

Application to divert part of Footpath MT114 at Hadlow College, Hadlow

A report by the Divisional Director of Environment & Waste to the Kent County Council Regulation Committee on 19 March 2010.

Recommendation: I recommend the County Council declines to make an Order under Section 119 of the Highways Act 1980 to divert Public Footpath MT114, because the Order would not be capable of confirmation.

Local Member:

Mr Richard Long

Unrestricted

Introduction

1. The County Council has received an application to divert part of Footpath MT114 (as shown in Appendix A) at Hadlow by the landowners, Hadlow College, on the grounds of security. Over recent years there has been an increase in theft of agricultural machinery and equipment from the College. The public footpath through the college provides unhindered public access to the College "presenting the opportunity for theft". In addition, the college holds a duty of care to its younger students and so again the footpath allows unhindered access to the College and there is no ability to challenge people at the heart of the Campus. Planning and development consultants **dha** are acting as agents on behalf of the landowner.

2. The proposed diversion route was originally put forward to Tonbridge & Malling Borough Council as a footpath creation and extinguishment (Planning Application: TM/07/03568/FL). Following a meeting at the end of May 2007, Hadlow Parish Council objected to the proposal on the basis that the College had not made a strong enough case for the diversion.

Procedure

3. 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 landowner's interest and the new 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

4. Consultations have been carried out as required. No objections were received from the Statutory Undertakers. The Area PROW Manager agrees in principle with the proposal as long as the College remains responsible for surfacing and bridges, that the steps by the A26 are removed and that gates should be 2-way opening metal. Kent Police have leant their support to the

proposal believing it will have a positive effect on the reduction in crime, as the College staff will have the ability to challenge any trespassers.

5. An objection has been received from Hadlow Parish Council. They consider the proposal to be in the interests of the landowner, but do not feel that security issues are valid reasons. They believe it to be less convenient as it is further and there may be an impact on the wildlife by the river. It will be less enjoyable as the views of the flower beds in the College grounds will be lost.

6. An objection has been received from the Ramblers' Association on the grounds that the current route is of historical significance, being shown on the Tithe map of 1842 and Muges Map of 1801. It passes through an interesting mixed environment of flower beds, maintained trees, horticultural sales centre and restaurant, an historic building and an equine centre. It is clean, well lit and easy to walk on. It leads to other paths that cross and run alongside the River Bourne and is well drained and not likely to flood. The proposed route is less interesting with no views of the College and College life except for the tractor training, where the risk of safety is likely to be higher than with vehicles on the current route. Currently there are not good views of the river from the proposed route; it is unlit and more prone to flooding. There may be a negative impact on wildlife if there is increased human and canine activity alongside the river there. The proposed route is less convenient as it is longer and if coming from the north there would be a long trip round to the College nursery and other enterprises. It may make the rear gardens of other properties more vulnerable. Without other significant measures, it is unlikely that security will be improved.

7. Tonbridge & Malling Borough Council is concerned about the location of the proposed route as the river is prone to flooding.

8. **dha** were invited to respond to the objections and other comments.

a) *Security would not be improved as it is an open site.* The College is private land and not an open site; moving the path would reduce opportunity for people to access the heart of the College where machinery is stored; it will be easier to identify who is legitimately on site; machinery theft is only part of the reason for the diversion – more importantly is the duty of care to younger students. The proposal is supported by Kent Police and Tonbridge & Malling Borough Council Crime Reduction Officers.

b) *It will be less convenient and less enjoyable due to potential flooding.* The flood risk is low and as the path would have a hard surface it would not be muddy and impassable at wet times.

c) *It would be less enjoyable as walkers would not be able to enjoy the planting.* The planting is done at the choice of the College and they are under no obligation to continue, but this will still be enjoyed by people visiting the tea rooms. Planting will take place at the river side by the new path.

d) *There is no point in the diversion as the public will still be able to access the tea rooms, garden centre and restaurant.* The College are under no obligation to provide the facilities currently offered. The purpose of the diversion is to limit the potential for unauthorized persons to obtain free access to the centre of the College as of right.

e) *It is an historic route.* The needs and requirements of the landowners must take precedence.

f) *There would be an increased security risk to nearby residents.* The proposed route is not in close proximity to residential homes, and why should the College be exposed to the security risk any more than anyone else?

9. **dha** emphasised the benefits of the proposal – that it will be a pedestrian only route and therefore safer; there will be an appropriate surface; it will offer a more tranquil and rural experience; if the proposal goes ahead the College will further create, by agreement, a connecting route with Carpenters Lane.

10. Those objectors who responded to **dha's** comments did not feel their issues were sufficiently addressed.

View of Members

11. Mr Long, County Member and District Councillors Mrs Jill Anderson, Miss J Sergison and Mr Owen Baldock have been consulted. Councillor Sergison did not respond. Mr Long informed the County Council that he has been lobbied by local people and registers his objection to the proposal. Councillors Anderson and Baldock also object to the proposal. They do not feel it is in the interests of the landowner as it is an open site and unlikely to be any more secure as a result of the diversion unless accompanied by other measures; it is much less convenient as it is longer and the River Bourne floods; it would be less enjoyable due to the flooding issue, possible environmental concerns and the loss of the historical route; it may make the properties in Carpenters Lane less secure.

The Case

12. 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: -

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

13. It is expedient to divert the path in the interest of the landowner. MT114 currently passes along the main access road into Hadlow College. The College is an open site, in that the public are not physically restricted from wandering around the grounds, and, with or without the footpath, the general public will continue to have access to the tea rooms, garden centre and restaurant so long as those facilities are provided.

14. However, the landowner believes that diverting the footpath away from the centre of the College will improve security in regards to the agricultural equipment and their younger students. Additional security measures would need to be undertaken to prevent the public from wandering on areas where they do not have a right to be. The College feels that the diversion will better enable them to challenge people on the campus. It should be noted, however, that the public rights exist on the line of the footpath only, and not within the remainder of the College grounds. Therefore, College staff can challenge anyone not on the footpath currently.

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;

15. There is no common point of termination. However from the A26 (southern end), the proposed point of termination (point F) is approximately 95 metres closer to the village than the current point of termination (point A), which could be seen as more convenient if coming from that direction. The second point of termination on the proposed route (point C) links with the same footpath (MT118) as the current point (point B) and although approximately 206 metres north-east, is not seen as substantially less convenient.

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

16. The proposed route is seen as being substantially less convenient to the public as it is longer: the distance from B-C is more than twice that of A-F. In addition, the River Bourne is prone to occasional flooding, which even with a surfaced path, may make it impassable at times, whereas the current route does not flood. The current route is well lit whereas the proposed route would be unlit. Although the current route shares a driveway with vehicles, there is plenty of space to move out of the way. The proposed route runs partly through

a tractor training ground, which is seen to be a greater risk due to the fact that it is a training area. If walking from the north, it would mean a much longer journey if wanting to access the tea rooms or garden centre.

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

17. The proposed route would have a negative impact on the enjoyment of the public. The current route has a strong historical link, being part of an ancient highway, appearing on Mudges Map 1810 and the Tithe Map 1842. As well as this the proposed route is felt to be less interesting as there are no views of the College or college life. Although the proposed route runs alongside the river, there are opportunities further along for a riverside walk.

18. **dha's** response to the objections did not adequately address the main issues raised in terms of convenience and enjoyment. In addition, the comment was made that amongst those who made representations, there is an implicit assumption that the public have the right to benefit from services and facilities such as lighting and planting provided by the College and to be part of College life. However, although there is not a right for the public in regard to these things, they are being enjoyed on the current route, whereas on the proposed route there is none of this. Presently these aspects add to the overall enjoyment of the experience.

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

19. The effect of the diversion will have no impact on other land served by the existing rights 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;

20. The new route created by the Order will have no impact on other land served by the rights of way.

Recommendations

21. The primary reason for the application to divert Public Footpath MT114 is security. Crime figures over the last few years have been produced showing theft and assault amongst others. However it is difficult to get an accurate picture of exactly what has been happening and who has been responsible. Unless other security measures are put in place, the diversion of the footpath is unlikely to make a dramatic difference to these figures as people will still be able to use the current route to access the College facilities and other areas are not clearly signed against public access.

22. Objections have been received to the proposal. These objections were based primarily on public convenience and enjoyment. Objectors were not satisfied that the response of **dha** to their issues was adequately dealt with, as described above.

23. I therefore recommend that the County Council does not make an Order under Section 119 of the Highways Act 1980 to divert Public Footpath MT114, because the Order would not be capable of confirmation.

Background Documents:

APPENDIX A – Plan showing the proposed diversion of Public Footpath MT114

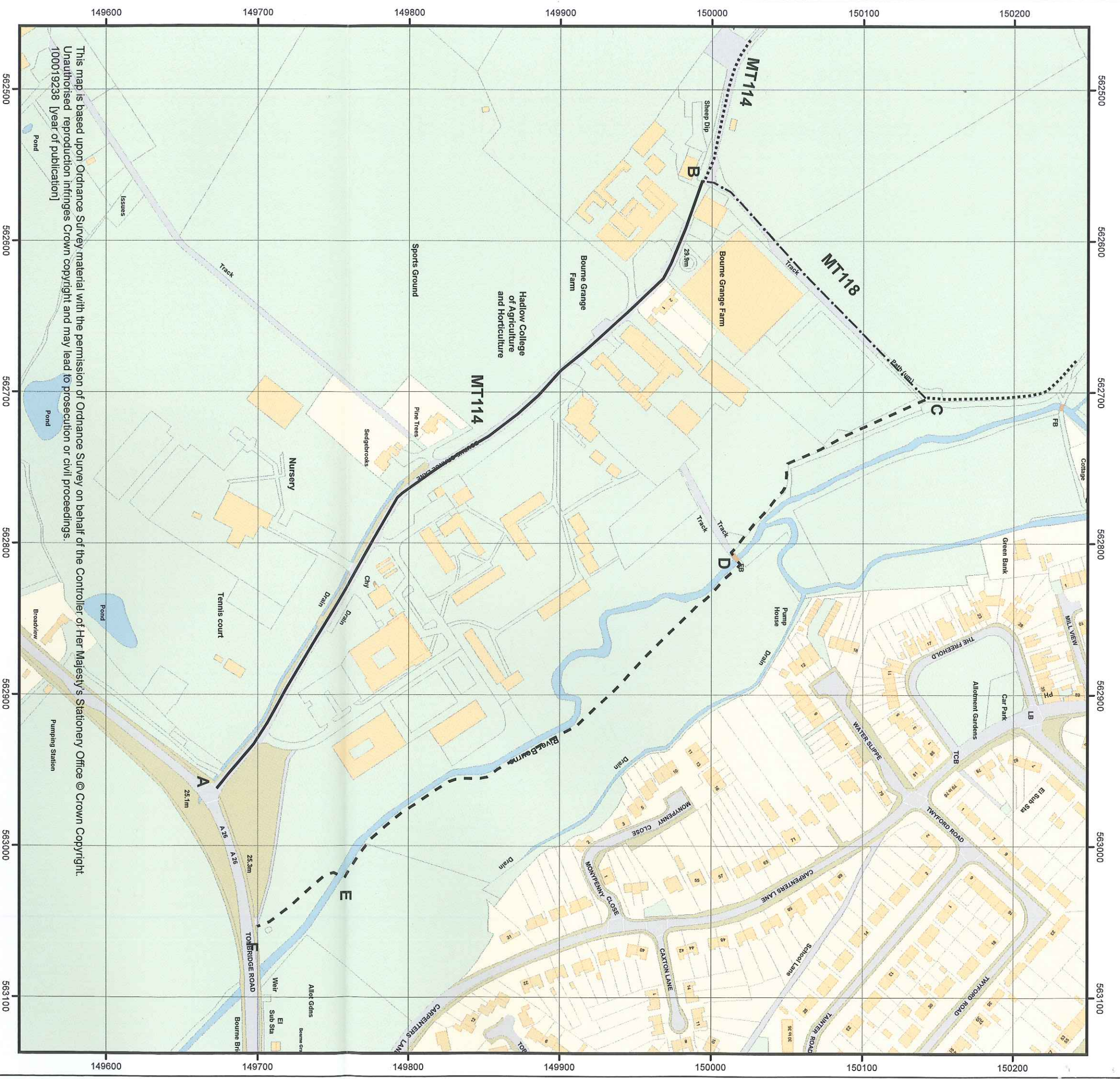
Case reference:

PROW/MT114/1284

Contact Officer:

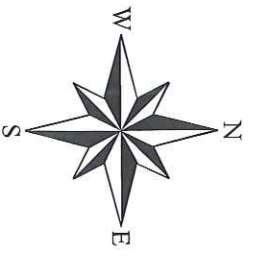
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- Route to be deleted
- Route to be added
- Route to be renumbered
- Unaffected routes



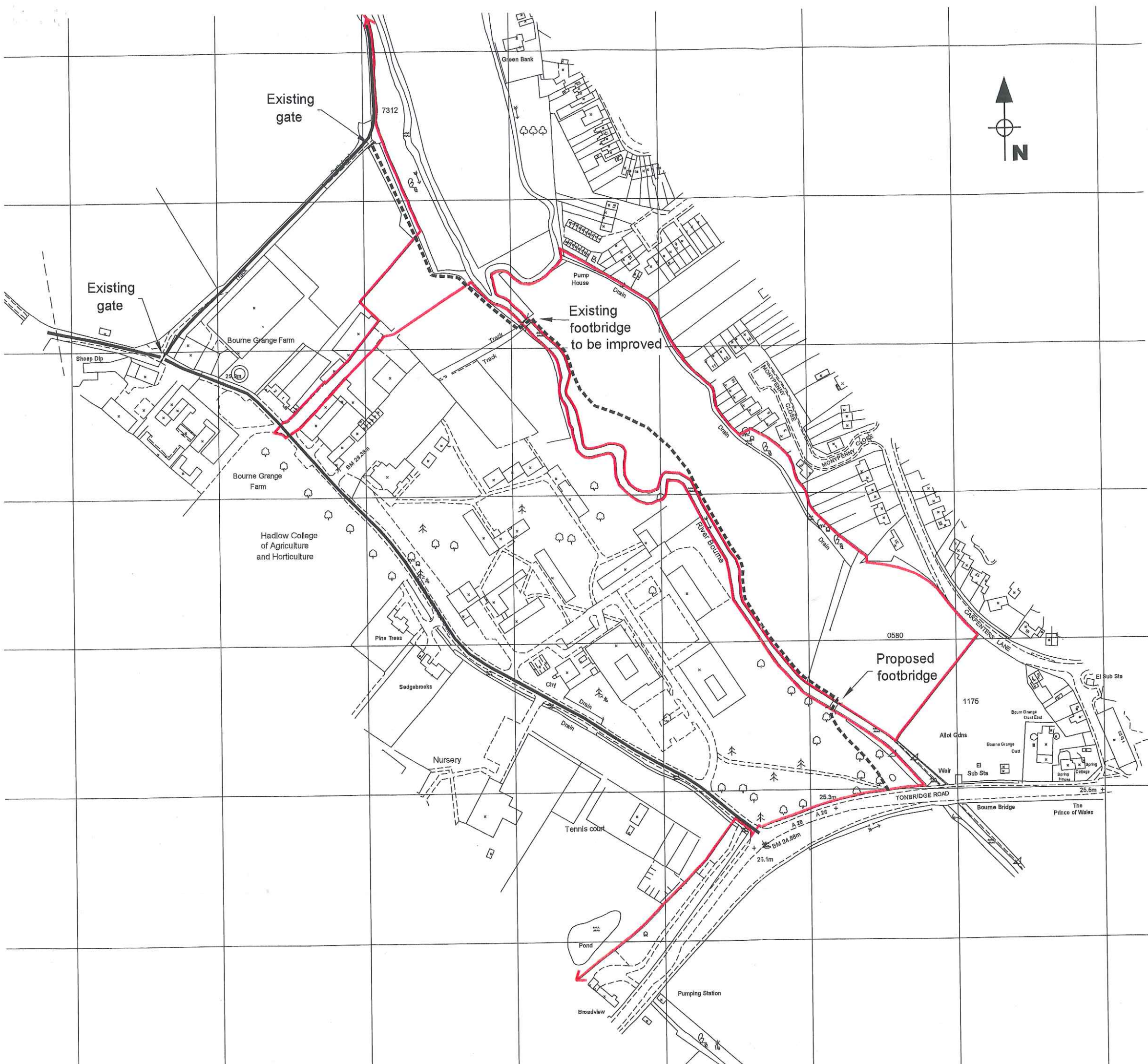
Scale 1:2,500

Highways Act 1980
Kent County Council
Proposed diversion of MT114 at Hadlow

Linda Davies - Environment & Waste Divisional Director



21/04/09



- EXISTING FOOTPATHS
- PROPOSED DIVERTED FOOTPATH
- OWNERSHIP BOUNDARY

client	HADLOW COLLEGE		
project	PUBLIC FOOTPATH DIVERSION, HADLOW COLLEGE, HADLOW, TONBRIDGE		
title	SITE LAYOUT PLAN		
drwg	rev	scale	date
DHA/5704/06		1:2500	JULY 2007



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CAD Reference: 5704-Site layout plan 06

OF PUBLIC RIGHTS OF WAY - COUNTY OF KEI

035

Map Sheet 035
T064NW

This map has been updated to show
CURRENT PROPOSED
NETWORK

T065SW
Adjoining sheet

61 19 62 20 63
TONBRIDGE AND MALLING CO CONST
MT14-MT18

