consideration of this application submitted under the Highways Act 1980.</p>

1.16 Mr & Mrs Sargent, 2 Parsonage Fam Cottages

Grounds of objection	Officer's comments
<p>The route of the paths is well established, and must have been known to the applicant when he</p>	<p>Under S.119 Highways Act 1980, the County Council may make a Diversion Order in the interest</p>

<p>purchased the property, and should have been taken into consideration. . The problem is therefore in fact that the house is planned to be built too close to the existing footpath for his liking. The planned house will be to a design chosen by Mr Walker, in a position chosen by Mr Walker, The problem, such as it is, is entirely of his making, and does not warrant restricting the enjoyment of those using the footpaths.</p>	<p>of the landowner, providing the proposed route is no less convenient or enjoyable for the public. (See Point 1.1. & 1.2 above)</p>
<p>The diversion would place the path significantly lower, on the slope down towards Church Lane, adversely affecting the currently available views.</p>	<p>The path is 28m lower down the slope towards Church Lane and whilst views would be reduced slightly, this would be for a short length of path.</p>

1.17 In addition to the objections, eight people have written in support of the proposal.

Mr & Mrs Davis	Mr & Mrs Davis live in a property at the entrance to Parsonage Farm, which is adjacent to Winkford Farm. They have experienced intruders entering their land and think diverting the footpaths for security is reasonable. They also believe the diversion routes will not be detrimental to the views enjoyed by walkers.
Ms Crowther	Ms Crowther says the proposal allows for the enjoyment of walking the open fields and retains a fairness of privacy for all those living in the surrounding properties.
Mr & Mrs Dorey	Mr & Mrs Dorey walk through the Winkford property almost every day and have done for years. They see no problem with rerouting the path as in fact consider it an improvement. Keeping their walk away from the property makes it more peaceful and pleasant for them and for the residents.
Ms Price	Ms Price has no objection to this application. She thinks it is a good idea from both the security and privacy angle of the owner and a diversion that would in all honesty make no difference to the convenience of walkers.
Mr & Mrs Morris	Mr & Mrs Morris, who live at Parsonage Farm, support the proposed new route, though they would like some screening to protect their privacy.

2. ANALYSIS:

- 2.1 The legal position to be considered is outlined in section 1.1-1.7 of this report.
- 2.2 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

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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.

- 2.3 In this instance the application would be in the interest of the landowner, to provide privacy and security to his property.
- 2.4 To confirm a diversion order the council must be satisfied that the new routes are not substantially less convenient to the public and that it is expedient to confirm it with regard to the effect which
- *the diversion would have on public enjoyment of the path or way as a whole,*
 - *the coming into operation of the order would have as respects other land served by the existing public right of way*
 - *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.*
- 2.5 The difference in distance between the current definitive route and the planned diversion route is 98m for FP599 and 79m for FP600. A works agreement is in place which will ensure that the surface of the diverted paths are as easily walked as the existing paths (Annex C). There is no significant change in gradient between the existing and proposed paths. The officer considers therefore that the proposed routes for these paths are not substantially less convenient to the public.
- 2.6 With regard to public enjoyment, one of the main reasons for objections is the perceived loss of views from the proposed route which is one element that contributes to the enjoyment of a path.
- 2.7 The paths run across the side of a hill with the contours running such that the land slopes up from Church Lane towards the crest of the hill which is to the west of the farm buildings. Church Lane is therefore at the bottom of the rise, with Winkford Farm nearing the top of the rise.
- 2.8 The current definitive route of FP599 between A and B has limited long distance views as it runs into what was the farm complex with hedges and fences associated. The diversion route between A and D takes walkers across an open field. It is the intention of Mr Walker, subject to planning permission, to create a pond in this field which will be fenced from the path.
- 2.9 The current definitive route of FP600 between B and C is located just off the crest of the hill, and once you have left the farm buildings behind there are good views to the west of the surrounding countryside. The diversion route would take you in a parallel route to the definitive path, 28m to the east. This will put walkers marginally further down the hillside and would reduce views by a small amount for a short distance. Walkers will still, however, benefit from good views as they walk this section. The path re-joins the definitive line at point C, so the distance for which there are marginally reduced views is approximately 40m.

- 2.10 The diverted routes will be recorded on the Definitive map as 4m wide, they will have a surfaced width of 2m and have verges of 1m either side. The landowner has entered into a works agreement with the County Council to ensure that the construction of the diverted route meets current standards.
- 2.11 The officer believes that the marginal reduction in the view for a short distance along the path is not sufficient to conclude that enjoyment of the path would be significantly reduced. In addition, the works agreement ensures that the proposed path would be constructed such that walkers would suffer no loss of enjoyment from the condition of the path.
- 2.12 There have been comments made by eight members of the public who consider that the proposed route would not have a significant impact on the views (e.g., Mr & Mrs Davis who think the diversion routes will not be detrimental to the views enjoyed by walkers), or who consider walking the open field would add to their enjoyment (Ms Crowther). One couple (Mr & Mrs Dorey) commented that moving the footpath away from the property would make the walk more pleasant and enjoyable.
- 2.13 Several objectors consider that the existing route was well established when landowner purchased the property, and that he should have taken that into consideration.
- 2.14 It is true that the path was in existence before the owner purchased the property, however the legislation is there to enable landowners to apply to divert public paths if the proposals meet the criteria.
- 2.15 Some objectors also mentioned the position and layout of the applicant's proposed development and the use of the land, which are planning matters that are not relevant to this application.
- 2.16 Section 118(1) of the Highways Act 1980 enables the County Council to make a public path extinguishment order if it appears to the council that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use.
- 2.17 The diversion of FP599 and FP600 as proposed would leave a short section of FP601 between B and D that would result in a dead end and serve no purpose. It would, therefore, not be needed for public use and it would be expedient to extinguish it.
- 2.18 Subsequently, if an extinguishment order is to be confirmed the confirming authority must be satisfied that it is expedient to do so having regard to the extent (if any) to which it appears 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.
- 2.19 It would be possible to confirm this part of the Order as it would have no use for the public and would not serve purpose with regard to land served by it.

3. OPTIONS:

- 3.1 After considering the matters Councillors have two options.
- 3.2 **EITHER:** direct officers to make Public Path Diversion and Extinguishment Orders as described in this report and shown on the map reference 3/1/16/H44D and advertise them in accordance with the statutory procedures.
- 3.3 If objections are received and maintained the Council may submit the orders with the objections to the Secretary of State for determination or it may decide not to proceed any further and to rescind the Orders. If no objections are received the orders can be confirmed as unopposed orders under delegated authority subject to the criteria set out in section 119 (6) (a) to (c) and section 118 (2) of the Highways Act 1980.
- 3.4 This is the Officer's preferred option
- 3.5 **OR:** Decide not to make the orders and the definitive route for Footpaths 599, 600 and 601 will remain unchanged.

4. CONSULTATIONS:

- 4.1 All interested parties were consulted including user groups and local stakeholders.
- 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 around £2,000 - £3000. 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.
- 5.2 The applicant has entered into a works agreement with the County Council in which the responsibility for undertaking the work required by SCC to create the new route will fall to the applicant at his expense. It will be the ongoing responsibility of the landowner to ensure that the path does not get overgrown.

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 and would have no gates or other less accessible structures. It would not provide significant safety improvements, new additional paths, width, nor resolve existing rights of way improvement issues.

7. LOCALISM:

No Localism issues have been raised nor are deemed to apply. The Borough Council made no comment and the 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 The Officer's recommendation is that Diversion and Extinguishment Orders should be made as the criteria set out in the legislation has been met.

9.2 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 No. 599 and 600 (Witley) and an Extinguishment Order is made under section 118 of the Highways Act 1980 to extinguish part of Public Footpath 601 (Witley) as shown on Drawing No. 3/1/16/H44D

- 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.

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Consulted:

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

Annexes:

A Drawing No. 3/1/16/H44D

B Drawing No. 3/1/16/H44A

C Works Agreement

Sources/background papers:

Papers contained in file 3/1/16 Footpath 599, 600, 601 Witley available for inspection by contacting the officer.
