

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Regulatory Committee
Date of Decision:	23 November 2011
Title:	Application for a Public Path Diversion Order for part of Footpath No.5 in the Parish of Kingsley
Reference:	3437
Report From:	Director of Culture, Communities and Business Services

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1. Executive Summary:

- 1.1. The purpose of this paper is to consider an application to temporarily divert part of Kingsley Footpath No.5 for a further period of eight years to allow for mineral extraction on the site to be completed. This path has been subject to a temporary diversion for a period of thirteen years since 1999 and this is currently due to expire in August 2012.
- 1.2. This paper seeks to provide members with the necessary information with which to determine the application. This diversion is necessary to allow mineral extraction to be completed and the site to be restored in accordance with planning permission already granted by this Committee. Members are therefore requested to authorise the making of an Order under s257 and s261 of the Town & Country Planning Act 1990 for this temporary diversion.

2. Legal Framework for the Decision:

Orders for the stopping up or diversion of footpaths, bridleways or restricted byways may be made under Section 257 of the Town & Country Planning Act 1990, in the following circumstances:-

- (1) ...a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out—
 - (a) in accordance with planning permission granted under Part III, or
 - (b) by a government department.

- (2) An order under this section may, if the competent authority are satisfied that it should do so, provide—
 - (a) for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing highway for such use;
 - (b) for authorising or requiring works to be carried out in relation to any footpath, bridleway or restricted byway for whose stopping up or diversion, creation or improvement provision is made by the order;
 - [(c) not included.]
 - (d) for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.
- (3) An order may be made under this section authorising the stopping up or diversion of a footpath, bridleway or restricted byway which is temporarily stopped up or diverted under any other enactment.
- (4) In this section 'competent authority' means –
 - (a) in the case of development authorised by a planning permission, the local planning authority who granted the permission or, in the case of permission granted by the Secretary of State, who would have had power to grant it.
 - (b) in the case of development carried out by a government department, the local planning authority who would have had power to grant planning permission on an application in respect of the development in question if such an application had fallen to be made.

Section 261(2) of the Town & Country Planning Act 1990 allows for any Order made under Section 257 to be for a temporary period;

- (2) Where a competent authority within the meaning of section 257 are satisfied-
 - (a) that an order made by them under that section for the stopping up or diversion of a footpath, bridleway or restricted byway is required for the purpose of enabling minerals to be worked by surface workings; and
 - (b) that the footpath, bridleway or restricted byway can be restored, after the minerals have been worked, to a condition not substantially less convenient to the public,

The order may provide for the stopping up or diversion of the footpath, bridleway or restricted byway during such period as may be prescribed by or under the order, and for its restoration at the expiration of that period.

3. Purpose of Report:

- 3.1. Hampshire County Council has received an application to temporarily divert part of Kingsley Footpath No.5 for a period of eight years, as shown on the attached large scale plan.
- 3.2. It is proposed that the application for the temporary diversion of part of Kingsley Footpath No.5 be approved under Section 257 and 261 of the Town and Country Planning Act 1990, on the grounds that the diversion continues to be necessary to carry out the development for which planning permission has been granted, and that it is expedient that the line of this path should be diverted.

4. Applicant:

- 4.1. Tarmac Ltd
Warren Lane
Stanway
Colchester
Essex
CO3 0NN

5. Landowners:

- 5.1. Tarmac Ltd
Warren Lane
Stanway
Colchester
Essex
CO3 0NN

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

6.1. Current Route

The section of Kingsley Footpath No.5 affected by this proposal commences at Point A (SU 7802 3724) and proceeds in a generally north-easterly direction to Point C (SU 7819 3747) where it rejoins the ongoing route of Kingsley Footpath No.5.

The length of Kingsley Footpath No.5 between Points A-C is approximately 280 metres. There is no recorded width for this section.

6.2. Proposed Route

The proposed route of this section of Kingsley Footpath No.5 commences at Point A (SU 7802 3724) and proceeds in a generally easterly direction to Point B (SU 7826 3730), then in a generally northerly direction to Point C (SU 7819 3747) where it rejoins the ongoing route of Kingsley Footpath No.5.

The length of Kingsley Footpath No.5 between Points A-B-C is approximately 446 metres and will have a width of 2 metres between fences. This is the same route that has formed the temporary diversion that has been in place since 1999.

7. Background to the Application:

- 7.1. This section of Kingsley Footpath No.5 has been subject to a temporary diversion since 1999, to allow for mineral extraction in accordance with planning permission that was granted by Hampshire County Council on 02 July 1990, ref 24847/4. This temporary diversion is due to expire in 2012.
- 7.2. There is a desire to divert this path permanently as part of the restoration of this site. However, it is not physically possible to get the necessary machinery to that location to create a route to the standard that would be deemed acceptable as a permanent diversion until the site is restored. This restoration is likely to happen by 2019.
- 7.3. In light of this, a further temporary diversion has been applied for to allow a more acceptable permanent diversion to be created at the end of that period.

8. Compliance with our Diversions Criteria:

- 8.1. The Access Team 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.

9. Costs:

- 9.1. The cost of advertising the Diversion Order, the administrative costs up to the point at which a contested Order may be referred to the Secretary of State for determination, and the cost of any physical works required on the proposed route will be met by the applicant.
- 9.2. Should it be decided that an Order be made for this diversion, it is required that the made Order is then advertised for a period of four weeks, during which time formal objections could be made to it. Should objections be made the County Council does not have the power to confirm the Order but can refer it to the Secretary of State for determination.

- 9.3. The County Council does not have the power to charge for administrative costs beyond the point at which an application may be referred to the Secretary of State and as such the merits of each application will be assessed when deciding whether or not to do so. If it is decided that it is not expedient to refer an application, the made Order must be rescinded.

10. Consultations with Other Bodies:

- 10.1. Local Member – Councillor Mark Kemp-Gee
Councillor Kemp-Gee has been consulted on this proposal and is in support of it.
- 10.2. East Hampshire District Council
East Hampshire District Council has been consulted on this proposal, but has made no comment.
- 10.3. District Councillor – Councillor David Ashcroft
District Councillor David Ashcroft has been consulted on this proposal and has no objection to it
- 10.4. Kingsley Parish Council
Kingsley Parish Council has been consulted on this proposal, but has made no comment. However, the Parish Council was involved with the development of this proposal.
- 10.5. 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 proposed route up to a condition suitable for use by the public.
- 10.6. Hampshire County Council – Highways Management
Highways Management has been consulted on this proposal but has made no comment.
- 10.7. Hampshire County Council – Environment Department
Environment Department has been consulted on this proposal, but has made no comment.
- 10.8. Hampshire County Council – Crime & Disorder Risk Advisor
Hampshire's Crime and Disorder Risk Advisor has been consulted on this proposal and has no objection to it.
- 10.9. The Ramblers
The Ramblers has been consulted on this proposal, but has made no comment.
- 10.10. The Open Spaces Society
The Open Spaces Society has been consulted on this proposal and has no objection to it. A comment was made that the OSS would wish to see a more natural alignment for any permanent diversion that may be proposed at such time as the temporary diversion expires.
- 10.11. Land Access & Recreation Association (LARA)
The Land Access & Recreation Association has been consulted on this proposal, but has made no comment.

10.12. National Farmers Union

The National Farmers Union has been consulted on this proposal, but has made no comment.

11. Comments on Consultation Replies

11.1. None of the consultees have any objection to this proposal.

11.2. The Open Spaces Society have commented that they would like to see a more natural alignment for any permanent diversion in the future. This will be looked at again at the appropriate time with a view to securing the best route and specification for a permanent diversion. The reason that a permanent diversion has not been applied for at this stage, is that it is not possible for a route to be created that is acceptable as a permanent diversion, until such time as the site is restored and landscaping carried out.

12. Criteria for Assessment of the Proposal

12.1. Section 257(1) of the Town & Country Planning Act 1990 states that;

“...a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out—

- a) in accordance with planning permission granted under Part III, or
- b) by a government department ”

Planning permission was granted for this development by Hampshire County Council on 02 July 1990, ref 24847/4.

12.2. 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 Equalities Act 2010. Officers confirm that the requirements of those with limited mobility have been taken into account when developing this proposal.

13. Conclusions:

Officers are of the opinion that the proposed diversion satisfies the criteria required by section 257 of the Town & Country Planning Act 1990 and that it is necessary for the County Council to make the order in that:

13.1. The proposed temporary diversion is necessary, for a further period of eight years, to allow mineral extraction to be carried out in accordance with planning permission that has been granted.

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

14. Recommendations:

- 14.1. That an Order is made diverting part of Kingsley Footpath No.5 from the current definitive alignment to the proposed alignment for a further period of eight years, 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 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"/>

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\CCRA\Countryside\Countryside HQ\Countryside Orders\Public Path Order (PPO) 5050\Kingsley FP5 – Diversion
Proposal File	VB\Div\Kingsley FP5

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	The proposed temporary route will be the same as the temporary diversion that has been in place since 1999, so the level of accessibility is maintained.	
Crime Prevention (under Section 17)	None	The proposal is unlikely to have any impact on crime and disorder in this area.	
Environmental	None	The proposed temporary route has been in place since 1999. As such the current proposal is unlikely to have any significant environmental impacts.	