

Application to divert part of Footpath MR493 at Ditton

A report by the Divisional Director of Environment & Waste to the Kent County Council Regulation Committee on 31 October 2008.

Recommendation: I recommend the County Council makes an Order under Section 119 of the Highways Act 1980 to divert part of Footpath MR493 at Ditton.

Local Member:

Mrs Trudy Dean

Unrestricted

Introduction

1. The County Council has received an application to divert part of Footpath MR493 at Ditton by Peter Brett Associates, on behalf of Aylesford Newsprint on the grounds of increasing security and public safety around the Mill Pond. Concerns have been raised due to the repeated acts of vandalism to the bridge, which crosses the Mill Pond, over which the Public Footpath passes.

2. All liaison between the County Council and the landowner, Aylesford Newsprint, has been conducted, at their behest, through their representative Mr Alan Aston of Peter Brett Associates, 30 Tower Hill, West Malling, Kent, ME19 4PR.

Description of Route

3. The existing route of Footpath MR493 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 B on Appendix A to this report.

Procedure

4. 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

5. 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.

6. Objections have been received from Aylesford Parish Council, Ditton Parish Council and The Ramblers' Association. All three objectors have stated

that to divert the Public Footpath in order to remove the maintenance obligation to the landowner is unacceptable and the vandalism could be resolved by using metal decking.

7. Ditton and Aylesford Parish Councils both state that the diversion would have a negative impact on public enjoyment by removing the unique perspective of a picturesque Mill Pond. Ditton Parish Council has additionally stated that the proposed route would be dangerously close to the M20 and the proposed timber panels would not provide a sufficient safety barrier.

8. Due to the proximity of the M20 motorway, consultation was also carried out with The Highways Agency in order to ensure - should the proposed diversion go ahead - then no threat was posed to those using the route by the traffic using the M20. The Highways Agency responded stating that a representative has visited the area and provided the proposal did not encroach on Highways Agency land they had no objections. They further added that palisade fencing is already in place protecting the Mill Pond and that the motorway verge was already protected by a safety fence.

View of Members

9. Mrs Trudy Dean, County Member and Borough Councillors Mr J Clements, Mr J Balcombe, Mrs C Grant, Mr B Stone, Mr D Thornewell and Mr D Smith, have been consulted. No responses were received from Mrs Dean, Mr Clements, Mr Balcombe, Mrs Grant, Mr Stone, or Mr Smith. Councillor Mr Thornewell believes the proposal is a reasonable one as it would retain the views of the historic Mill Pond, which is a major feature of the Footpath.

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 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;

It is expedient to divert the path in the interests of the landowner. The primary reasons for the application to divert Public Footpath MR493 relate to the repeated vandalism to the bridge on the section of the route that crosses the Mill Pond. This has not only given the landowner - to whom responsibility for maintenance of the bridge rests - security concerns but also raised concerns regarding public safety. Although inspection measures have been put in place to reduce the health and safety concerns these will never remove the risks completely.

The diversion of Public Footpath MR493 will remove the maintenance responsibility of the landowner for the bridge, but the primary benefit to the landowner will be the reduced health and safety obligations and risks.

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;

The common points of termination (Points 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;

The existing route measures approximately 32 metres (A-B) and the proposed measures approximately 46 metres (A-B). Although there is a small increase in distance, the increase in length is de minimus when actually walking the route, adding less than 1 minutes walking time. The width of the new route will be two metres.

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

Public enjoyment of the path as a whole will not be affected. The proposed route will retain its views of the picturesque Mill Pond, with the current bridge being removed to ensure these views remain unhindered.

Although the proposed route is close to the M20 the Highways Agency do not see this as a safety issue, with adequate safety measures already in place to protect the Mill Pond. The noise from the M20 is already audible from the majority of MR493, which runs alongside the M20 for most of its length. The noise levels will not be increased by virtue of being 5 metres closer to the source of the noise on the proposed compared with the current route. The erection of timber panels along the outer boundary of the proposed route will further reduce the visual and noise impact of the M20.

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

The effect of the diversion 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;

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

I believe that the legal tests are met in all respects

Conclusions

11. A number of objections have been received to this proposal. These objections are based on whether it was expedient to divert in the landowner's interest, on public enjoyment and public convenience. The Ramblers' Association and Ditton Parish Council have both objected to the proposal because they do not believe it is in the landowner's interest. There is an obvious benefit to Aylesford Newsprint in terms of reducing their health and safety obligations in regard to the bridge and the ongoing maintenance of the structure, which requires constant repair following repeated acts of vandalism.

12. Ditton Parish Council have objected on the grounds that the proposed route is substantially less convenient to the public due to its proximity to the M20, which they believe raises concerns over safety with the proposed boarding being an insufficient safety barrier. Advice has been sought from the Highways Agency concerning any possible safety implications on the new route in relation to the M20. The Highways Agency has clearly stated that palisade fencing is in position to protect the Mill Pond, with the motorway verge itself already protected by safety fencing. The proposed route does not fall within the boundaries of the highway. The majority of Public Footpath MR493 already runs in close proximity and parallel to the M20 and there are no reported instances of any safety issues relating to the M20. The proposed timber panels will denote the outer boundary of the proposed new route, and will be erected in addition to the palisade fencing and the safety fencing already in place. These timber panels will shield the proposed route from the visual and noise impact of the M20.

13. Aylesford and Ditton Parish Councils have objected on the grounds that the proposed route will have a negative impact on public enjoyment by removing the view of the Mill Pond. This is not the case. The views of the Mill Pond will be maintained and even enhanced by the removal of the current bridge, which will provide views over the full width of the Pond.

Recommendations

14. Despite there being objections to the proposal I recommend that the County Council makes an Order under Section 119 of the Highways Act 1980 to divert part of MR493, at Ditton, shown in Appendix A to this report, on the grounds that it is expedient to divert the path in the interest of the landowner without prejudicing the public's enjoyment and that the Definitive Map and Statement are amended accordingly.

Appendix A- Map showing the route and location.

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