

Individual Decision

Title of Report:	Footpath 30 Speen (part) diversion; Footpath 15 Shaw-cum-Donnington (part) extinguishment and footpath creations		
Report to be considered by:	Geoff Findlay	on:	8 December 2005
Forward Plan Ref:	ID1117		

Purpose of Report:

To consider an application to make changes to the footpath network across Donnington Grove Golf Course.

Recommended Action:

That the Council declines to make Diversion and Extinguishment Orders for Footpath 30 Speen (part) and Footpath 15 Shaw-cum-Donnington (part).

Reason for decision to be taken:

The Council may make Orders to Extinguish/Divert public rights of way following applications by landowners.

List of other options considered:

The Council could agree to make Orders despite the high level of objection and the matter would ultimately have to be decided by the Planning Inspectorate.

Key background documentation:

- The Highways Act 1980
- Application for changes to the footpath network
- Consultation letter, site notice and responses

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Supporting Information

1. Background

- 1.1 Donnington Grove was converted to a Golf and Country Club during the period 1991-3 by a Japanese company, Shi-Tennoji following planning permission given by the former Newbury District Council in June 1991. The area was crossed by a number of rights of way as shown on the First Consolidated Definitive Map dated 1991 (see Appendix 1) The footpath network in this vicinity is particularly well used, being on the edge of a residential area and close to Donnington Castle, a local tourist attraction.
- 1.2 Several new public rights of way were created as part of the golf course construction and Speen Footpath 30 was legally diverted onto its current route, which now runs alongside the river (see map Appendix 2). Safety concerns were raised by the Rights of Way Section at the time about the closeness of Footpath 30 Speen to the fairway of what is now the 10th hole. Berkshire County Council guidelines based on the Berks, Bucks, and Oxon Union of Golf Club guidelines were used as a reference (see Appendix 3). However, all parties, including Shi Tennoji, the Ramblers Association, the Parish Councils and the Council agreed with its position and the Order was confirmed in 1993.
- 1.3 New owners took over Donnington Grove Country Club in the spring of 2004. The rights of way officer attended a meeting in October 2004 when various issues including safety of walkers using the footpaths were discussed. The club manager reported problems the club were experiencing with walkers on the golf course e.g. trespass, dog fouling. At this time complaints were also being received by the Rights of Way Section from walkers who reported a heavy-handed attitude by the new owners.
- 1.4 A permitted path, forming part of the Lambourn Valley Way long distance path, across the edge of the golf course/running along the track to the former fish farm, (part of which forms part of one the proposed new routes) was also revoked by the owners at this time. Many complaints about this continue to be received. One of the conditions on planning permission granted in March 2005, to convert the former fish farm to a new club house, requires the provision of a permitted path in perpetuity along part of the proposed new route (see Appendix 4)
- 1.5 The golf club have recently had a Safety Appraisal carried out at the golf course (see Appendix 5), according to which Holes 1, 10 and 13 are in "direct safety conflict" with the footpaths. It also states that with advances in technology and golf equipment, today's golfers can strike the ball much further than in previous years. This therefore means that the public are now potentially at greater risk. The report suggests a wide scale rationalisation of the footpath network. The golf club has asked the Council to invoke emergency powers under s14 Road Traffic Regulation Act 1984 to close the footpaths which are in conflict with play. The Council considers that it would not be appropriate to use the legislation in this way. The Council has a statutory duty to assert and protect the rights of the public to the use and enjoyment of rights of way (s130 Highways Act 1980) The Council accepts no liability for any accidents on the footpaths caused by golfers. The officers' view is that it is the responsibility of the golf club to abate any hazards to walkers caused by their golfing activities and considers that the Golf Club must take whatever action is needed to reduce/alleviate the risks, for example:
- Signs to be installed on both the footpaths and the tees of the holes where potential conflict is greatest to make golfers more aware of walkers and walkers more aware of golfers. Maps of the public footpaths to be displayed in the clubhouse/golf shop.
 - High netting to be considered at points of potential conflict.
 - Extra marshalling of the footpaths where potential conflict is greatest

- Redesign of particular golf holes may be necessary
- Letters to be sent to local users groups and parish councils to promote responsible use.
- The club are also able to apply for a temporary closure of the footpaths across the golf course if a tournament is taking place, under s16a Road Traffic Regulation Act 1984. Of the 120 objections to the proposals approximately 30 consultees have said they would support such temporary closures.

1.6 The Golf club do not accept that it is their responsibility to take any of the above measures and in July 2005 submitted an application to extinguish part of Footpath 15 Shaw (adjacent to hole 1), to divert part of Footpath 30 Speen (adjacent to hole 10) and to create two new sections of footpath. The applicants consider that the changes are essential in order to achieve a satisfactory level of safety for users of the footpaths, whilst enabling the golf course to continue to be used for the purposes for which planning permission was originally granted (see Appendix 6).

2. Consultations

2.1 A pre-Order, informal consultation on the proposals for the footpaths was carried out throughout September and October 2005 with interested parties. A consultation letter was sent out to the Utility Companies, local parish councils and representatives of user groups, as well as local people who had requested a letter, on 7th September (see Appendix 7). A notice was also placed on site at various points on the two footpaths inviting the views of footpath users (see Appendix 8). An unprecedented number of responses have been received totalling approximately 170. Of these, approximately 120 have registered strong opposition to the proposals, approximately 100 of which give clear reasons relevant to the legislation. A summary of the responses received is detailed in tables (Appendices 9 & 10). Approximately 50 letters of support for the proposals have also been received, almost all of which relate to safety but most of which are signatures on a standard letter.

2.2 A petition with approximately 600 signatures was received by the Council in July 2005 prior to the diversion proposals being submitted by the golf club. These detail the concerns petitioners have regarding the golf clubs attitude to the footpaths across the golf course but do not specifically refer to the alteration of the routes of the footpaths (see Appendix 11). Following the publication of the site notices a group of local people have set up a "Save our footpaths" campaign on a web site. A further 50+ signatures were submitted in October as objections to the proposals via this site. The web site discusses the proposals but the wording of the petition still does not specifically refer to the proposed footpath changes (see Appendix 12).

3. Legal Considerations

3.1 The application must be considered in the light of the provisions of sections 118 and 119 of the Highways Act 1980 (see Appendices 13 and 14). The Council must decide whether it is expedient that part of Footpath 15 is stopped up on the ground that it is not needed for public use. Consideration must also be given to the extent to which the path would be used by the public if an order is not made (an issue supported by case law), and the effect which the extinguishment of the path would have on land served by the path.

3.2 Approximately 80 consultees say that they use and enjoy Footpath 15 Shaw as a direct route through open space between Donnington and Bagnor and it is therefore considered to be needed for public use. Only a very small number of consultees support the extinguishment on grounds relevant to the legislation. The proposed new paths are not considered to compensate for the loss of Footpath 15 and it would therefore not be appropriate to make an Extinguishment Order.

- 3.3 The application must also be considered in the light of the provisions of section 119 of the Highways Act 1980. The Council should consider if the proposal to divert Footpath 30 is in the interest of the landowner and/or the public, whether the new path would be substantially less convenient to use and to the effect that the diversion would have on public enjoyment of the path as a whole.
- 3.4 The proposal is clearly in the interests of the landowner. However, approximately 100 consultees consider that the proposed alternative route is inferior and that their enjoyment of the path would be adversely affected, the main reasons given being that a footpath close to the road/bypass does not compare with the tranquillity, quietness and beauty of the existing riverside footpath (see Appendix 10). Officers' consider that the provisions of the Act are clearly not met.
- 3.5 The issue of safety of walkers on public footpaths is not directly covered by the legislation outlined above, although it could affect walkers' enjoyment of the footpath. Approximately 70 consultees either do not consider safety to be an issue or believe the risks to be minimal. A small number comment that the golf club should take action to mitigate the risks. In the 12 years since the golf course has been operating there have been no accidents or even near misses involving walkers and no complaints have been received from walkers about their safety whilst using the footpaths. Officers' believe however that the safety of walkers does need to be urgently addressed by the golf club.
- 3.6 In 1997 there is a useful precedent regarding the safety of walkers across a golf course in West Berkshire - a proposal to divert Footpath 8 Theale (part) which crosses several fairways on Theale Golf Course was considered in 1997. The Planning Inspectorate held a public hearing due to objections to the Order. The inspector expressed the view that reasonable care taken both by golfers and walkers should minimise risks. The Inspector decided not to confirm the Order – (see Appendix 15). There are 4 other golf courses in West Berkshire over which public footpaths run and the safety of walkers is managed by various means including notices, netting and a warning bell. No problems regarding walkers' safety have been reported on any of these.

4. Conclusions

- 4.1 It is considered that the proposed alternative route for Footpath 30 Speen is not substantially as convenient and will adversely affect public enjoyment of the path as a whole. It is considered that there is clear evidence that Footpath 15 Shaw-cum-Donnington is needed for public use. The proposed new sections of footpath between the existing Footpaths 30 and 15 across the River Lambourn and between Footpath 8 and Bridleway 7 would make useful additions to the path network but do not compensate for the loss of the footpaths proposed to be extinguished. The creation of a footpath along the southern part of the driveway to the golf club would be dangerous since it crosses a fairway and should not be created.
- 4.2 The Council should decline to make a Public Path Diversion Order for Footpath 30 Speen (part) and an Extinguishment Order for Footpath 15 Shaw-cum-Donnington (part). The applicant could appeal to the Planning Inspectorate under section 120(3) of the Highways Act 1980 if the Council declines to make the Order.
- 4.3 Officers' consider the hazards that exist should be managed by the golf club using appropriate measures and not by removing the historic rights of the public to have access across the golf course.

Appendices

1. First Consolidated Definitive Map of Public Rights of Way 1991
2. Second Consolidated Definitive Map of Public Rights of Way 1994
3. Berkshire County Council Safety Guidelines
4. Planning Application 04/02049 Planning Decision Notice - Conditions 12 and 13

5. Safety appraisal submitted by golf club
6. Application to extinguish/divert Footpaths 15 Shaw/30 Speen
7. Consultation letter dated 7/9/05
8. Site notice and map displayed on Footpaths 15 Shaw/30 Speen
9. Table summarising consultation responses from consultees e.g. user groups/parish councils
10. Table summarising consultation responses from interested individuals
11. Petition submitted to Newbury Area Forum 5/7/05
12. Save our footpaths web site (www.saveourfootpaths.org.uk)
13. s118 Highways Act 1980
14. s119 Highways Act 1980
15. Decision notice Footpath 8 Theale (part)

(Due to the number and size of the appendices they have not been attached to the report, if you wish to view any of the appendices please contact David Cook extension 2475.)

Implications

Policy:	None
Financial:	Budgetary provision exists for the making and advertising of Extinguishment and Diversion Orders
Personnel:	None arising from the report
Legal:	Liaison with officers in legal department required
Environmental:	None
Equalities:	None
Partnering:	None
Property:	None
Risk Management:	None
Community Safety:	None

Consultation Responses

Members:	
Leader of Council:	Graham Jones
Select Committee Chairmen:	Quentin Webb –concurs with recommendation
P&L Committee Chairman (where appropriate):	
Ward Members:	Paul Bryant –concurs with recommendation Marcus Franks –concurs with recommendation
Opposition Spokesperson:	Royce Longton –concurs with recommendation
Advisory Members:	N/A
Local Stakeholders:	Shaw-cum-Donnington and Speen Parish Councils
Officers Consulted:	Bill Jennison, Paul Hendry, Sallie Jennings
Trade Union:	N/A