

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Regulatory Committee
Date of Decision:	13 January 2016
Title:	Application to Dedicate Public Footpath Rights in Winchester City and Application to Extinguish Footpath 6 in Winchester City
Reference:	7170
Report From:	Director of Culture, Communities and Business Services

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1. Executive Summary

- 1.1. The purpose of this report is to consider an application to dedicate public footpath rights through a recreation ground in Winchester City, connecting Bar End Road to Domum Road; and also to consider an application to extinguish Winchester Footpath 6, which currently runs along the boundary of the same recreation ground and is then obstructed by a steep bank and the site of a former waste recycling facility. The extinguishment application has been made because Winchester Footpath 6 is no longer needed for public use.
- 1.2. This report seeks to obtain Members' authority for the County Council to enter into an agreement with the landowner for the dedication of public footpath rights over the used route through the recreation ground (under section 25 of the Highways Act 1980), followed by the extinguishment of the entire length of Winchester Footpath 6 (under section 118 of the Highways Act 1980), which will no longer be needed for public use.
- 1.3. Officers consider that it is expedient to extinguish Winchester Footpath 6 on the grounds that it is not needed for public use, due to the close proximity of the alternative route proposed to be dedicated, which pedestrians are walking instead. Members are therefore requested to authorise the making of an Order under section 118 of the Highways Act 1980 for this extinguishment.

2. Legal Framework for the Decision

HIGHWAYS ACT 1980 – section 25 – Creation of footpath, bridleway or restricted byway by agreement

“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... over land in their area. An agreement under this section is referred to in this Act as a ‘public path creation agreement’...

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...

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

HIGHWAYS ACT 1980 – section 118 – Stopping up of footpaths, bridleways and restricted byways

Orders for the Extinguishment of Footpaths, Bridleways and Restricted Byways may be made under Section 118 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, on the grounds that:-

“...the path or way... is not needed for public use...”

Members must be satisfied that it is expedient to extinguish the right of way, having regard to the extent (if any) to which it appears to them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way.

3. Applicant and Landowner

- 3.1. Winchester City Council
City Offices
Colebrook Street
Winchester
SO23 9LJ

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

4.1 Footpath to be Dedicated

The path to be dedicated commences at Point A (SU 4868 2894) and proceeds in a generally southerly, then westerly direction across a recreation ground to Point B (SU 4860 2877) and then further south down a flight of steps (3 steps, a ramp and 13 steps, with handrail) to Point C (SU 4860 2873) at a junction with Domum Road, Winchester Bridleway 512 and the end of Winchester Footpath 513. The length of the footpath to be dedicated is approximately 238 metres and the width is to be 2 metres where the path crosses the recreation ground and 1.2 metres on the steps / ramp. The surface is compacted gravel (mainly grassed over on the recreation ground) for most of its length.

The path needs to navigate a steep gradient between the recreation ground and Domum Road. The steps / ramp on the used route replace a 'steep bank' (as described by the Definitive Statement) on Winchester Footpath 6. The steps are currently in good condition, with an estimated 10 – 15 years remaining life before replacement will be needed. It should be noted that Hampshire County Council installed the present set of steps approximately 15 years ago (replacing an older set of steps), and have been maintaining them as necessary ever since. Therefore, the future maintenance liability of this route will be no greater than the County Council's existing responsibility.

4.2 Footpath to be Extinguished

Winchester Footpath 6 commences at Point A (SU 4868 2894) and proceeds in a generally southerly, then westerly direction to Point D (SU 4860 2871) at a junction with Winchester Footpath 513.

A total length of approximately 260 metres and no specified recorded width.

Approximately 50m of footpath near the southern end is not currently accessible as, until fairly recently, the area was operating as a waste recycling facility and fences have been erected around the site boundaries.

5. Background to the Application

- 5.1. Winchester City Council applied for a footpath diversion under the provisions of the Town and Country Planning Act 1990 when planning permission was granted in 2013 to enable the waste recycling facility (through which part of Winchester Footpath 6 runs) to operate as a waste transfer station handling construction and demolition / skip waste, in addition to its existing use at that time for recycling metal, paper, cardboard and plastic. Consultation on the proposed diversion of Winchester Footpath 6 was carried out and a report was drafted for this Committee, however the planning application was subsequently withdrawn as the waste recycling facility relocated to another

site, preventing the footpath diversion on planning grounds. Responses to this consultation are included later in this report. (It should be noted that the definitive route of Winchester Footpath 6 crosses land which was formally the site of a waste recycling facility, previously granted Planning Permission (ref 10/00637/HCS) where no Town and Country Planning Act footpath diversion took place in conjunction with that development.)

- 5.2. With no imminent Planning Application for the site, Winchester City Council then applied to dedicate the used route and extinguish Winchester Footpath 6, on the grounds that the definitive line running through the former waste recycling facility is no longer walked (and has not been for a considerable period of time). The public instead favours an established track through the centre of the recreation ground, with a set of steps and ramp at the southern end. This route has actually been signposted and the steps and ramp maintained for at least the last 15 years by the County Council (the route is currently waymarked by the County Council). The dedication of public rights on this route would formalise the existing arrangement, whilst enabling the application for the extinguishment of Winchester Footpath 6 to proceed on the grounds that it is no longer needed for public use.
- 5.3. The County Council consulted on the dedication and extinguishment proposals during 2015, and responses are set out below.
- 5.4. A residential development project has recently been completed at 31 Domum Road, on land to the north of Point B on the attached plan. The land was excavated to a near vertical chalk bank, close to the boundary and close to the proposed route to be dedicated. Extra engineering works in the form of a concrete retaining wall took place to reinforce the bank, after the initial reinforcement with ground anchors proved inadequate following the extreme winter weather. Winchester City Council Building Control is satisfied for the purposes of the Building Regulation with the work carried out to stabilise the chalk bank on the site, as it has been built to a design specified by a specialist structural engineer. Nevertheless, given the narrow section of chalk bank where this path runs, Hampshire County Council have sought to obtain reassurance from Winchester City Council, that as landowner, they would reinstate the right of way (by providing another route down the bank or shoring up the existing route) in the event of extreme conditions eroding the path away. Winchester City Council has not, at the time of writing this report, responded to this enquiry. However, taking everything into account, it is considered appropriate to dedicate a footpath in this location.

6. Costs

- 6.1. Under section 25(6) of the Highways Act 1980, the highway authority must give notice of the dedication of rights to the public, by means of an advertisement in a local newspaper. The cost of the required press advertisement will be met by the applicant.
- 6.2. The cost of advertising the Extinguishment Order and the administrative costs up to the point at which the Order (if contested) may be referred to the Secretary of State for determination will be met by the applicant.

- 6.3. Should it be decided that an Order be made for this extinguishment, it is required that the made Order is 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.
- 6.4. 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 refer an order that has attracted objections. If it is decided that it is not expedient to refer an application, the made Order must be rescinded.
- 6.5. Maintenance costs for the County Council will not increase with the proposed dedication of public footpath rights, as the steps have been maintained by Hampshire County Council for at least the last 15 years and the path across the recreation ground has been, and will continue to be, maintained by Winchester City Council. There is no intention to make any change to the surface of the route over which public footpath rights are to be dedicated.

7. Consultations

- 7.1. Local Member for Winchester Eastgate – Councillor Mather
Councillor Mather has been made aware of these proposals and accepts that the dedication and extinguishment is, in the circumstances, the best option.
- 7.2. District Councillors for ‘St Michael’ ward – Councillor Mather, Councillor Sanders and Councillor Tait
Councillor Mather, Councillor Sanders and Councillor Tait have been made aware of these proposals. Councillor Mather has responded (see above).
- 7.3. Winchester City Council
Winchester City Council is the landowner of both routes and applicant.
- 7.4. The Ramblers
The Ramblers has been consulted on these proposals and has no objection.
- 7.5. The Open Spaces Society
The Open Spaces Society has been made aware of these proposals and has no objection.
- 7.6. Hampshire County Council – Area Countryside Access Manager
The Area Countryside Access Manager has been made aware of these proposals and is in agreement.

7.7. 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.

7.8. Local Residents
Approximately 50 households in the surrounding area have received letters making them aware of these proposals. Only one response was received (to the original Town and Country Planning Act diversion proposal) – not objecting to the proposal but stating that the excavations at the nearby property have undermined the footpath.

8. Comments on Consultation Replies

8.1. Of all of the respondents to these proposals none has any objection to it.

9. Criteria for Assessment of the Proposal

9.1. A landowner has the power to dedicate public rights on their land and the County Council has the power to enter into a dedication agreement with the landowner under Section 25 of the Highways Act 1980.

9.2. The County Council, as the Highway Authority, has the power to make a Public Path Extinguishment Order, if it is considered expedient to do so in a particular case.

9.3. In considering this proposal, Members must be satisfied that Winchester Footpath 6 is not needed for public use and that it is expedient to extinguish the public rights that exist, having regard to the extent (if any) to which it appears to them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect that the extinguishment of the right of way would have as respects land served by the path or way.

9.4. 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 Disability Discrimination Act 2005 and the Equalities Act 2010. Officers confirm that the requirements of those with limited mobility have been taken into account when considering this proposal. The flight of steps and ramp are necessary to navigate the steep gradient between the recreation ground and Domum Road and provide a much improved route compared to the steep bank on Winchester Footpath 6.

10. Conclusions

10.1. Officers are of the opinion that the proposed extinguishment of Winchester Footpath 6 satisfies the criteria set out in section 118 of the Highways Act 1980 and that it is expedient for the County Council to make the order, given that:

- The path does not appear to be needed for public use, given the existence of an alternative route in close proximity which is well-used, and over which public rights are proposed to be dedicated by Winchester City Council.
- There would not appear to be any adverse effect on land served by the path.

11. Recommendations

- 11.1. That authority is given for the County Council to enter into an agreement with Winchester City Council for the dedication of public footpath rights on the route between Points A, B and C (as shown on the accompanying plan), with a recorded width of 2 metres across the recreation ground and 1.2 metres on the steps / ramp.
- 11.2. Following the dedication, that an order is made extinguishing Winchester Footpath 6 between Points A and D, as shown on the accompanying plan.

CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:

Hampshire safer and more secure for all:	yes
Maximising well-being:	yes
Enhancing our quality of place:	yes

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 Reference: Countryside Access Parishes\Winchester\Dedication of Public Footpath and Extinguishment of Winchester FP6
Dedication and Extinguishment Proposal File: Winchester FP6	Countryside Access Team, Countryside Service, Castle Avenue, Winchester, SO23 8UL

IMPACT ASSESSMENTS:

1. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2. Equalities Impact Assessment:

These proposals are unlikely to have any impact on equality and diversity in this area. The route proposed to be dedicated is more accessible than the route to be extinguished, and has been used in its stead for many years (see paragraph 9.4 of main report).

2. Impact on Crime and Disorder:

2.1. The proposal is unlikely to have any impact on crime and disorder in this area (see paragraph 7.7 of main report).

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

N/A

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

N/A