

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Regulatory Committee
Date of Decision:	20 November 2013
Title:	Application for a Public Path Diversion Order for part of Bridleways 15, 16, 17, 18, 20a, 20b & 26 and part of Footpath 47, and for the Dedication of Public Bridleway Rights in the parish of Yateley
Reference:	5361
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 a proposal to divert parts of Yateley Bridleways 15, 16, 17, 18, 20a, 20b & 26, and part of Footpath 47, and to create a new Bridleway connecting with Bridleway 504 at Yateley Common Country Park. The changes are proposed to bring these public rights of way onto routes that either are already in use or can be easily created and maintained on the ground. The proposal will also serve to reduce the number of points at which Vigo Lane is crossed from six to three, providing safer crossing points with better visibility for both path users and vehicular traffic.
- 1.2. This paper seeks to provide members with the necessary information with which to determine the application.
- 1.3. Officers recommend that it is expedient to divert these routes as described in the interests of the landowner. The proposed alignments will be no less convenient or enjoyable than the current routes, and members are therefore requested to authorise the making of an Order under s119 of the Highways Act 1980 for these diversions, and the making of an Order under s25 of the Highways Act 1980 for the creation.

2. Legal Framework for the Decision:**2.1. Highways Act 1980, section 119**

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.

2.2. Highways Act 1980, section 25

Orders for the creation of a footpath or bridleway by agreement may be made under Section 25 of the Highways Act 1980 as follows:-

a) 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 or bridleway over land in their area. An agreement under this section is referred to in this Act as a "public path creation agreement".

b) For the purposes of this section "local authority" in relation to land outside Greater London means a county council or a district council.

c) 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.

d) 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 subject to limitations or conditions affecting the public right of way over it.

e) Where a public path creation agreement has been made it shall be the duty of the local authority, who is a party to it, to take all necessary steps for securing that the footpath or bridleway is dedicated in accordance with it.

2.3. Highways Act 1980, section 118

Orders for the extinguishment of a footpath or bridleway may be made under section 118 of the Highways Act 1980 as follows:-

“Where it appears to a council as respects a footpath or bridleway in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.

An order under this section is referred to in this Act as a public path extinguishment order’.”

3. Purpose of Report:

- 3.1. Hampshire County Council is proposing to divert parts of Yateley Bridleways 15, 16, 17, 18, 20a, 20b, 26 and part of Footpath 47 at Yateley Common Country Park, and to create a new bridleway connecting with Bridleway 504 as shown on the attached large scale plan.
- 3.2. It is proposed that the application be approved under section 119 of the Highways Act 1980 as amended by the Wildlife and Countryside Act 1981, and under section 25 of the same Act, on the grounds that it is in the interests of the landowner and that it is expedient that the line of these paths should be diverted as detailed in this report.

4. Landowner:

- 4.1. Hampshire County Council
The Castle
High Street
Winchester
Hampshire
SO23 8ZF

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

- 5.1. The majority of the currently recorded routes do not physically exist on the ground, and have not done so for a significant period of time.
- 5.2. The majority of the proposed routes do already physically exist on the ground, although some sections will need to be physically created to make more direct connections, and to enable the reduced number of road crossings to be on straighter sections of Vigo Lane; the better visibility will enable safer crossing of the road.
- 5.3. The southern end of Footpath No.47 used to go around a building between Bb-Cc. This building no longer exists and so it is proposed to divert the route to make a straight connection from Bb-Dd.

- 5.4. The proposed routes will all have a width of 3 metres.
The total length of the affected sections of Bridleway is 3407 metres.
The total length of Bridleways, if diverted as proposed, would be 3418 metres.
The total length of the affected section of Footpath 47 is 90 metres.
The total length of Footpath 47, if diverted as proposed would be 51 metres.

6. Background to the Application:

- 6.1. These changes have been proposed in order to bring the recorded routes of various public rights of way on Yateley Common onto the routes that are either in use on the ground, or which would be easy to create and maintain, and which will provide safe, useful links to other existing paths.
- 6.2. The majority of the area affected by this proposal is designated as a Site of Special Scientific Interest (SSSI) or Site of Importance for Nature Conservation (SINC). Maintaining the proposed routes will have less impact on this sensitive landscape than maintaining some of the currently recorded routes.
- 6.3. Another significant public benefit will be to improve the crossing points on Vigo Lane; this is a busy road that is heavily used by lorries and HGVs. The road is currently crossed six times by the recorded bridleways, most of these crossings being on dangerous bends with poor visibility. The proposed diversions would reduce the number of crossings to three, all of which will be on straighter sections with much better visibility and will enable safer crossing.
- 6.4. It is proposed to divert part of Yateley Footpath No.47 at the southern end from Bb-Cc to Bb-Dd. This will provide a more logical junction with the A30. The currently recorded route circumvented a building that is no longer in existence, so it is now possible for the path to take a more natural line to its termination point.
- 6.5. Currently there are three points where rights of way join the A30 London Road; these are at points Cc, X and V. This is a busy road, and it is proposed to reduce the number of rights of way junctions with it to one, at point Dd which is at the westernmost end of the boundary between the A30 and this area of the Common. The proposed bridleway junction with Vigo Lane at point Z will offer a safer option than the existing junctions with the A30.
- 6.6. It has so far proved impossible to gain a response from the organisation that owns the land crossed by the section of Bridleway 504 that runs north from point O. Once the changes to the rights of way proposed in this package are complete, the intention is to extinguish that section of Bridleway 504 north from Point O. Such an extinguishment can be achieved by making an Order under section 118 of the Highways Act 1980.

7. Consultations with Other Bodies:

7.1. Local Member – Councillor Simpson

Councillor Simpson has been consulted on this proposal, and has made no comment to date as he sits on the Regulatory Committee.

7.2. Local Member – Councillor Collett

Councillor Collett has been consulted on this proposal, and has no objections. Cllr Collett is happy to support the proposal, subject to any issues which may be raised by other consultees and any members of the public who might be more familiar with the implications of the proposed changes.

7.3. Hart District Council

Hart District Council has been consulted on this proposal, and has made no comment.

7.4. Hart District Councillors Billings, Murr, Bailey and Cockerill

Hart District Councillors Billings, Murr, Bailey and Cockerill have been consulted on this proposal, and have made no comment.

7.5. Yateley Town Council

Yateley Town Council has been consulted on this proposal, and has made no comment.

7.6. Hampshire County Council – Highways Management

Highways Management has been consulted on this proposal and has no objection to it.

7.7. Natural England

Natural England has been consulted on this proposal, and has made no comment.

7.8. The Ramblers

The Ramblers have been consulted on this proposal and have submitted comments.

7.9. The Open Spaces Society

The Open Spaces Society has been consulted on this proposal, and has made no comment.

7.10. National Farmers Union

The National Farmers Union has been consulted on this proposal, and has made no comment.

7.11. Cyclists Touring Club

The Cyclists Touring Club has been consulted on this proposal, and has made no comment.

7.12. British Horse Society

The British Horse Society has been consulted on this proposal and initially objected to it. Some points of objection have now been resolved, others are still under discussion.

7.13. The Yateley Society

The Yateley Society has been consulted on this proposal, and has made no comment.

7.14. Holders of Common Rights

The holders of Common Rights have been consulted on this proposal, and none have objected to the proposal.

7.15. Yateley Common Management Committee

Yateley Common Management Committee has been consulted on this proposal and supports it with the exception of the diversion of Bridleway 16 between points Aa and V, which the Committee suggests should be retained for its heritage value as it forms part of the Welsh Drive.

7.16. Local Residents

Two local horse riders have submitted comments regarding the proposal.

8. Consultation Replies:

8.1. The following comments have been made:

- 8.1.1. The proposed new bridleway section L-M should be removed as the access from Vigo Lane at point M is difficult for horse-riders.
- 8.1.2. Point M should connect with the eastern end of the section of bridleway immediately to its north in order to provide a contiguous off-road route.
- 8.1.3. Bridleway access at point M would require the removal of an earth bund which is required to prevent illegal access to the Common.
- 8.1.4. The proposed new section of bridleway between points N-O will need extensive clearance and levelling. The sections of Bridleway 504 left to the north of point O and to the east of Point Q will show on the definitive map as two dead legs which will be an anomaly.
- 8.1.5. That part of Bridleway 26 that runs north-west from point R to Vigo Lane should remain on its current line and not be diverted to R-S.
- 8.1.6. The proposed new route P-T should be moved northwards and run closer to and parallel with Vigo Lane.
- 8.1.7. Additional links and circular routes should be created, including an additional crossing of Cricket Hill Lane.
- 8.1.8. Vegetation should be adequately cleared from the proposed routes to give sufficient width and height for horse riders, especially at road crossings.
- 8.1.9. The tarmac surface on section W-Y should be removed as tarmac can be slippery and is not ideal for horse-riding.

- 8.1.10. The routes that are currently recorded on the definitive map and statement should be cleared and maintained by Hampshire County Council, not diverted. The proposed routes should be provided in addition to the existing ones – not instead of. For example, there is no need to extinguish part of Bridleway 18 east of Cricket Hill Lane between points D-E.
- 8.1.11. Additional changes are needed in this area, including on neighbouring land, and have not been included in this package of proposals.
- 8.1.12. Yateley Common is covered by section 193 and as such the right to air and exercise already exists across the common.

9. Comments on Consultation Replies:

- 9.1. The currently recorded routes have, over the years, fallen out of use and this has resulted in parts of them becoming overgrown to a point where they are now impassable. The routes that have been favoured for use by the public have remained open with minimal maintenance as regular footfall has helped to keep encroaching vegetation at bay. It is not feasible to maintain and keep clear of vegetation both the recorded and used routes as this would have an unacceptable impact on this sensitive landscape. For these reasons it is now sought to bring the recorded routes into line with the used routes as these will have a lower impact in terms of maintenance and will also provide safer crossing points across Vigo Lane. The proposed routes will be fully cleared to the appropriate height and width should this proposal prove successful.
- 9.2. In response to comments received during this consultation clarification is being obtained on the exact position of land and highway boundaries at point M. It will be possible to provide an off-road connection between point M and the eastern end of the unaffected section of Bridleway 26, which is marked in green on the plan. That connection may be physically implemented via the existing verge or layby, as represented on the map accompanying this report. It may be possible to connect the bridleways without using any highway land, in which case the accompanying map would show point M relocated to the eastern end of the unaffected section of Bridleway 26. The earth bund at point M will allow access for walkers, cyclists and horse riders but will remain a barrier to unauthorised vehicular access.
- 9.3. The proposed new section of bridleway between points N-O will provide an off-road option, leading to a safer crossing point of Vigo Lane, for those users accessing the network of rights of way from the road network at point N. Currently this access point is served by Bridleway 15 which is being diverted in order to avoid difficult road crossings.
- 9.4. Additional changes have been proposed to resolve problems on neighbouring land, particularly at Blackbushe Airport. It has not so far been possible to gain agreement from neighbouring landowners to the additional changes put forward. As such, this proposal contains only those changes that are contained on land owned by Hampshire County Council. Should it be possible to gain agreement to other nearby changes in the future, then a separate diversion package can be processed.

- 9.5. In response to comments received during this consultation the proposed route between W and Y has been moved from a concrete track onto a nearby unsurfaced route through woodland. The new proposed route currently exists as a narrow walking route, but will be cleared to a sufficient width and height for use as a public bridleway.
- 9.6. Yateley Common is covered by section 193 of the Law of Property Act 1925 which grants a general right of access to the public on foot and on horseback for the purposes of air and exercise. The linear public rights of way that cross the same land provide a separate 'layer' of public access along those linear routes. The proposed diversion of the public rights of way will in no way affect the underlying right of access granted by s193, but will alter the linear routes that the County Council has a duty to maintain.

10. Compliance with our Diversions Criteria:

- 10.1. The Countryside Access Team at Hampshire County Council has published Guidance Notes for landowners who are considering an application for diversion (<http://www3.hants.gov.uk/making-changes/diversions>), 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.
- 10.2. The diverted routes will be easier to maintain on the ground and will benefit from recorded widths of 3 metres. The changes to the road crossings will benefit from improved visibility making them safer for all.

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 or of both the landowner and the public. Officers are of the view that it would be expedient to implement the proposed changes to the rights of way, and that the changes would be in the interests of both the landowner and 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 is substantially as convenient to the public as the existing termination point. In this proposal all termination points connect with either the same, or a nearby highway.
- 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 25 of the Highways Act 1980 gives the County Council, as the Highway Authority, the power to enter into an agreement with any person with the necessary power to dedicate a footpath or bridleway over land, and to take all the required actions to ensure that the footpath or bridleway is dedicated in accordance with that agreement.
- 11.5. 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 routes, which will be at least as accessible as the existing routes.

12. Conclusions:

- 12.1. Officers are of the opinion that the proposed diversion of parts of Yateley Bridleways 15, 16, 17, 18, 20a, 20b, 26 and part of Footpath 47 at Yateley Common Country Park 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 proposed changes are in the interests of both the landowner and the public.
 - 12.1.2. The termination points will still connect with the same or nearby highways.
 - 12.1.3. The proposed routes will not be substantially less convenient than the existing routes, being comparable in terms of views and general character.
 - 12.1.4. It is unlikely that there will be any material increase in the cost to the County Council of maintaining the routes at public expense.
- 12.2. Officers are also of the opinion that it will be expedient for the County Council to alter the termination point of Yateley Footpath 504 by means of the proposed path creation agreement and subsequent part extinguishment.

13. Recommendations:

- 13.1. That an Order is made diverting parts of Yateley Bridleways 15, 16, 17, 18, 20a, 20b, 26 and part of Footpath 47 at Yateley Common Country Park, as shown on the accompanying plan.
- 13.2. That the County Council dedicates a public bridleway by means of a public path creation agreement between points N-O as shown on the accompanying plan.
- 13.3. That following confirmation of the diversion Order and completion of the public bridleway dedication referred to above, an Order is made to extinguish part of Yateley Bridleway 504.

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) 5047\Yateley Common - Diversion
Proposal File	VB\Div\Yateley\5047

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 routes will be at least as accessible as the existing routes, having improved visibility at the road crossings.	11.5
Crime Prevention (under Section 17)	None	The proposed changes are unlikely to have any impact on crime and disorder in the area.	
Environmental	Low	The majority of the area affected by this proposal is designated as a Site of Special Scientific Interest (SSSI) or Site of Importance for Nature Conservation (SINC). Maintaining the proposed routes will have less impact on this sensitive landscape than some of the currently recorded routes.	6.2