

Agenda Item 54.

Application Number	Expiry Date	Parish	Ward
N/A			Emmbrook;

Applicant	Andrew Fletcher
Site Address	Land between Jubilee Avenue and Martins Drive, Wokingham, RG41 1NY
Proposal Type	Path Creation Order
PS Category	1
Officer	Andrew Fletcher
Reason for determination by committee	Scheme of delegation

FOR CONSIDERATION BY	Planning Committee on Wednesday, 10 February 2021
REPORT PREPARED BY	Andrew Fletcher, Green Infrastructure Manager

SUMMARY
<p>A new section of path is required along unregistered land in order to construct the planned route of Greenway Route B at Jubilee Avenue, Wokingham. Part of the land required is unregistered and the Council has been unable to establish any land owner, and therefore has been unable to obtain the route by agreement. As a solution to this issue the committee is asked to consider using the Council's powers to create a new path across the land by a Path Creation Order, under Section 26 Highways Act 1980.</p> <p>This enables the path to be created without specific land owner consent. The order process will advertise the making of the order in newspaper publications and on site, and provides for any objections to be received. If no objections are received or are subsequently withdrawn the Council can confirm the order. If any objections are not withdrawn the Council may send the order to the Secretary of State for confirmation.</p>

PLANNING STATUS
<p>Legal Framework for the Decision: Orders for the creation of footpaths, bridleways or restricted byways may be made under section 26 of the Highways Act (1980), if the local authority is satisfied that, having regard to the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public and the effect which the creation of the path would have on the rights of the persons interested in the land, it is expedient that the path or way should be created.</p> <p>Defra Rights of way Circular 01/09 is also relevant.</p>

RECOMMENDATION
<p>That the committee authorise the making of the PATH CREATION ORDER:</p> <ol style="list-style-type: none"> 1. That authorisation is given to the making of an order under s.26 Highways Act 1980 Act to create a bridleway as shown in Appendix A to this report, on the basis that the creation would add significantly to the convenience and enjoyment of the public using the Greenway in this area;

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 If no objections to the order are received or any such objections are withdrawn, that the order may be confirmed;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.

CONSULTATION RESPONSES

Executive Member for Environment & Leisure	No comments received
Ward Members	No comments received
Wokingham Town Council	No objection
Loddon Valley Ramblers	No comments
British Horse Society	No comments
Mid & West Berks Local Access Forum	No comments received

BACKGROUND

1. The Wokingham Greenways project is aimed at linking the major development sites within the borough with each other and also to the existing communities and places of interest/employment. Greenways will provide non-car accessible commuting journeys to work and school as well as new leisure opportunities to get out into the countryside and greenspaces.
2. The project will link with and align to additional greenways and paths proposed to improve the non-vehicular connectivity within the Borough and to adjoining boroughs. This internal network of Greenways will utilise and extend beyond the public existing rights of way and highways network to public green space and point of interests.
3. The Council has included Greenways as part of the Wokingham Borough Council Core Strategy adopted in January 2010 and are captured in policy CP10 items 20 and 21 and SDL policies CP18-21. The implementation of the Greenways is included as one of the main objectives in the Wokingham Borough Council Rights of Way Improvement Plan 2020, adopted by the Council in April 2020.
4. The first route was constructed at California Country Park in 2017, with the final sections of the route completed in 2020. This is known as California Way.
5. The Council is currently progressing towards the implementation of Greenways Route B, which will run from Cantley Park to Arborfield Cross, linking Woosehill Meadows and Foxhill.

This route is split into 4 separate sections:

Section 1: Cantley Park to Woosehill Meadows via Matthewsgreen

Section 2.1: Woosehill Meadows

Section 2.2: Woosehill Meadows to Bearwood Road via Foxhill

Section 3: Bearwood Road to Arborfield Cross via Coombes Lane and Coles Lane.

Maps showing the different comprising sections of the route are included as Appendix B to this report.

6. Initial public consultation for the whole route was undertaken between March-May 2019. The consultation responses were 64% in support, 12% objection and 24% neither supporting nor objecting. The consultation report for the initial public consultation is included as Appendix C to this report.
7. The initial proposed route included a path through Joel Park, however subsequent discussions with the landowner (Wokingham Town Council) highlighted significant concerns and objections from the Town Council to the use of Joel Park as part of the route and permission was denied. The alternative route adjacent to Jubilee Avenue was subsequently identified in consultation and agreement with Wokingham Town Council.
8. As a result of this change, an additional localised public consultation was undertaken for Section 1 between July - September 2020. The consultation responses were 26% in support, 26% objecting and 48% neither supporting nor objecting. The consultation report for the localised public consultation is included as Appendix D to this report.
9. Part of the planned route of Section 1 will utilise land adjacent to Jubilee Avenue to link from Cantley Park to the entrance of Martins Drive. This additional section provides an extension of the off-road route, before joining with Clifton Road and Brook Close to provide the final link to the Greenway at Woosehill Meadow. This allows users to avoid the need to negotiate the busier section of Clifton Road where it meets with Holt Lane, and avoids the parking area adjacent to Joel Park.
10. Part of this land is owned by Wokingham Borough Council, and part is owned by Wokingham Town Council, and there exists a middle section of the land which is unregistered.
11. Wokingham Town Council have agreed in principle to allow a long-term permitted path across their land to facilitate the Greenway, but a landowner for the unregistered section of land has not been identified.
12. The unregistered area of land is identified in the Council's records as public open space maintained by Wokingham Borough Council. To protect the ongoing highway status of the unregistered section of the land required for the greenway it is considered that the most expedient and appropriate option will be to make a Path Creation Order under Section 26 of the Highways Act to create the path over the land.
13. Section 26 of the Highways Act provides that where it appears to a local authority that there is a need for a footpath, bridleway or restricted byway over land in their area and they are satisfied that it is expedient that the path or way should be created having regard to (a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public or to the convenience of persons resident in the area, and (b) the effect which the creation of the path or way 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 1980 Act, the authority may by order made by them ...create a footpath, bridleway or restricted byway over the land.

14. Having regard to the benefits to the public as set out in paragraph 8 above, the Committee is therefore requested to consider the making of a Path Creation Order to create a bridleway across the land shown in Appendix A to this report.
15. Once a Path Creation Order is made it is subject to a statutory 6 week public consultation. This will be advertised in local newspapers and any land owner that has an interest in the land must be notified. As a landowner is not able to be identified a dispensation from the Secretary of State will be sought to notify via site notice. If no objections are received to the Order the Council is able to confirm the order. If objections are received which are not subsequently withdrawn the order will need to be sent to the Secretary of State for confirmation.
16. Section 27 of the Act confers a duty on the authority to carry out the works necessary to physically create the new path. Section 28 confers a duty on the authority to pay compensation when a claim is made and depreciation or damage is shown to exist. In such a case, compensation would payable equal to the amount of the depreciation or damage, however Officers do not consider that the impact of the proposed Order on the value of this land or the nearby land would be significant given the proximity of the land to Martins Drive, Holt Lane and Clifton Road.

PLANNING POLICY		
Adopted Core Strategy DPD 2010	CP10	Improvements to the Strategic Transport Network
	CP20	North Wokingham Strategic Development Location

The Public Sector Equality Duty (Equality Act 2010)
<p>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.</p> <p>There is no indication or evidence (including from consultation on the proposal) that there will be any adverse impacts upon protected groups as a result of the Path Creation Order.</p> <p>HUMAN RIGHTS</p> <p>If the making of the order is approved, the following principles of the Human Rights Act 1998 may be engaged:</p> <ul style="list-style-type: none"> • The First Protocol Article 1 (<i>Every person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law</i>). The Highways Act 1980 provides the legal basis for controlling the use of property in accordance with the general interest. There must be a demonstrable “general interest” for an imposed public right of way creation such as for example a need identified in a ROWIP which is the case in relation to greenways scheme. It is intended that the authority will

take all steps reasonably necessary to ensure that any interference will be no greater than necessary although it should be noted that there is no identifiable landowner in respect of the land in question and the land is already used by the public given its inclusion in the Council's public open spaces maintenance regime.

- Schedule 1 Part 1 Article 6 (*In the determination of his civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*) The public path order process provides for any person having a valid objection to the making and confirmation of a creation order to be heard before an independent inspector at a public inquiry or a local hearing.
- Schedule 1 Part 1 Article 8 (*everyone has the right to respect for his private and family life, his home and correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law*). The Highways Act 1980 provides the legal basis for the interference with this right. It should be noted that there is no identified landowner for the affected land but in any event all reasonable steps will be taken when carrying out the works to ensure that there will be minimal disturbance to the land in question.

CONCLUSION

The proposed Greenway route along this section will provide a safe, off-road route for cyclists looking to pass to and from Cantley Park along the Greenway. This has been a long term strategic objective of the Council, and contributes to its climate change and sustainable transport objectives.

This would add significantly to the convenience or enjoyment of a substantial section of the public. The unregistered section of land is a small section of woodland verge adjacent to Jubilee avenue with limited prospects for improvement or development. It is therefore considered that the proposed path would have minimal effect on the rights of any persons interested in the land. As such it is considered that the tests of Section 26 Highways Act 1980 have been met, that it is expedient that the path of way should be created.

It is therefore recommended that the order is made.

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