HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date of Decision:	21 November 2012
Title:	Application for a Public Path Diversion Order for part of Over Wallop Footpath No.8
Reference:	4427
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 Over Wallop Footpath No.8. The application has been made in the interests of the landowner to remove the path from crossing the garden immediately to the rear of Poole 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 Over Wallop Footpath No.8, as shown on the attached plan.

3.2. It is proposed that the application for diversion of part of Over Wallop Footpath No.8 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 Henshaw
Poole Cottage
Over Wallop
Stockbridge
Hampshire
SO20 8HZ

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

5.1. <u>Current Route</u>

The section of Over Wallop Footpath No.8 affected by this proposal commences at Point A (SU 2896 3817) at Poole Cottage and proceeds in a north-westerly, then north-easterly direction through the garden to a gate at Point B (SU 2896 3824).

The length of the section A-B is approximately 73 metres. The recorded width for this section of Over Wallop Footpath No.8 is 1.8 metres.

5.2 Proposed Route of Diversion

The proposed route of this diversion proceeds in a generally north-easterly direction from Point A (SU 2896 3817) along a grass track to Point C (SU 2898 3827) at a junction with Over Wallop Footpath Nos. 5 and 9.

The length of the proposed route A-C is approximately 62 metres and will have a width of 2.5 metres, with a pinch point of 1.5 metres as the route passes behind the existing garage just north of Point A.

6. Background to the Application:

6.1. The landowner has applied for this diversion to avoid the route of the path running through the garden immediately to the rear of Poole Cottage. Whilst the proposed route still passes close to the dwelling, it would enable the landowner to enclose the majority of the garden for domestic purposes.

6.2. The proposed diversion also provides benefits for path users in that there will be no gates or other structures on the proposed route, the width will be increased to 2.5 metres (with one pinch point) and the route will make a more direct connection with the ongoing route of Over Wallop Footpath No.9 at Point C.

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 firm earth surface with improved width, 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 Gibson
Councillor Gibson has been made aware of this proposal.

9.2. Test Valley Borough City Council
Test Valley Borough Council has been consulted on this proposal, but has made no comment.

9.3. Over Wallop Parish Council
Over Wallop Parish Council has been consulted on this proposal, but has made no comment.

9.4. Nether Wallop Parish Council
Nether Wallop Parish Council has been consulted on this proposal and has no objection to it.

9.5. Area Countryside Access Manager
The Area Countryside Access Manager has been consulted on this proposal and has agreed the works that will be required to bring the proposed route up to a condition suitable for use by the public.

9.6. Hampshire County Council – Environment Department
Environment Department has been consulted on this proposal and has no objection to it.

9.7. 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 impact on reported crime and disorder in this area.

9.8. The Ramblers
The Ramblers has been consulted on this proposal and has no objection to it, being pleased with the increased width and the absence of any structures on the proposed route.

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. 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 at Point A is not changed, and Point B is moved to Point C, which connects to the same public footpath.

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 an improved width.

12. Conclusions:

12.1. Officers are of the opinion that the proposed diversion of Over Wallop Footpath No.8 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 be altered to a point on the same highway.

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 width.

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 Over Wallop Footpath No.8, as shown on the accompanying plan.

Integral Appendix A

CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:

Links to the Corporate Strategy

	Yes	No
Hampshire safer and more secure for all	☑	☐
Maximising well-being	☑	☐
Enhancing our quality of place	☑	☐

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.)

Document	Location
General Correspondence	HantsFile\CCRA\Countryside\Countryside HQ\Countryside Orders\Public Path Order (PPO) 5042\Over Wallop FP8 - Diversion
Proposal File	VB\Div\Over Wallop FP8\5054
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 have no structures and an improved width. 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		