

Application to divert part of Public Footpath SR22 (part), Shoreham in the District of Sevenoaks

A report by the Head of Public Protection to Kent County Council's Regulation Committee Member Panel on Tuesday 17th July 2018.

Recommendation: I recommend that the applicant be informed that the application to divert Public Footpath SR22 (part), Shoreham, in the District of Sevenoaks, is declined.

Local Member: Mr Roger Gough

Unrestricted item

Introduction and background

1. The County Council has received an application to divert part of Public Footpath SR22 in Shoreham. The application has been made by the owner of The Garden House through whose land part of the definitive line of Public Footpath SR22 runs. The reason for the application was to provide greater security for the property.

- The length of Public Footpath SR22 to be diverted is shown by a solid black line between the points A-B. The proposed new route is shown by bold black dashes between the points A-C-D-E-B.
- The proposed new route will have a width of 2.0 metres except for between points C and D which will have a width of 1.2 metres.
- Should an order be made and confirmed, the applicant will be required to improve surfacing between points A-C-D-E to remove all unevenness caused by the current large pieces of masonry and tree routes and to provide a suitable depth of compacted MOT Type 1. This surfaced element of the public footpath would have a width of 1.2 metres within the overall width of 2 metres except between C and D where the overall width will be 1.2 metres. Vegetation other than mature trees will need to be cleared to the width stated in the order.

Policy

2. The Countryside Access Improvement Plan, Operational Management document (2013) sets out the County Council's priorities for keeping the Definitive Map and Statement up to date. The main priorities in respect of Public Path Change Orders are:

Public Path Change Orders will normally be processed in the order in which applications are received, except in any of the following circumstances where an Order maybe processed sooner:

- Where it will satisfy one or more of the relevant key principles set out in paragraphs 4.14 – 4.25 of the CAIP Operational Management document,
- Where an application has been made to the County Council in its capacity as Planning Authority

- Where the processing of an Order could save significant costs incurred in other Rights of Way functions
- Where a Public Path Change Order is made concurrently with Orders made under Section 53 of the Wildlife and Countryside Act.

3. The County Council will take into account whether the following criteria are satisfied before promoting a Public Path Change Order. Irrespective of the following, the statutory tests (as set out within the Legal Tests section) for changing public rights of way must apply.

- I. 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 the County Council to be reasonably practicable be open, clear and safe to use.

4. 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.

Legal Tests

5. Legislation relating to the diversion of a public path is contained within Section 119 of The Highways Act 1980: The Procedure is in Schedule 6 of the same Act.

(i) The Council may make an Order to divert a public path if it is satisfied that it is expedient to do so, either in the interests of the owner, lessee or occupier of the land crossed by the path or way in question, or that it is expedient in the interests of the public. There are other issues: -

(ii) If the end of the path is not on another highway it cannot be diverted. So, for example, a path to a specific point on the sea shore cannot be moved to a different point on the sea shore.

(iii) If the path does end on a highway, it may be diverted only to a point which is on the same or connected highway and which is substantially as convenient to the public.

(iv) The second major constraint is the Order may not be confirmed either by the Council in the absence of objections or the Secretary of State when objections have been received unless it is satisfied the route will be substantially as convenient to the public as a result of the diversion, and that confirmation of the Order is expedient having regard to the effect of the diversion on public enjoyment of the route as a whole.

Consultations

6. Consultations have been carried out as required by the Act.

Along with the proposal and an extract of the definitive map, consultees were provided with a response slip which laid out four statements linked to the legal tests, which the consultee can either agree or disagree with.

The four statements are :-

- “I agree the proposed diversion is in the landowner’s interest/I do not agree because...”,
- “I agree the proposed diversion is not substantially less convenient to the public/I do not agree because...”
- “I agree that the proposed diversion would not negatively impact upon public enjoyment of the route/I do not agree because...”
- “I agree that the new point of termination will not be substantially less convenient to the public/I do not agree because...”

It is these statements which are referred to in the analysis of the consultation responses below.

County Member and Borough Councillors

7. County Member Mr Roger Gough was consulted and responded having walked the route. Mr Gough’s response was that he agreed the proposed diversion was in the landowner’s interest. Mr Gough agreed the diversion is not substantially less convenient to the public but did note that there is clearly some inconvenience from this diversion, but it is over a short distance.
8. Mr Gough did not agree that the proposed diversion would not negatively impact upon public enjoyment of the route. Mr Gough commented on the enclosed nature of the proposed route near the shed which ‘creates a less agreeable environment’. While Mr Gough admitted he had not seen the views available from the legally defined route (due to obstruction) he did comment that it would certainly be more open than the proposed diversion and therefore he presumes would have better views.
9. Mr Gough agreed that the new point of termination will not be substantially less convenient to the public since the proposed diversion re-joins the unaffected sections of SR22. Mr Gough did, however, point out that there are reports of some users turning down the driveway and that this would need to be addressed should a diversion order be made. He also commented on the dangerous nature of the termination point of Public Footpath SR22 where it meets the A225 (but this will not be affected by the diversion proposal).
10. Sevenoaks District Councillors Cllr John Edwards-Winser and Cllr Michelle Lowe were consulted but did not respond.

Sevenoaks District Council

11. Sevenoaks District Council was consulted and responded raising no objections as: the diversion would provide more security and privacy for the applicant, the diversion does not significantly increase the distance of the path or make it less convenient and the diversion retains access to the woodland and will not substantially affect public enjoyment.

Shoreham Parish Council

12. Shoreham Parish Council was consulted. The Parish Council responded to confirm that the proposal was opposed unanimously by all members of the Parish Planning Committee. They stated that 'the proposed route does not benefit from the same views across the valley as the original and will therefore spoil the enjoyment of many walkers who come to the area'. They also believed the diversion would introduce a risk of confusion to walkers which could result in them leaving the path and ending up on the very busy A225, some considerable distance from the next footpath. The Parish Council agreed the proposed diversion was in the interests of the landowner. The Parish Council did not agree that the proposed route is not substantially less convenient as the proposal is steeper and longer than the legal route and is 'jungle like' in places. The Parish Council did not agree the diversion would not negatively impact upon public enjoyment of the route believing that it will induce a lack of openness and have a negative impact on the views across the valley which can be enjoyed when following the legal route. The Parish Council agreed the new point of termination would not be substantially less convenient to the public as it is in the same location.

User Groups

13. Open Spaces Society and British Horse Society were consulted but did not respond.
14. The Ramblers were consulted and a local representative responded agreeing with all the points in the consultation response slip with a single comment adding that they would not like any barbed wire on any fencing (if required).

Statutory Undertakers

15. South East Water, SGN, National Grid and EDF were all consulted but did not respond
16. Openreach and Southern Water responded with no objections.

Kent County Council

17. The Terrier team were consulted and responded with no objection. Schemes Planning and Delivery Team were consulted but did not respond.
18. Public Rights of Way Area Manager David Munn was consulted but did not respond.

External Bodies

19. Due to the section of path falling within the Kent Downs AONB and being close to (but not within) a Site of Specific Scientific Interest, Kent Downs AONB Unit and Natural England were consulted, but did not respond.

Members of the Public

20. Neighbouring landowners and their representatives were directly consulted on this proposal. Alongside this site notices were erected. Two members of the public requested copies of the consultation which was provided.
21. During the consultation a number of members of the public responded to the consultation, summarised below.
22. A member of the Sevenoaks Society responded to the consultation and stated that they could find “no sensible grounds on which we should object to the proposed diversion and believes that the ordinary Sevenoaks Society walker would prefer the new route in several ways”. They then continued that the proposed route is a good clear well walked path of suitable width, the legal alignment would be more difficult to follow, they would feel embarrassed about walking across the front garden of a house and that they found it a lot more comfortable walking the new line of the path. They also agreed with all the statements in the response slip.
23. Following this email, the Case Officer was copied into several emails, to which he did not respond. Included in this was a response from another member of the Sevenoaks Society who believes the proposal was “completely unobstructed by bumps, sharp ends or undergrowth” and that the legal path through the garden would include the need to “climb a steep slope and pass through gates on either side of the garden” and that they thought the proposed route is better. They also disagreed with a comment made that the proposed diversion removes the sweeping views of the Darenth Valley and Shoreham Cross.
24. A representative of a neighbouring landowner responded to comment that the proposal makes little difference to their client, but they did query the need for a 2-metre wide, type 1 surfaced path, where the rest of the route does not have this standard. The Case Officer responded to explain the reasons behind this (an improvement of the network and to reduce the future maintenance burden on the public purse), but no further response was received.
25. A member of the public responded claiming they have always used the proposed route and they have no objection to the proposal as it seems to just regularise the route they have always happily used.
26. A total of 13 members of the public wrote to the Case Officer strongly objecting to the proposal. These have been numbered for ease of reference. As laid out in paragraph 6, the consultation included a response slip with agree/disagree statements and it is these which are referred to below.

Number 1 – Commented that this is the only point on the eastern side of the valley with sweeping views across to Shoreham and the Cross.

Number 2- Commented that the diversion is clearly in the landowner’s interest, but this should not be a decision-make criterion. They did not agree that the proposal is not substantially less convenient as there are no paths and the cars come very fast and unseen around the bend. They did not agree with the public enjoyment statement as this is the only point on the eastern side of the valley with sweeping views across

to Shoreham and the Cross. They did not agree with the termination point statement as walkers would have to make a detour from a straight path.

Number 3 - Commented that the diversion is not in the interest of the public as it takes a long, more difficult and less scenic route.

Number 4 - Commented that they did not agree with the enjoyment statement as the proposal is “through a scrub path not over open ground” and also didn’t agree with the termination point statement as “the walkers have to walk along the A225 before they can cross to continue on the path over the railway”.

Number 5 - Agreed the diversion was in the landowner’s interest. They did not agree with the convenience statement, claiming the diversion is longer and enclosed by hedge and walkers are deprived of a view of the valley. They did not agree with the enjoyment statement due to the loss of view and it sets a bad precedent if private homeowners can re-route footpaths. They did not agree with the termination point statement.

Number 6 - Did not agree with all the statements, claiming the landowner gains by improving value of the property, the path was changed without permission and the legal route had lovely views over the village.

Number 7 - Strongly objected to the diversion of a much-loved footpath which had not been accessible due to bad maintenance. They believed the form was biased in favour of approval so did not use the form. No diversion and a return to the original line of the path is paramount.

Number 8 - Commented that the path is not close to the house and is openly visible from the house so is not a significant security risk, and that the house is not sufficiently overlooked by the existing path to create a real issue about privacy. They commented that privacy in the garden is a luxury and not a given, certainly not a given if one has bought a house with a PROW running through the garden. They added that it is important to retain the original route as the directness is a historical reminder of its origins and that the proposed diversion is detrimental to enjoyment of the path as the walker descends through woodland with no view. They commented that at the point of diversion there is a wonderful opening up of the view across the Darent Valley and this view is considerably limited if one takes the proposed diversion. They also believed the proposal is distinctly less attractive than the current right of way.

Number 9 - Did not agree with any of the statements. They commented that the previous owner had accepted the original route without problems and the proposal is a longer and less pleasant route and has no benefit to the public. They commented that the existing route affords walkers excellent long-distance views across Darent Valley which are not available along any other sections of SR22, and that the proposal is longer and moves it closed to another residential property and along a section of land which has not been properly maintained.

Number 10 – Agreed that the diversion is in the landowner’s interest, but he had not followed correct procedure. They did not agree with the convenience statement, as the original route did not deviate in a loop around the landowner’s boundary and behind his shed. They commented that the original path is well below the

landowner's property and it is not possible to see into the house from the path. They did not agree with the enjoyment statement, as the original path had lovely open views across the valley to the Shoreham Cross, and the proposed diversion is through the rough dark overgrown scrub. They agreed with the termination point statement as it terminates on the original path.

Number 11 – Commented that the house is some distance from the path and higher so walkers on the path cannot see in and that the proposed diversion is much less convenient for the public as it is longer and enclosed. They believed the open field aspect that one used to have coming down from the wood is completely lost and that the diversion has a negative impact on the public enjoyment of the route as it is now an unpleasant stretch of path partly through brambles and due to the laurel, which has been planted, it will soon be like walking through a tunnel. They also added that the last question (termination points) is irrelevant as one goes back on to the original path, but that there is a danger of going down the drive and reaching the A225 a considerable distance from the next path.

Number 12 - Commented in support of the Parish Council. They added that the proposed diversion is not convenient for the public and that their enjoyment of the path, with wonderful views across the valley, is completely lost. They referred to the proposed diversion as an unpleasant path part of which is through undergrowth. They also mentioned the serious hazard of walkers come down the drive to the main road, further down from the linking path to cross the railway.

Number 13 – This member of the public gave a detailed account of their knowledge and thoughts on the history of the path.

In response to the interest of the landowner test they commented that the original definitive route is some 25 metres and more from the house and is screened by a large grass bank and a mixture of mature shrubbery. They added the diverted route outside the post and rail fencing has been planted with laurel to one side and that both these routes afford no more impact on privacy or security. They comment that while in this application it may be in the landowner's interest financially to move the footpath, increasing re-sale value, it is not in terms of convenience or practicality.

In response to the termination point test, they commented that as it departs from and returns to the same PROW this should not be an issue. However, they comment that the diversion is in two distinct sections. They comment that one section leads people down a driveway on to a dangerous and fast-moving section of the A225 on a blind bend, with the connecting SR18 footpath nearly a kilometre away, instead of the 20-metre connection between SR22 and SR18.

In response to the convenience test they commented that in two sections the diversion is both much longer and much steeper than the definitive line, commenting that the true line is on a gentle slope over open grassland. They also comment that the proposed diversion has had little maintenance to be kept open and that it is unpleasant, very difficult to get through and frequently overgrown. They also comment that it is uneven and extremely slippery when wet and is prone to flooding and would require constant upkeep.

In response to the enjoyment test, they commented that there can be no argument that a walk down a gentle slope over open land is much more enjoyable than battling through dense undergrowth over a longer distance. They also commented

that the definitive line here is over the only open ground on the Eastern side of the Darent Valley with sweeping views over Shoreham and the Cross in an AONB. They mention the historic interest of the path and that the viewpoint is of great cultural significance to the area. They mention that the only other footpaths on the eastern side of the valley (SR24 and SR26) are completely through woodland and do not give any sense of the wider area and its unique history and identity.

In response to the effect on other land served by the existing right of way test, they responded that the footpath had been blocked off and diverted without any permission prior to the application, without consent of the Council or owners of the surrounding land. They also commented that the proposed diversion is still not wholly on the applicants registered land and provided an overlay of title to show this.

In response to the effect of any new PROW created by the order would have on land over which the right is so created, and any land held with it test, they responded that the proposed diversion is through dense undergrowth that forms a hedgerow along the top of the field which is home to a diverse range of animal and plant life. They commented that work required to create the footpath would require extensive disturbance to this environment and that the extent to how the protected species that live in the stretch of land would be affected has not been considered.

The Case - the proposed diversion of Public Footpath SR22 (Part), Shoreham

27. 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 landowner 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; and
- 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 landowner that part of the footpath in question should be diverted.*

28. The landowner applied to divert the public footpath to formalise the existing situation on the ground and for security in the garden of their property, specifically it is used by young children. At the time of consultation and this report, the legal alignment of Public Footpath SR22 is obstructed, however, this report has been made as if the path is available and open on its legal route, and therefore any current obstruction is not taken into consideration when coming to a conclusion. Therefore, one of the applicant's reasons for applying for the diversion to formalise the existing situation on the ground will not be considered under this test or any other test.

29. The landowner believes that the diversion will help with the security of their garden. The existing path is approximately 24 metres from the applicants residential building at its nearest point and is partly hidden from the house by the topography of the land, with large banks and trees partly obscuring direct view of the building from the path. It does however, run directly across the middle of the applicant's front lawn. This has obvious security issues for the garden, as members of the public, can legally walk through the garden, close to whoever may be using the garden at that time (possibly small children as claimed by the applicant).
30. The proposed route is approximately 35-60 metres from the building, with the majority of the route obscured by natural vegetation, trees, a small building (shed) and a fence line with several large trees. This runs along the outside of the garden, a small section across a gated driveway then along a fenced off section at the bottom of the garden. The proposal being further from the property and on the outskirts of the garden would increase security for those using the garden. Whilst anybody with malicious intentions could still access the garden via the drive, the public would have no legal right to walk across the garden, and therefore could be challenged if they were seen within the fenced section of the garden. Effectively the security of the garden would be in the control of the applicant and those using it for private recreation.
31. Comments were received during the consultation, that the landowner has applied for the diversion for financial gain. This is not something which the Case Officer is knowledgeable enough to comment on and has therefore not been considered in this test. However, if this is the case it is clearly in the interest of the landowner.
32. Due to the increase in security of the garden that the proposed diversion would provide it is expedient in the interests of the landowner that part of the footpath 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;*
33. The point of termination of the proposed diversion does not differ from the existing legal alignment. Several comments were received from consultees claiming that the diverted route is confusing and therefore there is a strong chance of users wandering off the footpath and heading down the private drive and ending up stranded on the busy road. This could be resolved by improved waymarking, clearly indicating the correct right of way.
- There were also comments regarding the unaffected termination point of SR22 onto Shoreham Road and its dangers. Whilst these comments are understandable, it is not something which is affected by this diversion and therefore is not relevant to this report.
- As the point of termination is not changing it will be substantially as convenient.
- c) Whether the right of way will not be substantially less convenient to the public;*
34. The total length of Public Footpath SR22 is currently approximately 1766 metres, the proposed diversion would add an approximate 39 metres to the total length of the path. The increase in distance is minimal in comparison to the total length of the

walk and is therefore unlikely to be a major inconvenience for those walking the length of the path.

35. The proposed diversion causes users to change the direction they are walking for the length of the proposed route before returning to the relatively straight line they were walking before. While this could be seen as less convenient to the public, this change of direction is unlikely to have a substantial effect on the users onward journey given the overall distance of the footpath
36. Comments were received from consultees that the proposed diversion is “much steeper than the definitive line”. Some sections of the proposed diversion are slightly steeper than the definitive line, but the difference is relatively minimal. It should also be noted that whilst the majority of the definitive line that cuts across the applicant’s garden does not have a substantial gradient there is a short section of the definitive line which approaches the garden near point A (which would be removed by the proposed diversion) which is steep and would cause issues for those with mobility issues. This is also the case for the section exiting the garden near point B. These sections are not included in the proposed diversion.
37. However, unaffected sections of SR22, particularly through the woods to the north east are steep and difficult to walk, and when wet could require care. Therefore, whilst the majority of the proposed diversion is slightly steeper than the existing legal alignment, there are several points on the legal alignment of SR22 which are substantially steeper, and therefore, any change in gradient at this section of the footpath is unlikely to have a substantial effect on the convenience of the path to the public.
38. In regard to the surface of the path, several comments were made regarding the current uneven surface of the proposed diversion. This was noted by PROW Officers and therefore as part of the certificate of works, surface improvements were required including type one surfacing which would reduce the unpleasantness of the surface. The use of type one surfacing, while not as natural as the existing route’s surface, and therefore viewed by one consultee as “suburbanisation”, would increase the ease of access of the path, and therefore in regard to the surface the proposal is not substantially less convenient than the existing.
39. In conclusion, while the proposed diversion is less convenient than the existing line, it is unlikely to have a substantial impact on the convenience to the public.

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

40. The proposed diversion would have a substantial negative effect on the path as a whole.
Currently, the section of Public Footpath SR22 which runs through the applicant’s garden is relatively open with only two small sections of footpath when you enter and exit the garden which run through trees and undergrowth. Some comments were received claiming that walking through a garden would make them uncomfortable.
The proposed diversion is to run the footpath along the outskirts of the garden with vegetation either side, behind a shed where the path will slightly narrow, before running through a double fenced path along the bottom of the garden.

41. A large number of the comments received mentioned that the proposed diversion is amongst the undergrowth and enclosed. While comparing this to the rest of the route, there are large unaffected sections of the footpath which run through similar undergrowth, vegetation and trees which are not pleasant to walk through.
42. However, the existing legal alignment of the footpath which goes through the garden is one of the few sections of footpath which runs across open land and not through undergrowth or woods and is therefore one of the most enjoyable parts of the lengthy path. Therefore, by diverting this section of footpath to a route enclosed by vegetation and trees, and beside a shed structure, the path will be losing one of its most appealing sections. It would reduce the already limited number of open sections on the length of path and this would have a substantial effect on enjoyment of the path. Of particular concern is where the proposed path runs alongside the shed between points C-D, where users will be forced between hedgerow and the shed which would be a rather unpleasant experience.
43. The other major point which should be considered when looking at the impact on public enjoyment, in this case, are the views available to the public. The existing route gives users a substantial open view of the valley and wider countryside should they be heading in a south westerly direction. The view is available from the majority of the legal alignment through the garden and only begins to diminish as you leave the maintained garden and approach the unaffected section of the path. This view also includes the Shoreham Cross on the hills on the opposite side of the valley. This cross has significant historical and cultural importance, and has been mentioned by a large number of respondents. The rest of Public Footpath SR22 does not offer as substantial views due to the nature of its surrounding environment; in most places the woodland obscuring the views, or the open section of farmland being too low to enjoy the views.
44. The proposed route does give you a few glimpses of this enjoyable view, but they are limited to certain sections of the proposal, such as a section at the bottom of the hill. The view is barely available at all for most of the section A-C-D, except for a section where the surrounding vegetation has been cut back to offer a small glimpse of the surrounding countryside. The majority of the proposal does not offer the same view: Over large sections the view is obstructed by surrounding vegetation.
45. A number of consultees mentioned that once the trees planted alongside the proposal grow they will completely obstruct views; however, Kent County Council can only comment on the existing situation.
46. Overall, the unimpeded view is unique to this section of the Public Footpath SR22. The same view is not consistently available from the proposed route. It is evident from the comments and objections received from the local community that enjoyment of the views is a key reason for using the route.
47. A comment was received regarding the uncomfortable feeling that the respondent has when walking rights of way through front gardens. On balance, however, the enjoyment of the view and openness of the path outweighs any discomfort felt by members of the public in using a route across the garden.

48. In conclusion the proposed diversion would have a substantial negative impact on the enjoyment of the path.

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

49. The proposed diversion would have no impact on any land served by the existing public right of way. However, comments were received by a representative of a neighbouring landowner, over whose land the unaffected section of the existing public right of way runs. They commented that they do not understand why a surfaced path, wider than the rest of the route is required. However, despite these comments, it is unlikely this surface improvement or the proposed diversion would have an impact on the land served.

50. It was commented that the plan for the consultation showed the proposal slightly out of the applicant's title and therefore suggesting part of the proposed route falls under different landownership. The applicant does not have permission to divert onto neighbouring land outside his title. While every attempt has been made to ensure that the proposal plan shows the footpath within the applicant's landownership, the applicant has agreed to indemnify any compensation claims faced by the Council should this not be the case.

There were also concerns that by moving the footpath closer to another property it will be reducing the security of the neighbouring property. However, currently there is a substantial hedge/tree line between the proposal and that property and it is therefore unlikely to cause any significant security concerns. This neighbouring land is not currently served by the existing public right of way so cannot be considered under this test.

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.

51. A track has already been partly created on the ground where the diverted route is proposed, and therefore the creation of a new public right of way would unlikely have a major effect on the land on which the right is so created. However, as part of the works laid out to bring this into effect, widening of the route on the ground and aggregate surfacing has been proposed. This may have an effect on the ecology of the land affected. Should an order be made and confirmed, then suitable steps would be required to mitigate any ecological impacts.

Further considerations

52. In addition to the tests set out in section 119 of the Highways Act 1980, the County Council must also have regard to the following issues when considering an application to divert a public right of way.

53. The Countryside Access Improvement Plan: There are no relevant provisions within the County Council's Countryside Access Improvement Plan.

54. Under section 29 of the Highways Act 1980, the County Council has a duty to have regard to the needs of agriculture (including the breeding and keeping of horses), forestry and the desirability of conserving flora, fauna and geological and physiographical features.

In this case, there could be an adverse effect caused by the diversion of the path and relevant steps and procedures would have to be followed when creating a new right of way to minimise the impact on the flora and fauna affected by the widening and surface improvement of the path.

55. Section 40 of the Natural Environment and Rural Communities Act 2006 requires that every public authority must have regard “*so far as is consistent with the proper exercise of [its] functions, to the purpose of conserving biodiversity*”. There could be an adverse effect caused by the diversion of the path and relevant steps and procedures would have to be followed by the applicant when creating a new right of way to minimise the impact on the biodiversity of the area.

56. Where the affected land forms part of an Area of Outstanding Natural Beauty (AONB), section 85 of the Countryside and Rights of Way Act 2000 requires that the County Council shall have regard to “*the purpose of conserving and enhancing the natural beauty*” of the AONB. In this case the land forms part of the Kent Downs AONB. Whilst the Kent Downs AONB unit were consulted they did not respond. A comment was received that the proposal would increase “its suburbanisation” and this comment can be taken to mean that it would influence the natural beauty of the AONB. The Case Officer does not believe the proposal increases the suburbanisation of the AONB and therefore would not directly affect the natural beauty of the AONB. However, the change in view would have a significant impact on the enjoyment of the AONB for the path users.

57. Under section 17 of the Crime and Disorder Act 1998, the County Council has a duty to exercise its functions “*with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area*”. In this case, there is no adverse effect caused by the diversion of the path.

58. Finally, the County Council is subject to the public-sector duty regarding socio-economic inequalities set out in section 1 of the Equalities Act 2010. An assessment in this regard has been undertaken and there will be minimal impact on the use of the affected path as a result of the diversion.

Conclusion

59. In this case the proposed diversion meets the legal test to be applied by the Kent County Council when considering whether to exercise its discretion to make an order, in that the diversion is in the landowner’s interest.

60. The proposed diversion also meets the tests which are applied before the County Council exercises its power to make an order, these being the tests regarding points of termination and the convenience of the diverted route. Therefore, Kent County Council is able to make an order under this legislation.

61. However, before exercising its power to make an Order to divert a public footpath it would be impractical were the County Council not to consider the tests that must be applied for the confirmation of the Order either by the County Council in the case of an unopposed Order or the Secretary of State in the case of an opposed Order.

62. Section 119 of the Highways Act 1980 states: *The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that*

the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—

(a)the diversion would have on public enjoyment of the path or way as a whole,

(b)the coming into operation of the order would have as respects other land served by the existing public right of way, and

(c)any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it,

63. The Case Officer believes the diversion would have a negative effect on the public enjoyment of the path or way, and therefore is not satisfied it would be expedient¹ to confirm the order having regard to the effect which the diversion would have on public enjoyment of the path or way as a whole.
64. A number of objections were received to the initial consultation, with a consistent theme regarding the loss of views and the adverse impact this has on amenity. The objections support the conclusion that the confirmation test of enjoyment has not been met. These objections are likely to be reiterated should an order be made.
65. Therefore, whilst the Case Officer believes the County Council can make an order, it would not be expedient for the order to be confirmed and, therefore, to make an order and continue the process would not be in the public's interest and would result in unnecessary expense for the landowner and the use of Officer time at the expense of other cases.

Recommendations

66. I recommend that the County Council declines to exercise its power to make an Order under Section 119 of the Highways Act 1980 to divert part of Public Footpath SR22 in Shoreham

Accountable Officer:

Mr Mike Overbeke – Tel: 03000 413427 or Email: mike.overbeke@kent.gov.uk

Case Officers:

Mr Graham Rusling – Tel: 03000 413449 or Email: graham.rusling@kent.gov.uk

Mr William Barfoot – Tel: 03000 418674 or Email: william.barfoot@kent.gov.uk

The case file is available for viewing on request at the PROW & Access Service, Invicta House, County Hall, Maidstone, Kent, ME14 1XX. Please contact the Case Officer for further details.

1 . The meaning of expedient in Section 119 of the 1980 Act was also considered in *Ashbrook v East Sussex County Council* [2002] EWHC 481 (Admin) where Grigson J said:

"The Concise Oxford Dictionary gives two definitions of expedient;

i) convenient and practical although possibly improper or immoral.

ii) Suitable and appropriate.' I think it safe to assume that Parliament had in mind the second."

List of appendices

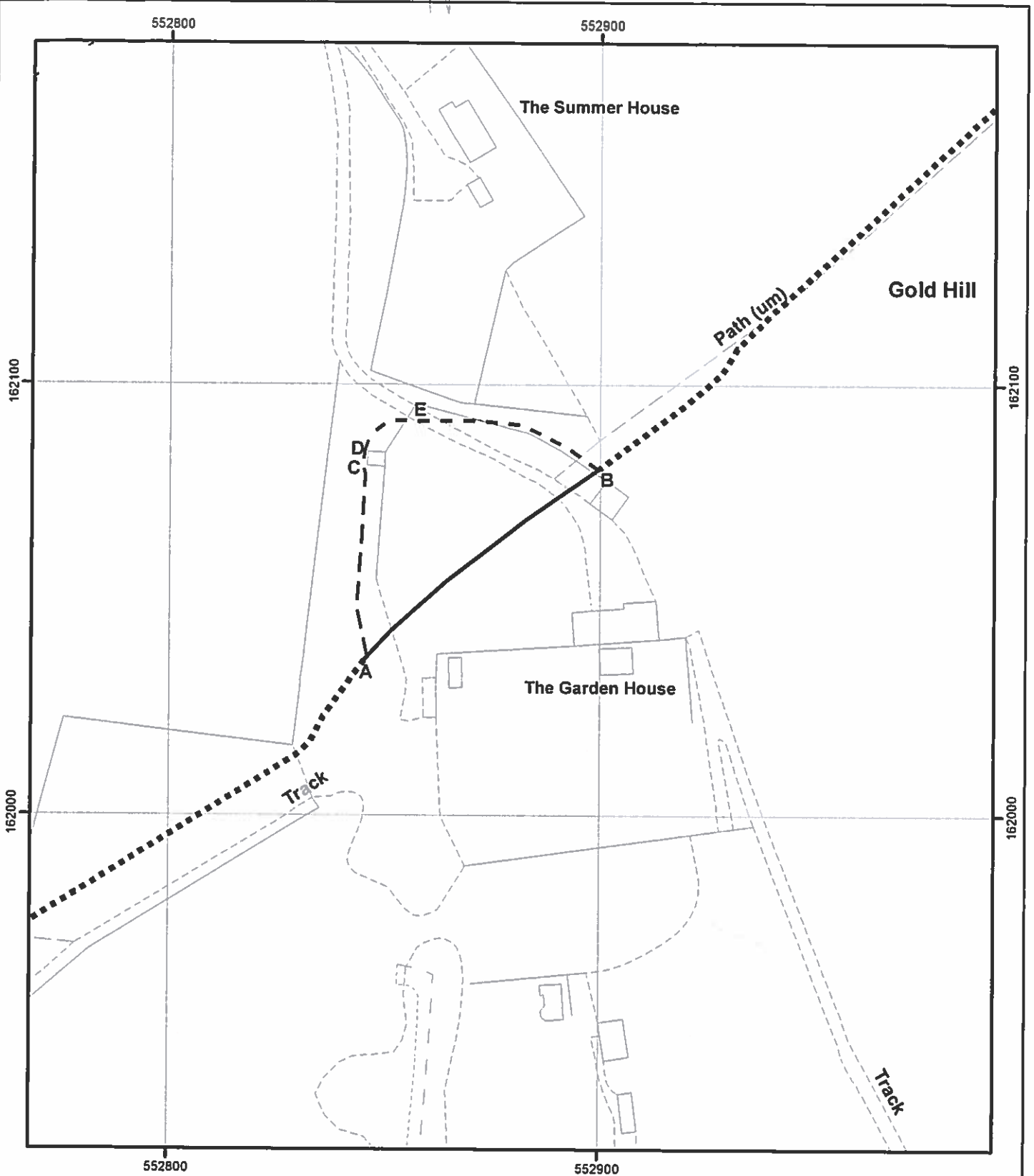
Appendix A - Plan of proposal and extract from the Definitive Map, sheet 022 (TQ56SW)

Appendix B – Photos from legal alignment of SR22 taken by Case Officer




Appendix C- Photos from proposed diversion of SR22 taken by Case Officer

Case file - PROW/SR22/1484

Appendix A



Key

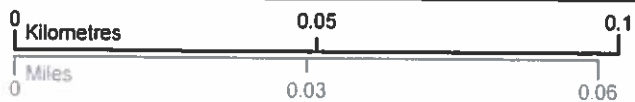
-  Route to be diverted
-  New Length of route
-  Unaffected Routes

**Highways Act 1980
Kent County Council
Public Footpath SR22 (Part), Shoreham
PROPOSED Definitive Map Modification Order 2018**

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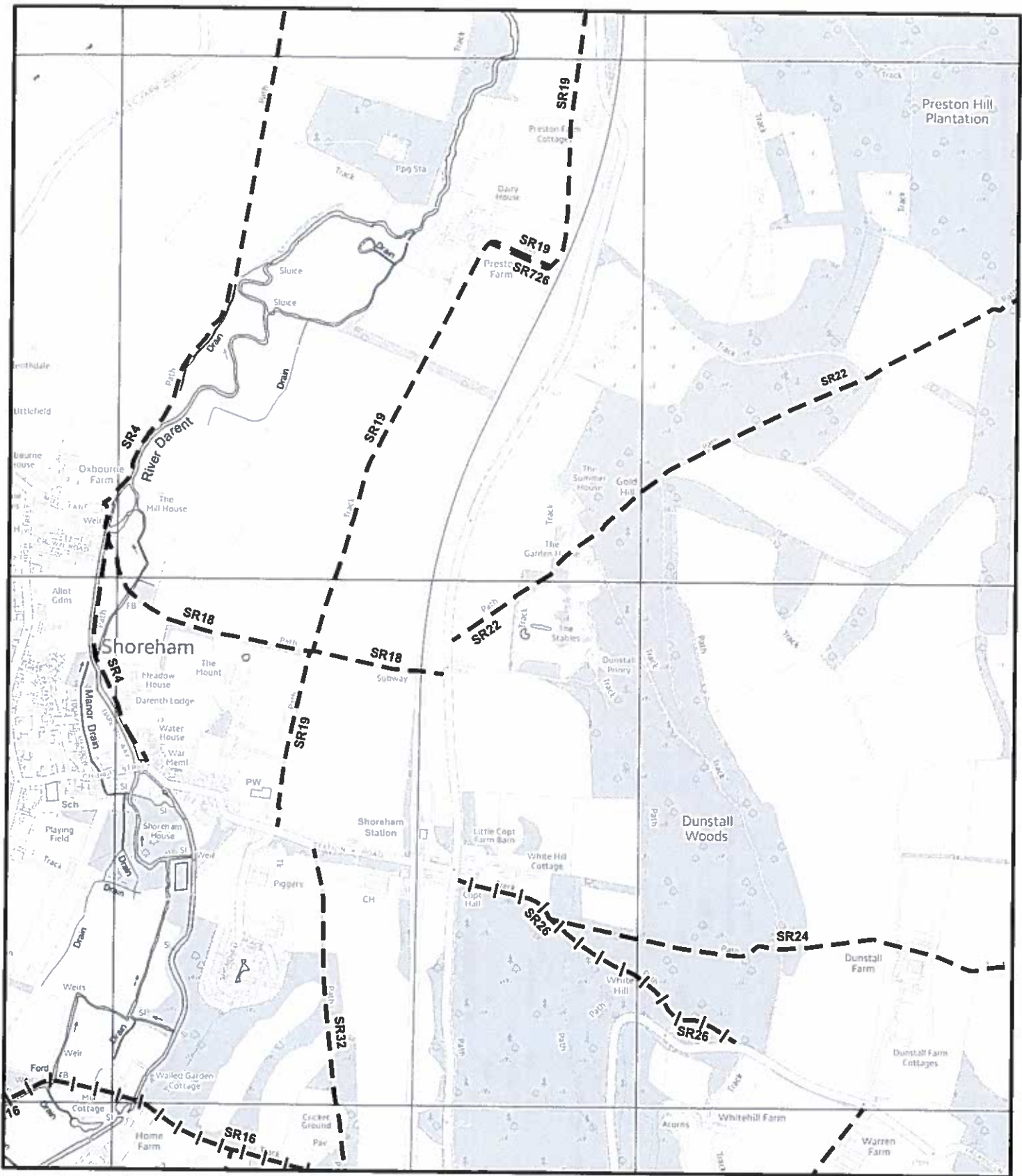


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Reference: PROW/SR22/1484

Public Rights of Way and Access Service





- Footpath
- Bridleway
- Restricted Byway
- Byway Open to All Traffic
- Point path number or status changes
- Boundary of area covered by 1:2500 scale Network Map
- Area covered by 1:2500 scale Network Map

**EXTRACT OF THE WORKING COPY OF THE
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FOR THE COUNTY OF KENT**

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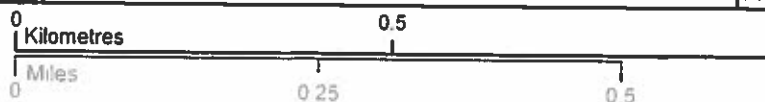
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PROW/SR/1484/DEF

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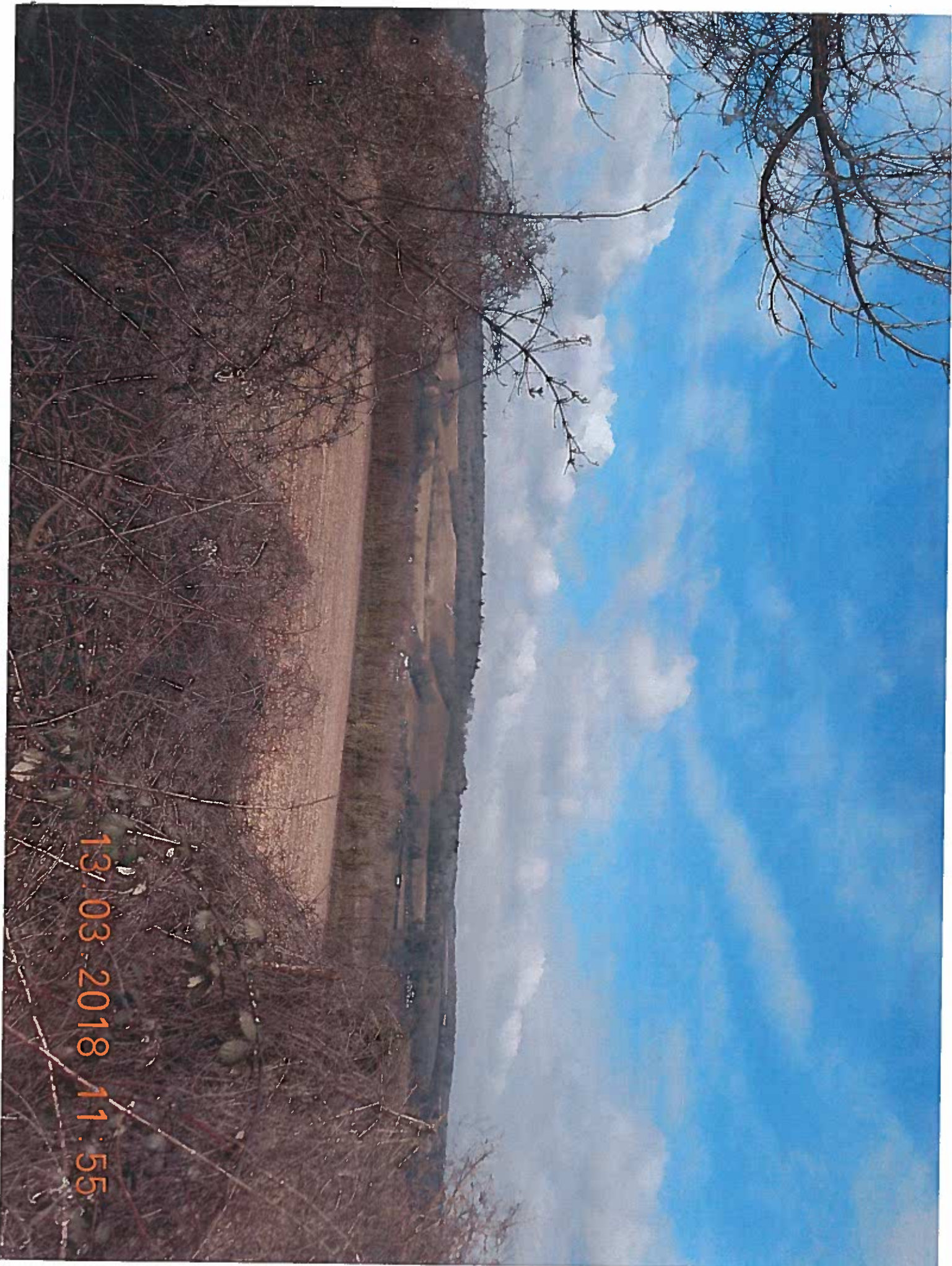
Appendice C



13.03.2018 12.07



13.03.2018 12:09



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13.03.2018 11:56