

Report to	<b>Planning Committee</b>
Date	<b>19 January 2017</b>
By	<b>Director of Planning</b>
Local Authority	<b>East Hampshire District Council</b>
Application Number	<b>SDNP/16/05343/FTP</b>
Applicant	<b>South Downs National Park Authority</b>
Application	<b>Proposed diversion of Public Footpath 55</b>
Address	<b>Broadview Farm, Blacknest Road, Binsted, Alton, Hampshire, GU34 4PX.</b>

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**Recommendation: The Committee is recommended to:**

- 1) That an order shall be made providing for the diversion of part of public footpath no.55, as shown on the plan at Appendix 2.**
  - 2) If after making the order objections are received that cannot be resolved, it shall be submitted to the Secretary of State for a decision.**
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**Executive Summary**

An application to divert part of footpath no.55 has been submitted under Section 257 of the Town and Country Planning Act (TCPA) 1990, associated with planning application SDNP/16/03835/FUL at Broadview Farm, Blacknest Road, Binsted. This planning application is being considered at agenda item 7 of the planning committee meeting and proposes the erection of a barn to accommodate a farm shop, café and cycle store and four tourist cabins and associated parking and access.

Footpath no.55 runs through Broadview Farm and in the event that planning permission is granted part of its route would need to either be diverted or extinguished because the proposed barn and part of the car park would be sited on the public right of way (PROW). The applicant proposes to divert the PROW to the north of the existing farm buildings so as the proposals could be built in full.

Section 257 of the TCPA 1990 gives local authorities (LPAs) power to authorise the stopping up or diversion of any footpaths, bridleways or restricted byways where they are satisfied that it is necessary to enable development to be carried out. Government guidance states that the disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the disadvantages of the proposed order. This is a separate legal process to a planning application and the diversion cannot be made as part of the application for planning permission for the proposed development (agenda item 7).

The recommendation is that an order be made for the reasons outlined in the report. Once it has been made it must undergo formal 28 day consultation period before it can be confirmed. Informal consultation with consultees has taken place and third party objections have been received. In the event objections cannot be overcome during the formal consultation process, the order must be submitted to the Secretary of State for a final decision on whether to confirm it. The development could not proceed in so far as it obstructs the PROW.

The application is placed before the Committee due to its relevance with application SDNP/16/03835/FUL which is being considered at agenda item 7 of the planning committee meeting along with the significant volume of objection.

## 2. Introduction

- 1.1 An application to divert part of footpath no.55 has been submitted in response to planning application SDNP/16/03835/FUL at Broadview Farm, Blacknest Road, Binsted (**Appendix 2**). This planning application is being considered at agenda item 7 of the planning committee meeting. It proposes the erection of a barn to accommodate a farm shop, café and cycle store and four tourist cabins and associated parking and access (**Appendix 3**).
- 1.2 The diversion has been proposed so as to enable the development to be built in full, in the event planning permission is granted. The proposed layout of the development shows that the barn and part of the car park would obstruct the PROW. Its current route would pass between the proposed tourist cabins.
- 1.3 The application has been submitted under Section 257 of the TCPA 1990. It provides LPAs the power to authorise the stopping up or diversion of any footpaths, bridleways or restricted byways where they are satisfied that it is necessary to enable development to be carried out in accordance with a planning permission. It allows for an order to be 'made' in anticipation of a planning permission being granted but the order cannot be 'confirmed' until the consent has been issued.
- 1.4 Prior to an order being confirmed, it must undergo formal consultation once it has been made. In the event objections are received, it cannot be confirmed until either these are resolved and withdrawn or, consequently, it must be referred to the Secretary of State for a decision on whether to confirm it, with or without any modification(s).
- 1.5 An informal consultation with consultees has been undertaken. This is recommended in government guidance in order to highlight and address any issues prior to an order being made, but it is not a statutory requirement. This has generated limited responses from consultees and representations from third parties have been received.
- 1.6 This report recommends that an order is made, which would then be subject to a statutory formal consultation period of 28 days. Based on the objections received, it is likely that further objections would be submitted during this period which will require the order being submitted to the Secretary of State for a decision.

## 2. Site description and proposal

- 2.1 Broadview Farm is a 50 hectare sheep farm. It is located on the western side of Blacknest Road approximately 2km north east of Binsted, within the most northern part of the National Park. The Farm is within a valley which is a pastoral landscape which is characterised by open fields with areas of woodland, established mature hedgerows and tree belts which border fields and mature field trees. Alice Holt Forest is also to the north east and Blacknest Business Park is to the south east of the farm. There are also dwellings to the north along Blacknest Road. Between the farm buildings which comprise Broadview Farm and the wider fields to the west are a line of trees alongside a dismantled railway line.
- 2.2 Footpath no.55 runs through Broadview Farm from the fields to the south west up to Blacknest Road to the north. It runs up to the dismantled railway and navigates around it before travelling north-east alongside an existing farmyard access and past the southern side of the farm buildings. It then heads northwards through the farm yard and along an access track and up to Blacknest Road. This route is shown in **appendix 2** (solid black line).
- 2.3 There is also an undesignated footpath which has become established over time which travels past the north west side of the farm buildings. It starts from the point at which footpath no.55 reaches the dismantled railway line and it carries on through the railway ditch, where there are timber sleepers to create steps, where it then travels north east up to the access track into the farm where there is a pedestrian gate and it re-joins footpath no.55.
- 2.4 The application proposes to divert the PROW along the route shown in **appendix 2** (the black dashed line). This route would re-position the legal line to the north of the farm buildings. This route would join with the undesignated footpath described above once it had gone around the dismantled railway and then re-join the PROW on the access track. The works would involve removing existing stiles along the undesignated path and replacing them

with gates. This has already started to take place. No surfacing of the route is proposed.

### **3. Relevant planning history**

- 3.1 SDNP/16/03835/FUL: New barn to be used as a café, farm shop and cycle storage, four timber cabins for tourist accommodation and new access and parking area. Recommended for approval in agenda item 7 of the committee meeting.

### **4. Legislative background and procedure**

- 4.1 Section 257(1) of the Town and Country Planning Act 1990 gives local planning authorities (LPAs) the power to make an order to extinguish or divert public footpaths, bridleways or restricted bridleways, where they are satisfied that it is necessary in order to enable development to be carried out either (1) in accordance with planning a planning permission; or (2) by a government department. An order under this legislation cannot be made where the development is not yet substantially completed.
- 4.2 Before an order can be made by a LPA, it must be apparent that there is a conflict between the development and the PROW, such as an obstruction. An order may be made in anticipation of a planning permission being granted, however, it cannot be confirmed by either the LPA or the Secretary of State until that permission has been granted. A planning permission does not entitle applicants to obstruct a PROW until an order has been confirmed.
- 4.3 When an order to divert a PROW is made, the diversion must commence and terminate at some point on the definitive line of the original way so as the public, where appropriate, can return to the original way not affected by the development. The LPA should also give consideration to any necessary works required to bring the new route into use.
- 4.4 Once an order is made, as the result of planning permission being granted, LPAs do not have the authority to confirm it where it is opposed. In the event that objections cannot be resolved, the order must be submitted to the Secretary of State for a decision on whether or not it should be confirmed. A confirmed order can only amend the definitive map and statement insofar as the route of the PROW and cannot alter the status of the PROW.

#### Procedure for confirming an order

- 4.5 When an application is received, informal consultation on the proposals is undertaken before deciding whether to make an order. Such consultations invite the views of consultees and with the appropriate parish council, user groups and local and county councils to gauge views and identify particular concerns. This is not a formal consultation nor is it a statutory requirement.
- 4.6 Following an initial consultation, the LPA must consider whether to make an order for the extinguishment or diversion of a PROW. If an order is made, site notices advertising details of the order are to be posted at both ends of the affected section of the PROW. Similar notices are published in at least one local newspaper and a formal consultation period of 28 days is undertaken.
- 4.7 If at the end of the 28 day period no objections have been received or if any objections can subsequently be resolved and withdrawn, the LPA may confirm the order without modification. If there are objections which cannot be withdrawn, the LPA must refer the order to the Secretary of State for a decision.
- 4.8 The Secretary of State would determine whether to confirm the order with or without modification(s) via either written representations, an informal hearing, or a Public Inquiry.

### **5. Consultations**

- 5.1 It is not a statutory requirement to undertake a formal consultation exercise at this stage. This must take place once an order has been made. An initial consultation exercise has been undertaken with consultees.
- 5.2 **Binsted Parish Council:** No objection.
- 5.3 **East Hampshire District Council:** Response received, no comments.

- 5.4 **Environment Agency:** No comments received.
- 5.5 **Open Spaces Society:** No comments received.
- 5.6 **Public Rights of Way Officer:** No objection. The new route bypasses the railway embankment and proposes the removal of the five stiles, which will be replaced by a gate at each end of the diversion. This provides a more accessible route than the previous proposals for diversion. In the interest of the amenity of the public request a condition that the proposed development (agenda item 7) shall not be started until the diversion of the PROW is completed, to the satisfaction of the Highway Authority.
- 5.7 **Ramblers Association:** No comments received.
- 5.8 **Southern Water:** No objection.
- 5.9 **Southern Gas Networks:** No objection. Include informative that there should be no mechanical excavations taking place above or within 0.5m of a low/medium pressure system or above or within 3m of an intermediate pressure systems. Safe digging practices, in accordance with health and Safety Guidance must be used.

## 6. Representations

- 6.1 It is not a statutory requirement to consult local residents until an order is made. At that point, a statutory formal consultation is undertaken. Notwithstanding, 14 objections have been received which raise the following issues:
- Purpose of a National Park is to preserve such features as public rights of way, not degrade them.
  - Classic case of a landowner trying to remove an ancient PROW from their land.
  - Applicant distorts and manipulates facts between the two applications.
  - If approved, it would set a precedence that any landowner can unlawfully build over or block an existing footpath, direct walkers to another area then later apply for permission for a diversion.

### The existing definitive route

- Many people have used the definitive route for years, especially those with difficult climbing over stiles.
- Been a concerted attempt of previous and current owners to conceal the route by removing signs and discouraging walkers.
- Walkers have been directed to use the undesignated and more difficult path and not through the yard on the definitive route. This has been misleading and deters use of the definitive PROW.
- The discouragement to use official route has now been highlighted because of the proposed development aspirations on the site.
- Regularising the unofficial diversion is inappropriate.
- Applicant's assertion the definitive route has not been in use for at least 40 years untrue.
- Definitive route has previously been obstructed by a now demolished unlawful barn.
- Definitive route is perfectly capable of being used and should be re-instated.
- Cannot say that because the definitive route has been unused for a long time that it is no longer a highway.
- Incumbent on landowners to ensure that PROWs are safe for users and this is not the case.

### The proposed diversion

- Diverted route no real benefit to the recreational user.
- Detrimental impact on the rural enjoyment of the footpath.
- Users will not get a full view of the open and valley and Hanger until they clear the trees in the railway cutting, which will give a totally different experience to the existing route.

- To re-route a footpath in pursuit of a commercial development in the National Park is wholly inappropriate.
- Functional need to moving the footpath are a nonsense.
- New route is not shorter/more direct as claimed.
- Would not be an improvement to the definitive route and a compromise for accommodating the development.
- Applicant states that the diversion of the FP will take users away from the farm complex, however, walkers will still be within 10m of the new holiday accommodation.
- Will inconvenience genuine users of the footpath.
- Existing route is clean and simple to follow. Proposed route convoluted.
- Reject a shorter route is a benefit. This path is not used to minimise walking time but to experience the countryside.
- Safety and security benefits unjustified.
- Would seek to accommodate unlawful development being proposed.
- The diversion should follow the route of the undesignated path through the dismantled railway to regularise its use and that the current re-routing be opposed.

#### Comments about the proposed development (SDNP/16/03835/FUL-Agenda item 7)

- Diversion would simply be to accommodate a badly planned, unnecessary development.
- Wrong for SDNPA to consider diversion of a historic footpath for material gain of the applicant. PROW should have priority.
- No apparent evidence to show that the proposals have considered the PROW and that is necessary.
- Development one more step on the road to change the valley and its peaceful grazing fields into a commercial hub.
- Create a significant increase in activity, detrimental to remoteness and sense of place.
- Unimaginative design of proposals will introduce an inappropriate development in the landscape.
- Proposals actively encourage visitors to visit the farm but proposed route

#### Application process

- No notification with the local community including no site notices or individual notification. Likely due to mishandling of current planning application.
- Failure to consult correctly contravenes the Development Management Procedure Order.
- Obvious flaws in application process and the application documents.
- SDNPA officers are ignoring own policies and national planning advice.
- The PROW has not been considered in the decision making.
- Application for the proposed development and footpath diversion have been mishandled. Planning officers have incorrectly and unjustifiably validated both applications without due process.
- Will challenge the decision if approved.

#### Inaccuracies and errors in the application

- Proposals are unclear.
- This application does not meet the technical standards required for approval and should be refused.
- Application is flawed and should be made invalid because of errors and inaccuracies.
- Cited grid references inaccurate.
- Detail of the route is not correctly set out in the application form.

- Application form states that the alternative route has been in use for 40 years, which is incorrect.
- Site plan does not show the applicant's ownership and line of the definitive path is incorrect, which is misleading.
- Application does not meet any of the standards required for approval and must either be refused or deferred to such times as a sensible and legitimate application is submitted, scrutinised and managed.

## **7. Consideration of the application**

- 7.1 The proposed barn and car park would obstruct part of the designated route as shown in appendices 2 and 3. In order for the development to be implemented in full it would be necessary to divert the PROW, as the grant of planning permission does not entitle applicants to obstruct a PROW.
- 7.2 In determining the proposed diversion, LPAs should not question the merits of a planning permission when considering whether to make or confirm an order. The effect of the development on the PROW was a material consideration in determining the planning application. Having granted permission for a development an authority must have good reasons to justify a decision either not to make or not to confirm an order.
- 7.3 In considering whether or not to make, and if no objections are received, confirm the order, government guidance suggests that the disadvantages or loss likely to arise as a result of the diversion to members of the public or whose properties adjoin or are near the existing PROW should be weighed against the advantages of the proposed order. The following paragraphs therefore undertake this balancing exercise.
- 7.4 No objections have been raised by consultees. The PROW officer at Hampshire County Council does not object. There have however been objections from local residents. They have raised fundamental concerns about the diversion and it is anticipated that in the event an order is made it will need to be confirmed by the Secretary of State, as these may not be overcome.
- 7.5 The following justification has been provided in support of the application:
- It would regularise the position of the existing undesignated footpath that has been in place since the 1970s.
  - The existing undesignated footpath in use is a shorter and more direct route; it bypasses the farm complex which has safety and security benefits; and has been in place for a long time and it is managed and signposted.
  - The ordnance survey base of the submitted site plan shows the existing undesignated footpath which supports the historic use and diverted route.
  - Whilst there is a technical need for the diversion to facilitate the proposed development, there is a functional need.
  - There would be no cost or disruption caused by the diversion.
  - There would be no inconvenience to walkers given the existing undesignated footpath is already in place, used, signposted and accepted as the actual route.
- 7.6 Concerns have been raised about the previous use and accessibility of the definitive footpath through the farm yard and it has also been contended that the existing undesignated route has been in a long standing use. On site, the undesignated path is an obvious route, it has stiles and a gate along it and steps through the dismantled railway. It is also identified by official PROW markers erected by Hampshire County Council on the stiles. The line of the definitive route is less clear on the ground but south of the barns there is some evidence of a path but it is not apparent whether it has been regularly walked on based on the appearance of the ground.
- 7.7 The proposed diversion does not follow the entire length of the existing undesignated path (**Appendix 2**). Its route on the ground would follow a fence and where the undesignated path traverses the field up to the dismantled railway the proposed route would divert from

it to a more southerly point at the dismantled railway before travelling around it to join with footpath 55 on the opposite side. The fence line and the dismantled railway are features on the ground which would help to define the new route. In the event planning permission for the proposed development is granted, new hedgerow planting would also define the route and it would be near to 2 of the holiday cabins.

- 7.8 In regard to the experiential qualities between the existing and proposed routes, concerns have been raised about the impact on the user's enjoyment of travelling through this area, including views. When walking from Blacknest Road on the definitive footpath, once past Broadview Cottage there are views along the access track to the farmyard and barns and to the south west there are some wider views of fields and the hanger beyond, but the line of mature trees along the dismantled railway also limits a more panoramic view of the valley. Once through the farmyard, where wider views are blocked by the existing barn, and around the southern side of the farm buildings there are further views of the valley but these are arguably more focussed between the large poplar trees along the boundary of the industrial estate and trees along the dismantled railway. This view then starts to open up as you approach the field boundary.
- 7.9 Along the proposed diversion, there are also some wider views of the hanger but views are also shortened by the line of trees along the dismantled railway. The closer you get to the dismantled railway and once past the existing barns the view becomes more distant and open where you can see more of the valley and approximately the same area as if you were on the definitive path.
- 7.10 Walking in the opposite direction, from the dismantled railway on the definitive route the view is across fields to Broadview Cottage, the farm buildings and trees beyond, and the industrial estate boundary. This wider view would be lost as you approach the barns and travel through the farmyard, where there is then a view along the access. There would be similar views along the proposed route, but they and the path would remain more open.
- 7.11 The above comparison does not take into consideration the proposed development. In considering the proposed layout, the views along the proposed diversion may be further limited by the siting of the tourist cabins and boundary hedging.
- 7.12 In comparing the convenience of the two routes, the proposed route would be 175m long compared to 162m for the designated path. The proposed route would not be as straight a route as the existing. It would also have gates as opposed to none on the definitive route. The definitive route has a slightly steeper gradient between the barns and field boundary compared to the proposed route. There would be similar ground conditions as either routes are on grass, albeit the land around the barns is more actively used with general farm yard activities.
- 7.13 Concerns have been raised that there are no benefits of the proposed route. The comparison above suggests that there are similarities between the two routes in terms of their enjoyment and convenience. Concern has also been raised about the justification that it would be a safer route for walkers and added security benefits for the farm. In these regards, it is not uncommon for PROWs to pass alongside farm buildings and through working farmyards. The proposed route would remove any potential conflict and a degree of added security however people would still be able to gain access into the farmyard via the main access track. In regard to the proposed development, the diversion would still allow walkers to easily access the cafe and shop for instance from when it meets the access track, provided the applicant permits people to walk through the farm yard.
- 7.14 On balance, the proposed diversion is unlikely to be significantly less enjoyable a route than the definitive footpath, either as existing or in the event the proposed development has been built. From Blacknest Road, it is not until you have passed all the existing development and entered the field to the south west that the open valley can be fully appreciated. It is at this point which you leave walking past development and enter the wider open countryside. The proposed route would not be substantially less convenient than the definitive route. It would be easy to follow, the stiles would be replaced with gates and the topography and ground conditions would not hinder the accessibility of the footpath.

#### Impact upon properties which adjoin or are near the public footpath

- 7.15 The land crossed by the definitive and proposed diversion is owned by the applicant. The nearest property outside of their ownership is Broadview Cottage to the north. The private amenities of this dwelling would not be adversely affected by the proposed diversion because it is a sufficient distance away to avoid significant noise and disturbance and utilises the undesignated path which has been in existence for some time. The diversion also ends closer to the farm yard and the existing PROW passes this dwelling as per the definitive route along the access track. The diversion would also not impact upon the amenities of the other properties along Blacknest Road. The diversion would not be greatly discernible as the PROW would continue along its existing route along the access track up to Blacknest Road.

#### Process of the application

- 7.16 There has been an informal consultation with consultees. Third party objections have raised concerns about a lack of publicity and notification of the application. The process for the diversion of a footpath is different to that of a planning application, as outlined above. In the event the order is made, a formal public consultation period will be undertaken.

#### Concerns about inaccuracies and errors in the application

- 7.17 The application is not subject to the same validation requirements of a planning application. The original application did not include detailed grid co-ordinates for the existing and proposed route or accurate lengths of each route. An amended form has been submitted. A Site Plan was submitted with the application which clearly shows the designated route and the proposed diversion (see **Appendix 2**). The designated route shown is reasonably accurate with the ordnance survey map. The site plan is not required to identify an application area (red line area) and land within the applicant's ownership (blue land) as per a planning application.

### **8. Conclusion**

- 8.1 It is recommended that the order is made under S257 of the TCPA 1990, subject to the decision for agenda item 7, for the reasons outlined above. If the proposed development is not approved, and the applicant still wishes to divert the footpath, an application will need to be made under the Highways Act 1980 instead of S257.

### **9. Recommendation**

- 9.1 That an order shall be made for the diversion of part of public footpath 55, as shown on submitted site plan. If after making the order objections are received that cannot be resolved, the order shall be submitted to the Secretary of State for a decision.

### **10. Crime and Disorder Implication**

- 10.1 It is considered that the proposal does not raise any crime and disorder implications.

### **11. Human Rights Implications**

- 11.1 This planning application has been considered in light of statute and case law and any interference with an individual's human rights is considered to be proportionate to the aims sought to be realised.

### **12. Equality Act 2010**

- 12.1 Due regard has been taken of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010.

### **13. Proactive Working**

- 13.1 In reaching this decision the Local Planning Authority has worked in a positive and proactive way with the applicant in resolving issues with the application, in line with the NPPF.

**TIM SLANEY**

**Director of Planning**

**South Downs National Park Authority**



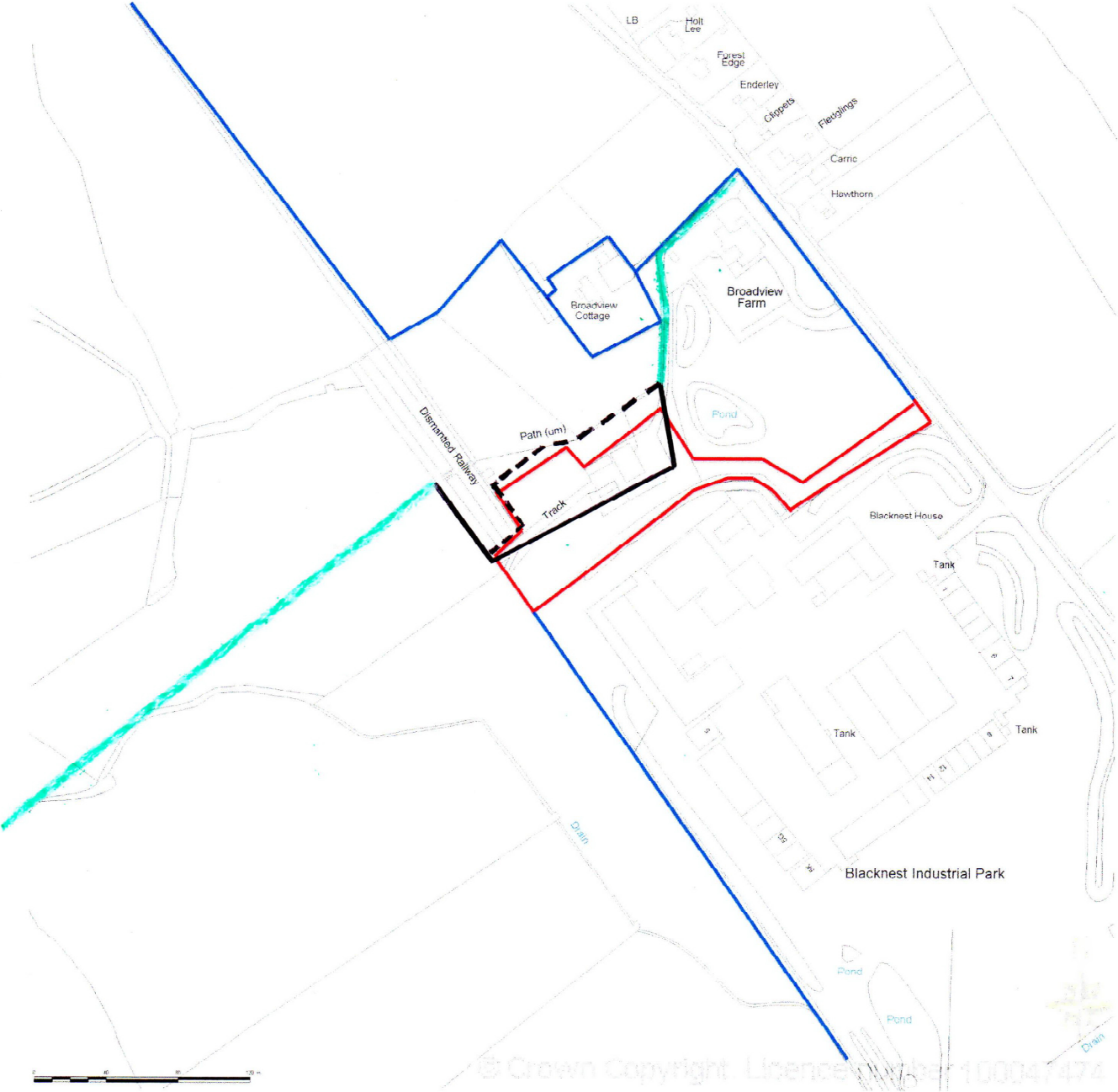
Contact Officer:	Richard Ferguson
Tel:	01730 819268
email:	<a href="mailto:richard.ferguson@southdowns.gov.uk">richard.ferguson@southdowns.gov.uk</a>
Appendices	<ol style="list-style-type: none"><li>1. Site Location Map</li><li>2. Site Plan</li><li>3. Layout of the proposed development</li></ol>
SDNPA Consultees	Legal Services, Development Manager.
Background Documents	<a href="#">All planning application plans, supporting documents, consultation and third party responses</a>

## Agenda Item 8 Report PC07/17 Appendix I Site Location Map

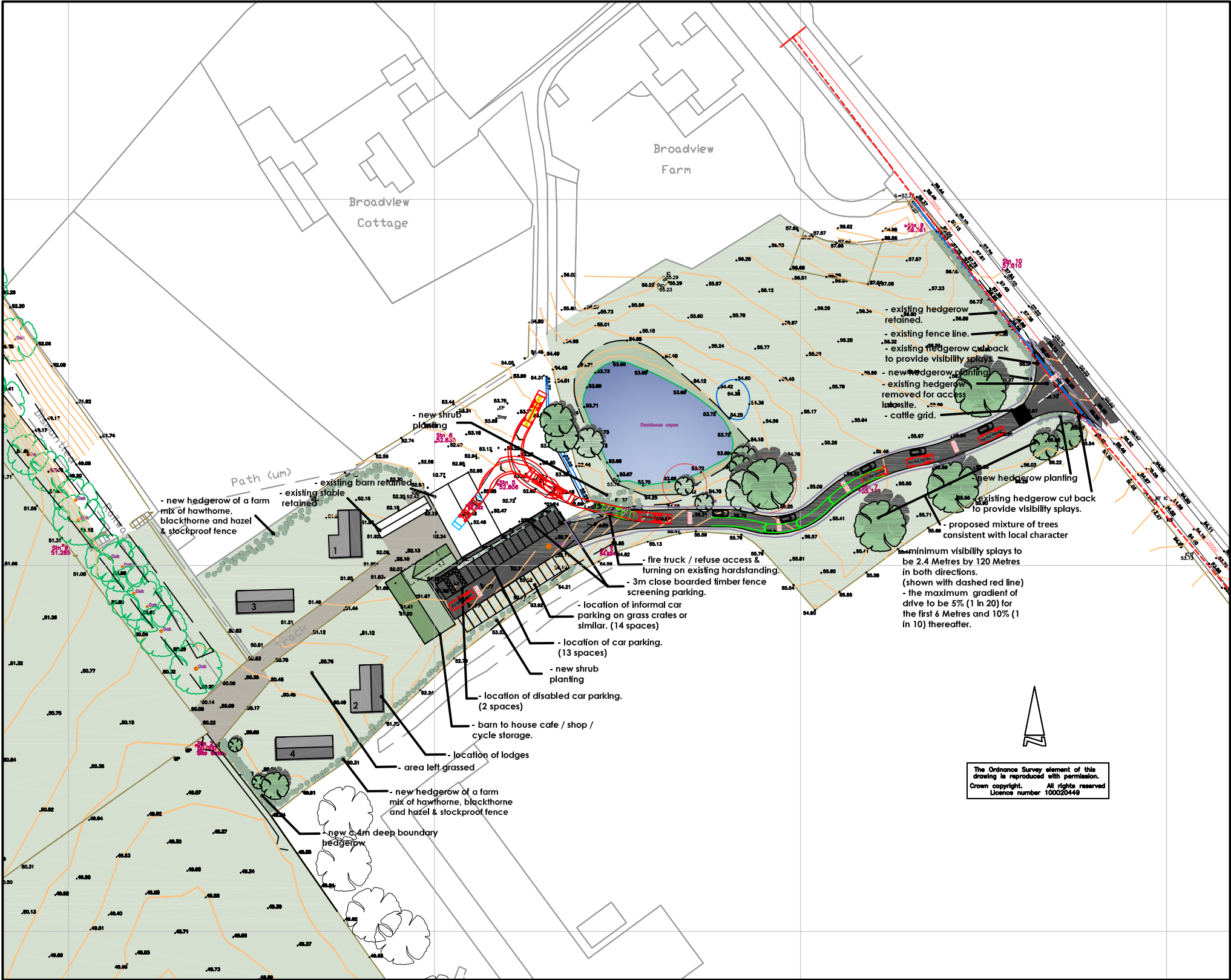


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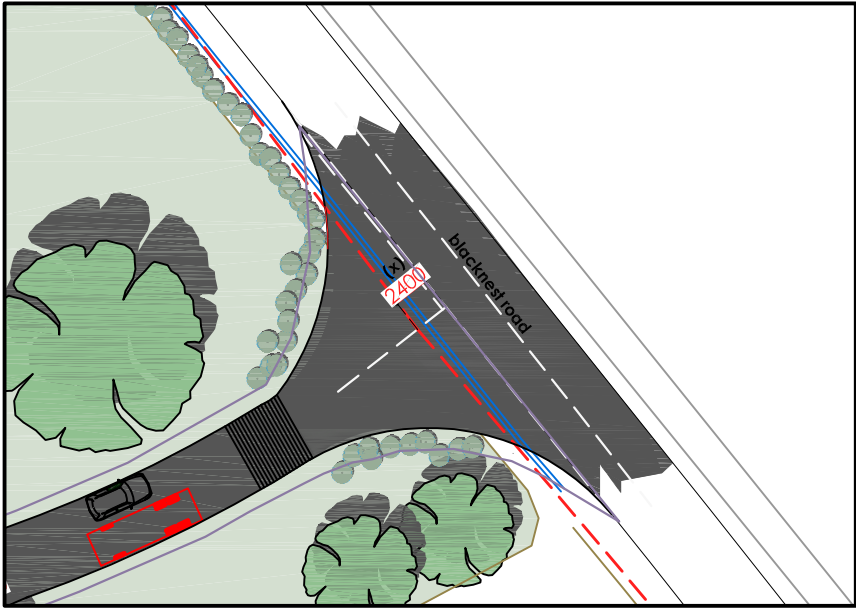
SITE LOCATION PLAN  
AREA 36 HA  
SCALE 1:2500 on A3  
CENTRE COORDINATES: 479178, 142067



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SITE ENTRANCE LAYOUT SCALE 1:1250



SITE ENTRANCE VISIBILITY SPLAYS SCALE 1:500

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**revision**  
a - 18.05.16 - first issue following relocation of lodges to planning comments.  
b - 08.11.16 - updated to LA landscaping & highways comments.  
c - 22.11.16 - fire truck and passing added to access track.  
d - 23.11.16 - further trees added as requested by LA comments.

**client**  
mr cullen

**stage**  
planning

**date**  
may 2016

**scale**  
1:100 @ A3

**address**  
broad view farm  
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**drawing no.**  
136a/05/02

**drawing**  
proposed site  
entrance layout

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