

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Regulatory Committee
Date of Decision:	12 September 2012
Title:	Application for a Public Path Diversion Order for part of Durley Footpath No.19
Reference:	4220
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 Durley Footpath No.19. The application has been made in the interests of the landowner to take the path away from the immediate vicinity of Broke Cottage for reasons of privacy and security, but also provides benefits for path users.
- 1.2. Officers recommend that it is expedient to divert this footpath 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 Durley Footpath No.19, as shown on the attached plan.
- 3.2. It is proposed that the application for diversion of part of Durley Footpath No.19 under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, be approved 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.

4. Applicant and Landowner:

- 4.1. Mrs Linda Ward
Broke Cottage
Durley Hall Lane
Durley
Southampton
SO32 2AN

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

5.1. Current Route of Footpath

The section of Durley Footpath No.19 affected by this proposal commences at Point A (SU 5174 1827) at Durley Hall Lane and proceeds in a generally south-westerly, then south-easterly direction, crossing a gate and three stiles to Point B (SU 5183 1808) at a junction with Durley Footpath No.17.

The length of this section A-B is approximately 262 metres. The recorded width for this part of Durley Footpath No.19 is 1.8 metres.

5.2 Proposed Route of Diversion

The proposed route for diversion of this section of Durley Footpath No.19 commences at Point C (SU 5167 1829) and proceeds in a generally southerly direction to Point D (SU 5162 1801) at a junction with Durley Footpath No.17.

The length of the proposed diversion between Points D and C is approximately 278 metres and will have a width of 2.0 metres throughout.

6. **Background to the Application:**

- 6.1. The landowner has applied for this diversion to take the path away from the immediate curtilage of Broke Cottage and enable the land to be used more effectively for the keeping of poultry.
- 6.2. The proposal would also provide benefits to path users, in that three existing stiles would be eliminated in favour of a kissing gate and possible conflict with vehicular traffic on the driveway going south from Point A would be removed.
- 6.3. There can be a perceived feeling of intrusion in following the existing path as it passes through the garden. In contrast, the proposed route passes through open countryside offering improved views and a generally more inviting experience.

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

- 7.1. The Countryside Access Team of Hampshire County Council has published Guidance Notes for landowners who are considering an application for diversion 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.
- 7.2. The diverted route C-D offers a much improved experience in terms of both general character and accessibility, as the three stiles that currently accommodate the path will be eliminated in favour of a kissing gate.

8. **Costs:**

- 8.1. 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.
- 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 P 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 has made no comment.
- 9.3. Durley Parish Council
Durley Parish Council has been consulted on this proposal and has no objection to it.
- 9.4. 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.
- 9.5. Hampshire County Council – Environment Department
Environment Department has been consulted on this proposal and has no objection to it.
- 9.6. Hampshire County Council – Crime & Disorder Risk Advisor
The Crime and Disorder Risk Advisor has been consulted on this proposal and does not consider that it will have any significant impact on reported crime and disorder in this area.
- 9.7. Hampshire County Council – Highways Department
Hampshire Highways has been consulted on this proposal and has advised regarding the necessary works affecting the highway verge at Point C.
- 9.8. The Ramblers
The Ramblers has been consulted on this proposal and expressed no objection to it during earlier informal consultations in 2009.
- 9.9. The Open Spaces Society
The Open Spaces Society has been consulted on this proposal and has no objection to it.
- 9.10. National Farmers Union
The National Farmers Union has been consulted on this proposal, but has made no comment.
- 9.11. Cyclists Touring Club
The Cyclists Touring Club has been consulted on this proposal, but has made no comment.
- 9.12. British Horse Society
The British Horse Society has been consulted on this proposal, but has made no comment.

10. Comments on Consultation Replies:

10.1. Of all of the respondents to this proposal, none has any objection to it.

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 the termination points are altered to a point further along the same connecting highways.

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 more accessible in that it will be stile-free, eliminating the three stiles that exist on the current route in favour of an accessible kissing gate.

12. Conclusions:

12.1. Officers are of the opinion that the proposed diversion of Durley Footpath No.19 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 will connect with the same highways.

- 12.1.2. the proposed route will not be substantially less convenient than the existing route and offers an improvement in terms of structures and general character.
- 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.

13. Recommendations:

- 13.1. It is recommended that an Order is made under section 119 of the Highways Act 1980 to divert part of Durley Footpath No.19, 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) 5036\Durley FP19 - Diversion
Proposal File	VB\Div\Durley FP19\5036
Diversion Guidance	http://www3.hants.gov.uk/making-changes/diversions.htm

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 accommodated by an accessible kissing gate, avoiding the three 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.	11.4
Crime Prevention (under Section 17)	None	It is unlikely that this proposal will have any impact on reported crime in this area.	9.6
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.	