

## **Proposed Diversion: Footpath No. 2, Kings Nympton**

Report of the Head of Highways, Capital Development and Waste

***Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.***

**Recommendation:** It is recommended that a Public Path Diversion and Definitive Map & Statement Modification Order be made to divert Footpath No. 2, Kings Nympton from the line A – B to the line A – C – B as shown on drawing no. HTM/PROW/11/83B and that if there are no objections, or if such objections are made and subsequently withdrawn, it be confirmed as an unopposed order.

### **1. Summary**

It was recommended at the Public Rights of Way Committee held on 28 February 2013 that a members' site visit should take place to meet with the applicant, objectors and local member so that the decision as to whether or not to divert Footpath No. 2, Kings Nympton could be fully informed and the subsequent recommendation be reported back to the next committee for decision (Min \*PR/69(a) refers). The current proposal is shown on plan no. HTM/PROW/11/83B and previous report HTM/13/16 is attached.

### **2. Background**

The application was made by the landowners, Mr & Mrs Steer-Fowler, in June 2011.

A site inspection was held with the parish council and landowners in July 2012; further consultations were undertaken in August 2012 on a revised proposal resulting in 12 objections (including the parish council), 5 no objections and 4 no responses; another site meeting was held on 14 November 2012 attended by Cllrs. Sanders and Edgell (local member), the parish council and the landowners to consider the objections. A report was taken to the public rights of way committee on 28 February and a decision was deferred until a site visit was undertaken by members to inform the debate.

### **3. Site Meeting**

Members of the Public Rights of Way Committee County Councillors Sanders (chair); Knight; Eastman; Bowden and Colthorpe attended a site visit on 4 April 2013 and met with the landowners Mr and Mrs Steer Fowler and a supporter for the proposal, Mrs Lunn; the parish chairman Mr Kenyon, Mrs Atkinson and Mr Waddell represented the objectors, and County Councillor Edgell attended as the local member. The tests to be met for a diversion to proceed were outlined by the public rights of way & country parks manager and the local area warden at the start of the meeting.

The landowners outlined their proposal as described in the attached report which would enable them to manage the land and their animals more easily whilst at the same time providing an alternative route which they felt would benefit the community. They made the point that if the path could not be diverted they would need to fence both sides of the existing path which they considered could impact on public enjoyment. Mrs Lunn explained how part

of the proposed route would enable her to access the countryside more easily as she has some limited mobility.

The objectors then made their case regarding impact on neighbouring properties, losing an open view, loss of amenity value and proximity to a parallel route also described in the attached report.

The group walked the route and members took note of comments which both the applicants and the objectors made to illustrate their opinions.

The Public Rights of Way Committee members then discussed the matter 'in camera', noted everyone's views and were unanimous in their conclusion that the diversion met the necessary legal tests, would not have an adverse impact on neighbouring property, that the views were of a similar nature and that part of the path was more suitable for those with some limited mobility potentially increasing its amenity value.

#### **4. Conclusion**

The application would appear to meet the requisite legal tests for the making and confirmation of a public path diversion order and is in accordance with County Council policies. Improvements will be required to the surface of the new path, but the order will state that the old path is not deleted until these have been carried out to the County Council's satisfaction. It is recommended that an order be made and published.

#### **5. Financial Considerations**

The landowners have agreed to meet the County Council's standard charge for processing a diversion order application and will meet the cost of all accommodation work required to establish the new path.

#### **6. Sustainability Considerations**

There are no implications.

#### **7. Carbon Impact Considerations**

There are no implications.

#### **8. Equality Considerations**

Where any structures may be required on rights of way, the policy of gap, gate, kissing gate, stile will be followed to improve the accessibility of the network.

#### **9. Legal Considerations**

Section 4 above refers.

#### **10. Risk Management Considerations**

There are no implications.

#### **11. Public Health Impact**

Amendments to the Definitive Map will contribute to the County Councils Health and Wellbeing agenda.

## 12. Options/Alternatives

The processing of diversion order applications is a discretionary power of the County Council. If the decision is taken not to proceed with an order the landowners have no right of appeal.

## 13. Reasons for Recommendation/Alternate Options Considered

The application would appear to meet the relevant legal tests and County Council policies.

David Whitton  
Head of Highways, Capital Development and Waste

### Electoral Division: Chulmleigh & Swimbridge

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Ref.
Correspondence file	2011 – date	PROW(32)ND

rm280513pra  
sc/cr/kings nympton fp 2 proposed diversion  
03 hq 060613



HTM/13/16

Public Rights of Way Committee  
28 February 2013

**Proposed Diversion: Footpath No. 2, Kings Nympton**

Report of the Head of Highways and Traffic Management

***Please note that the following recommendation is subject to consideration and determination by the Committee before taking effect.***

**Recommendation:** It is recommended that a Public Path Diversion and Definitive Map & Statement Modification Order be made to divert Footpath No. 2, Kings Nympton from the line A – B to the line A – C – B as shown on drawing no. HTM/PROW/11/83B and that if there are no objections, or if such objections are made and subsequently withdrawn, it be confirmed as an unopposed order.

**1. Summary**

The report examines an application by landowners to divert a public footpath in the parish of Kings Nympton to facilitate the breeding of horses and to safeguard the public. The current proposal is shown on plan no. HTM/PROW/11/83B.

**2. Background**

The application was made by the landowners, Mr & Mrs Steer-Fowler, in June 2011. The initial proposal was to divert the path on the slightly different alignment A – x from that now proposed along the line A - C. Informal consultations undertaken in May 2012 on the initial proposal resulted in no objections from the statutory consultees, but seventeen objections from local residents. The main concerns related to the loss of amenity and views on the new route, poor ground conditions on the section A - x, security of adjacent properties and proximity of the new route to the existing Footpath No. 1.

A site inspection was held with the parish council and landowners in July 2012 to discuss the objections. In an effort to address the concerns Mr & Mrs Steer-Fowler agreed to move the new path further into the field to the line A – C, to erect a 1.6 metre high fence to improve the security of the adjacent properties, and to excavate a new ditch to assist with field drainage. The area between the new path and the rear of the properties would be planted to provide a recreation area for the public.

Further consultations were undertaken in August 2012 on the revised proposal resulting in 12 objections (including the parish council), 5 no objections and 4 no responses.

**3. Site Meeting**

Another site meeting was held on 14 November 2012 attended by Councillors Sanders and Edgell (local member), the parish council and the landowners to consider the objections.

The landowners explained that the diversion was being sought as they wished to use the field over which the existing footpath crosses for the breeding of horses and were concerned

for public safety. If the path could not be diverted then they would need to fence both sides of the existing path which would impact on public enjoyment. They pointed out that the existing route was very muddy through the gateway at point z and alongside the hedge between points z - B. They accepted that the proposed path was boggy in places, but the planned drainage works would improve this and they were prepared to carry out any surface improvements to the new route that the County Council considered necessary.

The parish council provided a summary of its objections which is attached as an appendix to this report. The objections were as stated above and the summary explains that the landowners were aware of the existence of the footpath before they built their new property. The parish council felt that the landowners were attempting to improve their own privacy at the expense of other residents in the parish and suggested that the path could be re-routed alongside the access road to Mr and Mrs Steer-Fowler's property via point D.

Councillor Sanders was of the view that the diversion met the tests set out under Highways Act for diverting a public right of way and was willing to proceed with publication of an order. However, Councillor Edgell agreed with the parish council and did not wish the matter to proceed as he believed the diversion was not in public interest. It was therefore decided that the application should be considered by the Public Rights of Way Committee for determination.

#### **4. Highway Considerations**

The section 119 of the Highways Act 1980 sets out the criteria for making and confirming a public path diversion order. They are:

**Section 119(1):**

***Whether it is in the interests of the owner, lessee or the occupier of land crossed by the path or way, or of the public that the path or way should be diverted.***

The application to divert the path has been made by the landowners as the field crossed by the existing path will be used for the breeding of horses. The landowners believe that the temperamental nature of the horses could endanger the public.

It is felt that this test is met. There is no requirement that a path diversion must also be in the interest of the public.

**Section 119(2):**

***That an altered termination is on the same highway or a highway connected to it, and that it is substantially as convenient to the public.***

The proposed diversion will not alter a point of termination.

**Section 119(6):**

***Whether it is expedient to confirm the order having regard to:***

***Whether the path or way will not be substantially less convenient to the public.***

This generally addresses issues of length, gradient, difficulty of using the proposed route, surface and safety. The new route will be 80 metres longer than the existing route which is not considered significant given that the overall length of the path is 660 metres. The gradients on both routes are similar. The surface condition on both routes is poor, but the landowners will be required to bring the surface of the new path to an acceptable standard before the old route is extinguished.

It is felt that these general requirements will be met.

***And having regard to:***

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

This deals with issues such as views, noise (e.g. adjacent to a road), proximity of other routes. Both routes provide extensive views of the surrounding countryside. The diversion will affect less than half the length of the existing route and is not considered to adversely affect the public enjoyment of the route “as a whole”. The proposal does, however, take the new path closer to the adjacent Footpath No. 1, but there is a boundary separating the two routes and both routes can continue to be used as a circular walk.

***(b). the effect of the coming into operation of the Order on land served by the existing right of way;***

No other land is served by the existing right of way.

***(c). the effect of the new public right of way on the land over which it is created (or land held with it;***

The new path crosses land in the sole ownership of Mr and Mrs Steer-Fowler and will not affect other land.

**Any material provision in Rights of Way Improvement Plan.**

The County Council’s relevant policies state:

**LP1A** The making of diversion orders which are in the interests of the users and/or landowners will be supported. Examples of diversions in the interest of the public are those which achieve:

- i. a direct improvement in road safety for users; or
- ii. a direct improvement in provision of a circular route, or provide access to a national route, regional route, attraction or viewpoint.

**LP1B** Applications will be supported which seek to divert paths away from:

- i. residential buildings to improve privacy; and
- ii. working farmyards and farm buildings for safety reasons.

## **5. Other Considerations**

The objection of the parish council relating to the landowners’ knowledge of the footpath prior to the building their house is not relevant to the tests set out in the legislation for the making and confirmation of a diversion order. The landowners have not indicated that the application has been made to improve their own privacy, but to make better use of the field which is cut in two by the existing footpath and to safeguard the public. The proximity of the new route to the rear of other properties is also not a relevant consideration, but Mr and Mrs Steer-Fowler have volunteered to erect a 1.6 metre high fence to provide added security for the owners.

The landowners have also offered to enter into a permissive agreement with the parish council for an additional footpath link following the boundary C – x – y. The agreement would be for an initial period of three years and subject to periodic review in case a newly planted orchard is adversely affected by the area being used to exercise dogs.

## **6. Conclusion**

The application would appear to meet the requisite legal tests for the making and confirmation of a public path diversion order and is in accordance with County Council policies. Improvements will be required to the surface of the new path, but the order will state that the old path is not deleted until these have been carried out to the County Council’s satisfaction. It is recommended that an order be made and published.

## **7. Financial Considerations**

The landowners have agreed to meet the County Council's standard charge for processing a diversion order application and will meet the cost of all accommodation work required to establish the new path.

## **8. Sustainability Considerations**

There are no implications.

## **9. Carbon Impact Considerations**

There are no implications.

## **10. Equality Considerations**

There are no implications.

## **11. Legal Considerations**

Section 4 above refers.

## **12. Risk Management Considerations**

There are no implications.

## **13. Options/Alternatives**

The processing of diversion order applications is a discretionary power of the County Council. If the decision is taken not to proceed with an order the landowners have no right of appeal.

## **14. Reasons for Recommendation/Alternate Options Considered**

The application would appear to meet the relevant legal tests and County Council policies.

Lester Willmington  
Head of Highways and Traffic Management

## **Electoral Division: Chulmleigh & Swimbridge**

Local Government Act 1972: List of Background Papers

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Background Paper

Date

File Ref.

Correspondence file

2011 – date

PROW(32)ND

mj100113pra  
sc/cr/proposed diversion kings Nympton fp2  
02 hq 140213





## KINGS NYMPTON PARISH COUNCIL

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13<sup>th</sup> November 2012

### **Proposal to re-route footpath No2 in Kingsnympton Parish**

There is limited access to open land in the parish and therefore the two footpaths in proximity to the village (No1 and No2) are a very valuable amenity.

(See Public Rights of Way 77 RevNov01 attached)

The amenity value of these footpaths is corroborated by the findings of a Parish Survey conducted in the summer of this year. Of the 80% of parishioners replying to the survey:

94 people 34% said that they used footpaths often.

97 people 35% said they used footpaths seldom.

162 people replied that they lived within the village boundary.

Since May the Parish Council has considered and rejected the proposal to re-route footpath No2 on a number of occasions putting forward their view to both the owners of North Close and the PROW Officer that the preferred route should closely follow the line of the original footpath.

In June 2012 the PROW Officer received 17 objections to the re-routing of the footpath and 2 in favour. In September 14 parishioners re-confirmed their objections.

Most recently at the meeting on Thursday 8<sup>th</sup> November the latest proposal for the path re-routed according to ACB, with more detail as to planting, construction and drainage, was discussed.

The Parish Council unanimously rejected route ACB and agreed that the most acceptable route is ADB which provides fine open views to the north across the fields.

**The Parish Council objects to the re-routing of footpath No2 on the following grounds:**

- 1) The owners of North Close built their house close to the existing footpath in the full knowledge of its existence.
- 2) In an attempt to improve their own privacy the owners of North Close have promoted the re-routing of the footpath to the boundaries of a number of village residents thus reducing their privacy and view across the fields.
- 3) The proposed diversion of the footpath, for all the detail of improved drainage etc., runs close to, and parallel with, a significant portion of footpath No1 and therefore offers no improved amenity.
- 4) It is possible that the proposed re-routed footpath will reduce the value of those properties affected by its close proximity to their land.

**The Parish Council proposes that the footpath remain very close to its original route ADB for the following reasons:**

- A) There is no compelling reason to move the footpath at all as, with a careful planting scheme adjacent to the house, the privacy of North Close could be maintained.
- B) The existing No2 footpath provides one of the very few routes which is dry underfoot and provides quality and diversity of views. An important amenity for village residents
- B) The route ADB continues to protect the privacy and views of residents of long standing in the village who have enjoyed this aspect since they purchased their properties.

We expect the views of the village to prevail in this matter.

H. M. Kenyon

Chairman

cc Mr Mike Jenkins  
Mr Philip Sanders  
Mr Richard Edgell  
Mr and Mrs Steer-Fowler