

## **Planning and Rights of Way Committee**

**29 June 2021**

### **Selsey: Proposed Upgrade of part of Public Footpath 76 Golf Links Lane to Bridleway as Part of a Route Linking Selsey with Medmerry**

**Report by Matt Davey, Director of Highways, Transport & Planning, Place Services**

**Electoral division: Selsey**

---

## **Summary**

This report relates to a proposal to provide an important off-road route for cyclists and equestrians connecting Selsey to the Medmerry path network by upgrading existing footpath 76 on Golf Links Lane to bridleway.

The proposal is made under the provisions of Section 26 Highway Act 1980. Members are referred to paragraph 4.9 of the Rights of Way Guide to the Law.

## **Recommendations**

- (1) That the Director of Law and Assurance be authorised to make, and confirm in the event of no objections, an order under Section 26 Highways Act 1980 to upgrade a length of public footpath 76 along Golf Links Lane to a bridleway.
- 

## **1. Introduction**

- 1.1 There is a long held ambition shared by the County Council, Selsey Town Council, Selsey Community Forum and others to create an off road route for walkers, cyclists and horse riders connecting Selsey with the extensive package of footpaths and bridleways already in place around the Medmerry coastal area to the west of the town. At present the linking path network is footpath status only meaning that horse riders and cyclists must use the road network over some 7 kilometres, including the busy B2145 Chichester Road, to reach this popular recreational area.
- 1.2 Footpath 76 runs west from Chichester Road via Golf Links Lane and then continues northwest across farmland to meet the Medmerry footpath and bridleway network. It is proposed that footpath(fp)76 be upgraded to bridleway status in order to achieve an off-road route for all path users as indicated by points A, B and C on the Location Plan.

- 1.3 Agreement has already been reached with landowners to create a length of permissive bridleway (B to C on the Location Plan) over part of fp76 on farmland westward from Golf Links Lane and connecting to the Medmerry network at point C on the existing permissive bridleway 38. In order to complete the link to Selsey, it is proposed that the Golf Links Lane (part of fp 76) be designated a definitive bridleway thereby enabling its present use by walkers to be extended to cyclists and horse riders. This part of the scheme is identified between points A and B on the attached Proposal Plan and is the subject of this report.

## **2. The Proposal**

- 2.1 Golf Links Lane, whilst being a public footpath also serves as the main vehicular access for a number of private properties as well as the Selsey Golf and Country Club. Currently, the public right to use the lane extends to use on foot only.
- 2.2 It has a hardened, all-weather surface, but not fully black topped throughout its length and a width of 5 metres which narrows to 3 metres towards its western end. As well as the public footpath, it carries a fair amount of private vehicular traffic and also private and unofficial cycle use, which is accommodated by the adequate width and straight alignment with generally good visibility. From a practical viewpoint the route is considered to be suitable for use as a bridleway.
- 2.3 Unfortunately, the owners of part of Golf Links Lane are not agreeable to dedicating part of the lane within their ownership as a bridleway. Furthermore, part of the proposed route is unregistered (ownership not known) and so dedication by means of a section25 Creation Agreement is not possible. It is therefore proposed that bridleway status be achieved by way of a s26 Creation Order.

## **3 Highways Act 1980 Section 26 – Creation Order**

### **The Legal Tests and process**

- 3.1 Section 26 of the Highways Act provides the County Council with compulsory powers to acquire land for the purpose of a right of way (highway) and can be used when the owner of the land is unknown, or alternatively unwilling to dedicate.
- 3.2 Before making an Order the County Council must be satisfied that it is expedient that the path should be created after having regard to two factors. The first factor is the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public or to the convenience of persons resident in the area. The second is the effect which the creation of the path would have on the rights of persons interested in the land after having taken into account the provisions available for payment of compensation. Both factors must be considered.
- 3.3 Section 26 specifically provides:  
  
Where it appears to a local authority that there is need for a footpath bridleway or restricted byway over land in their area and they are satisfied that, having regard to—

- (a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area, and
- (b) the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 28 below, it is expedient that the path or way should be created, the authority may by Order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed Order, create a footpath bridleway or restricted byway over the land

- 3.4 Before confirming an Order, the confirming authority must also have regard to any material provision of a rights of way improvement plan.
- 3.5 With regards to compensation under Section 28 Highways Act 1980, if it is shown that the value of an interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of a public path Creation Order, the authority by whom the order was made shall pay to that person compensation equal to the amount of the depreciation or damage.
- 3.6 The Order, once made, is open to objection and is subject to confirmation. Where the Order is opposed (i.e. where objections are lodged and are not withdrawn) the Order will have to be confirmed by the Secretary of State. Where it is unopposed, it may be confirmed by the County Council itself.

#### **4 Consultations**

- 4.3 There is no statutory requirement to consult on proposals for a Section 26 Creation Order, however, it is considered best practice to do so. On 7 April 2021 letters of consultation were sent out to Chichester District Council, Selsey Town Council, Sussex Police and the relevant user groups including the Ramblers, the British Horse Society, Cycling UK, and other interested parties. Notice of the consultation was included in the Members' Bulletin.
- 4.4 All those who replied either advised no objection or expressed positive support for the proposal. Selsey Town Council confirmed their support and Selsey Community Forum and the Selsey to Chichester Greenway Project Group expressed strong support for the route which they believe has widespread statutory, commercial and community support and go on to describe as a "safe route off the increasingly busy B2145 and suit both leisure and commuter use for all ages"
- 4.5 The local county council member for Selsey, Donna Johnson, has confirmed her support for this proposal.
- 4.6 No reply was received from the Ramblers but two other walking groups – The Society of Sussex Wealdmen and the South Downs Society both responded in support noting that the route is considered to lend itself to being upgraded.
- 4.7 The British Horse Society replied with strong support referring to "... a large number of horses/ponies in the Selsey area, ridden by adults and children,

who are in desperate need of more safe, off road routes. There are very few bridleways, and the local roads have become very busy and dangerous for all non-motorised users, walkers, cyclists, and horse riders, due to the increasing amount of development taking place on the Coastal Plain.” The representative goes on to describe the value of the Medmerry network and the importance of creating this safe, recreational link.

- 4.8 Letters in support were also received from individual users, 5 horse riders and a cyclist, who expressed strong support for the proposal which they welcome as a valuable new recreational opportunity.
- 4.9 Due to the unregistered nature of part of Golf Links Lane, requisitions for information together with details of the proposal to upgrade were sent to all properties along the unregistered section of Golf Links Lane. Responses were received from 2 properties.
- 4.10 The Selsey Country Club consisting of some 300 privately owned holiday chalets, golf club and other recreational facilities is situated at the western end of Golf Links Lane. Access is via Golf Links Lane and footpath 76 continues west alongside the southern side of the complex on a track separated by fencing. The Selsey Country Club have, during early discussions in 2019, expressed their opposition to the proposal because they consider that the bridleway will create traffic that the Lane cannot sustain; that it will draw attention to the holiday site and that its present quiet and secure location will be adversely affected. More recently an offer to meet with them on-site to discuss their concerns was made however to date no meeting has been arranged.
- 4.11 In view of the Lane already having public footpath status and the intention being to extend this to cyclists and horse riders it is considered that any increased impact on the privacy and security of the Country Club will be slight. The Lane already carries a good deal of private vehicular traffic and the change to bridleway will not include public vehicular use. The width, straight alignment and general condition of the Lane is considered suitable for shared use and the inclusion of cyclists and horse riders would bring minimal additional wear to the surface.
- 4.12 In contrast to these concerns it should also be noted that the bridleway will provide not only a valuable route for the local community but it will also offer a new and conveniently situated recreational facility for visitors to the Country Club to enjoy. They will be able to cycle directly from the Club site westwards via the new bridleway to explore the wider path network around Medmerry and the villages beyond. A request has been made to the Country Club for a meeting with officers to discuss the proposal – members will be updated at the Committee meeting.

## **5 Consideration of the Legal Tests**

**....the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area.....**

- 5.1 In considering the proposal to designate Golf Links Lane a public bridleway all issues concerning the extent to which the path would add to the

convenience and enjoyment of the local community and to the wider public have been taken into account. It can be clearly demonstrated that the bridleway will provide an important and convenient off road recreational link between Selsey and Medmerry for local residents and the wider public to enjoy which is borne out by the response to consultation and by relevant key elements of the Rights of Way Management Plan being met.

**...the effect which the creation of the path or way would have on the rights of persons interested in the land, it is expedient that the path or way should be created ....**

- 5.2 Careful note has been taken of the response to consultation and to aims and objectives contained in the Rights of Way Management Plan. Consideration has also been given to the effect which the creation would have on the rights of persons interested in the land and to the possibility of claims for compensation.
- 5.3 Given that the character of Golf Links Lane is suitable for bridleway use together with the fact that it already carries a public footpath and a good deal of private traffic the extension of its use to include public cyclists and equestrians is considered not likely to have a significant adverse impact on those with an interest in the land. It should also be noted that the provision of direct access to the new cycle route may be beneficial to some of those with an interest in land on Golf Links Lane and in particular it will offer much enhanced cycling opportunities for visitors to the Country Club.

**...Provisions as to compensation under Section 28 Highways Act 1980...**

- 5.4 It is not possible to say whether an application for compensation will be made as an application can only be made once an Order has been confirmed. However, the objection process that follows the making of the Order should identify any potential claims at which point these will be fully considered by officers.
- 5.5 It is therefore considered that the legal tests for making and confirming of an unopposed Order under section 26 Highways Act have been met.

## **6 Works**

- 6.1 Apart from changing waymarking from Public Footpath to Public Bridleway and the provision of a new gate at the western end, (these works to be at County Council expense) no additional works will be required.

## **7 Overall Conclusion and Recommendation**

- 7.1 The designation of Golf Links Lane as a bridleway would be the final element in the creation of a valuable recreational route for Selsey residents and the wider public, especially for cyclists, who would be able to enjoy a safe off-road route to the popular Medmerry area and the communities beyond, as well as providing a new recreational facility in support of the local tourism economy.

## **8 Finance**

- 8.1 All costs associated with making and implementation of the s26 Creation Order would be borne to the County Council together with any compensation that may become payable as a result of the effect which the creation has on the rights of persons with an interest in the land. All costs that may become payable would fall within existing Public Rights of Way revenue budgets.
- 8.2 Cost implications arise:
- i. In the event of an Order being made and objected to the matter may be considered at a public local inquiry or a public hearing and all fees incurred borne by the County Council. This includes but is not limited to fees relating to the venue hire, fees relating to advertisement.
  - ii. Should an order be made and confirmed; the County Council would be responsible for any works necessary for use as a public bridleway -no substantial works are required other than a new gate and amendment to waymarking.
  - iii. Should the decision of the committee be challenged by way of Judicial Review.
  - iv. In the event that an Order is made and confirmed s28 Highways Act 1980 provides that any person with an interest in the land who, as a result, has suffered loss or damage to his land or enjoyment of his land may claim compensation against the County Council. If settlement is not reached through negotiation, then the claim would be referred to the Land Tribunal.

## **9 Risk implications and mitigations**

- 9.1 The decision is one that must be taken on strict legal tests:
- i. If the matter is not determined in accordance with the tests this could lead to a successful legal challenge by way of Judicial Review.
  - ii. In the event that an Order is made and objections are received the matter may be referred to the Secretary of State to be considered by way of written representations, hearing or public inquiry.

## **10 Policy alignment and compliance**

### ***West Sussex Rights of Way Management Plan 2018-28 and West Sussex Walking and Cycling Strategy 2016-26***

- 10.1 In considering this proposal the County Council's commitments under the provisions of the above have been taken into account. Some of their key objectives are met by the proposal. These include the improvement of path links; the creation of safer routes by minimising road use; the promotion of countryside access for all; the support of the rural economy, health and wellbeing.

### ***Equality and Human Rights Assessment***

- 10.2 The County Council has a duty to have regard to the impact of any proposal on those people with characteristics protected by the Equality Act 2010. Officers considered the information provided in response to consultation and determined that the proposal would have no adverse impact on individuals or identifiable groups with protected characteristics. Rather, if bridleway status is achieved, the up grading of the gateways, footbridge and surfacing on the continuation of the route to Medmerry will make the present footpath more accessible to a wider range of user including the less agile walker, wheelchair users and those with push chairs.

### ***Human Rights Act 1998 Implications***

- 10.3 It is unlawful for a public authority to act in any way, which is incompatible with a convention right. The rights, which should be considered, are rights pursuant to Article 8, Article 1 and Protocol 1 and Article 6.
- 10.4 Article 8 protects the right to respect for private and family life including an individual's home. This is a qualified right and there may be interference by a public authority if that authority does so with an intention of protecting the right and freedom of others.
- 10.5 Article 1, Protocol 1 deals with the protection of property. Again, this is a qualified right and interference of it may take place where it is in the public's interest to do so subject to the conditions provided by law. Any interference, however, must be proportionate. The main body of the report identifies the extent to which there is interference with these rights and whether the interference is proportionate.
- 10.6 The Committee should be aware of Article 6, the focus of which (for the purpose of this Committee) is the determination of an individual's civil rights and obligations. Article 6 provides that in the determination of these rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for rights of way matters, the decision-making process as a whole, which includes the right of review by the High Court, complied with Article 6.

### ***Crime and Disorder Act 1998***

- 10.7 In response to consultation the Sussex Police Designing Out Crime Officer replied that having examined the reasoning behind the proposal from a crime prevention viewpoint no objection is raised to the proposal.

### ***Climate Change***

- 10.8 Enhancement of the public rights of way network, especially the encouragement of cycling, is a positive contribution towards the Council's stated ambition of being carbon neutral by 2030.

### ***Public Health***

10.9 Creating wider access to the public rights of way network by upgrading fp 76 to allow off road cycling and horse riding could assist in enhancing the general health and wellbeing of the communities served by the Council.

**Matt Davey, Director of Highways, Transport & Planning, Place Services**

**Contact Officer: Nicholas Scott, Principal Rights of Way Officer.**

**Appendices**

- 1) Proposal Plan
- 2) Location Plan