

Rights of Way Committee

22 October 2019

Recent Decision by the Secretary of State's Inspector:

**West Sussex County Council (Elsted & Treyford and Harting)
Public Path (No. 871) Diversion Order 2017**

**West Sussex County Council (Elsted & Treyford) Public Path
(No. 872) Diversion Order 2017**

**West Sussex County Council (Elsted & Treyford) Public Path
(No. 873) Diversion Order 2017**

Report by Director of Law and Assurance

Electoral division: Midhurst

Recommendation

That this report be noted.

1. Background

- 1.1 The County Council received an application made by Mr Nigel Hanbury to divert part of public footpaths 871, 872 and 873 at Woodhouse Farm just north of Elsted and East Harting. The application also included the provision of two new public footpaths.
- 1.2 The application to divert the above paths was made due to the considerable impact on the management of the farmland and conservation aims and for the privacy and security of the farm.
- 1.3 A delegated decision was made on 1 December 2016 to allow the application and to make the necessary orders. The orders were made in March 2017.
- 1.4 The orders attracted two objections so, in line with the agreed practice when an order made following officer delegated decision is opposed, the Committee was asked to decide whether the orders should be submitted for confirmation.

- 1.5 The legal tests to satisfy before making a diversion order are:
- The Authority may make an order to divert a public path if it is satisfied that it is expedient that the line of the path or way, or part of it, should be diverted in the interests of the public, or both.
 - The Authority must also be satisfied that the diversion order does not alter any point of termination of the path, other than to another point on the same path, or another highway connected with it, and which is substantially as convenient to users as the path to be stopped up.
- 1.6 The Committee agreed with the Officer recommendation that the tests for making of the orders could be met and approved the officer recommendation.
- 1.7 On 6 September 2018, the opposed orders were submitted to the Secretary of State for the Environment, Food and Rural Affairs. The matter was dealt with by way of written representations.

2. The Inspector's Decision

- 2.1 A full copy of the Inspector's decision report is attached, however, once the matter was submitted to the Planning Inspectorate one of the two objectors withdrew their objection.
- 2.2 The Inspector advised that the diverted routes of the paths would not be less convenient to the public. The Inspector also agreed that greater weight should be given to the landowner in this instance in order to facilitate land management for conservation purposes.
- 2.3 The Inspector concluded that the legal tests for confirmation of the orders could be met and therefore confirmed the orders.

3 Resource Implications and Value for Money

- 3.1 The County Council has the power, but not the duty, to investigate applications for diversion and extinguishment applications made under the Highways Act 1980. Applicants are required to reimburse the County Council's costs up to the point where an opposed order is submitted to the Secretary of State for determination and while there is no obligation to submit such an opposed order, if the order is submitted, the County Council must bear the costs from that point.

Tony Kershaw

Director of Law and Assurance

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Appendices

None

Background papers

- a) [Committee Report dated 12 June 2018](#)
- b) [Inspectors full decision dated 26 June 2019](#)
- c) [Site Plan](#)