

## **Rights Of Way Committee**

**12 June 2018**

### **Town and Country Planning Act 1990 Section 257**

#### **Lancing: Proposed Diversion of Part of Public Footpath 2048**

#### **Report by Director for Highways and Transport**

##### **Executive Summary**

The County Council has been consulted by Adur & Worthing Councils (AWC) in respect of an Environment Agency proposal to divert part of Public Footpath 2048 (FP2048) between Old Shoreham Road and a bridge carrying the south coast railway to the south. The proposal is made as part of the Agency's works to implement a flood alleviation scheme for Shoreham, within which it is required to provide compensatory environmental habitat. The Agency has identified this can be created by realigning the river's flood embankment west towards the airport and removing the current defence carrying this length of FP2048. Paragraph 2 of this report refers.

An application has been made to AWC, as the local planning authority, as is customary when path Orders are sought to enable development to take place. In such cases the County Council is consulted as highway authority. Members are requested to refer to paragraph 4.10 of the "Guide to the Law for the Rights of Way Committee".

Officers are satisfied diversion is necessary to enable consented development to take place. It is, however, that officers are concerned that the proposed provision of the new alignment is not to the standard the County Council ordinarily requires to support a diversion. The proposal is to provide generally a 1.5m surfaced footpath on a 2.0m wide bank crest with passing areas of 2.5m surfaced width at various points along the length. This is a popular route with walkers and frequent cyclists, although there is no public right to cycle, and officers are concerned that the path as proposed will not be appropriate for the expected increase in use, which will give rise to incidents of conflict between users. As highway authority, the County Council has an on-going duty 'to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority' (Highways Act 1980 Section 130) and could incur liability from future incidents.

##### **Conclusion**

Given this concern, and that the scheme is clearly of significance and with a high profile, the Committee is asked to decide whether the County Council should object or not to the Order.

## **1. Background**

- 1.1 Adur & Worthing Councils (AWC) is to make an Order under the Town and Country Planning Act 1990 Section 257 to divert a length of public footpath 2048 (FP2048) alongside Shoreham Airport, Lancing. An application has been made to it by the Environment Agency in order that the Agency can implement planning permission granted to deliver a flood alleviation scheme for the local area, consented under planning application AWDM/1614/15.
- 1.2 When initially approached by the Agency in 2011, it was suggested an embankment crest up to 4.0m would be created. County Council officers suggested the scheme presented an opportunity to enhance local off-road access demand. Up-grading the route to bridleway status would formalise the path's regular cycle use and provide a convenient route for horse riders to access the beach. The Council's standard minimum width for a bridleway is 3.0m, which is encouraged to be greater if a route is known to be popular and used regularly by different modes.
- 1.3 The Agency advised, in 2015, it would be unable to provide a 4.0m width and bridleway and, due to the legal requirement to provide compensatory habitat for other parts of Shoreham Harbour and the river channel it needed to work in, that the footpath provision would be 1.5m along this length. Officers discussed the proposal with the Agency, which offered to create a series of passing bays to enable walkers to pass each other conveniently. It accepted this would compromise some of the area of habitat mitigation it is required to provide but still leave it satisfying that legal duty.
- 1.3 WSCC has lodged a holding objection to the diversion proposal pending comments from County Councillors.

## **2. The Proposal (see AWC Plan 1)**

- 2.1 It is proposed that a length of approximately 770m of FP2048 is diverted (shown as R – S on the plan) to be replaced with a length of 824m between R – S via points C – Q.
- 2.2 The present route of FP2048 (shown R – S on the plan) is 1.4m to 1.7m in width between sloping concrete slabs set in the embankment. Much of the path surface is of 1.22m-wide concrete slabs, which are uneven due to settlement over time and vegetation growth, with narrow grassed verge to both sides. There are no gates or other furniture limiting users' enjoyment of the route. Presently this length is currently closed to the public to enable the Agency to begin its construction of the new embankment proposed to carry the diverted length of FP2048.
- 2.3 The diversion route is proposed to have a surfaced width of 1.5m with 0.25m grassed verges on both sides, thereby using the full width of the bank crest of 2.0m. There will be a series of passing bays, providing a width of 2.5m, for path users to pass each other more conveniently.

- 2.4 The length to be diverted will be open, without fencing or other barrier, and the land will fall away at 1:2.5 gradients (22 degrees) in both directions. To the east, this will fall to land intended to become new saltmarsh habitat; the slope will be allowed to vegetate naturally. To the west the slope will be top-soiled and seeded, and fall to a drainage ditch adjacent to Cecil Pashley Way, the airport approach road. The Agency advises it is to make a further planning application to remove this ditch and to create a level grassed verge varying between 2m and 4m between the embankment toe and the road. There will be no gates, bollards or other structure along the proposed new route. The Agency proposes to provide signage off Old Shoreham Road and close to the railway bridge to deter cycling on the new route.

### **3. The Legal Tests for Diversion**

- 3.1 The test to be satisfied under the Town and Country Planning Act 1990 Section 257, for both the making and confirmation stages, is that diversion is necessary to enable development to take place. Members are requested to refer to paragraph 4.10.7 of the "Guide to the Law for the Rights of Way Committee". It is for AWC, as the Order Making Authority, to be satisfied that the test is met.
- 3.2 Members will also note paragraph 4.10.8 of the "Guide to the Law for the Rights of Way Committee". Together these two paragraphs make clear that consideration is also to be given to the disadvantage or loss to path users as a result of any diversion compared with any benefits to be gained.
- 3.3 County Council officers consider it will be an advantage to walkers that a consistent and level surface will be provided – the present surface of concrete slabs is uneven. However, officers have concerns for the future enjoyment of the path. These were detailed by the Principal Rights of Way Officer in responding to a planning application consultation in December 2015, which is copied below:

*The County Council's standard is for a minimum width of 2.0m where footpath diversions are sought, and a greater width where popular and possibly conflicting use could be reasonably expected. I do not consider that the provision of small verges as proposed make the effective usable proposed width 2.0m given there are immediate and steep drop-offs, which would be hazardous to path users. Use of this route is already significant given the open character of the path in the local landscape and the extensive and enjoyable views along the river, to Lancing College and to the Downs; and with likely development in and around Shoreham, the number of users can only increase. In addition to walkers, who have a legal right of use, it is known that cyclists currently use the footpath for convenience and enjoyment given the lack of alternative local facilities; this use too can only reasonably be expected to increase upon completion of works. I am concerned that the width as proposed, limited between [...] steep slopes, which themselves could be hazardous to unwitting people, will give rise to conflict between users and, unless a 3.0m wide path can be consistently created, or without more regular passing places*

*provided (i.e. increased number of 'build-outs', say every 100 metres), I must raise objection to the design as submitted.*

- 3.4 As highway authority, the County Council has an on-going duty 'to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority' (Highways Act 1980 Section 130). In considering whether the proposal can be supported the County Council needs to consider this in the context of its standards and the expectation of applicants to provide a minimum path width of 2.0m.
- 3.5 The Agency has acknowledged officers' concerns and incorporated seven passing bays along the length, mostly of 8m length and increasing the path width to 2.5m. These bays are generally spaced between 66m and 92m apart excepting one length of 202m. For the latter, a maintenance crossing point will act as a *de facto* passing bay.
- 3.6 For reasons outlined above, the proposal does not meet the County Council's standard. It is reasonable to envisage, should incidents of conflict arise, the County Council will be the organisation expected to devise and implement measures to resolve conflict(s), which could be a considerable liability given the length of the path and the sensitive local environment.

#### **4. Rights of Way Improvement Plan considerations**

- 4.1 The proposal has been examined in the context of the Rights of Way Improvement Plan. In creating a new path that is a lesser width than would be expected for convenient use by walkers, and is potentially unsafe due to the hazards of conflict with other path users and sloped to both sides, the proposal is not considered to meet the objectives of the Plan.

#### **5. The Equality Act 2010**

- 5.1 In considering this application the County Council's responsibilities under the provisions of the Equality Act 2010 have been taken into account. It is for AWC, as the Order Making Authority, to consider the Act in deciding whether or not to make an Order.

#### **6. Consultations**

- 6.1 AWC, as the Order Making Authority, is required to carry out its own consultations in respect of the proposed diversion.
- 6.2 In line with agreed delegated decision procedures Members have been notified of this proposal by way of the Members Information Service in May 2018.

## **7. Costs**

- 7.1 The County Council is not expected to bear any costs associated with the diversion of this path, with works being undertaken by the Environment Agency at its cost.

**Matt Davey**  
**Director of Highways and Transport**

### Background Papers

- (a) Email dated 24 December 2015 from Jon Perks, WSCC Principal Rights of Way Officer, to Gary Peck, Planning Services Manager, Adur & Worthing Councils
- (b) Email dated 16 May 2018 from Jon Perks, WSCC Principal Rights of Way Officer, to Gary Peck, Planning Services Manager, Adur & Worthing Councils

### Appendices

Appendix 1 Location Plan  
Appendix 2 Proposal Plan

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