

# Agenda Item 95.

<b>Development Management Ref No</b>	<b>No weeks on day of committee</b>	<b>Parish</b>	<b>Ward</b>	<b>Listed by:</b>
N/A	N/A	Earley	Maiden Erlegh, Hawkedon, Winnersh	Scheme of Delegation

<b>Applicant</b>	Wokingham Borough Council	<b>Postcode</b>	N/A
<b>Location</b>	Footpath Earley 15		
<b>Proposal Type</b>	Diversion Order Amendment Highways Act 1980		
<b>PS Code</b>	N/A		
<b>Officer</b>	Rebecca Walkley		

**FOR CONSIDERATION BY** Planning Committee on Wednesday 1 February 2017  
**REPORT PREPARED BY** Public Rights of Way Officer

## SUMMARY

Currently, part of Earley footpath 15 is obstructed. To resolve the obstruction the Council made the Wokingham Borough Council (Footpath 15 Earley (Part)) Public Path Diversion Order 2014 under s.119 of the Highways Act 1980). Agreement to the final width of the right of way will enable the Order to be sent back to the Secretary of State for the Environment, Food and Rural Affairs for confirmation or otherwise. If the Diversion Order is confirmed, a definitive footpath and permissive cycle route will be created for residents of Earley travelling to the Park and Ride and train stations at Winnersh. The diverted path will also be well used as a valuable leisure link to leisure facilities located in Winnersh. The new route would also form part of the Loddon Long Distance Path.

## PLANNING STATUS

- N/A

## RECOMMENDATION

That Members agree to a modification of the Diversion Order, the effect of which will be to reduce the width of the diverted path between Points B-C on the Order to 2.5m and to authorise officers to submit the modified Order to the Secretary of State for the Environment, Food and Rural Affairs to be confirmed.

## PLANNING HISTORY

- N/A

## CONSULTATION RESPONSES

None.

## REPRESENTATIONS

- Ramblers' Association – no objections
- Open Spaces Society – no objections
- Earley Town Council – no objections

#### **APPLICANTS POINTS**

None.

#### **PLANNING POLICY**

- N/A

#### **PLANNING ISSUES**

1. Currently, part of Earley footpath 15 is obstructed between A-D (see plan appended to this report). It was proposed to resolve the matter by way of a Diversion Order under s.119 of the Highways Act 1980. The Order was agreed to be made by Members at the Planning Committee on 8th January 2014. The Order was made in agreement with the landowners. A Section 106 agreement was also drawn up between the landowners and Authority regarding the development of the adjacent land to provide a showroom and forecourt facility; however, the land owners subsequently objected to the Order.
2. The description of the new path as set out in Part 2 of the Schedule to the Diversion provides for a path width of 5.5m between A-B and 3.5m between B-C. These widths included a 1m width of an existing path (which is currently used by cyclists and walkers) outside of the site planning application boundary. The Authority originally intended to fence 0.5m inside the path from the bank edge of the River Loddon to create a final path width of 5m and 3m respectively. The 3m width would allow for dual use for cyclists and walkers.
3. Although originally agreed, the land owner's new view was that the path should be 2.5m in total width as they understood it to be set out in the s.106 agreement. The land owner's understanding was that they owned the existing adjacent path and therefore this was included in their final calculation. Therefore they would only be providing 3.5m and 1.5m respectively, on their land.
4. The Diversion Order therefore requires modification before it may be confirmed and the new path brought into operation. The Authority could decide to submit the Order to the SoS to be confirmed without amendment. However, in view of the landowner's current objection this would most likely to an Inquiry incurring high costs for the Authority and there is no guarantee of a successful outcome.
5. With a view to resolving the situation, a second engineer's opinion was sought regarding the necessity for fencing the path at the top of the embankment. The Council's Structures Engineer is of the view that 'the existing footpath above the embankment is in good condition with straight & true surfacing'. When the path is fenced then the preferred option would be for concrete footing to the main posts.
6. This would provide final widths to the path of 4.5m between A and B and 2.5m between C and D. The land owners have agreed to the path carrying permitted use for cyclists. A 2.5m width is the minimum width the Authority would recommend for a shared use path.

7. The Ramblers' Association and the Open Spaces Society have been consulted on the modified width between points B-C to 2.5m and they have no objection this modification. Earley Town Council has no objection to the modified width.
8. The Land owners have been consulted regarding the new width. They are of the view that they will agree to the change of width provided that: a) That the whole of the proposed amended width between A-B and B-C in Part 2 of the order is outside the boundary fence, as currently exists on site. b) That where there may be currently any diminution on site of the proposed amended width for A-B and B-C in Part 2 of the order, this is as a result of side growth (or other feature) on the eastern side of the proposed path the Council agrees that this is not the responsibility of the land owner to address.
9. Resolving this Diversion Order will bring a long standing issue of the obstruction of this part of footpath Earley 15 to conclusion. In the past, the Authority could not have been confident that by serving notice on the land owner for obstruction that it could recover its costs if a site building had to be demolished to reinstate the public right of way. An alternative path had been available for use. However, currently, this existing path is not included on the Definitive Map and Statement (DM&S). This Order provides the legal mechanism for this path, which is currently well used, to be recorded on the DM&S, if the Diversion Order is confirmed and resolves the issue of the obstructed path.

#### **CONCLUSION**

The Diversion Order cannot currently be confirmed due to the land owner's objection. This means that part of Earley 15 is currently obstructed until the Diversion Order is resolved via a modification to the Order. If Members decide not to agree to modification then it is likely to go to Public Inquiry to resolve the matter. If Members decide to agree the modification, this means that it can be sent back to the Secretary of State to be confirmed. This not only resolves the Diversion Order but adds a currently well used path to the Definitive Map and Statement.

#### **CONTACT DETAILS**

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