



AGENDA

REGULATION COMMITTEE MEMBER PANEL

Tuesday, 18th March, 2025, at 12.00 pm
St Lawrence Village Hall, Church Road,
Sevenoaks TN15 0LL

Ask for: **Hayley Savage**
Telephone **03000 414286**

Membership

Mr S C Manion (Chair), Mr M Baldock, Miss S J Carey and Mr P Cole

UNRESTRICTED ITEMS

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

1. Membership and Substitutes
2. Declarations of interest for items on the agenda
3. Application to divert Public Footpath SR161 at the Sevenoaks Preparatory School, Seal (Pages 1 - 12)
4. Other items which the Chairman decides are urgent
5. Motion to exclude the press and public for exempt business

That under section 100A of the Local Government Act 1972 the public be excluded from the meeting on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 1 and 3 of Part 1 of Schedule 12A of the Act.

EXEMPT ITEMS

(During these items the meeting is likely NOT to be open to the press and public)

6. Transfer of Rights of Common at Higham Common (CL86) (Pages 13 - 24)

Benjamin Watts
General Counsel

Monday, 10 March 2025

Please note that any background documents referred to in the accompanying papers maybe inspected by arrangement with the officer responsible for preparing the relevant report.

Application to divert Public Footpath SR161 at the Sevenoaks Preparatory School, Seal

A report by the Head of PROW and Access to Kent County Council's Regulation Committee Member Panel on 18 March 2025.

Recommendation:

I recommend that the County Council:

- (a) makes a Public Path Diversion Order under Section 119 of the Highways Act 1980 to divert Public Footpath SR161 at Seal; and**
- (b) in the event of objections to the Order, the matter be referred to the Planning Inspectorate for resolution.**

Local Member: Mr. R Gough (Sevenoaks North & Darent Valley) Unrestricted item

Introduction

1. The County Council has received an application, from the Sevenoaks Preparatory School ("the school") at Park Lane, Godden Green to divert Public Footpath SR161 at Seal. The proposed diversion is shown on the plan at **Appendix A** to this report.
2. The current route of the path commences on Park Lane (at Point B), initially crossing the school car park in a westerly direction to run across the tennis court (an informal diversion has been provided by the school), and then enters the school playing field where it crosses sports pitches marked out commensurate with the season, to link with a Public Bridleway numbered SR160 (Point A). The total length of the current route is approximately 280 metres.
3. In replacement for the existing route, it is proposed to provide two new pedestrian routes. Firstly, a proposed new route commencing from Point A and running generally south-westwards, utilising a short (30 metre) section of Public Bridleway SR160 before turning generally eastwards (Point C) to run over a broad track for approximately 480 metres to rejoin Park Lane (Point D). Secondly, for reasons that will be set out later in the report, a further route is proposed from a point on the track described above (at Point E), and approximately 60 metres to the west of Park Lane, which will run diagonally northwards for approximately 100 metres to meet Park Lane opposite Cherry Tree Cottages (Point F).

Background

4. The application was made on 25th of April 2016. Initial work to resolve this application was commenced, however, this work was halted in line with a request from the applicants and was recommenced during 2024.
5. In its application, the school, cited the following grounds as reasons for the application:

- Removing walkers from moving traffic in the school car park.
 - The risk of injury to users from flying balls during sports activities.
 - The safeguarding of children, between the ages of 2 years to 13 years, on a school site.
 - The school field is a fire assembly point for the whole school.
 - The alternative route proposed will be more attractive for walking.
 - To prevent walkers ending up in the wrong part of the school.
 - To alleviate the disruption of field activities.
 - To offset the problems of walker's dogs, off leads, chasing balls and fouling the field.
 - To offset the children's fear of strangers and animals that may bite.
 - Some of its pupils have severe allergies to dogs.
6. The school has further amplified and strengthened its original reasons by setting out that, the Department for Education Keeping Children in Education safe guidance (2023) places the school under a legal duty to keep its children safe, and by specifically referring to the fact that safeguarding and promoting the welfare of children is everyone's responsibility. Further, schools must have regard to this guidance when carrying out their duties to safeguard and promote the welfare of children. For that reason, the children are fully supervised when on site and the school's paramount duty is to ensure the children's safety at all times.
 7. The school further sets out that the Department for Education Site Security guidance updated in October 2023 suggests that schools' perimeters should have metal fencing of 2m high around the site. This is not something that the school want to do, but offering a replacement route to a footpath allows it to retain the open aspect of the school whilst increasing the safety of the children.
 8. The County Council is also aware of a further problem, in that the school's tennis court had been constructed over the line of the path, thus causing obstruction to the legally defined route (although an informal diversion on site has been provided by the school). This matter was first reported in 2012, so it is felt opportune to resolve this issue with the current application.
 9. Initially, whilst the school had lodged an application to divert the footpath on a like for like basis, following a gesture by the adjoining landowner, it was proposed that the new route could be upgraded to bridleway status to provide greater benefit for a larger section of the public, providing public rights for equestrians and cyclists as well as pedestrians. Such greater rights could not be provided by way of a Public Path Diversion Order, however, so it was agreed that two Public Path Orders would be made concurrently: one to extinguish the existing path and one to create the proposed new route. Whilst this proposal was advertised, unfortunately, the cost, both in time of attempting to ameliorate local objections, and the financial costs involved of achieving a viable solution led to the abandonment of this suggestion, and a reversion to the original proposed diversion at footpath status.
 10. The County Council cannot deal with any application made on a capricious basis. In dealing with such issues, it must be satisfied that it is expedient to divert a legally recorded public right of way, and that such application is based on the

grounds set out within the Highways Act 1980. The Case Officer is satisfied that it is expedient in the interests of the owner of the land to divert the path.

Policy

11. The Countryside Access Improvement Plan (CAIP) Operational Management Document (dated 2013) sets out the County Council's priorities for keeping the Definitive Map and Statement up to date. The policies in respect of Public Path Change Orders are:

a. Public Path Change Orders will normally be processed in the order in which applications are received, except in any of the following circumstances where an Order may be processed sooner:

- I. Where an Order would satisfy one or more of the key principles set out in paragraph 11.1 of the Countryside Access Policy,
- II. Where an application has been made to the County Council in its capacity as Planning Authority
- III. Where the processing of an Order could save significant costs incurred in other Rights of Way functions.

b. The County Council will consider whether the following criteria are satisfied before promoting a Public Path Change Order. Irrespective of the following, the statutory reasons (as set out within the Legal Tests section) for changing Public Rights of Way must apply.

- I. The status of the route must not be in dispute at the time of the application unless the Public Path Order is being implemented concurrently with an application under Section 53 of the Wildlife and Countryside Act 1981.
- II. The applicant must agree to meet the County Council's costs of promoting the Order and bringing the new path into a fit condition for public use (as set out within section 3 of the Policy).
- III. The applicant must also agree to defray any compensation which may become payable because of the proposal.
- IV. The definitive line should, where it is considered by the County Council to be reasonably practicable be open, clear, and safe to use.

c. However, nothing in this policy is intended to prevent the County Council promoting a Public Path Change Order in any case where it considers it appropriate in all the circumstances to do so. In this case, all the above criteria are complied with.

Legal Tests

12. Legislation relating to the diversion of a public path is contained within Section 119 of The Highways Act 1980: The Procedure is in Schedule 6 of the same Act.

(i) The Council may make an Order to divert a public path if it is satisfied that it is expedient to do so, either in the interests of the owner, lessee or occupier of the land crossed by the path or way in question, or that it is expedient in the interests of the public. There are other issues:

(ii) If the end of the path is not on another highway it cannot be diverted. So, for example, a path to a specific point on the seashore cannot be moved to a different point on the seashore.

(iii) If the path does end on a highway, it may be diverted only to a point which is on the same or connected highway and which is substantially as convenient to the public.

(iv) The second major constraint is the Order may not be confirmed either by the Council in the absence of objections or the Secretary of State when objections have been received unless it is satisfied the route will be substantially as convenient to the public as a result of the diversion, and that confirmation of the Order is expedient having regard to the effect of the diversion on public enjoyment of the route as a whole.

Consultation

13. Consultations have been carried out as required, and a site notice and plan erected at each end of the existing path.

Parish Council

14. The Seal Parish Council was consulted. No response was received.

Sevenoaks District Council

15. Sevenoaks District Council was consulted and likewise relevant local District Councillors. The District Council replied with no objection to the proposal and confirming that it did not have any comments to make on these proposals.

County Member

16. County Member Roger Gough was consulted but no comments have been received.

Statutory Undertakers

17. No objections were received from the Statutory Undertakers.

User Groups and residents

18. As a matter of course, the Council consults the main user groups. Responses were received from the local representative of the Kent Ramblers, The Sevenoaks Society and local residents. In all, if counting objections made jointly on behalf of couples, there are ten outstanding objections to the proposal. Most of the objections are similar and they can be summarised as follows:

- The current path is mainly used at weekends and therefore the risk to children is minimal.
 - It is an open attractive route that forms part of an important east-west link.
 - The path could be moved to the edge of the field or fenced.
 - It currently reaches Park Lane approximately 78 metres from the nearest connection to the remainder of the network and the newly proposed route would connect further to the south meaning users would have a much greater distance to negotiate on a busy road; and
 - Whilst the existing path crosses open land, the proposed would run through woodland and is boggy in places and is therefore not an adequate substitute.
19. Two further, perhaps more substantive issues, were also raised by the objectors. Firstly, the issue of a path being there long before a purchaser bought the land, the inference here being that the school purchased land in full knowledge of the path across the playing field. Secondly, the path is obstructed and is not therefore in compliance with paragraph 2(4) of this Council's General Notes on requests for Diversion or Extinguishment of a Public Right of Way. It would in consequence fail to meet the judgement in the High Court case of R (Ashbrook) v East Sussex County Council¹. These two issues whilst not relating to paths in Kent, have been dealt with by the courts in the past and my response to this and the other issues raised are set out in further detail below.

Comments on the objections

20. The County Council must balance the interests of the owner against those of the public, especially in relation to enjoyment by the public. I note, the suggestion in opposition above, that the owner should not be able to apply for a diversion when the owner knew of the existence of the public footpath at the time of purchase. Whilst the owner may have been aware of the existence of the footpath it does not preclude an Order being made by the Council where it considered that such an Order would be in the interests of the owner - a fact endorsed by the High Court in the Weston² case where the Judge stated, "*there is no statutory bar to a person making an application where they have acquired the property with knowledge*". The Council considers this matter on that basis.
21. Likewise, the objectors' suggestion that the proposal would fly against the judgement in the Ashbrook case. In this respect, I feel it helpful to refer Members to another relevant paragraph of the County Council's General Notes to accompany a Public Path Order application. Here the discretion available to the Council is clearly and deliberately set out following advice from Counsel. This paragraph states, "However, nothing in this policy is intended to prevent the County Council promoting a Public Path Change Order in any case where it considers it appropriate in all the circumstances to do so".
22. The reason the County Council sought advice from Counsel was as a direct result of the judgement in the Ashbrook case; it did not wish to find itself in the same position as the East Sussex County Council. The Judge in that case found that the legitimate expectations of the Appellant (Ms. Ashbrook) that the East Sussex County Council would comply with its adopted guidelines, (those

¹ [2002] EWHC 481 (Admin)

² Ramblers Association v Secretary of State for Environment, Food and Rural Affairs, Weston and others [2012] EWHC 3333 (Admin) at paragraph 38

guidelines stating words to the effect that it would not divert a path if it was deliberately obstructed), had not been met. As a result of that Case, and following advice from Counsel, the Kent County Council inserted the disclaimer above into its General Notes and it has remained there since that date. It means that if none of the guidelines shown numbered 1 – 4 above are complied with then the Council has discretion to make an Order in any event where it is considered appropriate, and that is the case here. Accordingly, the Ashbrook Case would not apply here, and it only applied to East Sussex because, at the time, that Council's guidelines did not contain such a discretion.

23. Regarding the other issues of specific detail raised, the school, in response, set out, it is their experience, the footpath is regularly used through the day during the week. Most people are respectful, and careful when on the site, but an alternative route will keep the children safer and keep footpath users safe from being hit by stray cricket balls and so forth as people cross the playing fields during the school day. It would be totally inconvenient for the school to fence the path across the field. Likewise, moving the path to the edge. The playing field extends beyond that point anyway and would place the path against other buildings used by the school.
24. It is not generally considered satisfactory for the public to incur a greater distance of road walking, and the Council alerted the school to this issue at an early stage in this process. Currently, to connect from the footpath to the next connecting path (Public Footpath SR131), walkers need to walk along the road/verges for approximately 78 metres. From the point where the proposed main route would connect with Park Lane, the distance from this point would be approximately 180 metres. However, the verge on the southern side of the road here is part of formally recorded Common Land. Neither the Knole Estates or the Sevenoaks District Council object to the County Council formalising a further public right of way on foot over this land to provide an alternative and safer northern link nearer to the current path terminus which reduces the distance to 70 metres - a distance that can be accommodated within an improved highway verge, further reducing risk.
25. Some of those objecting state they prefer the current route because it is more open and pleasant than the proposed. However, this simply illustrates the relative nature of public rights of way and how personal preference dictates choice as woodland walks are also considered pleasant by many, and, in addition, the proposal would have the advantage of use being undisturbed by the activities currently taking place on the playing field. Such use which would certainly deter some from exercising their rights across the field in the first place.

The Case

26. 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 or the public 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.*

27. The above criteria and the conclusions upon them are considered individually below.

Whether it is expedient in the interests of the owner of the land or the public that part of the footpath in question should be diverted.

28. Here, the school has set out, in its application, that it has a legal duty to keep its children safe, and this duty was recently updated by the Keeping Children Safe in Education policy in September 2023, which refers to the fact that safeguarding and promoting the welfare of children is everyone's responsibility. Schools must have regard to this guidance when carrying out their duties to safeguard and promote the welfare of children. The children are fully supervised when on site and the school's paramount duty is to ensure the children's safety at all times. The Department for Education Site Security guidance updated in October 2023 suggests that schools' perimeters should have metal fencing of 2m high around the site. This is not something that this school want to do, but offering a replacement route to a footpath allows it to retain the open aspect of the school whilst increasing the safety of the children and overcoming the other issues articulated in the application. It should also be noted that, additionally, the current legal line is obstructed by the tennis court and that is a further issue the school and the County Council wishes to overcome.

29. I am satisfied therefore it is expedient in the landowner's interests to divert this path.

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.

30. The proposed path will continue a connection between Public Bridleway SR160 and Park Lane. However, it is considered it would not, generally, be satisfactory for the public to incur a greater distance of road walking. The County Council alerted the school to this issue at an early stage.
31. Currently, utilising the existing route, any user leaving the Bridleway, SR160, and wishing to proceed eastwards would leave Point A, cross the school field to reach Park Lane at Point B. To then connect with the next available route (Public Footpath SR131) in the PROW network entails users negotiating Park Lane, southwards, for a further 78 metres.
32. In relation to the proposed alternative route, originally suggested by the school, the same user would connect with Park Lane approximately 180 metres to the south of SR131. This was not considered satisfactory. The proposal

necessitating a much greater distance to walk along the busy Park Lane. An issue also raised by those raising objection.

33. The Case Officer has been attempting, with the school and the Knole Estate to mitigate this issue. As a result, agreement has been reached to add the secondary route, through a further section of the woodland and then utilising the verge to the western side of Park Lane to a point opposite the property shown as Cherry Tree Cottages on Appendix A, thus reducing the distance needed to negotiate Park Lane to approximately 70 metres.

Whether the right of way will not be substantially less convenient to the public.

34. The proposal will not be substantially less convenient to the public. Connections to the existing network will be maintained. With the addition of the proposed connection road walking will be reduced. The paths will be surfaced for the comfort of the public reasonably expected to use it. The path is recreational it does not perform a more utilitarian purpose.

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

35. Matters of personal preference are often raised. However, such relative statements are common in this area of Public Rights of Way work. The current route, it is cited by some, is more open and is pleasant. However, woodland walks are also considered pleasant and enjoyable by many and in that respect, this proposal would also have the advantage of use being undisturbed by the activities currently taking place on the playing field. It is also known, from experience, that such use would be a total deterrent to many from using the path across the school field. The proposed route would overcome that issue. It would also shorten the distance to negotiate along Park Lane.

The effect on other land served by the existing public right of way.

36. There will be no detrimental effect.

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.

37. There are none.

Further considerations

38. In addition to the tests set out in section 119 of the Highways Act 1980, the County Council must also have regard to the following issues when considering an application to divert a public right of way.
- a) Under section 29 of the Highways Act 1980, the County Council has a duty to have regard to the needs of agriculture (including the breeding and keeping of horses), forestry and the desirability of conserving flora, fauna and geological and physiographical features. In this case, there is no adverse effect caused by the diversion of the path.

- b) Section 40 of the Natural Environment and Rural Communities Act 2006 requires that every public authority must have regard “*so far as is consistent with the proper exercise of [its] functions, to the purpose of conserving biodiversity*”. In this case, there is no adverse effect caused by the diversion of the path.
 - c) Where the affected land forms part of a National Landscape, section 85 of the Countryside and Rights of Way Act 2000 requires that the County Council shall have regard to “*the purpose of conserving and enhancing the natural beauty*” of the National Landscape. In this case the land does form part of a National Landscape.
 - d) Under section 17 of the Crime and Disorder Act 1998, the County Council has a duty to exercise its functions “*with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area*”. In this case, there is no adverse effect caused by the diversion of the path.
39. Finally, the County Council is subject to the public sector duty regarding socio-economic inequalities set out in section 1 of the Equalities Act 2010. An assessment in this regard has been undertaken and there will be no adverse impact on the use of the affected path as a result of the diversion.

Conclusion

40. As stated in the Weston³ case, “*the question that has to be asked under Section 119(1) of the Highways Act 1980 is whether the diversion is expedient in the interests of the landowner... if it is more convenient, beneficial or advantageous to him, it is expedient in his interests*”. It is considered, therefore, that whilst the Officer’s view is the legal tests are met in all respects and it appears expedient that an Order should be made in the interests of the landowner without impacting on the enjoyment or convenience of the public, there is local opposition to the application including from key stakeholders.
41. As such, a decision of the Regulation Committee Member Panel is sought in this matter.

Recommendation

42. I recommend that the County Council makes (a) a Public Path Diversion Order to divert Public Footpath SR161 Seal; and (b) in the event of objections to the Order, the matter be referred to the Planning Inspectorate.

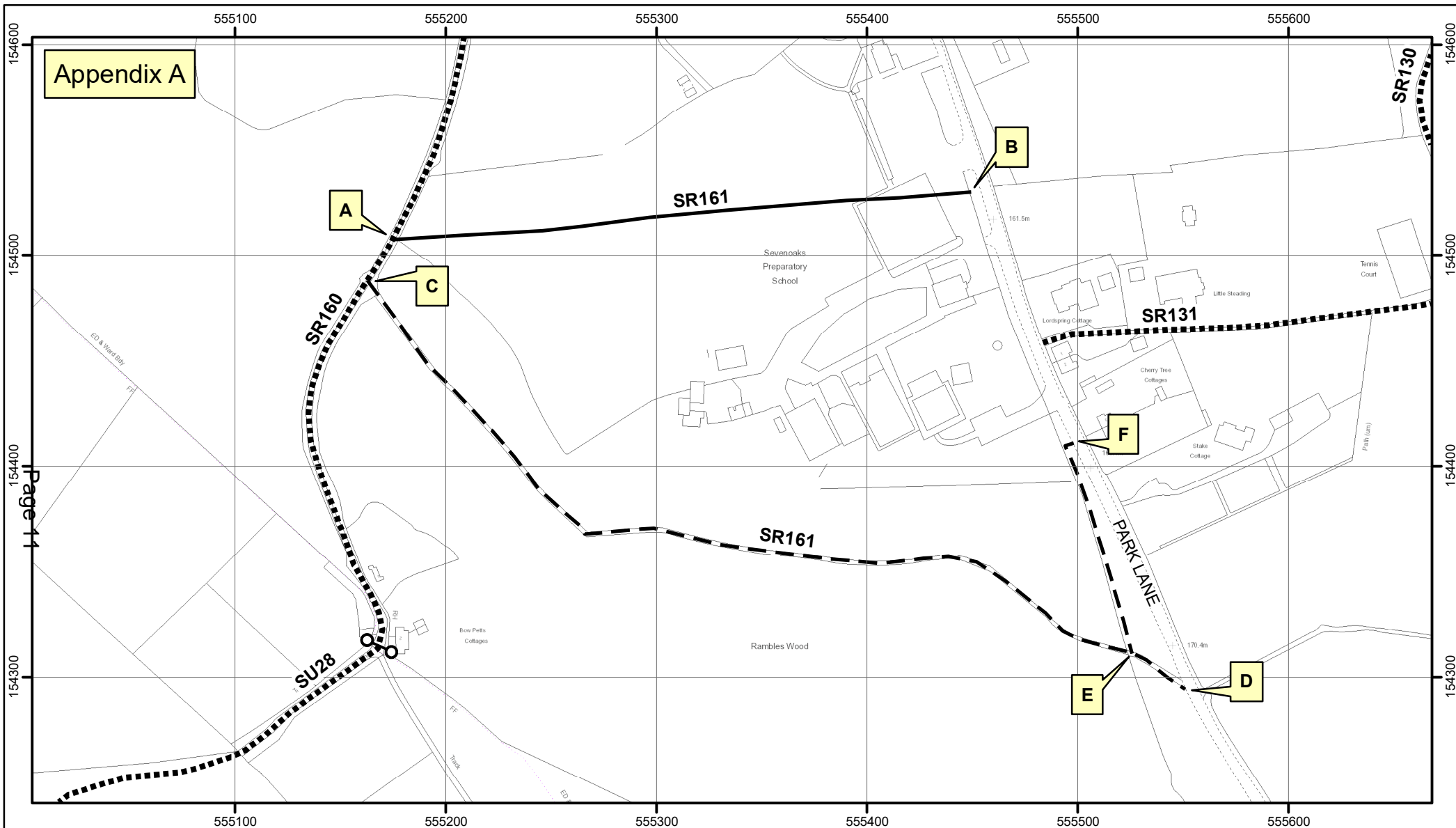
Accountable Officer:
Mr. Graham Rusling– Tel: 03000 413449 or Email: graham.rusling@kent.gov.uk
Case Officer:
Mr. Chris Wade – Tel: 03000 413449 or Email: chris.wade@kent.gov.uk

Appendices

APPENDIX A – Plan showing proposed diversion of Public Footpath SR161

³ At paragraph 33

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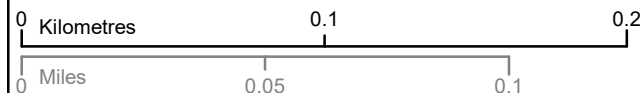


Key

- Route to be diverted
- - - New length of route
- Unaffected Routes

Highways Act 1980
Wildlife and Countryside Act 1981
The Kent County Council
(Public Footpath SR161, Seal)
Proposed Public Path Diversion and Definitive Map and
Statement Modification Order 2025

Public Rights of Way and Access Service



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Agenda Item 6

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