

LOCAL COMMITTEE (WOKING)

DATE: 23 JUNE 2021

LEAD OFFICER: DANIEL WILLIAMS COUNTRYSIDE ACCESS OFFICER

SUBJECT: PROPOSED DIVERSION OF FOOTPATH 5 (WOKING)

DIVISION: GOLDSWORTH EAST AND HORSELL VILLAGE

SUMMARY OF ISSUE:

This report seeks a decision on whether to make a legal order to divert Footpath No. 5 (Woking).

Two objections have been maintained 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 landowner and the public.

RECOMMENDATIONS:

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

- (i) A diversion order is made under section 119 of the Highways Act 1980 to divert Public Footpath No. 5 (Woking) as shown on Drawing No. 3/1/79/H68A.
- (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.

REASONS FOR RECOMMENDATIONS:

Officers are of the view that the criteria for making a diversion order have been met. At present the path crosses an area being developed for stabling. The new route, 3m in width, will improve security for the property and provide a path that will no longer be shared with vehicles accessing the property.

1. INTRODUCTION AND BACKGROUND:**Legal position:**

- 1.1 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 and 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

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(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 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.
- 1.4 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.
- 1.5 Under the Equality Act 2010 the Council must consider the needs of those with mobility impairments when managing rights of way and access.

The application and consultations:

- 1.6 An application dated 24 February 2020 to divert part of public footpath No. 5 (Woking) was received from Mr and Mrs Howard of Deep Pool Farm, Deep Pool Lane, Chobham. The definitive route is shown A-B with a solid black line and is 241 metres in length. The proposed route is shown A-C and is 231 metres in length. In support of the application the applicant states:
- a. It is in the interests of safety for all reasons regarding horses on the land and for security.
 - b. They have stallions which may attack dogs and hope moving the path will prevent future problems. If dogs are let off their leads near livestock this can be a problem in and around the farm.
 - c. By diverting the path it gives them protection against rural crime.

Objections and representations:

- 1.7 On 3 March 2020 an informal consultation lasting 28 days took place with regard to this route. Due to the number of objections received to this the landowner proposed the alternative diversion route being considered here. The original application route will be considered no further.
- 1.8 The diversion was applied for in the interests of the landowner and the public. At the present the applicant states that the path crosses an area that is being developed with new stabling. The proposed new route will improve security for the property and provide a path that will no longer be shared with vehicles accessing the property and horses.
- 1.9 A second round of consultation for 28 days took place from 2 June 2020. It was proposed that A-B is diverted to the line as shown A-C on the attached

drawing No. 3/1/79/H68A. Two objections have been maintained to this second proposal which are outlined below.

1.10 Mr Andrew Carapiet

Grounds of objection	Comments
1. Fencing alongside the existing path and smaller trees and underbrush has been ripped out around the pond. This has caused a loss of animal habitat and rendered the path unusable for smaller children when the adjacent fields are grazed.	The applicant states that the only hedges taken out were three hazel and one holly bush down the avenue, no large amount was removed. New hedge rows will be replanted. Previous fencing was removed due to its condition and will be replaced with a safer fence without barbed wire. The path will be fenced end to end. This is work that has already happened and is not a necessary result of the diversion proposal.
2. The Proposed Diversion of the footpath is not a good alternative, because the field through which it will pass is also grazed and if anything, with greater frequency than the fields by the original path and would as a consequence be unusable for smaller children.	The applicant confirmed the path will be fenced in from end to end so children, dogs and people will be safe from any grazing animals

1.11 Mr John McIntyre

Grounds of objection	Officer's comments
1. Questions the validity that this will improve security for the property and provide a path that will no longer be shared by vehicles.	The diversion will move the right of way away from proposed conversion and/or residential buildings removing some casual security threats which might arise.
2. There is no more of a security issue relating to Deep Pool Farm than there is to other properties here.	The threat to other properties is irrelevant (see point 1).
3. The reality of the diversion will increase the number of vehicles encountered by walkers using the footpath. This is because they will be diverted onto footpath 4 between B and C. Vehicles on Footpath 4 between	This seems a negligible or dubious claim. Those users will pass onto footpath 4 in any case, passing either to the north or the south, so will in any case meet a small amount of traffic on that path. The diversion runs for a

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B and C will be associated with 3 existing properties.	shorter distance over a shared use route than the existing route.
4. The public notice for the proposed diversion stated that the area was being developed for new stabling. The only application I can find on the Woking Borough website regarding stable buildings (PLAN/2019/1049) has been refused. Therefore there appears no reason for the diversion.	It is not necessary for an application to have yet been successful for an application to be made. Presumably this is part of a process of planning ahead.
5. A second application (PLAN/2020/0346) for agricultural buildings is under consideration but does not mention stabling. It does state that the right of way will not be affected and the proposal will not increase traffic. There appears to be no ground to divert footpath 5 on the basis of this application.	See above
6. A third application (PLAN/2020/0591) for change of use of an agricultural building to one dwelling is under consideration. This may be the real reason for the application. The documents on the website do not refer to the right of way running past the site. The owner may wish to increase the value of the property by diverting the way.	If this is the case it does not negate the application. There is no reason why the applicant could not have applied for reasons of security for the 'dwelling'. An examination of the published decision discusses the right of way and any mitigating measures which the development might require.
7. As of 30 May 2020, part of footpath 5 was obstructed by the developments taking place, including a dumper truck. On 8 July 2020 it was obstructed with both a JCB and stack of breeze blocks.	Temporary issues or obstructions should not be taken into account when considering whether a right of way should be diverted or not.

1.12 Three other initial objections by local users were later withdrawn and so are not considered here.

1.13 An undated petition containing 58 names, addresses and accompanying signatures was received in early 2021 from the applicant. It is titled: "Walkers in support for the proposed application for relocation of footpath no. 5 plan attached". Most of these appear to be by residents local in the immediate area. These suggest a body of support for the proposed diversion therefore

supporting the applicant's argument that the application is also in the interests of the public.

- 1.14 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 It is deemed in this case that the proposal is in the interest of the public, removing the possible close interaction of the public (and dogs) with horses in the area of proposed stabling. It will also provide fencing in the area where grazing has occasionally taken place. These benefits are acknowledged as currently being notional in that redevelopment of the site and any problems which might arise because of it have not yet concluded.
- 2.3 It is also proposed that the right to have two stiles with field gates along the diverted section will also be replaced by two kissing gates at A and C which are in the interest of public accessibility.
- 2.4 The application is also deemed to be in the interest of the landowner, given that it removes part of its length away from the area proposed for stabling and/or residential. This may remove any potential for conflict between the public and horses and any casual criminal activity.
- 2.5 No biodiversity considerations are deemed to arise as a result of the proposal.

3. OPTIONS:

- 3.1 Make a 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 with delegated powers. This is the Officer's preferred option.
- 3.2 OR: Decide not to make the order and the definitive route for Footpath 5 will remain unchanged.

4. CONSULTATIONS:

- 4.1 All interested parties were consulted including user groups and local stakeholders. Both Ramblers and Open Spaces Society have no objection to this proposal. Woking Borough Council had no issue with it and Horsell Common Preservation Society had no opposition to it. 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 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. 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 removes the section of footpath 5 that runs over the accommodation road to Deep Pool Farm. The surface will remain level grass. Two stiles will be replaced by more accessible kissing gates to British Standard. A width of 3 metres is proposed enclosed by low stock fencing. The proposed route is 10 metres shorter than the definitive route. No adverse impacts are foreseen.

7. LOCALISM:

- 8.1 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 a diversion order should be made.
- 9.2 The Local Committee (Woking) is asked to agree that:

A diversion order is made under section 119 of the Highways Act 1980 to divert public footpath no. 5 (Woking) as shown on drawing no. 3/1/79/H68A and that if any objections are received and maintained to the Order that it is

submitted to the Secretary of State for Environment Food and Rural Affairs for determination.

10. WHAT HAPPENS NEXT:

10.1 All interested parties will be informed about the decision.

Contact Officer:

Daniel Williams, Countryside Access Officer.
Tel. 07929 849518 or 0208 541 9245

Consulted:

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

Annexes:

Annex A – Drawing No. 3/1/79/H68A
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 3/1/79 Footpath 5 (Woking) available for inspection by contacting the Officer.

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