

**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**

**Inspecting Officer's Report**

**1 Location and Background – Location plan 01692**

A request has been received from Mr Giles Wheeler-Bennett on behalf of the landowner, Mr Nigel Hanbury, for the diversion of parts of fps 871, 872 and 873 at Woodhouse Farm just north of Elsted and East Harting. The site was inspected by the Rights of Way Officer on 10 February and 13 April 2016.

Access to the farm is from East Harting via a narrow lane with D classification public highway status. The northern end of the lane meets fp 871 at **A** near the entrance to the farmyard. Westwards fp 871 runs through Loaders Copse and then north-west across farmland towards Nyewood. To the east it runs through the farmyard on the main accessway and close to the farmhouse before passing through a game bird rearing area to the east of the buildings. It turns north east over a stile at **B** to cross large open arable field to intersect with fp 872 at **C** in the approximate centre of the field. Further north fp 871 crosses a stile to enter an uncultivated area of marshy grassland before meeting with fp 873 at a further stile at **D** just before crossing the disused railway line which forms the northern boundary of the applicant's land.

Footpath 872 bisects the farm on a north-south line from **E** to **R** forming a crossroads with fp 871 in the centre of the arable field at **C** before crossing the southwest corner of the marshy grassland and entering a tree lined headland known as Summer Row via a stile at **F**. The path runs northwards through trees to meet the disused railway line at **R** before continuing northwards across neighbouring farmland towards Dumpford Lane.

The applicant describes Woodhouse Farm as a mixed arable and livestock holding with conservation being an integral part of its management. The rearing of gamebirds for recreational pursuits is an additional activity on the farm. He further advises that Woodhouse Farm forms part of a conservation Entry Level Stewardship Scheme(ELS) administered by Natural England which promotes the conservation of flora and fauna through the introduction of a restrictive farming regime with annual management payments and grants for improvements. The scheme started in 2012 and runs for 5 years - he intends to enter the Countryside Stewardship Scheme (CSS) as and when his existing Entry Level Scheme (ELS) expires next year.

The applicant has sought advice from Natural England, the Game and Wildlife Conservation Trust and the South Downs National Park Authority as to enhancing the wildlife on the farm, in particular the populations of snipe and lapwing - ground nesting birds on the UK list of Birds of Conservation Concern. As part of the conservation programme for the farm some areas have been sown with wild grass/wildflower mix and wide grass margins have been established around the perimeter of the majority of the arable fields. A new woodland area has been planted and the marshy grassland between the old railway and the boundary line **I-L** which has a high flora and fauna value is managed by grazing to create

different habitats, including wet areas with rushes and tufted vegetation particularly suited to ground nesting birds.

The applicant's original proposal met with some adverse comment at the initial consultation stage owing to concerns about the circuitous nature of the diversion proposed for one of the paths. Following discussion between the case officer and the applicant's agent a less extensive route was agreed and it is this amended route that is now the subject of the report.

## **2. Reasons for the Request for the Diversions**

The applicant's agent reports that, on their present routes, fp 871, 872 and 873 have a considerable impact on the management of the farmland and his conservation aims and on the privacy and security of the farm.

East of point **A** fp 871 passes through the farmyard and where livestock are housed at times, materials and equipment are stored and machinery is in constant use. The buildings, and also the farmhouse are within a few metres of the path. The applicant expresses concern that this has an adverse impact on the security of the farm and on the privacy and security of the nearby farmhouse. He would like to improve security at the property by locking gates etc. but the obligation to allow access through the farmyard via the paths makes it difficult to do this.

A further concern is that at times there is considerable movement of large agricultural vehicles around the farmyard and so the need to ensure the safety of walkers who may enter the working area at any time can hinder efficient farm operations. The applicant believes he would be able to reduce these safety concerns and also improve the privacy and security of the property if public access to the area directly surrounding the house and farmyard were to be removed and the path diverted onto an alternative route further away from the buildings.

Beyond the farmyard fp 871 crosses a paddock which is used for the grazing of sheep and rearing of game birds and the present route of the path can cause disturbance especially when walkers are accompanied by loose dogs. The applicant would like to remove this problem by diverting the path away from this area.

The path northeast of **B** bisects a large arable field on an undefined line forming a cross roads with fp 872 near the centre and so their reinstatement and clearance of growing crops requires the applicant to give a considerable amount of attention at the various stages of cultivation. The applicant would like to place these paths on headland routes where they would not be subject to cultivation.

Further north, where fp 871, 872 and 873 enter an area of wet marshy grassland, the vegetation consists largely of dense tussocks of rushes and wetland vegetation with varying amounts of standing water at different times of the year. The applicant would like to protect and encourage this habitat as it suits snipe, lapwing and other ground nesting birds. These routes are already quite difficult to negotiate due to the ground conditions at most times of the year and this could worsen as the wet marshy grassland develops. Furthermore, loose dogs are an obvious hazard to nesting birds and could undermine the conservation efforts. The applicant would like to remove this problem by diverting the paths onto routes skirting around the marshland area.

### **3. The Proposals – Plan 01693/1**

#### **3.1 The Proposed Diversion of part of fp 871 (to Q-P-X-B-E-I-J-H)**

Beginning in the west the proposed route runs north from **Q** to run along the western side of a series of small ponds and then turns east via an existing field access at **P**. Turning south eastwards the route crosses an arable field to **X** on a line to be established as a 3m wide grass surface southern headland adjoining a new fence and hedgeline to be planted as part of the works to install the diversion. At **X** suitable culverts/footbridges will be provided to take the new path over the double ditch feature on the field boundary.

Turning south on the western field headland there is a 3m grass field edge route to **B** where the path turns east on a southern headland route which widens to 6m and follows the adjoining woodland eastwards to meet fp 872 at **E** and then continues east north east to **I**. Continuing north east a small watercourse that crosses the route at **J** will be provided with a small bridge or culvert to serve the new path. At **H** the proposed path meets fp 873 where it will terminate. The diverted route of fp 873 will provide a connection to the present northern end of the length of fp 871 at **D** just to the south of the disused railway.

#### **3.2 The Proposed Diversion of part of fp 872 (to I-L-M-G)**

It is proposed that from point **E** walkers using fp 872 will travel east via the new route of fp 871 for approximately 310 m to **I**. From here a new route will run north west on a 3m wide grass surfaced fenced headland route to **L** and then turn north east on a western headland route to **M** where it enters Summer Row and rejoins the length to be retained at **G**. The existing metal gate at **M** will be removed to allow open access for the path.

#### **3.3 The Proposed Diversion of fp 873 (H-D)**

Footpath 873 presently crosses 2 stiles to enter and exit the marshland area at **H** and **D**. It is proposed that the new path will run on an almost parallel route following the fenced field edge route just to the south of the existing route. It will serve as a connection for the diverted route of fp 871.

#### **3.4 Additional Paths**

In addition to the diversions of fp 871,872 and 873, the landowner has agreed that, once the Orders are ready to be confirmed, he will dedicate a footpath on the old railway between **R** and **S**. The old track bed runs between trees on a slightly raised embankment over much of this length and provides very good walking conditions with some attractive long distance views southwards towards the South Downs and north over Dumpford Park Farm. It offers an interesting contrast as part of a longer distance farmland walk. An additional length of new path to connect fp 871 and 872 between **X** and **L** will provide a useful link in the network and allow the option of figure of eight alternatives for local walkers.

### **4. The Tests**

#### **4.1 Making Test for the Diversion of part of fp 871-A,B,C,D(to Q-P-X-B-E-I-J-H)**

**i The grounds:**

*An 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 owner, lessee or occupier of land crossed by the way; or in the interests of the public; or both.*

The application to divert the footpath is made in the interests of the landowner. The reason given is that on its present route the path has an adverse impact on the security of the property and the privacy of the farmhouse, the effective management of the farm both in terms of agricultural efficiency and the furtherance of the landowner's conservation aims. A diversion of the path onto a route avoiding the main farmyard area and removing the length which bisects arable land will enable privacy, security and agricultural efficiency to be improved. The diversion will also allow the conservation value of the marshland to be developed with less likelihood of disturbance.

**ii The point of termination and convenience:**

*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 the public.*

The western point of termination of the path will not be changed but its eastern end will be foreshortened to **H** where it meets fp 873. The diverted route of fp 873 provides a connection to the western termination of the existing route of fp 871 at **D** and is considered substantially as convenient to users as the path to be stopped up.

**Conclusion on the Making Test**

The applicant has demonstrated that it would be in his interests for the path to be diverted as proposed and the altered point of termination of the northern end of the path will not be substantially less convenient to the public. Therefore the part of the test concerning the grounds for the diversion is satisfactorily met.

**4.2 The Confirmation Test for the Diversion of part of fp 871**

*Is the proposed route substantially less convenient to the public?*

The present path to be diverted is some 1320 metres (m) in length and the proposed path is approximately 1380m, plus a further 194m via the diverted route of fp 873, which is a slight overall increase in distance. However, there are 4 stiles to be negotiated on the present route together with the marshy wetland and a lengthy stretch of path across an area of heavy, rather poorly drained arable land - both known to present some quite difficult walking conditions during much of the year. In contrast the proposed route has open access throughout its length and follows wide permanent grass headlands skirting around the arable and marsh areas which will offer much easier walking conditions. The effect of the proposals as a whole offers new alternative routes for walkers wishing to travel between points **A** and **D** - although a little more lengthy than the present route of fp 871 these routes provide easier walking conditions without the need to negotiate stiles.

In the context of a recreational walk and in view of the open access, improved conditions and the opportunity of alternative routes the diversion is not considered to be substantially less convenient to users.

*Is it expedient having regard to:-*

- a) the effect on public enjoyment of the way as a whole?*
- b) the effect on other land served by the existing way?*
- c) the effect on land over which the way is created?*

- a)** The present path takes walkers through the busiest and most intensively used part of the farm. There are some attractive views from the existing path over the surrounding farmland and towards the Downs and these will still be available from the proposed path, together with some new views over a series of small ponds that will be available from the new length **Q** to **P**. Many walkers will find the improved walking conditions easier to negotiate than the present paths which may increase their enjoyment of the path as a whole.
- b)** It is not anticipated that other land will be directly affected by the diversion.
- c)** It is understood that the applicant owns all the land over which the path is proposed to run.

#### Conclusion on the Confirmation Test

The proposed route is lengthier than the present path but any inconvenience caused by increased distance is offset by the improved walking conditions and accessibility of the proposed route. In conjunction with the other diversions proposed the diverted route offers the walkers new alternative routes within the local network. Views from the proposed path are much the same as those presently available.

It is concluded that users' enjoyment of the path as a whole is not diminished by this diversion and the legal test for confirmation as set out in Section 119 of the Highways Act 1980 has been satisfactorily met.

#### **4.3 The Making Test for the Diversion of part of fp 872- E,C,F,G (to I-L-M-G)**

##### **i** The grounds:

*An 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 owner, lessee or occupier of land crossed by the way; or in the interests of the public; or both.*

The application to divert fp 872 is made in the interests of the landowner. The reason given is that on its present route the path has an adverse impact on the effective management of the farm both in terms of agricultural efficiency and the furtherance of the landowner's conservation aims. A diversion of the path onto a route not bisecting arable land will enable agricultural efficiency to be improved. The diversion will also allow the conservation value of the marshland to be developed with less likelihood of disturbance.

**ii The point of termination and convenience:**

*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 the public.*

The points of termination of the path would not be changed and in this respect the proposed route is considered substantially as convenient to path users.

**Conclusion on the Making Test**

The applicant has demonstrated that it would be in his interests for the path to be diverted as proposed. In terms of the point of termination and convenience of the diversion the proposed path is considered to be as convenient to the public.

Therefore the part of the tests concerning the making of the diversion Order is satisfactorily met.

**4.4 The Confirmation Test for the Diversion of part of fp 872**

*Is the proposed route substantially less convenient to the public?*

The present path to be diverted is some 595 metres (m) in length and the proposed path is approximately 613m, plus a further 310m via the diverted route of fp 871 which, overall, is a considerable increase in distance. However, there are 2 stiles to be negotiated on the present route together with the marshy wetland and a lengthy stretch of path across an area of heavy, rather poorly drained arable land, both known to present some quite difficult walking conditions during much of the year. In contrast the proposed route has open access throughout its length and follows permanent grass headlands skirting around the arable and marsh areas which will offer much easier walking conditions. The effect of the proposals as a whole offers new alternative routes for walkers wishing to travel between points **E** and **G** - although more lengthy than the present route of fp 872 these routes provide easier walking conditions without the need to negotiate stiles.

In the context of a recreational walk and in view of the open access, improved conditions and the opportunity of alternative routes the diversion is not considered to be substantially less convenient to users.

*Is it expedient having regard to:-*

- a) the effect on public enjoyment of the way as a whole?*
- b) the effect on other land served by the existing way?*
- c) the effect on land over which the way is created?*

- a)** The present path bisects arable land and crosses wet marshland. There are some attractive views from the existing path over the surrounding farmland and towards the Downs and these will still be available from the proposed path. Many walkers will find the improved walking conditions easier to negotiate than the present paths which may increase their enjoyment of the path as a whole.
- b)** It is not anticipated that other land will be directly affected by the diversion.
- c)** It is understood that the applicant owns all the land over which the path is proposed to run.

#### Conclusion on the Confirmation Test

The proposed route is lengthier than the present path but any inconvenience caused by increased distance is offset by the improved walking conditions and accessibility of the proposed route. In conjunction with the other diversions proposed the diverted route offers the walkers new alternative routes within the local network. Views from the proposed path are much the same as those presently available.

It is concluded that users' enjoyment of the path as a whole is not diminished by this diversion and the legal test for confirmation as set out in Section 119 of the Highways Act 1980 has been satisfactorily met.

#### **4.5 The Making Test for the Diversion of part of fp 873- H to D**

##### **i** The grounds:

*An 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 owner, lessee or occupier of land crossed by the way; or in the interests of the public; or both.*

The application to divert fp 873 is made in the interests of the landowner. The reason given is that on its present route the path has an adverse impact on the landowner's conservation aims. A diversion of the path onto the nearby field edge will allow the conservation value of the marshland to be developed with less likelihood of disturbance.

##### **ii** The point of termination and convenience:

*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 the public.*

The points of termination of the path will not be changed. The diverted path will avoid 2 existing stiles.

#### Conclusion on the Making Test

The applicant has demonstrated that it would be in his interests for the path to be diverted as proposed. In terms of the point of termination and convenience of the diversion the proposed path is considered to be as convenient to the public. Therefore the part of the tests concerning the making of the diversion Order is satisfactorily met.

#### **4.6 The Confirmation Test for the Diversion of part of fp 873**

*Is the proposed route substantially less convenient to the public?*

The present path to be diverted is only slightly longer than the proposed path. There are 2 stiles to be negotiated on the present route together with the marshy wetland which presents quite difficult walking conditions during much of the year. In contrast the proposed route has open access throughout its length and follows a permanent 3m wide grass headland skirting around the field edge and offers much easier walking conditions.

The diversion is not considered to be substantially less convenient to users.

*Is it expedient having regard to:-*

- a) the effect on public enjoyment of the way as a whole?*
- b) the effect on other land served by the existing way?*
- c) the effect on land over which the way is created?*

- a)** The present path crosses wet marshland. There are some attractive views from the existing path over the surrounding farmland and towards the Downs and these will still be available from the proposed path. Many walkers will find the improved walking conditions easier to negotiate than the present paths which may increase their enjoyment of the path as a whole.
- b)** It is not anticipated that other land will be directly affected by the diversion.
- c)** It is understood that the applicant owns all the land over which the path is proposed to run.

#### Conclusion on the Confirmation Test

The proposed route offers a very obvious and convenient alternative to the present path. It avoids 2 stiles and will not reduce users' enjoyment of the path as a whole. It is concluded that the legal test for confirmation as set out in Section 119 of the Highways Act 1980 has been satisfactorily met.

#### **5. Consultations**

On 7 July 2016 letters of consultation in respect of the applicant's original proposal were sent to the relevant user groups and other interested parties, including the Members Information Sheet, with the request that any comments be submitted by 18 August 2016. The responses received were accepting of the proposals in general and the additional path links were welcomed. However a concern about part of the diversion of fp 871 was raised by the following consultees: Harting and Elsted/Treyford Parish Councils, Chichester District Ward member Mr A Shaxson, South Downs National Parks Authority (SDNPA), South Downs Society, the Ramblers and a local walker. They were consistent in their acceptance of the reasons for the length **A** to **B** of fp 871 to be diverted away from the yard and rearing pens but considered the diversion route proposed, which was routed further north along the edge of a new plantation under the earlier proposal, to be unnecessarily lengthy and circuitous.

Following discussion between the case officer and the applicant's agent a less extensive route via a proposed new southern headland **P** to **X** was agreed and on 21 September 2016 the consultees who expressed concerns were asked to comment on the amended route. Replies were received from all except the SDNPA and were all either in support of the amended proposal or registered no objection.

#### **6. Rights of Way Improvement Plan Considerations**

The proposal has been examined in the context of the Rights of Way Improvement Plan and is considered to be in accordance with relevant provisions of the Plan. One of the key aims of providing additional link paths where possible is met by the provision of the path on the old railway **R** to **S**.



## **7. The Equality Act 2010**

The Equality Act 2010 bans unfair treatment, and seeks equal opportunities in the workplace and in wider society. It also introduced a Public Sector Equality Duty (PSED). The PSED requires the County Council to have due regard in all decision making processes to the need to:

Eliminate discrimination, harassment, victimisation or other prohibited conduct;

Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not; and

Foster good relations between those who share a relevant characteristic and those that do not share it.

The relevant protected characteristics are age, disability, gender reassignment, marriage/civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

In considering this application the County Council's responsibilities under the provisions of the Equality Act 2010 have been taken into account.

## **8. Crime and Disorder Act 1998 Implications**

The Sussex Police Crime Prevention Design Advisor supports the proposal.

## **9. Human Rights Act 1998 Implications**

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.

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.

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.

The County Council should be aware of Article 6, the focus of which 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.

## **10. Works to be undertaken by the applicant:**

1. A width of 3 metres for the new paths to be provided, except for the length **M** to **G** which is restricted to 2m by existing trees.

2. The existing metal gate at **M** will be removed to allow open access for the path.
3. An opening to be formed in the boundary at **X** to accommodate walkers - minimum width 1.2m - or application to be made for installation of a gate to an approved standard. Culvert/footbridge to an approved standard to be installed.
4. A new fence/hedge to be provided **P** to **X** and the surfaced seeded and rolled to create a 3 m wide headland route.
5. A culvert or footbridge to an approved standard to be installed at **J**.
6. The length **B** to **E** is rutted and subject to waterlogging. Improvement works are required to provide a generally level surface suitable for convenient use by walkers, in keeping with its farmland location and commensurate with local/seasonal conditions. The confirmation of the diversion order will be conditional on this standard of path being provided. The applicant has been asked to consider what works - which may include drainage and surface materials as determined by his own investigations - he may need to undertake to achieve this. The specification for these works is to be approved by the Rights of Way officer.
7. Waymarking will be adjusted and new waymarkers installed by the County Council as necessary- the cost of the work to be charged to the applicant.
8. Fallen trees to be cleared from the route **R-S**.

### **11. Costs**

As regards the costs associated with the diversion/extinguishment order process, the usual administrative fees plus advertising charges will be borne by the applicant together with the cost of adjusting the waymarking and other works.

### **12. Overall Conclusion on the Proposals**

This is a reasonable proposal that will allow the landowner to improve the security of the property and the privacy of the farmhouse, the effective management of the farm both in terms of agricultural efficiency and the furtherance of the conservation aims allowing the marshland to be developed with less likelihood of disturbance. 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, 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.

It is considered that the legal tests for diversion of fps 871,872 and 873 can be met.

Judith Grimwood  
Public Rights of Way Officer

10 November 2016

### **DECISION of PRINCIPAL RIGHTS of WAY OFFICER:**

**It is proposed that Orders be made under Section 119 of the Highways Act 1980 for the diversion of parts of footpaths 871, 872 and 873 as shown on attached plan 01693/1. Upon confirmation the County Council**

**will enter into an agreement with the landowner to dedicate new footpaths from points X to L and R to S.**

PROPOSAL APPROVED..... .....Jon Perks ...01.12.2016.....date