

Application to divert part of Bridleway MR108 (parts) at Ditton and East Malling & Larkfield

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 makes two Orders under Section 119 of the Highways Act 1980 to divert;

(a) part of public bridleway MR108 at Ditton, on the grounds it is expedient to divert the path in the interest of the landowner and/or occupier and;

(b) part of public bridleway MR108 at East Malling & Larkfield, 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 Members:

Mrs Trudy Dean and
Mr Peter Homewood

Unrestricted

Introduction

1. The County Council has received an application to divert part of public bridleway MR108 within the parish of Ditton and part of public bridleway MR108 within the parish of East Malling and Larkfield by the landowners, Mr P & M Gallagher, to:

- (a) Help improve land management (Oaken Wood) and
- (b) To formalise an existing arrangement, whereby the public are using an alternative route to the Definitive line in order to avoid a private driveway (Luckhurst Farm).

2. An initial consultation was undertaken by the County Council in August and December 2009. Following the consultation in August the County Council received a number of objections to proposal A. A meeting was therefore held on site, with those who had responded to the consultation to discuss their comments in greater detail. This site meeting failed to address any of the objections and representations made. No objections have been lodged thus far to proposal B.

Existing and Proposed Routes

Proposal A

MR108 (Oaken Wood)

3. The existing route of public bridleway MR108 is shown by a solid black line between points A and B and the proposed diversion is shown by black dashes between points A-C-B at **Appendix A** to this report.

4. The public bridleway currently runs through managed woodland along a narrow woodland track. The proposed route runs along a wide surfaced track, which provides a woodland walk along much of its length, and excellent views of the North Downs when travelling from C to A as shown at **Appendix A**.

Proposal B

MR108 (Luckhurst Farm)

5. The existing route of public bridleway MR108 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 at **Appendix B** to this report.

6. Currently the definitive line of MR108 which runs along the private driveway accessing Luckhurst Farm is obstructed by security gates and a cattle grid, and the public are using an alternative route. The route is further obstructed by two hedges and two fences when trying to access the definitive route from Sweets Lane. The alternative route was put in place when planning permission was granted for the construction of the driveway and gates. As the definitive line of MR108 would be affected by the planning consent, the onus was on the landowner to ensure the path was diverted by further provisions of the Town & Country Planning Act 1990. However, this process was not carried through and so the County Council has been asked that this section of MR108 be included in the application to resolve this issue.

Procedure

7. 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

8. Consultations have been carried out as required. No objections have been received from the Statutory Undertakers, Maidstone Borough Council, East Malling & Larkfield Parish Council or Aylesford Parish Council. No response was received from Tonbridge and Malling Borough Council or The Open Spaces Society.

9. Objections to the proposed diversion of Public Bridleway MR108 at Ditton (Oaken Wood) have been received from Barming Parish Council, Ditton Parish Council, The Ramblers' Association via its local representative Mr Nigel Ward and Ms S Manser. Barming Parish Council commented on the fact that the diversion would detract from the enjoyment of a woodland walk, and that the proposal is entirely in the landowner's interest. Ditton Parish Council stated that the diversion would not aid land management in Oaken Wood. The Ramblers' Association stated that they believed that there were other reasons behind the application to divert bridleway MR108, and were not solely based on land management issues. The Ramblers' also stated that there would be a loss of enjoyment if the path were to be diverted. Ms S Manser, is a Councillor for Barming Parish Council, however, Ms Manser replied to the consultation to proposal A as a local resident. Ms Manser stated that the current definitive route is currently wide enough and having a straighter alignment would detract from the enjoyment of the current definitive route through the woodland. The edges of the current definitive route are a habitat for many different species of butterflies. The proposed route will still continue through managed woodland and so the argument of better land management by the landowner is void and if the diversion was to be carried out planning permission could be sort far more easily.

10. No objections were received to the consultation on proposal B, the diversion of MR108 within East Malling and Larkfield Parish (Luckhurst Farm).

View of Members

11. Mr P Homewood and Ms T Dean, County Members, and Borough Councillors; J Balcombe, D Smith, C Grant, B Stone, C Woodger, E Simpson and F Gooch have been consulted. Mr Homewood, although providing no specific comments, attended the site visit, at which he gave his approval to the proposal and has asked to be kept informed as to progress. No responses were received from Councillors D Smith, C Grant, B Stone and F Gooch. Cllr J Balcombe responded in favour to the proposed diversion of MR108 at Ditton. No responses were received from Councillors C Grant, B Stone, C Woodger, E Simpson.

12. Mrs T Dean commented on the proposal to divert MR108 at Ditton (proposal A). Mrs Dean states that the route is an important one published in many circular walks, she is also aware that the land at Oaken Wood is an area of search for quarrying despite it being ancient woodland. Mrs Dean supports the views of Ditton Parish Council, and asks that if the path stays on its current definitive line that it is properly waymarked and surfaced as it is difficult to use in the winter.

The Case

13. 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 Bridleway MR108 (Proposal A), Ditton

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

14. It is considered expedient to divert the path in the interests of the landowner and/or occupiers of the property to allow them to effectively manage their woodland for coppicing. Public Bridleway MR108 passes through the middle of Oaken Wood, and as such causes many problems to the land owner when coppicing. By diverting the bridleway the landowner would be able to better manage his woodland, which the land agent Mr La Dell will elaborate on. It is also noted, that the proposed diversion will offer the public a far wider and better surfaced route.

15. The objectors have stated a number of reasons against the diversion of public bridleway MR108 in Oaken Wood. Firstly, they state that the proposed diversion of MR108 is purely in the landowner's interest and not that of the public. The objectors also state that the diversion would not aid the land management of the wood. Some of the objectors also stated that the diversion would allow planning permission to be granted for the wood far easier if the bridleway was diverted.

16. The definitive line of bridleway MR108 passes through close woodland and at points is less than a metre wide. The surface of the route although metalled in places is uneven and can become very muddy in heavy weather. The proposed new bridleway has a width of 4 metres, is level and surfaced with ash. Whilst still providing a woodland walk for much of its length, the proposed route also offers extensive views of the North Downs when walking from point C to A (Appendix A). By diverting MR108, the landowner would be able to better manage his woodland by closing parts off when coppicing, which with the current Public Bridleway running through the centre of the woodland is difficult to do.

17. Extensive consultation has taken place with representatives of Ditton Parish Council, Barming Parish Council, and the Ramblers' Association, this

has included two formal consultations, and a site meeting. It is not deemed necessary to delay proceedings any further in order to carry out further, and what would be repeat, consultations.

18. The objectors are sceptical as to the land management concerns cited by the landowner. A number of the objectors have stated that the application for the diversion is merely a preparation for planning permission to be granted on the site. Although the County Council is aware of a scoping exercise having been undertaken to extend the nearby quarry into the woods, no planning permission has been sought. The County Council is not able to take into account the possibility of future planning consents, and in fact, were the reasoning behind the diversion to allow quarrying there are provisions to divert or extinguish public rights of way under the Town and Country Planning Act 1990.

19. 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 bridleway MR108 (part) will benefit the landowner by allowing better land management of the wood.

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;

20. The common points of termination (Point A & B) will not be altered and are therefore as convenient.

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. Although the proposed route is an extra 128 metres longer than the definitive route, the surface of the proposed route makes travel a lot easier than that of the definitive. It should also be noted that this is a recreational route, and therefore will be as substantially as convenient to the public.

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

23. Public enjoyment of the path as a whole will not be affected. The proposed route provides a woodland walk with views along the entire length of path. There are extensive views to the north and north-west on the proposed route, when travelling from point C to A. The current definitive line of MR108 runs through enclosed woodland along a narrow track. The proposed offers the user a wide, level and well surfaced path, through woodland with extensive views of the North Downs available. The definitive route, in comparison,

although a pleasant woodland walk, feels confined and is difficult to navigate due to its uneven surface and condition in heavy weather.

24. The objectors have stated the proposed diversion will have a negative impact on public enjoyment. The objectors state that the diversion would mean that the public would lose a woodland walk along this part of public bridleway MR108. This is not considered to be the case. The proposed route will still offer the user a woodland walk, with the benefit of extensive views of the North Downs when travelling from point C to A on the attached plan.

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

25. 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;

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

Public Footpath MR108 (Proposal B), East Malling & Larkfield

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

29. It is expedient to divert the path in the interest of the landowner and in the interest of the public. Public footpath MR108 currently runs along a private driveway leading from Oaken Wood to Sweets Lane accessing Luckhurst Farm. The definitive line of Public Bridleway MR108 is obstructed by a set of security gates, cattle grid and two fences and hedgerows. The landowner originally applied for planning permission to erect the security gates, which was granted by Tonbridge & Malling Borough Council. As this planning permission affected the route of bridleway MR108, the onus was on the landowner to have sought a diversion of the path under the provisions of the Town & Country Planning Act 1990. This process would have been dealt with by Tonbridge & Malling Borough Council, however, since the landowner appears to have made no relevant application this did not occur. The County Council does not normally condone the obstruction of a definitive route when dealing with diversion applications. Our policy states:

“KCC will take into account whether the following criteria are satisfied before promoting a Public Path Change Order. Irrespective of the following, the statutory reasons for changing Public Rights of Way must apply.

- 1. 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.*
- III. *The applicant must also agree to defray any compensation which may become payable as a result of the proposal.*
- IV. *The definitive line should where it is considered by KCC to be reasonably practicable be open, clear and safe to use.*

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 circumstances to do so."

30. However in this case it would, in my view, be unreasonable to require the applicant to open the definitive line when a formalisation of the alternative route would overcome this problem. The County Council approached the landowner to include this part of MR108 within the diversion application as this will resolve this issue on MR108 within East Malling & Larkfield Parish. Diverting the bridleway will not only assist the landowner in helping to secure his property, but will also benefit the public by removing the need to walk or ride along a private driveway, with the possibility of conflict between vehicles, pedestrians, cyclists and horses.

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;

31. The common point of termination (Point A) will not be altered and is therefore as convenient. The second point of termination (Point C) is 40 metres to the west of the original termination point (Point B). The new termination does, however, remove the need to exit bridleway MR108 on a blind bend (Point B). The new point of termination (Point C) allows the user to exit onto Sweets Lane in a much better position, with good views along the road in both directions and removing 40 metres of road walking to connect with the nearest Public Right of Way. 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;

32. The existing route measures approximately 888 metres (A-B), plus an additional 300 metres of road walking to continue along the nearest connecting Public Footpath (MR107). The proposed route measures approximately 963 metres (A-C), and reduces the amount of road walking to connect with the nearest Public Right of Way. 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;

33. Public enjoyment of the path as a whole will not be affected. The proposed route provides better views towards the north compared to those on the current definitive route. The current definitive route is hedged on both sides, resulting in restricted views in the spring and summer. The new route will also remove the need for walkers and horse riders to use the same private driveway as vehicles improving the safety of the public.

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

34. 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;

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

36. 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

37. 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 bridleway MR108 at Ditton, on the grounds it is expedient to divert the path in the interest of the landowner and/or occupier and;
- (b) part of public bridleway MR108 at East Malling and Larkfield, 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.

Appendix A- Map showing the route and location of public footpath MR392
Appendix B- Map showing the route and location of public footpath MR350

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