

Application to divert part of public Footpath SD284 at West Kingsdown

A report by the Director of Environment and Waste to Kent County Council's Regulation Committee Member Panel on Friday 29th January 2010.

Recommendations:

I recommend that

(a) the County Council makes a further Order under section 119 of the Highways Act 1980 to divert part of Public Footpath SD284 at West Kingsdown and, if necessary, submit the Order to the Secretary of State for resolution; and

(b) the Kent County Council Public Footpath SD284 (part) Public Path Diversion Order 2004 made in respect of this path be formally revoked.

Local Members: Mr D Brazier

Unrestricted Item

Background

1. A previous Panel of Members from the Regulation Committee considered an application to divert this particular right of way on the 7th September 2004 and in consequence it was agreed that an Order should be made. A copy of this Order is attached at **Appendix A**.
2. However, formal objection to the proposal was lodged, from a number of parties, including the Parish Council and the Ramblers Association. Attempts to reconcile these objections failed but in carrying out this reconciliation exercise, it became apparent that there was perhaps more merit in the Objector's arguments in relation to the proposed new route than perhaps first envisaged. This led Officers to revisit the required tests for diverting a Public Right of Way and to conclude that the new route was not as substantially as convenient to the Public as the existing route and that, if the matter was referred to the Secretary of State for resolution, there would be a very high percentage chance the Order would not be confirmed.
3. The landowner's representative was therefore informed of the Officers view that the matter would have to be returned to Members for further consideration. In consequence the landowner asked the County Council to consider holding a site meeting of all interested parties and this was duly held. At this meeting the landowner's representative set out an amended proposal for consideration. Further options were and have since been put forward by the objectors but having considered these further the landowner decided these were not acceptable and has reapplied to the County Council seeking an amended diversion of Public Footpath SD284.
4. This further application has been made on behalf of the Trustees of the St Clare Estates by Smiths Gore, 23 Kings Hill Avenue, West Malling, Kent. Details of the new application are set out below and shown on the plan attached to this report at **Appendix B**.

Procedure

5. The County Council may make an Order under Section 119 of the Highways Act 1980 to divert a Public Right of way. Before doing so however, the County Council must be satisfied on the following points:
 - (a) *Whether it is expedient to do so in the landowners interest;*
 - (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 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 that the diversion would have as respects other land served by the existing right of way;*
 - (f) *The effect which any new public rights of way created by the Order would have as respects the land over which the right is created and any land held with it.*

Application

6. The Trustees of the St Clere Estate have applied for a minor diversion to the present line of Public Footpath SD284 as it passes close to Drane Farm Oast at West Kingsdown. The Trustees argue it would be in the interest of the landowner and lessee of the land on the basis that the recently converted residential properties adjacent to the path would benefit from the diversion due to their rural and remote nature. In addition, the planning conditions imposed at the time of the conversion from agricultural farm buildings to residential developments, do not allow the gardens to be fenced and as a consequence the current route runs adjacent to and across part of the garden to Drane Farm Oast.
7. The Trustees further argue there is an obvious intrusion upon both the privacy and security of Drane Farm Oast which the proposed diversion would allay. The existing route is also in close proximity to Highbury Barn and it would be beneficial to the privacy for the occupiers of this property to be moved slightly further away.
8. Having considered the tests to be met in diverting Public Rights of Way, the Trustees firstly assert that the proposed diversion would still allow views of both the vernacular buildings which have both been converted into residential buildings to preserve their integrity and in addition would still provide the far reaching views that this part of the Kent Downs brings, without impinging on the privacy of the residents of these properties, to the degree that the current route presently does.
9. Secondly, it is asserted that the proposed diversion route offers a gentle gradient which is neither substantially less convenient nor less enjoyable than the existing route. The proposed route also increases the public enjoyment of the route due to the gradient of the land allowing better views of the buildings for more of the route. The route would be easier to negotiate for the unfamiliar walker with there

being natural gaps in tree lines acting as aiming points and part of the proposed diversion is over a well worn farm track adjacent to an attractive hedgerow.

10. Common points of termination will not be affected by the diversion neither will it be necessary for any of the tests relating to the land to be taken into consideration as there are no other outside interests.

Consultations

11. Consultation has been carried out as required. There has been no objection received from any of the Statutory Undertakers.
12. However, West Kingsdown Parish Council has objected to the Order, as has Mr R. Barry of the Ramblers Association. The local District Councillor for Sevenoaks, Mrs P. Bosley, has also objected.

Objections

13. Mr. Barry objects on the basis that the Existing Definitive Map route is much more preferable for path users than the proposed, especially when travelling in a south westerly direction where the Oast and a mature tree act as a good aiming point, especially when the route has not been made apparent after ploughing. Mr Barry does not agree that the security and privacy is affected by the route and is not aware of any complaints or reported instances of burglaries, 'break ins' or invasions of privacy. In his view, there must be very good reasons for diverting a right of way that has been in existence across the field since at least 1910.
14. However, Mr Barry is prepared to support a compromise route, some 20 metres to the east of the corner of Drane Oast, through a narrow gap (which would have to be provided) in the hedge continuing on the south side of the hedge. This compromise route is shown on the plan attached at **Appendix C**.
15. The West Kingsdown Parish Council likewise, would support a diversion on to the compromise route which in its view is considered more than adequate for provision of the security and privacy issue and addresses the concerns of the occupants set out by the Trustees. The Parish Council does not, however, support the present proposal mainly on the grounds that from the "dip" on the proposed new route, sight is lost of all targets for direction. The proposals would take walkers below a shoulder in the land that would obscure long distance views of London, as well as local picturesque and pleasing buildings.
16. Mrs Bosley, it would appear, would be aligned in a similar manner to these comments.

Landowner's response

17. The Landowner does not agree with Mr Barry's assertions that the security and privacy of the two properties is not affected by the presence of an adjoining Public Right of Way and is surprised by such a comment. The landowner is able to confirm that there have been many occasions where walkers veer from the existing footpath and walk across the gardens to both properties.

18. In fact, the landowner is able to cite a recent example where one of the property owners (in the property furthest from the Footpath) had to redirect a group of walkers who had strayed into her garden whilst she was undertaking a midwifery consultation in the house. This is an event which the landowner asserts is a clear example of an invasion of privacy.
19. With respect to the proposed compromise route, this would require the necessity of creating yet another gap in a hedgerow, which the Estate is against from a conservation point of view. In other areas, the Estate has planted hundreds of metres of hedgerows along roads and footpaths in an attempt to recreate wildlife corridors.
20. With regard to the additional objections raised by the Parish Council and the Sevenoaks District Councillor, the landowner does not agree that the proposed route would take walkers away from the views of London and the two buildings. The proposed route not only obscures the views for less distance and less of the walking time but is also more direct, a more obvious route, allowing the more unfamiliar walker to aim at gaps within the landscape on clear horizons. The Estate has no desire to discourage walkers or to make their route less enjoyable or less easy to negotiate, which is why the proposed route is suggested.

Conclusions

21. Although there are three objections to this proposal, the County Council does not consider that the diversion would be substantially less convenient or impact on public enjoyment. Legal tests do not require positive advantages for the public. In essence once the benefits to the owners are demonstrated, the proposal must leave the public in no significantly worse position than exists at present. I am satisfied that the interests of the landowner have been demonstrated.
22. Further, I do not believe that the new route is not less enjoyable to the public. Concerns have been expressed regarding the loss of pleasurable views. However, here, I totally concur with the landowner that similar views may still be enjoyed from the proposed new route. I also agree that the new route will be easier to follow for those unfamiliar with the area.
23. Neither do I believe that the proposed route would not be substantially less convenient to the Public. The surface of the majority of the path will be the same as exists on the existing route (i.e. reinstated arable agricultural land). However, the remainder will run over an existing wide established farm track.
24. The new route will run across the gradient of the land and not against it. Existing wide gaps in the landscape provide excellent aiming points and whilst the new route may be in the region of 50 metres longer, the County Council does not consider this to be in any way substantially less convenient, especially as the route is used primarily for recreational purposes.
25. In such circumstances I do not see that, unless the landowners change their minds, it is necessary to impose the further hedgerow clearance that would be required in respect of the "compromise route" when there is already a perfectly

adequate and existing gap in close proximity. The application as submitted does, in my view, comply with all of the requirements of the Act.

Revocation of previous Order

26. The Rights of Way Circular (1/09) prepared by DEFRA (paragraph 5.29) provides that Authorities have the discretion not to proceed with Orders to which there are representations or objections. In order to bring the procedure to an end, the Authority must make a formal resolution not to proceed, and should then notify the applicant and those who have made objections of the passing of the resolution.

27. It is common ground with all parties that the Kent County Council Public Footpath SD284 (Part) West Kingsdown Public Path Diversion Order 2004 previously considered and subsequently made by the County Council should be revoked.

Recommendations

28. I recommend that

(a) the County Council makes a further Order under Section 119 of the Highways Act 1980, to divert part of Public Footpath SD284 at West Kingsdown and if necessary submit the Order to the Secretary of State for resolution; and

(b) That it be resolved that the Kent County Council Public Footpath SD284 (part) Public Path Diversion Order 2004 made in respect of this path be formally revoked.

Accountable Officer:

Dr. Linda Davies – Tel: 01622 221500 or Email: linda.davies@kent.gov.uk

Case Officer:

Mr. Chris Wade – Tel: 01622 221511 or Email: chris.wade@kent.gov.uk

The main file is available for viewing on request at the Environment and Waste Division, Environment and Regeneration Directorate, Invicta House, County Hall, Maidstone. Please contact the case officer for further details.

Background documents

APPENDIX A – Copy of the Kent County Council Public Footpath SD284 (part) Public Path Diversion Order 2004

APPENDIX B – Proposed new diversion

APPENDIX C – Route proposed by Mr. Barry

IN THE DISTRICT

HIGHWAYS ACT 1980

KENT COUNTY COUNCIL

(PUBLIC FOOTPATH SD284 (PART) WEST KINGSDOWN)

PUBLIC PATH DIVERSION ORDER 2004

This Order is made by Kent County Council under Section 119 of the Highways Act 1980 ("the 1980 Act") because it appears to the authority that in the interests of the owner of the land crossed by the path described in paragraph 1 of this Order it is expedient that the line of the path should be diverted.

Sevenoaks District Council has been consulted as required by Section 120 (2) of the 1980 Act;

BY THIS ORDER:

1. The Public Right of Way over the land situate at West Kingsdown and shown by a bold continuous line on the attached map contained in the Order and described in Part I of the schedule to this Order shall be stopped up twenty eight days from the date of confirmation of this Order.
2. There shall at the end of twenty eight days from the date of confirmation of this order be a public footpath over the land situate at West Kingsdown described in Part II of the schedule and shown by a bold broken line on the map contained in this Order.

**GIVEN UNDER THE SEAL OF KENT COUNTY COUNCIL THIS TWENTY-FIRST
DAY OF SEPTEMBER IN THE YEAR TWO THOUSAND AND FOUR**

**THE COMMON SEAL OF
KENT COUNTY COUNCIL**

was hereto affixed in the presence of :-

 21/9/04

AUTHORISED SIGNATORY



SCHEDULE

PART I

DESCRIPTION OF EXISTING ROUTE

That length of Public Footpath SD284 which commences at its junction Public Footpath SD283 (GR 5775 6057) and runs in a generally south-south-westerly direction for approximately 284 metres, then in a generally south-westerly direction for approximately 20 metres to GR 5761 6031, as shown between points A and D on the Order plan.

PART II

DESCRIPTION OF PROPOSED NEW ROUTE

A new length of Public Footpath SD284 which commences from GR 5775 6057 (point A) and runs in a generally south-south-easterly through southerly direction along the full 4 metre width of a green lane for approximately 176 metres to point B (GR 5780 6041), then narrowing to a width of 3 metres and continuing in a generally south-south-westerly direction for approximately 44 metres to point C (GR 5778 6037) and then running the full 3 metre width between hedgerows along an existing trackway in a generally west-south-westerly through westerly direction for approximately 188 metres to rejoin the existing line of Public Footpath SD284 at point D (GR 5761 6031).

PART III

LIMITATIONS AND CONDITIONS

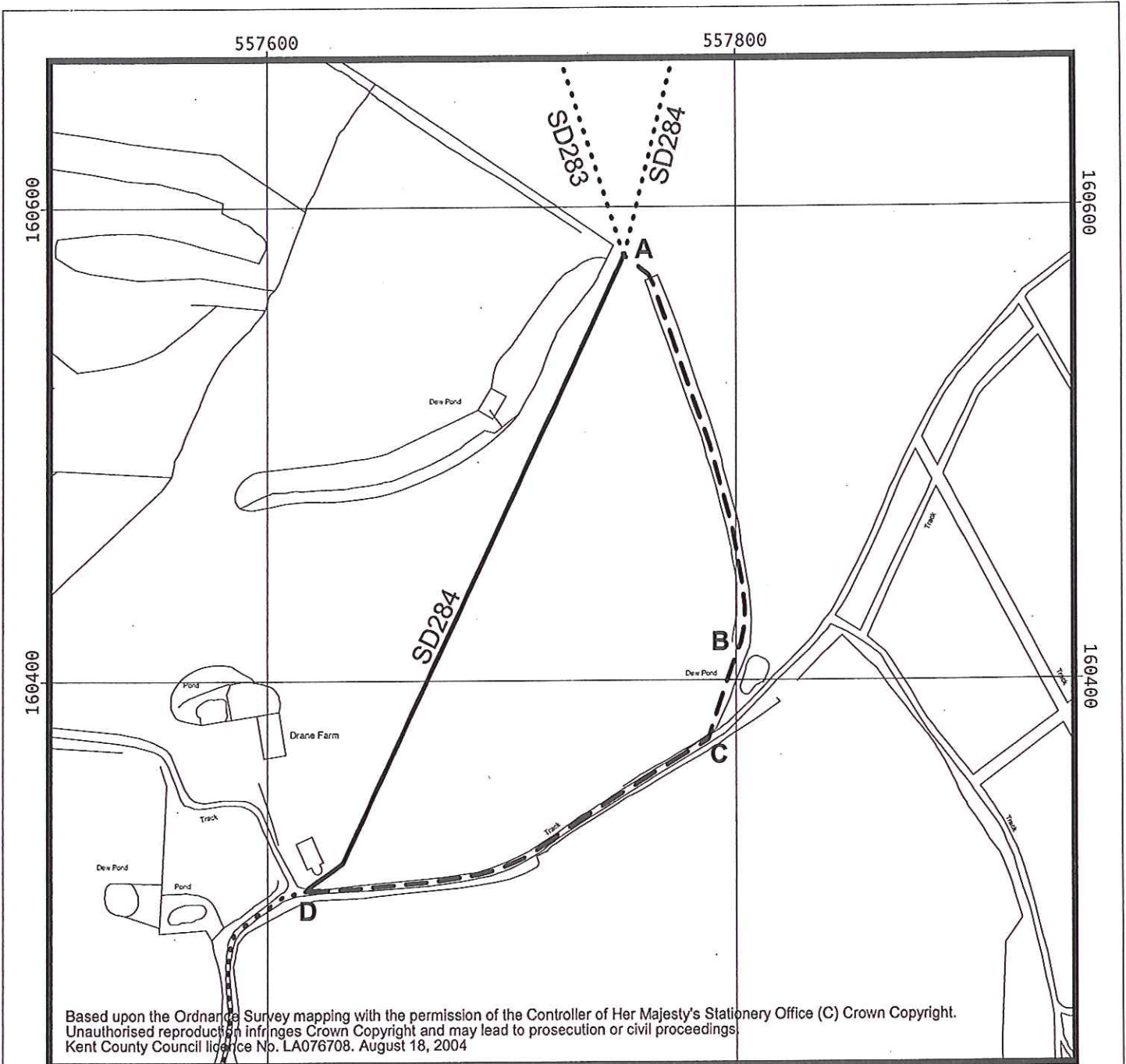
1. The landowner is to be responsible for all aspects of the maintenance of the new section of SD284 (as described in Part II of this Order), including the surface and encroaching or overhanging vegetation.
2. The landowner is to be responsible for maintaining the hedgerow on either side of the new route between points C (GR 5778 6037) and D (GR 5761 6031) on the Order plan to a height of not more than 1.2 metres.
3. The landowner is to be responsible for undertaking any remedial works required to the route should flooding become a problem in the area of the dew ponds at point B on the Order plan.

HIGHWAYS ACT 1980

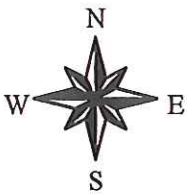
KENT COUNTY COUNCIL

(PUBLIC FOOTPATH SD284 (PART) WEST KINGSDOWN)

PUBLIC PATH DIVERSION ORDER 2004



- Path to be diverted
- Proposed new route
- Unaffected routes



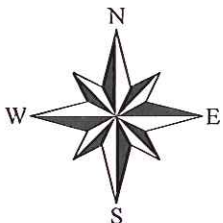
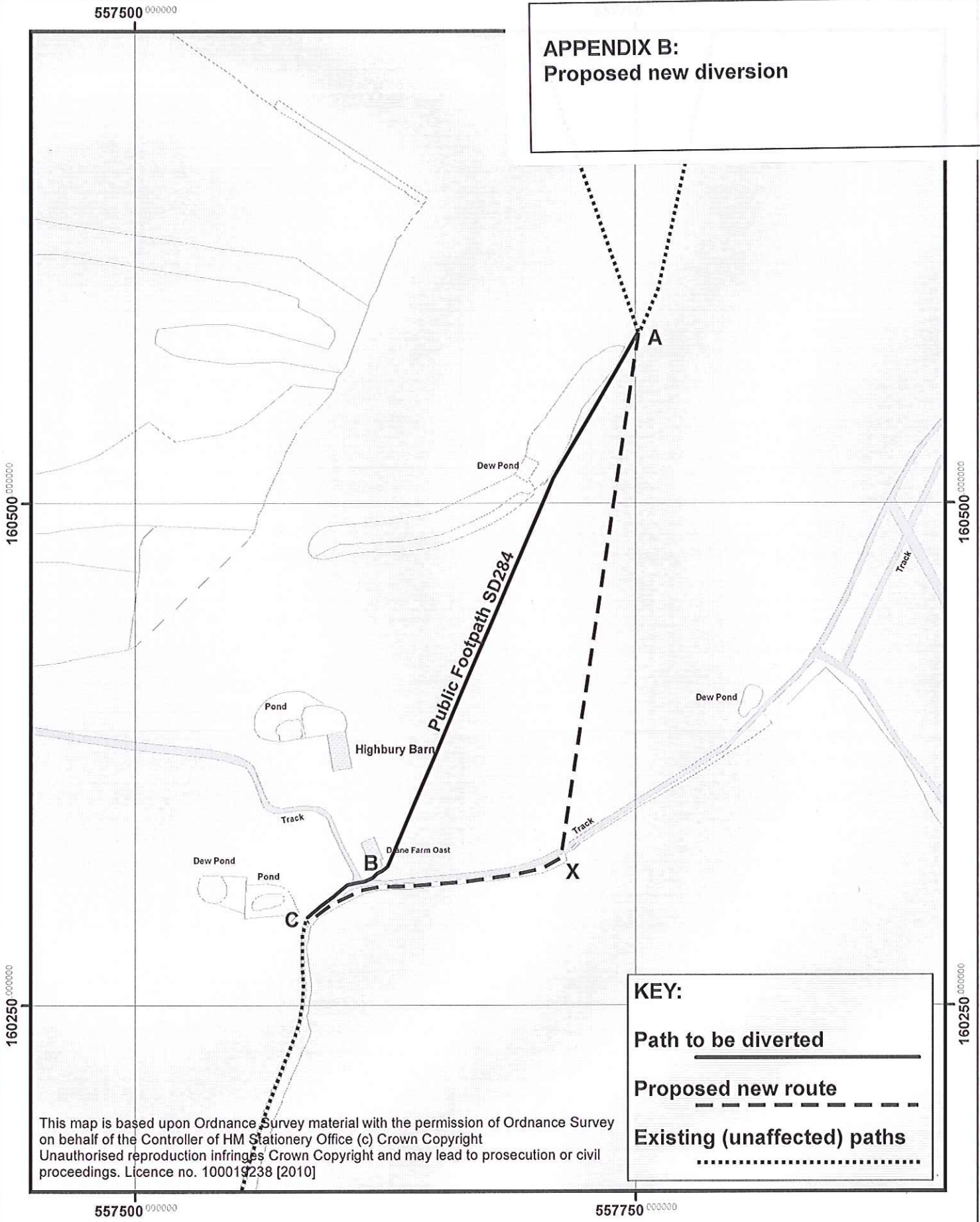
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Highways Act 1980
 Kent County Council
 Footpath SD284 (part) West Kingsdown
 Public Path Diversion Order 2004

Pete Raine - Strategic Planning Director



**APPENDIX B:
Proposed new diversion**



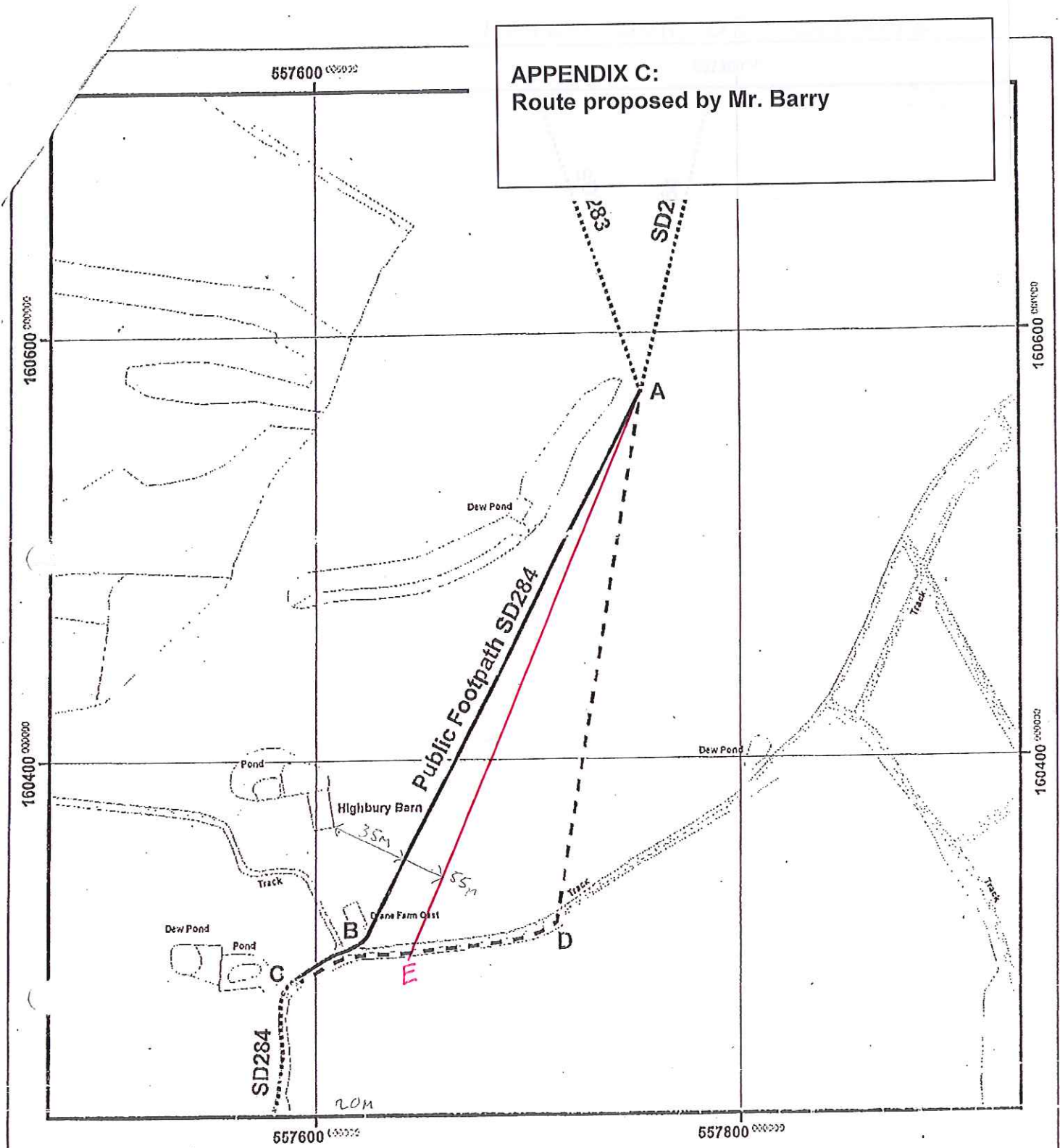
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**Highways Act 1980
Kent County Council
Public Footpath SD284 (part) West Kingsdown
Public Path Diversion Order 2010**

Linda Davies - Director of Environment and Waste

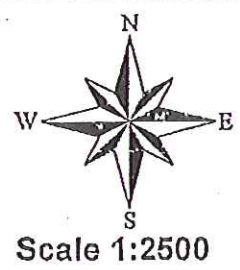


APPENDIX C:
Route proposed by Mr. Barry



- Existing path
- Proposed new path
- Unaffected path

Emma-Jane Adams
4-6-08



Highways Act 1980
Kent County Council
Public Footpath SD284 (part) West Kingsdown
Public Path Diversion Order 2008

Linda Davies - Director of Environment and Waste



