

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Regulatory Committee
<b>Date:</b>	19 March 2014
<b>Title:</b>	Proposal to dedicate public footpath rights over land at Springvale, in the Parish of Kings Worthy, to extinguish unrecorded public rights, and to rescind The Hampshire (Winchester City No. 18) (Parish of Kings Worthy) Definitive Map Modification Order 2005
<b>Reference:</b>	5710
<b>Report From:</b>	Director of Culture, Communities and Business Services

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### 1 Executive Summary

- 1.1 The County Council has received an offer from Drew Smith Ltd to dedicate public footpath rights over land at Springvale, in the parish of Kings Worthy. The proposed dedication would formalise public rights over routes which are substantially similar to those claimed by Kings Worthy Parish Council in an application of 1997, and would also enable a Definitive Map Modification Order, made in 2005 (and as yet not confirmed) to record those routes originally claimed by the Parish Council, to be rescinded.
- 1.2 This paper seeks to obtain Member authority for the County Council to enter into an agreement with Drew Smith Ltd for the dedication of the above mentioned footpaths. It also seeks authority to apply to the local Magistrates' Court for an order under section 116 of the Highways Act 1980 to extinguish the unrecorded rights over the land, as well as authority to rescind the Hampshire (Winchester No. 18) (Parish of Kings Worthy) Definitive Map Modification Order 2005.

### 2 Legal framework for the decision

#### HIGHWAYS ACT 1980: Section 25: Creation of a footpath or bridleway by agreement

- 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, 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<sup>1</sup> 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.

**HIGHWAYS ACT 1980 - Section 116: Power of Magistrates' Court to authorise stopping up or diversion of highway**

- a) Subject to the provisions of this section, if it appears to a Magistrates' Court after a view, if the court thinks fit, by any two or more of the justices composing the court, that a highway...as respects which the authority have made an application under this section -
- (a) is unnecessary, or
- (b) can be diverted so as to make it nearer or more commodious to the public, the court may by order authorise it to be stopped up or, as the case may be, to be so diverted.

**3 Landowners**

3.1 Drew Smith Ltd  
Drew Smith House  
Mill Court  
The Sawmills  
Durley  
Southampton  
Hampshire  
SO32 2EJ

**4 Description of the Routes (please refer to the maps attached to this report)**

- 4.1 The routes that have been offered are two 2 metre wide footpaths, shown as red pecked lines on the attached plan (Appendix A). One path runs around the perimeter of the field over a defined grass path (Points D-E-F-K-C), the other is an existing earth track running in a south-easterly direction from the south-eastern corner of the field, to a junction with Springvale Road (Points F-G).
- 4.2 The routes shown in blue situated at the northern part of the land (Points A-C and B-D) were established by an order under the Town and Country Planning Act 1990, confirmed by Winchester City Council (WCC) in December 2013. The order has diverted some of the routes which had originally been claimed (but which remained unrecorded) onto new footways which have been constructed as part of an approved housing development (see Appendix B). Hampshire County Council (HCC) has subsequently recorded these routes on the Definitive Map, and so although the landowner has included these routes in their dedication offer, they must be excluded on the basis that they already legally exist.

**5 Background**

- 5.1 In 1997, the County Council received an application from Kings Worthy Parish Council (KWPC) for a Definitive Map Modification Order (DMMO) to record the routes shown at Appendix C as public footpaths. The application was taken up for investigation in 2001, and a report was presented to the Regulatory Committee later that year recommending that an order be made to record the claimed routes as public footpaths. Committee approved the recommendation, but the making of the order was delayed whilst the possibility of securing the routes through planning gain was explored. Due to a subsequent change of land ownership this did not come to fruition and the order was eventually made in April 2005.

- 5.2 After the formal consultation period closed, it was established that some of the affected landowners had not been consulted, and that, in order to comply with the relevant legislation, all affected parties would need to be served (or re-served) notice of the making of the order.
- 5.3 Shortly afterwards, in July 2005, HCC was notified by WCC of a planning application affecting the site, and so the matter was again delayed whilst fresh attempts were made to secure the routes through planning gain. Planning permission was granted on the site in August 2008, but extensive discussions between WCC and the landowner, to which HCC was not party, delayed proceedings. No further progress was made on the matter of public rights of way until 2011, and the order remained unconfirmed.
- 5.4 In 2011, HCC was notified by WCC that they had received an application to extend the 2008 planning permission. At this time, the Countryside Service drew WCC's attention to the outstanding DMMO, and subsequently the landowner contacted HCC to discuss how the outstanding issues regarding public access on the site might be addressed. Following extensive discussions with the landowner and KWPC, it was agreed that if the landowner dedicated routes that were substantially similar to the routes that were the subject of the 2005 DMMO, then the Parish Council would withdraw its original 1997 application and, subject to the extinguishment of those unrecorded rights, the order could be rescinded.
- 5.5 The landowner wrote to HCC in January 2014 to offer the routes shown by red pecked lines at Appendix A as public footpaths, and additionally offering two permissive routes, shown by yellow pecked lines (Points E-H and J-K). KWPC then wrote to HCC to withdraw its DMMO application, on condition that the routes D-E-F-K-C and F-G are formally dedicated as public footpaths and recorded on the Definitive Map.
- 5.6 Despite the provision of routes that are substantially similar to those originally claimed, and KWPC's withdrawal of its support for the application, HCC still has a duty to resolve the DMMO of 2005. Therefore, upon the successful completion of the dedication agreement, it is proposed that application be made to a local Magistrates' Court to extinguish the unrecorded routes under Section 116 of the Highways Act 1980 on the grounds that, in light of the provision of the newly created routes, they are not needed for public use. Once the extinguishment of unrecorded rights has successfully been completed, officers consider that the 2005 DMMO would be 'unconfirmable', and so should be rescinded.

## **6 Consultations with Other Bodies**

### **6.1 Winchester City Council**

Winchester City Council is happy with the proposals.

### **6.2 Kings Worthy Parish Council**

The parish council has agreed to withdraw its DMMO application of 2005, providing that:

- 1) Drew Smith Ltd dedicates the specified footpaths to a minimum of 2m wide as Public Rights of Way

- 2) Drew Smith Ltd provides permissive pedestrian routes providing public access to and along the dismantled railway, and access to the statutory footpaths from Ilex Close.
- 3) HCC enters into a standard agreement with Drew Smith Ltd, covering liabilities and maintenance in respect of the permissive pedestrian routes referred to above.
- 4) HCC erects appropriate signage to confirm the location and status of the routes.
- 5) HCC works with WCC to ensure there is no duplication or confusion of a 2m wide route in the area of the Public Path Order, confirmed by WCC in December 2013.

### 6.3 Local County Councillor Jackie Porter – Local Member

Councillor Porter has been involved in previous discussions regarding these proposals, but has made no comment on the latest consultations.

### 6.4 User Groups

The organisations listed below were all consulted on these proposals. At the time of writing, no comment has been received from any of these consultees.

The Ramblers

The British Horse Society

The Open Spaces Society

Cyclists' Touring Club

Auto Cycle Union

Byways and Bridleways Trust

British Driving Society

## **7 Response to consultation**

- 7.1 KWPC's concerns that the route running through the new development should not be duplicated have been addressed - the routes diverted by the order made under the Town and Country Planning Act 1990 by WCC have now been recorded on the Definitive Map and subsequently excluded from the dedication proposals.

## **8 Criteria for Assessment of the proposal of a dedication under the Highways Act 1980**

- 8.1 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, bridleway or restricted byway over land, and to take all the required actions to ensure that the footpath or bridleway is dedicated in accordance with that agreement.

## **9 Criteria for Assessment of the proposal of an extinguishment under the Highways Act 1980**

- 9.1 Section 116 of the Highways Act 1980 enables a Magistrates' Court to, by order, authorise the stopping up or diversion of a highway if it is held that it is

unnecessary, or could be diverted so as to make it nearer or more commodious to the public.

- 9.2 The proposal for extinguishing the unrecorded rights meets this test, as the routes to be dedicated by the landowner are substantially similar and will render them unnecessary.

## **10 Financial impact**

- 10.1 Once the routes have been formally dedicated, HCC will become liable for their maintenance. There are no plans to make any surface alterations to the any of the dedicated routes and it is anticipated that the level of on-going maintenance required will be minimal. Some new signage and way marking will be required.
- 10.2 An application to a Magistrates' Court for an extinguishment order under section 116 of the Highways Act 1980 will attract a fee in the region of £200, which will be met by the Access Team budget. This order and the dedication agreement must be publicised by way of advertisements in the local press, so in addition there will be a small associated expense.

## **11 Recommendation**

- 11.1 That the offer to dedicate routes running through D-E-F-K-C and F-G as public footpaths be accepted.
- 11.2 That authority is given for an application to be made to the local Magistrates' Court for the extinguishment of unrecorded public rights over the land.
- 11.3 That, subject to the successful completion of 11.1 and 11.2, authority be given for the Countryside Service to rescind the Hampshire (Winchester No. 18) (Parish of Kings Worthy) Definitive Map Modification Order 2005.

**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>OR</b>	
<b>This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because authority is needed for the County Council to enter into a dedication agreement with another body.</b>	

**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.)**

DocumentLocation

Claim Reference:

Countryside Access Team  
Room 0.01  
Castle Avenue  
Winchester  
SO23 8UL

## **IMPACT ASSESSMENTS:**

### **1 Equality and Diversity Impact:**

- 1.1 The routes are generally flat and are step-free throughout, with no restrictions for those with mobility impairments.

### **2 Crime Prevention (under Section 17):**

- 2.1 The proposed dedications are unlikely to have any impact with regard to crime prevention.

### **3 Environmental:**

- 3.1 It is envisaged that walkers will cause minimal environmental impact given the surface of these routes and they have been used for many years.