

**HAMPSHIRE COUNTY COUNCIL**

**Decision Report**

<b>Decision Maker:</b>	Regulatory Committee
<b>Date:</b>	11 February 2014
<b>Title:</b>	Proposal to dedicate a short section of public footpath and public cycling rights over part of Havant Footpath 128 between Liddiards Way and Crookhorn Lane, in the Borough of Havant
<b>Reference:</b>	6484
<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 a proposal to dedicate public cycling rights over part of Havant Footpath 128, in the Borough of Havant. This path runs adjacent to Morelands Primary School, and a small section of the curtilage of the school has been added to the existing width of Footpath 128, to allow for widening at the junction with Crookhorn Lane. Public footpath rights will need to be dedicated over this small sliver of land.
- 1.2. This paper seeks to obtain Members' authority for the County Council to enter into an agreement with Hampshire County Council for the dedication of public cycling rights over part of Havant Footpath 128.

**2. Legal framework for the decision**

LOCALISM ACT 2011: Section 1 – Promotion of well-being

(1) *A local authority has power to do anything that individuals generally may do.*

As in this instance, Hampshire County Council fulfils the roles of both landowner and highway authority, and so it is unable to enter into an agreement under Section 25 of the Highways Act 1980, the legislation usually used for such matters. As a result, a deed of dedication would be processed under the powers of the Localism Act 2011 which, in this context, would enable the County Council to dedicate rights over its land in the same way an individual would.

2.2 This is a 'common law' dedication of public cycling rights by the owner of the freehold of the land in question, with an acceptance of the dedication by the County Council as highway authority, on behalf of the public. The common law dedication would mean the public 'cycleway' would be publicly maintainable by Hampshire County Council (the Highway Authority), who already maintain Havant Footpath 128, to footpath standard.

### **3. Purpose of the Report**

- 3.1. Hampshire County Council has received a request to accept the dedication of public cycling rights over part of Havant Footpath 128 dedicated under common law, as shown on the plan attached to this report. This dedication is made under the provisions of the Localism Act 2011.
- 3.2. The dedicated public cycling rights cannot be recorded on the Definitive Map because, under the Wildlife and Countryside Act 1981, the only routes that can be shown on a Definitive Map are footpath, bridleway, restricted byway and byway open to all traffic. The Definitive Map will continue to show that section of Havant Footpath 128 over which the public cycling rights are to be dedicated as a footpath. However, steps will be taken to advise the public that use of this part of Footpath 128 with cycles is authorised.
- 3.3. It is proposed that offer of dedication of public rights over part of this path be accepted.

### **4. Landowners**

#### **4.1. Hampshire County Council**

The Castle  
Winchester  
Hampshire  
SO23 8UJ.

### **5. The Definitive Statement for Havant Footpath 128:**

#### **5.1. The Definitive Statement for Havant Footpath 128 is:**

*'From Sandy Brow, Purbrook, to Crookhorn Lane*

*From Sandy Brown (sic) south eastwards along earth path three feet wide enclosed between fences and fence and hedge, over stile, south-eastwards across pasture, through iron kissing gate and on to Crookhorn Lane.'*

*'That part of the path which ran between 6819 0706 and 6832 0699 has been diverted and now runs between 6819 0706 and 6832 0697*

*1.25 metres wide between 6829 0698 and 6832 0697'*

### **6. Description of the Routes (please refer to the map attached to this report)**

- 6.1 The length of the proposed cycle route is approximately 68 metres. Public cycling rights will be dedicated over a section of footpath, 1.25 metres wide, shown as a pecked line on the attached plan known as Havant Footpath 128. This section of Footpath 128 runs in a generally south-easterly direction from Point A (SU 68259 06997) in Liddiards Way (U605), to Point B (SU 68317 06972), at Crookhorn Lane (U605). The provision of a strip of additional land taken from the School's curtilage will increase its width to 2.5 metres, at the southern end. It benefits from a renewed tarmac surface.

## 7. Background

- 7.1 A short section of Havant Footpath 128, running around the periphery of Morelands Primary School, was identified as an appropriate route for shared use between pedestrians and cyclists. A Havant Borough document dated December 2013 states that this is *'in general accordance with the Council's adopted 'Cycle Strategy' which sees access improvements to local schools...as being one of the key means of achieving modal shift away from the private car and towards more sustainable and healthier means of travel to and from school.* The footpath forms *'an important link around the periphery of Morelands Primary School, helping to distribute pupils to the various gates, as well as forming part of a useful 'quiet road' link for the general public'.*
- 7.2 Moreland Primary School has a Travel Plan which identifies the need for improved connections between the three gates of the school *'in order to encourage parents to use more sustainable methods to travel to the site'.* There are problems with inconsiderate parking, particularly in Liddiards Way, and also in Crookhorn Lane. Both the School and Havant Borough Council are trying to address these difficulties.
- 7.3 The funding for the construction works to implement the Travel Plan has been provided by the Hampshire County Council 'Safe routes to School' programme (£27,000), and the work has been further supported by Section 106 developer contributions held by Havant Borough Council (£9,297.22).
- 7.4 To allow the current phase (Phase 2) which is the subject of this report to go ahead, negotiations were conducted with the County Council's Education Service in the summer of 2013. These resulted in the offer of a dedication of an unused section of the school grounds, running beside the footpath along the School's northern boundary, for highway purposes. This land runs alongside Havant Footpath 128, a longer route linking Crookhorn Lane with Sandy Brow. The project provided a new boundary fence (along the new boundary line – see plan at Appendix 1), in turn allowing footway widening work. This additional section of land, widening the existing Footpath 128 to assist in accommodating shared use, will require to have public footpath rights dedicated over it, to provide consistent rights over the whole width of the route from Crookhorn Lane to Liddiards Way. The Definitive Statement will be amended to reflect this.
- 7.5 Work was carried out by the Transportation and Implementation Team of Havant Borough Council to remove the pinch point where Havant Footpath 128 at Crookhorn Lane. This was done by Havant Borough, acting as agents for Highway Authority, Hampshire County Council. It was advertised by public notice as converting a length of footpath to cycle track using powers under section 65(1) and section 66(4) of the Highways Act 1980. The length of footpath affected links the southern end of Liddiards Way to a point adjacent to number 78 Crookhorn Lane, a distance of approximately 68 metres. *'For the avoidance of doubt, this length includes the width of western footway in Crookhorn Lane at the point where Footpath 'Havant 128' joins this road'.* This work is part of a larger proposal to provide a comprehensive cycling network throughout Havant Borough.
- 7.6 Work was completed on 5<sup>th</sup> November 2013, resulting in the widening of the eastern end of the footpath from 1.25 metres to 2.5 metres. It also has a new junction with the footway in Crookhorn Lane, described by the Project

Engineer as '*designed to avoid users of the path coming into conflict with users of Crookhorn Lane*'. The western end of the footpath where it joins Liddiards Way is described as '*already of satisfactory width*, not requiring any works. The whole area has been resurfaced with tarmacadam.

- 7.7 Hampshire County Council, the freeholder of the land over which Havant Footpath 128 runs at this location, has offered to dedicate public cycling rights over the route A-B, as shown on the plan. It has also offered to dedicate an additional strip of the curtilage of the school (as described in paragraphs 6.1, 7.4 and 7.6) as public footpath to allow for widening of a small section of Footpath 128 at the junction with Crookhorn Lane. This is contained in a dedication offer form, with accompanying plan, dated 4<sup>th</sup> March 2014.
- 7.8 The dedication of public cycling rights under common law, over a section of Havant Footpath 128, will be accepted under section 1 of the Localism Act 2011. It has a tarmac'ed surface maintained by Havant Borough Council, acting as its agent. It is estimated that use by cyclists will not add to any existing maintenance costs for this footpath. The public rights being dedicated are for cyclists only.

## 8. Consultations with Other Bodies

### 8.1. Havant Borough Council

The **Borough Council** has written to confirm its support for the dedication of public cycling rights from Liddiards Way to Crookhorn Lane. '*This meets the Borough Active Travel Strategy and helps provide safe routes to school. This path has been widened and improved making it suitable for cycle use*'.

### 8.2 County Councillor Robin McIntosh – local Member

The local Member has been informed of this proposal.

### 8.3 The Ramblers

- On behalf of the **Ramblers**, the local representative does not object to the dedication.
- He raises concerns regarding the lack of segregation between cyclists and pedestrians on this stretch of Havant Footpath 128. Their representative suggests that there will be no white line on the tarmac, and identifies this as '*an unfortunate and increasing trend whenever cycling rights are included*'.
- However, a '*commendable feature*' is noted, in the provision of a six-part metal-fenced barrier directing the east end of the footpath 90 degrees, to run parallel to the west side of Crookhorn Lane, ensuring that children do not run out into the road.
- He raises a question about any change in status to the path, particularly whether it would '*involve a change to the local bylaws*'.

### 8.4 Cyclists' Touring Club

The representative of the **CTC** fully supports '*the dedication of public cycling rights on Havant Footpath 128 between Crookhorn Lane and Liddiards Way*', which will '*enable cycling to be safe alongside the school. If cycling is to be encouraged in local community areas, especially for younger people and people cycling to school, this sort of cycle link is essential*'. The

representative would like to see public cycling rights on the whole of Havant Footpath 128, and at other schools in the Borough.

#### 8.5 HCC Area Countryside Access Manager

The Area Countryside Access Manager has been made aware of this proposal.

### 9. **Response to consultation:**

9.1 In relation to the non-segregation concerns raised by the Ramblers, the Project Engineer of Havant Borough Council comments that '*white line segregation is no longer in favour since it tends to lead to:*

- *conflict when the wrong users are on the wrong side (both peds and cycles)*
- *cycling faster*
- *maintenance issues'*
- making the path non-segregated tends to lower cycling speeds and resolves the conflict issues.

9.2 The Ramblers also commented on status, asking whether the dedication of public cycling rights on Havant Footpath 128 would involve affect any bylaws. Officers are not aware of any bylaws on this part of the footpath. This section of Footpath 128 will remain as a public footpath, recorded as such on the Definitive Map. The public cycling rights are dedicated under common law, and cannot be recorded on the Map. However, the presence of the dedicated cycling rights on that section will be recorded on the Definitive Statement through a Legal Event Order, and that section of the route will be signed as carrying public cycling rights. The Ordnance Survey also records routes carrying cycling rights, shown by the presence of orange dots above the relevant route, and included in the legend.

9.3 The Cyclists Touring Club enquired as to whether there could be further dedication of public cycling rights on the remaining, or other, parts of Havant Footpath 128, to '*help cycling access in this area*'. If any other freeholder of any other section of Footpath 128 is minded to dedicate such rights, the Countryside Access Team would be happy to facilitate the making of further such agreements as discussed in this report.

### 10. **Criteria for Assessment of the Proposal of a dedication under the Highways Act, and at common law:**

10.1 A landowner has the power to dedicate public rights on their land. Section 1 of the Localism Act 2011 gives the County Council the power to do anything that any individual generally may do, including the dedication of public rights over its own land.

10.2 A landowner has the power to dedicate any specie of rights that he or she wishes. Legal advice to officers is that the County Council, as the Highway Authority, has the power, in its capacity as Highway Authority, to accept the dedication of public rights of way at common law.

10.3 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 improved route, which will be more accessible in that it will, in part, be wider. It is a route with a smooth tarmacadamed surface, with no stiles or gates.

#### **11. Countryside Access Plans:**

11.1 This proposal is supported by issues 3 and 5 of the Solent Countryside Access Plan, which detail concerns about the need for the public to use busy vehicular roads to link between off-road routes and the lack of provision for cycling in the region.

#### **12. Financial Implications:**

12.1 There is no intention to make any change to the surface of the section of Havant Footpath 128 over which additional public footpath rights and public cycling rights are to be dedicated. Funding for the work already done has been provided through the mechanisms fully detailed in paragraph 7.4. Some form of waymarking will be required to indicate to cyclists that they can use this section of Footpath 128, and this will be provided by the Countryside Service. It is not thought that any additional maintenance will be required.

12.2 Under s.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 Countryside Service.

#### **13. Recommendation:**

13.1 It is recommended that the dedication of public footpath rights over a small section of land adjoining the existing Havant Footpath 128, under section 1 of the Localism Act 2011 between Points A and B (as shown on the accompanying plan) be accepted.

13.2 It is recommended that the dedication under common law of public cycling rights over the width of the route A-B-C (as shown on the accompanying plan) be accepted.

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

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

DocumentLocation

Dedication of public footpath rights and cycling rights over part of Havant Footpath 128

Rights of Way Office,  
Room 0.01,  
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:**

The route is step-free, with no restrictions for those with mobility impairments.

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

2.1. The area is a low crime area, and crime and disorder is not an issue in relation to this footpath. Therefore the County Council has complied with its statutory obligations in decision-making. By increasing the usage of a footpath, natural surveillance is increased which often reduces crime opportunities. The footpath is in a well-lit area, providing good vision of the slope down to Crookhorn Lane.

### **3. Environmental:**

3.1 It is envisaged that walkers and cyclists will cause minimal environmental impact given the tarmac surface on this route.

### **4 Climate Change:**

4.1 The improvement of this section of Havant Footpath 128 allows children to cycle to Moreland Primary School more safely, and is designed to reduce the use of motor vehicles to take children to school, and therefore carbon emissions.

4.2 Cycling is a sustainable activity, a necessary component of adapting and reducing the effects of climate change.