Consultation

Thakeham– Proposal to divert part of footpath 2475 under Section 119 Highways Act 1980

1. The existing path and background to the proposal- see Plan numbered 08141

Footpath 2475 in the parish of Thakeham commences at its eastern end on Crays Lane and runs east for a short distance before heading generally west and terminating on "the Street" in Thakeham. At Crays Lane, there are no adjoining rights of way connections therefore users are required to walk along the Lane which is a rural D Class Highway and subject to a 60mph speed limit. From its termination on the Street, there are several connecting rights of way allowing users to travel south, west and north using the rights of way network.

On its current definitive line (shown between points A, B and C on the attached plan) footpath 2475 continues from Crays Lane, through a pedestrian gate and runs north-west along a shared access drive that serves numbers 1 and 2 Crays Farm cottages. The footpath continues west, passing to the front of both cottages, through a further pedestrian gate and through a private farmyard which is owned and occupied by the applicants. On passing to the north of the stable block, the path continues through another pedestrian gate into a grazed paddock and continues southwest along the fields western edge before passing through another gate and continuing west across agricultural land.

It is proposed to divert the path a point C so that it runs in a south easterly direction to point D where it meets Crays Lane, at a point approximately 110m from its existing termination point at A. Whilst the existing definitive route remains fully open and accessible, the owners have provided the proposed route as an alternative permissive route for approximately the last 3 years. They report that many users happily opt to use this rather than pass through their property.

This short diversion would provide the owners of both 1 and 2 Crays Farm with increased privacy and security of their properties, private gardens and private farmyard through which the existing path passes.

2. Consultations

As part of the application process the applicant has carried out the required pre-application consultations with the Parish Council and relevant amenity groups. The following responses were received and submitted with the application.

i. Thakeham Parish Council – *at their assets and amenities committee held on 16 July 2024 the committee voted to support the proposal..*

ii. Local Ramblers representative – *"……do not see any reason to oppose your proposal to divert footpath 2475….."*

A copy of this consultation has been sent to Horsham District Council, Sussex Police and placed in the Members bulletin.

All responses received will be fully considered before proceeding with any legal order.

3. Grounds and legal tests for diversion

Before making and confirming an unopposed order under Section 119 of the Highways Act 1980 Act the County Council must be satisfied that the legal tests can be met.

3.1 The making test

Before making an order, the County Council must consider whether the diversion is expedient in the interests of the owner, lessee or occupier of land crossed by the path, or in the interest of the public. This is subject to any altered point of termination of the path being substantially as convenient to the public.

3.2 Conclusion on the making test

The application to divert the footpath is made in the interests of the landowner. Diverting the path removes the need for walkers to pass though the applicants property and private farmyard providing the owners and occupiers of the neighbouring property an increase in privacy, security and enjoyment. The majority of the land over which the existing path crosses is owned by the applicants. The owners of the neighbouring property have confirmed in writing that they support the proposal.

Whilst there is a change to the footpath's termination point on Crays Lane, it is considered that it offers users with good visibility due to the straight nature of the road as well as an area of refuge when exiting the field via a kissing gate. There are no other connecting rights of way on Crays Lane affected by the proposal.

4. Confirmation tests

Additional tests must be considered and satisfied before confirming an order.

i. Is the proposed route substantially less convenient to the public?

ii. If not, is *expedient to confirm the Order having regard to:-*
a) the effect on public enjoyment of the way as a whole?
b) the effect on other land served by the existing way?
c) the effect on land over which the way is created?

4.1 Conclusions on the confirmation tests

a. Is the proposed route substantially less convenient to the public? The proposed route offers a continued rural route across similar terrain to the rest of footpath 2475. The alteration to the footpath's termination point has no impact on any connecting rights of way as there are no others that join with Crays Lane.

b. The effect on public enjoyment of the way as a whole*?* The proposed route offers users with uninterrupted views of open countryside with a similar terrain to the existing length of footpath 2475 which is unaffected by the diversion. It avoids the need for users to walk through the private curtilage and farmyard of the landowners, avoiding interaction between the residents and walkers. In this respect, users may find the alternative route more enjoyable. Whilst being slightly shorter in length (approx. 57 metres) than the existing path, it is not considered to be a disadvantage to users.

c. The effect on other land served by the existing way*?* It is not anticipated that other land will be directly affected by the diversion.

d. The effect on land over which the way is created? Land registry documents confirm that the applicants own all the land subject to the proposed route.

5. DEFRA Guidance

In addition to the statutory legal tests set out above, we must also consider the latest government guidance[i] on diverting and extinguishing public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises.

This latest guidance provides that:

"*In all cases where the guidance applies, the order-making and confirming authority should weigh the interests of the owner and/or occupier against the overall impact of the proposal on the public as a whole. They should note that reducing or eliminating the impact of the current route of the right of way on the owner and/or occupier, in terms of privacy, security and safety, are important considerations to which due weight should be given.*

The order-making authority should therefore be predisposed to make, and the confirming authority will be similarly predisposed to confirm, an order if it satisfies the respective relevant legislative tests"

On its current definitive line FP 2475 passes through in close proximity to private dwellings, curtilage and farmyard of 1 Crays Farm, therefore an application to divert is covered by the above guidance. If it is considered that the proposal meets the necessary making tests, as set out in this guidance, as set out in the guidance the County Council should make an order to divert the path.

6. West Sussex Rights of Way Management Plan, Human Rights Act 1998, Equality Act 2010 and Crime and Disorder Act 1998 Implications

In considering this application the County Council's responsibilities under the provisions of the above have been taken into account.

7. The Works and Costs

All costs associated with the diversion proposal will be met by the applicants. This includes any practical works needed to bring the path up to a suitable condition, the County Councils administrative and advertising charges and the cost of any changes needed to the existing waymarking. Before bringing any diversion order into effect, the County Council will ensure that the diverted path is made up to an acceptable standard.

8. Overall Conclusion

This is a relatively small, reasonable proposal which will provide the landowners and occupiers improved privacy, security and enjoyment of their property, curtilage and private farmyard. The proposal offers users a reasonable alternative path to the current definitive line which has been available and in use as a permissive route. It is recommended that an order for the diversion of footpath 2475 as set out on the attached plan be made. Should an order be made, there will be a public representation period of 28 days to allow for any further comments on the proposal. All comments received will be fully considered before deciding whether or not to proceed with the order as made.

Ami Dye
Senior Rights of Way Officer
14 May 2025.

---

[i] DEFRA- Government guidance on diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises
Date: August 2023
Version: 1.0