

Application to divert part of Footpaths MR350 (parts) and MR392 (part) at Plaxtol and Shipbourne

A report by the Divisional Director of Environment & Waste to the Kent County Council Regulation Committee on 29 January 2010.

Recommendation: I recommend the County Council makes two Orders under Section 119 of the Highways Act 1980 to divert;

(a) part of public footpath MR392 at Shipbourne, on the grounds it is expedient to divert the path in the interest of the landowner and/or occupier and;

(b) part of public footpath MR350 at Plaxtol, 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 Member:

Mrs Valerie Dagger

Unrestricted

Introduction

1. The County Council has received an application to divert part of public footpath MR392 at Shipbourne and part of public footpath MR350 at Plaxtol by the landowner, Fairlawne Estates, to help improve land management and to formalise an existing arrangement, whereby the public are using an alternative route to the Definitive line in order to avoid the necessity to walk along a busy vehicular road.

2. An initial consultation was undertaken by the County Council in August and September 2009. Following the consultation I received a number of objections, representations and requests for additional proposals to be taken into consideration. Two meetings were therefore held, one on site and one at County Council offices, with those who had responded to the consultation to discuss their comments in greater detail. These meetings raised a significant number of alternative and additional proposals. This resulted in what could ultimately, be a huge rationalisation scheme for the rights of way network in the area. As such, and in consultation with the landowner, it was decided that the best way forward was to split the package into two. In the first instance a new consultation was completed regarding the diversion of public footpaths MR392 and MR350.

Existing and Proposed Routes

MR392

3. The existing route of public footpath MR392 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 on **Appendix A** to this report.

4. Public footpath MR392 has a total length of 3484 metres running through undulating managed parkland and providing close views of historic woodland and mature trees. Outstanding long distance views are available from the majority of MR392, with the northern end providing spectacular views of St Gile's Church and the adjacent oast house.

MR350

5. The existing route of public footpath MR350 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 on **Appendix B** to this report.

Procedure

6. 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

7. 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.

8. Following a suggestion by the Ramblers' Association an additional section of public footpath MR350 was included within the second consultation. The Ramblers Association subsequently objected to the additional section and therefore it has been removed from the proposal. No other objections have been received to the diversion of public footpath MR350, although a letter of support was supplied by, local resident, Ms Elaine Webb.

9. Objections to the proposed diversion of Public Footpath MR392 have been received from Shipbourne Parish Council and local residents - Mr Nick Tyler, Ms Chris Owlett, Mr Harshad Topiwala, Mr Richard Bate and Mr Godfrey Haslehurst. Representations in relation to the Order have been made by Mr Alan Bristow, Mr Vince Fowler and the Ramblers Association, none of which contain any objections, but agree the proposal meets the legislative tests.

View of Members

9. Mrs Valerie Dagger, County Member, and Borough Councillors; Mr A Sayer, Mr D Evans and Mrs S Murray have been consulted. Mrs Dagger, although providing no specific comments, has asked to be kept informed as to progress. No responses were received from Mrs Murray and Mr Evans. Mr Sayer has objected to the diversion of MR392 on the grounds there will be a “kink” in the path which will be unhelpful to long distance walkers and that the changed termination point will result in more difficult map reading. He has also objected to that part of the diversion of MR350 that has now been removed from the proposal on the grounds that it will be less “streamlined”.

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 outline my conclusions upon them individually: -

Public Footpath MR392 (Appendix A)

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

11. It is considered expedient to divert the path in the interests of the landowner and/or occupiers of the property by allowing them to segregate the sheep which currently graze the area from dogs, which are accompanying their owners on the public footpath. Over the years there have been a number of instances of uncontrolled dogs worrying sheep. Diverting the path will also allow the landowner and / or occupier to secure the property, to avoid repetition of previous instances whereby people have wandered off the public footpath and into the garden area of the oast house.

12. The objectors have stated that the diversion of public footpath MR392 is not in the interest of the landowner for a number of reasons. Firstly, that the

worrying of sheep by uncontrolled dogs is not a reason to divert a public footpath. The objectors state there are other areas within the Fairlawne Estate where sheep could be grazed thus avoiding the necessity for them to be grazed where dogs may be present. Some of the objectors have requested further evidence of the number of instances where dogs have caused problems with the sheep and some have sought a further delay to the proposal in order to gather further views and evidence from Shipbourne residents.

13. The protection of livestock by removing the proximity of uncontrolled dogs is quite clearly in the interests of the landowner. The diversion of the public footpath will enable the landowner to completely segregate the two, which is an option currently unavailable due to the footpath dissecting the land. Although there are other areas within the Fairlawne Estate where sheep can be grazed, due to the nature of the park through which MR392 passes it makes an ideal location in which to round up all the sheep to dip them and administer medication. There have been 8 dog related instances since July 2009.

14. Extensive consultation has taken place with representatives of Shipbourne, - including the Parish Council – and some of the residents. This has included two formal consultations, a site meeting and a meeting held and at County Council offices. It is not deemed necessary to delay proceedings any further in order to carry out further, and what would be repeat, consultations.

15. The objectors are sceptical as to the security concerns cited by the landowner. A number of the objectors have stated that it is not the landowner who will benefit from the diversion but an employee who resides in the property at weekends and that concerns relating to walkers wandering off the footpath and into the private dwelling are no greater than the threat for anyone living anywhere. Additionally some of the objectors believe the proposed diversion of the footpath is simply a desire to have the public moved as far as possible away from the rear garden of the property.

16. 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 footpath MR392 (part) will benefit both landowner and the occupiers by improving the security of the property. As previously stated there have been a number of instances whereby people have wandered off the public footpath and into the garden of the oast house.

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;

17. The common point of termination (Point A) will not be altered and is therefore as convenient. The termination of the path at Point C is on the same connecting highway (public footpath MR395).

18. Several of the objections state that the new point of termination will not be substantially as convenient to the public - due to it no longer terminating at the church gate - and will be less direct. However the Ramblers' Association have rightly highlighted that for those proceeding in an easterly direction along MR395 and wishing to continue in a northerly direction along MR392 the new point of termination is actually more convenient.

19. The existing route of public footpath MR392 measures 426 metres (A-B), the proposed new route measures 554 metres (A-C-B). This however includes 190 metres of existing public footpath MR395. The overall increase in length is therefore 130 metres. Public footpath MR392 is a highly used recreational route as opposed to a utilitarian route. The additional 130 metres is therefore seen as a relatively small increase being *de minimus* when actually walking the route and adding approximately 5 minutes walking time.

20. It should be noted that the test is '**substantially as convenient**'. This can be seen as meaning 'as good as' or as close to as makes no difference, with convenience meaning 'ease of use'. The proposed route of MR392 is considered to be 'as good as' the current definitive line, particularly when taking into considering its use as a recreational route and is therefore considered to be substantially as convenient to the public.

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. The majority of the objectors state that the proposed diversion is substantially less convenient to the public. This for a number of reasons. Some of the objectors are concerned that the proposed diversion gives a feeling of being "hemmed" in by a hedge and that there is the possible risk of another hedge being planted in the future on the other side. The objectors state they are wary of this is because over a number of years hedges have already been planted alongside the existing route, altering the landscape.

23. Many of the objectors are concerned that the flexibility of walking in one of either three directions at the church gate will be removed and that whilst the current route is "substantially" longer than the proposed route the overall effect of the proposal, in their view, means an overall reduction in the length of the footpath network in Shipbourne.

24. I dealt with the distances of the existing and proposed routes in paragraph 19 above and see no point in repetition.

25. The objection that the proposed route is "hemmed" in by a hedge and the implication that the route is to be hedged on both sides cannot be substantiated. There is no intention by the landowner that this will be the case in the future. The current route passes through pasture fields, bounded by hedging and

mature or semi mature trees. This hedging can, to some, give a feeling of enclosure. In comparison the proposed new route has a more open feel.

26. The option to walk north, south or west will not be removed by diverting the section of Public Footpath MR392 in question. It is just that those wishing to do so will be required to walk in a westerly direction for a relatively short distance before turning north. As stated earlier the Ramblers' Association have highlighted that for those proceeding in an easterly direction along MR395 and wishing to continue in a northerly direction along MR392 the proposed diverted route is more convenient.

27. The objection that there will be an overall reduction in the overall length of the footpath network in Shipbourne is not, in my view, relevant to the convenience test and would not be given the weight afforded to it by the objectors should this case require submitting to the Secretary of State for determination.

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

28. Public enjoyment of the path as a whole will not be affected. The proposed route provides extensive views to the south and in particular the west, across the valley. The current definitive line of MR392 runs through enclosed pasture with limited views available from within the confines of the surrounding hedgerow and mature trees; in comparison the proposed route, although bordered on one side by a hedgerow, has a more open feel with superior views of the surrounding countryside.

29. The objectors have stated the proposed diversion has a negative impact on public enjoyment. Firstly that the proposed route has severely limited views to the east, due to tall hedgerows, compared to the open views currently available on MR392, and in particular the views of the Church, the oast and the pasture. Secondly that the current Definitive route offers beautiful open country walks across open fields with outstanding views to the east of the village which would be lost on the proposed route.

30. This is not considered to be the case. The legislation states that the effect on public enjoyment should be considered in relation to the path as a whole. Public footpath MR392 has a total length of 3484 metres running through undulating arable parkland and providing close views of historic woodland and mature trees. Outstanding long distance views are available from the majority of MR392, with the northern end providing spectacular views of St Gile's Church and the adjacent Oast House.

31. Views of the surrounding countryside are fairly limited on the section of MR392 to be diverted, passing as it does through an area bordered on all sides by a hedgerow and mature trees, thereby limiting views in all directions. Views of St Gile's Church and the oast are only available for approximately the final 20 metres of the route and at its connection with MR395. The same view of the church is available from MR395. To reiterate, the most spectacular views of St

Gile's Church are available on the northern section of MR392 and these remain unaffected by the proposed diversion.

32. In addition some of the objectors have raised concerns that the proposed route would in fact require walking beside a high and imposing hedge which restricts views and that any views currently available of the church will be removed over time by the planting of tall species of trees by the rear gate of the churchyard, which over time will obscure the entire view of the church.

33. It is not within the County Council's remit to ensure adjoining landowners do not plant trees or hedgerows on their land that may over time impact on the views enjoyed by those using the rights of way network. In this case the applicant has agreed to restrict the height of the newest hedge - to the east of the proposed new route - in order to maintain current views. When comparing the current, definitive route and the proposed new route, the new route is considered to have a more open feel, despite being bordered on its eastern side by an established hedgerow. This is due to the open, panoramic views to the west and south. In comparison the current route can, because of the enclosure of the pasture by hedgerow and maturing trees, in places, feel enclosed.

34. The Ramblers' Association have no objection to the proposed diversion of Public Footpath MR392 and have in fact stated; *"It [MR392] is very pleasantly wide with splendid views to the west and a better view of the church once it hits MR395"*. In addition they have requested that the landowner be persuaded to keep the hedge at a suitably low height to enable average height walkers to be able to enjoy views of the church from the new path on its general approach to MR395. The landowner has agreed to this request.

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

35. 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;

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

Other objections

37. In addition to the objections detailed above some of the objectors have also commented on the historical nature of the footpaths in Shipbourne and in particular the route in question being part of the County Council's promoted route, The Greensand Way.

38. Public rights of way, by their very nature, are historic routes it is however not the intention to extinguish the public rights that exist but merely to move those rights to reflect current circumstance. The Greensand Way is a promoted

route, running along the greensand ridge in Kent. Diverting the public footpath will not remove it from the geologically important ridge.

Public Footpath MR350 (Appendix B)

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

39. It is expedient to divert the path in the interest of the landowner and in the interest of the public. Public footpath MR350 currently runs diagonally across two fields – one pasture, one arable – connecting with Plaxtol Lane. Diverting the footpath will not only assist the landowner in helping improve the management of these two fields, but will also benefit the public by removing the need to walk along a busy vehicular road, with no verges, and creating a direct connection with public footpath MR346.

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;

40. The common point of termination (Point A) will not be altered and is therefore as convenient. The second point of termination (Point C) is 175 metres to the east of the original termination point (Point B). The new termination does, however, remove the need to walk 175 metres along a narrow road which carries a national derestricted speed limit. Those using Public Footpath MR350 are most likely to wish to proceed in a southerly direction along Footpath MR346, which, with MR350 on it's on the current definitive line requires 175 metres of road walking. The need for road walking will be removed by the proposed new route. 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;

41. The existing route measures approximately 203 metres (A-B), plus an additional 175 metres of road walking to continue along the nearest connecting Public Footpath (MR346). The proposed route measures approximately 363 metres (A-C). 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;

42. Public enjoyment of the path as a whole will not be affected. The proposed route provides extensive views to the east, which are not available from the current route. The new route will also remove the need for walkers to pass along 175 metres of busy and potentially dangerous road.

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

43. 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;

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

45. 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

46. 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 footpath MR392 at Shipbourne, on the grounds it is expedient to divert the path in the interest of the landowner and/or occupier and;

(b) part of public footpath MR350 at Plaxtol, on the grounds it is expedient to divert the path in the interest of the landowner and the public;

without prejudicing the public's enjoyment 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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