

Report to	Planning Committee
Date	13 September 2018
By	Director of Planning
Local Authority	Arun District Council
Application Number	SDNP/18/03954/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 made.

Executive Summary

An application to divert part of footpath no. 2218 has been submitted under Section 257 of the Town and Country Planning Act (TCPA) 1990, associated with planning and listed building applications SDNP/18/03921/FUL and SDNP/18/03922/LIS at Blakehurst Farm, Blakehurst Lane, Warningcamp, Arundel West Sussex. This planning application is being considered at Agenda Item 8 of the 13 September 2018 Planning Committee meeting.

Footpath no. 2218 runs immediately south of Blakehurst Farm and if planning permission were granted for SDNP/18/03921/FUL and SDNP/18/03922/LIS, part of its route would need to be diverted because a single storey extension and private amenity areas, serving units 2 and 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 applications SDNP/18/03921/FUL and SDNP/18/03922/LIS which are being considered at Agenda Item 8 at the 13 September 2018 planning committee meeting along with the objections and comments received as part of the required informal consultation phase.

I. Introduction

- I.1 An application to divert part of footpath no. 2218 has been submitted in response to planning applications SDNP/18/03921/FUL and SDNP/18/03922/LIS 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 5 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 two storey extensions, providing living room space and private amenity areas serving units 2 and 3, would obstruct a portion of the designated route 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 is made, which would then be subject to a statutory formal consultation period of 28 days. Based on the informal representations received, which are dealt with in Section 8 it is likely that there would be no further objection submitted during this period from statutory consultees. In the event that further objections are submitted during this period it will require the order to be submitted to the Secretary of State for a decision.

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 currently operates from a group of buildings to the west of the main farmstead, and a separate planning application has been made to provide replacement stabling further to the south adjacent to an existing stable block to the west of the proposed diversion.
- 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 first section of the route (approximately 50m) shown in **Appendix 2** (the black dashed line), by re-positioning the legal line between 25-32m further to the south, around the proposed two storey extensions and private amenity areas serving Units 2 and 3. The route would be extended by approximately 28m.

3. Relevant planning history

SDNP/17/03717/FUL The Erection of three new agricultural buildings at Maggot Farm, comprising Grain Store; Sprayer, Fertiliser, Hay and Storage and Straw Barn; and Machinery Store, incorporating Farm Office and welfare facilities, together with associated hard standing and landscaping; and residential conversion of existing traditional agricultural

buildings to create a total of 7 dwellings at Blakehurst Farm. Refused at committee 10 May 2018.

SDNP/17/05259/FTP Diversion of Footpath 2218. Refused at the 12 May 2018 Committee 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.

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 a planning permission; or (2) by a government department. An order under this legislation cannot be made where the development is 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 divert 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, informal consultation exercise has been undertaken with consultees and the following comments provided.

5.2 **Access & Recreation:** Holding Objection.

- Accepts a public path diversion is necessary in order to facilitate the proposed development at Blakehurst Farm. However the current proposed diversion is inadequate as the proposed route width of the right of way 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.
- Consideration should be given to the dedication of higher rights (bridleway status) on the proposed diverted route and the remainder of the right way. The presence of stables and other equestrian facilities nearby would indicate that such a route would be a welcome addition to the access network in the area.

- 5.3 **British Telecommunications:** No comments provided. No objection to the previous application SDNP/17/05259/FTP as no land or buildings owned or occupied by BT or Teleraeal Trillium within the area.

5.4 **Landscape:** No objection

- Support Access & Recreation and PROW in requiring a wider route if the footpath is going to be upgraded to a multi-use route as part of the wider network of bridleways. However, if this is not the intention then the footpath should be less wide and more typical of a footpath to provide more space for positive landscaping interventions. Either way, it would be helpful to ensure that the route has better signage, as this combined with the lack of management by the landowners led to it falling out of use in the past.

- 5.5 **Open Spaces Society:** No comments provided. No objection to the previous application SDNP/17/05259/FTP, however provided comments in regard to the layout, which have been incorporated.

5.6 **Public Rights of Way:** Holding objection.

- The proposed path width is only 1.2 metres in width. This is insufficient and will be a reason for objection if the proposal is carried forward into the made Order. A width of between 2 and 3 metres would be acceptable.
- Doubt expressed in regard to the description of the existing path as being “not currently used by recreational walkers.” Also the description of the existing route A to B to C does not accord with the plan. There is No C? The order will need to be accurate in this regard.
- The Highway Authority will need to approve the proposed construction of the new path and details of the specification for surfacing will need to be provided. A formal undertaking from the applicant to be responsible for this work and for the cost of

changes to the waymarking will be required.

- The works to the new route will need to be inspected and approved by WSCC prior to issuing the certificate necessary to bring the diversion into effect.

5.7 **Southern Gas:** Comments provided.

- Gas pipe locations are available online at www.linesearchbeforeudig.co.uk

5.8 **Southern Water:** No objection.

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

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 two storey extensions 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 Public Rights of Way officer in regard to the proposed width of the footpath extension, which should be between 2-3m, and concerns raised in regard to the description of the existing path as not currently used, and the accuracy of the route description. However, the width of the proposed footpath extension varies from 4m-2.9m which is considered to be adequate. Beyond the farmstead, the existing footpath is currently impassable, and the route description has been amended. Details of surfacing of the new section to be provided, and the upgrading of the surfacing, drainage and embankments of the remainder of the route may be secured through conditions associated with the main application SDNP/18/03921/FUL.

7.5 The proposed diversion is unlikely to be a significantly less enjoyable 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 potentially be more convenient than the definitive route, not least as the 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 It is recommended that the order is made under S257 of the TCPA 1990, subject to the decisions for agenda item 8, 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 2218, 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.

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Appendices	1. Site Location Map 2. Proposed Diversion Route
SDNPA Consultees	Legal Services, Development Manager.
Background Documents	All planning application plans, supporting documents, consultation and third party responses

Site Location Map



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Proposed Diversion Routes

