

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date of Decision:	15 July 2015
Title:	Application for a Public Path Diversion Order for part of Swanmore Footpath No.10
Reference:	6784
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 Swanmore Footpath No.10. The application has been made in the interests of the landowner to correct an anomaly on the definitive map which incorrectly shows the path running through his barn, whilst also taking the route of the footpath away from the immediate vicinity of his farmyard. This application is supported by Officers as being beneficial in that it would remove an anomaly from the definitive map, and the proposal also provides benefits to path users associated with the attractive views available from the proposed route.
- 1.2. The recommendation is that it is expedient to divert this footpath in the interests of the landowner. The proposed alignment of the diversion is not considered to be substantially less convenient to the public than the definitive route. Members are therefore recommended to authorise the making of an Order under section 119 of the Highways Act 1980 for this diversion.

2. Legal framework for the decision

- 2.1. Orders for the Diversion of footpaths, bridleways or restricted byways may be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, in the following circumstances:-

“Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one that is a trunk road or a special road) that,

in the interests of the owner, lessee or occupier of land crossed by the path or way

or

of the public,

it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,-

(a) create, as from such date as may be specified in the order, any such new footpath, bridleway or restricted byway as appears to the council requisite for effecting the diversion; and

(b) extinguish, as from such date as may be specified in the order or determined in accordance with the provisions of subsection (3) below, the public right of way over so much of the path or way as appears to the council requisite as aforesaid.

An order under this section is referred to in this Act as a 'public path diversion order'."

- 2.2. Members must be satisfied that the diverted route will not be substantially less convenient to the public, and must have regard to the effect that a diversion will have on the enjoyment of the path as a whole.

3. Applicant and Landowner

- 3.1. Hampshire County Council has received an application to divert part of Swanmore Footpath No.10, as shown on the attached plan, from:

Mr Angus Campbell,
Mayhill Barn Farm,
Mayhill Lane,
Swanmore,
SO32 2QW

4. Description of the Routes (please refer to the attached plan)

4.1. Current (Definitive Map) Route of Footpath

The section of Swanmore Footpath No.10 affected by this proposal commences at Point A (SU 5858 1712) and proceeds in a generally northerly direction to Point B (SU 5862 1733).

The length of the section A-B is approximately 258 metres and there is a recorded width of 2.5 metres.

4.2. Proposed Route of Diversion

The proposed route of Swanmore Footpath No.10 commences at Point A (SU 5858 1712) and proceeds in a generally northerly direction to Point B (SU 5862 1733).

The length of the section A-B is approximately 238 metres and will have a width of 2.5 metres throughout.

5. Background to the Application

- 5.1. The landowner has applied for this diversion in order to correct an anomaly on the definitive map which incorrectly shows the path running through his barn, the anomaly having been created by a mapping error associated with a previous diversion, whilst also taking the route of the footpath away from the immediate vicinity of his farmyard.
- 5.2. Diverting the footpath away from the farmyard will reduce the risk of footpath users encountering hazardous farm machinery. The proposed route is currently used by the public and it will also provide public benefits in that it will follow an established track running along the edge of a large open field (currently a grassy paddock), offering attractive distant views to the east. The surface of the proposed route is level, compacted and free-draining.

6. Consultation

6.1. Local Member Councillor Huxstep

Councillor Huxstep has been consulted on this proposal and is in full support of it.

6.2. Swanmore Parish Council

Swanmore Parish Council has been consulted on this proposal and is in full support of it.

6.3. The Ramblers

The Ramblers have been consulted on this proposal and have no objection to it, commenting that they agree the map anomaly should be corrected and the definitive line be recorded on the route which is now walked by the public. The Ramblers also initially requested the landowner enter into a maintenance agreement regarding the new path, as the previous diversion had such an agreement. However they subsequently withdrew this request.

6.4. The Open Spaces Society

The Open Spaces Society has been consulted on this proposal and has no objection to it.

6.5. National Farmers Union

National Farmers Union has been consulted on this proposal and is in support of it, commenting that it will be beneficial to the landowner and any farm operations that are undertaken there.

6.6. Hampshire County Council – Area Countryside Access Manager

The Area Countryside Access Manager has been consulted on this proposal and has no objection to it.

6.7. Hampshire County Council – Crime and Disorder Risk Advisor

The Crime and Disorder Risk Advisor has been consulted on this proposal and has no objection to it, commenting that the area is very low for crime

and disorder and additionally the ability to re-route users away from the farm/buildings will reduce illegal trespass on to nearby land.

6.8. Hampshire County Council – Highways and Environment

The Highways and Environment Departments have been made aware of this proposal.

6.9. Local Residents

Nearby residents received letters to make them aware of this proposal.

7. Comments on the Consultation Replies

- 7.1. All of the respondents to this proposal are either in support of, or have no objection to, it.

8. Criteria for Assessment of the Proposal

- 8.1. The County Council, as the Highway Authority, has the power to make a Public Path Diversion Order under section 119 of the Highways Act 1980, if it is considered expedient to do so, and if it is in the interests of either the landowner or of the public.
- 8.2. Section 119(2) of the Highways Act 1980 requires that a Diversion Order should not be made unless the new termination point connects to the same highway, or a highway connected to it and is substantially as convenient to the public as the existing termination point. In this proposal the termination points are unaltered.
- 8.3. Section 119(6) of the Highways Act 1980 sets out criteria to be considered before a Diversion Order is confirmed. The new path or way should not be substantially less convenient to the public in consequence of the diversion, and it should be expedient to confirm the order, having regard to the effect which:
- a) the diversion would have on public enjoyment of the path or way as a whole;
 - b) the coming into operation of the order would have as respects other land served by the existing public right of way; and
 - c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.
- Although these criteria are not applied at the order-making stage, it is believed that the proposal meets these tests and therefore the Order can be confirmed, subject to any matters that may be raised should the Order be made and advertised.
- 8.4. 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 Equality Act 2010. It can be confirmed 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.

9. Conclusion

9.1. Officers are of the opinion that the proposed diversion of part of Swanmore Footpath No.10 satisfies the criteria required by section 119 of the Highways Act 1980 and that it is expedient for the County Council to make the order, in that;

- a) both the northern and southern termination points are unaltered.
- b) the proposed route will not be substantially less convenient for the public than the original route, being of a similar distance and an improvement in terms of general character.
- c) it is unlikely that there will be any material increase in the cost to the County Council of maintaining the route at public expense.

10. Recommendation

10.1. It is recommended that an Order is made under section 119 of the Highways Act 1980 to divert part of Swanmore Footpath No.10, as shown on the accompanying plan.

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

Hampshire safer and more secure for all:	yes/no
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes/no
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	yes/no
Corporate Improvement plan link number (if appropriate):	
OR	
This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because: its part of our Regulatory functions upon which a decision is required.	

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: Orders by Parish\Swanmore
PPO Proposal File: Swanmore FP10	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:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- 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 proposal will have no impact on equality and diversity in this area, as there will be no change to the current walked route.

2. Impact on Crime and Disorder:

2.1. The proposal will have no impact on crime and disorder in this area, as there will be no change to the current walked route.

3. Climate Change:

The proposal will have no environmental impacts and will not impact on the carbon footprint or energy consumption of Hampshire County Council. The proposal will have no impacts on the need to adapt to climate change and be resilient to its longer term impacts.