

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	11 January 2012
Title:	Proposal to dedicate a public right of way at The Armoury, Marchwood, subject to limitations regarding gates and times of use.
Reference:	3554
Report From:	Director of Culture, Communities and Business Services

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1. Executive Summary:

- 1.1. The County Council has received a proposal to dedicate a public right of way for pedestrians and cyclists over a route at The Armoury in Marchwood. The proposed dedication is subject to limitations relating to the existence of gates and restricting the hours of public use.
- 1.2. This report seeks to get Member authority for the County Council to enter into an agreement with The Armoury Management Company Limited ('the Landowner') for the dedication of this public right of way, as shown on the plan attached to this report.

2. Legal framework for the decision:

- 2.1. This is a common law dedication by the owner of the freehold 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 that the public right of way would not be publicly maintainable by Hampshire County Council (the Highway Authority).

3. Landowners:

- 3.1. The Armoury Management Company Ltd.
c/o HMS Property Management Services Limited
62 Rumbidge Street
Totton
Hampshire
SO40 9DS

4. Description of path (please see attached maps):

- 4.1. The path connects the promenade fronting Southampton Water with a network of footways and cycle ways within the housing estate to the south of The Armoury. There are gates at both ends of the path set in the high brick wall that surrounds The Armoury, although the gate at the northern end is for flood defence purposes only. The path between the gates is either defined by block paving, or brick edging with a gravel surface in between. The defined route is two metres from the windows of the dwellings on the west side of the building.
- 4.2. Access to the promenade can also be gained from its western and eastern ends. At the western end there is Footpath 501 which runs from Admiralty Way around the outside of the depot wall to connect with the seafront, and at the eastern end there is Byway Open to All Traffic 18, called Magazine Lane, which also provides vehicular access to a public car park and public hard. These access points are not restricted in any way, therefore the whole length of the promenade is accessible at all times of the day and night.

5. Background:

- 5.1. The Armoury was part of the Royal Naval Armaments Depot which operated on this site from 1815 to 1961. Most of the site was redeveloped with new houses in the 1990s, but the Victorian buildings fronting the promenade were retained and converted to 10 dwellings. As part of the planning permission the developer of The Armoury, Crest Homes, entered into a planning agreement, in 2000, with New Forest District Council to provide a public path through the site, linking the new development with the promenade. The planning agreement also placed an obligation on the then landowner, and successors in title, to dedicate that path as a public right of way.
- 5.2. The path is currently not recorded as a public right of way, although it has been used by the public on foot for about 10 years. Although the estate roads and footways, including the promenade, have now been adopted by the Highway Authority, this small development was not part of the wider adoption scheme. Adoption was not considered to be appropriate in this case because of the requirement to have a tarmac surface which would not be in keeping with the historic character of the locality.
- 5.3. The current Landowner is aware of its responsibilities under the 2000 planning agreement, with New Forest District Council, and are willing to enter into a dedication agreement to formalise the status of the path. However, there have been incidents of criminal activity and anti-social behaviour at these properties. These include theft of lead from the roof, a bicycle stolen from outside one of the houses, people looking into ground floor windows and human and dog fouling of gardens. These concerns led to a discussion on a possible application for a Gating Order, restricting public access to daylight hours only.
- 5.4. Given the protracted nature of the process associated with the making of a Gating Order, with its uncertain outcome, it was suggested that the

Landowner might dedicate a public right of way for walkers and cyclists, subject to the inclusion of gates at A and C and the locking of those gates between the hours of 22.00 and 08.00. The residents would be responsible for the locking and unlocking of the gates. In this way the public would have a right of way on foot and bicycle during daylight hours, the residents would achieve some measure of security and the County Council would secure a right of way without the need to make a definitive map modification Order, Creation Order or Gating Order, all of which could prove expensive in advertising and processing costs, possibly involving a public inquiry.

- 5.5. Although the County Council has the ability to enter into an agreement for any type of right of way, it is limited as to how this is depicted on the definitive map. The statutory classifications are footpath, bridleway, restricted byway and byway open to all traffic. There is no provision to show a cycleway. It is, therefore, proposed to show this path on the definitive map as a public footpath, and the definitive statement will include the information regarding hours of closure under the heading "Conditions and limitations". Notices on site will advise the public that they can also use this path on a bicycle.

6. Consultation with other bodies:

6.1. Marchwood Parish Council

The Clerk to the Parish Council has supplied the following response:

"Members of Marchwood Parish Council considered the proposal on Monday 17th October at the full Council meeting. I am afraid that they were not supportive of the proposal. They feel that as it is a public right of way it should remain open and accessible at all times. They also had concerns that the gates would not be opened at the correct times if left to the residents."

6.2. County Councillor D Harrison – local member

"I know this footway well and understand the issues involved. I support the dedication of this small stretch of land as a public right of way. However, I am not supportive of the gates being locked, at anytime of the day or night. The owners of the nearby properties have justified concerns about crime and anti-social behaviour. However, locking the gates at night won't improve the dog fouling situation, won't stop people looking into the large windows of properties adjacent to the pathway, or stop unsecured bicycles being stolen.

There will always be night fishermen wanting to access the coast here, as indeed they have always done so. This route is by far the shortest way. In the event of an accident or serious medical emergency, I think it important that emergency services should be able to use the route, at all hours, without the difficulties encountered with locked gates.

There is also the possibility (some would say probability) that anyone taking on the responsibility of locking and unlocking the gates might not do so, as originally agreed. I can anticipate problems with walkers and fishermen finding the gates locked during the daytime. Although there have been occasional problems affecting nearby property owners, I don't judge these

as anything like serious enough to change the status quo and locking the gates would be a very poor way of trying to remedy them.”

6.3. New Forest District Council

The Open Space Co-ordinator has written to say:

“I can confirm that there is no objection to the proposals....New Forest District Council is aware of some of the issues mentioned by the residents and concur that the proposal is a logical way forward.”

6.4. New Forest National Park Authority

The Countryside Access Officer has written the following:

“The proposed footpath would lie outside the National Park, and in my opinion would have no effect on the National Park, or on the public’s access to, and enjoyment of, the Park. Therefore I have no objection to the proposed dedication.”

6.5. The Ramblers

The Footpath Secretary for the Southampton Area has e-mailed to say:

“Having viewed the location and the threat of a gating order we have no general objection to your proposals for locked gates at points A and C between 22.00 and 08.00 hours. However, there is a concern that the residents responsible for the locking and unlocking of the gates might eventually ‘forget’ to unlock the gates and how HCC are going to ensure/monitor that the residents keep to their responsibilities. It would also need waymarking, particularly on the seaward side, because with the high wall and gate, it’s not going to be obvious that there is public access.”

7. Financial implications and comments on objections:

- 7.1. The proposed right of way is already in a suitable condition for public use. The agreement will specify that the maintenance of the path will be the responsibility of the Landowners. There are therefore no significant, long-term, financial implications for the County Council as highway authority.
- 7.2. The dedication agreement is a relatively quick and easy process to secure a public right of way. The only expense is advertising the completed agreement in a local newspaper. If the County Council were to secure the path using a Creation Order, or process an application for a Gating Order, this could involve a great deal of time and expense in preparing for, and appearing at, a public inquiry. In the circumstances a dedication, with limitations, would seem to offer the best settlement for all parties.
- 7.3. The proposal to dedicate a right of way, subject to time limitations, is not without precedent in Hampshire. There is an existing public footpath, Odiham Footpath 69, which the definitive statement describes as “Subject to closure between the hours of 9 p.m. and 6 a.m.” This is an old right of way which runs between houses and shops in the town centre. It would seem very likely that the public acquired a right of way through long use but, traditionally, the path was closed at night by the landowner.

- 7.4. If the dedication were to proceed, and the path was not opened at the times specified by the dedication agreement, then that would constitute an obstruction of the public highway as well as a breach of the agreement. In these circumstances the County Council would be able to take enforcement action against the Landowner on both counts.
- 7.5. If the dedication agreement does not proceed, there is very little that the County Council can do other than wait for a period of 10 years, by which time the public might have acquired a right of way through 20 years use. However, this could still be defeated by the Landowner taking steps to stop the acquisition of a public right of way by a variety of methods e.g. the locking of gates.
- 7.6. For the foreseeable future, the only body that can secure the public right of way, or take action if the path were to be blocked, is New Forest District Council. This would have to be done through enforcement action for non-compliance of the 2000 planning agreement. Given that the District Council is supportive of the current proposal, it would seem unlikely that it would force the issue if the path is kept open during daylight hours.

8. Recommendations:

- 8.1. That the County Council enters into an agreement with The Armoury Management Company Limited to dedicate a right of way for use by pedestrians and cyclists, between points A-B-C as shown on the plan attached to this report, subject to the limitations specified in paragraph 8.2. Section A-B to have a width of 2.5 metres and section B-C to have a width of 3.0 metres.
- 8.2. That the dedication be subject to the following limitations:
 - i) The existence of gates at points A and C.
 - ii) The closure of the path to the public between the hours of 22.00 and 08.00.
 - iii) Gates to be locked and unlocked, at the appropriate times, by the Landowner.
 - iv) Notices to be maintained at each end of the path, by the Landowner, explaining the nature of the right of way, that is, that the public have the right to use the path with bicycles, and the periods of closure.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	
Corporate Improvement plan link number (if appropriate):	
OR	
This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because: Authority is needed for the County Council to enter into a dedication agreement with another body.	

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>
Hantsfile ref: 1082	Room 200
Path at RNAD	Mottisfont Court
The Armoury	High Street
Marchwood	Winchester
	SO23 8ZF

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 arrangement will not be that different from what has been in place for the last 10 years. For daylight hours the same public access will be available. The existing route has an all-weather, level surface.	When the path is closed, during the night, public access will still be available at both ends of the promenade. The alternative access routes do not have steps or other barriers.
Crime Prevention (under Section 17)	Low	The proposal is designed to improve security for those properties close to the path by restricting public access during the night.	The impact should be positive for the occupants of The Armoury
Environmental	None	The proposed route has been in public use since 2001. As such the current proposal will not have any significant environmental impacts.	