

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Regulatory Committee
<b>Date:</b>	13 January 2016
<b>Title:</b>	Application for a Public Path Extinguishment Order for part of Footpath 41 and proposal for the dedication of public footpath rights in Titchfield, Fareham
<b>Reference:</b>	7198
<b>Report From:</b>	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 extinguish part of Fareham Footpath 41. The application has been made because the path runs through the applicant's property and is no longer needed for public use.
- 1.2 This paper also seeks Member authority for the County Council to enter into an agreement with the applicant for the dedication of public footpath rights on a route running along the boundary of his property (under s25 Highways Act 1980), as well as seeking approval for a similar dedication by the County Council on its own land (under the Localism Act 2011).
- 1.3 Officers consider that it is expedient to extinguish the section of Fareham Footpath 41 in question on the grounds that it is not needed for public use, due to the close proximity of an alternative route that pedestrians are walking instead. Members are therefore requested to authorise the making of an Order under s118 of the Highways Act 1980 for this extinguishment.

### 2 Legal framework for the decision

#### HIGHWAYS ACT 1980 – s118 – Stopping up of footpaths, bridleways and restricted byways

Orders for the Extinguishment of Footpaths and 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.

HIGHWAYS ACT 1980 - s25 – 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 or bridleway 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 the local authority must consult any other local authority or authorities in whose area the land concerned is situated, and after the agreement is made, it is 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.

LOCALISM ACT 2011 – s 1: Local Authority’s general power of competence

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

**3 Applicant**

3.1 Mr Michael Smith  
Holmfield  
Southampton Road  
Titchfield  
Fareham  
PO14 4AZ

**4 Landowners**

4.1 Mr Michael Smith  
Holmfield  
Southampton Road  
Titchfield  
Fareham  
PO14 4AZ

4.2 Hampshire County Council  
The Castle  
Winchester  
SO23 8UL

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

5.1 Footpath to be extinguished

The section of Fareham Footpath 41 that is the subject of the application is approximately 130 metres in length, and runs from a junction with Southampton Road, Titchfield (Point A on the Committee Plan) in a south-westerly direction through land belonging to Mr Smith, to a point at the southern extent of his ownership (Point B).

5.2 Footpath to be dedicated

The path to be dedicated in place of the extinguished section also commences on Southampton Road, some 15 metres to the west of Footpath 41 (Point C), and proceeds through a gap in a hedge in a south-westerly direction along the boundary of Mr Smith's property, over land owned by the County Council to Point D, before crossing into Mr Smith's land, bearing south-east to meet the existing line of Footpath 41 (Point B).

**6 Background to the Application**

6.1 The application for this extinguishment was made by Mr Smith in September 2015, on the grounds that the definitive line of the path that runs through his property is no longer walked (and has not been for a considerable period of time). The public instead favours an established path which runs along the western boundary of his property over land owned by the County Council.

6.2 The 'alternative route' has actually been signposted and maintained since at least the 1980s, initially by Fareham Borough Council, and then by the County Council when responsibility for the path was transferred to them from the borough council (the route is currently waymarked by the County Council. The dedication of public rights this route would formalise the existing arrangement, whilst enabling the application for the extinguishment of the relevant part of Footpath 41 to proceed on the grounds that it is no longer needed for public use.

6.3 The County Council consulted on the proposals in October 2015, and responses are set out below.

**7 Costs**

7.1 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.

7.2 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.

7.3 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.

7.4 Both the extinguishment order and dedication of the new footpath must be advertised in the local press, so there will be a small associated expense. Maintenance responsibility for the new path will fall to the County Council as highway authority, but it is considered that the impact of this change will be negligible.

## **8 Consultations with Other Bodies**

### **8.1 The Ramblers**

The local Footpath Secretary for The Ramblers has stated that:

*“Since this extinguishment, together with the two designations, confirms the de-facto situation on the ground, I don’t really see that I should raise any objection to this proposal.”*

### **8.2 The Open Spaces Society**

The Open Spaces Society has been consulted on the proposals but has made no comment.

### **8.3 Fareham Borough Council**

Fareham Borough Council has been consulted on the proposals and has raised no objection.

### **8.4 County Councillor Geoff Hockley**

Councillor Hockley is aware of the proposals.

## **9 Criteria for Assessment of the Proposals**

9.1 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.

9.2 In considering this proposal, Members must be satisfied that path A-B 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.

9.3 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 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 and the alternative routes are no less accessible to those with limited mobility.

9.4 The section of the route to be dedicated between Points C and D falls within the ownership of the County Council. As Hampshire County Council is both landowner and highway authority, it is unable to enter into an agreement with itself under Section 25 of the Highways Act 1980, the legislation that is normally used by the County Council for rights of way dedications (and under which mechanism the route between Points D and B will be dedicated by virtue of an agreement with Mr Smith). However a deed of dedication processed under the powers of the Localism Act 2011 enables the County Council to dedicate rights over its land in the same way an individual can.

**10 Conclusions**

10.1 Officers are of the opinion that the proposed extinguishment of part of Fareham Footpath 41 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 already well-used, and over which public rights are to be formalised by the proposed dedication by the County Council and the landowner.
- There would not appear to be any adverse effect on land served by the path.

**11 Recommendation**

11.1 That authority is given for the dedication by the County Council of public footpath rights on the route shown between Points C and D on the Committee Plan.

11.2 That authority is given for the County Council to enter into an agreement with Mr Michael Smith for the dedication of public footpath rights on the route shown between B and D on the Committee Plan.

11.3 That an order is made extinguishing that part of Fareham Footpath 41 shown between Points A and B on the Committee Plan.

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

<b>Hampshire safer and more secure for all:</b>	yes
<b>Maximising well-being:</b>	yes
<b>Enhancing our quality of place:</b>	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>
Claim Reference: PPO/Fareham FP 41	Countryside Access Team Castle Avenue Winchester SO23 8UL

## **IMPACT ASSESSMENTS:**

### **1 Equalities Impact Assessment:**

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 alternative route is no less accessible than the route to be extinguished, and has been used in its stead for number of years. As such people with a range of levels of ability will not be disadvantaged by this proposal.

### **2. Impact on Crime and Disorder:**

The proposed route takes the path away from the landowner's property, thus improving the security of the property and reducing the real or perceived possibility of crime resulting from the path's proximity to it.

### **3. Climate Change:**

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

**N/A**

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

**N/A**