

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Regulatory Committee
Date of Decision:	20 June 2012
Title:	Application for a Public Path Diversion Order for part of Upham Footpath No.30b and Owslebury Footpath No.27
Reference:	4024
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 divert part of Upham Footpath No.30b and Owslebury Footpath No.27. The application has been made in the interests of the landowner to enable the land to be managed more effectively for the keeping of horses, but also provides significant benefits for path users.
- 1.2. Officers recommend that it is expedient to divert these footpaths in the interests of the landowner. The proposed alignment of the diversion is not considered to be substantially less convenient to the public than the existing route. Members are therefore requested to authorise the making of an Order under s119 of the Highways Act 1980 for this diversion.

2. Legal Framework for the Decision:

Orders for the Diversion of footpaths, bridleways or restricted byways may be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, in the following circumstances:-

“Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that,

in the interests of the owner, lessee or occupier of land crossed by the path or way
or
of the public,

it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and

confirmed by the Secretary of State, or confirmed as an unopposed order,:

(a) create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion; and

(b) extinguish, as from such date as may be so specified in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.

An order under this section is referred to in this Act as a 'public path diversion order'."

Members must be satisfied that the diverted route will not be substantially less convenient to the public, and must have regard to the effect that a diversion will have on the enjoyment of the path as a whole.

3. Purpose of Report:

- 3.1. Hampshire County Council has received an application to divert part of Upham Footpath No.30b and Owslebury Footpath No.27, as shown on the attached plan.
- 3.2. It is proposed that the application for diversion of part of Upham Footpath No.30b and Owslebury Footpath No.27 be approved under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, on the grounds that it is in the interests of the landowner and that it is expedient that the line of these paths should be diverted.

4. Applicant:

- 4.1. Mr David Buckett
Woodlock's Down Farm
Upham
Southampton
SO24 0HY

5. Landowner:

- 5.1. Mr David Buckett
Woodlock's Down Farm
Upham
Southampton
SO24 0HY

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

6.1. Current Route of Bridleway

The section of Owslebury Footpath No.27 affected by this proposal commences at Point A (SU 5330 2171) and proceeds in a generally south-westerly direction, on the north-west side of the field boundary, crossing four stiles to the parish boundary at Point C (SU 5318 2137).

The route then continues in a generally westerly and southerly direction as Upham Footpath No.30b, running on the north-west side of the field boundary between Point D and E (SU 5311 2115) and crossing a further two stiles.

The length of the affected route between Points A and C is approximately 370 metres, and between D and E is approximately 103 metres. The recorded width for Owslebury Footpath No.27 is 9 feet (2.7 metres). The recorded width for Upham Footpath No.30b is 3.08 metres.

6.2. Proposed Route of Bridleway Diversion

The proposed route of the diversion of these paths runs along a parallel line but proceeds on the southern and eastern side of the field boundary between Points A to C, and D to E. This route will be entirely free of structures.

The length of the proposed diversion between Points A to C and D to E is comparable to the existing route and will have a width of 3.0 metres throughout.

7. Background to the Application:

- 7.1. The existing route of Upham Footpath No.30b and Owslebury Footpath No.27 crosses field boundaries in six locations, each accommodated by a stile, taking it through five different fields. Some of these fields are used to keep livestock and this can present difficulties for both path users and the landowner.
- 7.2. The landowner is now seeking to divert the path to run entirely on the eastern and southern side of the field boundary to reduce the number of fields impacted by the path and enable the land to be managed more effectively for agricultural purposes.
- 7.3. The proposed route will be open, unfenced and entirely free of structures, compared to the six stiles that are necessary on the existing line for stock control purposes. In this way the proposed route will be more accessible and pleasant for path users than the existing route.

8. Compliance with our Diversions Criteria:

- 8.1. The Rights of Way Office 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.

- 8.2. The diverted routes A-C and D-E offer a similar experience in terms of views, and a much improved experience in terms of accessibility as the six stiles that currently accommodate the path will be eliminated.

9. Costs:

- 9.1. The cost of advertising the Diversion Order, the administrative costs up to the point at which an Order (if contested) 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 further 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 – Cllr Porter
Councillor Porter has been made aware of this proposal.
- 10.2. Winchester City Council
Winchester City Council has been consulted on this proposal, but have made no comment.
- 10.3. Upham Parish Council
Upham Parish Council has been consulted on this proposal and have no objection to it.
- 10.4. Owslebury Parish Council
Owslebury Parish Council has been consulted on this proposal and are in support of it.
- 10.5. South Downs National Park
The South Downs National Park has been consulted on this proposal, but have made no comment.
- 10.6. Area Countryside Access Manager
The Area Countryside Access Manager 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.
- 10.7. HCC – Environment Department
Environment Department has been consulted on this proposal and have no objection to it.

10.8. HCC – Crime & Disorder Risk Advisor

The Crime and Disorder Risk Advisor has been consulted on this proposal and has does not consider that it will have any significant impact on reported crime and disorder in this area.

10.9. The Ramblers

The Ramblers has been consulted on this proposal and fully support it.

10.10. The Open Spaces Society

The Open Spaces Society has been consulted on this proposal and have no objection to it.

10.11. National Farmers Union

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

10.12. Cyclists Touring Club

The Cyclists Touring Club has been consulted on this proposal, but have made no comment.

10.13. British Horse Society

The British Horse Society has been consulted on this proposal and have no objection to it.

11. Comments on Consultation Replies:

11.1. All of the respondents to this proposal are either in favour or have no objection to it.

12. Criteria for Assessment of the Proposal:

12.1. The County Council, as the Highway Authority, has the power to make a Public Path Diversion Order under s119 of the Highways Act 1980, if it is considered expedient to do so in a particular case, and if it is in the interests of either the landowner or of the public.

12.2. Section 119(2) of the Highways Act 1980 requires that a Diversion Order should not be made unless the new termination point connects to the same highway, or a highway connected to it and is substantially as convenient to the public as the existing termination point. In this proposal the termination points are not altered.

12.3. Section 119(6) of the Highways Act 1980 sets out criteria to be considered before a Diversion Order is confirmed. The new path or way should not be substantially less convenient to the public in consequence of the diversion and it may then be expedient to confirm the order, having regard to the effect which:

12.3.1. the diversion would have on public enjoyment of the path or way as a whole;

12.3.2. the coming into operation of the order would have as respects other land served by the existing public right of way; and

12.3.3. any new public right of way created by the order would have as respects the land over which the right is so created and any land held

with it.

Although these are not the criteria to be applied at the order-making stage, subject to any matters that may be raised should the Order be made and advertised, Officers feel that the proposal meets these tests.

- 12.4. 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 Equality Act 2010. Officers confirm that the requirements of those with limited mobility have been taken into account when developing the proposal for the new route, which will be more accessible in that it will be stile-free, eliminating the six stiles that exist on the current route.

13. Conclusions:

- 13.1. Officers are of the opinion that the proposed diversion of Upham Footpath No.30b and Owslebury Footpath No.27 satisfies the criteria required by section 119 of the Highways Act 1980 and that it is expedient for the County Council to make the order, in that;
 - 13.1.1. the termination points are not altered.
 - 13.1.2. the proposed route will not be substantially less convenient than the existing route and offers an improvement in terms of structures and general character.
 - 13.1.3. 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. It is recommended that an Order is made under section 119 of the Highways Act 1980 to divert parts of Upham Footpath No.30b and Owslebury Footpath No.27, 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"/>
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	
<p>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.</p> <p>(NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)</p>	
<u>Document</u>	<u>Location</u>
General Correspondence	HantsFile\CCRA\Countryside\Countryside HQ\Countryside Orders\Public Path Order (PPO) 5052\Upham30b&Owslebury27 - Diversion
Proposal File	VB\Div\Upham30b&Owslebury27\5034

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 will be 3.0 metres wide and will be structure-free, avoiding the six stiles that exist on the current route. As such it will be more accessible for people with a range of levels of ability, when compared to the existing path.	7.1, 7.2, 7.3
Crime Prevention (under Section 17)	None	It is unlikely that this proposal will have any impact on reported crime in this area.	
Environmental	None	Developing an attractive and robust network of public rights of way throughout the county will help to encourage non-motorised users to make use of their local area, avoiding use of the vehicular road network as far as possible.	