



REGULATORY SERVICES COMMITTEE

REPORT

4 October 2012

Subject Heading:	Application for the Diversion of Footpath No. 252 at RM14 3QH over land situate at North Ockenden between Dennis Road and the stile to the south of the Railway crossing in Upminster Ward (and Ockendon Ward Thurrock Council area)
Report Author and contact details:	Vincent Healy, 01708 432467 Vincent.Healy@havering.gov.uk James Rose, 01708 433868 james.rose@havering.gov.uk
Policy context:	1. Parks and Open Spaces Policy 2. Rights of Way Improvement Plan (currently in Draft) 3. Section 53(2) of the Wildlife and Countryside Act 1981
Financial summary:	Applicant contributes to costs of advertising and making Order

The subject matter of this report deals with the following Council Objectives

Ensuring a clean, safe and green borough	[X]
Championing education and learning for all	[]
Providing economic, social and cultural activity in thriving towns and villages	[X]
Valuing and enhancing the lives of our residents	[X]
Delivering high customer satisfaction and a stable council tax	[]

SUMMARY

- 1.1 This report relates to an application submitted by the owners of land running alongside the M25 within post code RM14 3QH, which is crossed by Footpath No. 252, to divert part of Footpath 252 because that part of it is being covered over by new earth banks to facilitate the widening of the M25 between junctions 29 and 30 and also divert the footpath around a new 'balancing pond' which will service the water run off from the M25.
- 1.2 The applicant requests that the Council exercise its powers under Section 119 (public path diversion orders) of the Highways Act 1980 to divert a section of footpath No.252 between the railway line stile at the northern end of the diversion and a new exit point on Dennis Road to the south approximately 60 metres to the east of its current termination point. The existing footpath No. 252 to be diverted is shown on the Definitive Rights of Way Map running from the stile to the south of the railway line (running between Ockendon and Upminster Railway Stations) southwards and near to the bottom of the M25 embankment to join with Dennis Road on the eastern side of the M25.
- 1.3 The Council must consider the following factors and determine whether it is satisfied that these tests have been met before confirming the Order following consultation. The Council must be satisfied that (i) the new path is not substantially less convenient to the public as a result of the diversion; (ii) that confirmation is expedient having regard to the effect of the diversion on public enjoyment of the path as a whole and on the land crossed by the existing path or to be crossed by the new one; and (iii) that the new path does not alter the point of termination otherwise than to a point on the same highway and be substantially as convenient to the public.

RECOMMENDATIONS

Subject to the landowners paying the Council's costs of making and advertising the Order under the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 [SI 407], receiving all necessary consents and making up the path into a suitable state for users it is recommended that:

- 2.1 The Council consults with interested parties, statutory consultees, the landowners and Thurrock Council (from whom the Council must obtain prior statutory approval) for an Order to divert a section of Footpath No.252 within RM14 3QH under the provisions of sections 119 and 120 of the Highways Act 1980 as amended by the Wildlife and Countryside Act 1981 on the grounds that it is expedient in the interests of the owners of the land to make this Order. The existing footpath is shown as a solid black line on the attached plan.

- 2.2 A Combined footpath and modification of the definitive map and statement Order be made to create a new route for users of Footpath 252 to facilitate the diversion as shown on the attached plan as a broken black line. Public Notice of the making of the Order be given by amongst other things posting Notices to this effect at each end of the path affected and in the Romford Recorder and the Thurrock Enquirer.
- 2.3 That in the event no objections are made to the proposal within the 28 day period specified or that any objections which may be made are withdrawn and/or resolved then the Order be confirmed by the London Borough of Havering without further reference to the Committee on the grounds that: (i) the Council is satisfied that the new path is not substantially less convenient to the public as a result of the diversion and that the interests of the owner are considered in balance with any possible inconvenience to the public; (ii) that confirmation is expedient having regard to the effect of the diversion on public enjoyment of the path as a whole and on the land served by the existing path or to be crossed by the new one; and (iii) the Council is satisfied that the new path does not alter the point of termination otherwise than to another point on the same highway [Dennis Road] which is substantially as convenient to the public. This decision will be made with due regard to the Havering Rights of Way Improvement Plan (in draft).
- 2.4 In the event that the objections submitted cannot be resolved the matter be remitted to a subsequent meeting of the Regulatory Services Committee after the close of the consultation period to determine whether or not to submit the order with the objections to the Secretary of State for confirmation or decide not to confirm the order.

REPORT DETAILS

- 3.1 Between 1975 and 1979 the Ministry of Transport constructed the M25 motorway through this part of Essex and in so doing blocked up or diverted numerous footpaths by Order. Footpath 252 was altered in this way from its 1971 Definitive Map and Statement line because it was bisected by the new motorway. Formerly FP 252 continued a hundred yards across a field to join with Pea Lane where it terminated. The diversion which was made by order of the Ministry in 1975 took the path south to join Dennis Road and ran it close to the eastern embankment of the M25 running north-south from the stile at the railway line.
- 3.2 On the 4th March 2011 the Council received an application from Skanska Balfour Beatty Joint Venture, who have become the owners of the Land which the existing footpath crosses, to formally divert the section of footpath No. 252 situated on their land along the black dotted line on the attached plan. The owner made this request because they were building out over the footpath to create a new embankment to support the M25 widening currently under way and to put in place a 'balancing pond' to accommodate water run off. Officers consider that the first test has been passed in that the Council is satisfied that it is expedient in the interests of

both the owners of the land which the old path rested on and the owner of the land over which the new path is proposed to go to make this Order.

3.3 Secondly, and on balance, Officers are satisfied that the diversion is not overall substantially less convenient to the public. This test is one which requires the Council to consider all the circumstances. The reasons for this conclusion are as follows:

3.3.1 The new footpath would run around a new 'balancing' (motorway drainage run-off) pond and back on to the same highway (Dennis Road) within 60 metres of the existing termination point further east so *more* convenient for walkers heading in that direction having also a little less road walking although the reverse will be true for those heading west back under the M25 into Havering so in this last respect the effect is considered to be at worst neutral;

3.3.2 the proposed route is further away from the M25's nearside lane southbound traffic than the existing path which is a gain in itself in terms of being in more open countryside and further from fumes and traffic noise;

3.3.3 the route is no less accessible to people with disabilities as there were stiles, steps and a railway crossing along this short part of the route and a proposed stile with steps up the bank at the Dennis Road end will mirror stiles at the railway crossing;

3.3.4 in general the Council considers that a diversion order which requires the minimum movement of a path will be less inconvenient and in this case it is not an unreasonably lengthy diversion as for those travelling eastwards it is in fact shorter;

3.3.5 the same widths of path can be achieved and in fact would be less restrictive on an open field boundary than previously;

3.3.6 the route does not result in a lower quality or diversity of views, in fact one could argue the contrary is true as planting is proposed to screen the pond and embankments and no features of interest are removed from the route, the path is not quite so overshadowed as before by the M25 overhead and the new pond adds a feature;

3.3.7 there are no additional hazards created on the route as such although there would be a new stile and steps up the bank in the Thurrock portion of the new path;

3.3.8 there is no downgrading of the right of way; and

3.3.9 there will be no additional maintenance costs.

3.4 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council's discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. Section 120 of the Highways Act 1980 makes additional provision in the exercise of powers of Highways Authorities under section 119. Section 120(1) provides that where a footpath lies partly within and partly outside the area of a highway authority, powers conferred under section 119 extend to the whole path "as if it lay wholly within their area". Section 120(1) requires consultation with, and the consent of, the council in whose area the other part of the path was. Part of the proposed diversion passes over land in Thurrock which has informally agreed to the principle of re-routing at the pre-

consultation stage. Formal consent will be required before any confirmation of the order is made.

4. ENVIRONMENTAL CONSIDERATIONS

The diverted path will be signposted as it is now with a finger post from Dennis Road. No further disturbance of flora or fauna is planned or considered likely. The route will be a 'field edge footpath' with protection from disturbance under the Highways Act 1980. A path has already been cleared by the landowner and or applicant in advance of the diversion being made through the hedge at the planned southern termination point. This was done without the knowledge of officers of the council and is in fact not within the Havering section of the footpath. The only flora of note (a large Hawthorne) was left intact and mostly scrub removed.

IMPLICATIONS AND RISKS

5.1 Financial Implications and Risks:

The costs of the making, advertising and confirmation and any costs associated with bringing the Footpath up to an acceptable standard as approved by our Parks and Open Spaces Department should the order be confirmed will be borne by the developer pursuant to the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 [SI 407]. This may be in the region of £3000.00 without the costs of making good the path. However, the costs of holding a Public Inquiry should there be one, is borne by the Order Making Authority alone. Officers will use their best endeavours to satisfy any objection before the end of the consultation period. To this end, some early consultation has been carried out by officers with the Ramblers and Thurrock Council who have been supportive of the plans up to this time.

5.2 Legal Implications and Risks:

Legal Services will be required to draft the Orders and Notices as well as carry out the Consultation process and through the applicant mediate any negotiation with objectors.

5.3 Equalities and Social Inclusion Implications:

None directly attributable to the proposal in terms of negative impact for people with disabilities. There are two stiles and a railway crossing with in-fill boards at the northern end of the diversion route already in existence for the safety of footpath users crossing the railway. The new footpath will serve Footpath 252 equally well in the opinion of your officers despite some additional steps being required and a new stile being erected at the proposed southern termination point.

CONCLUSION

The proposed diversion and modification order is required with urgency to enable Footpath 252 to be kept open as a public right of way on its new route through this field.

Due to the physical situation on the ground, the cooperation and assistance from the applicant, the acquiescence of Thurrock Council as well as the fact of convenience to the land owner and relative absence of inconvenience to the public of the proposed route, the diversion of footpath 252 is in both the owners' and the public's interests. Accordingly it is considered appropriate, should the Council receive no objections, that the necessary Order be made and confirmed, subject to the applicant paying the Council's costs of making and advertising the Order under the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993.

It is therefore recommended that the necessary Order is made and confirmed if unopposed after the 28 day period for objections and if not to return to this committee for further instructions.

Background Papers List

1. Draft order and draft Plan showing route of existing and diverted path
2. List of statutory consultees and local consultees
3. Highways Act 1980
4. The Countryside and Rights of Way Act 2000
5. The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (SI No. 407)
6. The Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (SI No. 1978)
7. DoE Circular 11/96, Recovery of Costs for Public Path and Rail Crossing Orders - Amendment Regulations
8. DEFRA Rights of Way Circular (1/09) Version 2