



General Purposes Committee
29 June 2010

**Report from the Director of
Environment and Culture**

For Action

Wards Affected: ALL

Northwick Park – Diversion of Public Rights of Way

1.0 Summary

1.1 This report seeks to consider the representations received by the Council following the publication of the Public Path Diversion Order under the Highways Act 1980.

2.0 Recommendations

2.1 The published order be withdrawn.

2.2 A new order is made under the Highways Act 1980 to extinguish part of PROWs 34 & 37 as shown on the attached plan and correcting the defects in the current order.

3.0 Detail

3.1 The Council as owner of the land at Northwick Park, Watford Road Harrow, granted a lease in April 2002 to Playgolf (Northwick Park) Limited to redevelop the site by constructing a golf driving range, 6 hole golf course and ancillary leisure buildings and facilities. Planning permission for the development was granted in May 2001.

3.2. Three sections of public rights of way (PROW) lie within the golf facility area. These are PROW's 34, 36 and PROW 37. PROW 36 is located west-east across the northern edge of the golf facility i.e. parallel to the southern edge of the grounds of Northwick Park Hospital. The Council considered that the golf facility could proceed without closing PROW36 as it would not interfere with the continued use of that footpath. PROW37 is on an approximately north-south route across Northwick Park and part of it runs across the driving range where it becomes PROW 34. It was agreed following a request from Playgolf which was considered by the General Purposes Committee in July 2005 that the part running across the driving range should be diverted as there was a

danger that members of the public could be struck by golf balls fired from the driving range.

- 3.3 A Public Path Diversion Order ('the Order') was made on 4 October 2005. There were a number of objections and a hearing by an Inspector appointed by the Secretary of State was held on 21 November 2006. However the Secretary of State for Communities and Local Government's Inspector declined to confirm the order for, among other reasons, public safety concerns about the golf course. It followed that the new route would have been, in her view, substantially less convenient for the public and that the diversion would have a significantly detrimental effect on the enjoyment by the public of the route as a whole.
- 3.4. Following a resolution of the General Purposes Committee on 27 September 2007, a new Order was made by the Council in 2008. There have been numerous objections to the Order and it is likely to be opposed at any Public Inquiry into the confirmation of the Order.
- 3.5. Some of the objections concern technical defects with the Order as drafted. Firstly, the Order does not contain grid references to identify the path concerned, a matter which, although not a statutory requirement, has been a requirement of government guidance and has been raised by the Open Spaces Society. Secondly, the Defra guidance in Circular 1/09 recommends that the plan attached to a diversion order should be an OS map, and it is a statutory requirement that the scale is at least 1:2500 (this is disputed as the scale was 1:1250). The current map appears to be at a smaller scale than is required. Thirdly, the Order does not provide that the Order should only take effect once the Council has certified that the works required to bring it into a fit condition for use by the public (as required by s119(3) Highways Act 1980). Fourthly, the map fails to show the part of footpath 34 that is being diverted.
- 3.6. The position with these types of minor defects is that the Secretary of State may, on confirming the Order, make amendments to ensure that the final Order is clear and compliant with the statutory scheme. However, it is possible that the Planning Inspectorate (which handles the matter for the Secretary of State) will simply reject the Order as defective. The defects taken alone are minor, but a series of minor defects may be enough for the Inspectorate to reject the Order.
- 3.7 The other objections in the main concern the following issues
 - (a) it is not expedient in the interests of the public (i.e. no positive benefit to the public)
 - (b) the diversion is substantially less convenient to the public (i.e. longer and less direct)
 - (c) the proposed termination point is not substantially as convenient as the existing termination point (i.e. further from the direction of travel, could become overgrown with vegetation because the route will be fenced in)

- (d) it will have an adverse effect on public enjoyment of the path as a whole (i.e. the path as a whole is a direct one and the diversion loses that sense of purpose). Another objector commented that if people used the footpath for recreational use there was no problem but if the footpath was used as a through route connecting North Wembley with Northwick Park hospital and central Harrow the additional distance becomes significant.
- (e) people will be no safer on the proposed diverted route
- (f) the diverted route is more dangerous and intimidating passing through several secluded and blind areas.
- (g) the diverted route is not as accessible to the elderly or infirm

Copies of the letters of objection and the original draft order are attached as an appendix to this report.

- 3.8 The Committee is now required to consider the objections. It has three options
 - (a) Refer the current Order to the Secretary of State for confirmation;
 - (b) Withdraw the current Order and make a new order in the same or similar terms, but correcting the technicalities raised in the letters of objection;
 - (c) Take no further action in respect of the footpath
- 3.9 If the Order is referred to the Secretary of State in its present form this will bring the matter to a head and speed up the process of having the Order confirmed. However having regard to the number of technical errors when seen cumulatively there is a substantial risk the Order will not be confirmed and the matter will not have moved forward.
- 3.10 If the current Order is withdrawn and a new Order made correcting the technicalities raised in the letters of objection then there would be a better prospect of the Order being confirmed. Risk will be reduced very significantly. However this will inevitably cause delay in the matter being settled.
- 3.11 Having considered the objections the Council has a discretion as to whether or not to submit the Order to the Secretary of State
- 3.12 In deciding whether to proceed with the Order the Committee needs to be satisfied
 - (a) as to whether it is expedient in the interests of the landowner, lessee or occupier or in the interests of the public that the Order shall be made and;
 - (b) that the footpath would not be substantially less convenient to the public in consequence of the diversion and it is expedient to pursue the Order having regard to the effect which

- (i) the diversion would have on the enjoyment of the footpath as a whole
- (ii) the coming into operation of the Order would have as regards other land served by the existing footpath and;
- (iii) any new public right of way would have as regards the land over which the right is so created and any land held with it

3.13 It is considered confirmation of the Order is expedient in the interests of the landowner and lessee in order to allow the facility to continue without endangering the safety of the users of the footpath by being struck by golf balls. It is also considered expedient in the interests of the public for the same reason as the existing path passes through the golf driving range. The chances of a walker being struck by a golf ball on a driving range are greater because on a driving range a number of players of varying ability simultaneously hit golf balls, whereas on a fairway a single player alone hits a ball at any given time. The diverted path will cross only one of the fairways and it will not bisect the driving range. It is not uncommon for public rights of way to intersect golfing links and courses in this way. Safety concerns can readily be overcome by the provision of signage and warning notices.

3.14 It is considered that the diverted path would not be significantly less convenient than the existing path. The diverted path is not substantially longer than the existing path and it is the same width. The diversion would not detrimentally affect the public enjoyment of the path as a whole, which would remain in amenity terms of broadly the same value as the existing alignment.

3.15 With regard to paragraph 3.12(b)(ii) and (iii) above there are no issues for the Committee to consider.

3.16 In conclusion the officers are of the opinion that having regard to the issues set out above that the present Order should be withdrawn and a new Order made in the same or similar terms.

4.0 Financial Implications

4.1 The costs of the diversion order are being met by the operators of the golf facility.

5.0 Legal Implications

5.1 Legal Services were involved in the drafting of this report.

6.0 Diversity Implications

6.1 An Equality Impact Assessment will need to be carried out to ensure that the diverted route will be accessible for people with disabilities.

7.0 Staffing/Accommodation Implications (if appropriate)

7.1 None

Background Papers

The objection letters are available for inspection.

Report to General Purposes Committee July 2005

Report to General Purposes Committee Sept 2007

Contact Officers

Paul Williams Transportation ext 5043

Richard Saunders
Director of Environment & Culture

Appendix 1 – O. S. Plan of Diversion