

**HAMPSHIRE COUNTY COUNCIL**

**Decision Report**

<b>Decision Maker:</b>	Regulatory Committee
<b>Date of Decision:</b>	24 April 2013
<b>Title:</b>	Application for a Public Path Diversion Order for part of Greatham Footpath No.1
<b>Reference:</b>	4727
<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 Greatham Footpath No.1. The application has been made in the interests of the landowner to take the path away from the immediate vicinity of the historic hopkiln, for which planning permission has been granted for conversion into a private dwelling. The proposal also provides benefits to path users owing to the attractive distant views available from the proposed route.
- 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 Greatham Footpath No.1, as shown on the attached plan.
- 3.2. It is proposed that the application for diversion of Greatham Footpath No.1 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 W Wolmer  
Blackmoor Estate  
Blackmoor  
Liss  
Hampshire  
GU33 6BS

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

#### **5.1. Current Route of Footpath**

The section of Greatham Footpath No.1 affected by this proposal commences at Point A (SU 7660 3208) at the parish boundary and proceeds in a generally south-westerly direction to Point B (SU 7634 3156).

The length of the section A-B is approximately 686 metres. The recorded width for this section of Greatham Footpath No.1 is 10 feet (3 metres) between Point B and the disused hopkiln, and 2.0 metres to the north.

## 5.2 Proposed Route of Diversion

The proposed route of Greatham Footpath No.1 commences at Point C (SU 7653 3207) at a junction with Selborne Footpath No.34 and proceeds in a generally south-westerly direction to Point B (SU 7634 3156).

The length of the section C-B is approximately 568 metres and will have a width of 3.0 metres throughout, set within a 6.0 metre strip that will be separated by stock fencing from a new conservation grassland to the east.

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

- 6.1. The landowner has applied for this diversion to take the route of the footpath away from the immediate vicinity of the historic hopkiln, for which planning permission has been granted for conversion into a domestic dwelling (planning refs 37470/001 and SDNP/12/02327/TIME).
- 6.2. This diversion will also keep the footpath outside of the planted apple orchard area. This will reduce the risk of footpath users encountering hazardous farm machinery and avoid the damage that can be caused when deer get into the orchard through gates that have been left open on the footpath.
- 6.3. The diversion provides benefits to path users in that the proposed route runs along higher ground, offering attractive distant views to the east and a firm well-drained surface. The existing route runs on low ground, giving a more secluded character to the path and wetter surface conditions owing to the local geography.

## 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 B-C offers an improved experience in terms of the attractive distant views across the South Downs National Park area and the general character of the path. The proposed route will be on higher, well-drained ground and accessibility will also be improved with two gates on the existing path being eliminated in favour of open access on the proposed route.

## 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 Kemp-Gee  
Councillor Kemp-Gee has been made aware of this proposal.
- 9.2. East Hampshire District Council  
East Hampshire District Council has been consulted on this proposal and has no objection to it.
- 9.3. Greatham Parish Council  
Greatham Parish Council has been consulted on this proposal and has no objection to it. A concern was raised regarding the difficulty of using the steep gradient on Selborne Footpath No.34 between Points A and C. A further concern was raised that once the hopkiln has been converted into a domestic dwelling, the new owners might erect some kind of screening that may impact on the views enjoyed from the new route.
- 9.4. Selborne Parish Council  
Selborne Parish Council has been consulted on this proposal and has no objection to it.
- 9.5. Hawkley Parish Council  
Hawkley Parish Council has been consulted on this proposal and has no objection to it, commenting that it will be a definite improvement once the new route has been fully cleared for use.
- 9.6. South Downs National Park  
The South Downs National Park has been consulted on this proposal and is in support of it, commenting that the proposed route offers an enhanced experience compared to the existing route, offering extensive views of the area and a better surface.
- 9.7. The Ramblers  
The Ramblers has been consulted on this proposal and is in support of it, commenting that the views from the proposed route are outstanding and that, being on higher ground, the surface is much drier than the existing route, which borders a stream/ditch to the north of the hopkiln. A concern was raised regarding the difficulty of using the steep gradient on Selborne Footpath No.34 between Points A and C.

- 9.8. The Open Spaces Society  
The Open Spaces Society has been consulted on this proposal and has no objection to it. A concern was raised regarding the difficulty of using the steep gradient on Selborne Footpath No.34 between Points A and C, and that the fencing to the east of the path should not be deer fencing.
- 9.9. National Farmers Union  
The National Farmers Union has been consulted on this proposal, but has made no comment.
- 9.10. Cyclists Touring Club  
The Cyclists Touring Club has been consulted on this proposal, but has made no comment.
- 9.11. British Horse Society  
The British Horse Society has been consulted on this proposal, but has made no comment.
- 9.12. The Trails Trust (South Central)  
The Trails Trust (South Central) has been consulted on this proposal, but has made no comment.
- 9.13. Hampshire County Council - 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.
- 9.14. Hampshire County Council – Countryside Officer  
The Countryside Officer has been consulted on this proposal. The adjacent wooded Hangars are recorded as a Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC) and Site of Interest for Nature Conservation (SINC), but it is not considered that this proposal will have any significant impact on the protected features.
- 9.15. 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.
- 9.16. Local Residents  
Two local residents responded to this consultation, raising concerns mainly about the steep gradient on Selborne Footpath No.34 between Points A and C. There was also some concern that once the hopkiln has been converted into a domestic dwelling, the new owners might erect some kind of screening that may impact on the views enjoyed from the new route.

## **10. Comments on Consultation Replies:**

- 10.1. Of all of the respondents to this proposal all are either in support or have no objection to it.

- 10.2. The route of Selborne Footpath No.34 from Point A to Point C on the attached plan passes up a steep gradient, which can become muddy and difficult to use, particularly in wet weather. Whilst this does not form part of the diversion route itself, several consultees raised concerns about the difficulty of using this steep path to connect with Greatham Footpath No.2 to the south-east of Point A. In response to this it has been agreed that steps and a handrail will be installed to make this short section of path easier to use.
- 10.3. The Open Spaces Society also raised a concern about the intended fencing along the eastern boundary of the proposed route, in particular that this should not be high deer-fencing, as is used elsewhere on the Blackmoor Estate, that would obstruct the views. It is intended that the field to the east of the proposed route will be planted as a conservation meadow and as such fencing is needed to keep out dogs in particular that would cause disturbance to ground nesting birds and other wildlife. However, a low stock fence is sufficient for this purpose and it is not intended to erect any deer fencing here, which is only used to protect areas where commercial fruit trees are grown.
- 10.4. Some consultees were concerned that, once the hopkiln has been converted into a domestic dwelling, the new owners might erect some kind of screening that may impact on the views enjoyed from the new route. However, planning restrictions will prevent any significant screening from being erected and as such will protect the attractive views.

## **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 B is not altered, and the termination at Point A is diverted to Point C and 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 free of any structures, compared to the two gates that exist on the current route.

## **12. Conclusions:**

- 12.1. Officers are of the opinion that the proposed diversion of part of Greatham Footpath No.1 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 southern termination point is not altered and the northern termination point will connect with the same public footpath.
  - 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 Greatham Footpath No.1, 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>	
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) 5042\Greatham FP1 – Diversion
Proposal File	VB\Div\Greatham FP1\5037
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 entirely free of structures, avoiding the two gates 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.	9.15
Environmental	Low	The adjacent wooded Hangars are recorded as a Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC) and Site of Interest for Nature Conservation (SINC), but it is not considered that this proposal will have any significant impact on the protected features.	9.14