

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Regulatory Committee
<b>Date of Decision:</b>	18 July 2012
<b>Title:</b>	Application for a Public Path Diversion Order for part of Bridleway No.17 and dedication of a linking bridleway in the Parish of Twyford
<b>Reference:</b>	4088
<b>Report From:</b>	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 Twyford Bridleway No.17 and to dedicate an additional bridleway link. 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 this bridleway in the interests of the landowner. In view of the additional bridleway link offered, the proposed alignment of the diversion is not considered to be substantially less convenient 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.
- 1.3. It is further recommended that the offer to dedicate a public bridleway linking the diverted route of Twyford Bridleway No.17 to Twyford Bridleway No.20 be accepted as it provides a valuable off-road link for non-motorised users. Members are requested to authorise the making of a deed of dedication for this bridleway under s25 of the Highways Act 1980.

#### 2. Legal Framework for the Decision:

HIGHWAYS ACT 1980 Section 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 bridleway 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 or 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.
- (6) As soon as may be after the dedication of a footpath, bridleway or restricted byway in accordance with a public path creation agreement, the local authority who are party to that agreement shall give notice of the dedication by publication in at least one local newspaper circulating in the area which the land to which the agreement related is situated.

#### HIGHWAYS ACT 1980 Section 118: Extinguishment

Orders for the Extinguishment of Footpaths and Bridleways and Restricted Byways may be made under Section 118 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, on the grounds that:-

“the path or way is not needed for public use”

Members must be satisfied that it is expedient to extinguish the right of way, having regard to the extent (if any) to which it appears to them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way.

#### HIGHWAYS ACT 1980 Section 119: Diversion

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 Twyford Bridleway No.17 and to dedicate a linking bridleway, as shown on the attached plan.
- 3.2. It is proposed that the application for diversion of part of Twyford Bridleway No.17 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 this path should be diverted.
- 3.3. It is proposed that the dedication of a new bridleway to link the diverted route of Twyford Bridleway No.17 to Twyford Bridleway No.20 be accepted.

### **4. Applicant and Landowner:**

- 4.1. Mr Chris Chapman  
Hazeley Estate Ltd  
Hazeley Farm Lodge  
Hazeley Road  
Twyford  
Winchester  
Hants  
SO21 1QA

### **5. Description of the Routes (please refer to the map attached to this report):**

#### **5.1. Current Route of Bridleway**

The section of Twyford Bridleway No.17 affected by this proposal commences at Point A (SU 5033 2528) and proceeds in a generally north-westerly direction to Point B (SU 5010 2576).

The length of the affected route between Points A and B is approximately 528 metres. The recorded width for Twyford Bridleway No.17 is 8 feet (2.4 metres).

## 5.2 Proposed Route of Bridleway Diversion

The proposed route of the diversion of this bridleway follows an existing farm track from Point B (SU 5010 2576) in a generally south-westerly, then southerly direction, passed a historic war memorial at Point C, to a junction with Hazeley Road at Point D (SU 5003 2520).

The length of the proposed diversion B-C-D is approximately 635 metres and will have a width of 6.0 metres throughout.

## 5.3 Proposed Route of Bridleway to be Dedicated

The proposed route will continue in a southerly direction from Point E (SU 5004 2519) between fences to Point F, before following a headland path in a southerly direction to Point H (SU 5022 2442).

The length of the proposed new bridleway E-F-G-H is approximately 831 metres and will have a width of 6.0 metres throughout.

## 6. **Background to the Application:**

- 6.1. This path forms part of the Pilgrims' Trail long distance promoted route. The land use to either side of this route will soon be changing and the paddocks will be used to keep horses, including stallions, at various times. This will have an impact on the experience of bridleway users along this section, making it potentially difficult for equestrian users in particular.
- 6.2. Whilst it is acknowledged that this diversion would introduce a dog-leg into an otherwise straight path, a desire has been expressed by users of the Pilgrims' Trail to secure permanent public access to the war memorial at Point C. In addition to taking in this popular local landmark, Point D also provides a much safer road crossing for path users, with much better visibility than that available at Point A, especially for those on foot. The width of the proposed route would be 6.0 metres throughout – more than double that of the existing route.
- 6.3. In addition to the diverted route B-C-D, the landowner is proposing to include 831 metres of additional bridleway, taking path users south from Point E, running between fences to Point F and then along the headland of arable fields to Point H, also at a width of 6.0 metres throughout.
- 6.4. The existing route of the Pilgrims' Trail goes south from Point A along Mare Lane. Mare Lane is a narrow road with traffic often travelling at speed. A permissive route exists through sections of the strip of woodland that borders the western side of Mare Lane. This is enjoyed by pedestrians and mountain bikers, but is too narrow to be suitable for shared use as a public bridleway and has no legal protection. The route E-F-G-H would provide a valuable, permanent, off-road link in this popular promoted route for all bridleway users, linking also to the Monarch's Way at Point H.

- 6.5. There is currently one bridle gate between A and B on the existing route. The proposed route B-C-D will not have any gates on it, the bridleway being accommodated via 1.5 metre wide gaps next to the existing vehicular gates at C and D. Suitable bridle gates will be maintained at E, F, G and H.
- 6.6. An anomaly has arisen between the historically recorded route, A-B, and the currently used route, A-x-B, owing to the path having been moved on the ground at some point in the past, but no legal diversion ever being carried out. It is proposed to resolve this by way of a dedication to record the used route A-x-B, followed by an extinguishment of the disused recorded route A-B (no longer needed for public use) before processing the diversion proposed in this report. This will ensure that the correct line is diverted and prevent any possibility of public rights being inadvertently retained on the existing used route.

## **7. Compliance with our Diversions Criteria:**

- 7.1. The Rights of Way Office of Hampshire County Council has published Guidance Notes for landowners who are considering an application for diversion in order to ensure that the proposed route is no less convenient to use than the existing route and that the proposal does 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.
- 7.2. The diverted route B-C-D offers an improved experience in terms of views and general character, taking the path past the war memorial that is considered to be a valuable local landmark. The proposed route will benefit from a firm, level surface, a width of 6.0 metres throughout and will not have any gates, making it accessible by people of varying levels of ability.
- 7.3. The proposed dedication E-F-G-H offers attractive views, will benefit from a level grass surface and will have a width of 6.0 metres throughout. The necessary gates will be bridle gates of a suitable design, making the proposed route accessible by people of varying levels of ability.

## **8. Costs:**

- 8.1. The cost of advertising and the cost of the physical works required on the proposed route will be met by the applicant.
- 8.2. 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.
- 8.3. 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.

**9. Consultations with Other Bodies:**

- 9.1. Local Member – Councillor Mason  
Councillor Mason has been made aware of this proposal.
- 9.2. Winchester City Council  
Winchester City Council has been consulted on this proposal, but have made no comment.
- 9.3. Twyford Parish Council  
Twyford Parish Council has been consulted on this proposal. Having considered the matter at length and agreed some amendments to the original proposal (detailed below), it was agreed that Twyford Parish Council have no objection to this proposal.
- 9.4. South Downs National Park  
The South Downs National Park has been consulted on this proposal, but have made no comment.
- 9.5. HCC – 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.
- 9.6. HCC – Highways Management  
Highways Management has been consulted on this proposal but has made no comment.
- 9.7. HCC – Environment Department  
Environment Department has been consulted on this proposal, but has made no comment.
- 9.8. HCC – Crime & Disorder Risk Advisor  
The Crime and Disorder Risk Advisor has been consulted on this proposal and does not feel that this proposal will have any impact on the low level of reported crime in this area. In addition, the provision of an off-road link for vulnerable users is likely to improve road safety.
- 9.9. The Ramblers  
The Ramblers has been consulted on this proposal. Subject to a small change to the alignment originally proposed at D to E (detailed below), the Ramblers very much welcome this proposal, in particular the provision of a route to avoid Mare Lane, which they consider to be unattractive and sometimes dangerous for walkers.
- 9.10. The Open Spaces Society  
The Open Spaces Society has been consulted on this proposal. They do have some concerns about the dog-leg that this diversion would introduce between B and C, but do not object to the overall proposal.
- 9.11. National Farmers Union  
The National Farmers Union has been consulted on this proposal but has made no comment.

9.12. Cyclists Touring Club

The Cyclists Touring Club has been consulted on this proposal and welcomes it, particularly the provision of an off-road link avoiding this section of Mare Lane.

9.13. British Horse Society

The British Horse Society has been consulted on this proposal. Subject to a small change to the alignment originally proposed at D to E (detailed below), they strongly support the proposed diversion, owing to incidents of conflict between horse riders and vehicular traffic on both Hazeley Road and Mare Lane.

9.14. Local residents and path users

- 9.14.1. The resident of Hazeley Farm has raised concerns about the proximity of the proposed route to their property and being overlooked by users of the new bridleway.
- 9.14.2. Two representatives of mountain bike riders have objected to the permissive route alongside Mare Lane, y-z, being withdrawn as a result of this diversion. The character of this narrow winding route is particularly valuable to them.
- 9.14.3. One local resident has written in to object strongly to the moving of an ancient route such as the Pilgrim's Trail for the convenience of a local landowner.
- 9.14.4. One local horse rider has written in to support the proposal, following a recent incident at the current exit of Twyford 17 onto Hazeley Road. A safer road crossing, wider track, no barbed wire in close proximity, access to the war memorial and the new off road link avoiding Mare Lane are all cited as reasons that this proposal is supported.

**10. Comments on Consultation Replies:**

- 10.1. Of all the respondents to this consultation, most are either in support, or have no objection to it. The Ramblers, British Horse Society and Cyclists Touring Club have particularly welcomed this proposal as it provides a safe, off-road link for vulnerable users through this area.
- 10.2. Following concerns raised by the Ramblers, British Horse Society (BHS), Cyclists Touring Club (CTC) and Twyford Parish Council, the route originally proposed for the dedication E-F-G-H was amended to provide a direct link across Hazeley Road between Points D and E (this had been put forward as a staggered crossing). It was first proposed that this route should go east from Point F along the field boundary, and then south running parallel to Mare Lane to join Twyford Bridleway 20 at its junction with Mare Lane. However, path users were strongly of the opinion that this circuitous route around the fields was not acceptable to them and the change to the route now being proposed, going directly south from Point F, was agreed.

- 10.3. Local mountain bikers have expressed significant concern about the removal of the permissive route alongside Mare Lane, y-z, as a result of this diversion. This is a narrow, winding route through the trees and its character is of particular value to that group. In response to this, the landowner has agreed to retain this permissive route, leaving a gap to accommodate users when he fences the land to prevent fly-tipping.
- 10.4. The resident of Hazeley Farm has expressed concern about the proximity of the proposed route to their property. In response the applicant has agreed to plant additional hedging along the boundary from F to G to screen the path from that property, and to repair the fencing to ensure that dogs cannot gain access through this boundary.
- 10.5. A local resident has objected to the diversion of Pilgrim's Way owing to its status as an ancient path. This particular section of the Pilgrims Trail does not follow an ancient trail, but a more modern route that reflects the route thought to have been followed by pilgrims. There is nothing in the heritage of this particular path that suggests it should be treated differently to any other public right of way that is subject to an application for diversion. The relative merits of the proposal should be assessed against the legal tests required by section 119 of the Highways Act 1980 in the usual way.

## **11. Criteria for Assessment of the Proposal:**

- 11.1. 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.
- 11.2. 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 Point B remains the same and Point A is moved to Point D, which is on the same highway, being Hazeley Road.
- 11.3. 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:
  - 11.3.1. the diversion would have on public enjoyment of the path or way as a whole;
  - 11.3.2. the coming into operation of the order would have as respects other land served by the existing public right of way; and
  - 11.3.3. 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.

- 11.4. 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 accessible in that it will be stile-free, 6.0 metres wide and will have a level surface.

## **12. Conclusions:**

- 12.1. Officers are of the opinion that the proposed diversion of Twyford Bridleway No.17 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;
  - 12.1.1. the termination points are substantially as convenient to the public.
  - 12.1.2. the proposed route will not be substantially less convenient than the existing route and offers an improvement in terms of width, views and general character.
  - 12.1.3. it is unlikely that there will be any material increase in the cost to the County Council of maintaining the route at public expense.
- 12.2. Officers are also of the opinion that the dedication of the additional bridleway E-F-G-H should be accepted as it offers a valuable off-road link for non-motorised users linking the promoted routes known as Pilgrims Trail and Monarch's Way.
- 12.3. Officers are of the view that a dedication of the currently used route A-x-B and an extinguishment of the recorded route A-B is necessary prior to processing the recommendations contained in 12.1 and 12.2 above. This will ensure that the correct route is diverted and prevent any public rights being inadvertently retained on the existing line.

## **13. Recommendations:**

- 13.1. It is recommended that (as shown on the accompanying plan);
  - 13.1.1. the dedication of the used route A-x-B be accepted under s25 of the Highways Act 1980.
  - 13.1.2. an Order is made extinguishing the recorded route A-B as no longer needed for public use under s118 of the Highways Act 1980, owing to the dedication in 13.1.1 above.
  - 13.1.3. the dedication of the additional bridleway E-F-G-H be accepted under s25 of the Highways Act 1980, conditional upon the successful diversion in 13.1.4 below.
  - 13.1.4. an Order is made diverting Twyford Bridleway No.17 from A-x-B to B-C-D under s119 of the Highways Act 1980.

**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**

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) 5052\Twyford BW17 - Diversion
Proposal File	VB\Div\Twyford BW17\5052
Diversion Guidance	<a href="http://www3.hants.gov.uk/making-changes/diversions.htm">http://www3.hants.gov.uk/making-changes/diversions.htm</a>

### 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 6.0 metres wide with four accessible bridle gates and a level grass surface. As such it will be more accessible for people with a range of levels of ability, when compared to the existing definitive public route of the Pilgrims Way.	7.5, 12.4
Crime Prevention (under Section 17)	None	It is unlikely that this proposal will have any impact on recorded crime in this area.	
Environmental	Low	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.	