

Consultation Report

Highways Act 1980 S119, S118 and s25

Application for: -

- The Extinguishment of Part of Footpath No 702
- The Extinguishment of Footpath No 2866
- The Diversion of Part of Footpath No 701
- The Creation of a Footpath between Footpaths Nos 2864 and 701

At Warren Barn, Bedham Lane, Fittleworth

1. Background

An application is made by the owners of Warren Barn for the extinguishment of part of Footpath No 702 together with the consequential extinguishment of Footpath No 2866, as well as the creation of a new path linking Footpaths Nos 2864 and 701 and a minor diversion of a section of Footpath No 701 to reflect its use on the ground.

Footpath No 702 runs north from Footpath No 701, through the Warren Barn property and then into a large arable field where it forms a junction in the middle of that field with Footpath No 2864. In passing through Warren Barn it runs adjacent to the front of the house and between an area forming the house, garden and outbuildings which are used as a studio by the owners.

Footpath No 2866 forms a short link between Footpath Nos 701 and 702.

The section of Footpath No 701 to be diverted would reflect how the path is marked on Ordnance Survey maps and is the route in current use on the ground.

A new public Footpath will be created to link Footpaths Nos 701 and 2864 which will allow for these routes to be joined without the need to use a short section of Bedham Lane in order to do so.

2. Reasons for the Request for Diversion and Extinguishment

Warren Barn is a family home and Footpath No 702 as described above, impacts on it considerably, being a cause of regular concern to the owners. Between points C and D on the plan, the route passes immediately in front of the house which lies on the east of the path. To the west of the path is a courtyard area, adjacent to which are the buildings on the west of the path which are used by the owners as a studio from which they work. The applicants state that any use of the path can have a considerable impact on family life, privacy and security of

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themselves, their home and their family. The very rural, and relatively isolated location only adds to the overall intrusiveness of the path which the owners feel makes living at the property a constant source of worry.

There have been several incidents of intrusion into the family life at Warren Barn and these have been documented. CCTV evidence is also available.

The owners have suffered a number of thefts and attempted thefts from outbuildings, along with other instances of anti-social and aggressive behaviour towards the landowners exhibited by persons using the path.

Walkers also sometimes stray from the path or will stop to observe members of the landowners' family when they are trying to enjoy the garden. On occasions members of the public have been found wandering in the garden close to the house and within the vicinity of the other buildings although the owners cannot always challenge them due to the close proximity of the path.

As a consequence, the owners feel that the path unnecessarily exposes their home and place of work to intrusion and, potentially to those with ill intent, who they are unable to challenge. As a result, the owners have been compelled to seek ways to improve security at the property including the installation of CCTV. The continued obligation to allow access makes it impossible for security to be improved by the locking of gates etc.

There is also some history to this path in terms of its potential closure / diversion but these have never been concluded. Furthermore, whilst the owners were willing to look at potential alternative routes so the path might be diverted, there are no obvious possibilities and the topography of the area does not lend itself to this as it consists of undulating land where it would be difficult to set out any new routes. Even if it were possible, to some extent any diversion would only make a new path even more duplicitous of No 2864.

By extinguishing Footpath No 702, the short, linking Footpath – No 2866 – becomes irrelevant and needs to be extinguished as a consequence.

The opportunity can be taken to undertake the minor diversion of a small section of Footpath No 701 for the reasons explained above.

Also, the creation of a new section of public footpath linking Footpaths Nos 701 and 2864 would be a useful addition for the reason set out above.

3. The Proposed Extinguishment of Part of Footpath No 702

From its southern end at **Point G** the existing path runs generally northwards passing adjacent to the house and immediately between the buildings of Warren Barn, partly co-existing with the driveway to the property and then passes into small paddocks, entering a large arable field at **Point E**, and continuing to a junction with Footpath No 2864 at **Point A**.

4. The Proposed Extinguishment of Footpath No 2866

From its southern end at **Point F**, generally northwards, to its northern termination at **Point C**.

5. The Proposed Diversion of Footpath No 701

From its junction with Footpath No 2866 at **Point F**, east-north easterly to **Point B** at its junction with Footpath No 702, will be diverted to a slightly more north-easterly direction from **Point F** at its junction with Footpath No 2866 to its junction with Footpath No 702 at **Point G**.

6. The Proposed Creation of New Footpath

A new path will be created from its junction with Footpath No 701 at **Point H**, running north to a junction with Footpath No 2864 at **Point J**.

7. The Legal Tests

i. The Legal Test under the Highways Act 1980 for the Extinguishment of Part of Footpath No 702

An extinguishment Order may be made if the Authority is satisfied that the path is not needed for public use.

In this case it is not necessary that Footpath No 702 be used by the public in order to fulfil any particular walk in the area. By utilising the other existing public footpaths – Nos 701 and 2864 – the same outcome is achieved when walking from West to North and vice-versa, or from South to North and Vice-versa.

The rural, very secluded nature of the area, its proximity to any developed area and the undulating topography mitigate against any question of ‘need’ due to convenience, distance, etc

Similarly there is no ‘need’ for the viewing of Warren Barn itself, which is not listed and nor does it have specific architectural merit in that the public would be deprived of such a view.

The Serpent Trail formerly included Footpath No 702 through Warren Barn but was re-routed onto a more westerly route – with less road walking – in April this year and is, therefore, not affected by this proposal.

ii. The Legal Test under the Highways Act 1980 for the Extinguishment of Footpath No 2866

The legal test is as above. In this case, however, the path becomes unnecessary as a consequence of extinguishing Footpath No 702.

iii. The Legal Test under the Highways Act 1980 for the Diversion of Part of Footpath No 701

The Authority can make an Order to divert a public footpath if it is satisfied that it is expedient to do so either in the interests of the owners or occupiers, or of the public, or both.

In this case, the diversion is considered to be little more than a tidying up exercise. It is possible that the route has never been recorded correctly on the Definitive Map but, in any event, the route used by the public on the ground is that shown on Ordnance Survey maps and is in a natural gully that provides an obvious, already well used route in contrast to the definitive line which crosses difficult terrain much less suitable and convenient for walkers.

A diversion must not alter a point of termination of the path if that point is not on a highway, or otherwise than to another point which is on the same highway, or a highway connected to it, and which is substantially as convenient to the public.

The termination points of the proposed alternative path are on the same paths as at present and are not altered in that sense. This is a relatively minor change and a diversion of the path and is simply to rectify an anomaly in the most straightforward way, whilst complying fully with the legal tests.

iv. The Creation of a New Public Footpath between Footpaths Nos 701 and 2864

A new path would be created by the owner under a separate Public Path Creation Agreement in accordance with section 25 of the Highways Act 1980. The Agreement can be prepared and signed ready to be brought into effect on confirmation of the Extinguishment and Diversion Order.

8. The Confirmation Test for the Extinguishment of Part of Footpath No 702

Two additional tests apply when considering if an Order should be confirmed or not.

These are: -

- a) That it is expedient to do so having regard to the extent to which it appears that the path would, apart from the Order, be likely to be used by the public and***
- b) Having regard to the effect which the extinguishment would have on the land crossed by the path***

With regard to (a), the path is open and available for the public to use. It is used although not heavily. The question of expediency in this case gives some allowance for other factors to be taken into account. In this case, these are best considered within test (b) in that the effect of the extinguishment would have on the land crossed by the path.

For reasons set out above, the effect of the use of the path on those who live on the land crossed by the path is exponentially greater than the effect on any single individual or on the

public as a whole in accessing the countryside in the area. There is almost nothing else that the owners of the land can do that preserves their enjoyment, security and privacy of the immediate surroundings of their home without obstructing the path. For example, fencing of the path is no answer in that it passes immediately past their front door, along their access and bisecting the buildings that are in constant use, making this an impossibility. Set against this, the infrequent enjoyment of the path by the public is not adversely affected by using the alternative paths that are available.

The route is used for passive recreational purposes where speed of connection between two fixed points is not a paramount consideration for most users. This situation might be different were this a path in a more urban or suburban setting where the proximity of services to individuals may be a factor. In this case, anyone walking to this area has already covered some distance in order to do so and the overall additional walking distance utilising Footpath Nos 701, the newly created route and Footpath No 2864 negligible. The additional distance for a walker at point F wishing to proceed to point A is 125 metres via points H and J. The additional distance for a walker at point B wishing to access point A is 32 metres via points H and J. This is not considered to be a substantial inconvenience to public use, set against the impact on the land of the present path and its location, remoteness and topography.

There are no views that are special to this path that cannot be obtained on the alternative paths in the area.

There are no properties or other discrete areas of land in different land ownership which require the retention of the paths proposed for extinguishment in order to gain access. The adjacent owners support the intention of the Order, and the extinguishment of the path would have no adverse effect upon the land served by them.

Neither can it be said that these are, in any way, temporary circumstances where the permanent closure of the path might be seen as an unnecessarily drastic. The potential for the house to be anything other than a family home being unlikely.

Some recent monitoring of the use of Footpath No 702 has been undertaken. Following completion of works requiring the temporary closure of the path it was reopened towards the end of July. Since that time not one person has walked through on Footpath 702. In comparison, in monitoring the use of the alternative path - No 701 – up to 45 persons in a day have been noted to use that route.

9. The Confirmation Test for the Extinguishment of Footpath No 2866

The confirmation tests apply equally here but, given that those in respect of Footpath No 702 can be met, Footpath No 2866 would be a cul-de-sac. As a path in its own right, it has very little use other than to cut a corner between two other paths.

10. The Confirmation Test under the Highways Act 1980 for the Diversion of Part of Footpath No 701

The confirmation tests for a diversion Order are: -

- a) That the new path should not be substantially less convenient to the public*
- b) That it is expedient having regard to the effect of public enjoyment of the path as a whole*
- c) The effect on other land served by the existing way*
- d) The effect on land over which the way is created?*

It is felt that this is such a minor change that the question of it being substantially less convenient or have any effect on public enjoyment of the route as a whole does not arise. Indeed it is subject to use whereby no such questions have been raised or even realised.

There are no material effects in respect of (c) and (d).

11. Rights of Way Improvement Plan Considerations

The proposal has been examined in the context of the Rights of Way Improvement Plan and is considered not to counter the relevant, overall provisions of the Plan.

12. The Equality Act 2010

In considering this application the County Council's responsibilities under the provisions of the Equality Act 2010 have been taken into account. There are no impacts on those with disabilities with conditions on the ground being the same for other paths in the immediate area.

13. Crime and Disorder Act 1998 Implications

Sussex Police Crime Prevention Design Advisor has been asked for his views on the proposal from the crime prevention viewpoint.

14. Human Rights Act 1998 Implications

In considering this application the County Council's responsibilities under the provisions of the Human Rights Act 1998 have been taken into account.

15. Other factors

Although not yet in place, the Government has taken account of concerns and has drafted guidance, the effect of which would be that local authorities should be mindful to divert paths if there is a reasonable alternative route to be provided or extinguish paths where there is a reasonable alternative available, where existing routes pass through gardens, working farmyards and commercial premises. This is one such route that the proposed guidance is intended to cover and one where there exists a satisfactory, safe and suitable alternative route for public use.

16. Works

There are no works needed in order to bring these matters into effect.

17. Costs

The administrative fees and advertising charges associated with this process will be borne by the applicant.

Overall Conclusion

Whilst it is relatively rare that the Council makes Orders to extinguish paths, this one would seem to meet the relevant legal tests. It is also the case that this matter is one which has a long history and continues to present real concerns to the owners of the property whereby it is having effect on their daily lives and to their health.

Whilst the path is in use to some extent, it is not greatly used and other paths in the area are relatively well-used and the more popular promoted walk is a short distance away. On balance it is considered that the overall impact on the closure of Footpath No 702 will have no detrimental impact on the local rights of way network.

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