

Application to divert part of Public Footpath WC108 and create an additional Public Footpath at Cranbrook

A report by the PROW and Access Manager to Kent County Council's Regulation Committee Member Panel on Monday 3rd December 2019.

Recommendation:

I recommend that the County Council

- (a) makes a Public Path Diversion Order to divert part of Public Footpath WC108 at Cranbrook;**
 - (b) makes a Public Path Creation Order to create a new length of Public Footpath in the vicinity of Great Swifts Manor at Cranbrook; and**
 - (c) in the event of objections to the Order(s), the matter be referred to the Planning Inspectorate with the County Council retaining a neutral stance in respect of any proceedings thereafter.**
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Local Member: Mr. S. Holden (Cranbrook)

Unrestricted item

Introduction

1. The County Council has received an application ("the application") to divert part of Public Footpath WC108 from the owners of Great Swifts Manor at Cranbrook ("the applicants"). As part of the proposal, the applicants have also offered to create an additional length of path around the edge of an adjoining field to benefit users of the existing PROW network. The proposals are shown on the plans at **Appendix A** (proposed diversion of Public Footpath WC108) and **Appendix B** (proposed creation of new route).
2. The applicants have applied for the diversion on the basis that it is in their interests to move the path for several reasons:
 - To increase safety as the current route runs down a busy driveway with a considerable number of visitors and delivery vans throughout the day. A magnetic counter installed at the gate recorded between 50-80 vehicles daily or between 300-500 vehicles per week. The applicants have also had incidents where children and dogs have been close to a serious accident.
 - The Footpath runs across land fronting the property where the applicant's children and dog play. The diversion would provide better security in this respect. The proposed diversion would also improve the security of the property.
 - The field over which the footpath passes is grown to hay and having a footpath crossing and bisecting this field is potentially dangerous when farm machinery is operated in the vicinity. The applicant's tenant has stated he is not willing to take a hay cut from this area of the Estate as the path is used by the public to exercise dogs who foul the grass. Dog excrement contaminates the machinery used to cut the grass and the hay crop that is produced. Contaminated hay poses a real risk as an animal feed and is of no value. Cleaning contaminated machinery is unpleasant and can also pose a health risk.
 - Although there is currently a separate gate provided adjacent to the main gates, walkers frequently attempt to gain access through the electronically

controlled main gate which has resulted in damage to the motor and expensive replacements.

Policy

3. The Countryside Access Improvement Plan (CAIP) Operational Management Document (dated 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 may be processed sooner:

- Where an Order would satisfy one or more of the key principles set out in paragraph 11.1 of the Countryside Access Policy,
- 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.

4. The County Council will consider whether the following criteria are satisfied before promoting a Public Path Change Order. Irrespective of the following, the statutory reasons (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 (as set out within section 3 of the Policy).

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.

5. 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

6. Legislation relating to the diversion of a public path is contained within section 119 of the Highways Act 1980 ("the 1980 Act") and the procedure is set out in Schedule 6 of the 1980 Act.
7. 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 seashore cannot be moved to a different point on the seashore. 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.

8. Legislation relating to the creation of a Public Footpath by Order is contained within Section 26 of the 1980 Act which provides that:

(1) Where it appears to a local authority that there is a need for a public path over land in their area and are satisfied that, having regard to-

(a) The extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and

(b) The effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation

it is expedient that the path or way should be created, the authority may... create a public path over the land.

Consultations

9. Consultations have been carried out and the following responses were received:

County Member

10. County Member Mr. S. Holden was consulted but no comments were received other than the fact he was aware of the application which was to be discussed further by the Parish Council and that he expected to hear more.

Tunbridge Wells Borough Council

11. The Council was informed the Borough Council does not support diversions of public rights of way especially in the High Weald as this is contrary to Landscape and AONB Management Plan objectives unless there are compelling reasons of safety and/or security or a satisfactory alternative of equal or greater value can be provided. Neither appear to apply in this case and consequently the proposal is not supported. The Council received no response to the proposed additional route.

Cranbrook Parish Council

12. The Parish Council initially responded fully supporting the proposal on the basis that the new path would be equally as accessible as the existing.

13. However, the Parish Council has seen fit to reconsider the matter and whilst supporting the additional length of path now objects to the proposed diversion on the following grounds:

- The proposed route is approximately 400 metres longer than the original;
- The current line of WC108 is well used and pivotal in picking up the path to the neighbouring village of Sissinghurst;
- The applicant's claim to the taking of a hay crop is inaccurate;
- Historical evidence exists of this ancient path being used for at least 250 years;
- Important views of Cranbrook would be lost; and
- In the context of the emerging NDP and the draft Local Plan there could be potential large developments at Wisley necessitating the provision of footpaths providing cohesion between settlements.

The County Council's policy is that the objection by the Parish Council is to be regarded as 'substantive' and as such any decision has to be taken by Members and not an Officer with similar authority delegated to him/her.

User Groups

14. The Ramblers, Open Spaces Society and the British Horse Society were consulted.

15. The local Ramblers' representative has responded to the consultation and noted that the reasons for the landowner wanting to re-route this path were, in his opinion, very inaccurate. He further stated:

- This PROW has been in place for many years;
- The path runs parallel to the drive and crosses at a point with excellent visibility - it is not a busy driveway and he does not believe there have been near accidents;
- The path is nowhere near the house so there is no significant security aspect;
- The perceived danger of farm machinery is wildly exaggerated;
- The driveway gate is electric, but the footpath does not use this (there is a separate gate) and he cannot believe for one minute that a walker has damaged it; and
- These are fabrications on the part of the owner who purchased the land with the PROW and now wishes to change it.

16. The Ramblers' representative has also engendered a response from a local resident who states that:

- She would like to reiterate the Ramblers' views;
- She has used the path frequently since 2001 and almost weekly between 2001 and 2009;
- She very rarely met any other person whilst using this path;
- The path does not take the public anywhere near the house; and
- She had never seen damage to the footpath or the gate.

17. It is interesting to note her statement that she rarely met any other person whilst using this path which conflicts with the statement by the Parish Council that the route is well used.

18.No response was received from the British Horse Society or the Open Spaces Society.

Utilities Companies

19.No objections were received from the utilities companies.

High Weald AONB Unit

20.The High Weald AONB Unit responded stating Kent County Council has a statutory duty to have regard to the purpose of conserving and enhancing the natural beauty of the High Weald AONB. This duty includes the determination of applications for the diversions of PROW. In this respect, Objective R1 of the Management Plan states an objective of maintaining the basic pattern and features of routeways. The Current alignment of WC108 is of historic importance serving not only Great Swifts but historically Moat Farm (now gone). It was used for the local movement of people stock and farm vehicles over 250 years between the farms, green and common and for access around Swifts Park. The diversion would therefore be damaging to the High Weald AONB and impact upon public enjoyment of the route by those who appreciate walking in the footsteps of their ancestors. The High Weald AONB unit therefore objects to the diversion of this footpath. Several historical maps were submitted in support.

Area Public Rights of Way Officer

21.The West Kent Area Public Rights of Way Manager initially voiced concerns which were placed before the applicant. He also sought assurances concerning any new works on the proposed path. In consequence of this, and the other comments articulated above from those voicing similar concerns, the applicant amended his proposal and agreed to the required works. The applicant also offered an additional length of path to further improve the local network. In consequence, the Area Manager states that, with the dedication of the additional path and his suggested amendment to the diversion, he would not raise any objection to the proposal.

The proposed diversion of part of Public Footpath WC108

22.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 or the public 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.

The above criteria and the conclusions upon them are considered individually below.

(a) Whether it is expedient in the interests of the owner of the land or the public that part of the footpath in question should be diverted.

23. The applicant has, in addition to his original application, amplified his reasoning following comments received at the consultation stage. In the main these are summarised at paragraph 2 above.

24. It is suggested by the Parish Council and the Ramblers' representative that the initial grounds for diversion submitted by the applicants were weak. It is accepted that, whilst not all of the grounds advanced by the applicants would individually be considered sufficient to divert the footpath, the applicants nonetheless, on balance, do provide convincing argument, and reflect concerns of security and privacy that have been raised in the past by previous owners.

25. One of the original reasons given in support of the application is the damage to the driveway gate. On the basis of current case law alone, where the Courts have held that it is not acceptable for a landowner to lock a gate for his own purpose and provide a separate gate alongside to accommodate the footpath, the applicant has a case. Currently (and indeed for some time), the public have entered the grounds of Great Swifts through a gate placed some metres away from the legally defined line of the path which passes through the main vehicular gates. The Parish Statement prepared by the Cranbrook Parish Council in the 1950s describes the route as running 'onto to drive to Great Swifts, and thence on to Main Road by Lodge Gate'. Today, the Lodge gates, are worked by electricity and are an integral part of the security of this large property. Were the County Council to implement the correct letter of the law and insist the path is open on the correct line there is no doubt this would present the applicant with problems of security. The Gate design would need to be amended and the electrics disabled. The applicant has already submitted evidence of damage/repair where users had attempted to push their way through the main gates in ignorance of the fact, they were electrically operated. It would appear therefore that the applicants have genuine concerns in this respect such that it is in their interest to divert the path.

26. The diversion will improve security and privacy; it may not be as great as that received by other applicants from somewhat smaller properties, but it is none the less an improvement.

27. Having carefully considered the grounds for the diversion, it would appear that it is in the landowner's interest for the path to be diverted and this test is therefore met. The point raised by the Parish Council that there could be further large developments in the Wisley Area tends to support the applicant on the basis of increased future usage of this path.

(b) Whether the point of termination of the paths 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;

28. The path is to be diverted to reconnect with the same highway at the same points as presently exist. Accordingly, the points of termination will therefore remain equally as convenient.

(c) Whether the right of way will not be substantially less convenient to the public;

29. The new route will not be substantially less convenient to the public. This is an amenity path where most of the use would be for recreational purposes (as opposed to, for example, a route to school or other local facilities). The diversion may increase the distance that some users would have to travel but may equally reduce this for others, dependant of course on their ultimate destination. In any event, any increase would be minimal given the context of the recreational use.

30. The proposed diversion will initially traverse an open area of grassland and then the proposed creation to the south of WC103 will follow a broad and mown grassed surface with a width of two metres. The headland path is a route currently enjoyed by the public on an informal basis and the Order will formalise the current informal arrangement. The convenience of the public in using this new route will not be in any way jeopardised and this is illustrated by the plan attached at **Appendix C** which shows the surrounding rights of way network.

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

31. The proposed diversion is not any less enjoyable to use, in terms of its physical nature, than the current route.

32. It has been suggested by the objectors that the proposal would result in the loss of an historic route. However, this cannot be in any way said to be a route of any intrinsic or specialist historic interest. It is, like most paths in Kent, old. It is not “a walk-through time” which encourages use of this route and unlikely that most, or if indeed any, users of this route would be remotely aware of any historic significance, let alone be specifically attracted to the route for this reason. Despite assertions to the contrary, these routes are not pickled in aspic nor inscribed in tablets of stone; instead they have been providing the public - albeit over many years - with a means to navigate the County. Even with the proposed diversion, the path will continue to do just that for the current and future users.

33. As such, it is not considered that the proposed diversion will have any negative impact upon the public enjoyment of the path as a whole.

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

34. There will be no detrimental effect on other land served by the existing path.

(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.

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

The proposed creation of a new Public Footpath

36. In an effort to address some of the issues raised by the objectors, the applicants have offered to dedicate a further length of path which, taken together with the proposed diversion, would be advantageous to the public by improving access to the local network of Public Rights of Way. However, quite rightly, the applicants have informed the County Council that this offer of an additional length of path is conditional upon the successful outcome of his Diversion Order application.
37. The Area PROW Manager is in total agreement with the additional length of path and the improvement/benefit it would bring. The matter could be dealt with by way of an Agreement under Section 25 of the 1980 Act but, in my view, it would be more properly dealt with under section 26 of the 1980 Act by the making of a formal Public Path Creation Order. The County Council received no objection to this proposal.
38. As set out at paragraph 7 above, the County Council may make a Public Path Creation Order where it is considered necessary to do so, having regard to both the extent that the new length of path would add to the convenience of path users and also the effect the new path would have on persons with an interest in the land.
39. In this case, it is clear that the proposed new path would add to the convenience and enjoyment of path users as well as providing a useful addition to the local rights of way network.

Further considerations

40. 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.
41. 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 is no adverse effect caused by the diversion of the path with the landowner, as set out above, stating positive advantages.
42. 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*". In this case, there is no adverse effect caused by the diversion of the path.
43. 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 does form part of the High Weald AONB, but the High Weald Joint Advisory Committee objections have been taken into account and given due regard. It is not considered that the proposal will affect the conservation or natural beauty of the AONB.

44. 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, the proposed diversion would provide positive benefits to the landowner in this respect.

45. 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 no adverse impact on the use of the affected path as a result of the diversion.

Conclusion

46. It is considered, having regard to all of the relevant considerations, that the legal tests are met in all respects and that a Public Path Diversion Order should be made in respect of Public Footpath WC108, as per the applicants’ request. In addition, it is proposed that Public Path Creation Order be made to give effect to the additional route offered by the applicants.

Recommendations

47. I recommend that the County Council

- (a) makes a Public Path Diversion Order to divert part of Public Footpath WC108 at Cranbrook;
- (b) makes a Public Path Creation Order to create a new length of Public Footpath in the vicinity of Great Swifts Manor at Cranbrook; and
- (c) in the event of objections to the Order(s), the matter be referred to the Planning Inspectorate with the County Council retaining a neutral stance in respect of any proceedings thereafter.

Appendices:

Appendix A – Plan showing the proposed diversion of Public Footpath WC108

Appendix B – Plan showing the proposed creation of a new length of path

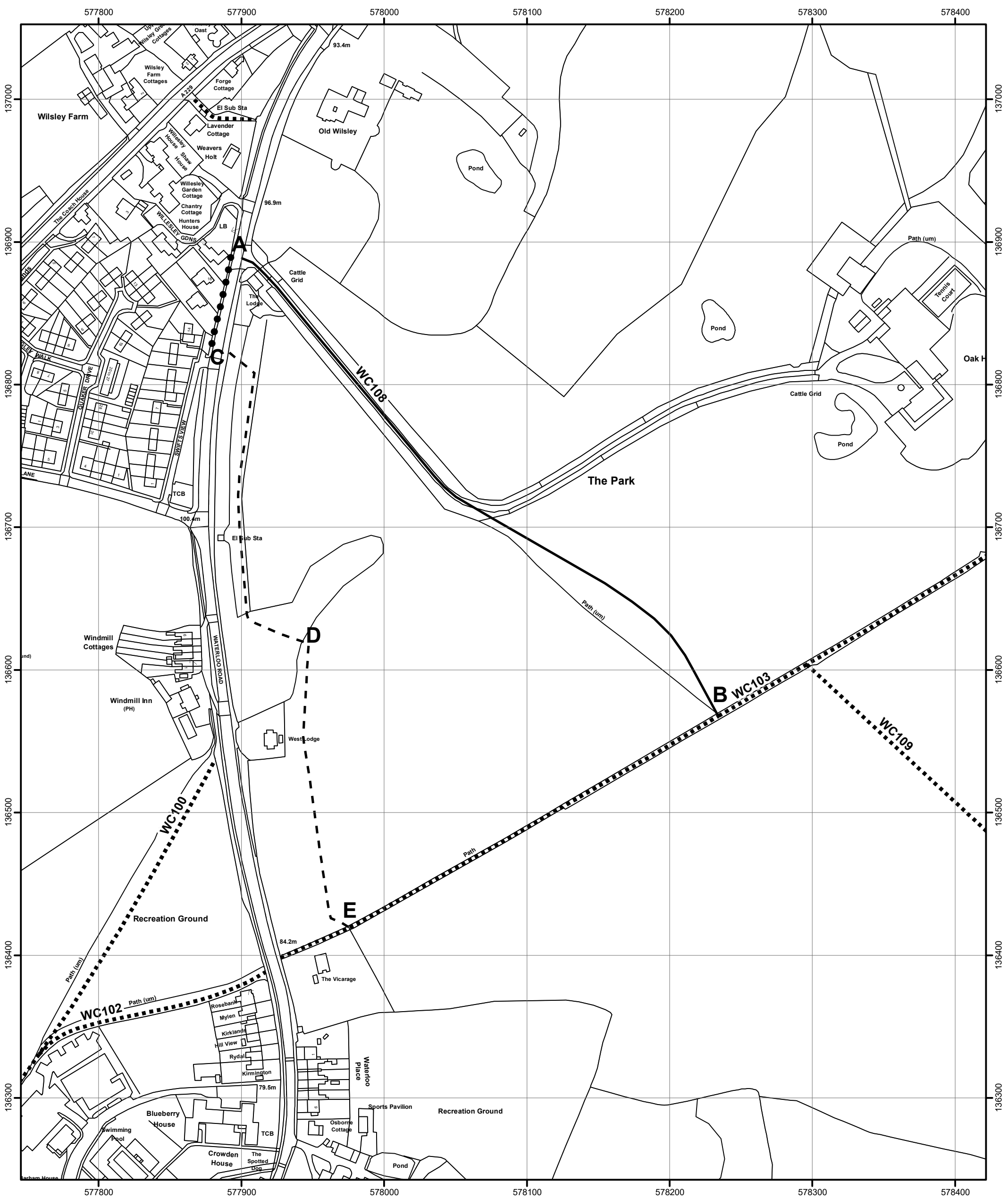
Appendix C – Plan showing the wider PROW network

Background Documents:

Case file in respect of the proposed diversion of Public Footpath WC108 and creation of new path at Cranbrook

Contact Officer:

Chris Wade 03000 413475



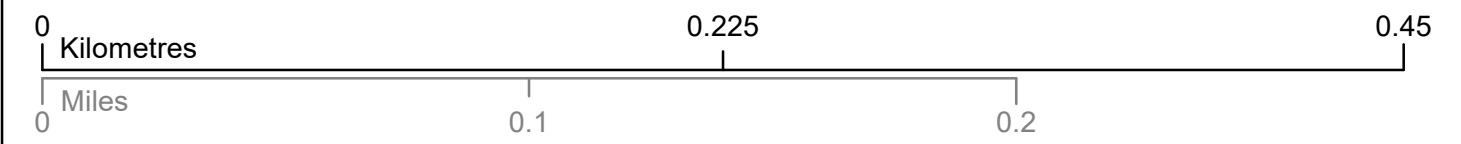
Key	Route to be diverted
	New Length of route
	Unaffected Routes
	Existing highway being used as part of this diversion

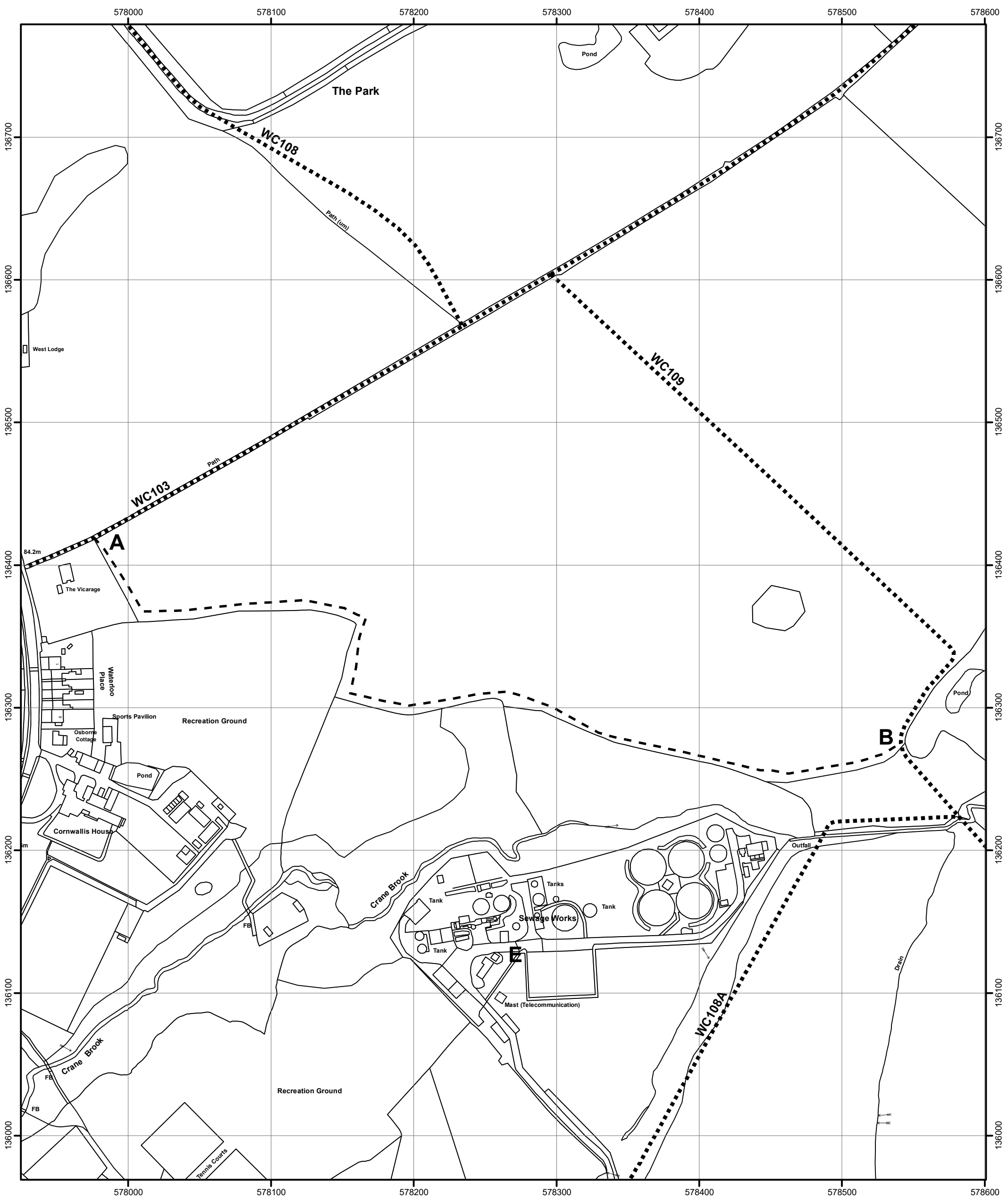
Highways Act 1980
Kent County Council
Public Footpath WC108, Cranbrook)
Public Path Diversion & Definitive Map and Statement
Modification Order 2019
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Created by:	WJB
Checked by:	CW
Reference:	WC108

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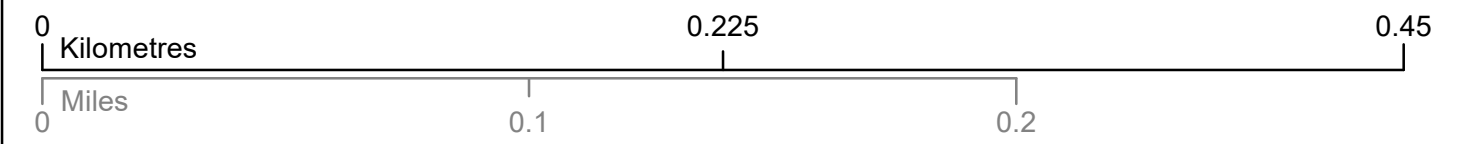
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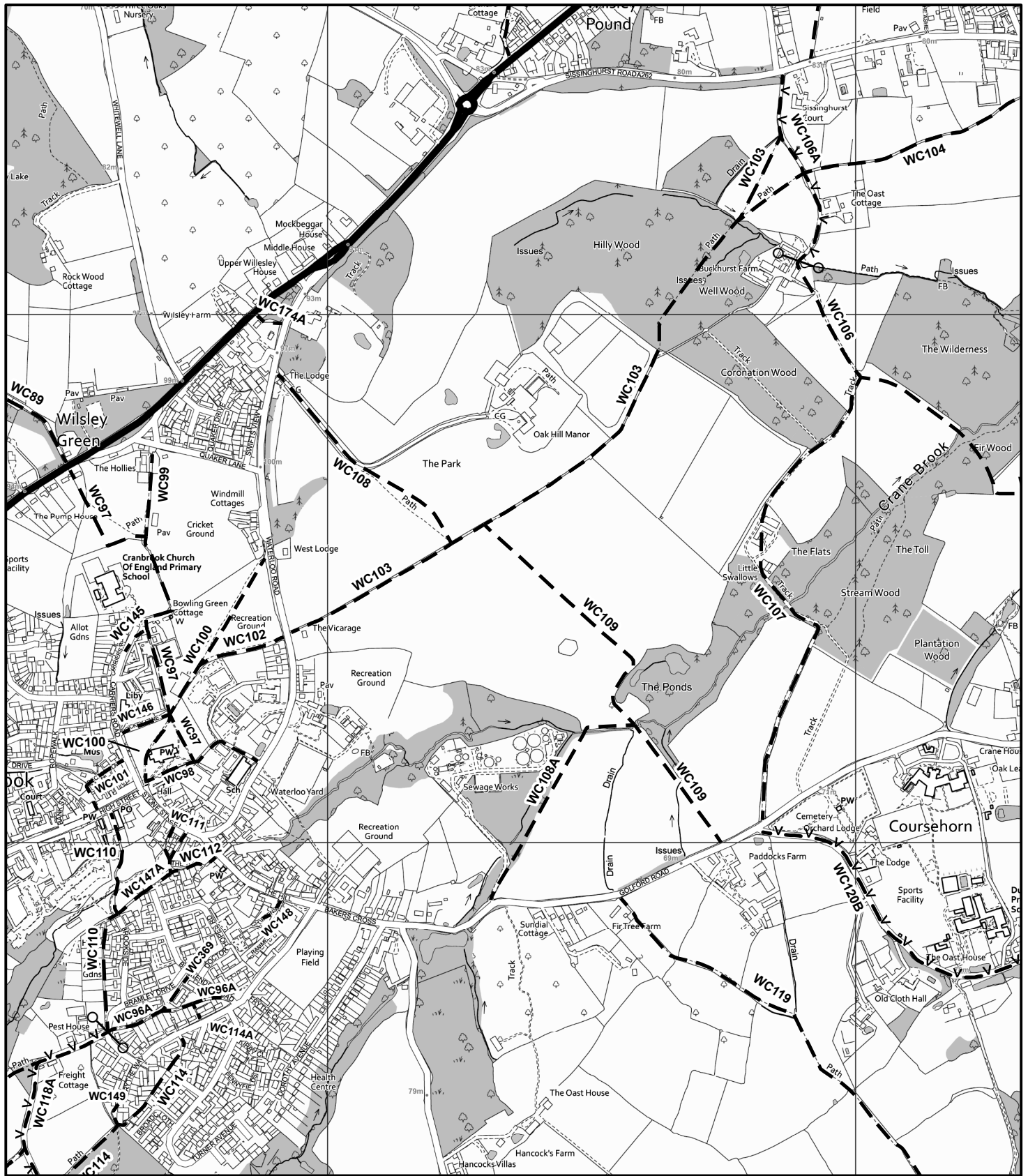
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Created by:	WJB
Checked by:	CW
Reference:	WC108

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- 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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Issue Date:

13/11/2019

Reference:

WC108Def

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