

Rights Of Way Committee

12 June 2018

Highways Act 1980 Sections 119 and 25

Elsted and Treyford, and Harting – Request for Diversion of Parts of Footpaths (fp) 871, 872 and 873; Creation of New Footpath on Disused Railway

Report by Director for Highways and Transport

Executive Summary

In December 2017 Orders were made to divert three public footpaths, together with the dedication of two additional paths, at Woodhouse Farm near Elsted following an officer delegated decision by the Principal Rights of Way Officer. A copy of the Decision Report is attached for information (Appendix 1).

The Orders attracted two objections and so, in line with the agreed practice when an Order made following officer delegated decision is opposed, the Committee is asked to decide whether the Orders should be submitted for confirmation. This report summarises the points raised by objectors and considers their significance in the context of the legal tests for Public Path Diversion Orders.

Conclusion

Having reviewed the objections with the applicants' agent, the officers' view remains that the legal tests for making and confirmation are met. To enable the Diversion Orders to be progressed they will need to be submitted to the Secretary of State (The Planning Inspectorate) for determination and the Committee's authority to make the submission is now sought.

Recommendation

That the Public Path Diversion Orders made in respect of footpaths 871, 872 and 873 in the parishes of Elsted and Treyford and Harting be submitted by the Director of Law and Assurance to the Secretary of State for confirmation.

Background

An application, made on behalf of the owner Woodhouse Farm, just north of Elsted and East Harting, to divert three public footpaths at the farm, together with the dedication of two additional paths, was determined under officer delegation in December 2016 as no adverse comments to the proposal had been received at consultation. The decision of the Principal Rights of Way Officer was that Public Path Orders be made. A copy of the Decision Report is attached for information (Appendix 1).

Orders were made and published on 10 March 2017. Two individual objections were received and so, in line with the agreed practice when an Order made following officer delegated decision is opposed, the Committee is asked to decide whether the Orders should be submitted for confirmation. This report summarises the points raised by objectors under five headings and considers their significance in the context of the legal tests for Public Path Diversion Orders.

1 Objection 1 - Distance and Convenience (Objector 2)

- 1.1 The proposed paths are less direct and will take longer to access. For example, fp 872 from F to E is approximately 50% longer and fp 871 from Q to S is 18% longer (fp 873 is 3% longer).
- 1.2 **WSCC Comment** – *The test for confirmation requires that the proposed route of a diversion not be substantially less convenient to the public, and distance /direction are clearly relevant issues (see Decision Report, paras 4.2, 4.4, 4.6). Two of the three diversions are lengthier than the existing routes and, in the case of fp 872, the increase in distance to be walked between F and E is some 300 metres and approximately 50% more than the present path. However, in the context of a rural walk and as it can be reasonably envisaged users will have already come far and/or have some way to travel, this distance is not considered substantially less convenient. Also, in considering users' convenience it is noted there are 4 stiles to be negotiated on the present route of fp 871 and 2 stiles on each of the other two paths; together with the marshy wetland and lengthy stretches across heavy, rather poorly drained arable land, both are known to present some quite difficult walking conditions during much of the year. In contrast, the proposed routes have open access throughout and follow wide permanent grass headlands skirting around the arable and marsh areas, which will offer much easier walking conditions.*
- 1.3 *A further point to consider is that although the diverted routes of individual paths are longer, the overall effect of the proposals is that they make more direct connections between the 3 paths. For example, walkers wishing to go north from Elsted via fp 872 or fp 873 and then travel west towards Nyewood via fp 871, would at present walk away from their direction of travel across the arable field and then turn back, i.e. for fp 872 E-C-B and for fp 873 H-D-*

C-B. The diversions offer direct, easy to walk connection via the proposed headland route of fp 871. Also, the two additional paths offer some more direct connections; for example, between fp 872 and fp 873 via R-S.

- 1.4 *On balance, the overall effect of the proposals, together with the two additional paths, offers new alternative routes for walkers with the option of shorter routes or 'figure eights', and although some directions of travel will be longer than at present others will be more direct with new routes providing easier walking conditions and without the need to negotiate stiles. In the context of their recreational use and in view of the open access, improved conditions and the opportunity of alternative routes, the diversions are not considered to be substantially less convenient to walkers.*

2 Objection 2. Enjoyment, path character and views (Objectors 1 and 2)

- 2.1 The present paths are across open fields with uninterrupted views of the South Downs and surrounding countryside, which is enjoyable; whereas the proposed routes are on muddy field edges, are shady with overhanging trees obstructing the views.

The proposed route H-J-I-E would have an unattractive narrow corridor effect as compared to the existing path.

All landowners would like to move cross field paths to the edges and if this happened the path network would be worse and less varied.

- 2.2 **WSCC Comment** – *Regard must be given to the effect the diversions would have on public enjoyment of the way as a whole as part of the test for confirmation (Decision Report, paras 4.2a, 4.4a, 4.6a). Considering first the objectors' concern about an unattractive corridor effect it should be noted that only the lengths of diversion adjoining the marshland D-H, J-I and M-L, will be on 5 metre wide headland tracks fenced on both sides in order to protect the conservation area. The rest of the proposed routes of fp 871 and fp 872, and the additional route L-X, are open on one side. Views from the existing routes are open and in all directions but over much of their lengths are limited by the wooded field boundary – more distant views to the South Downs are really only available from limited parts of fp 872 north of point C. The most extensive lengths with views to the Downs are the proposed route of fp 872, section M-L, and the northern half of I-L, much of the additional path L-X and through the trees from the railway route R-S. The proposed diversion of fp 871 along P-Q also offers very long distance views over countryside to the north.*
- 2.3 *The character of the proposed routes will be different but will still provide a network of very pleasant farmland walks with some attractive views over the surrounding countryside. There will be more opportunity to choose different routes and the new railway track route will provide an interesting contrast.*

- 2.4 *When considering enjoyment of the paths and the walking conditions they offer it should be noted that substantial lengths of the present paths are subject to ploughing and cropping. Present legislation allows cross-field paths to be ploughed provided they are reinstated to a width of 1 metre within 14 days of ploughing. It is, therefore, inevitable that the quite heavy, poorly draining clay soil will create difficult walking conditions at times. The lengths of all 3 existing paths that cross the wet marshland area are quite difficult to walk – the vegetation consists of dense tussocks of rushes and wetland vegetation with varying amounts of standing water at different times of the year.*
- 2.5 *It should be further noted that the landowner would be entitled to fence each side of the present paths if he wishes.*
- 2.6 *Legislation provides for landowners to apply for individual paths to be diverted and each case is considered on its own merits, so there should be no concern that this diversion might be a precedent for the diversion of other cross field paths.*
- 2.7 *The enjoyment of any route will always be a matter of individual preference, but it is considered that the proposed diversions will not make fp 871, fp 872 or fp 873 less enjoyable to walkers than the present routes.*

3 Objection 3. Wildlife conservation (Objector 2)

- 3.1 The diverted paths, alongside hedges and woodland, conflict with a greater range of wildlife habitats whereas the existing paths, mainly in open grassland, are away from field edges and woodland.

The proposed path link interferes with feeding, breeding and nesting grounds of rare wading birds, such as Snipe and Redshank, that can be found in the flat wetland fields situated immediately north and south of the old railway line. Habitats for rare reptiles and amphibians would also be disturbed.

The existing paths do not create any additional pressure on the local wildlife. The proposed paths interfere with a greater number and range of habitats and various species, such as bats found near hedgerow trees and barn owls hunting near field edges.

- 3.2 **WSCC Comment** – *The objector's view about the possible adverse impact of the path proposals on wildlife is at odds with the expert advice provided to the applicant by Natural England, the Game and Wildlife Conservation Trust and the South Downs National Park Authority. The applicant has forwarded 2 letters dated 12 January 2017 and 27 April 2017 (for clarification Woodhouse Farm is part of Hill Ash Estate) from Dr Andrew Hoodless, head of Wetland Research for the Game and Wildlife Conservancy Trust. He confirms that the marshland area crossed by the existing paths (defined as Grid Refs. SU 817 208 & SU 815 209 in his letter and marked on the*

attached plan) is important habitat for Snipe and Lapwing (ground nesting birds on the UK list of Birds of Conservation Concern) and that the existing paths across their nesting grounds are not helpful. He goes on to advise that "the re-routing of paths to the field edge seems an appropriate measure to minimise disturbance, in particular by dog walkers." He also gives the view that any detriment to other species at the field edge would be outweighed by the benefit to the breeding waders and Snipe.

4 Objection 4. Additional path is not necessary (Objector 2)

- 4.1 The proposed new additional path link on the old railway is additional to two new further links, which are much shorter between fp 871 and fp 872, and the additional route is thus not necessary.

- 4.2 **WSSC Comment** – *The new paths will provide some pleasant, easy to follow alternative routes with improved surface conditions and open access free from stiles. The 2 extra paths to be provided as part of the package of proposals, especially the new route on the old railway track with its typical old rail bed surface and some attractive views south to the Downs, will be welcomed additions to the network and will increase the opportunity for local walkers to vary their routes with different options for circular walks within the new network. In response to consultation the two local parish councils confirmed their support for the new route on the old railway as did the South Downs National Park Authority.*

5 Objection 5. Impact on neighbouring land (Objector 2)

- 5.1 The proposed diversions and new path on the railway will increase the risk of livestock worrying by dogs, especially on the neighbouring grazing land to the north. Contamination of the neighbouring land by dog faeces and Neosporin parasite is a concern. The livelihood of the neighbour to the north of the railway is dependent on the grazing of cattle and sheep and minimum public access is preferred whereas the applicant does not depend on grazing livestock.

The public would have further additional risk of dogs being shot if they are found let loose or not under control and worrying livestock.

- 5.2 **WSSC Comment** – *The diversions are confined to land owned by the applicant. The proposed new route R to S on the old railway track is a direct and very clearly defined route separated from the land to the north by fencing, although it is noted that the old railway style fencing is in poor condition. For much of its length the new path is on a slight embankment and so the difference in levels adds to the separation. The County Council is committed to improving access for public path users and to provide link paths and increased opportunities for walkers to enjoy the countryside wherever it is possible and appropriate, as is considered to be the case here.*

6 Conclusion

- 6.1 For the reasons detailed above and contained in the Decision Report, the tests for the making and confirmation of these diversions are considered to have been met. It is recommended that the Orders be submitted to the Secretary of State for determination.

7 Resource Implications and Value for Money

- 7.1 It is the County Council's practise to exercise its power to consider applications for diversions from landowners. The applicant for this diversion has undertaken to pay the cost of making and advertising the Order and for works necessary to implement it as referred to in paras 10 and 11 of the Decision Report. The County Council has the power, but not the duty, to submit opposed Public Path Orders to the Secretary of State for confirmation. The applicant will bear the cost of any submission and the matter may be determined by way of written representations. However, should the Secretary of State decide to hold a public inquiry or hearing, the County Council bears this cost.
- 7.2 Cost/resource implications could also arise if the decision of the Committee should be challenged by way of Judicial Review.

8 Risk Management Implications

- 8.1 The decision to make a Public Path Order is one that must be taken on strict legal tests. Officers believe that the tests have been satisfied in this case. If the application has not been determined in accordance with the tests, this could lead to a successful legal challenge by way of Judicial Review.

9 Crime and Disorder Act Implications

- 9.1 This is addressed in the attached Decision Report.

10 Human Rights Act 1998 Implications

- 10.1 This is addressed in the attached Decision Report.

11 Equality Act 2010 – Equality Impact Report

- 11.1 This is addressed in the attached Decision Report.

12 Public Rights of Way Management Plan Considerations

- 12.1 This is addressed in the attached Decision Report.

Matt Davey
Director of Highways and Transport

Background Papers

- a) PUBLIC PATH DIVERSION ORDERS Highways Act 1980 West Sussex County Council (Elsted & Treyford and Harting)Public Paths 871, 872,873 Diversion Orders 2017
- b) Email from Objector 1 dated 13 April 2017 to the Director of Law and Assurance.
- c) Email from Objector 2 dated 20 April 2017 to the Director of Law and Assurance.
- d) Email from applicant's agent dated 9 March 2018 to Director of Law and Assurance.
- e) Letter from Director of Law and Assurance dated 27 April 2018 to objectors 1 and 2.
- f) Letters dated 12 January and 27 April 2017 from Dr Andrew Hoodless, Head of Wetland Research for the Game and Wildlife Conservancy Trust.

Appendices

Appendix 1 – Highways Act 1980 S119 and S118 Elsted and Treyford, and Harting:
Request for Diversion of Part of Footpath (fp) 871, 872 and 873;
Creation of new Footpath on Disused Railway – Decision Report dated
1 December 2017

Appendix 2 – Location Plan

Appendix 3 – Site Plan

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