

**HAMPSHIRE COUNTY COUNCIL**

**Decision Report**

<b>Decision Maker:</b>	Regulatory Committee
<b>Date of Decision:</b>	21 November 2012
<b>Title:</b>	Application for a Public Path Diversion Order for part of Fair Oak Footpath No.28a
<b>Reference:</b>	4428
<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 Fair Oak Footpath No.28a. The application has been made in the interests of the landowner to take the path away from the immediate vicinity of Pear Tree Farm House (formerly known as Hick's Bungalow) 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 Fair Oak Footpath No.28a, as shown on the attached plan.
- 3.2. It is proposed that the application for diversion of part of Fair Oak Footpath No.28a 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. Mr & Mrs Burke  
Vicarage Farm House  
Winchester Road  
Fair Oak  
Eastleigh  
Hants  
SO50 7HD

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

#### **5.1. Current Route**

The section of Fair Oak and Horton Heath Footpath No.28a affected by this proposal commences at a pedestrian gate at Point A (SU 4895 2011) on the driveway to Pear Tree Farm House (formerly known as Hick's Bungalow) and proceeds in a westerly direction through the garden of that property to Point B (SU 4888 2012), then in a southerly direction between trees to Point C (SU 4888 2008).

The length of the section A-B-C is approximately 105 metres. There is no recorded width for Fair Oak and Horton Heath Footpath No.28a.

5.2 Proposed Route of Diversion

The proposed route for this diversion commences at Point A (SU 4895 2011) on the driveway to Pear Tree Farm House (formerly known as Hick's Bungalow) and proceeds in a generally south-westerly direction along a gravel path to Point C (SU 4888 2008).

The length of the section A-C is approximately 78 metres and will have a recorded width of 2.5 metres throughout.

**6. Background to the Application:**

- 6.1. The landowner has applied for this diversion to take the path away from the immediate vicinity of Pear Tree Farm House (formerly known as Hick's Bungalow) for reasons of privacy and security. The property has been redeveloped and the existing route passes through the garden, approximately 6.0 metres from the new house.
- 6.2. The diversion will also provide benefits for path users in that it is a more direct route between Points A and C. There will be no structures and the route will benefit from an all-weather gravel surface and a recorded width of 2.5 metres.

**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 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. The diverted route A-C is more direct, will benefit from a gravel surface and will be free of structures.

**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. Formal Consultations:**

- 9.1. Local Member – Councillor A Roling  
Councillor Roling has been made aware of this proposal.
- 9.2. Eastleigh Borough City Council  
Eastleigh Borough Council has been consulted on this proposal, but has made no comment.
- 9.3. Fair Oak & Horton Heath Parish Council  
Fair Oak and Horton Heath Parish Council has been consulted on this proposal, but has made no comment.
- 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 no objection to it.
- 9.8. The Ramblers  
The Ramblers has been consulted on this proposal and has no objection to it.
- 9.9. The Open Spaces Society  
The Open Spaces Society has been consulted on this proposal, but has made no comment.
- 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. No objections have been made in response to this consultation.

**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 not altered.
- 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 structure-free and will benefit from a gravel surface.

**12. Conclusions:**

- 12.1. Officers are of the opinion that the proposed diversion of Fair Oak Footpath No.28a 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 not be altered.

- 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 surfacing.
- 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 Fair Oak Footpath No.28a, as shown on the accompanying plan.

**CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:**

<b>Links to the Corporate Strategy</b>		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"/>
<b>OR</b>			
<b>This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because:</b>			

<b>Section 100 D - Local Government Act 1972 - background documents</b>	
<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) 5042\Fair Oak FP28a - Diversion
Proposal File	VB\Div\Fair Oak FP28a\5042
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 have no structures and a level compact surface. 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.	
Environmental	None		