

Application Number	Expiry Date	Parish	Ward
Shinfield Footpath 14 Diversion	N/A	Shinfield	Shinfield South;

Applicant	Shinfield West Housebuilder Consortium (Bloor Homes and Vistry Thames Valley)
Site Address	Shinfield Footpath 14 at Martyn Crescent, Shinfield, RG2 9WF
Proposal	Application for the extinguish part of Shinfield Footpath 14 under Section 118 Highways Act 1980 and to divert part of Shinfield Footpath 14 under Section 119 Highways Act 1980
Type	Public Rights of Way Diversion and Extinguishment
Officer	Andrew Fletcher
Reason for determination by committee	Scheme of delegation

FOR CONSIDERATION BY	Planning Committee on Wednesday, 12 April 2023
REPORT PREPARED BY	Assistant Director – Environment and Safety
RECOMMENDATION	That the committee authorise the making of the diversion order and extinguishment order.

SUMMARY
<p>The Council has received an application to divert part of Shinfield Footpath 14 under Section 119 Highways Act 1980 to meet with Martyn Crescent, and to extinguish part of Shinfield Footpath 14 running through Martyn Crescent under Section 118 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>The grounds for making the extinguishment order are that the existing path is no longer needed for public use.</p> <p>It is recommended that the order is made.</p>

PLANNING STATUS
<p>Legal Framework for the Decision: Orders for the stopping up of footpaths, bridleways or restricted byways may be made under section 118 of the Highways Act (1980), if the highways authority is satisfied that it is necessary to do so on the grounds that it is not needed for public use.</p> <p>Orders for the 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**That the committee authorise the making of the EXTINGUISHMENT ORDER:**

1. That authorisation is given to the making of an extinguishment order under s.118 Highways Act 1980 Act to stop up part of Shinfield Footpath 14 as shown on the plan no. 1, on the basis that the path is no longer needed for public use.
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.

That the committee authorise the making of the DIVERSION ORDER:

4. That authorisation is given to the making of an order under s.119 Highways Act 1980 Act to divert part of Shinfield Footpath 14 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;
5. If no objections to the order are received or any such objections are withdrawn, that the order may be confirmed;
6. If objections are received and sustained, the order may be sent to the Secretary of State for confirmation.

PLANNING HISTORY

Application Number	Proposal	Decision
O/2010/1432	Outline consent for the redevelopment of the area	Approved at appeal
160183	Primary infrastructure phase	April 2016
161189	Reserved matters for the Phase 1 residential area	July 2016
181142	Discharge of conditions (Walking and Cycling Strategy)	Approved November 2019

CONSULTATION RESPONSES

Executive Member – Environment and Leisure	No objections
Local Members	No objections
Shinfield Parish Council	No response
Loddon Valley Ramblers	No objections
Mid & West Berks Local Access Forum	No response
Open Spaces Society	No response
British Horse Society	No objections but has requested footpaths upgraded to bridleways as part of the change (detailed below)

REPRESENTATIONS

Town/Parish Council: No comments received.

Local Members: No comments received

BACKGROUND

Description of existing path and proposed diversion

1. Shinfield Footpath 14 commences on Hyde End Road and runs in a westerly and generally north-westerly direction for approximately 585m, ending at Shinfield Footpath 13 to the north of Martyn Crescent.
2. The section of the path to be extinguished is shown by a solid pink line between points B and D on Plan No. 1.
3. The reason for the extinguishment is that new estate roads have been constructed as part of the approved development, providing a new path suitable for use all year round, and rendering the existing line of Shinfield Footpath 14 unnecessary. The estate roads are in the process of being dedicated as adopted highway; this means that the legal line of the footpath cannot be diverted onto them they will already be a public highway. In a practical sense this will not impact on the public right of access as the public have rights of access along Martyn Crescent, but it is beneficial to extinguish the route to avoid complications and potential conflicts between the Council's Adopted Highway records and the Definitive Map and Statement of Public Rights of Way.
4. The section of path to be diverted is shown by a solid orange line between the points A-B on Plan No.1. The proposed diversion route is shown by a solid red line between the points A-C on Plan No. 1.
5. The reason for the diversion will be to ensure that Shinfield Footpath 14 terminates on a public highway (Martyn Crescent).
6. The surface of the existing path runs through what is now residential housing, crossing over asphalt estate roads which have been dedicated as a highway separately under Section 38 Highways Act 1980.
7. A second consequence to the diversion and extinguishment will mean that Shinfield Footpath 14 will be separated into two distinct paths and the path will need to be renumbered. It is proposed to renumber the northern section of the path as Shinfield Footpath 14A.
8. The length of Shinfield Footpath 14 to be stopped up is approximately 245 metres long. The proposed diverted route will be 9 metres long.
9. The ongoing route by pedestrians will be to use either the estate roads along Martyn Crescent, or the off-road paths within the adjacent public open space.

Purpose of the Order and legal test for an Extinguishment

10. The test under s.118 of the Highways Act 1980 to be used to decide whether to make an extinguishment order is whether or not the existing path is necessary for public use.
11. The existing legal line of the path has been built upon and it is now unable to be used, however new roads and footways have been constructed that provide an

alternative surfaced path suitable for use all year round. It is considered that this alternative route means that the legal line is no longer necessary.

Purpose of the Order and legal test for a Diversion

12. 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.
13. The purpose of the diversion is to alter the definitive line of the path to join with the existing public highway (Martyn Crescent) in the interests of the public so that the route is not a dead-end

Benefits to the landowners

14. The path between A-B runs across what is now a residential estate. The diversion and extinguishment of the path will remove the legal line over these properties and provide reassurance to the residents that their homes are not at risk of having enforcement action taken them.

Benefits to the public

15. The effect of the proposed diversion will be to create a new route with a defined width of 2 metres linking into Martyn Crescent. This will prevent the diversion being a dead-end highway and allow ongoing travel on foot through the residential estate and also allow access to Shinfield Footpath 14 from the residential estate. It is thus considered that the proposed diversion order will be in the interests of both the landowner and the public.

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. Local Members have been consulted and have made no objections to the diversion. Similarly, Shinfield Parish Council, the Loddon Valley Ramblers, the Mid & West Berkshire Local Access Forum, and the Open Spaces Society been consulted and have made no objections to the proposed diversion.
18. The British Horse Society do not have any objections to the specific extinguishment and diversion proposal however they have requested improvements to other paths to benefit the local community as an offset for this change. The British Horse Society have proposed one of the following changes detailed below. The full response and the map provided in included as Appendix 1 to this report:
 - a. *Reclassify footpath 11 as bridleway, offer the local community access from the new homes to community centre, shops and Langley Mead SANG at School Green. Also offer the existing community at School Green, an alternative quieter route, avoiding the A327, to the Church and Oakbank Senior School. There is space along the short route of footpath 11 to make this possible.*

- b. Adding a bridleway to link from footpath 14 from either point A or point D to opposite the Langley Mead SANG, offering recreational opportunities for cyclists as well as walkers*

19. The landowner has declined to make the changes suggested above as part of the application, with reasons cited below:

- a. There are proposals at the Local Centre for a retail unit in the vicinity of footpath 11 and any changes to the form or route of footpath 11 will ultimately depend on such proposals when approved at reserved matters stage. Nevertheless, while not a Bridleway, Footpath 11 is an existing public right of way which residents of School Green can currently use to visit St Mary's church (via Church lane). Similarly, residents can already use footpath 11, Deardon Way and existing footpaths 13 and 16 to visit Oakbank School avoiding the A327.*
- b. The route between A and E drawn in red is on land retained by the University of Reading and hence is not in the Shinfield Housebuilder Consortium's control. Nevertheless, an existing route in the form of a permissive path is available for the public to use along the dashed line identified between point A and point E, providing a connection to Langley Mead SANG. Moreover, the section between point D and E is provided as a carriageway with an adjacent 3m shared footway/cycleway and is in the process of being adopted by Wokingham Borough Council.*

20. The requests for path changes above do not impact the legal tests for the extinguishment and diversion order proposal, either that the existing path is not needed for public use, or whether or not the diversion would be in the interests of the landowner and/or the public. Accordingly it is not considered appropriate for the requests to be included as part of the decision whether or not to make an extinguishment order and diversion order. It is recommended that the Panel consider the proposal in isolation to these requests.

Next steps

- 21. If a decision is made to make an Extinguishment Order and a Diversion Order, there is a further statutory objection period of 28 days from the date of publication of each Order 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.
- 22. 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.

CONCLUSION

Officers are of the opinion that the proposed extinguishment satisfies the criteria required under section 118 Highways Act 1980 and that it is expedient for the Council to make the order in that:

- 1) The existing line of Shinfield Footpath 14 running through the residential estate is no longer needed for public use.

Officers are of the opinion that the proposed diversion satisfies the criteria 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 and wider highway network will be as substantially convenient to the public.

It is recommended that the orders are made.

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 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 planning application and there would be no significant adverse impacts upon protected groups as a result of the development.