

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Regulatory Committee
Date:	18 May 2016
Title:	Proposal for a Public Path Extinguishment Order for part of Alton Footpaths 29a and 29b
Reference:	7440
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 a proposal to extinguish part of Alton Footpaths 29a and 29b, which have for many years been cul-de-sac routes apparently unused by the public.
- 1.2 Officers consider that it is expedient to extinguish the sections of the routes marked on the Committee Plan on the grounds that they are not needed for public use. Members are therefore requested to authorise the making of an Order under s118 of the Highways Act 1980, and are additionally asked to authorise the County Council to enter into an agreement with the Treloar Trust for the dedication of public footpath rights in order to record a short link which has long been used in preference to the definitive line of the path.

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.

3 Landowners

3.1 Treloar Trust (Sections D-G & E-F)
Upper Froyle
Alton
Hants
GU34 4JX

3.2 Hampshire County Council (Sections A-B & C-D)
The Castle
Winchester
SO23 8UL

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

4.1 Footpaths to be extinguished

Alton Footpath 29a

The path to be extinguished is a spur heading north-eastwards from a junction with Alton Footpath 30 (Point A on the Committee Plan), running over land owned by Hampshire County Council. It is approximately 75 metres in length and runs behind the Queen’s Head public house, physically terminating at the fence surrounding the school’s play courts, although the definitive line actually continues for a further 30 metres, terminating in the middle of the school play courts. (Point B).

Alton Footpath 29b

This path commences at a boundary with the playing field to the north-east of the school buildings (Point C). At some point during recent decades the first 25 metres or so has been absorbed into the property of 12 Complins. From here the path continues north-eastwards on a narrow earth track along the boundary of the school field for a further 50 metres before turning north-west (Point D). Shortly after the path turns north-west, opposing gates are located on each side of the path, providing private access into the grounds of both the school and the college. At the northern end of the route, the legal line of the path splits at Point E to provide two connections to the main length of Alton Footpath 29b. However, in reality E-F has been overgrown for some time and is no longer visible on the

ground. It is proposed that the lengths of both spurs (E-F and E-G) are extinguished as part of these proposals.

4.2 Footpath to be dedicated

The extinguishment of E-F and E-G would effectively create a short 10 metre break in the east/west length of Footpath 29b, and so it is proposed that prior to the extinguishment order being made, the County Council enters into an agreement with the Treloar Trust for the dedication of public footpath rights on the currently walked line between Points F and G.

5 **Background**

- 5.1 Alton Footpath 29 was originally added to the definitive map in 1958, when a continuous route was available between B-C, as shown on the excerpt from the Third Edition of the Definitive Map (1964) at Appendix 1.
- 5.2 In 1967, prior to the planned construction of Eggar's Grammar School, the County Council considered proposals by the Minister of Housing and Local Government to extinguish or divert Footpath 29. Initially it was held that the section of the path running between B-C should be extinguished, with an alternative route being provided around the northern perimeter of the site (now recorded as Footpath 29b). Internal correspondence indicates that at the time County Council officers also considered a further extinguishment of public rights between A-B and C-F, but a memorandum from the County Clerk to the County Land Agent dated 2nd March 1967 states that these sections were "*used by nearby property owners as a means of rear access and it has been decided, therefore, to retain these sections.*" The possibility of extending the path south-westwards from Point D into the recently built housing estate was also considered, but dependent as it was upon a voluntary dedication of land by local residents (which was not forthcoming), this proposal did not come to fruition, and so the County Council reverted to recommending the original proposal. In January 1969 an order was made by the Minister to extinguish footpath rights between B-C (see Appendix 2).
- 5.3 It could be argued that in taking the decision not to extinguish public rights on A-B and C-F at that time, the County Council conflated the issue of public and private rights. Whilst the retention of the path may have been desirable for residents of adjoining properties, from the public's perspective the order as made effectively rendered each route a 'cul-de-sac' with little prospect of reconnecting them to other local highways, a situation further hampered by further development which effectively 'boxed in' the termini of the paths.
- 5.4 A little over forty-five years has passed since the order was made to accommodate the school, and during that period there is no record of any member of the public having made any enquiry or complaint about the usability of either route to the County Council. The only mention of the issue in County Council records is a Ramblers' survey in 1979 (in which the 'dead ends' are noted), and again in correspondence between the local Ramblers' representative and the Rights of Way office in the early 1990s, in which it was agreed that there was little prospect of providing an onward connection from either route to render them usable by the public.
- 5.5 The 'dead end' sections of Footpaths 29a and 29b have long been recorded as anomalies by the Countryside Access Team. In 2014, in accordance with its duty

to keep the Definitive Map under continuous review, the Countryside Service contacted both Eggar's School and Treloar College to explore the possible extinguishment of public rights on both sections. Through these discussions officers learned that the school is planning to provide a formal access onto the site at Point B, as part of an initiative to encourage students to use safer, off-road routes to school. It was also discovered that the access gates between Points D and E are regularly used by students of Treloar College to access the school for the purposes of using their sports hall and other facilities. It would appear that the removal of public rights from both routes would offer improved security and safety for students using them to access both sites. Whilst these are not relevant concerns that can be taken into account when determining whether or not to make an order to extinguish public rights, they do nevertheless offer additional reasons for action to be taken to resolve the current anomalies.

- 5.6 The County Council consulted on the proposals in July 2015, and responses are set out in Section 7.

6 Costs

- 6.1 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. The maintenance of the newly dedicated section between F-G will fall to the County Council as highway authority. This line has been walked by members of the public using Footpath 29b for a number of years and has therefore been maintained to the same standard as the rest of the route - the dedication will merely formalise this position.
- 6.2 Should it be decided that an Order be made for this extinguishment, it is required by legislation 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.
- 6.3 The County Council does not have the power to charge for administrative costs beyond the point at which an Order may be referred to the Secretary of State and, as such, the merits of each case 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 this case in the event of objections, the made Order must be rescinded.

7 Consultations with Other Bodies

7.1 The Ramblers

The local Footpath Secretary for The Ramblers has stated that:

“As you know these spurs were left over when the path was re-routed in the 1960s and this is a tidy up exercise. In my opinion there is no reason to object as the spurs go nowhere.”

7.2 Alton Town Council

The Town Council have noted the proposals and made no comment.

7.3 County Councillor Andrew Joy
Councillor Joy is aware of the proposals.

7.4 Mrs Jessica Ostler (Owner – 12 Complins)
Mrs Ostler has confirmed that the section of the path running alongside her property (the section immediately north-east of Point C) was 'land grabbed' in around 2000 by the previous owner. In recent years the path has been maintained by both her family and the Tolas of No. 14 Complins. The section of the path running north-west from Point D is used by Eggar's students and Treloar's staff for access through opposing gates. Mrs Ostler has confirmed that since she moved to the property, to the best of her knowledge the path has not been used by the general public, save for isolated incidents when walkers, having either lost their way or not realised that there is no access to the rest of the public highway network, have found themselves on her property,

7.5 Mr and Mrs Tola (Owners – 14 Complins)
Mr and Mrs Tola have accepted that it would be sensible for the route to be removed from Ordnance Survey mapping

8 Criteria for Assessment of the Proposals

8.1 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.

8.2 In considering this proposal, Members must be satisfied that paths A-B, and C-F and E-G are 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 paths would be likely to be used by the public in the event that the order is not made, and having regard to the effect that the extinguishment of the right of way would have as respects land served by the paths.

9 Conclusions

9.1 Officers consider that the proposed extinguishments satisfy the criteria set out in section 118 of the Highways Act 1980 and that it is expedient for the County Council to make the proposed order, given that:

- Neither path is needed for public use, nor is either path being used by the public.
- There is no evidence that there would be any adverse effect on land served by either path.

10 Recommendation

10.1 That authority is given for the County Council to enter into an agreement with Treloar Trust for the dedication of public footpath rights on the route shown between F-G on the Committee Plan.

10.2 That an order is subsequently made extinguishing that part of Alton Footpath 29a shown running between A-B on the Committee Plan, and those parts of Alton Footpath 29b shown running between C-F and E-G on the Committee Plan.

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

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>
Claim Reference: PPO/Alton FPs 29a & 29b	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:

There is no evidence that the public are currently using either route, and so it is considered that no-one will be disadvantaged by the proposals. The route to be dedicated is already well-used by the public, and maintained by Hampshire County Council to a standard commensurate with its use.

2. Impact on Crime and Disorder:

The proposals will extinguish public rights on routes running immediately adjacent to two educational establishments, thus improving the security of both properties and reducing the real or perceived possibility of crime resulting from the paths' proximity to them.

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