

Rights of Way Committee

August 2018

Part I

URGENT ACTION

Adur and Worthing Council's Public Path Diversion Order Town and Country Planning Act 1990 S 257

Public Footpath 2048 (Shoreham Adur Tidal Walls Development) Diversion Order 2018

Report by Director of Highways and Transport

Electoral Division: Lancing

Recommendation

It is proposed that Adur and Worthing Councils be advised that West Sussex County Council's objection to the proposal to divert part of Shoreham Public Footpath 2048, as shown on the attached plan provided by the District Council, is withdrawn.

1. Background

- 1.1 On 30 May 2018 Adur and Worthing Council (AWC) made the above Order for diversion of part of footpath (FP) 2048. The length of path runs on the western embankment of the River Adur between Old Shoreham Tollbridge and the bridge carrying the south coast railway. Copy of the Order is attached (**Appendix 1**)
- 1.2 The proposal would enable the Environment Agency to install a new flood protection embankment west of an existing embankment. The current bank, which carries FP2048, is failing as flood protection and is not of sufficient height to protect Shoreham Airport and other land west of the river to the current 1 in 300-year standard. Establishing an embankment to the west would also allow the Agency to create enough mitigation habitat to satisfy a legal environmental requirement for its wider works within Shoreham Harbour.
- 1.3 The Agency proposed to provide a 1.5m surfaced footpath on a 2.0m wide bank crest with passing areas of 2.5m surfaced width (within a 3.0m crest) at various points along the length. Officers recognised this would be a slight improvement in terms of width than existing, also the surface would be consistent and level compared to the very uneven existing surface. However, officers were concerned that, as a popular route with walkers and frequent cyclists, although there is no public right to cycle, the path as proposed would not be appropriate for the expected increase in use, which could give rise to incidents of conflict between users. The County Council, as highway authority, could incur liability for future incidents arising from conflict; and that in recognising its duty to assert and protect the public right, the proposed provision would not meet the Council's customary minimum standard of provision.

1.4 On 12 June 2018, the West Sussex County Council Rights of Way Committee considered the proposal. A copy of the Committee report and meeting minute can be viewed here ([Appendix 2](#)). The Committee resolved to formally object to the Diversion Order. Adur and Worthing Council was advised of this on 26 June 2018.

2. Update

2.1 Following the Committee meeting, and in accordance with Members' wishes for a solution to be found that is pragmatic and not risk investment by the Agency to reduce the local flood risk, WSCC officers have explored various Options with the Agency. It has produced a report detailing these; copy attached ([Appendix 3](#)).

3. Consideration of Options

3.1 For reasons outlined in its report, the Agency has discounted all Options excepting that that had been proposed to the Rights of Way Committee, i.e. providing a 1.5m wide surfaced footpath with 0.25 grassed verges on top of a 2.0m bank crest, with 2.5m wide passing bays being provided at a number of points along the section. This is Option 2 in the Agency's report.

3.2 The County Council recognises the Agency has a difficult role balancing the requirements and needs of all stakeholders. It has legal obligations it must satisfy; for example, it must secure consent of the airport as statutory undertaker. There are also practical considerations, such as limited space for construction.

3.3 In the event there is no diversion, FP2048 will remain on the crest of the existing embankment; the Agency's Option 6. This bank is already in poor condition and, once the new embankment is in place, the Agency has confirmed it will no longer maintain the existing bank. The County Council's liability could, therefore, extend to undertaking repairs to the bank until such time as it is not reasonable to repair and to any incidents arising involving path users. At that point it would be faced with either extinguishing this section of FP2048, being a loss of access to the public; or seeking to divert it onto the new embankment, which would be the same as diverting the path as per Option 2.

3.4 In considering all Options proposed by the Agency, it is appreciated why the Agency has discounted all Options excepting Option 2. WSCC officers have not identified further reasonable options to explore.

4. Risk Management Implications

4.1 The County Council wishes to retain a useable path in a popular area and not to risk the Agency's investment in flood defence for the benefit of the wider area. It is noted, as was advised to the Rights of Way Committee, Option 2 would improve access for walkers and disabled users over the existing path – the surface would be wider and be consistent without trip hazards.

4.2 The County Council formally objected to the original proposal as it did not meet the Council's minimum standard of a consistent 2.0m minimum width and,

thereby, could expose the Council to potential future liability in the event of accident or injury of path users.

4.3 It is acknowledged the County Council may not be found liable in the event of future incidents – path users will have a duty of care to themselves and others. However, in the event the County Council is held liable and, given the consideration of the Options outlined in the Agency's report, there would not be reasonable means for the County Council to adapt the path to mitigate arising incidents. The County Council, in the event of accepting a path below its minimum standard, must therefore accept the risk of increased and on-going liability.

5. The Equality Act 2010

5.1 As the report to Rights of Committee of 12 June 2018 noted, it is for AWC, as the Order Making Authority, to consider the Act in deciding whether or not to make an Order.

5.2 In considering future use of the path should Option 2 be provided for public use, it will have an improved and consistent surface, and a greater width compared to the existing path. For those with mobility impairment there will be good forward visibility and regular provision of passing bays, which will minimise any inconvenience arising from the path being less than the Council's minimum width standard. It is considered the path will be as convenient as possible for all users, whether disabled or not.

6. Consultations

6.1 As the report to Rights of Committee of 12 June 2018 noted, it is for AWC, as the Order Making Authority, to carry out its own consultations in respect of the proposed diversion.

7. Resources

7.1 The implementation of Option 2 will be for the Environment Agency to finance and deliver in full. Any costs associated with the Order-making process are to be incurred by AWC as the Order Making Authority.

8. Need for a Urgent Action

8.1 Ordinarily it would be expected for a revised proposal to be considered by the Rights of Way Committee at its next meeting; this will be on 30 October 2018. The Agency has, however, already begun works on site to create the new embankment and intends to complete this work in October 2018. It has made clear that for it to cease works temporarily will incur a significant cost. For these reasons, officers are requesting this matter be considered by means of an Urgent Action rather than wait for the next meeting of the Public Rights of Way Committee.

9. Recommendation

9.1 Having considered the Options proposed by the Agency, it is considered Option 2 will ensure continued access for walkers and, with provision of various passing bays, will allow users to pass each other without undue inconvenience. This is at

a risk to the County Council of exposure to potentially increased liability for accidents or injuries arising from a path below the Council's customary standard in width. Given the circumstances, it is considered this exposure is outweighed by the advantages to the wider community of the flood defence and having a path available along the embankment crest. It is, therefore, recommended that the County Council's formal objection to Adur and Worthing Council's Diversion Order be withdrawn.

9.2 Recommendation Of Director Of Highways And Transport: It is proposed that Adur and Worthing Councils be advised that West Sussex County Council 's objection to the proposal to divert part of Shoreham Public Footpath 2048 as shown on the attached plan provided by the District Council is withdrawn.

Jon Perks
Principal Rights of Way Officer
8 August 2018

Agreed

Approval provided by email

Katharine Eberhart
Director of Finance, Performance &
Procurement

Date: email dated 13.08.18

Derek Whittington
Chairman
Rights of Way Committee

Approval provided by email

Date: By email dated 10.08.18

Action Authorised

Approval provided by email

Tony Kershaw
Director of Law and Assurance

Date: email dated 13.08.18