

Rights Of Way Committee

23rd February 2009

Highways Act 1980 Section 26

Itchingfield: Proposal to enter into a Public Path Creation Order

**Report by Director Operations, Infrastructure and Divisional
Manager, Transport**

Executive Summary

Public Bridleway 3706 was recently successfully claimed over the former railway track bed between Mill Lane, Itchingfield and the disused platforms of Christ's Hospital railway station. The County Council has aspired for a number of years to improve the safety and convenience of users of the Downs Link, one of the county's most popular routes, by providing an alternative to a length of road west of Christ's Hospital that must presently be used. The proposed West of Horsham development will increase pressure and demand on the Downs Link as an important recreational and communicational route.

It is feasible to create a route from bridleway 3706 through to Christ's Hospital railway station car park by utilising a tunnel beneath the Arun Valley railway. There will be considerable cost to create such a route but this is an opportunity to deliver a visionary project for the enjoyment of future generations. Discussions with Southern Water have resulted in the generous dedication by them as landowners of bridleway rights over paths 3710 and 1628/2 for use as part of this route and encouraging discussions have been held with Christ's Hospital School, owners of land from the tunnel to the car park. Discussions with the owners of the land shown between points A and B on the report plan have, regrettably, not secured any agreement for a bridleway and officers do not consider that an agreement on recommendable terms shall be reached in the near future. It is therefore proposed to use powers available to the County Council to secure this important link by Order and enable this valuable scheme to progress.

The Highways Act 1980 Section 26 permits a highway authority to make an order to create a public bridleway where it appears to the authority that there is a need.

Conclusion

There is considerable benefit to the public in creating an off-road bridleway between Mill Lane and Christ's Hospital railway station, both to existing users and those of the future, particularly those who will occupy the West of Horsham development. Discussions and negotiations with the owners of the land between points A and B have not brought agreement to secure public access over this length. The County Council is willing to offer fair compensation and to provide and maintain in future an appropriate path surface on this route and along bridleway 3706 in return for public bridleway access connecting bridleways 3706 and 3710.

The County Council has powers available to it to create a new bridleway and it is concluded that the relevant tests are satisfied and that the path should be created.

Recommendation

- (a) That an order be made under Highways Act 1980 Section 26 to create a new bridleway between points A and B on the plan, connecting bridleways 3706 and 3710, and that the Head of Legal Services be authorised to take all steps necessary to implement the proposal.
- (b) That the County Council funds all the costs of compensation and works as detailed in paragraph 6.

1. Introduction

- 1.1 Public Bridleway 3706 and Public Footpath 3707 were recently created after a public inquiry by confirmation of a Definitive Map Modification Order (DMMO). Presently these paths have no legal connection to Public Bridleway 3710 and beyond, and thereby are of limited value to the public. This proposal seeks to create a bridleway over land held in private ownership to link the two bridleways as part of a larger scheme to re-route the popular Downs Link bridleway away from a lengthy and trafficked section of road.

2. Background

- 2.1 The Downs Link is a long distance route for walkers, cyclists and equestrians between Guildford and Shoreham. Between Mill Lane and Christ's Hospital users are presently directed to use of roads for 1.6km (1 mile). Although rural in nature, these roads can be busy and carry fast traffic. In addition, poor visibility at bends makes safe passage hazardous.

- 2.2 The County Council has been discussing with landowners improvement to this section of the Downs Link, seeking to re-route the path along the former railway line and under the present Arun Valley railway into the car park of Christ's Hospital station.
- 2.3 A DMMO application by a member of the public to record a bridleway between Mill Lane and disused station platforms was confirmed by the Secretary of State in 2007; this is now recorded as Public Bridleway 3706. Discussion with Southern Water has resulted in the generous dedication of Public Bridleway 3710 across its land and upgrading part of a footpath to Public Bridleway 1628/2. Discussions are on-going with Christ's Hospital School regarding dedication of bridleway rights over part of Public Footpath 1628/3 and Public Footpath 1631; these have been positive and officers are hopeful that an agreement will be finalised once a connection between the existing bridleways has been secured and there will be a further report to the Committee.
- 2.4 The land between the two bridleways is owned by the Miller family, who also own the land over which bridleway 3706 runs. These lands entered the family's ownership in 1973, purchased from the County Council before creation of the Downs Link. As part of the purchase agreement the Miller family is covenanted to maintain the land including fences, hedges, gates, crossings, bridges, culverts, etc. The creation of bridleway 3706 has not transferred responsibility of managing the path and access along it to the County Council as, being created after 1959 by DMMO on the basis of long usage, this is an exception to the general rule of surface maintenance being vested in the highway authority. The Miller family therefore holds an on-going legal responsibility to maintain bridleway 3706 for current and future public users.
- 2.5 Discussions with the Miller family's surveyors were re-opened in 2007 and options of dedicating the route or obtaining a long-term lease or purchase of the land by the County Council have been discussed. Regrettably there has been no agreement between the parties and officers believe that an agreement is unlikely on recommendable terms. It is therefore proposed to seek to create this important bridleway link by means of a public path creation order under Highways Act 1980 Section 26.
- 2.6 The desire of the County Council to establish such link is increased due to the significant development planned south of Broadbridge Heath as part of the West of Horsham development. This will greatly increase the number of local residents and consequent demand and pressure on the Downs Link to provide an important local recreational resource for individuals and families as well as a convenient route for railway commuters.

3. The Proposal

- 3.1 To create a bridleway of 3 metres width between points A and B on the plan attached to this report, a length of approximately 120 metres.
- 3.2 The proposed route leaves bridleway 3706 at point A and runs north-eastwards through scrub woodland on level land and south of a boundary fence. After approximately 70 metres the route drops steeply into a gully used by a land drain outfall. In descending into and across this gully users presently must traverse the significant embankment that supports the former railway platforms to the south, then ascend a steep slope to meet bridleway 3710.
- 3.3 The route as described would not presently offer a safe and convenient route for public use and significant works will be necessary to bring the route into safe and convenient public use. A scheme has been devised to create an earth embankment to minimise slopes into and out of the gully whilst providing a 3 metres wide level path surface.
- 3.4 By creating as level a path surface as possible this shall be in keeping with the character of the Downs Link as a former railway line. A level surface shall maximise convenience of the route for future users and will be particularly beneficial to families and the mobility impaired. Creating a path of 3 metres width shall allow users to pass each other conveniently and safely.

4. The legal tests

- 4.1 The County Council has powers available to it under Highways Act 1980 Section 26 to create a new bridleway subject to being satisfied to:
 - (a) the extent to which the path would add to the convenience or enjoyment of a substantial section of the public, or to the convenience to the persons resident in the area; and
 - (b) the effect which the creation of the path would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in Section 28 of the Highways Act 1980.
- 4.2 It is considered that the creation of the route as proposed would substantially benefit the public. The West of Horsham development will increase demand on local access resources and this path will be valued by individuals, families and commuters. Through users of the Downs Link would also benefit as this would significantly minimise their use of roads to continue along the Downs Link. It should also be

noted that the County Council has been requested by amenity societies to secure the route for the public.

- 4.3 It is acknowledged that the creation of the route as proposed would affect the interests of the landowners, the Miller family. Appropriate statutory compensation (under Highways Act 1980 Section 28) would be payable to the landowners in the event an order is confirmed, being for both the access right over the land between points A and B and also possible depreciation in the land over which bridleway 3706 passes because of increased usage. The future use of bridleway 3706 can not be predicted with accuracy but it shall undoubtedly increase over present levels. The Miller family already has a duty to accept public access along this path but in the circumstances, and in addition to the payment of appropriate compensation, it is recommended the County Council provide and maintain in future the path surface. Management of the remainder of the land, including fencing, bridges, etc., would however remain with the Miller family.
- 4.4 It is considered that the legal tests are satisfied and that the bridleway should be created as proposed.

5. **Consultations**

- 5.1 Horsham District Council, Itchingfield Parish Council, the Ramblers' Association and The British Horse Society have recently been consulted. Members will be updated on any views received at their meeting.

6. **The costs and works necessary to implement the proposal**

- 6.1 The County Council will meet the administration charges and advertising costs associated with the making of the Path Creation Order and any compensation which may become payable – paragraph 4.3 refers.
- 6.2 The County Council will meet the costs of the earthworks on which the future bridleway will run – this was estimated at approximately £80,000 in August 2008, excluding any fencing, plantings, other landscape works and path surfacing.
- 6.3 The County Council will meet the costs of providing a route to a standard in keeping with the current Downs Link bridleway. Surfacing from Mill Lane through to the tunnel beneath the Arun Valley railway is estimated at £65,000, including installation of appropriate fencing for the safety of future path users.

7. **The Crime and Disorder Act 1998 Implications**

- 7.1 The proposed bridleway is not in close proximity to any residential property. The disused platforms are not directly available to users of the path, largely being at the top of a considerable embankment. Use of the path will be monitored and in the event of mis-use consideration given as to any appropriate means of control.

8. **The Human Rights Act 1998 Implications**

- 8.1 Article 8 of the European Convention safeguards the respect for family life and home whilst Article 1 of the first protocol concerns the non-interference with the peaceful enjoyment of private property. Both rights are subject to conditions and interference with these rights may be permitted if the need to do so is proportionate. In this particular matter, the interests of those affected by the proposal have been fully considered, as have the relevant considerations that may justify interference with particular rights. All of these are set out within the body of the report and are examined in the context of relevant planning considerations.

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