



AGENDA

Kent County Council

REGULATION COMMITTEE MEMBER PANEL

Friday, 29th January, 2010, at 2.00 pm
Wantsum Room, Sessions House, County
Hall, Maidstone

Ask for: **Andrew Tait**
Telephone **01622 694342**

Tea/Coffee will be available 15 minutes before the meeting

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

1. Membership

Conservative: Mr M J Harrison (Chairman), Mr A D Crowther (Vice-Chairman), Mr A H T Bowles and Mr R A Pascoe.

Liberal Democrat: Mr S J G Koowaree.

2. Declarations of Interest by Members for items on the agenda

3. Proposed diversion of Public Footpath SD284 at West Kingsdown (Pages 1 - 14)

4. Proposed diversion of Public Footpaths MR350 (parts) at Plaxtol and MR392 at Shipbourne (Pages 15 - 28)

5. Other Items which the Chairman decides are Urgent

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Peter Sass
Head of Democratic Services and Local Leadership
(01622) 694002

Thursday, 21 January 2010

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Application to divert part of public Footpath SD284 at West Kingsdown

A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Friday 29th January 2010.

Recommendations:

I recommend that

(a) the County Council makes a further Order under section 119 of the Highways Act 1980 to divert part of Public Footpath SD284 at West Kingsdown and, if necessary, submit the Order to the Secretary of State for resolution; and

(b) the Kent County Council Public Footpath SD284 (part) Public Path Diversion Order 2004 made in respect of this path be formally revoked.

Local Members: Mr D Brazier

Unrestricted Item

Background

1. A previous Panel of Members from the Regulation Committee considered an application to divert this particular right of way on the 7th September 2004 and in consequence it was agreed that an Order should be made. A copy of this Order is attached at **Appendix A**.
2. However, formal objection to the proposal was lodged, from a number of parties, including the Parish Council and the Ramblers Association. Attempts to reconcile these objections failed but in carrying out this reconciliation exercise, it became apparent that there was perhaps more merit in the Objector's arguments in relation to the proposed new route than perhaps first envisaged. This led Officers to revisit the required tests for diverting a Public Right of Way and to conclude that the new route was not as substantially as convenient to the Public as the existing route and that, if the matter was referred to the Secretary of State for resolution, there would be a very high percentage chance the Order would not be confirmed.
3. The landowner's representative was therefore informed of the Officers view that the matter would have to be returned to Members for further consideration. In consequence the landowner asked the County Council to consider holding a site meeting of all interested parties and this was duly held. At this meeting the landowner's representative set out an amended proposal for consideration. Further options were and have since been put forward by the objectors but having considered these further the landowner decided these were not acceptable and has reapplied to the County Council seeking an amended diversion of Public Footpath SD284.
4. This further application has been made on behalf of the Trustees of the St Clare Estates by Smiths Gore, 23 Kings Hill Avenue, West Malling, Kent. Details of the new application are set out below and shown on the plan attached to this report at **Appendix B**.

Procedure

5. The County Council may make an Order under Section 119 of the Highways Act 1980 to divert a Public Right of way. Before doing so however, the County Council must be satisfied on the following points:
 - (a) *Whether it is expedient to do so in the landowners interest;*
 - (b) *Whether the point of termination of the path will be substantially as convenient to the public given that it is proposed to be diverted to another point on the same or connecting highway;*
 - (c) *Whether the right of way will not be substantially less convenient to the public;*
 - (d) *The effect that the diversion would have on public enjoyment of the path as a whole;*
 - (e) *The effect that the diversion would have as respects other land served by the existing right of way;*
 - (f) *The effect which any new public rights of way created by the Order would have as respects the land over which the right is created and any land held with it.*

Application

6. The Trustees of the St Clere Estate have applied for a minor diversion to the present line of Public Footpath SD284 as it passes close to Drane Farm Oast at West Kingsdown. The Trustees argue it would be in the interest of the landowner and lessee of the land on the basis that the recently converted residential properties adjacent to the path would benefit from the diversion due to their rural and remote nature. In addition, the planning conditions imposed at the time of the conversion from agricultural farm buildings to residential developments, do not allow the gardens to be fenced and as a consequence the current route runs adjacent to and across part of the garden to Drane Farm Oast.
7. The Trustees further argue there is an obvious intrusion upon both the privacy and security of Drane Farm Oast which the proposed diversion would allay. The existing route is also in close proximity to Highbury Barn and it would be beneficial to the privacy for the occupiers of this property to be moved slightly further away.
8. Having considered the tests to be met in diverting Public Rights of Way, the Trustees firstly assert that the proposed diversion would still allow views of both the vernacular buildings which have both been converted into residential buildings to preserve their integrity and in addition would still provide the far reaching views that this part of the Kent Downs brings, without impinging on the privacy of the residents of these properties, to the degree that the current route presently does.
9. Secondly, it is asserted that the proposed diversion route offers a gentle gradient which is neither substantially less convenient nor less enjoyable than the existing route. The proposed route also increases the public enjoyment of the route due to the gradient of the land allowing better views of the buildings for more of the route. The route would be easier to negotiate for the unfamiliar walker with there

being natural gaps in tree lines acting as aiming points and part of the proposed diversion is over a well worn farm track adjacent to an attractive hedgerow.

10. Common points of termination will not be affected by the diversion neither will it be necessary for any of the tests relating to the land to be taken into consideration as there are no other outside interests.

Consultations

11. Consultation has been carried out as required. There has been no objection received from any of the Statutory Undertakers.
12. However, West Kingsdown Parish Council has objected to the Order, as has Mr R. Barry of the Ramblers Association. The local District Councillor for Sevenoaks, Mrs P. Bosley, has also objected.

Objections

13. Mr. Barry objects on the basis that the Existing Definitive Map route is much more preferable for path users than the proposed, especially when travelling in a south westerly direction where the Oast and a mature tree act as a good aiming point, especially when the route has not been made apparent after ploughing. Mr Barry does not agree that the security and privacy is affected by the route and is not aware of any complaints or reported instances of burglaries, 'break ins' or invasions of privacy. In his view, there must be very good reasons for diverting a right of way that has been in existence across the field since at least 1910.
14. However, Mr Barry is prepared to support a compromise route, some 20 metres to the east of the corner of Drane Oast, through a narrow gap (which would have to be provided) in the hedge continuing on the south side of the hedge. This compromise route is shown on the plan attached at **Appendix C**.
15. The West Kingsdown Parish Council likewise, would support a diversion on to the compromise route which in its view is considered more than adequate for provision of the security and privacy issue and addresses the concerns of the occupants set out by the Trustees. The Parish Council does not, however, support the present proposal mainly on the grounds that from the "dip" on the proposed new route, sight is lost of all targets for direction. The proposals would take walkers below a shoulder in the land that would obscure long distance views of London, as well as local picturesque and pleasing buildings.
16. Mrs Bosley, it would appear, would be aligned in a similar manner to these comments.

Landowner's response

17. The Landowner does not agree with Mr Barry's assertions that the security and privacy of the two properties is not affected by the presence of an adjoining Public Right of Way and is surprised by such a comment. The landowner is able to confirm that there have been many occasions where walkers veer from the existing footpath and walk across the gardens to both properties.

18. In fact, the landowner is able to cite a recent example where one of the property owners (in the property furthest from the Footpath) had to redirect a group of walkers who had strayed into her garden whilst she was undertaking a midwifery consultation in the house. This is an event which the landowner asserts is a clear example of an invasion of privacy.
19. With respect to the proposed compromise route, this would require the necessity of creating yet another gap in a hedgerow, which the Estate is against from a conservation point of view. In other areas, the Estate has planted hundreds of metres of hedgerows along roads and footpaths in an attempt to recreate wildlife corridors.
20. With regard to the additional objections raised by the Parish Council and the Sevenoaks District Councillor, the landowner does not agree that the proposed route would take walkers away from the views of London and the two buildings. The proposed route not only obscures the views for less distance and less of the walking time but is also more direct, a more obvious route, allowing the more unfamiliar walker to aim at gaps within the landscape on clear horizons. The Estate has no desire to discourage walkers or to make their route less enjoyable or less easy to negotiate, which is why the proposed route is suggested.

Conclusions

21. Although there are three objections to this proposal, the County Council does not consider that the diversion would be substantially less convenient or impact on public enjoyment. Legal tests do not require positive advantages for the public. In essence once the benefits to the owners are demonstrated, the proposal must leave the public in no significantly worse position than exists at present. I am satisfied that the interests of the landowner have been demonstrated.
22. Further, I do not believe that the new route is not less enjoyable to the public. Concerns have been expressed regarding the loss of pleasurable views. However, here, I totally concur with the landowner that similar views may still be enjoyed from the proposed new route. I also agree that the new route will be easier to follow for those unfamiliar with the area.
23. Neither do I believe that the proposed route would not be substantially less convenient to the Public. The surface of the majority of the path will be the same as exists on the existing route (i.e. reinstated arable agricultural land). However, the remainder will run over an existing wide established farm track.
24. The new route will run across the gradient of the land and not against it. Existing wide gaps in the landscape provide excellent aiming points and whilst the new route may be in the region of 50 metres longer, the County Council does not consider this to be in any way substantially less convenient, especially as the route is used primarily for recreational purposes.
25. In such circumstances I do not see that, unless the landowners change their minds, it is necessary to impose the further hedgerow clearance that would be required in respect of the "compromise route" when there is already a perfectly

adequate and existing gap in close proximity. The application as submitted does, in my view, comply with all of the requirements of the Act.

Revocation of previous Order

26. The Rights of Way Circular (1/09) prepared by DEFRA (paragraph 5.29) provides that Authorities have the discretion not to proceed with Orders to which there are representations or objections. In order to bring the procedure to an end, the Authority must make a formal resolution not to proceed, and should then notify the applicant and those who have made objections of the passing of the resolution.

27. It is common ground with all parties that the Kent County Council Public Footpath SD284 (Part) West Kingsdown Public Path Diversion Order 2004 previously considered and subsequently made by the County Council should be revoked.

Recommendations

28. I recommend that

(a) the County Council makes a further Order under Section 119 of the Highways Act 1980, to divert part of Public Footpath SD284 at West Kingsdown and if necessary submit the Order to the Secretary of State for resolution; and

(b) That it be resolved that the Kent County Council Public Footpath SD284 (part) Public Path Diversion Order 2004 made in respect of this path be formally revoked.

Accountable Officer:

Dr. Linda Davies – Tel: 01622 221500 or Email: linda.davies@kent.gov.uk

Case Officer:

Mr. Chris Wade – Tel: 01622 221511 or Email: chris.wade@kent.gov.uk

The main file is available for viewing on request at the Environment and Waste Division, Environment and Regeneration Directorate, Invicta House, County Hall, Maidstone. Please contact the case officer for further details.

Background documents

APPENDIX A – Copy of the Kent County Council Public Footpath SD284 (part) Public Path Diversion Order 2004

APPENDIX B – Proposed new diversion

APPENDIX C – Route proposed by Mr. Barry

IN THE DISTRICT

HIGHWAYS ACT 1980

KENT COUNTY COUNCIL

(PUBLIC FOOTPATH SD284 (PART) WEST KINGSDOWN)

PUBLIC PATH DIVERSION ORDER 2004

This Order is made by Kent County Council under Section 119 of the Highways Act 1980 ("the 1980 Act") because it appears to the authority that in the interests of the owner of the land crossed by the path described in paragraph 1 of this Order it is expedient that the line of the path should be diverted.

Sevenoaks District Council has been consulted as required by Section 120 (2) of the 1980 Act;

BY THIS ORDER:

1. The Public Right of Way over the land situate at West Kingsdown and shown by a bold continuous line on the attached map contained in the Order and described in Part I of the schedule to this Order shall be stopped up twenty eight days from the date of confirmation of this Order.
2. There shall at the end of twenty eight days from the date of confirmation of this order be a public footpath over the land situate at West Kingsdown described in Part II of the schedule and shown by a bold broken line on the map contained in this Order.

**GIVEN UNDER THE SEAL OF KENT COUNTY COUNCIL THIS TWENTY-FIRST
DAY OF SEPTEMBER IN THE YEAR TWO THOUSAND AND FOUR**

**THE COMMON SEAL OF
KENT COUNTY COUNCIL**

was hereto affixed in the presence of :-

 21/9/04

AUTHORISED SIGNATORY



SCHEDULE

PART I

DESCRIPTION OF EXISTING ROUTE

That length of Public Footpath SD284 which commences at its junction Public Footpath SD283 (GR 5775 6057) and runs in a generally south-south-westerly direction for approximately 284 metres, then in a generally south-westerly direction for approximately 20 metres to GR 5761 6031, as shown between points A and D on the Order plan.

PART II

DESCRIPTION OF PROPOSED NEW ROUTE

A new length of Public Footpath SD284 which commences from GR 5775 6057 (point A) and runs in a generally south-south-easterly through southerly direction along the full 4 metre width of a green lane for approximately 176 metres to point B (GR 5780 6041), then narrowing to a width of 3 metres and continuing in a generally south-south-westerly direction for approximately 44 metres to point C (GR 5778 6037) and then running the full 3 metre width between hedgerows along an existing trackway in a generally west-south-westerly through westerly direction for approximately 188 metres to rejoin the existing line of Public Footpath SD284 at point D (GR 5761 6031).

PART III

LIMITATIONS AND CONDITIONS

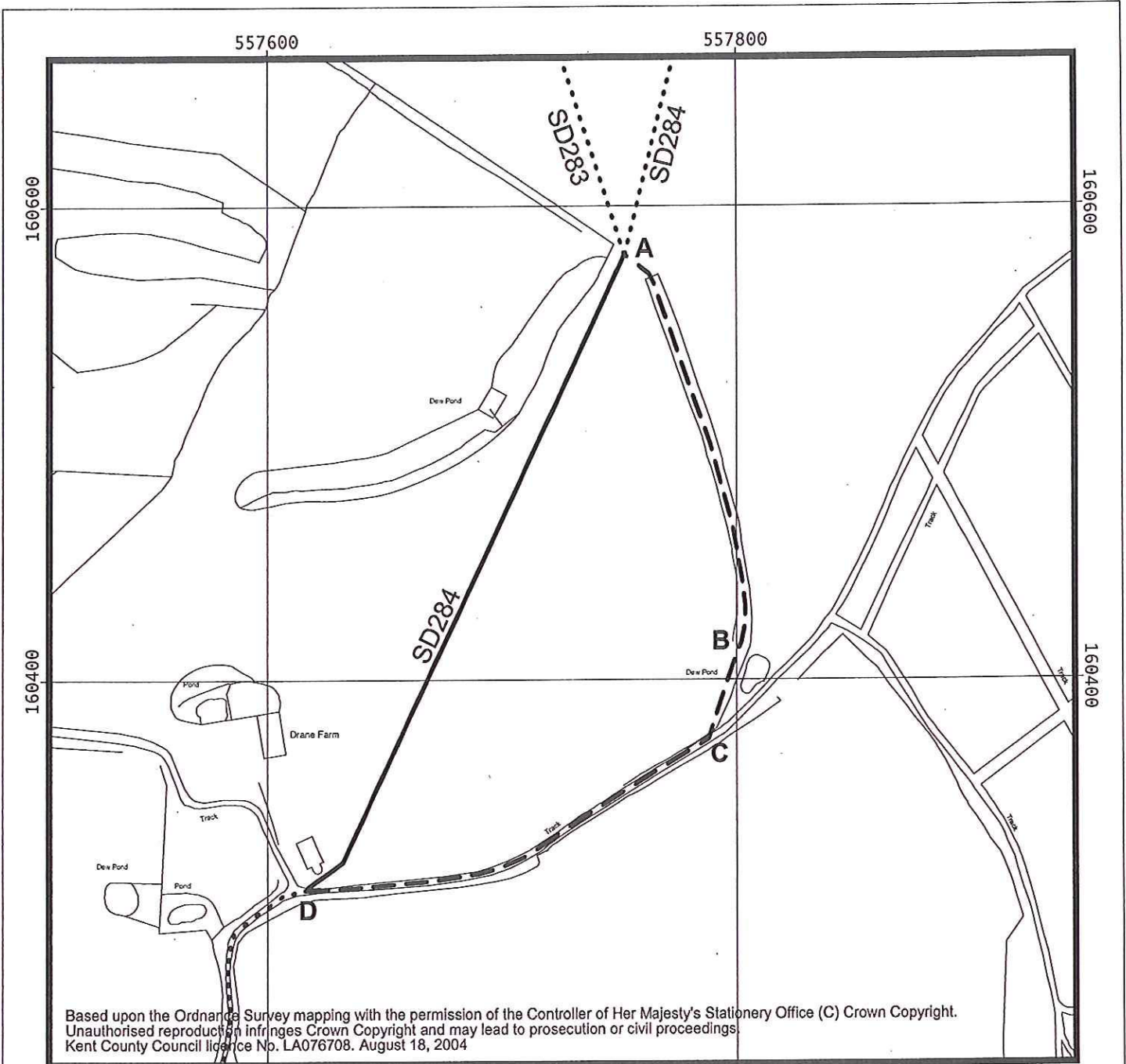
1. The landowner is to be responsible for all aspects of the maintenance of the new section of SD284 (as described in Part II of this Order), including the surface and encroaching or overhanging vegetation.
2. The landowner is to be responsible for maintaining the hedgerow on either side of the new route between points C (GR 5778 6037) and D (GR 5761 6031) on the Order plan to a height of not more than 1.2 metres.
3. The landowner is to be responsible for undertaking any remedial works required to the route should flooding become a problem in the area of the dew ponds at point B on the Order plan.

HIGHWAYS ACT 1980

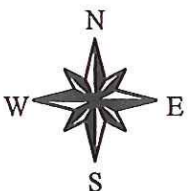
KENT COUNTY COUNCIL

(PUBLIC FOOTPATH SD284 (PART) WEST KINGSDOWN)

PUBLIC PATH DIVERSION ORDER 2004



- Path to be diverted
- Proposed new route
- Unaffected routes

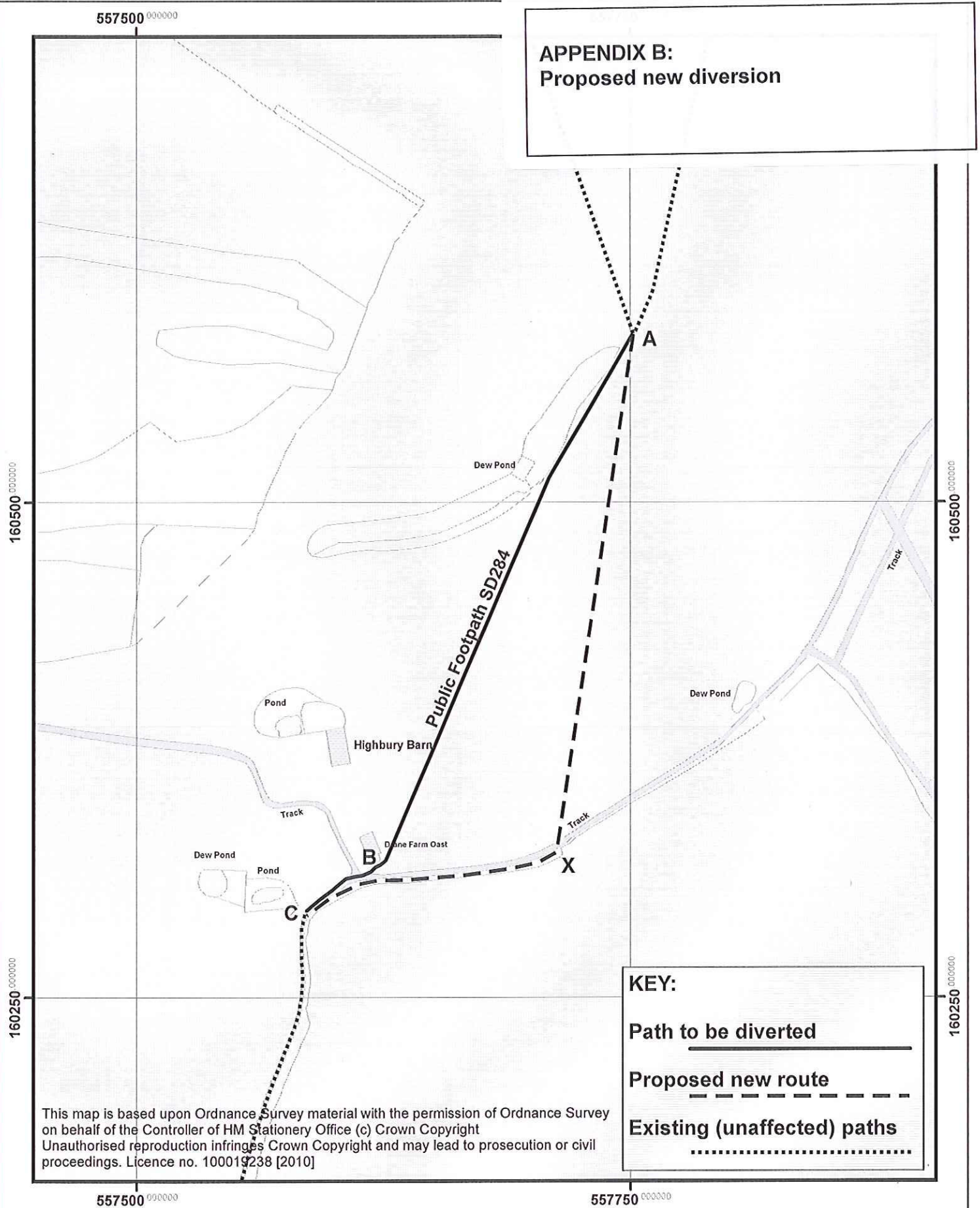


Scale 1:2500

Highways Act 1980
 Kent County Council
 Footpath SD284 (part) West Kingsdown
 Public Path Diversion Order 2004



**APPENDIX B:
Proposed new diversion**



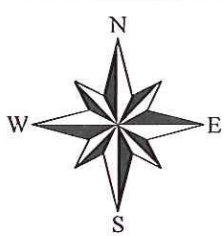
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KEY:

Path to be diverted

Proposed new route

Existing (unaffected) paths

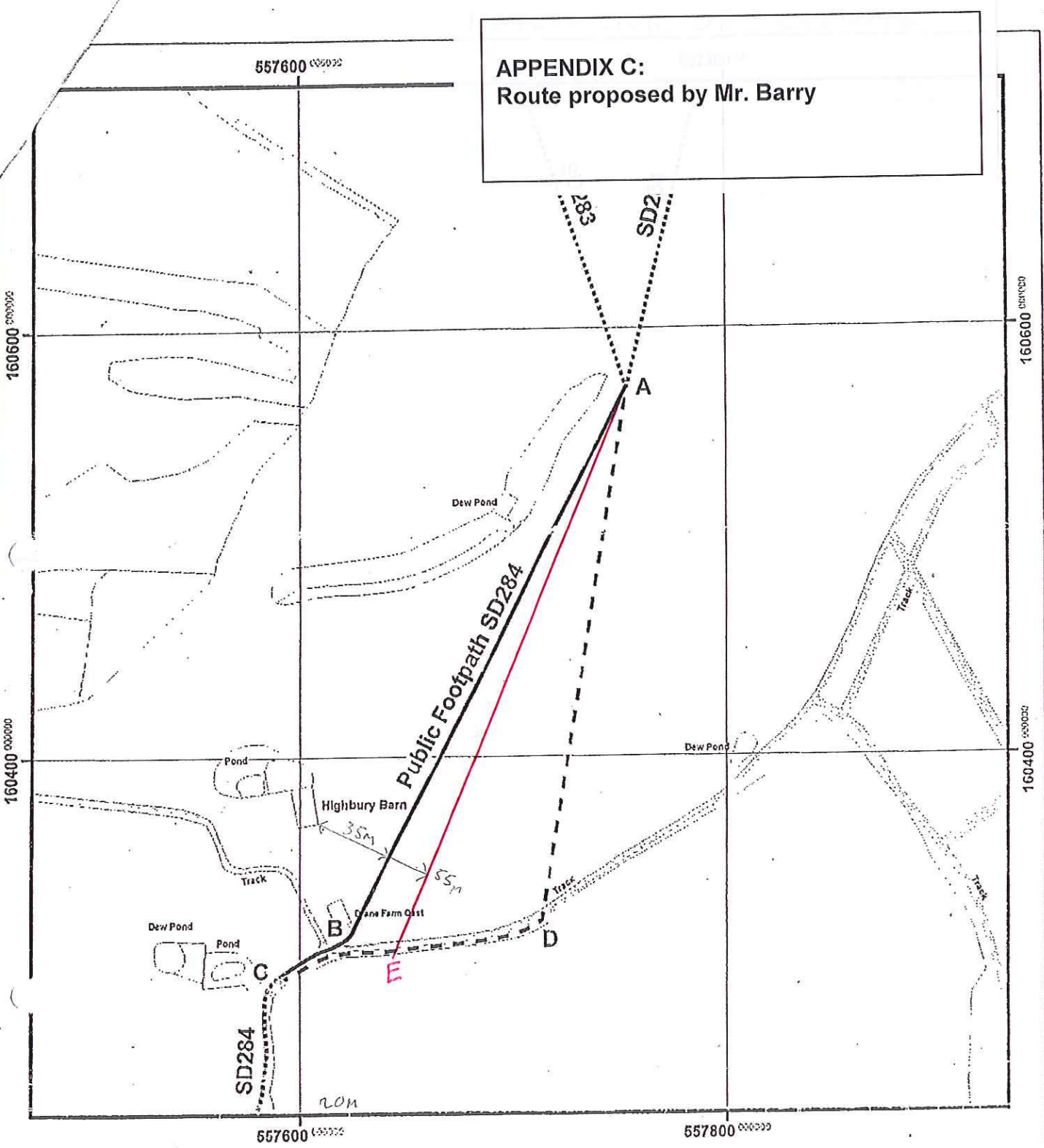


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**Highways Act 1980
 Kent County Council
 Public Footpath SD284 (part) West Kingsdown
 Public Path Diversion Order 2010**

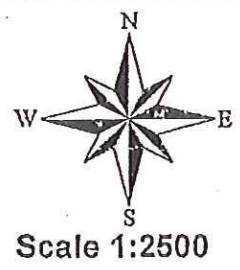


**APPENDIX C:
Route proposed by Mr. Barry**



- Existing path
- Proposed new path
- Unaffected path

*Emma-Jane Adams
4-6-08*



Highways Act 1980
Kent County Council
Public Footpath SD284 (part) West Kingsdown
Public Path Diversion Order 2008

Linda Davies - Director of Environment and Waste



Application to divert part of Footpaths MR350 (parts) and MR392 (part) at Plaxtol and Shipbourne

A report by the Divisional Director of Environment & Waste to the Kent County Council Regulation Committee on 29 January 2010.

Recommendation: I recommend the County Council makes two Orders under Section 119 of the Highways Act 1980 to divert;

(a) part of public footpath MR392 at Shipbourne, on the grounds it is expedient to divert the path in the interest of the landowner and/or occupier and;

(b) part of public footpath MR350 at Plaxtol, on the grounds it is expedient to divert the path in the interest of the landowner and the public;

and, if necessary, submit the Orders to the Secretary of State for resolution.

Local Member:

Mrs Valerie Dagger

Unrestricted

Introduction

1. The County Council has received an application to divert part of public footpath MR392 at Shipbourne and part of public footpath MR350 at Plaxtol by the landowner, Fairlawne Estates, to help improve land management and to formalise an existing arrangement, whereby the public are using an alternative route to the Definitive line in order to avoid the necessity to walk along a busy vehicular road.

2. An initial consultation was undertaken by the County Council in August and September 2009. Following the consultation I received a number of objections, representations and requests for additional proposals to be taken into consideration. Two meetings were therefore held, one on site and one at County Council offices, with those who had responded to the consultation to discuss their comments in greater detail. These meetings raised a significant number of alternative and additional proposals. This resulted in what could ultimately, be a huge rationalisation scheme for the rights of way network in the area. As such, and in consultation with the landowner, it was decided that the best way forward was to split the package into two. In the first instance a new consultation was completed regarding the diversion of public footpaths MR392 and MR350.

Existing and Proposed Routes

MR392

3. The existing route of public footpath MR392 is shown by a solid black line between points A and B and the proposed diversion is shown by black dashes between points A and C on **Appendix A** to this report.

4. Public footpath MR392 has a total length of 3484 metres running through undulating managed parkland and providing close views of historic woodland and mature trees. Outstanding long distance views are available from the majority of MR392, with the northern end providing spectacular views of St Gile's Church and the adjacent oast house.

MR350

5. The existing route of public footpath MR350 is shown by a solid black line between points A and B and the proposed diversion is shown by black dashes between points A and C on **Appendix B** to this report.

Procedure

6. The County Council may make an Order under Section 119 of the Highways Act 1980 to divert a Public Right of Way if it is satisfied that it is expedient to do so in the landowners interest and the route is not substantially less convenient to the public, having regard to the effect of the diversion on the public enjoyment of the route as a whole.

Consultations

7. Consultations have been carried out as required. No objections have been received from the Statutory Undertakers. No response was received from Tonbridge and Malling Borough Council or The Open Spaces Society.

8. Following a suggestion by the Ramblers' Association an additional section of public footpath MR350 was included within the second consultation. The Ramblers Association subsequently objected to the additional section and therefore it has been removed from the proposal. No other objections have been received to the diversion of public footpath MR350, although a letter of support was supplied by, local resident, Ms Elaine Webb.

9. Objections to the proposed diversion of Public Footpath MR392 have been received from Shipbourne Parish Council and local residents - Mr Nick Tyler, Ms Chris Owlett, Mr Harshad Topiwala, Mr Richard Bate and Mr Godfrey Haslehurst. Representations in relation to the Order have been made by Mr Alan Bristow, Mr Vince Fowler and the Ramblers Association, none of which contain any objections, but agree the proposal meets the legislative tests.

View of Members

9. Mrs Valerie Dagger, County Member, and Borough Councillors; Mr A Sayer, Mr D Evans and Mrs S Murray have been consulted. Mrs Dagger, although providing no specific comments, has asked to be kept informed as to progress. No responses were received from Mrs Murray and Mr Evans. Mr Sayer has objected to the diversion of MR392 on the grounds there will be a “kink” in the path which will be unhelpful to long distance walkers and that the changed termination point will result in more difficult map reading. He has also objected to that part of the diversion of MR350 that has now been removed from the proposal on the grounds that it will be less “streamlined”.

The Case

10. In dealing with the application to divert a Public Right of Way, consideration must be given to the following criteria of Section 119 of the Highways Act 1980: -

- a) Whether it is expedient in the interests of the owner of the land that the right of way in question should be diverted;***
- b) Whether the point of termination of the path will be substantially as convenient to the public given that it is proposed to be diverted to another point on the same or a connecting highway;***
- c) Whether the right of way will not be substantially less convenient to the public;***
- d) The effect that the diversion would have on public enjoyment of the path as a whole;***
- e) The effect on other land served by the existing right of way;***
- f) The effect of any new public right of way created by the order would have on land over which the right is so created and any land held with it.***

I will now take these points and outline my conclusions upon them individually: -

Public Footpath MR392 (Appendix A)

- a) Whether it is expedient in the interests of the owner of the land that the footpath in question should be diverted;***

11. It is considered expedient to divert the path in the interests of the landowner and/or occupiers of the property by allowing them to segregate the sheep which currently graze the area from dogs, which are accompanying their owners on the public footpath. Over the years there have been a number of instances of uncontrolled dogs worrying sheep. Diverting the path will also allow the landowner and / or occupier to secure the property, to avoid repetition of previous instances whereby people have wandered off the public footpath and into the garden area of the oast house.

12. The objectors have stated that the diversion of public footpath MR392 is not in the interest of the landowner for a number of reasons. Firstly, that the

worrying of sheep by uncontrolled dogs is not a reason to divert a public footpath. The objectors state there are other areas within the Fairlawne Estate where sheep could be grazed thus avoiding the necessity for them to be grazed where dogs may be present. Some of the objectors have requested further evidence of the number of instances where dogs have caused problems with the sheep and some have sought a further delay to the proposal in order to gather further views and evidence from Shipbourne residents.

13. The protection of livestock by removing the proximity of uncontrolled dogs is quite clearly in the interests of the landowner. The diversion of the public footpath will enable the landowner to completely segregate the two, which is an option currently unavailable due to the footpath dissecting the land. Although there are other areas within the Fairlawne Estate where sheep can be grazed, due to the nature of the park through which MR392 passes it makes an ideal location in which to round up all the sheep to dip them and administer medication. There have been 8 dog related instances since July 2009.

14. Extensive consultation has taken place with representatives of Shipbourne, - including the Parish Council – and some of the residents. This has included two formal consultations, a site meeting and a meeting held and at County Council offices. It is not deemed necessary to delay proceedings any further in order to carry out further, and what would be repeat, consultations.

15. The objectors are sceptical as to the security concerns cited by the landowner. A number of the objectors have stated that it is not the landowner who will benefit from the diversion but an employee who resides in the property at weekends and that concerns relating to walkers wandering off the footpath and into the private dwelling are no greater than the threat for anyone living anywhere. Additionally some of the objectors believe the proposed diversion of the footpath is simply a desire to have the public moved as far as possible away from the rear garden of the property.

16. Section 119 of the Highways Act 1980 states “*where it appears to a council as respects a footpath, bridleway or restricted byway in their area that, in the interests of the **owner, lessee or occupier** of the land crossed by the path or way, or part of that line should be diverted*”. The diversion of public footpath MR392 (part) will benefit both landowner and the occupiers by improving the security of the property. As previously stated there have been a number of instances whereby people have wandered off the public footpath and into the garden of the oast house.

b) Whether the point of termination of the path will be substantially as convenient to the public given that it is proposed to be diverted to another point on the same or a connecting highway;

17. The common point of termination (Point A) will not be altered and is therefore as convenient. The termination of the path at Point C is on the same connecting highway (public footpath MR395).

18. Several of the objections state that the new point of termination will not be substantially as convenient to the public - due to it no longer terminating at the church gate - and will be less direct. However the Ramblers' Association have rightly highlighted that for those proceeding in an easterly direction along MR395 and wishing to continue in a northerly direction along MR392 the new point of termination is actually more convenient.

19. The existing route of public footpath MR392 measures 426 metres (A-B), the proposed new route measures 554 metres (A-C-B). This however includes 190 metres of existing public footpath MR395. The overall increase in length is therefore 130 metres. Public footpath MR392 is a highly used recreational route as opposed to a utilitarian route. The additional 130 metres is therefore seen as a relatively small increase being *de minimus* when actually walking the route and adding approximately 5 minutes walking time.

20. It should be noted that the test is '**substantially as convenient**'. This can be seen as meaning 'as good as' or as close to as makes no difference, with convenience meaning 'ease of use'. The proposed route of MR392 is considered to be 'as good as' the current definitive line, particularly when taking into considering its use as a recreational route and is therefore considered to be substantially as convenient to the public.

c) Whether the right of way will not be substantially less convenient to the public;

21. The existing route measures approximately 426 metres (A-B) and the proposed measures approximately 554 metres (A-C-B).

22. The majority of the objectors state that the proposed diversion is substantially less convenient to the public. This for a number of reasons. Some of the objectors are concerned that the proposed diversion gives a feeling of being "hemmed" in by a hedge and that there is the possible risk of another hedge being planted in the future on the other side. The objectors state they are wary of this is because over a number of years hedges have already been planted alongside the existing route, altering the landscape.

23. Many of the objectors are concerned that the flexibility of walking in one of either three directions at the church gate will be removed and that whilst the current route is "substantially" longer than the proposed route the overall effect of the proposal, in their view, means an overall reduction in the length of the footpath network in Shipbourne.

24. I dealt with the distances of the existing and proposed routes in paragraph 19 above and see no point in repetition.

25. The objection that the proposed route is "hemmed" in by a hedge and the implication that the route is to be hedged on both sides cannot be substantiated. There is no intention by the landowner that this will be the case in the future. The current route passes through pasture fields, bounded by hedging and

mature or semi mature trees. This hedging can, to some, give a feeling of enclosure. In comparison the proposed new route has a more open feel.

26. The option to walk north, south or west will not be removed by diverting the section of Public Footpath MR392 in question. It is just that those wishing to do so will be required to walk in a westerly direction for a relatively short distance before turning north. As stated earlier the Ramblers' Association have highlighted that for those proceeding in an easterly direction along MR395 and wishing to continue in a northerly direction along MR392 the proposed diverted route is more convenient.

27. The objection that there will be an overall reduction in the overall length of the footpath network in Shipbourne is not, in my view, relevant to the convenience test and would not be given the weight afforded to it by the objectors should this case require submitting to the Secretary of State for determination.

d) The effect that the diversion would have on public enjoyment of the path as a whole;

28. Public enjoyment of the path as a whole will not be affected. The proposed route provides extensive views to the south and in particular the west, across the valley. The current definitive line of MR392 runs through enclosed pasture with limited views available from within the confines of the surrounding hedgerow and mature trees; in comparison the proposed route, although bordered on one side by a hedgerow, has a more open feel with superior views of the surrounding countryside.

29. The objectors have stated the proposed diversion has a negative impact on public enjoyment. Firstly that the proposed route has severely limited views to the east, due to tall hedgerows, compared to the open views currently available on MR392, and in particular the views of the Church, the oast and the pasture. Secondly that the current Definitive route offers beautiful open country walks across open fields with outstanding views to the east of the village which would be lost on the proposed route.

30. This is not considered to be the case. The legislation states that the effect on public enjoyment should be considered in relation to the path as a whole. Public footpath MR392 has a total length of 3484 metres running through undulating arable parkland and providing close views of historic woodland and mature trees. Outstanding long distance views are available from the majority of MR392, with the northern end providing spectacular views of St Gile's Church and the adjacent Oast House.

31. Views of the surrounding countryside are fairly limited on the section of MR392 to be diverted, passing as it does through an area bordered on all sides by a hedgerow and mature trees, thereby limiting views in all directions. Views of St Gile's Church and the oast are only available for approximately the final 20 metres of the route and at its connection with MR395. The same view of the church is available from MR395. To reiterate, the most spectacular views of St

Gile's Church are available on the northern section of MR392 and these remain unaffected by the proposed diversion.

32. In addition some of the objectors have raised concerns that the proposed route would in fact require walking beside a high and imposing hedge which restricts views and that any views currently available of the church will be removed over time by the planting of tall species of trees by the rear gate of the churchyard, which over time will obscure the entire view of the church.

33. It is not within the County Council's remit to ensure adjoining landowners do not plant trees or hedgerows on their land that may over time impact on the views enjoyed by those using the rights of way network. In this case the applicant has agreed to restrict the height of the newest hedge - to the east of the proposed new route - in order to maintain current views. When comparing the current, definitive route and the proposed new route, the new route is considered to have a more open feel, despite being bordered on its eastern side by an established hedgerow. This is due to the open, panoramic views to the west and south. In comparison the current route can, because of the enclosure of the pasture by hedgerow and maturing trees, in places, feel enclosed.

34. The Ramblers' Association have no objection to the proposed diversion of Public Footpath MR392 and have in fact stated; *"It [MR392] is very pleasantly wide with splendid views to the west and a better view of the church once it hits MR395"*. In addition they have requested that the landowner be persuaded to keep the hedge at a suitably low height to enable average height walkers to be able to enjoy views of the church from the new path on its general approach to MR395. The landowner has agreed to this request.

e) The effect on other land served by the existing public right of way;

35. The effect of the diversions will have no impact on other land served by the existing right of way.

f) The effect of any new public right of way created by the order would have on land over which the right is so created and any land held with it;

36. The new routes created by the Order will have no impact on other land served by the right of way.

Other objections

37. In addition to the objections detailed above some of the objectors have also commented on the historical nature of the footpaths in Shipbourne and in particular the route in question being part of the County Council's promoted route, The Greensand Way.

38. Public rights of way, by their very nature, are historic routes it is however not the intention to extinguish the public rights that exist but merely to move those rights to reflect current circumstance. The Greensand Way is a promoted

route, running along the greensand ridge in Kent. Diverting the public footpath will not remove it from the geologically important ridge.

Public Footpath MR350 (Appendix B)

a) Whether it is expedient in the interests of the owner of the land and the public that the footpath in question should be diverted;

39. It is expedient to divert the path in the interest of the landowner and in the interest of the public. Public footpath MR350 currently runs diagonally across two fields – one pasture, one arable – connecting with Plaxtol Lane. Diverting the footpath will not only assist the landowner in helping improve the management of these two fields, but will also benefit the public by removing the need to walk along a busy vehicular road, with no verges, and creating a direct connection with public footpath MR346.

b) Whether the point of termination of the path will be substantially as convenient to the public given that it is proposed to be diverted to another point on the same or a connecting highway;

40. The common point of termination (Point A) will not be altered and is therefore as convenient. The second point of termination (Point C) is 175 metres to the east of the original termination point (Point B). The new termination does, however, remove the need to walk 175 metres along a narrow road which carries a national derestricted speed limit. Those using Public Footpath MR350 are most likely to wish to proceed in a southerly direction along Footpath MR346, which, with MR350 on it's on the current definitive line requires 175 metres of road walking. The need for road walking will be removed by the proposed new route. The new point of termination is therefore not considered to be substantially less convenient to the public.

c) Whether the right of way will not be substantially less convenient to the public;

41. The existing route measures approximately 203 metres (A-B), plus an additional 175 metres of road walking to continue along the nearest connecting Public Footpath (MR346). The proposed route measures approximately 363 metres (A-C). There is therefore no significant difference in length, particularly when considering this route is primarily a recreational route.

d) The effect that the diversion would have on public enjoyment of the path as a whole;

42. Public enjoyment of the path as a whole will not be affected. The proposed route provides extensive views to the east, which are not available from the current route. The new route will also remove the need for walkers to pass along 175 metres of busy and potentially dangerous road.

e) The effect on other land served by the existing public right of way;

43. The effect of the diversions will have no impact on other land served by the existing right of way.

f) The effect of any new public right of way created by the order would have on land over which the right is so created and any land held with it;

44. The new routes created by the Order will have no impact on other land served by the right of way.

45. I believe that the legal tests are met in all respects and am satisfied that an Order should be made in the interests of the owners of the land without prejudicing the public's enjoyment.

Recommendations

46. Despite there being objections to the proposal I recommend County Council makes two Orders under Section 119 of the Highways Act 1980 to divert;;

(a) part of public footpath MR392 at Shipbourne, on the grounds it is expedient to divert the path in the interest of the landowner and/or occupier and;

(b) part of public footpath MR350 at Plaxtol, on the grounds it is expedient to divert the path in the interest of the landowner and the public;

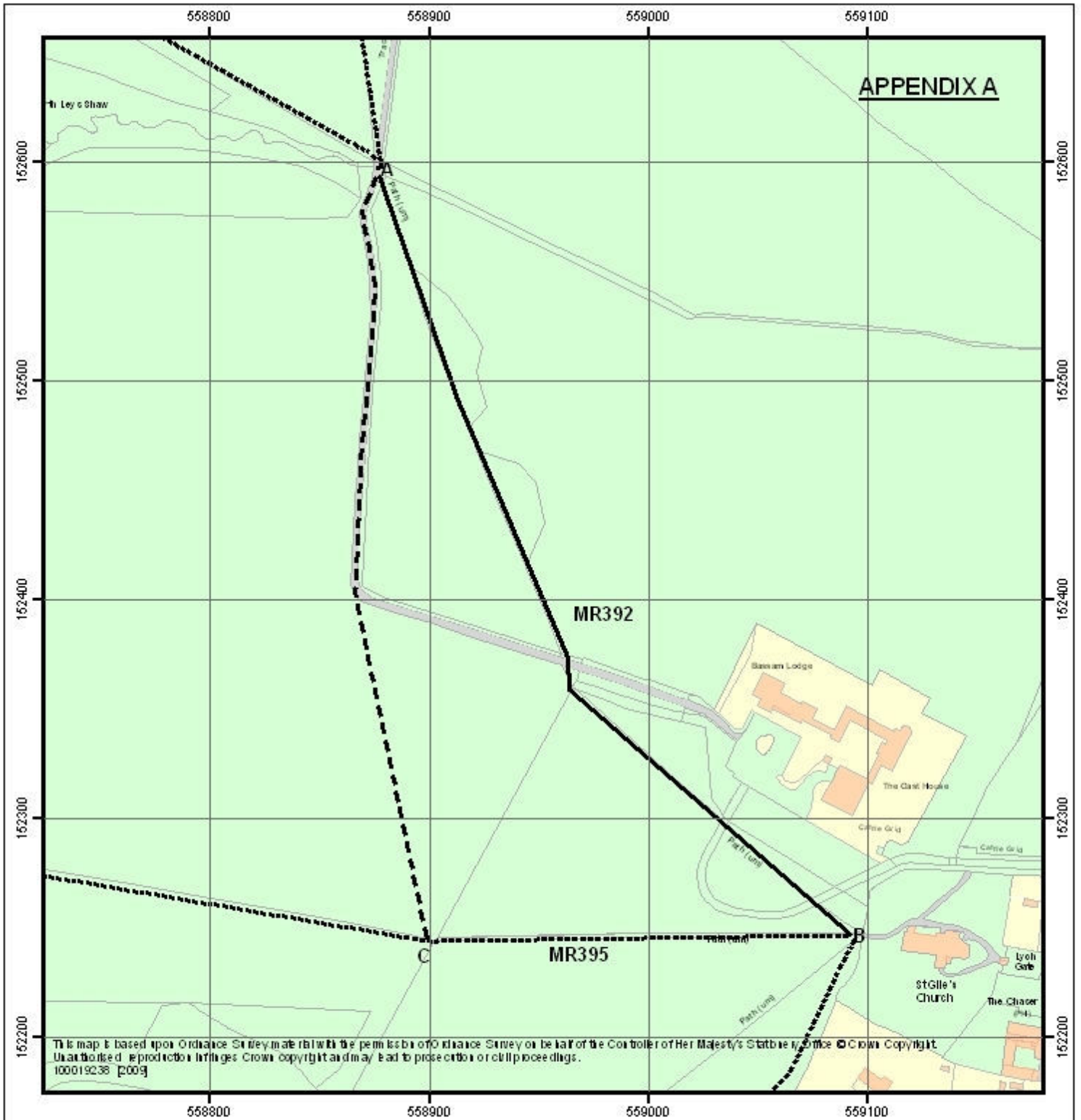
without prejudicing the public's enjoyment and, if necessary, submit the Orders to the Secretary of State for resolution.




Appendix A- Map showing the route and location of public footpath MR392

Appendix B- Map showing the route and location of public footpath MR350

Contacts: Sonia Coventry 01622 221512

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-  Footpath MR392 to be deleted
-  Footpath MR392 to be added
-  Unaffected Routes

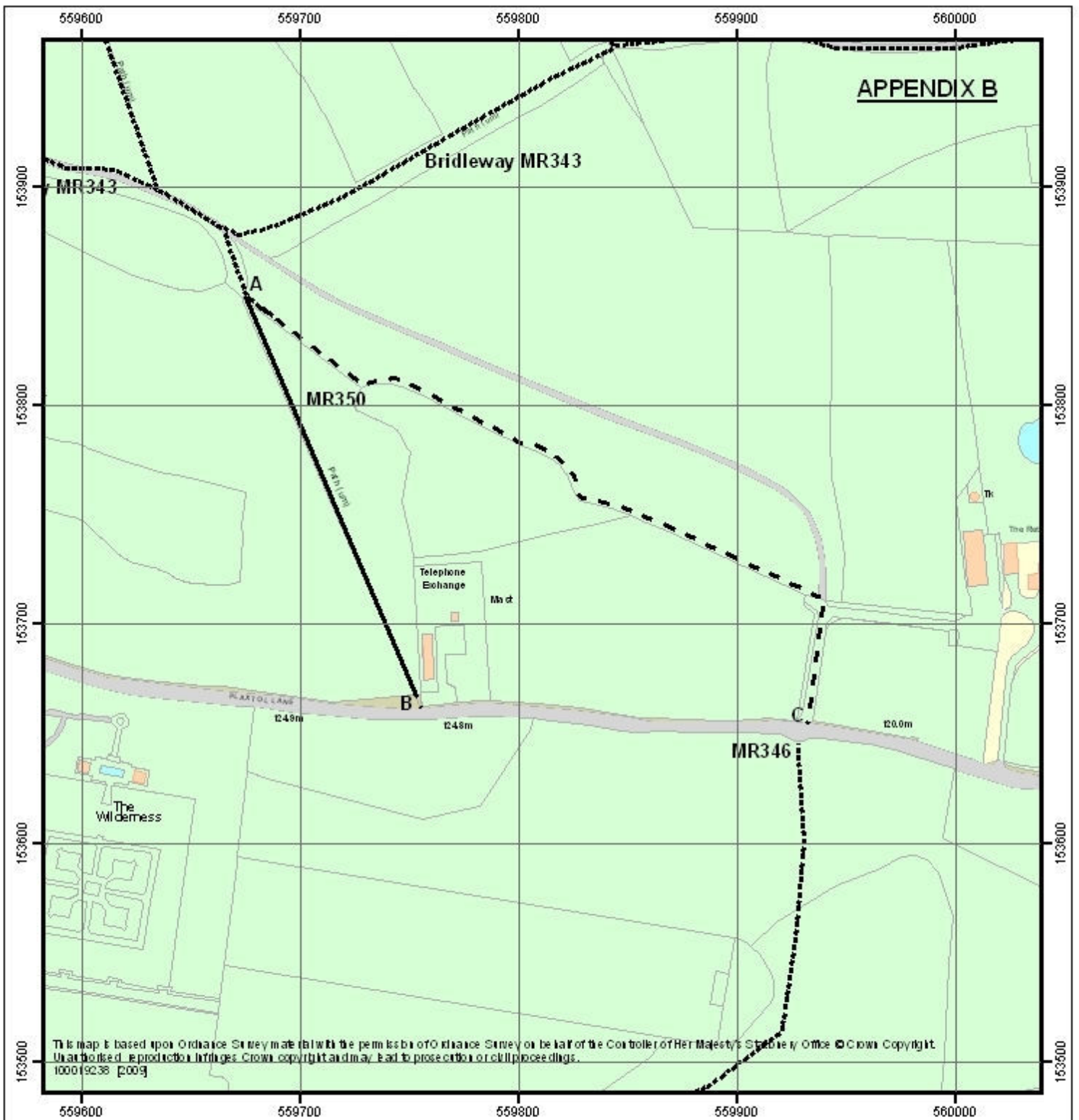


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**Highways Act 1980, Section 119
Proposed diversion of Public
Footpath MR392 (part), Shipbourne**



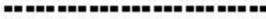


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APPENDIX B

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-  Footpath MR350 to be deleted
-  Footpath MR350 to be added
-  Unaffected Routes



Scale 1:2,500

**Highways Act 1980, Section 119
Proposed diversion of Public
Footpath MR350 (part), Plaxtol**

Linda Davies Page 27
Environment & Waste Director



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