

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 Footpath No.4 and dedication of linking footpaths in the Parish of Michelmersh
Reference:	4219
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 Michelmersh Footpath No.4 and dedicate additional footpath links to enable planning permission for a recycling facility to be carried out.
- 1.2. This paper seeks to provide members with the necessary information with which to determine the application. The proposed diversion is necessary to allow planning permission (10/02712/CMAS) to be carried out. Members are therefore requested to authorise the making of an Order under s257 of the Town & Country Planning Act 1990 for this diversion and to accept the dedication of the additional footpath link under s25 of the Highways Act 1980.

2. Legal Framework for the Decision:

Orders for the stopping up or diversion of footpaths, bridleways or restricted byways may be made under Section 257 of the Town & Country Planning Act 1990, in the following circumstances:-

- (1) ...a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out—
 - (a) in accordance with planning permission granted under Part III, or
 - (b) by a government department.
- (2) An order under this section may, if the competent authority are satisfied

that it should do so, provide—

- (a) for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing highway for such use;
 - (b) for authorising or requiring works to be carried out in relation to any footpath, bridleway or restricted byway for whose stopping up or diversion, creation or improvement provision is made by the order;
 - [(c) not included.]
 - (d) for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.
- (3) An order may be made under this section authorising the stopping up or diversion of a footpath, bridleway or restricted byway which is temporarily stopped up or diverted under any other enactment.
- (4) In this section ‘competent authority’ means –
- (a) in the case of development authorised by a planning permission, the local planning authority who granted the permission or, in the case of permission granted by the Secretary of State, who would have had power to grant it.
 - (b) in the case of development carried out by a government department, the local planning authority who would have had power to grant planning permission on an application in respect of the development in question if such an application had fallen to be made.

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.

3. Purpose of Report:

- 3.1. Hampshire County Council has received an application to divert part of Michelmersh Footpath No.4 and to accept the dedication of additional footpath links, as shown on the attached large scale plan.
- 3.2. It is proposed that the application for the diversion of part of Michelmersh Footpath No.4 under section 257 of the Town and Country Planning Act 1990 be approved, on the grounds that the diversion is necessary to carry out the development for which planning permission has been granted, and that it is expedient that the line of this path should be diverted.
- 3.3. It is further proposed that the dedication of the linking footpath be accepted under s25 of the Highways Act 1980.

4. Applicant and Landowner:

- 4.1. Ms N Salvidge and Mrs S D Trotter
c/o LMML
Roundhouse Cottages
Bridge Street
Frome
Somerset BA11 1BE

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

5.1. Current Route

The section of Michelmersh Footpath No.4 affected by this proposal commences at Point A (SU 3556 2449) and proceeds in a generally northerly direction to Point B (SU 3541 2496).

The length of Michelmersh Footpath No.4 between Points A and B is approximately 488 metres. The recorded width is 3.6 metres between 3556 2449 and 3546 2474.

5.2. Proposed Route

The proposed route of this section of Michelmersh Footpath No.4 commences at Point C (SU 3539 2443) at a point on Bunny Lane opposite Jinny Lane and proceeds in a generally north-easterly direction to Point F (SU 3577 2463), then in a generally northerly direction to Point J (SU 3561 2507), then in a generally south-westerly direction to Point B (SU 3541 2496) where it rejoins the ongoing route of Michelmersh Footpath No.4.

Two additional footpaths will also be dedicated. A footpath commencing at Point F and proceeding in a generally north-easterly direction to Point G, then in a north-westerly direction to Point H will provide an exit onto Bunny Lane at Point G (SU 3585 2470). A footpath commencing at Point J and proceeding in a generally northerly direction will provide a link to Rudd Lane at Point L (SU 3565 2526).

The length of Michelmersh Footpath No.4 between Points C-F-J-B is approximately 1175 metres, F-G-H is approximately 207 metres and J-L is approximately 194 metres. All routes will have a width of 2.5 metres throughout.

6. **Background to the Application:**

- 6.1. An application was made for planning permission (10/02712/CMAS) to retain and extend the recycling site, currently operating under temporary permission, which requires the diversion of part of Michelmersh Footpath No.4 that runs through the site. This matter was considered by Regulatory Committee on 27 July 2011 and permission was refused. An appeal was made and permission was subsequently granted by the Inspector. The diversion of Michelmersh Footpath No.4 remains a condition of this planning permission.
- 6.2. Consultation with the Ramblers and Open Spaces Society has shown that walkers predominantly access this path via Jinny Lane to the south and this currently involves using a section of Bunny Lane. This road carries heavy traffic and does not have any verge or footway alongside to allow a refuge for walkers. The proposed route runs around the edge of the application site and includes an off-road path alongside Bunny Lane, from Jinny Lane all the way to the eastern boundary of the site.
- 6.3. This diversion does involve a significantly longer route to travel from A to B. However, a link is also provided from Point J, through woodland to exit onto Rudd Lane at Point L, providing a circular route for walkers coming from the north. Rudd Lane is a narrow lane, but is significantly quieter than Bunny Lane so there are fewer safety concerns here.
- 6.4. The proposed routes will be 2.5 metres wide throughout, will be bounded by hedges between C and F and offer attractive views to the east between G and L over Casbrook Stream, which is a Site of Importance for Nature Conservation (SINC). Large-mobility kissing gates will be installed at Points E, G and L, and a staggered barrier at Point D. A Specification of Works is attached at Appendix 1.

7. Costs:

- 7.1. The cost of advertising the Diversion Order, the administrative costs up to the point at which a contested Order 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.
- 7.2. 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.
- 7.3. 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 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.

8. Consultations:

- 8.1. Extensive consultations were carried out as part of the planning application process and included details of this proposed diversion. Details of this consultation can be found in the report considered by Regulatory Committee on 27 July 2011 (see Appendix 2).
- 8.2. Whilst there were objections to the proposed development during the original consultation, there have been no objections to this diversion, which has received support from both the Ramblers and the Open Spaces Society.

9. Criteria for Assessment of the Proposal

- 9.1. Section 257(1) of the Town & Country Planning Act 1990 states that;

“...a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out—

a) in accordance with planning permission granted under Part III, or
b) by a government department ”

Planning permission was granted for this development by an Inspector on behalf of the Secretary of State on 12 July 2012, appeal reference APP/Q1770/A/11/2161324.
- 9.2. 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 Equalities Act 2010. Officers confirm that the requirements of those with limited mobility have been taken into account when developing this proposal and the kissing

gates on the proposed route will be to an accessible specification.

10. Conclusions:

Officers are of the opinion that the proposed diversion satisfies the criteria required by section 257 of the Town & Country Planning Act 1990 and that it is necessary for the County Council to make the order in that:

- 10.1. The proposed diversion is necessary to enable development to be carried out in accordance with planning permission that has been granted.
- 10.2. In general the proposed routes offer a more attractive rural experience and provide a safe off-road link along Bunny Lane.

11. Recommendations:

- 11.1. That an Order is made under s257 of the Town and Country Planning Act 1980 diverting part of Michelmersh Footpath No.4 from A-B to C-F-J-B, as shown on the accompanying plan.
- 11.2. That the dedication of a new public footpath F-G-H be accepted under s 25 of the Highways Act 1980.
- 11.3. That the dedication of a new public footpath J-L be accepted under s 25 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"/>

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) 5048\Michelmersh FP4 – Diversion
Proposal File	VB\Div\Michelmersh FP4

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	Kissing gates installed at Points E, G and L will be large-mobility gates to ensure that these paths are accessible to those with a wide range of mobility levels.	6.4, 10.2
Crime Prevention (under Section 17)	None	The proposal is unlikely to have any impact on crime and disorder in this area.	
Environmental	None	The proposal is unlikely to have any significant environmental impacts.	