

0.2 Statement of the grounds on which it is considered the Diversion Order should be confirmed

This statement explains why in the opinion of Essex County Council (ECC) as the Order Making Authority (OMA) the Order meets the relevant criteria as set out in Section 119 of the Highways Act 1980 and why the diversion is expedient on the grounds stated.

Footpath 36 Chelmsford (PUBLIC PATH DIVERSION ORDER 2021).

The joint applicants applied for a diversion of a section of Footpath 36.

The relevant statutory tests that were examined in detail and for which categorical evidence was sought by the County Council before agreeing to proceed with the making of the Diversion Order concerned the main criteria when considering a public path diversion.

(i) *Whether it was expedient to make such an Order in the interests of the landowner.*

A part length of Footpath 36 runs through the gardens to the rear of the properties [REDACTED] and [REDACTED], which are owned and lived in by the applicants. The current legal route of Footpath 36 splits the respective gardens of both properties. In doing so, it raises privacy and security concerns for the residents of both [REDACTED] and [REDACTED], and also to an extent for the residents of [REDACTED], and no's [REDACTED] and [REDACTED] Butts Way, too, who own the garden land to the immediate north of the existing footpath. The applicants also advised that upon completion of proposed building works at [REDACTED], the owner's elderly mother will be residing in the property as well. The proximity of the footpath and lack of privacy and security afforded to the property by the footpath's location in the garden, is consequently of concern to the applicant's as the elderly mother may be alone in the house for periods during the day. The applicants also raised their specific concerns re security, with the footpath perceived as providing opportunities for the 'scoping' of properties for theft, as well as a providing a means of potential access and escape. They cited the example of a number a burglaries that have occurred to properties along Private Road including several to the property [REDACTED], as well as neighbours' reports of people using the footpath to peer over fences and into gardens. More recently one of the applicants made a video recording of drug taking activity by juveniles along the footpath, activity which understandably he did not feel inclined to enter the garden confront. They also report ongoing issues of dog mess and litter left in the gardens and adjacent land by users of the footpath as well as incidents of trespass off the footpath route. It is

the consideration of the OMA that all of the reasons provided by the applicants support the making of an order in their interests.

(ii) The termination points of the diversion are not substantially less convenient to the public.

Termination point (A) of the diversion for Footpath 36 remains on the current definitive line of the footpath along Butts Way and is unaltered. The termination point (C) is approximately 157 metres south east of the current termination point (B), and is situated along the same highway - this being Footpath 35 (Private Road). In the view of the OMA the termination points are substantially as convenient to the public, connecting as they do to the same carriageways and PROW.

(iii) The diversion should not be substantially less convenient to the public (in terms of increased distance).

The current length of the definitive route of Footpath 36 proposed to be diverted measures approximately 197 metres. The proposed new footpath route length and the length of Footpath 35 (Private Road) required together to provide the current route's access total approximately 264 metres. The difference in distance of 67 metres is not substantial and in the opinion of the OMA is in practical terms no less convenient. This is especially true when the difference is considered as part of a much longer walk such as that referenced by the sole objector i.e. his walk from [REDACTED] to Hylands Park (and presumably back). Such a route using PROW, footways etc. would likely be in excess of 3 kilometres in length (not including any additional walking within the park) and would also necessitate the crossing of the busy A414 dual carriageway twice. It seems reasonable to conclude that an additional 67 metres would do little to change the experience of such a walk, or indeed a shorter one. The diversion route seeks to regularise a route currently in use by the public which would be marginally more convenient for those coming from/going to the section of Footpath 35 located south east of Butts Way (e.g. when travelling to it south from Footpath 34, or making a circular walk with Footpath 33) and would legitimise the public's use of Butts Way on foot, adding no significant distance to walkers from other directions. The proposed diversion route along Butts Way is surfaced for vehicle use and therefore by comparison with the natural surface of the current route, offers the convenience of year round, all-weather use and is not as effected by flooding as the gardens are, the diversion route not being within a flood zone (see Appendix 1. EA Flood map). The applicant will I am sure provide their own evidence regarding the garden flooding issue but see also the photographs provided by them, some of which were included in my response to the sole objector (Document 03.).

(iv) Regard to the effect the diversion would have on the public enjoyment of the path as a whole.

Footpath 36 currently runs (from point A) between property boundaries and then within the gardens of the applicants' two gardens to (point B) where it meets Footpath 35 (Private Road). This route affords walkers no views (save those impinging upon the applicants' privacy) and is unremarkable in aspect. It slopes down towards the River Wid but does not provide access to or views of that river and as a consequence of its geography and the proximity of the river, it is subject to significant flooding after any sustained rainfall. The diversion route of Footpath 36 offers a surfaced, all-weather alternative which is already in use by the public and which provides the same connectivity. It is therefore felt that the new route has not suffered in terms of amenity by comparison with existing route and that due to its performance during wet weather would be more enjoyable for most users.

(v) The effect the order will have on the land served by the existing right of way and of the land over which the right of way is created.

The path is being diverted from within private gardens in the ownership of the applicants and between and alongside other property boundaries. One of the adjoining landowners responded to the formal consultation with their support for the proposal (see Document 0.3 [REDACTED] response) and the applicants advise that they have received verbal support from the owners of No's [REDACTED] and [REDACTED] Butts Way.

Supporting evidence:

(i) ECC Rights of Way Improvement Plan (ROWIP)

The ROWIP is not felt to be especially relevant in this case, however, an extract from it (page 28) is included (Document 21.) as it was cited by the sole objector on the grounds of maintenance and safety and by the OMA in our response to them re accessibility (Document 03.). No evidence was provided by the objector in support of their claim that the diversion route was unsafe beyond the simple observation that Butts Way is a private road. This is also true of Footpath 35 and an existing section of Footpath 36 (as well as many other PROW) and so does not appear to be a cogent argument in the absence of any evidence. The public are in any case already using Butts Way in its entirety as the objector themselves notes, with no incidents having been reported to the Highway Authority re this assumed risk. For the OMA's more detailed comments re ROWIP applicability including re safety and maintenance please refer to Document 04. Item no.3. Please also refer to Appendix 2. PROW Inspector's statement.

(ii) The effect of flooding on the current definitive route

The footpath area through the gardens lies within an Environment Agency designated Flood Zone 3 area. It is the view of the OMA that the diversion route is preferential in this regard. For supporting information please refer to item 4. within Document 04. and to Appendix 1. EA Flood map, and Appendices 3 and 4 Footpath flooding photos (as dated).

(iii) Maintenance re the existing route

The above was raised as an issue by the objector and partly addressed in the OMA's response (Documents 0.3 and 0.4). The current definite route is available to use. Maintenance is an existing Highway Authority and where appropriate (side/over-growth) a landowner responsibly. It is the submission of the OMA therefore that the question of maintenance has no relevance to this proposal excepting that the proposed route, through providing private vehicle access, is highly likely to be maintained to a higher standard and require less if any Highway Authority intervention. Please also refer to Appendix 2. PROW Inspector's statement.

Taking the above factors into account, the OMA concluded that the proposed diversion for the Public Right of Way meets the relevant tests as laid down in section 119 of the Highways Act 1980 and is supported by additional considerations.

