

Application Number	Expiry Date	Parish	Ward
N/A	N/A	St. Nicholas Hurst	Hurst;

Applicant	St. Nicholas Hurst C of E Primary School
Site Address	St. Nicholas Hurst C of E Primary School, School Road, Hurst, Wokingham, RG10 0DR
Proposal	Diversion Order Hurst Footpath 20
Type	N/A
PS Category	N/A
Officer	Andrew Fletcher
Reason for determination by committee	Scheme of delegation

FOR CONSIDERATION BY	Planning Committee on Wednesday, 13 May 2020
REPORT PREPARED BY	Assistant Director – Delivery and Infrastructure

SUMMARY
<p>The Council has received an application from St Nicholas Hurst C of E Primary School to divert part of Hurst Footpath 20 under section 119 Highways Act (1980).</p> <p>The grounds for the making of the diversion order are that part of the line of the path should be diverted in the interests of the owner of land crossed by the path and of the public.</p> <p>It is recommended that the order is made.</p>

PLANNING STATUS
<p>Legal Framework for the Decision: Orders for the stopping up or diversion of footpaths, bridleways or restricted byways may be made under section 119 of the Highways Act (1980), if the highways authority is satisfied that it is necessary to do so in the interests of the owner of the land and the public.</p> <p>Defra Rights of way Circular 01/09 is also relevant.</p>

RECOMMENDATION
<p>That the committee authorise the making of the DIVERSION ORDER:</p> <ol style="list-style-type: none"> 1. That authorisation is given to the making of an order under s.119 Highways Act 1980 Act to divert part of Hurst Footpath 20 as shown on the plan no. 1, on the basis that the diversion will be in the interests of the public and of the landowner; 2. If no objections to the order are received or any such objections are withdrawn, that the order may be confirmed; 3. If objections are received and sustained, the order may be sent to the Secretary of State for confirmation.

4. In addition to the above, that the Diversion Order made on 20th August 2007 and referred to in Paragraph 9 below shall be abandoned.

CONSULTATION RESPONSES

Executive Member – Environment and Leisure	No objection
Local Members	No objection
St. Nicholas Hurst Parish Council	No objection
Loddon Valley Ramblers	No objection
Open Spaces Society	No objection
Local Access Forum	No objection

BACKGROUND

Description of existing path and proposed diversion

1. Hurst Footpath 20 commences on School Road and runs in a southerly direction for 78m, then in a south easterly direction for 95m, ending along Orchard Road to the west of Vine Cottage.
2. The section of the path which is required to be diverted is shown by a solid black line between the points A-B on Plan No.1. The proposed diversion route is shown by a dashed line between the points B-C-D-E on Plan No. 1. St Nicholas Hurst C of E Primary School are the land owners for this section of the path.
3. The surface of the path is a grass path through the playing field. The Council is responsible for the maintenance of the path however as it is part of the playing grounds, no maintenance is generally required. There is no defined width on the ground or the Definitive Statement for the section A-B.
4. There are currently three gates along the path through this section: a gate at the entrance to School Road at Point A, a second gate at point B where the path leaves the playing field and lastly a kissing gate at the boundary of the school land at point B where the path leads into the adjacent field.
5. The proposed diversion route will be to route the path around the playing field, but separated from the field by a wooden rail fence. The proposed diversion route is within the land ownership of the school. This diverted route is already in place and is being used by some members of the public as a permitted alternative route. This route is signed by the School as a permitted alternative route to the existing right of way.
6. The length of Hurst Footpath 20 to be diverted is approximately 77 metres long. The proposed diverted route will be 95 metres long, an increase of 18 metres. The existing section of the route to be diverted has no dog legs; the proposed diverted section has one dog leg along the route.
7. The school are seeking to make the new path as user friendly as possible and have undertaken to carry out the following work as part of the diversion:
 - a. Removal the stile at the entrance to the alterative path on School road (point E on Plan No. 1)
 - b. Cut back the hedge and remove any overhanging branches along the proposed route

- c. Remove the 90 degree part of the fence at point C-D by taking the fence back into the playing field to create a wider and gentler turning point in the path.
- d. Surface along the diverted path with compacted limestone scalplings to provide a surface suitable for all year round use.
- e. Replace the kissing gate which is on the boundary of the school land at point B with a new kissing gate compliant with British Standard BS5709.
- f. Remove the second stile which is on Orchard Road and replace it with a new kissing gate compliant with British Standard BS5709. The adjacent landowner has agreed to this change, should the diversion be approved.
- g. Removal of the top rail of the existing fence adjacent to the proposed diverted route to ensure a more open view from the proposed diverted path.

History of the application

8. A diversion order was made in 2007 to divert this path, however a number of objections were received. The Order was not confirmed (and therefore did not come into effect) pending further discussions between the applicant, the Council and those who had raised objections to the Order. These discussions were further delayed due to staff changes at both the School and the Council.
9. The issue was revisited in 2019 and fresh discussions were carried out with those who had objected previously and other key stakeholders. As a result of these discussions various changes were made to the proposed diversion route to address their concerns (detailed above). Consequently, it is necessary for Members to authorise the case officer to abandon seeking confirmation of the 2007 Order.

Purpose of the Order and legal test for a Diversion

10. The test under s.119 of the Highways Act (1980) to be used to decide whether to make a diversion order is whether the new route is as substantially convenient to the public and in the interests of the landowner and/ or the public.
11. The purpose of the diversion is to alter the definitive line of the path to provide increased security for the school, and to provide an improved path which is more convenient to users.

Benefits to the landowner

12. The path between A-B runs through the outdoor play area of the school. The existence of the path means that the school is unable to effectively prevent any member of the public from entering the playing ground whilst the children are playing, and are likewise unable to lock the gates to prevent children from accessing the adjacent road or field. This represents a significant safeguarding risk to the school and whilst supervisory staff are deployed during playtimes to monitor the gates and path the risk remains. The school are seeking to divert the path around the playing field so that they are able to properly secure the field and prevent unauthorised access in and out of the school in line with the other security measures in place for the main buildings.

Benefits to the public

13. The current route crosses a playing field, with a natural grass surface underfoot. During wetter months this path is liable to become muddy and will be more difficult

for the public to use than a surfaced path. The existence of 3 narrow gates along the path also make it less accessible to those with pushchairs or wheelchairs.

14. The effect of the proposed diversion will be to create a new route with a defined width of 2.8 metres, with a surface suitable for all year round use and making the path safer and more accessible to users. The number of gates and barriers along the route will be reduced from 3 to one. The remaining gate is there to prevent livestock from escaping, but as part of the works the gate will be upgraded to the modern standards so improving accessibility to all users. The diverted path will have a higher specification surface suited to use all year round. This will be more accessible to users. Therefore the route will be more convenient to the public. It is thus considered that the proposed diversion order will be in the interests of both the landowner and the public.

15. The difference in length between the length of path to be diverted and the proposed alternative is approximately 18 metres. However, it is considered that any perceived disadvantage as a consequence of the additional length will be outweighed by the improved surface and accessibility, overall the right of way is improved by proposed diversion.

Results of the informal consultation

16. The first stage of the diversion application process is to informally consult key stakeholders prior to any decision.

17. St. Nicholas Hurst Parish Council, Loddon Valley Ramblers and the Open Spaces Society have been consulted and have made no objections to the proposed diversion. The Local Access Forum has also been consulted and has no objection to the diversion. Local Members have been consulted and have no objections to the diversion.

Next steps

18. If a decision is made to make a Diversion Order there is a further statutory objection period of 28 days from the date of publication for any representations or objections. If there are no subsisting representations or objections the Council may then proceed to confirm the order. Otherwise the order can only be confirmed by the Secretary of State who may decide to hold a Public Inquiry.

19. Should any objections be received that are not subsequently withdrawn a further report will be made to the Planning Committee for a decision whether to refer the matter to the Secretary of State or to abandon the Order.

Relevant policies

20. The following policy is relevant to this application: *Rights of Way Improvement Plan 2009* (Statement of Action Policy SOA3) Improve accessibility and quality of life: 'to identify ways to improve access on public rights of way for those with visual or mobility impairments'. The length of the proposed diverted footpath will be accessible for pushchair and wheelchair users.

The Public Sector Equality Duty (Equality Act 2010)

In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age,

disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief.

There is no indication or evidence (including from informal consultation on the application) that the protected groups identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular public path diversion application and there would be no significant adverse impacts upon protected groups as a result of the proposed diversion.

CONCLUSION

Officers are of the opinion that the proposed diversion satisfies the criteria required under section 119 of the Highways Act (1980) and that it is expedient for the Council to make the order in that:

- 1) It is in the interests of the owner of the land and of the public;
- 2) In general the proposed diversion route will be substantially as convenient to the public.

It is recommended that the order is made.

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