**HAMPSHIRE COUNTY COUNCIL**

**Decision Report**

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| **Decision Maker:** | Regulatory Committee |
| **Date:** | 11 January 2012 |
| **Title:** | Information for Members concerning a proposed solution to the anomalous situation on Rowlands Castle Footpath 13, Wellsworth Lane, in the parish of Rowlands Castle |
| **Reference:** | 3557 |
| **Report From:** | Director of Culture, Communities and Business Affairs |

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## 1. Executive Summary

1.1. The purpose of this paper is to put before Members information about a proposed solution to the anomalous situation existing on Footpath 13, in the parish of Rowlands Castle. A report was taken to Committee on 7 October 2009, proposing the making of a map modification order to record restricted byway rights over the route of Rowlands Castle. Members requested that a decision be deferred to give officers the opportunity to devise a pragmatic solution to the difficulty posed by the close proximity of the definitive line of Footpath 13, which is no longer in public use, to the route that is now in use on the ground.

1.2. This paper seeks to provide an update to Members on the progress made by officers in reaching a position where this anomalous situation can be resolved by the use of a dedication agreement and an extinguishment order.

## 2. Background

2.1. Members are referred to a report put before them on 7 October 2009 (decision reference 981, see Appendix 1). This report sought authority to make a map modification order to record a restricted byway over Rowlands Castle Footpath 13. This resulted from an investigation of a route, indentified by Hampshire Countryside Access Forum as part of a project known as 'Discovering Hampshire's Lost Ways'. Footpath 13 had been identified by the Forum as a route that could deliver enhanced access to the public, in line with needs expressed in the Countryside Access Plan for the area. The investigation showed that this route was, on balance, likely to carry higher rights than footpath. The anomalous situation arises from the

fact that the definitive route of Footpath 13 is no longer in use by the public, who walk on a straight route on the headland of a field, which is intertwined with the definitive route (see map attached to this report).

2.2. Discussion at the Committee meeting on 7 October 2009 (see Minutes, at Appendix 2) resulted in a resolution to defer the item to a future meeting '*so that more information can be presented*'.

2.3. After discussions with the landowner and the Parish Council, a process which could resolve the anomaly has been identified and this report seeks to provide information for Members, before a further report which will seek specific authority for the agreements and orders required to put it into effect is brought to Committee.

## 3. Solution proposed to resolve the anomaly

3.1. The landowner, Mr. Martin Edney, has offered to dedicate public bridleway rights over the straight route shown on the map attached to this report. Mr. Edney has requested that the offer to dedicate bridleway rights on the straight route is '*expressly conditional upon the extinguishment of all public rights of way on the curved route*'.

3.2. It had been officers' intention to use the relevant legislation to extinguish the public rights over the definitive line of Rowlands Castle Footpath 13, namely section 118 of the Highways Act 1980. The test that must be met is that route is no longer needed for public use. However, it has been suggested that case law from 2006 (*Hertfordshire County Council* v. *Secretary of State for the Department of Environment Food and Rural Affairs*) means that it is not possible to have a dedication agreement contingent upon an extinguishment order made under this section. Therefore, it has been decided to use section 116 of the same Act, where an application can be made to a Magistrates' Court and Magistrates' can authorise extinguishment of the highway if they consider that the test for an extinguishment set out in that section has been met. There appears to be no case law to suggest that a contingent dedication cannot be prayed in aid under section 116.

## 4. Consultation with other bodies

4.1. No specific consultations have been made for this report, which is designed to present information to Members as to the present situation with regard to Rowlands Castle Footpath 13, since this matter has been outstanding for some time. A wide consultation will be carried out for both the dedication and the application for the extinguishment order. This is important in relation to the extinguishment, as it will enable officers to gauge whether there will be any objections, and what their nature would be.

4.2. While these consultations are taking place, officers will carry out the necessary actions to secure the dedication and put in train the extinguishment process.

4.3. If it appears to officers that any attempt at extinguishment might attract objections that would preclude success, then further consideration will be to other methods by which a pragmatic solution to the anomaly may be achieved.

## 5. Member Authority

5.1 Officers will bring a further report to the Committee in due course to seek Member authority for each step required to secure a solution to this anomaly.

## 6. Resolution

6.1 That the progress made in relation to this issue is noted.

## CORPORATE OR LEGAL INFORMATION:

### Links to the Corporate Strategy

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|---|---|
| **Hampshire safer and more secure for all:** | yes/no |
| Corporate Improvement plan link number (if appropriate): | |
| **Maximising well-being:** | yes/no |
| Corporate Improvement plan link number (if appropriate): | |
| **Enhancing our quality of place:** | yes/no |
| Corporate Improvement plan link number (if appropriate): | |
| **OR** | |
| **This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because:**<br>This report presents information to the surveying authority, to aid decision making, as it has a legal duty to determine applications for Definitive Map Modification Orders made under section 53 of the Wildlife and Countryside Act 1981 | |

### Other Significant Links

| **Links to previous Member decisions:** | | |
|---|---|---|
| Title<br>Proposal to record a restricted byway over Footpath 13, in the parish of Rowlands Castle | Reference<br>981 | Date<br>7 October 2009 |
| **Direct links to specific legislation or Government Directives** | | |
| Title | | Date |

**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.)**

| Document | Location |
|---|---|
| HCAF Discovering Hampshire's Lost Ways<br>CAP 9313 | Rights of Way Office,<br>Mottisfont Court,<br>High Street,<br>Winchester,<br>SO23 8ZF |

## IMPACT ASSESSMENTS:

### 1. Equalities Impact Assessment:

1.1.

### 2. Impact on Crime and Disorder:

2.1.

### 3. Climate Change:

a) How does what is being proposed impact on our carbon footprint / energy consumption?

b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

**This report does not require impact assessments but, nevertheless, provides information that will inform a decision by the County Council, in its capacity as surveying authority, as part of its legal duty to determine applications made under section 53 of the Wildlife and Countryside Act 1981.**