

**HAMPSHIRE COUNTY COUNCIL**

**Decision Report**

<b>Decision Maker:</b>	Regulatory Committee
<b>Date of Decision:</b>	27 July 2011
<b>Title:</b>	Common Law Dedication of a Public Footpath at Cams Hill, Fareham
<b>Reference:</b>	3106
<b>Report From:</b>	Director of Culture, Communities and Business Services

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**1. Executive Summary:**

- 1.1. The purpose of this paper is to consider a request to accept the dedication at common law of a public footpath at Cams Hill, Fareham, linked to the diversion of Fareham Footpath No.23 under s257 of the Town & Country Planning Act 1990 by Fareham Borough Council.
- 1.2. This paper seeks to provide Members with the necessary information with which to determine the request. Officers recommend that the dedication of this public footpath at common law be accepted.

**2. Legal Framework for the Decision:**

This is a common law dedication by the owner of the freehold of the land in question, with an acceptance of the dedication by the County Council as highway authority on behalf of the public. A common law dedication would, in this instance, mean the public footpath would not be publicly maintainable by Hampshire County Council (the Highway Authority).

**3. Purpose of Report:**

- 3.1. Hampshire County Council has received a request to accept the dedication of a public footpath at common law in connection with the diversion of Fareham Footpath No.23 under s257 of the Town & Country Planning Act 1990 by Fareham Borough Council, as shown on the attached large scale plan.
- 3.2. It is proposed that the request to accept the dedication of this path be approved.

**4. Landowner:**

- 4.1. Strand Harbour Securities Ltd  
Heaton House  
Cams Estate  
Fareham  
Hants  
PO16 8AA

**5. Description of the Routes (please refer to the map attached to this report):**

- 6.1. A footpath, 1.8 metres wide, shown as a dotted line on the attached plan and running in a generally south-easterly direction from Point C (SU 5878 0622) at Cams Hill, to point E (SU 5880 0617) at a junction with the diverted route of Fareham Footpath No.523. A total length of approximately 60 metres, as shown on the accompanying plan.

**6. Background to the Application:**

- 6.1. Fareham Borough Council have approved a planning application (P/09/0892/FP) for the reconstruction of Cams Mill. The approved works will obstruct the existing line of Fareham Footpath No.523 and this has necessitated the diversion of the path under s257 of the Town & Country Planning Act 1990 by Fareham Borough Council.
- 6.2. Fareham Footpath No.523 forms part of the Fareham Easy Access Trail. The proposed diversion that has been agreed provides two paths that pass to either side of the new restaurant. The existing line of Fareham Footpath No.523, A-B on the attached plan, will be diverted to D-E-B by Fareham Borough Council, in accordance with the Town and Country Planning Act 1990. The additional section from C-E needs to be created by a deed of dedication to which HCC will be party. By accepting this dedication at common law, rather than under the Highways Act 1980, the future maintenance of this section of path will remain the responsibility of the landowner and not become maintainable at public expense.
- 6.3. During Fareham Borough Council's consultations, Natural England raised a concern regarding of the proximity of the path to nesting birds on the adjacent waterway, Fareham Creek. This will be mitigated against by the provision of a three foot close-boarded fence on that side of the new path.

**7. Criteria for Assessment of the Proposal:**

- 7.1. The County Council, as the Highway Authority, has the power to accept the dedication of public rights of way at common law.

- 7.2. 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 and the Equality Act 2010. This route will form part of the Fareham Easy Access Trail and as such will be constructed to a standard that is consistent with the ongoing trail and offers easy access to those with limited mobility.

**8. Conclusions:**

- 8.1. Officers are of the opinion that it is expedient to accept the proposed dedication of this footpath at common law.

**9. Recommendations:**

- 9.1. That the dedication of this path, shown C-E on the attached plan, be accepted at common law, and that the landowner should remain responsible for the installation and future maintenance of this path.

**CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:**

**Links to the Corporate Strategy**

	Yes	No
Hampshire safer and more secure for all	<input checked="" 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.)

<u>Document</u>	<u>Location</u>
General Correspondence	HantsFile\Countryside Orders\Public Path Order (PPO) 5000\Public Path Order Enquiries
Proposal File	VB\Div\Fareham FP523

### 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	Low	The proposed route forms part of the Fareham Easy Access Trail and will be constructed to a standard that is consistent with the ongoing trail.	
Crime Prevention (under Section 17)	None	The proposed dedication is unlikely to have any impact on crime.	
Environmental	Low	Natural England have raised concerns regarding of the proximity of the path to nesting birds on the adjacent waterway, Fareham Creek. This will be mitigated against by the provision of a three foot close-boarded fence on that side of the new path.	