

KENT COUNTY COUNCIL

REGULATION COMMITTEE MEMBER PANEL

MINUTES of a meeting of the Regulation Committee Member Panel held in the St Lawrence Village Hall, Church Road, Sevenoaks TN15 0LL on Tuesday, 18 March 2025.

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

IN ATTENDANCE: Ms H Savage (Democratic Services Officer), Mr C Wade (Public Rights of Way Officer), Mr D Munn (PROW Area Manager - West Kent) and Ms M McNeir (Public Rights Of Way and Commons Registration Officer)

UNRESTRICTED ITEMS

1. Declarations of interest for items on the agenda
(Item 2)

In relation to Item 2 - *Application to divert Public Footpath SR161 at the Sevenoaks Preparatory School, Seal* - Mr Cole declared an interest that he was Deputy Leader of Sevenoaks District Council but was able to approach the determination of the application with an open mind.

2. Application to divert Public Footpath SR161 at the Sevenoaks Preparatory School, Seal
(Item 3)

1. The Members of the Panel visited the site of the proposed diversion prior to the meeting. This visit was also attended by Mr Andrew Hodgkin (Bursar, Sevenoaks Preparatory School), Ms Margarethe Batteson (Kent Ramblers), Mr Chris Haslam (Chairman of Seal Parish Council) and Ms Christine Owlett. The Panel Members and interested parties walked the route of the footpath as it currently was and the proposed diversion as shown at Appendix A to familiarise themselves with the route and facts relating to the application.
2. Mr Chris Wade, Public Rights of Way Officer, introduced the report which set out the application the Council had received from Sevenoaks Preparatory School at Park Lane, Godden Green to divert Public Footpath SR161 at Seal.
3. Mr Wade explained that the current route of the path ran across a tennis court on the land owned by Sevenoaks Preparatory School and an informal diversion had been provided by the school. He highlighted that this was an issue that the school and the Council would need to overcome even if the decision was not made to divert the path.

4. Mr Wade explained, as set out in the report, that the first consultation had resulted in the proposal that the new route could be upgraded to bridleway status to provide greater benefit for a larger section of the public. However, the costs this would involve had led to this proposal being abandoned and a reversion to the original proposed diversion at footpath status.
5. Mr Wade explained that the Council must be satisfied that it is expedient to divert a legally recorded public right of way on the grounds set out within the Highways Act 1980 and confirmed he was satisfied that it was expedient in the interests of the owner of the land to divert the path. Mr Wade set out the considerations that the Council must consider (paragraph 11 b. i-iv of the report) are satisfied before promoting a Public Path Change Order and confirmed that all the criteria in relation to these had been complied with.
6. Mr Wade referred to paragraphs 13–25 of the report and said that consultations had been carried out as required. He summarised the comments that had been received and the outstanding objections.
7. Mr Wade explained that two substantive issues had been raised (paragraph 19 of the report) which included that the path had been there long before a purchaser bought the land, and that the path was obstructed and was therefore not in compliance with paragraph 2(4) of the Council's General Notes on requests for Diversion or Extinguishment of a Public Right of Way. Mr Wade referred to paragraph 20 of the report and explained that the Council must balance the interests of the owner against those of the public and whilst the owner may have been aware of the existence of the footpath it did not preclude an Order being made by the Council. Mr Wade referred to the Council's General Notes to accompany a Public Path Order application where the discretion available to the Council was clearly and deliberately set out following advice from Counsel. The 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".
8. Referring to paragraphs 26-37 of the report Mr Wade summarised the criteria that must be considered, when dealing with an application to divert a public right of way, under Section 119 of the Highways Act 1980. He confirmed that he considered that the main categories for diverting the path had been met. In addition to the tests set out in section 119 of the Highways Act 1980, the Council must also have regard to the issues set out in paragraph 38 of the report when considering an application to divert a public right of way. Mr Wade notified the Panel of a typographical error in the report at paragraph 38 (c) which should read "In this case the land does not form part of a National Landscape".
9. Mr Wade said it was the Officers' view that the legal tests had been met in all respects and it appeared expedient that an Order should be made in the interests of the landowner without impacting on the enjoyment or convenience of the public whilst noting that there was local opposition to the application. Mr Wade recommended that the Council makes a Public Path

Diversion Order to divert Public Footpath SR161 Seal; and in the event of objections to the Order, the matter be referred to the Planning Inspectorate.

10. The Chair invited questions of clarification from the Panel to Officers.
11. Mr Cole referred to paragraph 33 of the report and asked how the Weston case related to the application, as well as the Wednesbury Principle, and Mr Wade explained that, as in the Weston case, there was low landowner interest and therefore it was necessary to consider the enjoyment of the public. In relation to the Wednesbury principle Mr Wade said the Council had made considerable efforts to consult with members of the public and key stakeholders and had sought Counsel's opinion.
12. Mr Cole asked for clarification regarding the definition of 'public' and Mr Wade explained that anyone invited onto the land by Sevenoaks Preparatory School was there by right, and members of the public using the footpath were there by right. He stressed the importance of considering all the issues that relate to the general public as a whole.
13. Miss Carey asked about the slight gradient of the proposed path and Mr David Munn explained the importance of considering the current users of the path and said it was not possible to specify that a certain gradient was not acceptable. Mr Wade confirmed that the Officers' professional opinion was that anyone using the current path now would be able to use the proposed path although it would be slightly less convenient to do so, and this was allowed under legislation.
14. Mr Baldock asked whether it needed to be expedient in the interests of both the landowner and the public and Mr Wade explained it could be in the interests of one or both. There would need to be grounds for the landowner if it was not in the interests of the public.
15. Mr Baldock questioned whether the proposed route would be suitable for use by those with a disability and Mr Wade explained that the current route across a playing field would be difficult to use by those in a wheelchair as it was not maintained. If the route became a highway it would be maintained and a surface would be put down. Mr Munn explained there was not a definitive answer and a judgment in this regard was made from evidence received from interested parties.
16. Mr Baldock referred to the proposed diversion and its use by horse riders. Mr Wade said the British Horse Society had been consulted and notices had been posted for members of the public to see. He explained that it was the pedestrian rights that were being diverted and it was possible horses would use the route however they would not be exercising a public right. Mr Wade referred to a Section 31(6) of the 1980 Highway Act deposit and said this ran to 2033 (it was renewed every 20 years) and explained that landowners could give permission to horse riders and cyclists to use a PROW on their land.

17. The Applicant, Mr Andrew Hodgkin on behalf of Sevenoaks Preparatory School, addressed the Panel. He explained that the principal reason for the application was to protect the school children and promote safeguarding. He said there were extensive regulations in place to ensure the school children were protected and any person who came onto the school site was required under Department of Education rules to sign in and be accompanied by a member of staff at all times. However, in the case of the footpath the school was not able to take those measures and at times several people could be walking across the school playing field as children were outside playing. He said a detour was needed which he believed provided a more natural perspective and minimised the risk of pedestrians walking across the field and being hit by stray balls. He said it would be negligent of the school and the Council not to address the safeguarding issue until there was any evidence that it was necessary to do so, and the school had a duty to protect its children who were not able to protect themselves.
18. Ms Margarethe Batteson from Kent Ramblers had sent a written representation (as below) in objection to the application which was circulated to the Panel prior to the meeting:

“Submission dated 14 March 2025 on behalf of Kent Ramblers in response to the Report by the Head of PROW and Access to Kent County Council’s Regulation Committee Member Panel on 18 March 2025 (the “Report”).

We wish to make the following observations/comments on the Report. References to paragraph numbers and definitions reflect those set out in the Report.

Introduction

1. *Noted.*
2. *The current route is blocked by the tennis court which is a fenced structure. Given the physical presence of the tennis court, the only current option is to walk around it, so reference to an “informal route” having been provided by the School is somewhat disingenuous. On one occasion last year, the author of this submission, hesitating while trying to ascertain where the path runs over the School grounds in the absence of any signs or markings, was instructed by a member of the School’s staff that the correct route of the path was to walk north along the edge of the car park.*
3. *Noted.*

Background

4. *No comment.*
5. *We comment on these grounds later in this submission.*
6. *It appears that the School is unable to make the case for requiring diversion under S119 (B) of the Highways Act 1980 (to protect pupils and staff from violence or the threat of violence; or harassment; or alarm or distress arising from unlawful activity; or any other risk to health or safety arising from such activity) and is instead relying on the catch-all list set out in paragraph 5 of the Report. The School admits that its pupils are fully supervised at all times when on site (see paragraphs 6 and 28 of the Report). This suggests that the*

safeguarding concerns listed at paragraph 5 of the Report are hypothetical rather than real.

7. *The site security guidance issued by the Department of Education (updated 12 July 2024) recommends that a school's boundary should be protected with a secure fence of railings such as Weldmesh fencing to BS1722 or expanded metal railings over 2.0m high. There is nothing to prevent the installation of Weldmesh fencing which would retain the open aspect that the School indicates it wishes to maintain. Suitable signage would also alleviate the School's concerns about walkers "ending up in the wrong part of the School" (See paragraph 5 of the Report).*
8. *See paragraph 1 above.*
9. *The route of the proposed diversion is currently used not only by equestrians from nearby riding stables, but also by walkers. No mention is made of how it is intended to exclude equestrians if the diversion is only to have footpath status. This is of great concern given the current state of the track (making it difficult for walkers) and its condition in the future if there is continued use as an informal bridleway. Will horse riders be excluded and, if so, how? Have they been consulted?*
10. *No comment.*

Policy

11. *No comment.*

Legal Tests

12. *No comment.*

Consultation

13. *Noted.*
14. *Noted.*
15. *Noted.*
16. *Noted.*
17. *Noted.*
18. *Noted.*
19. *Noted.*

Comments on the objections

20. *No comment.*
21. *We would wish to understand how that discretion is exercised by the Council in the light of the Wednesbury principles.*
22. *We strongly disagree that the guidelines of paragraph 12 (iv) have been met.*
23. *No evidence has been provided that walkers using SR161 have actually caused any issues to the School. The clear implication from this paragraph is that the diversion is purely for the School's convenience (e.g. "it would be totally inconvenient for the school to fence the path across the field"). The School do not seem to be prepared to consider any form of compromise such as moving the path to the side of the playing field to the north of the current route of SR161. We have previously offered to meet with the School to discuss a possible compromise but this offer has not been taken up.*
24. *We note the proposal for an improved highway verge. What form will this take? Future maintenance is of concern.*

25. *We strongly refute the suggestion that a reasonable person would consider the proposed route “pleasant”; in fact, quite the opposite is the case: the track is muddy and rough under foot, makes for difficult walking even in dry weather and is churned up by horse riders. The foliage bordering the path makes it dark and oppressive, even in sunny weather. Contrast the sunny open aspect of SR161 as currently constituted. The fact that walkers may be currently deterred from using the legal route of SR161 where it crosses the playing field (especially if a game is in progress) could quickly and easily be rectified by the erection of adequate signage.*

The Case

26. *No comment.*
27. *No comment.*
28. *See our comments in paragraphs 6, 7 and 23 above and 40 below. Any fencing can be Weldmesh which would preserve the open aspect.*
29. *No comment.*
30. *Noted.*
31. *Noted.*
32. *Noted.*
33. *Noted.*
34. *If it is intended that the new route be pedestrian only, how will horse riders be excluded? Have they been consulted?*
35. *We repeat paragraph 25 above.*
36. *No comment.*
37. *No comment.*

Further considerations

38. *No comment.*
39. *No comment.*
40. *We would refer to the doctrine of “ex turpi causa” in respect of the School’s conduct. It is a fundamental tenet of the common law that a party should not profit from its own wrongdoing. The School purchased the site in full knowledge of the existence of SR161. The School chose to construct games’ pitches across the line of the route of SR161. Furthermore, it appears that it knowingly obstructed part of SR161 by constructing a tennis court over it in or around 2012. Moreover, apart from one “footpath” sign near the road access to the School car park and a sign at the corner of the tennis court directing people around the court, the School has neglected to erect any signage or markings to indicate the correct (or even any) route of the path over its grounds at the Park Lane end of the route. In paragraph 5 of the Report, the School expresses concern at members of the public potentially being injured by “flying balls” during School sports activities when using SR161. The School has chosen to introduce the risk of those flying balls by allowing sports activities to take place on a right of way. If it were to erect a secure fence such as Weldmesh fencing to BS1722 2.0m high, that risk would be minimised.*
41. *No comment.*
42. *We reiterate our objection to the proposed Order for the reasons given above.”*

19. Ms Christine Owlett addressed the Panel and said she was in favour of the proposal. Ms Owlett said she had lived in the parish for 42 years and could not recall a time that she had ever walked across Sevenoaks Preparatory School and had always taken the proposed diversion route.
20. Councillor Chris Haslam (Chairman of Seal Parish Council) addressed the Panel. Mr Haslam said that Seal Parish Council recognised the need to divert the current footpath and was interested to see what the alternative route would be and how it would be maintained. Mr Haslam said the Parish Council supported a submission to upgrade the route to a bridleway. He referred to the gradient of the current path in contrast with the proposed route and said consideration should be given to the condition of surrounding paths. Mr Haslam expressed his support for an alternative safer and shorter route along Park Lane.
21. The Chair invited comments from the Panel.
22. Mr Baldock said there was clear evidence that the footpath was used by members of the public and the path was in place before the land was bought by the school who were now applying for it to be diverted. Mr Baldock expressed his disappointment as to how the application had been made and said the current route was open and flat and safer than the proposed route through woodland. He said the diversion was not like for like and much longer than the current footpath and inconvenient for those with disabilities. He said barriers to the proposed route might mean less people would use it and it would be more appealing if it was flat and open. He said the diversion was substantially less convenient, longer and less safe. Mr Baldock expressed his concern regarding the amount of consultation with equestrian users and potential problems for them using the proposed diversion.
23. Miss Carey thanked officers for the report and clear explanation, and to everyone who came along to the site visit. Miss Carey referred to a viable alteration to the route suggested by officers that would shorten the route along Park Lane. Mindful of this and comments made by the Chairman of Seal Parish Council, Miss Carey proposed, and Mr Cole seconded, an amendment to the recommendation in the report as follows:
 - (a) The County Council makes a Public Path Diversion Order under Section 119 of the Highways Act 1980 to divert Public Footpath SR161 at Seal as shown at Appendix A; and
 - (b) a path at points G to E, as shown on the attached amended plan, be added to the diversion route to replace the proposed path at points E to F; and
 - (c) in the event of objections to the Order, the matter be referred to the Planning Inspectorate for resolution.

Amendment carried.
24. Mr Munn clarified that the precise location of point G would be identified once a GPS survey had been completed.

25. Mr Cole said it was important to consider the public as well as the safety of the children at Sevenoaks Preparatory School and under those circumstances was minded to support the diversion.
26. The Chair put the amended recommendation set out in paragraph 23 and it was agreed by majority vote.
27. RESOLVED that:
 - (a) The County Council makes a Public Path Diversion Order under Section 119 of the Highways Act 1980 to divert Public Footpath SR161 at Seal as shown at Appendix A; and
 - (b) a path at points G to E, as shown on the attached amended plan, be added to the diversion route to replace the proposed path at points E to F; and
 - (c) in the event of objections to the Order, the matter be referred to the Planning Inspectorate for resolution.

3. Other items which the Chairman decides are urgent
(Item 4)

There were no urgent items.

4. Motion to exclude the press and public for exempt business
(Item 5)

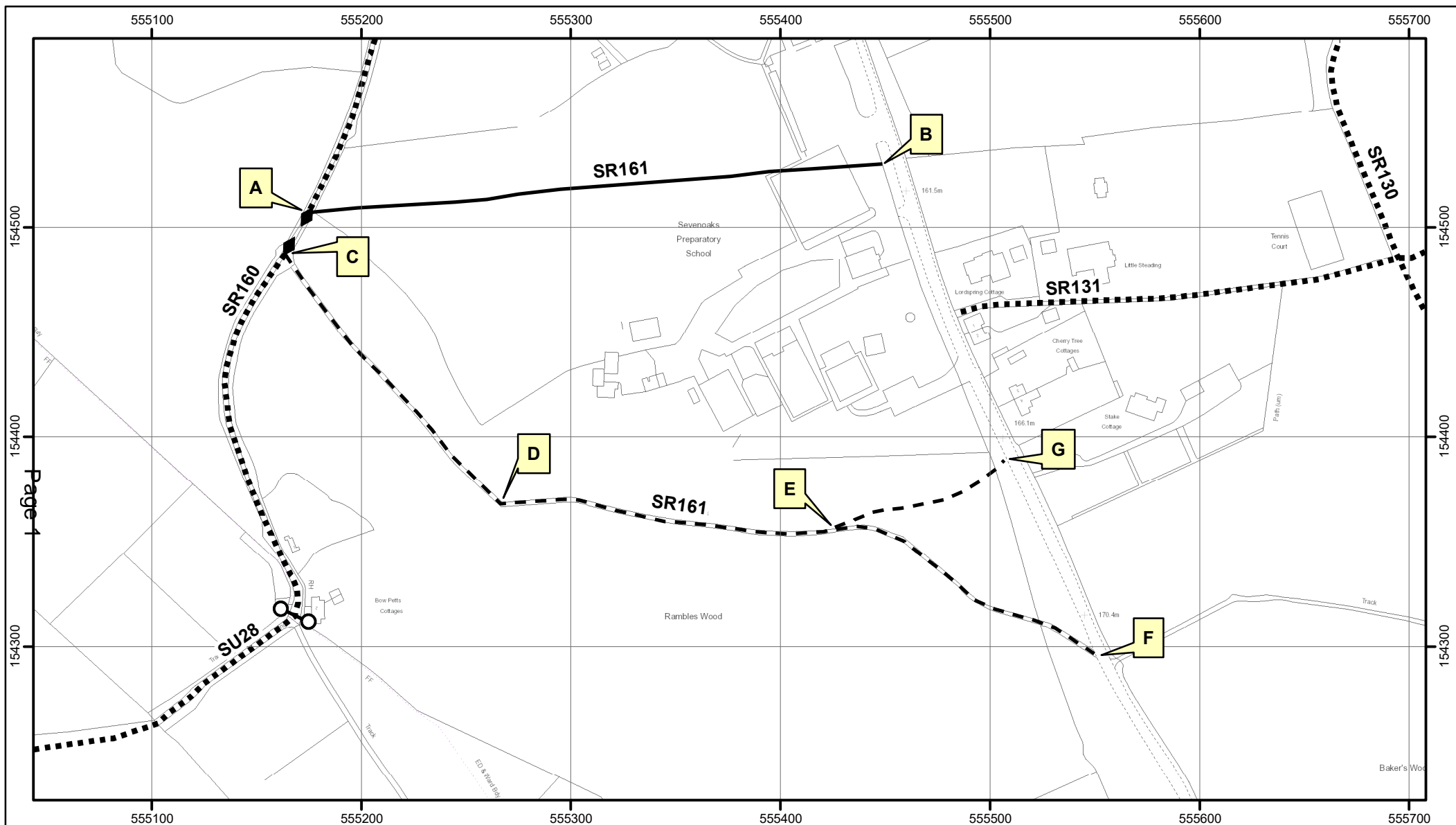
Members resolved under Section 100A of the Local Government Act 1972 that the public be excluded for the following business on the grounds that it involved the likely disclosure of exempt information as defined in paragraphs 1 and 3 of Part 1 of Schedule 12A of the Act.

5. Transfer of Rights of Common at Higham Common (CL86)
(Item 6)

1. The Public Rights of Way and Commons Registration Officer introduced the report and explained that the Council had received two applications to amend the Register of Common Land in respect of rights of common at Higham Common. The first application sought to amend the Register to reflect a transfer of ownership of rights of common and the second application had been made under section 12 of the Commons Act 2006 in respect of the sale of those rights of common. The need for two separate applications (under different parts of the legislation) had arisen because the current registered owners of the rights of common were deceased and it was therefore necessary to update the Register (to record the beneficiaries of their estates), before those rights could formally be transferred to the purchaser.

2. The Public Rights of Way and Commons Registration Officer explained that Schedule 3 of the Commons Act 2006 enabled applications to be made to reflect 'historic events' that had taken place prior to 1st October 2008 and Section 12 of the Commons Act 2006 enabled the transfer of ownership of any rights of common (after 1st October 2008) to be recorded in the Register of Common Land. Notices of the applications were published on the Council's website and served on all owners of the rights of common listed in the Register for Higham Common and no objections were received.
3. In determining an application under Schedule 3, the County Council must be satisfied either that the application has been made by the registered owner or that the person making the application has the capacity to apply. In this case, the applicant had provided evidence of the capacity to apply.
4. The Council must also consider a fairness test set out in Regulation 42(5) of the 2014 Regulations, which states that: 'the determining authority may not determine that a register entry should be amended if it considers that, by reason of reliance reasonably placed on the register by a person since 1st October 2011, it would be unfair to do so'. In this case, since this application related simply to an administrative update to the legal record, it was not considered that there were any issues relating to fairness.
5. In respect of applications under section 12 of the Commons Act 2006, the Council must be satisfied that the person making the application had the capacity to apply. The applicant in this case was the transferee and, as such, the applicant was able to make the application to amend the register under the Commons Act 2006.
6. The Council must also be satisfied that the current owners of the rights of common consent to the application. In this case, current owners had all confirmed their agreement to the transfer and all signed the formal Deed of Transfer.
7. Following a question from Mr Cole The Public Rights of Way and Commons Registration Officer explained that the ownership of land was separate to the right to graze animals and the ownership section of the Register was now obsolete as there was no legal requirement for it to be kept up to date (the Land Registry now being the official source of land ownership information).
8. The Chair put the motion set out in the report and it was agreed unanimously.
9. RESOLVED that the County Council accepts the two applications (CAA26 and CAA27) to amend the Register of Common Land (to reflect the transfer of rights of common at Higham Common), and that the Register of Common Land for unit number CL86 be amended accordingly.

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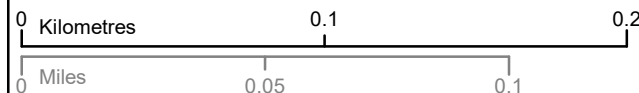


Key

- Route to be diverted
- New length of route
- Unaffected Routes
- Existing path used as part of diversion

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

Public Rights of Way and Access Service



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