

RIGHTS OF WAY & HIGHWAY LICENSING PANEL

MONDAY, 18 OCTOBER 2021

PRESENT: Councillors Maureen Hunt (Chairman), Samantha Rayner, Christine Bateson, Phil Haseler, Mandy Brar, John Baldwin and Clive Baskerville

Also in attendance: Councillor Gurpreet Bhangra

Officers: Mark Beeley and Anthony Hurst

APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Cannon and Councillor Muir. Councillor Bateson was attending the meeting as Councillor Cannon's substitute.

DECLARATIONS OF INTEREST

In the interests of transparency, Councillor Rayner explained that she had visited the footpath last year with officers.

MINUTES

RESOLVED UNANIMOUSLY: That the minutes of the meeting held on 7th April 2021 were approved as an accurate record.

FOOTPATHS 17 AND 59 COOKHAM: DIVERSION APPLICATION

The Chairman confirmed that the Panel had visited the site the previous week, accompanied by an officer from RBWM. The members who had attended the site visit were Councillor Baskerville, Councillor Brar, Councillor Baldwin, Councillor Haseler and Councillor Hunt.

Anthony Hurst, Parks and Countryside Manager, explained that the application had been received from the landowner for the diversion of parts of Footpaths 17 and 59 Cookham, at Mount Farm in Cookham. The proposal was that parts of footpath 17 would be moved from crossing the field as it was currently, to be diverted to the permitted path in situ that followed the edge of the field instead, and a connecting section of Footpath 59 would also be diverted. The dashed black lines on the map showed the proposed new routes of the footpaths, with the current routes shown by solid black lines. There were some legal tests that needed to be applied when considering this application. The proposed diversion had to be considered under the criteria set out in Section 119 of the Highways Act 1980. This required that before making a Diversion Order the Council had to be satisfied that the proposal would be in the interests of the owner of the land and/or in the interests of the public. Before confirming an Order, the Council had to also be satisfied that the proposed new route would not be substantially less convenient to the public than the existing route and must have regard to the effect that the diversion would have had on public enjoyment of the path as a whole, and the effect that the coming into operation of the diversion would have had on land served by the existing right of way. The Council had to also have regard to the needs of agriculture and forestry, flora and fauna, and any relevant provisions within the current "Royal Borough of Windsor and Maidenhead Public Rights of Way improvement Plan 2016-2026".

The officer view was that the proposed diversion did not meet the criteria, both in terms of the 'convenience' test and the 'enjoyment' test, and therefore a recommendation had been put forward in the report to refuse the application. Anthony Hurst presented some photos to the Panel which showed the footpaths and area that was being discussed.

The Chairman asked if Anthony Hurst could clarify what the difference was between a permitted footpath and a public footpath.

Anthony Hurst said the fundamental difference was a public right of way was permanent and available to use all year round. A permitted footpath could be opened up by landowners, but it was up to them whether it was temporary or if it was later closed.

Dick Scarff said that he was speaking on behalf of the Cookham Society. He said the current footpath had great views whereas the new proposed footpath lost these views as it went around the edge of the field. Female walkers felt safer crossing the middle of a field, particularly as the edge was close to the woods. Dick Scarff asked the Panel to support the officers recommendation for refusal. He had spoken with the previous landowners a number of years ago and had been told that the impact the footpath had on farming in the field was very small. The main issue was when the footpath got muddy, walkers would stray off the route into planted areas. Dick Scarff suggested that the applicant created a permitted path around the field edge to avoid this, along with additional signage.

Jayne Walker explained that she was speaking in support of the application. She had been impressed by the efforts of the landowners to improve the paths and environment for both wildlife and walkers. The council should work with farmers, the new route was slightly longer but not substantially so. The permitted path should be retained so that it could be used in winter if the original footpath was to get too muddy. People were using footpaths to enjoy the countryside rather than from getting from A to B in the shortest amount of time. Jayne Walker enjoyed having the woods beside the proposed footpath. She had used the permitted path regularly and often saw more people using this path than the original cross field path. Therefore, she believed that more people would be inconvenienced if the permitted path was to close in favour of keeping the cross field path. If the issue was with the surface of the path, this could be addressed in consultation with the landowner. Jayne Walker had never encountered farm machinery on the permitted path.

Jane Shire said that she was supportive of retaining the existing footpaths on their current routes. They were well used and even when they were muddy, walkers had appropriate footwear. The views were delightful and very enjoyable for those who walked the route. Jane Shire believed that the footpath made less damage to the crops than the tyre tracks did when the crops were harvested. She did not feel there were any valid reasons to move the footpaths.

Diane Lilley said that she strongly objected to the proposal. The new route was dull, open paths provided a much better experience for walkers. The cross field path had exceptional light whereas the proposed path was largely in shade. Diane Lilley was surprised at the proposal as it would likely involve cutting down trees. A long circular route was not needed and Diane Lilley urged the Panel to reject the application.

Steve Gillions said that he was representing the Ramblers Association. He argued that the footpaths should be retained in their current form. The Ramblers had agreed to a diversion at the site before and were mindful of the criteria which had been set out by officers. Steve Gillions said there was no good reason for the footpath to be closed. The permitted path had been welcomed by some but this should not be at the expense of the current cross field path.

Jane Courtier said that she supported the officers recommendation that the application was refused. If the cross field path was closed, it would lead to a reduction in the number of local walks available. Jane Courtier felt that the permitted footpath was also worth keeping for those who were doing longer walks.

The applicant, Mr Copas, said that he appreciated the Panel undertaking a site visit of the proposed area. A lot of walkers had used the QR codes which had been placed on signs along the path, expressing their support of the footpath diversion. There was an effect on farming as walkers strayed further from the path during winter months when the path was muddy. Mr Copas walked the route regularly and a lot of walkers had said that they enjoyed the proposed route.

The Chairman said that there had been 18 objections received to the application and 27 comments in support. Therefore, the application was very divisive.

Councillor Baskerville asked how old the footpath was.

Anthony Hurst explained that the northern part of the footpath dated back to 1875 or earlier, although the route of the southern sections of the footpath were more recent.

Councillor Baskerville commented that the footpath had significant history, the largest hand axe in Europe had also been found close by. The path provided a good vantage point, with walkers being able to see a significant distance on a clear day. Councillor Baskerville was pleased to see that the footpaths were popular, he went to Furze Platt Secondary School and used to do cross country around the area and therefore knew it well. The proposed footpath around the edge of the field lost the view which was important for many people.

Councillor Haseler felt that he had heard more reasons to retain the footpath than divert it. The potential closure of the cross field footpath could make it more difficult for walkers to complete a local circular route, RBWM wanted to encourage more residents to get out and enjoy the boroughs countryside.

The Chairman asked if the footpath had been previously diverted.

Anthony Hurst clarified that the southern section of the footpath had been previously diverted. The northern section was the original route. There had been no objections to the diversion from any users, therefore the diversion was automatically approved.

Councillor Baldwin explained that this was one of the hardest decisions that he had made as a councillor. He had a huge attachment to the local area and was mindful of the arguments that had been made both for and against the application. Councillor Baldwin believed that the permitted footpath was more accessible and the loss of the direct route would be greater if there was something at the end of it. He said that he was unable to comment on the farming aspects of the application. Councillor Baldwin wanted to see the surface at an acceptable level to enable cycling but he did not find anything objectionable in the application which had been made.

Councillor Brar said that she was also torn between the two sides of the argument. She felt that the application made sense and was happy with the proposal which the landowner had made.

Councillor Bateson said that lots of people used the footpath and the views were fantastic. Lots of residents were upset about the application and she felt that the cross field footpath should stay along its existing route.

The Chairman commented that the permitted footpath was very good while the public footpath was very muddy, it was clear to see where walkers had trampled on crops. It was important that the diversion was not less convenient for the public, the Panel needed to have regard for the public's enjoyment of the footpath.

Councillor Rayner said that the borough was a good part of the country for walking and there were some good views of things like Windsor Castle from the path. However, she did not

believe that the application was detrimental to the views that could be enjoyed by walkers. Councillor Rayner felt that the new path was more convenient and was therefore better for public enjoyment. It was important that RBWM provided good quality footpaths for its residents. She had noted that there were more representations in support of the application than against it.

Councillor Baldwin commented on the landowner committing to a 2m path, as the section through the woods would be a challenge. He asked if this was enforceable on the landowner.

Anthony Hurst said that the section of path through the woodland would be 2m wide, as detailed in the report. This would mean that there could be no trees within the 2m width of the path, this would be legally enforceable.

Councillor Baskerville asked for clarification on which paths would be closed as a result of this application.

Anthony Hurst explained that if the diversions were to proceed the routes shown on the plan by solid black lines would be diverted to the routes shown by broken black lines. If the diversion was not granted, it was entirely in the control of the landowner on whether the permitted footpath was to remain open.

The Chairman asked what happened to the application after the Panel had voted.

Anthony Hurst said that if the Panel refused the application, that would be the end of the matter. If the application was permitted, Diversion Orders would be published which would then go out for consultation, signs would also be installed at each end of the sections of footpath proposed to be diverted, and a Notice would also be published in the Maidenhead Advertiser. All those who commented in response to the pre-Panel consultations would be sent copies of the Orders and Notices and would at that stage have the opportunity to either re-submit their comments unchanged, or add further comments if they wished.

Once the Diversion Orders had been published and the statutory consultation process completed, a further report would then be submitted to the Panel, for the Panel to consider any objections or representations received during the statutory consultation period. The Panel would then need to decide whether or not to refer the Orders to the Secretary of State, who would then arrange a public inquiry to determine whether or not the Orders were confirmed. The Inspector would then decide the result. RBWM was not itself able to approve the Diversion Orders if there were any outstanding objections.

Councillor Haseler asked what the status of the footpath was at 17.1.

Anthony Hurst confirmed that it was a public footpath.

Councillor Haseler asked if cyclists wanted to use the permitted footpath that they would need to walk their bikes to the footpath.

Anthony Hurst said that footpath 17 would be shared with cyclists, cyclists were able to use footpaths with the landowners permission. Horse riders would not be permitted on the route.

Councillor Baldwin asked if the cycleway could be removed at any point. There were signs at the site which suggested that cyclists were already able to use the path. Councillor Baldwin asked what weight this would have in the decision.

Anthony Hurst said that landowners could create permitted cycleways and then withdraw them, the council was unable to place any conditions on the landowner.

Councillor Rayner asked if the council could ensure that the footpath was also allowed to be used by cyclists.

Anthony Hurst confirmed that this was not possible as there was no mechanism for this in place.

A motion was put forward by Councillor Haseler to refuse the application, in line with officers recommendations. This was seconded by Councillor Baskerville.

A named vote was taken.

To refuse the application (Motion)	
Councillor Maureen Hunt	Against
Councillor Samantha Rayner	Against
Councillor Christine Bateson	For
Councillor Phil Haseler	For
Councillor Mandy Brar	Abstain
Councillor John Baldwin	Against
Councillor Clive Baskerville	For
Drawn	

Due to the vote being a tie, the Chairman used her casting vote. She voted against the motion, therefore the motion fell.

A motion was put forward by Councillor Baldwin to permit the application, against officers recommendations. This was seconded by Councillor Rayner.

A named vote was taken.

To permit the application (Motion)	
Councillor Maureen Hunt	For
Councillor Samantha Rayner	For
Councillor Christine Bateson	Against
Councillor Phil Haseler	Against
Councillor Mandy Brar	Abstain
Councillor John Baldwin	For
Councillor Clive Baskerville	Against
Drawn	

Due to the vote being a tie, the Chairman used her casting vote. She voted for the motion, therefore the motion was passed.

RESOLVED: That the Panel noted the report and:

- i) The footpath diversion application for parts of Footpaths 17 and 59 Cookham, at Mount Farm, Cookham, was permitted.**

The meeting, which began at 6.30 pm, finished at 7.55 pm

CHAIRMAN.....

DATE.....