

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date of Decision:	18 th March 2010
Decision Title:	Application for a Public Path Diversion Order for part of Footpath No. 21 in the Parish of Ropley
Decision Reference:	1396
Report From:	Director of Culture, Communities and Rural Affairs

Contact name: Vicky Bowskill

Tel: 01962 846891

Email: vicky.bowskill@hants.gov.uk

EXECUTIVE SUMMARY

1) Summary of Decision Area:

- 1.1. The western section of Ropley Footpath No. 21 passes through two large fields used for grazing which are separated by a post and rail fence with a kissing gate through which the footpath passes at point A on the attached plan. The applicant has recently purchased one of these fields to the east of his residential property and has erected a post and rail fence to partition this field into two grazing paddocks. The current route of Ropley Footpath No. 21 follows the northern edge of the southern paddock, while the proposed route would cut across this paddock forming a new boundary that would allow the northern paddock to be enlarged to improve management of this land for stock.
- 1.2. Kissing gates will be required at points A and D on the attached plan for stock control purposes.
- 1.3. The proposed route would avoid a narrow section of the footpath at points B-C, which can become muddy and overgrown in wet weather, and would provide a more direct connection with the C189 Lyeway Lane. This section of road is not subject to heavy or rapid transit by vehicles and should therefore not present any problems for walkers wishing to continue on the footpath network to the south.
- 1.4. Members are requested to approve the recommendation that an Order should be made for the permanent diversion of part of Ropley Footpath No. 21 from the current definitive route between points A and C to a new route between points A and D as shown on the accompanying plan.

2) Legal Framework for the Decision:

Orders for the Diversion of Footpaths and Bridleways may be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, in the

following circumstances:-

“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 land crossed by the path or way

or

of the public,

it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (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; and

(b) extinguish, as from such date as may be so specified in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.

An order under this section is referred to in this Act as a 'public path diversion order'.”

Members must be satisfied that the diverted route will not be substantially less convenient to the public, and must have regard to the effect that a diversion will have on the enjoyment of the path as a whole.

3) Summary of Issues to be Decided:

- 3.1. Officers believe that it is expedient to divert the footpath in the interests of the landowner. The proposed alignment will be no less convenient or enjoyable than the current route, and members are therefore requested to authorise the making of an Order under s119 of the Highways Act 1980 for the diversion of this public right of way.

4) Recommendation:

That an Order is made diverting part of Ropley Footpath No.21 from the current definitive alignment between points A and C to a new alignment between points A and D as shown on the accompanying plan.

MAIN REPORT:

1) Purpose of Report:

- 1.1. Hampshire County Council has received an application to divert part of Footpath No. 21 in the Parish of Ropley, as shown on the attached large scale plan.
- 1.2. It is proposed that the application for diversion of part of Ropley Footpath No. 21 be approved under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, on the grounds that the diversion is in the interests of the landowner and that it is expedient that the line of the path should be diverted.

2) Applicant:

- 2.1. Jonathan Dawson & Anne Dawson
Town Street Farmhouse
Church Street
Ropley
Hampshire
SO24 0DP

3) Landowners:

- 3.1. Jonathan Dawson & Anne Dawson
Town Street Farmhouse
Church Street
Ropley
Hampshire
SO24 0DP

4) Description of the Routes (please refer to the map attached to this report):

4.1. Current Route

The section of Ropley Footpath No.21 affected by this proposal commences at point A (GR 464854 132005) at a kissing gate in a post-and-rail fence separating two large fields used for grazing. The footpath then continues in a generally south-westerly direction along a boundary fence to a further kissing gate at point B (GR 464766 131968) and thence along a narrow path, between a residential property and a fenced village green, to a junction with the C189 Lyeway Lane at point C (GR 464744 131932).

The length of Ropley Footpath No. 21 between points A, B and C is approximately 138 metres.

4.2. Proposed Route

The proposed route of Ropley Footpath No. 21 will commence at Point A

(GR 464854 132005) and proceed in a generally south-westerly direction, across pasture with a post-and-rail fence to the north west and unenclosed to the south east, to terminate at a junction with the C189 Lyeway Lane at point D (GR 464776 131920).

The length of Ropley Footpath No. 21 between points A and D is approximately 114 metres and it will have a width of 2.0 metres throughout its length.

One kissing gate will be specified on the Order at Point D to control the movement of livestock in the field crossed by the path. A kissing gate already exists at Point A.

The Countryside Access Manager has agreed a Schedule of Works that will be required to bring the new route up to a standard suitable for use by the public and the landowner has agreed to implement the necessary improvements.

- 4.3. The cost of advertising the Diversion Order, together with the administrative costs up to the order-making stage, will be met by the applicant. The County Council has no power to charge for administrative costs after the Order has been made.

5) Background to the Application

- 5.1. The western section of Ropley Footpath No. 21 passes through two large fields used for grazing which are separated by a post and rail fence with a kissing gate through which the footpath passes at point A. The applicant has recently purchased one of these fields to the east of his residential property and has erected a post and rail fence to partition this field into two grazing paddocks. The current route of Ropley Footpath No. 21 follows the northern edge of the southern paddock, while the proposed route would cut across this paddock forming a new boundary that would allow the northern paddock to be enlarged to improve management of this land for stock.
- 5.2. A kissing gate already exists at Point A and an additional kissing gate will be required at Point D for stock control purposes.
- 5.3. The new route would avoid a narrow section of the footpath at points B-C, which can become muddy and overgrown in wet weather, and provide a more direct connection with the C189 Lyeway Lane. This section of road is not subject to heavy or rapid transit by vehicles and should therefore not present any problems for walkers wishing to continue on the footpath network to the south.
- 5.4. The diversion would allow the northern paddock to be enlarged to improve its suitability for grazing, allowing the reduced southern paddock to be used for light, occasional grazing. This would resolve the problem of stock gathering around the existing kissing gate, which causes the surface to become poached in this area and as such would result in an improved surface for path users.

6) Compliance with our Diversions Criteria

- 6.1. The Rights of Way Office of Hampshire County Council has published Guidance Notes for landowners who are considering an application for diversion (<http://www3.hants.gov.uk/making-changes/diversions.htm>), in order to ensure that the proposal for a diverted route should be no less convenient to use than the existing route and should not adversely affect the public's enjoyment of the path as a whole. The recommendations contained in the Guidance Notes have been taken into account in developing this proposal.
- 6.2. The diverted route (114m) is slightly shorter and more direct than the equivalent section of the current alignment (138m).
- 6.3. Kissing gates will be specified where these are required for stock control. In this way, and by avoiding the sometimes boggy section between B and C, the footpath should be more accessible to those with limited mobility.
- 6.4. The width for the current route in the Definitive Statement is either not stated or is varying between 1.8 and 2.0 metres. The new width of 2.0 metres throughout the diverted section will be recorded in the Order and will standardise the width of the path available to the public.

7) Consultations with Other Bodies:

- 7.1. Local Member – Cllr Kemp-Gee
Cllr Kemp-Gee has been consulted and has no objection to this proposal.
- 7.2. East Hampshire District Council
East Hampshire District Council have been consulted on this proposal.
- 7.3. Ropley Parish Council
Ropley Parish Council discussed this proposal at their meeting in June 2009. The Councillors have no objection to the proposal and feel that it is sensible to divert the path away from the section B-C which can become very muddy in wet weather.
- 7.4. Countryside Access Manager
The Countryside Access Manager for the area has been consulted on this proposal and has specified the works that will be required to bring the footpath up to a condition suitable for use by the public on foot.
- 7.5. HCC – Highways Management
Highways Management has been consulted on this proposal and confirm they have no objection.
- 7.6. HCC – Environment Department
Environment Department has been consulted on this proposal.
- 7.7. Hampshire County Archivist
The County Archivist has consulted the Ropley Tithe Map which shows Ropley Footpath No.21 up to Point B, with nothing shown between Points B and C. There is no enclosure map for this area.
- 7.8. The Ramblers' Association
The Ramblers' Association have been consulted on this proposal.

- 7.9. The Open Spaces Society
The Open Spaces Society have said that they would not support this application as they do not see any benefit for the public. They feel that taking the path away from the village pond could deter path users from taking advantage of this feature and that public rights *through* the village green should be preserved. They also have concerns that activity at the field entrance at point D, such as feed delivery etc, could create a conflict with path users that does not exist on the current route.
- 7.10. Land Access & Recreation Association (LARA)
The Land Access & Recreation Association have been consulted on this proposal.
- 7.11. National Farmers Union
The National Farmers Union have been consulted on this proposal.
- 7.12. Cyclists Touring Club
The Cyclists Touring Club have been consulted on this proposal.

8) Comments on Consultation Replies

- 8.1. Of the responses received from the consultation exercise, the majority are either in favour of the proposal, or have no objection to it. The only exception is the response by the Open Spaces Society.
- 8.2. Officers feel that the proposed route would offer an improved experience for walkers as, once the fence line has been moved to bound the new route it would be easy to follow and there would rarely be stock kept in the small triangular paddock through which the diverted path would run.
- 8.3. The diversion would also eliminate the difficulties caused by stock congregating around the existing kissing gate at point A, as well as avoiding the often muddy section between Points B and C.
- 8.4. A field gate exists at point D to allow vehicular access to the field when required. The diverted route would be accommodated by an adjacent kissing gate to allow unrestricted access independent of the field gate. It is not anticipated that any significant activity will take place at this field entrance so as to create conflict with path users.
- 8.5. The village pond is clearly visible from Lyeway Lane and walkers would still have ample opportunity to take advantage of this area, including the bench as a rest stop.
- 8.6. The concerns expressed by the Open Spaces Society regarding the effect of removing the public right of way through the village green are not considered by Officers to be relevant for the purposes of the decision members are being asked to make. The land in question was registered as a Town or Village Green under the Commons Act 1965 and the diversion of this right of way would not affect the statutory designation of this land as a Town or Village Green, nor the protection which such a designation affords.

9) Criteria for Assessment of the Proposal

- 9.1. The County Council, as the Highway Authority, has the power to make a Public Path Diversion Order, if it is considered expedient to do so in a particular case, and if (as in this case) it is in the interests of the landowner.
- 9.2. Section 119(2) of the Highways Act 1980 requires that a Diversion Order should not be made unless the new termination point is substantially as convenient to the public as the existing termination point. In this case the proposed termination point would be 30 metres east of the existing termination point on the C189 Lyeway Lane.
- 9.3. Section 119(6) of the Highways Act 1980 sets out criteria to be considered before a Diversion Order is confirmed. The new path or way should not be substantially less convenient to the public in consequence of the diversion and it may then be expedient to confirm the order, having regard to the effect which:
 - a) the diversion would have on public enjoyment of the path or way as a whole;
 - b) the coming into operation of the order would have as respects other land served by the existing public right of way; and
 - c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.

Although these are not the criteria to be applied at the order-making stage, subject to any matters that may be raised should the Order be made and advertised, Officers feel that the proposal meets these tests.

- 9.4. Section 69 of the Countryside and Rights of Way Act 2000 requires the County Council to have due regard to the needs of persons with mobility problems. This is further reinforced by the requirements of the Disability Discrimination Act 2005. Officers confirm that the requirements of those with limited mobility have been taken into account when developing the proposal for the new route. The route chosen for the diversion is comparable in terms of structures, however the slightly shorter route avoiding the sometimes boggy section between B and C should make the footpath more accessible to those with limited mobility.

10) Conclusions:

Officers are of the opinion that the proposed diversion satisfies the criteria required by section 119 of the Highways Act 1980 and that it is expedient for the County Council to make an order in that:

- 10.1. The proposed diversion will facilitate the grazing of livestock in these fields.
- 10.2. The proposed diversion will not be substantially less convenient than the existing route, in that the diverted section A-D (114 metres) is slightly shorter than the equivalent section of the current route A-B-C (138 metres).

- 10.3. It is unlikely that there will be any material increase in the cost to the County Council of maintaining the route at public expense.

11) Recommendations

- 11.1. It is recommended that an Order should be made for the permanent diversion of part of Ropley Footpath No. 21 from the current definitive route between points A and B to a new route between points A and C as shown on the accompanying plan.

CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:

Links to the Corporate Strategy

	Yes	No
Hampshire safer and more secure for all	<input type="checkbox"/>	<input type="checkbox"/>
Maximising well-being	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Enhancing our quality of place	<input checked="" type="checkbox"/>	<input type="checkbox"/>

OR

This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because:

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report.

(NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

(Quote list of documents here: e.g. list the relevant letters, memos, etc. and their location)

<u>Document</u>	<u>Location</u>
General	I:\Recreation and Heritage\Countryside Service\
Correspondence	Rights of Way\Vicky Bowskill\Diversions\Ropley 21
Proposal File	VB/Div/Ropley 21

IMPACT ASSESSMENTS:

This decision has been assessed to see what impact it may have in the following areas. If it has been identified that there are possible implications which may have a negative impact this grid should identify the part of the report which covers the recommendation about how those potential negative impacts are managed or avoided.

Impact Level: **S**= Significant Impact **L** = Low Impact **None** = No impact

IMPACT AREA	IMPACT LEVEL	COMMENTS	WHERE COVERED IN REPORT (Where there are details of how impact could be managed)
Equality & Diversity Impact	None		
Crime Prevention (under Section 17)	None		
Environmental	None		

