

Report to	Planning Committee
Date	10 May 2018
By	Director of Planning
Local Authority	Arun District Council
Application Number	SDNP/17/05259/FTP
Applicant	Mr Nigel Draffan
Application	Diversion of Footpath 2218
Address	Blakehurst Farm and Maggot Farm, Blakehurst Lane, Warningcamp, Arundel, West Sussex

Recommendation: That an order under Section 257 of the Town and Country Planning Act 1990 for the diversion of Public Footpath number 2218, as shown on the plan appended to this report, be not made.

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/17/03717/FUL at Blakehurst Farm, Blakehurst Lane, Warningcamp, Arundel, West Sussex. This planning application is being considered at Agenda Item 8 of the 10 May 2018 planning committee meeting.

Footpath no. 2218 runs immediately south of Blakehurst Farm and if planning permission were granted for SDNP/17/03717/FUL, part of its route would need to be diverted because a single storey extension and private amenity areas, serving units 2-3, would be sited over the public right of way (PRoW). The applicant proposes to divert the footpath so that the proposals may 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 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 8).

The application is placed before the Committee due to its relevance to application SDNP/17/03717/FUL which is being considered at the 10 May 2018 planning committee meeting along with the objections and comments received as part of the required informal consultation phase.

As the recommendation for SDNP/17/03717/FUL is one of refusal, the SDNPA is not in a position to recommend approval for the application, as the Local Planning Authority only has power to authorise the diversion of a footpath if they are satisfied that it is necessary to enable development to be carried out in accordance with a planning permission.

1. Introduction

- 1.1 An application to divert part of footpath no.2218 has been submitted in response to planning application SDNP/17/03717/FUL at Blakehurst Farm, Blakehurst Lane, Warningcamp). This planning application is being considered at Agenda Item 8 of the planning committee meeting, and includes the residential conversion of existing traditional agricultural buildings to create a total of 7 dwellings at Blakehurst Farm.
- 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 at Blakehurst Farm shows that the proposed single storey extension, providing living room space and private amenity areas serving units 2 and 3, would obstruct a portion of the designated route as shown in the as indicated at **Appendix 2**.
- 1.3 The application has been submitted under Section 257 of the TCPA 1990. It provides Local Planning Authorities 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 a number of responses from consultees. No representations from third parties have been received.
- 1.6 This report recommends that an order not be made, due to the recommendation for SDNP/17/03717/FUL being one of refusal.

2. Site description and proposal

- 2.1 Blakehurst Farm comprises 489 acres, of which 405 acres is arable, with the remainder mostly given to pasture used for the grazing of horses.
- 2.2 The Blakehurst Farm site retains a number of 19th Century traditional flint and brick barns that are of a distinctive 'Norfolk Estate' design. There are a small number of residential properties in the vicinity, the nearest being Blakehurst Farm House immediately north of the farmstead, which is Grade II Listed, Orchard Cottage, approximately 25m north of the farm house, and Blakehurst House which is sited approximately 40m to the south. A livery yard operates to from a number of buildings to the east to the main farmstead.
- 2.3 Footpath 2218, which links Blakehurst Lane to Warningcamp Village approximately 750m to the west, passes through the application site immediately south of the southernmost barn building. This route is shown in **Appendix 2** (solid black line).
- 2.4 The application proposes to divert the PRoW along the route (approximately 35m) shown in **Appendix 2** (the black dashed line), by re-positioning the legal line between 25-32m further to the south, around the proposed single storey extension and private amenity areas serving Units 2 and 3. The route would be extended by approximately 40m.

3. Relevant planning history

- SDNP/16/00771/PRE Erection of purpose designed agricultural buildings and conversion of existing buildings to residential - Advice given 21 April 2016.
- W/4/05/ Change of use from permanent grassland to outdoor exercise sand school to be used solely by the horses in the existing stables adjacent to site. Approved 07 July 2005.
- W/3/00/ Erection of pre-fabricated wooden stable block to include 12 stables and 3 stores Approved 8 August 2000.

- W/2/00/ Refurbishment of annexe to habitable accommodation for short term holiday lets Approved 7 April 2000.
- W/1/00/L Application for Listed Building Consent for internal alteration to existing layout of accommodation within main house and refurbishment of annexe/wing to further habitable accommodation including two rooflights and one additional external door. Approved 20 March 2000.
- W/10/94/L Application for Listed Building Consent for 1) Underpinning of and repair to north wall (internally and externally). 2) Underpinning & repair to masonry columns of porch entrance 3) Demolish part of front boundary wall and rebuild to match existing adjacent. Approved 27 February 1995.
- W/8/94 Conversion of vacant farm buildings to livery stables Approved 08 February 1995.

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 proposal 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, informal consultation exercise has been undertaken with consultees.

5.2 **Warningcamp Parish Council:** No comments received.

5.3 **British Telecommunications:** Comments.

- No land or buildings owned or occupied by BT or Teleraeal Trillium within the area.

5.4 **Open Spaces Society:** Comments.

- The sharp right-angled turn should be eliminated for the safety and enjoyment of walkers.
- The definitive width should be set out according to HCC guidelines of 2.5m for an enclosed path.

5.5 **SDNPA Landscape:** Objection.

- The footpath contributes to the historic character of the local landscape character, being marked on the 1st edition OS Maps, to the character of the farmstead, and provides opportunities for recreation.
- There is an opportunity to improve its use so more people can continue to experience and enjoy the countryside (Purpose 2).
- The footpath is critical to the character of the farmstead and its diversion fails to understand its importance of the footpath, and therefore not supported.
- The historic route through the farmstead contributes strongly to its character and significance, and contributes no less value in the National Park than a historic hedgerow or veteran tree.
- This diversion demonstrates the antithesis of the landscape-led approach advocated through the emerging local plan, where the scheme imposes a design upon the farmstead, rather than sensitively accounting for all characteristic elements of the farmstead.

5.6 **SDNPA Public Rights of Way:** Objection.

- The available width of the right of way at this point is stated as 1.2 metres. The legal minimum width for a field edge footpath is 1.5 metres and the desirable minimum width for any path enclosed by hedges, fences or buildings is 2.5 metres. A path width of only 1.2 metres is therefore insufficient.

5.7 **Southern Water:** No objection.

5.8 **WSCC Public Rights of Way:** Objection.

- A short length of this footpath (approx. 35m), lies immediately to the west of the proposed development site and runs alongside an open drainage ditch. This ditch occasionally gives off a foul smell, possibly due to run-off from the existing farmyard / stable area of Blakehurst Farm discharging into it.
- In addition, the embankments have eroded, widening the ditch, and this combined with obstructing side vegetation, has led to a reduced footpath width.
- Should this development go ahead it is likely that footpath use will increase and PRoW would seek assurance from the developer that a review of the existing drainage is undertaken and improvement works are carried out to re-establish the full width of the footpath adjacent to the ditch.
- Should development proceed it is likely that footpath use will increase and PRoW would seek assurance from the developer that a review of the existing drainage is undertaken and improvement works are carried out to re-establish the full width of the footpath adjacent to the ditch.
- A clear footpath width of no less than 3m should be provided and the path surfaced with an all year round useable material.

- In order to avoid the impression of the route being a 'passageway' fences/boundaries along the proposed diversion must not be solid but open in character i.e. an open fence or hedge.

5.9 **Ramblers Association:** No comments received.

5.10 **South Downs Ranger:** Comments.

- Currently not the easiest of footpaths to follow.
- The proposed diversion may not be an improvement.
- Needs to be easy to follow and clearly signposted.

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. No public representations have been received.

7. Consideration of the application

7.1 The proposed single storey extension, providing living room space and private amenity areas serving units 2 and 3 would obstruct a portion of the designated route as shown in **Appendix 2**. 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. If the planning permission is granted, 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 An in-principle objection has been received from the Landscape officer; this is considered in the main application SDNP/17/03717/FUL as it is relevant to its overall acceptability. Other concerns raised, including the width of the footpath, the sharp turn, and use of open fencing to prevent the path appearing as a passageway have been addressed through changes to the design and layout. The width of the diverted section has been widened to 3m, the sharp turn has been changed to a curve, and the landscaping has been amended to include planting, and replacement of hard fence boundaries with open post and rail fencing. Details of surfacing, could be secured through condition, and upgrading of the drainage and embankments through a S106 agreement.

7.5 The proposed diversion is unlikely to be a significantly less enjoyable a route than the definitive footpath, given that this is currently unclear, and passes through a working farm access where a variety of machinery and sprayer equipment is currently stored. The proposed route would not be substantially less convenient than the definitive route, would be easier to follow, 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

7.6 The land crossed by the definitive and proposed diversion is owned by the applicant. The nearest property outside of their ownership is Blakehurst House which is sited approximately 40m to the south. 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. The diversion is not considered to impact upon the amenities of the other properties along Blakehurst Lane.

8. Conclusion

- 8.1 If planning permission is refused it is recommended that the order is not made, under S257 of the TCPA 1990. 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 Town and Country Planning legislation.

9. Recommendation

- 9.1 That in the absence of a recommendation for approval for application SDNP/17/03717/FUL, and based on concerns in regard to the landscape impact of the diversion, the application should be refused, and an order not made for the diversion of part of public footpath No 2218, as shown on the submitted site plan.

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

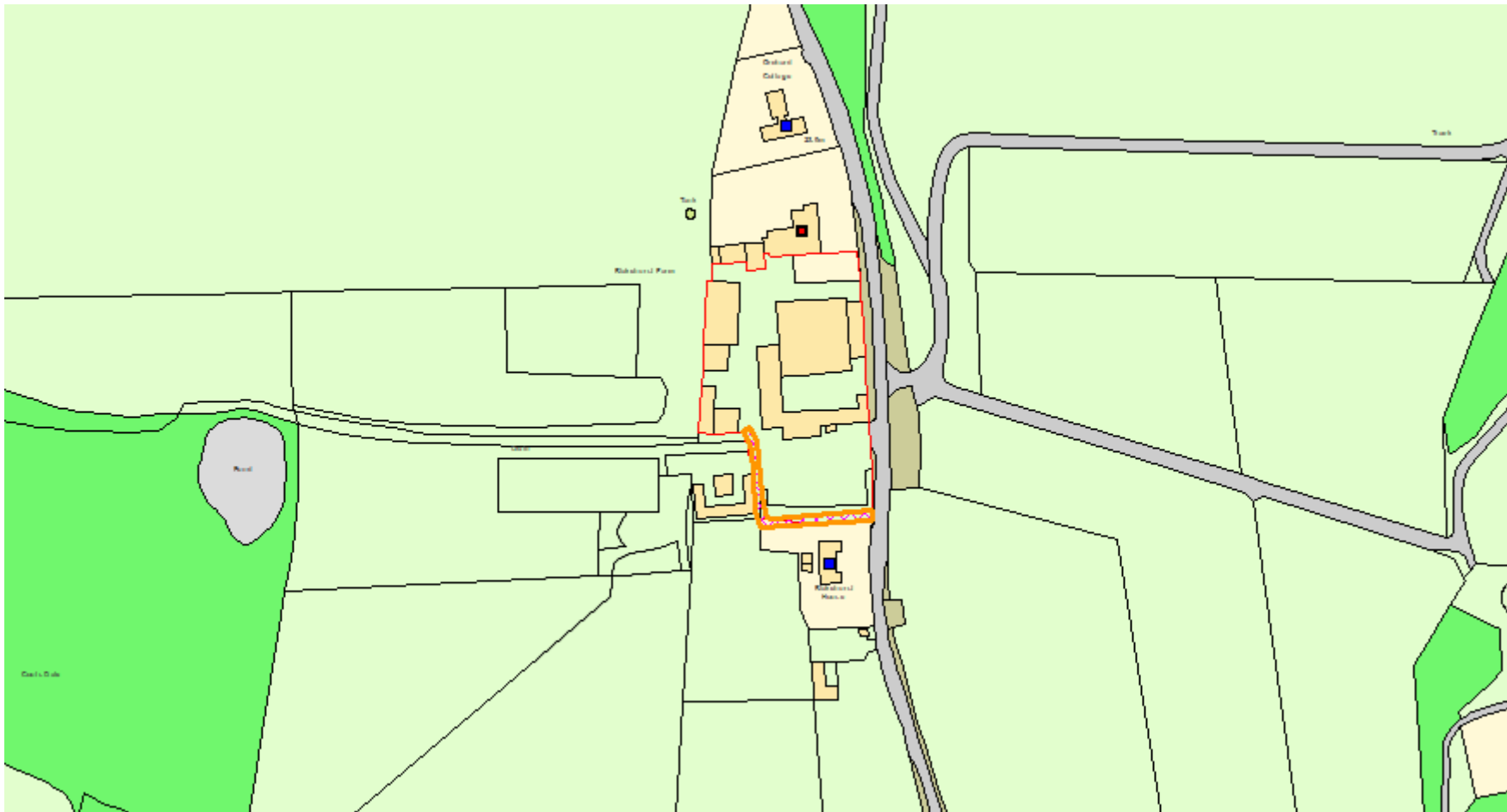
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Appendices 1. Site Location Map

2. Proposed Diversion Route

SDNPA Consultees Legal Services, Development Manager.

Background [All planning application plans, supporting documents, consultation and third party responses](#)
Documents

Site Location Map



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Proposed Diversion Route

