

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	8 February 2012
Title:	Proposal to dedicate a public right of way along the disused railway line in the Itchen Valley Parish
Reference:	3638
Report From:	Director of Culture, Communities and Business Services

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1. Executive Summary

- 1.1. The County Council owns a stretch of disused railway in the Itchen Valley. The County Council has received an application to record public footpath rights over this route under section 53 of the Wildlife and Countryside Act 1981 (on the basis of long, unchallenged use of the route by the public). However, given that the County Council owns this land, and has no objection to recording a public right of way over it, it is simpler and more efficient for it to dedicate this land as a public highway under section 25 of the Highways Act 1980.
- 1.2. This paper seeks Member authority to dedicate this land as public highway. Members are asked to consider the level of public rights which they wish to dedicate over the land in question. Officers recommend that the land should be dedicated with pedestrian rights of access, but consideration also needs to be given to whether or not equestrian users and cyclists should also be allowed to use the route.

2. Legal framework for the decision

HIGHWAYS ACT 1980

s.25 Creation of a footpath or bridleway by agreement.

(1) A local authority may enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a footpath, bridleway or restricted byway over land in their area.

An agreement under this section is referred to in this Act as a “public path creation agreement”.

- (2) For the purposes of this section “local authority” -
 - (a) in relation to land outside Greater London means a county council, a district council....
- (3) Before entering into an agreement under this section a local authority shall consult any other local authority or authorities in whose area the land concerned is situated.
- (4) An agreement under this section shall be on such terms as to payment or otherwise as may be specified in the agreement and may, if it is so agreed, provide for the dedication of the footpath, bridleway or restricted byway subject to limitations or conditions affecting the public right of way over it.
- (5) Where a public path creation agreement has been made it shall be the duty of the local authority, who are a party to it, to take all necessary steps for securing that the footpath, bridleway or restricted byway is dedicated in accordance with it.

3. Landowner

- 3.1. The owner of the land shown in blue on Appendix 1 is Hampshire County Council. Section A-B of this land is the subject of this report. The stretch shown as B-C is not owned by the County Council. B-C is not registered with the land registry and, as far as officers are aware, ownership is not claimed by the adjoining landowners. The lack of information about ownership may be relevant to the County Council’s decision making.

4. Background

- 4.1. The land shown in blue on Appendix 1 was purchased by the County Council in 1983 with the intention that it should be used as a public footpath. However, the County Council has never formally dedicated it as such.
- 4.2. In 1984 a footpath across Couch Green Recreation ground (now footpath 501) was dedicated, and in 1988 the County Council, (having been unable to ascertain who the landowner for the stretch shown as B-C), made a Public Path Creation Order to create a footpath over stretch B-C (now footpath 502). Both paths provide formal pedestrian access to the County Council’s land.
- 4.3. Since this date route A-B has been used by pedestrians and cyclists. The County Council is not aware of any current use by equestrians or other traffic. Since acquiring ownership, the County Council has undertaken occasional maintenance (in the form of vegetation clearance) to facilitate public use of the route. More recently, the County Council has installed a ramp at point ‘A’ to allow pedestrians to access the track.
- 4.4. In 2005 Itchen Valley Parish Council made a formal application to record the land between points A and B as a public footpath. If the currently proposed

dedication is accepted, the County Council need not progress the investigation of the application. If this dedication is not accepted, the County Council must continue to investigate the application.

5. Description of path

- 5.1. The route in question consists of a wide level path. The railway tracks have been removed, but the track bed (consisting of firm sub-base material) remains. The path is, in part, within the railway cutting and, in part, on the railway embankment. It is generally firm and dry, though as would be expected, the parts within the cutting can be muddy (especially in wetter periods). The path is to some degree bounded by vegetation, consisting of both mature trees and brambles, and fences demarcate the extent of the County Council's land ownership.
- 5.2. The path is formally accessed at four locations, shown on Appendix 1 and 2 and described here:
 - 5.2.1 Access point 1: An engineered ramp providing access down to the railway cutting from the road above. It is understood that this access was installed within the last few years by the County Council's Highways department using money from developer contributions obtained from the adjacent Bridgetts Lane housing development. The ramp is fairly steep, with a handrail. The surface is slightly loose. It is adequate for pedestrians but it is considered to be unsuitable for equestrian use and cyclists (unless cycle riders would dismount). Whether or not to allow cyclist or equestrian use of this access point is **currently within** the County Council's gift.
 - 5.2.2 Access point 2: An earth ramp providing access up to the railway embankment from the paying field below. This is an informally created pedestrian access point which has, at some point, been revetted with the addition of some paving slabs placed 'on end' to retain the earth of the slope. It is adequate for pedestrians (though muddy and slippery in wet conditions), but would need improvements were it to be used safely by cyclists or equestrians. Whether or not to allow cycling or equestrian lawful use of this access point is **not currently within** the County Council's gift (it is understood that this land is owned by the Parish Council and is registered Village Green).
 - 5.2.3 Access point 3: Railway sleeper steps providing access up to the railway embankment from the road below. These are formally placed steps which are thought to have been installed by the County Council's Highway's section. They are adequate for pedestrian use, but not suitable for cyclists or equestrians. Cyclists and equestrians would require a slope to be constructed at this point which would be on land outside of the County Council's ownership and thus, is **not currently within** the County Council's gift.

5.2.4 Access point 4: A flat path providing access onto the main road. This path is flat and physically useable by pedestrians, equestrians and cyclists. Concerns have been raised about the safety of cyclists and horse-riders using this access point. The owner of this stretch of land ownership is not currently known, and the question of whether or not cyclists or equestrians should use this path is **not currently within** the Council's gift.

5.2.5 It should be noted that if resources can be found to physically improve access points, Members may consider whether or not to formally 'create' public access for equestrians and cyclists over land it does not own. This can sometimes be viewed as an adversarial step and, therefore, should this be a desire of Members, officers would recommend that efforts first be made to achieve the desired outcomes through negotiation.

6. Consultation with other bodies

6.1. The County Council issued a public consultation which was advertised on site and sent to various groups and organisations. Appendix 3 contains a copy of the consultation notice (for reference as to option numbers) and full copies of the longer responses:

6.1.1 **Local Member, Councillor Porter** – is aware of the application

6.1.2 **Itchen Valley Parish Council** –

“The Itchen Valley Parish Council has debated this matter at length, and agrees that Option **1.4: Dedication of Public Rights for walkers and permissive access for cyclists** is the best solution.

We are anxious that the footpath continues to be useful to the community, while retaining its rural nature. We do not want the surface to be 'improved' or too much of the vegetation cut away.

We would like to keep it as a safe and pleasant place for walkers, with some use by cyclists, so we consider that it would be unsuitable for other vehicles or horses.”

(full response at Appendix 3).

6.1.3 **British Horse Society** – supports the dedication of the route as a bridleway, and provides suggestions as to how accessibility issues can be overcome (full response at Appendix 3).

6.1.4 **Ramblers** – “On behalf of the Ramblers I see no reason why this path should not be dedicated as a bridleway. The 'lesser' options seem inappropriate.

I appreciate that there are some practical matters relating to access for cyclists and horse riders to the old railway at this time. However, I don't see

why this should prevent the establishment of a new bridleway, with work to resolve the access problems taking place as appropriate.”

6.1.5 Cyclists Touring Club – supports the dedication of the route as a bridleway. “The CTC does not support the dedication of permissive rights for cyclists. As a permissive cycle route, it would not be shown on either the definitive map or the OS map. This would create uncertainty about who is entitled to use the path and could mean that its existence was little known.”
(full response at Appendix 3)

6.1.6 Local Residents – a variety of responses from local residents have been received and are included at Appendix 3. The key points made are:

- Generally in favour of rights for walkers and against equestrian access.
- Concerns that allowing cyclists and equestrians would then require ‘improvements’ to be made to the track (adversely affecting its ‘rural’ character)
- The access points at either end are unsuitable for horse riders and not ideal for cyclists
- Path too narrow for equestrians and cyclists to share with pedestrians
- Adult cyclists would be more likely to use B3047 and therefore, likely to be of most use by families cycling and mountain bikers
- Permissive cycling would allow cycle use to be reviewed if there were a problem, and generally favoured (as opposed to dedicated cycling rights)
- Owners of adjoining properties are concerned about safety implications of making the route public
- Safety concerns raised over cyclists/equestrians sharing Fp502 with the existing users (ie walkers and vehicles using the path as a driveway to existing residential properties)
- Signage would be needed to address safety issues of cyclists using access points at A and B

6.2. Officers make the following comments on the points raised:

6.2.1 The proposal to formally designate the line as a public right of way for walkers appears to be welcomed. Concerns about the security of adjoining properties have been raised, but given that the path is currently used on an informal basis, it is not considered that a formal designation would adversely affect the security of these properties.

6.2.2 In terms of cycling, concerns have been raised about the safety of cyclists using the path (bringing them into potential conflict with pedestrians). Officers are satisfied that the path is wide enough, with good enough

visibility, to mean that it will be safe as a shared use path. Further, the limited utility and surfacing of the path (it only provides a section of off-road link) means that 'road-racers' are unlikely to deviate from the road to use it, and it is likely to be of most benefit to vulnerable users (for example, families with children). Cyclists have come forward to indicate that this route would be a valuable addition to the network. Some respondents would prefer to see the route formally dedicated with cycle rights, others would prefer for permissive access to be granted to cyclists. There appears to be no outright opposition to the granting of permissive rights to cyclists (although some people have indicated they would object to a formal granting of rights in perpetuity).

6.2.3 Some respondents would favour the dedication of this route as a public bridleway, giving rights for riders, cyclists and walkers. However, at this point in time the access points to the route are considered (by officers) to be neither safe, nor suitable for equestrian use. Although an option is for the County Council to dedicate the route as a bridleway and then prohibit horse riders (by way of a Traffic Regulation Order) until such time that safe and legal equestrian access can be established, this seems an overly complex solution, given that officers are not aware of any demand from local horse-riders to use this route.

7. Financial implications

7.1. The County Council already owns and manages the land in question, and is aware of public use of it. Therefore, the financial liability to the County Council will not change. A small amount of additional signage and a newspaper advertisement will be required if the route is dedicated.

7.2. If Members do not agree to the dedication of a public right of way over the route, there will remain an outstanding application to record the path as a public footpath. Officer time will be required to investigate the application and, given the evidenced level of use and the lack of action to prevent public access, this application is likely to be ultimately successful, involving the County Council in the same costs as identified in 7.1, as well as additional order making and advertising costs.

8. Options

8.1. Various options may be considered by Members including:

- i) Do nothing (continue to allow informal access for those who wish to use A-B)
- ii) Dedicate A-B as a footpath and formally prohibit other classes of user
- iii) Dedicate A-B as a footpath and offer permissive access to cyclists
- iv) Dedicate A-B as a footpath and 'cycleway'
- v) Dedicate A-B as a bridleway

- 8.2. In view of the pending application to record this path as a public right of way, the desire from cyclists to use the path and the limitations to equestrian access (both lawfully and physically), officers suggest that of the options available to Members, options iii) and iv) are the most sensible to pursue at this stage.
- 8.3. Officers are mindful of the fact that the County Council does not own three of the four access points to the route. With this in mind it is felt that it is more sensible for the County Council to offer permissive access for cyclists over its land (option iii) and in the longer term to seek to work with the local community and cycle users to provide formal access to the route for users other than pedestrians.

9. Recommendation(s)

- 9.1. That the County Council dedicates this land as a public footpath under section 25 Highways Act 1980
- 9.2. That the route to be dedicated is 3.0 metres wide along its length, subject to a limitation of the width to 1.20m along the ramp providing access (at point A)
- 9.3. That the County Council permits cyclists to use the section of the footpath that it owns, but uses signage to request that cyclists dismount at point A and point B.

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

Hampshire safer and more secure for all:	no
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	yes
Corporate Improvement plan link number (if appropriate):	

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>
Claim 827 (file)	Countryside Access Team Mottisfont Court High Street Winchester SO23 8ZF

IMPACT ASSESSMENTS:

1. Equalities Impact Assessment:

1.1. No physical changes to path proposed and no other equalities impacts involved

2. Impact on Crime and Disorder:

2.1. N/A

3. Climate Change:

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

Negligible, though will encourage sustainable transport

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

N/A