

**HAMPSHIRE COUNTY COUNCIL**

**Decision Report**

<b>Decision Maker:</b>	Regulatory Committee
<b>Date:</b>	27 May 2014
<b>Title:</b>	Creation of a public bridleway at Wellsworth Lane in the Parish of Rowlands Castle
<b>Reference:</b>	5846
<b>Report From:</b>	Director of Culture, Communities and Business Services

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**1 Executive Summary**

- 1.1 This report seeks Member authority for the making of a public path creation order under Section 26 of the Highways Act 1980 to record bridleway rights over the route shown on the plan attached to this report.

**2 Legal framework for the decision**

HIGHWAYS ACT 1980 – Section 26: Compulsory powers for creation of footpath and bridleways

- 1) Where it appears to a local authority that there is need for a footpath or bridleway over land in their area and they are satisfied that, having regard to -
- (a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area, and
  - (b) the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 28 below,

it is expedient that the path or way should be created, the authority may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order, create a footpath or bridleway over the land.

HIGHWAYS ACT 1980 – Section 28: Compensation for loss caused by path creation order

- (1) ...if, on a claim made in accordance with this section, it is shown that the value of an interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of a public path creation order, the authority by whom the order was made shall pay to that person

compensation equal to the amount of the depreciation or damage.

### **3 Landowner**

- 3.1 The land in question is unregistered. Despite extensive local enquiries it has not been possible to establish who the landowner is. Enquiries suggested that Newcombe Estates Company Limited is the probable owner, but they have not responded to enquiries made by the County Council regarding ownership.

### **4 Description of the Route (please refer to the map attached to this report)**

- 4.1 The bridleway to be created runs over part of a route known locally as Wellsworth Lane, which commences at a junction with Finchdean Road (C72), shown at Point A on the Committee Plan, and runs in a generally south-easterly direction between enclosed boundary features, to a junction with Rowlands Castle Footpath 12 (Point B). A public footpath, Rowlands Castle Footpath 13, is currently recorded over section A-B. The track known as Wellsworth Lane continues in a south-westerly direction until it reaches a junction with an unclassified road (U219) at Point C.

### **5 Background**

- 5.1 In January 2014, a report was presented to the Regulatory Committee which requested Members' authority to accept a dedication from the landowner, Mrs Sally Ablewhite, for the dedication of bridleway rights under Section 25 of the Highways Act 1980 over the route A-B-C. This bridleway would effectively replace Rowlands Castle Footpath 13, the route of which is shown on the Committee Plan. In addition to accepting the offer of a bridleway dedication, authority was also requested for the extinguishment of the definitive line of Rowlands Castle Footpath 13 under Section 116 of the Highways Act 1980. Members approved the recommendations in that report.
- 5.2 During the preparation of the deed of dedication, and having now had sight of detailed conveyance and Land Registry documents covering the land in question, it became apparent that Mrs Ablewhite did not own all of Wellsworth Lane (as had been initially indicated) and her ownership only extended as far north as the junction with Rowlands Castle Footpath 12 (Point B). Since Mrs Ablewhite's offer to dedicate bridleway rights can only cover the section of Wellsworth Lane that falls within her ownership, further investigation was undertaken to explore potential options which would enable bridleway rights to be recorded between A-B.
- 5.3 These investigations have revealed that the land now owned by Mrs Ablewhite was conveyed to her late father, Mr John Edney, in 1963 by the Newcombe Estates Company Limited. The plan accompanying the Deed of Conveyance shows that the section of Wellsworth Lane running between A-B was not included in this conveyance. Whilst it is possible that Newcombe Estates own the section of Wellsworth Lane running between A-B, all attempts to contact them have met with no reply. As Land Registry records show that the land is unregistered, and local enquiries have not offered any indication as to who owns the land, the ownership of this section of the track is unclear.

- 5.4 Since a dedication agreement for a bridleway on section A-B cannot be undertaken because the landowner is unknown, it is now proposed that a creation order is made, which in combination with the extinguishment of Rowlands Castle Footpath 13 (by way of an order made under Section 116 of the Highways Act 1980) will effectively upgrade section A-B from a footpath to a bridleway. Unlike a dedication agreement, the landowner's formal agreement is not necessary for a creation order to be made.

## **6 Criteria for assessment of the proposal of a Creation Order under the Highways Act**

- 6.1 It is considered that the most effective means of recording bridleway rights over section A – B is by the making of a creation order under Section 26 of the Highways Act 1980. Under this legislation, a council may make such an order if it is satisfied that it is expedient that a path should be created. In considering the matter it must have regard to the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public or persons living in the area, and should also have regard to any relevant provisions contained within a rights of way improvement plan (the publication of which is a requirement of the Countryside and Rights of Way Act 2000).
- 6.2 Officers consider that a creation order would fulfil the criteria specified in Section 26. Previous investigations have revealed that members of the public are already using Wellsworth Lane on horseback, and the creation of the route would also address three issues outlined in the Countryside Access Plan (which is the County Council's rights of way improvement plan) for the Forest of Bere area, namely:
- Issue 2 - *'There are insufficient off-road routes that link centres of population to each other and to countryside sites'*
  - Issue 3 - *'There are limited resources for off-road cycling'*
  - Issue 5 – *'Countryside users are forced to use or cross busy roads to link up off-road access'*

## **7 Consultations**

- 7.1 Under the requirements of Section 26, the County Council must consult other local authorities on a proposal to make a creation order. The proposal to record bridleway rights was the subject of a wide consultation carried out in connection with the report that was presented to Members in January 2014. At that time all parties were either in favour of the recording of bridleway rights or made no comment on the matter. No further opinion has been expressed to the contrary as a result of the consultation on the proposal to make a creation order.
- 7.2 Although not required under the legislation, officers have also contacted the presumed landowner, Newcombe Estates Company Limited to advise them of the proposed course of action.

- 7.3 County Councillors Marge Harvey and Ken Moon, whose wards converge near Point A, are both aware of the proposal.

## **8 Financial Implications**

- 8.1 There is a provision under Section 28 of the Highways Act 1980 for the payment of compensation to anyone who is able to show that the value of their interest in land is depreciated, or that they have suffered damage by being disturbed in their enjoyment of land as a consequence of the creation order. Claims for compensation must be submitted within 6 months of the coming into operation of an order and any dispute as to the amount of compensation payable is adjudged by the Lands Tribunal. In this instance, given that there is already a public footpath recorded over the land in question, it is anticipated that in the event of any such claim being made, any compensation payable as a result of this order would be nominal.
- 8.2 The County Council has an existing duty to maintain the definitive footpath that is currently recorded. If bridleway rights are recorded over section A-B there will be an additional responsibility to maintain the route to a standard suitable for horse and cycle use. There is no intention to make any initial changes to the surface, although in light of the expansion of use of the route this will need to be monitored. Way-marking and signage reflecting the altered status of the route will also be required.
- 8.3 This order must be publicised by way of an advertisement in the local press, for which there will be a small associated expense.

## **9 Recommendation**

- 9.1 That authority be given for the making of a creation order to record bridleway rights between points A–B, as shown on the plan attached to this report.

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

<b>Hampshire safer and more secure for all:</b>	yes
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	no
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	no
Corporate Improvement plan link number (if appropriate):	

**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>
Claim Reference: DMMO/106	Countryside Access Team Castle Avenue Winchester SO23 8UL

**IMPACT ASSESSMENTS:**

- 1. Equalities Impact Assessment:**
  
- 2. Impact on Crime and Disorder:**
  
- 3. Climate Change:**
  - a) How does what is being proposed impact on our carbon footprint / energy consumption?
  
  - b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

**This proposal does not require impact assessment but, nevertheless, requires a decision because: Authority is needed for the County Council to enter into a dedication agreement with another body.**