

Consultation: Itchingfield – Proposal to divert part of footpath 1913 under Section 119 Highways Act 1980

1. The existing path and background to the proposal- see [Plan numbered 01827 \(PDF, 477KB\)](#)

Footpath 1913, in the parish of Itchingfield links Valewood Lane in the north to West Chiltington Lane in the south.

On its current definitive line, FP 1913 commences on Valewood Lane and continues south along a shared access drive which serves 4 properties. The path continues along the eastern side of Trelowenek, along the boundary of the neighbouring property Woodside and continues for approximately 30 metres before turning west where it crosses a planked bridge and meets a stile (point X on the [proposal plan \(PDF, 477KB\)](#)). On passing over the stile, the path exits immediately into the enclosed private garden of Trelowenek and continues through the garden for approximately 20 metres (between points X and C) before exiting through an existing gate. When approaching the path from the south, when passing through the existing gate (point C) users have direct sight into the owners property through their patio doors. At its closest point, the path takes users within 10 metres of the property. A series of [photos \(PDF, 433KB\)](#) are attached to this consultation.

It is proposed to divert the path, so that it continues, from point A on the [proposal plan](#) south to point B then turns west, crossing a planked footbridge to re-join the existing definitive line at point C. The proposed route has been offered as an alternative route for users for a number of years and whilst the current definitive line remained opened and available, users favour the proposed route.

2. Consultations

As part of the application process the applicant has carried out the required pre-application consultations with the Parish Council and relevant amenity groups. The following responses were received:

- i. Itchingfield Parish Council – *"has no objection having discussed it as its parish meeting on Monday 25 September 2023"*
- ii. Local Ramblers representative – *"I walked FP 19113 from the south a few months ago and I elected to take the obvious permissive path to avoid going through your garden. The permissive route is entirely in keeping with the character of the rest of the path adjacent to your property and is a satisfactory alternative route for the footpath. I have also spoken to the Ramblers local Footpath Warden for the parish who agrees that the proposed diversion is acceptable. The Ramblers therefore have no objection to the proposal."*

A copy of this consultation has been sent to Horsham District Council, Sussex Police and placed in the Members bulletin.

All responses received will be fully considered before proceeding with any legal order.

3. Grounds and legal tests for diversion

Before making and confirming an unopposed order under Section 119 of the Highways Act 1980 Act the County Council must be satisfied that the legal tests can be met.

3.1 The making test

Whether the diversion is expedient in the interests of the owner, lessee or occupier of land crossed by the path, or in the interest of the public. This is subject to any altered point of termination of the path being substantially as convenient to the public.

3.2 Conclusion on the making test

The application to divert the footpath is made in the interests of the landowner and will allow them to secure and use their private garden with no impact to their privacy and security. All the land subject to the proposal is on land owned solely by the applicants. The proposal makes no changes to the existing termination point of the path.

4. Confirmation tests

Additional tests must be considered and satisfied before confirming an order.

- i. Is the proposed route substantially less convenient to the public?
- ii. If not, is *expedient to confirm the Order 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?*

4.1 Conclusions on the confirmation tests

The proposed route offers users with an attractive suitable alternative route which is no longer or shorter in length than the current definitive route. The proposal is in keeping with the remaining path and surroundings and removes the need for users to navigate a stile, increasing the overall accessibility of this path.

(a) the effect on public enjoyment of the way as a whole? The proposed route offers users with an attractive alternative route with good walking conditions and removes the need for users to enter the private garden of the owners. In this respect, users may find the alternative route more enjoyable. As the proposed route no longer requires users to navigate a stile, accessibility of the route is increased providing a general overall benefit to a wider range of users.

(b) the effect on other land served by the existing way? It is not anticipated that other land will be directly affected by the diversion and evidence

(c) the effect on land over which the way is created? Land registry documents confirm that the applicants own all the land subject to the proposal.

5. DEFRA Guidance

In addition to the statutory legal tests set out above, we must also consider the latest government guidance¹ on diverting and extinguishing public rights of way that

pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises.

This latest guidance provides that:

"In all cases where the guidance applies, the order-making and confirming authority should weigh the interests of the owner and/or occupier against the overall impact of the proposal on the public as a whole. They should note that reducing or eliminating the impact of the current route of the right of way on the owner and/or occupier, in terms of privacy, security and safety, are important considerations to which due weight should be given.

The order-making authority should therefore be predisposed to make, and the confirming authority will be similarly predisposed to confirm, an order if it satisfies the respective relevant legislative tests"

On its current definitive line FP 1913 passes through the private garden of Trelowenek therefore an application to divert is covered by the above guidance. If it is considered that the proposal meets the necessary making tests, the County Council should make an order to divert the path.

6. West Sussex Rights of Way Management Plan, Human Rights Act 1998, Equality Act 2010 and Crime and Disorder Act 1998 Implications

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

7. The Works and Costs

All costs associated with the diversion proposal will be met by the applicants. This includes any practical works needed to bring the path up to a suitable condition, the County Councils administrative and advertising charges and the cost of any changes needed to the existing waymarking. Before bringing any diversion order into effect, the County Council will ensure that the diverted path is made up to an acceptable standard.

8. Overall Conclusion

This is a relatively small, reasonable proposal which will allow the landowners to improve the privacy and security of their private garden. The proposal offers user a reasonable alternative path to the current definitive line and improves accessibility for users. It is recommended that an order for the diversion as set out on the attached plan be made.

Ami Dye
Senior Rights of Way Officer
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DEFRA- Government guidance on diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises

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