

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date of Decision:	8 January 2014
Title:	Application for a Public Path Diversion Order for part of Footpath No.23 in the Parish of Ellingham, Harbridge and Ibsley
Reference:	5476
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 Ellingham, Harbridge and Ibsley Footpath No.23 to enable planning permission for mineral extraction 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 (ref 08/91952) to be carried out. Members are therefore requested to authorise the making of an Order under section 257 of the Town & Country Planning Act 1990 for this diversion.

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.

3. Purpose of Report:

- 3.1. Hampshire County Council has received an application to divert part of Ellingham, Harbridge and Ibsley Footpath No.23 as shown on the attached large scale plan.
- 3.2. It is proposed that the application for the diversion of part of Ellingham, Harbridge and Ibsley Footpath No.23 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.

4. Applicant and Landowner:

- 4.1. Lafarge Tarmac Trading Limited
Portland House
Bickenhill Lane
Sollihull
Birmingham, B37 7BQ

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

5.1. Current Route

The affected section of Ellingham, Harbridge and Ibsley Footpath No.23 commences at Point A (SU 1200 1047) and proceeds in a generally south-easterly direction to Point B (SU 1256 0933) at a junction with Ellingham, Harbridge and Ibsley Footpath No.38.

A total length of approximately 1389 metres and a recorded width of 12 feet.

5.2. Proposed Route

The proposed route commences at Point A (SU 1200 1047) and proceeds in a westerly, then southerly direction to Point C (SU 1236 0933), at a junction with Ellingham, Harbridge and Ibsley Footpath No.38.

A total length of approximately 1470 metres and a width of 3.5 metres or more throughout.

6. Background to the Application:

- 6.1. This diversion has been requested under the provisions of the Town and Country Planning Act 1990 to enable planning permission for mineral extraction to be carried out (ref 08/91952).
- 6.2. The existing route of Footpath No.23 runs through an area that will be subject to mineral extraction in the early stages of this development, so it is necessary to divert the path onto the proposed route to enable this to happen.
- 6.3. The land crossed by the proposed route is also due to be excavated in a subsequent phase of works, so prior to that time it will be diverted back onto a route that is similar to the existing line through Plumley Farm. The route of this subsequent diversion will vary from the existing line owing to the changed ground levels following extraction.
- 6.4. The proposed route will follow an established farm track with a compacted gravel surface for most of its length. This surfacing has been extended at the southern end to link in with Footpath No.38 adjacent to the new conveyor crossing that has been constructed as part of this development. This means that the proposed route will benefit from a similar surface and character to the existing route and provides good links into the permissive access in Plumley Wood to the west, which is owned by the Forestry Commission.

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. Local Member – Councillor Heron
Councillor Heron has been made aware of this proposal.
- 8.2. New Forest District Council
New Forest District Council has been consulted on this proposal and has no objection to it.
- 8.3. Ellingham, Harbridge and Ibsley Parish Council
Ellingham, Harbridge and Ibsley Parish Council has been consulted on this proposal and has no objection to it.
- 8.4. The Ramblers
The Ramblers has been consulted on this proposal and has no objection to it.
- 8.5. The Open Spaces Society
The Open Spaces Society has been consulted on this proposal and has no objection to it.
- 8.6. National Farmers Union
The National Farmers Union has been consulted on this proposal, but has made no comment.
- 8.7. The Trails Trust (South Central)
The Trails Trust (South Central) has been consulted on this proposal, but has made no comment.
- 8.8. 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.
- 8.9. 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. Comments on Consultation Replies:

- 9.1. Of all of the respondents to this proposal none has any objection to it.

10. Criteria for Assessment of the Proposal

- 10.1. 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 has been granted for this development by Hampshire County Council.

- 10.2. 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 there will be no structures on the proposed route.

11. Conclusions:

- 11.1. 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:
- 11.2. The proposed diversion is necessary to enable development to be carried out in accordance with planning permission that has been granted.
- 11.3. The proposed route is no less convenient for the public than the existing route, being of a similar distance and character.

12. Recommendations:

- 12.1. That an Order is made under s257 of the Town and Country Planning Act 1990 diverting part of Ellingham, Harbridge and Ibsley Footpath No.23 from A-B to A-C, as shown on the accompanying plan.

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) 5012\ Ellingham, Harbridge and Ibsley FP23 – Diversion
Proposal File	VB\Div\Ellingham, Harbridge and Ibsley FP23

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	None	The proposal is unlikely to have any impact on equality and diversity in this area.	10.2
Crime Prevention (under Section 17)	None	The proposal is unlikely to have any impact on crime and disorder in this area.	8.9
Environmental	None	The proposal is unlikely to have any significant environmental impacts.	