

REGULATORY COMMITTEE  
10<sup>th</sup> SEPTEMBER 2003

---

**BRIXTON DEVERILL: PROPOSED DIVERSION OF  
FOOTPATH 3 (PART)**

**Purpose of Report**

1. To seek approval to the making of an Order under Section 119 of the Highways Act 1980 to divert a short section of Footpath 3 Brixton Deverill, as shown on the plan attached at **Appendix 1**.

**Background**

2. The owners of Drovers End, Brixton Deverill, have enquired via their solicitors if it would be possible to divert a short section of Footpath 3 within their property.
3. The solicitors acting on behalf of the owners state that their clients effected a practical re-routing of the path approximately five years ago and this has been signed by the County Council as the route of the path.
4. No complaints have been received to the unofficial re-routing of the path.
5. The definitive route passes up the drive of the property and between the house and the garage before continuing over the lawn. This route is available for use.
6. The route signed on the ground as the footpath passes on the western boundary of the property and affords views of Cold Kitchen Hill. The width however is quite confined, being just over one metre between vegetation.

**Consultations**

7. **The Ramblers' Association** supports the legislative change proposed provided it is made to at least the standard width and is clearly signposted at both ends with approved signs.
8. **Mr. B. Riley** commented in a letter dated 28<sup>th</sup> April 2003:-

*"There is not much I can say about the proposal except to observe that the diversion appears to be less convenient than the historic route as it no longer lines up with BR2."*

Bridleway 2 has also been unofficially diverted by the owner of the land over which it crosses for many years and it now lies opposite the proposed diverted route.

9. **The Chairman of Upper Deverills Parish Council** stated in an email dated 8<sup>th</sup> May 2003:-

*"We are of course happy with the diversion because we can confirm it has in practice been in existence for a number of years."*

#### **Main Considerations for the Council**

10. Section 119 of the Highways Act 1980 provides for the diversion of footpaths and bridleways:-

*"Where it appears to a Council as respects a footpath or bridleway in their area (other than one that is a trunk road or a special road) that, in the interests of the owner, lessee or occupier of the land crossed by the path or way or of the public, it is expedient that the line of the path, or part of that line, should be diverted (whether onto land of the same or of another owner, lessee or occupier), the Council may, subject to Sub-Section (2) below, by Order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed Order:-*

- (a) *Create, as from such date as may be specified in the Order, any such new footpath or bridleway as appears to the Council requisite for effecting the diversion."*

Sub-Section (2) states:-

*"A public path diversion order shall not alter a point of termination of a path or way:-*

- (a) *If that point is not on a highway; or*
- (b) *(Where it is on a highway) otherwise than to a point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public."*

11. The existing policies with regard to diversion orders are:-

*The County Council will, in view of the limited resources available, no longer consider applications for diversion/extinguishment of rights of way unless there are exceptional circumstances for which prior committee approval is required.*

*Where justified, the County Council will pursue diversion/extinguishment of public rights of way through the most appropriate means possible with a view to recovering from the applicant the reasonable costs incurred by the County Council.*

12. The present width of the provided route is not sufficient to make it easy for the public to use when seasonal growth is great. For the path to be kept easily useable would require a heavy maintenance commitment. In relation to diversion proposals the County Council usually requires the width of a fenced path to be two metres to obviate this problem. A width of two metres would be sought subject to the presence of existing mature hedges and an undertaking from the landowners that they maintain the path to at least its existing width.

13. The definitive route takes walkers immediately alongside the house and members of the public could feel awkward or even discouraged from using this route for fear of intruding on the privacy of the landowners. Consequently this could affect the enjoyment of the path as a whole, which the Council must consider with regard to the confirmation of an Order.

### **Environmental impact of the Proposal**

14. None.

### **Risk Assessment**

15. None.

### **Financial Implications**

16. The applicants have confirmed that they will pay the costs of the County Council for making the Order.

### **Options Considered**

17. Members could resolve not to make the Order.

### **Reason for Recommendation**

18. Having signed the footpath the Council has been compliant with the unofficial diversion of the path. The owners of the land have provided the path and the public has adopted using it, and arguably a strong case could be made that a common law dedication of the proposed alternative route has taken place. It is not known if any advice was given to the landowners concerning the unofficial diversion of the path by the Council. In the light of this situation, it would be in the interests of the landowners and the public to regularise the position of the path.

### **Recommendation**

19. That approval be given to the making of an Order under Section 119 of the Highways Act 1980 providing for the diversion of that part of Brixton Deverill Footpath 3, as shown on the plan at **Appendix 1** subject to obtaining an undertaking from the landowners that they maintain the path to at least its existing width.

**GEORGE BATTEN**

Director of Environmental Services

Report Author

**BARBARA BURKE**

Senior Rights of Way Officer

---

**The following unpublished documents have been relied on in the preparation of this Report:**

Correspondence with District and Parish Councils and other interested bodies