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DATE: 2 July 2013

To: Members of the
RIGHTS OF WAY SUB-COMMITTEE

Councillor Simon Fawthrop (Chairman)
Councillor Julian Grainger (Vice-Chairman)
Councillors Julian Benington, Ellie Harmer, Gordon Norrie, Richard Scoates and Harry Stranger

A meeting of the Rights of Way Sub-Committee will be held at Bromley Civic Centre on **WEDNESDAY 10 JULY 2013 AT 7.30 PM** *

MARK BOWEN
Director of Corporate Services

***PLEASE NOTE STARTING TIME**

Copies of the documents referred to below can be obtained from
www.bromley.gov.uk/meetings

A G E N D A

- 1 **APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS**
 - 2 **DECLARATIONS OF INTEREST**
 - 3 **QUESTIONS BY MEMBERS OF THE PUBLIC ATTENDING THE MEETING**
In accordance with the Council's Constitution, questions to this Committee must be received in writing 4 working days before the date of the meeting. Therefore please ensure questions are received by the Democratic Services Team by 5pm on Thursday 4th July 2013.
 - 4 **MINUTES OF THE MEETING HELD ON 1ST NOVEMBER 2011** (Pages 3 - 8)
 - 5 **SUB-COMMITTEE TERMS OF REFERENCE** (Pages 9 - 16)
 - 6 **PROPOSED DIVERSION OF PUBLIC FOOTPATH 288 SILVERSTEAD LANE, BIGGIN HILL** (Pages 17 - 24)
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Agenda Item 4

RIGHTS OF WAY SUB-COMMITTEE

Minutes of the meeting held at 7.30 pm on 1 November 2011

Present:

Councillor Stephen Wells (Chairman)
Councillor Michael Tickner (Vice-Chairman)
Councillors Gordon Norrie, Richard Scoates and
Harry Stranger

1 APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN

Councillor Stephen Wells was appointed Chairman for the remainder of the Council year, and took the chair.

Councillor Michael Tickner was appointed Vice-Chairman for the remainder of the Council year.

2 APOLOGIES FOR ABSENCE AND NOTIFICATION OF ALTERNATE MEMBERS

Apologies for absence were received from Councillor Julian Grainger.

3 DECLARATIONS OF INTEREST

There were no declarations of interest.

4 QUESTIONS BY MEMBERS OF THE PUBLIC ATTENDING THE MEETING

(1) From Nigel McInery, Camden Park Road, Chislehurst

Please confirm that pursuant to correspondence between the solicitors acting for Camden Park Estate Limited and the Legal Democratic and Customer Services Department of the London Borough of Bromley (in particular our solicitors' letter of 16th November 2010 to the council, the council's response of 22nd December 2010 and the council's further letter to our solicitors of 9th May 2011) that the Minutes of the Sub Committee meeting held on 1st September 2010 be amended and corrected by adding the following statement:-

By way of correction it is to be noted that the minutes of the Rights of Way Sub Committee held on 5th January 2010 as are set out at point 4 of the Minutes of that Sub Committee held on 1st September 2010, are incorrect in that they stated that the correspondence with the solicitors acting for Camden Park Estate limited had ended on January 2008. Correspondence with the solicitors acting for Camden Park Estate Limited in fact continued into February 2008 when those solicitors wrote to the council on 7th February 2008 raising a number of points to which Tony Tompkins, on behalf of the council, responded by way of

letter on 12th February 2008 acknowledging receipt of the solicitors' letter and stating that he was taking further instructions and would then write again in due course. No further letters were sent by the council to the solicitors acting for Camden Park Estate Limited pursuant to the said letter from Mr Tompkins of 12th February 2008, notwithstanding the fact that the solicitors sent two further letters dated 19th March 2008 and 22nd May 2008 chasing a reply.

Reply:

The point you make can be addressed by adding the following clarification to the end of minute 4 from the meeting on 1st September 2010, and I will ask the Sub-Committee whether they will accept this change when we reach the confirmation of the minutes on our agenda.

"Note: It was subsequently confirmed that solicitors acting for Camden Park Estate Limited had written to the Council on 7th February 2008, and that the Council had acknowledged receipt of this on 12th February 2008 in a letter from Mr Tony Tompkins in which he said that he was taking further instructions. Two further letters had been sent by the solicitors on 19th March and 22nd May 2008, but no replies had been sent."

As a supplementary question, Mr McNery queried why the amended wording did not follow the precise wording given in earlier correspondence. In response the Council's legal advisor confirmed that the wording now proposed did in his opinion address the concerns that had been raised.

(2) From Ed FitzGerald, Camden Park Road, Chislehurst

With reference to the second resolution contained in point 6 of the Minutes of the meeting held by the Rights of Way Sub Committee on 1st September 2010 would the council please confirm that it has noted or will have noted on its records and in the Minutes of this meeting that Camden Park Estate Limited does not accept the proposed entry in the council's non statutory list that Camden Park Road is an unadopted highway and that it is the view of the company that the road should be listed as an unadopted highway with pedestrian rights of access only as confirmed by David Bartlett Chief Executive of Bromley Council in a letter to Mr W Hucklesby dated 30th July 2001 (the then chair of Camden Park Estate Ltd)?

Reply:

The Sub Committee agreed on 1 September 2010 that the entry for Camden Park Road in the Council's non-statutory list of un-adopted highways should be described as

" a highway restricted to footway rights running along the south side of Camden Park Road between the kerb line and street boundary and crossing Camden Park Road to join Footpath 41 on the other side, as shown along the route A to B in drawing EHP/9808/01 as circulated to the Rights of Way Sub-Committee for its meeting on 27 April 2005"

This description is entirely consistent with the description of Camden Park Road in the Council's street register as described in the then Chief Executive of LBB, David Bartlett's letter to Sir William Hucklesby of 30 July 2001.

Further, it is important that the description of the pedestrian highway running along Camden Park Road continues to be correctly recorded as described in drawing EHP/9808/01 as is shown in the description as agreed by the Sub-Committee on 27 April 2005.

Mr FitzGerald did not have a supplementary question.

5 MINUTES OF THE MEETING HELD ON 1ST SEPTEMBER 2010

It was proposed that the minutes as circulated be amended by the addition of the following note of clarification at the end of minute 4 -

"Note: It was subsequently confirmed that solicitors acting for Camden Park Estate Limited had written to the Council on 7th February 2008, and that the Council had acknowledged receipt of this on 12th February 2008 in a letter from Mr Tony Tompkins in which he said that he was taking further instructions. Two further letters had been sent by the solicitors on 19th March and 22nd May 2008, but no replies had been sent."

RESOLVED that, subject to the addition of the note set out above, the minutes of the meeting held on 1st September 2010 be confirmed as a correct record.

6 FOOTPATH 280 (PART) GRAYS ROAD TO BOROUGH BOUNDARY - APPLICATION FOR DEFINITIVE MAP MODIFICATION ORDER TO UPGRADE TO BRIDLEWAY Report ES11136

The Sub-Committee received the Secretary of State's decision upholding an appeal against the Sub-Committee's decision on 1st September 2010 not to make a Definitive Map Modification Order (DMMO) to upgrade Footpath 280 to a bridleway. The Council was now required by the Secretary of State to make the DMMO.

Councillor Richard Scoates, as the ward Councillor, insisted that the Sub-Committee had taken the correct decision in 2010 and should be prepared to object to the order. He considered that the evidence supporting the existence of a bridleway was circumstantial and did not provide a strong case, and he drew attention to a number of sections in the Inspector's report, including the Inspector's statement that she had not visited the site (paragraph 4), the delay in making the application (paragraph 19), the issue of logs placed across the path (paragraph 23) and the two witness forms that were not considered (paragraph 26.) He also stated that he was disappointed that he had not been informed as the Ward Councillor of the Inspector's decision.

Other Members agreed with Councillor Scoates, and were concerned that opening the gates could increase the risk of trespass on adjoining land given the history of traveller incursions in the area. Members also referred to the costs of making the path up to bridleway standards, and the amount of time spent on the issue already.

The Sub-Committee was informed that Kent County Council had already agreed to follow the Secretary of State's direction to make the Order and to take a neutral stance in any subsequent appeal should further objections be made to the confirmation of the Order.

The report recommended that the Council should take a neutral stance at any Public Inquiry into any further objections resulting from the making of the Order, and in any similar cases in the future where the Secretary of State directed the Council to make a DMMO. The Sub-Committee considered that, while the Council should neither take a neutral stance or a pro-active stance of opposition, it should await responses to the DMMO and support any objections that were made. The Sub-Committee accepted that the Council ran the risk of unlawfully fettering its discretion if it were to authorise a particular position in respect of potential appeals on other Public Path Inquiries in the future and unanimously resolved that it would consider each case and the Council's position on their merits at the appropriate time.

RESOLVED that

(1) The Director of Resources, in consultation with the Director of Environmental Services, be authorised to make a Definitive Map Modification Order under section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to 'upgrade' that part of footpath 280 shown on dwg. ESD-10967-1 to bridleway.

(2) Kent County Council be informed of the Council's decision and invited to send their views to the Chairman.

(3) The Director of Environmental Services be authorised to take further action as necessary on behalf of the Council, subject to consultation with the Chairman and Ward Councillor in the event of objections being lodged by third parties.

7 MAINTENANCE OF THE PUBLIC RIGHTS OF WAY NETWORK
Report ES11138

The Sub-Committee considered a report which had been requested by Councillor Tickner on the options for reducing the maintenance costs of little-used paths and bridleways. The annual budget for maintenance of the Rights of Way network was £58,550, of which around £25,000 was used for the clearance of vegetation. Use was made of Community Payback teams for removing graffiti, rubbish and litter and clearing vegetation, but this required extensive supervision and could not meet all the borough's maintenance needs. Officers confirmed that it was more cost effective to have a planned programme for

clearing vegetation than to have a reactive approach based on responding to reports and complaints.

Members considered that, although this was a relatively small budget, the possibilities for making savings should still be investigated. It was noted that closing a footpath would require the extinguishment of highway rights and compelling evidence that it was redundant, and that there would probably be strong resistance to any proposed closures. Some Members commented that hard-earned access rights should be protected.

The Council had been successful in harnessing the support of local residents through various initiatives such as the Friends of Parks, Snowfriends and footpath custodians, of whom there were about thirty five across the borough. The Sub-Committee suggested that the possibilities for increased use of this approach to support the maintenance of the Rights of Way network should be investigated.

Members also noted that although fines imposed by the courts on fly-tippers did not come to the Council, officers had been successful in persuading residents caught fly-tipping to reimburse the Council's costs.

RESOLVED that the report be noted, and that efforts be made to extend the involvement of voluntary groups and footpath custodian schemes in the maintenance of footways and bridleways in the borough.

The Meeting ended at 8.32 pm

Chairman

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Agenda Item 5

Report No.
RES13135

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: RIGHTS OF WAY SUB-COMMITTEE

Date: 10 July 2013

Decision Type: Non-Urgent Non-Executive Non-Key

Title: TERMS OF REFERENCE

Contact Officer: Graham Walton, Democratic Services Manager
Tel: 0208 461 7743 E-mail: graham.walton@bromley.gov.uk

Chief Officer: Mark Bowen, Director of Corporate Services

Ward: N/A

1. Reason for report

- 1.1 The Chairman and Vice-Chairman have requested that the Sub-Committee's terms of reference be on the agenda for this meeting.
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2. **RECOMMENDATION(S)**

That the Sub-Committee's terms of reference be noted.

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Quality Environment:
-

Financial

1. Cost of proposal: No Cost:
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre: N/A
 4. Total current budget for this head: £N/A
 5. Source of funding: N/A
-

Staff

1. Number of staff (current and additional): N/A
 2. If from existing staff resources, number of staff hours: N/A
-

Legal

1. Legal Requirement: None:
 2. Call-in: Not Applicable: This report does not involve an executive decision.
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

3.1 The Rights of Way Sub-Committee was originally established by General Purposes and Licensing Committee on 31st July 2002. The original terms of reference were –

“To consider such matters as may from time to time be referred to the Sub-Committee by the General Purposes and Licensing Committee in relation to public rights of way issues.”

3.2 The London Borough of Bromley is, amongst other things, the ‘surveying authority’ for its area. This means it is the body responsible for the preparation and upkeep of the definitive map of public rights of way. As the surveying authority Bromley has a number of duties as follows:

- To keep the definitive map under continuous review;
- To make modification orders to take account of events requiring the map to be modified;
- To prepare definitive maps for any areas not previously surveyed (*currently the whole of the Borough has been surveyed and a definitive map produced for the whole area and thus the Sub-Committee is unlikely to be required to be involved with this aspect of its duties;*)
- To keep copies of the definitive map and statement, together with copies of any subsequent modification and reclassification orders, available for public inspection;
- To keep a register of applications for modification orders;
- To draw the attention of the public to the availability of definitive maps for inspection and to the right to apply for modification orders to be made.

Bromley also has the following powers as the surveying authority:

- To make definitive map modification orders;
- To consolidate the definitive map and the orders which have modified it;
- The above duties and powers arise from the Wildlife and Countryside Act 1981.

All other issues that would fall to be dealt with by the Council as the ‘highway authority’, the ‘traffic authority’ and/or the ‘street authority’ are matters for the Environment Portfolio Holder and thus outside of the remit of this Sub-Committee.

3.3 The Sub-Committee’s terms of reference have recently been clarified by full Council on 15th May 2013. These are set out in [Appendix 1](#), together with the terms of reference of the General Purposes and Licensing Committee and also the Development Control Committee. The General Purposes and Licensing Committee is responsible for non-executive highway functions, except those relating to the Town and Country Planning Act, which are the responsibility of Development Control Committee. The Rights of Way Sub-Committee is responsible for “functions relating to non-vehicular highway matters within the remit of the General Purposes & Licensing Committee.”

3.4 Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 sets out those functions which shall not be the responsibility of an authority’s executive. The provisions relating to public rights of way are set out in items 1-34 of section (I) Miscellaneous Functions – this is set out in [Appendix 2](#). Where these functions relate to non-vehicular highway matters they are within the terms of reference of this Sub-Committee - three of these

functions (30A, 31 and 32) relate to the Town and Country Planning Act 1990 and are therefore are not the responsibility of this Sub-Committee.

Non-Applicable Sections:	Policy/Financial/Legal/Personnel
Background Documents: (Access via Contact Officer)	Constitution of the London Borough of Bromley

Terms of Reference
(From LBB Constitution – Part 3)

- 2.01 **General Purposes and Licensing Committee** (Membership proportional – may include one Member of the Executive from each recognised party group, subject to Executive Members not being in a majority.)
- (a) Electoral issues
 - (b) Making byelaws
 - (c) Administration of the Local Government Pension Scheme
 - (d) Staffing matters
 - (e) Probity Strategy
 - (f) Audit
 - (g) Open Government
 - (h) Fraud Prevention
 - (i) Complaint Procedures
 - (j) Member appointments
 - (k) Health and Safety
 - (l) Licensing of births, deaths and marriages
 - (m) Licensing matters
 - (n) Non-executive highway functions as set out in Schedule 1 to the Functions Regulations (excluding functions under the Town & Country Planning Act 1990)
 - (o) Any non-executive function not delegated elsewhere or reserved to Council.
- 2.04 **Rights of Way Sub-Committee** (Membership proportional – may include one Member of the Executive from each recognised party group subject to Executive Members not being in the majority) – Functions relating to non-vehicular highway matters within the remit of the General Purposes & Licensing Committee.
- 2.08 **Development Control Committee** (Membership proportional – may include one Member of the Executive from each recognised party group, subject to Executive Members not being in a majority)
- 1. **Planning and conservation.** All the Council's powers and duties relating to town and country planning and development control as specified in Schedule 1 of the Functions Regulations.
 - 2. **Unitary Development Plan.** To be responsible for preparing, revising and recommending the Plan to the Executive.
 - 3. **Highways use and regulation.** The exercise of powers relating to the regulation of the use of highways under the Town and Country Planning Acts 1990, as set out in Schedule 1 to the Functions Regulations.
 - 4. **Common land and village greens.** Power to register common land or village greens and to register variation of rights of common.

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THE LOCAL AUTHORITIES (FUNCTIONS AND RESPONSIBILITIES) (ENGLAND) REGULATIONS 2000

(1) Function	(2) Provision of Act or Statutory Instrument
[F. Power to make, amend, revoke, re-enact or enforce byelaws]	Any provision of any enactment (including a local Act), whenever passed, and section 14 of the Interpretation Act 1978 ¹ .
[FA. Functions relating to smoke-free premises, etc.	
<i>(1) Function</i>	<i>(2) Provision of Act or Statutory Instrument</i>
1. Duty to enforce Chapter 1 and regulations made under it.	Section 10(3) of the 2006 Act.
2. Power to authorise officers.	Section 10(5) of, and paragraph 1 of Schedule 2 to, the 2006 Act.
3. Functions relating to fixed penalty notices.	Paragraphs 13, 15 and 16 of Schedule 1 to the 2006 Act.
4. Power to transfer enforcement functions to another enforcement authority.	Smoke-free (Premises and Enforcement) Regulations 2006 (SI 2006/3368).]
G. Power to promote or oppose local or personal Bills.	Section 239 of the Local Government Act 1972.
H. Functions relating to pensions etc.	
1. Functions relating to local government pensions, etc.	Regulations under section 7, 12 or 24 of the Superannuation Act 1972 ² .
[2. Functions under the Firefighter's Pension Scheme relating to pensions, etc. as respects persons employed by fire and rescue authorities pursuant to section 1 of the Fire and Rescue Services Act 2004.]	[Sections 34 and 36 of the Fire and Rescue Services Act 2004.]
I. Miscellaneous Functions	
<i>Part I: functions relating to public rights of way</i>	
1. Power to create footpath[, bridleway or restricted byway] by agreement.	Section 25 of the Highways Act 1980.
2. Power to create footpaths[, bridleways or restricted byways].	Section 26 of the Highways Act 1980.
3. Duty to keep register of information with respect to maps, statements and declarations.	Section 31A of the Highways Act 1980.
4. Power to stop up footpaths[, bridleways or restricted byways].	Section 118 of the Highways Act 1980.
5. Power to determine application for public path extinguishment order.	Sections 118ZA and 118C(2) of the Highways Act 1980.
6. Power to make a rail crossing extinguishment order.	Section 118A of the Highways Act 1980.
7. Power to make a special extinguishment order.	Section 118B of the Highways Act 1980.
8. Power to divert footpaths[, bridleways or restricted byways].	Section 119 of the Highways Act 1980.
9. Power to make a public path diversion order.	Sections 119ZA and 119C(4) of the Highways Act 1980.
10. Power to make a rail crossing diversion order.	Section 119A of the Highways Act 1980.
11. Power to make a special diversion order.	Section 119B of the Highways Act 1980.
12. Power to require applicant for order to enter	Section 119C(3) of the Highways Act 1980.

¹ Section 14 of the Interpretation Act 1978 is applied to byelaws made under section 235 of the Local Government Act 1972 by section 22(1) of, and paragraph 3 of Part I of Schedule 2 to, the Interpretation Act 1978.

² As to section 7 see also section 99 of the Local Government Act 2000. Section 12 of the Superannuation Act 1972 is amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990.

PART 4C - STATUTORY INSTRUMENTS 1992 ON

(1) Function	(2) Provision of Act or Statutory Instrument
into agreement	
13. Power to make an SSSI diversion order.	Section 119D of the Highways Act 1980.
14. Duty to keep register with respect to applications under sections 118ZA, 118C, 119ZA and 119C of the Highways Act 1980.	Section 121B of the Highways Act 1980.
15. Power to decline to determine certain applications.	Section 121C of the Highways Act 1980.
16. Duty to assert and protect the rights of the public to use and enjoyment of highways.	Section 130 of the Highways Act 1980.
17. Duty to serve notice of proposed action in relation to obstruction.	Section 130A of the Highways Act 1980.
18. Power to apply for variation of order under section 130B of the Highways Act 1980.	Section 130B(7) of the Highways Act 1980.
19. Power to authorise temporary disturbance of surface of footpath[, bridleway or restricted byway].	Section 135 of the Highways Act 1980.
20. Power temporarily to divert footpath[, bridleway or restricted byway].	Section 135A of the Highways Act 1980.
21. Functions relating to the making good of damage and the removal of obstructions.	Section 135B of the Highways Act 1980.
22. Powers relating to the removal of things so deposited on highways as to be a nuisance.	Section 149 of the Highways Act 1980.
23. Power to extinguish certain public rights of way.	Section 32 of the Acquisition of Land Act 1981.
24. Duty to keep definitive map and statement under review.	Section 53 of the Wildlife and Countryside Act 1981.
25. Power to include modifications in other orders.	Section 53A of the Wildlife and Countryside Act 1981.
26. Duty to keep register of prescribed information with respect to applications under section 53(5) of the Wildlife and Countryside Act 1981.	Section 53B of the Wildlife and Countryside Act 1981.
27. [...]	[...]
28. Power to prepare map and statement by way of consolidation of definitive map and statement.	Section 57A of the Wildlife and Countryside Act 1981.
29. Power to designate footpath as cycle track.	Section 3 of the Cycle Tracks Act 1984.
30. Power to extinguish public right of way over land acquired for clearance.	Section 294 of the Housing Act 1981.
[30A. Power to authorise stopping up or diversion of highway.]	Section 247 of the Town and Country Planning Act 1990.]
31. Power to authorise stopping-up or diversion of footpath[, bridleway or restricted byway].	Section 257 of the Town and Country Planning Act 1990.
32. Power to extinguish public rights of way over land held for planning purposes.	Section 258 of the Town and Country Planning Act 1990.
33. Power to enter into agreements with respect to means of access.	Section 35 of the Countryside and Rights of Way Act 2000.
34. Power to provide access in absence of agreement.	Section 37 of the Countryside and Rights of Way Act 2000.
<i>Part II: other miscellaneous functions</i>	
35. Functions relating to sea fisheries.	Sections 1, 2, 10 and 19 of the Sea Fisheries Regulation Act 1966.
36. Power to make standing orders.	Section 106 of, and paragraph 42 of Schedule 12 to, the Local Government Act 1972.
37. Power to appoint staff, and to determine the	Section 112 of the Local Government Act 1972.

Agenda Item 6

Report No.
ES13060

London Borough of Bromley

PART 1 - PUBLIC

Decision Maker: Rights of Way Sub-Committee

Date: 10th July 2013

Decision Type: Non-Urgent Non-Executive Non-Key

Title: **PROPOSED DIVERSION OF PUBLIC FOOTPATH 288
SILVERSTEAD LANE, BIGGIN HILL**

Contact Officer: Duncan Gray, Project Engineer
Tel: 020 8313 4556 E-mail: duncan.gray@bromley.gov.uk

Chief Officer: Nigel Davies, Executive Director of Environment and Community Services

Ward: Darwin

1. Reason for report

To obtain the necessary authority to enable the Council to make a Public Path Diversion Order under the provisions of section 119 of the Highways Act 1980.

2. **RECOMMENDATION(S)**

- 2.1 **That the Director of Corporate Services, in consultation with the Executive Director of Environment and Community Services, be authorised to take the necessary steps to make a Public Path Diversion Order for Footpath 288 as shown on drawing no. 11372-02, and if no objections are received, or any such objections are withdrawn, to confirm the Order.**

Corporate Policy

1. Policy Status: N/A.
 2. BBB Priority: N/A.
-

Financial

1. Cost of proposal: Estimated cost £1,500
 2. Ongoing costs: Non-recurring cost.
 3. Budget head/performance centre: Highways
 4. Total current budget for this head: £6.118m
 5. Source of funding: Costs to be recovered from the applicant
-

Staff

1. Number of staff (current and additional): 0.4
 2. If from existing staff resources, number of staff hours: 40
-

Legal

1. Legal Requirement: Statutory requirement. Section 119 Highways Act 1980
 2. Call-in: Call-in is not applicable.
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All users of FP 288
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes.
2. Summary of Ward Councillors comments: None received

3. COMMENTARY

- 3.1 FP 288 runs from Silverstead Lane at its northern end, southwards for some 230m to the Borough Boundary with Kent County Council, just beyond which it joins with the North Downs Way. The route is shown as a continuous black line, between points A and B on drawing no. 11372-02.
- 3.2 The current owner of the property shown on the drawing as Silversted, has made a diversion application to the Council under section 119 of the Highways Act 1980 for the diversion of the current route of the footpath across his land to the route shown as a dashed line between points C and D on the drawing.
- 3.3 The current route of the path runs parallel with and some 12.0m east of the western boundary of the property. It is not enclosed by fencing but does have two stiles, one at each of points X and Y on the drawing. The proposal is for the diverted path to run adjacent to the western boundary of the land with a minimum width of 2.0m, between low (around 1.0m in height) post and wire fences.
- 3.4 A further drawing, number 11372-03, shows the boundary of the property associated with Silversted. From this it can be seen that a short section of the proposed route runs over land outside the applicant's control. The owner of the adjoining land, Squerryes Estate, has been contacted by the applicant and has raised no objection to part of the proposed route running over a section of their land. A copy of a letter from the Estate is attached at Appendix A for clarification in this respect.
- 3.5 The applicant has made the diversion request on the ground that it would enable him to maximise his use of the land by not having a footpath effectively cutting off the western section of it. The proposal would also move the path away from the dwelling which is perceived to have a security benefit.
- 3.6 On its current alignment the path has 2 stiles along its route (points X and Y on drawing 11372-02). The proposed route would be free from stiles making it more accessible to all users and can thus be considered as being of benefit to the public.
- 3.7 The route of the diversion will have a similar surface to the existing route in that it would run over the grassed surface of the field. As such it is not considered necessary to include any reference in the Order to bringing the surface of new route up to any particular standard or delay the date on which the Order, if confirmed, becomes effective.
- 3.8 Extensive consultation has been carried out including the Ward Member, Environment Bromley, local Ramblers Association and British Horse Society representatives and public utility companies. No objections have been received.

4. FINANCIAL IMPLICATIONS

- 4.1 The Council's costs associated with the making and advertising of the Order, estimated at £1,500 will be recovered from the applicant.

5. LEGAL IMPLICATIONS

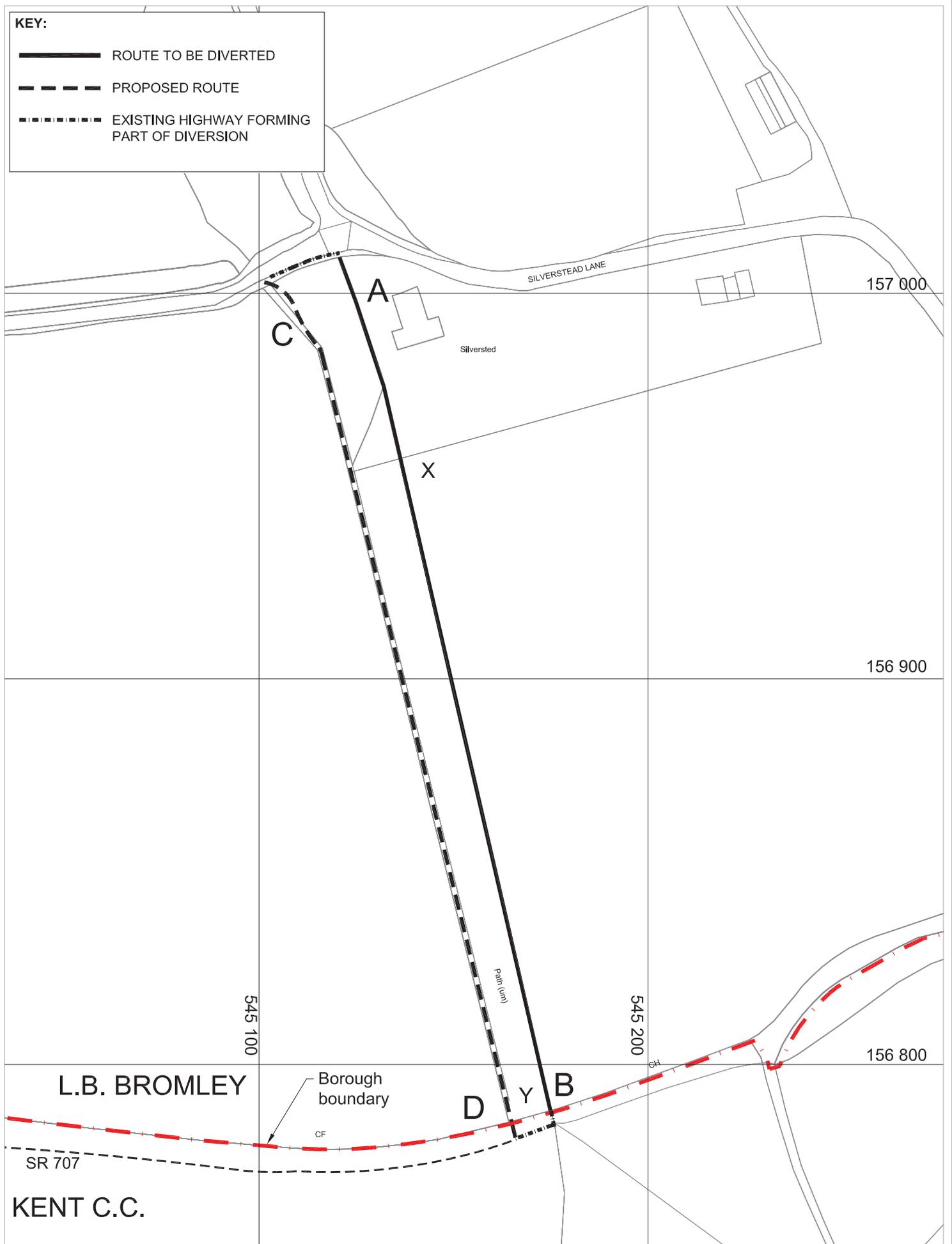
- 5.1 The route of Footpath 288 is formally recorded in the Council's Definitive Map and Statement of Public Rights of Way and the legislation pertaining to the recording of such ways, the Wildlife and Countryside Act 1981, places a duty on Bromley, as the Surveying Authority, to keep those records under continuous review.

- 5.2 Therefore a Public Path Diversion Order is required in order to progress the applicant's request to change the route of FP 288.
- 5.3 The diversion request must be considered by the Council in relation to the criteria set out in Section 119 of the Highways Act 1980, which are referred to in the following paragraphs together with an explanation of how the request fits with them.
- 5.4 The Council must be satisfied that it is expedient to make the Order in the interests of the owner, lessee or occupier of the land crossed by the path, or in the interests of the public. It is self evident that the diversion would make use of the field more practical for the owner. In addition the fact that there would be no need for stiles or gates on the proposed route would make it accessible to all and easier to use for existing users and thus can be considered to also have benefits for the public.
- 5.5 Where a proposed diversion alters the point of termination of the path on a highway, it may be diverted only to a point which is on the same or a connected highway which is substantially as convenient to the public. The proposed route joins to the same highways, namely Silverstead Lane and the North Downs Way, as the existing footpath, only a short distance, some 12m – 15m, westwards. It is thus considered that the new route would make little difference to users and can thus be considered to be substantially as convenient as the existing.
- 5.6 The path must not be substantially less convenient to the public as a result of the diversion and regard must be given to the effect of the diversion on the public's enjoyment of the path as a whole. The proposed path runs both close and parallel to the existing route and as such is virtually the same length as the existing. This coupled with the fact that no stiles or gates would exist on the diverted route mean that it can be considered that the diversion would not have any significant detriment to users' enjoyment or convenience.

Non-Applicable Sections:	Policy; Personnel
Background Documents: (Access via Contact Officer)	Correspondence on Footpath File

KEY:

-  ROUTE TO BE DIVERTED
-  PROPOSED ROUTE
-  EXISTING HIGHWAY FORMING PART OF DIVERSION



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Job Title:
HIGHWAYS ACT 1980
PUBLIC PATH 288

Drawing Title:
DEFINITIVE MAP &
STATEMENT
MODIFICATION ORDER 2013



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Sigel Davies
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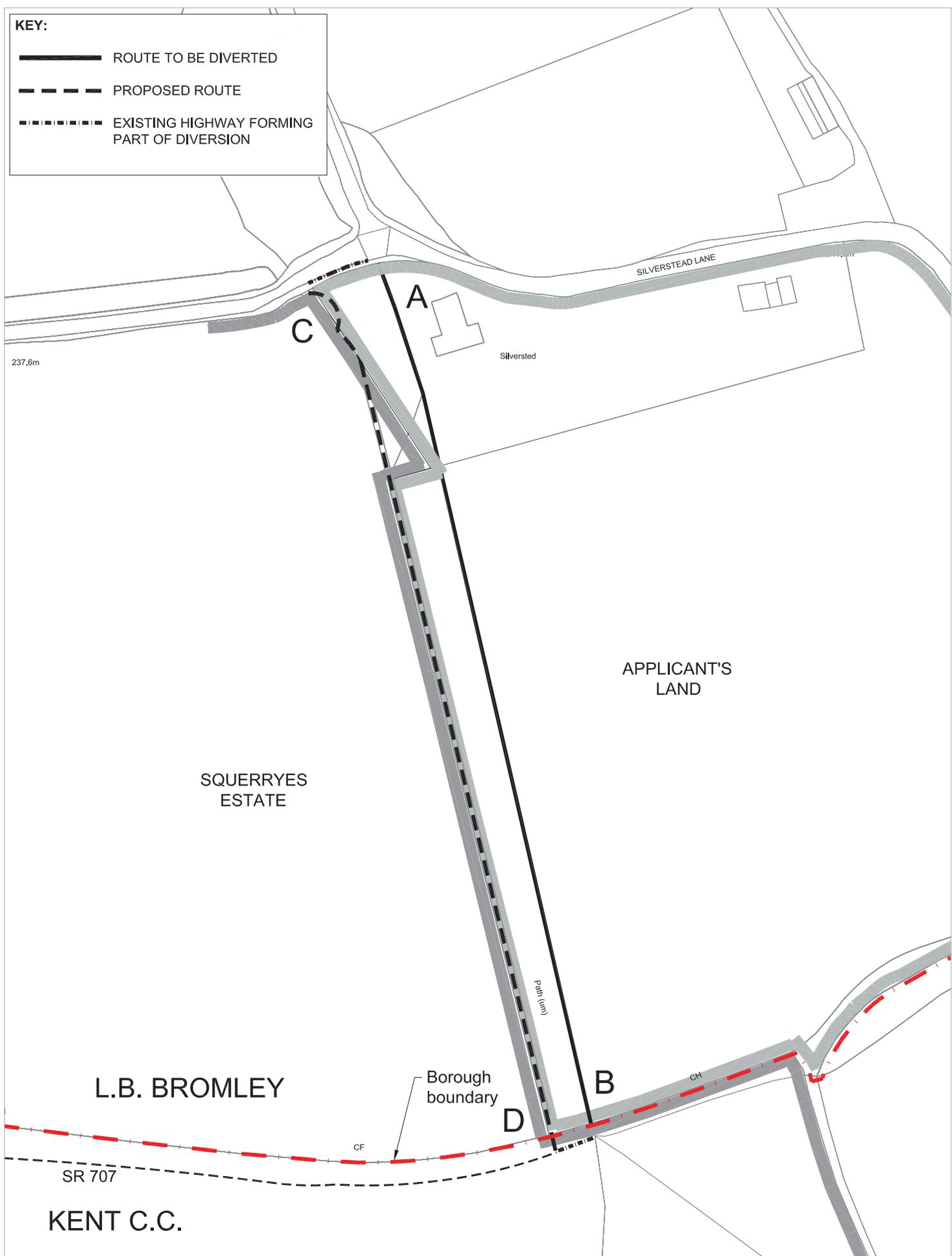
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1:1250
Date:
07/05/13
Drawn by:
J.J.

Rev	Date	Description	By
-	-	-	-
Drawing Number			Rev
11372-02			-

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KEY:

-  ROUTE TO BE DIVERTED
-  PROPOSED ROUTE
-  EXISTING HIGHWAY FORMING PART OF DIVERSION



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Job Title:
**FOOTPATH (288)
 PUBLIC PATH
 DIVERSION**

Drawing Title:
**LAND OWNERSHIP
 BOUNDARIES**



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Scale @ A4	1:1250			
Date:	07/05/13			
Drawn by:	J.J.	Rev	Date	Description
Checked by:	J.C.			
Drawing Number		11372-03		
Page 23				

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