

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Regulatory Committee
Date:	18 May 2016
Title:	Proposal to extinguish parts of Pamber Footpath 902 and to make a Map Modification Order to record parts of Pelican Road as public footpaths, in the Parish of Pamber
Reference:	7498
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 parts of Pamber Footpath 902, which runs over and near to Pelican Road, on the basis that several residential dwellings were built on sections of the path during the 1960s. Given the considerable period of time these routes have been unavailable without any complaint having been received from any member of the public, and the fact that other routes built at the time have been used in their stead, it is considered that these paths are no longer needed for public use. A small section of Pamber Footpath 902 runs over Pelican Road, and will remain on the definitive map.
- 1.2 This report also seeks Member authority for the County Council to make a Map Modification Order to record additional sections of Pelican Road, that are currently unrecorded, as public footpaths.
- 1.3 Officers consider that it is expedient to extinguish the sections of Pamber Footpath 902 in question on the grounds that they are not needed for public use, due to the close proximity of alternative routes that pedestrians are walking instead (some of which would be formally recorded in the proposed Map Modification Order). Members are therefore requested to authorise the making of an Order under s118 of the Highways Act 1980 for the extinguishment, and the making of a Map Modification Order under Section 53 of the Wildlife and Countryside Act 1981.

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.

WILDLIFE AND COUNTRYSIDE ACT 1981 - Section 53: Duty to keep definitive map and statement under continuous review

(2) As regards every definitive map and statement, the surveying authority shall -

(b) ... keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence... of any of [the events specified in sub-section (3)] by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.

(3) The events referred to in sub-section (2) are as follows -

(b) the expiration... of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path;

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows -

(i) that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies;

PRESUMED DEDICATION AT COMMON LAW

Use of a way by the public without secrecy, force or permission of the landowner may give rise to an inference that the landowner intended to dedicate that way as a highway appropriate to that use, unless there is sufficient evidence to the contrary. Unlike dedication under S.31 Highways Act 1980, there is no automatic presumption of dedication after 20 years of public use, and the burden of proving that the inference arises lies on the claimant. There is no minimum period of use, and the amount of user which is sufficient to imply the intention to dedicate will vary according to the particular circumstances of the case. Any inference rests on the assumption that the landowner knew of and acquiesced in public use.

3 Landowners

3.1 There is no known landowner for those paths to be added to the definitive map. The owners of properties affected by the extinguishments have been informed by letter of the Council's proposals. In fact, the decision to now resolve what has been a long-standing anomaly was made following representations by Mr Robert Brown, who purchased 85 Silchester Road in 2015. There is no registered owner of Pelican Road.

4 Description of the routes to be extinguished and added (please refer to the maps attached to this report)

4.1 Footpath to be extinguished

The sections of Pamber Footpath 902 that are the subject of this report are shown between A-B and C-D on the Committee Plan. The legal line of Pamber Footpath 902 commences at a junction with Silchester Road (Point A) and proceeds in a north-westerly direction through the properties of 83, 85 and 87 Silchester Road for 75 metres to a junction with Pelican Road (Point B), whereafter it proceeds north then west along the road for 90 metres. It then turns north-west again (Point C) and runs through the properties of 55, 57 and 59 Pelican Road for 95 metres. The county boundary coincides with the northern boundary of these properties, and the legal line of Footpath 902 terminates at the end of the garden of 55 Pelican Road. The path continues on the other side of the county boundary in West Berkshire as Aldermaston Footpath 15.

4.2 Footpaths to be added

The two routes to be added to the definitive map as footpaths run along Pelican Road between E-C and B-F. The section of Pelican Road to the east of Point E is not recorded on the List of Streets as a highway maintainable at public expense. B-C is the only section of Pelican Road where public rights are already recorded and will be the only part of Pamber Footpath 902 to remain on the definitive map. It is proposed that these remaining sections are extended both to the west and south to meet the nearest publicly maintainable highway.

5 **Background**

5.1 Pamber FP 902 formerly lay within Berkshire County Council and formed part of Aldermaston FP 15, but a county boundary change in April 1991 transferred jurisdiction for part of this path to Hampshire. Correspondence dating from the period reveals that the path already had a long history of obstruction prior to its transfer, and save for a minor diversion in 1982 to move part of the route onto Pelican Road (B-C), the majority of the route has been blocked since the 1960s.

5.2 A copy of a letter in the Pamber parish file from Basingstoke and Deane Borough Council to Berkshire County Council dated 1st March 1989 provides some insight into the history of the path:

“It seems that the former Bradfield Rural District Council had allowed development over the South-East end of the path, allegedly around the mid 1960s. Since that time the path has been unusable....

...Newbury District Council with the agreement of Berkshire County Council were advised to proceed with an extinguishment order as the path had apparently been obstructed for 10-15 years without objection, and was therefore considered not to be needed for public use....an extinguishment order was made by the District Council in 1979 but the High Court quashed the order on the grounds that the District Council had not complied with consultation requirements....

...it appears that no-one is prepared to actively seek a diversion because of the financial implication in creating the new path and the compensation which would be payable to the landowners and yet the original line of the path still legally exists and is still obstructed....”

During the years since this letter, the County Council has received queries in respect of this matter from owners of the affected properties, at which time no action appears to have been taken due to resourcing and prioritisation of other

work. The County Council has a number of anomalies which require resolution, but the decision to address this issue now is chiefly influenced by the difficulties experienced by Mr Brown when attempting to secure a mortgage on his property. Otherwise there appears to have been no complaint from any member of the public about the availability of the path since its initial obstruction.

- 5.3 Officers of the Countryside Access Team have discussed the possibility of pursuing a joint extinguishment/diversion order with West Berkshire County Council that would also encompass Aldermaston FP 15, which currently terminates at the rear of (and is obstructed by) properties on Pelican Road. However, West Berkshire has opted not to take any action to divert or delete the path on its side of the county boundary at this time. Officers of that authority have however advised that consultations were undertaken with relevant user groups, and that no objections were raised to Hampshire County Council's proposals.
- 5.4 Although E-F is not recorded on the List of Streets as a publicly maintainable highway, from observation both sections B-F and C-E are in regular use by pedestrians as a means of accessing properties and other public highways on the estate. B-F provides an alternative route to section A-B, whilst C-E provides an onward connection to the west to meet up with the section of Pelican Road that is already recorded as a publicly maintainable highway (and has already has a footway set out for use by pedestrians).

6 Documentary Evidence

6.1 Ordnance Survey County Series 3rd Edition (c1910)

This map shows the area in question prior to development. The path that would become Aldermaston FP 15 (and latter Pamber FP 902) is shown as a track with parallel pecked lines and labelled 'FP', leading north-westward from Silchester Road into an area of woodland referred to as 'Impstone Plantation'.

6.2 3rd Definitive Map (1964)

Although published prior to the county boundary change, the base map does indicate the changes the area was undergoing at the time. The eastern end of Pelican Road had by now been constructed, and whilst at the time the map was produced only a scattering of houses had been built along its length, the legal line of Aldermaston FP 15 had already been obstructed by the construction of 83, 85 and 87 Silchester Road. The obstruction of the path was apparently further exacerbated by additional development during the years that followed.

6.3 Public Path Diversion Order (1982)

This order, a copy of which was forwarded to the County Council in 1988 by Berkshire County Council with the letter detailed at 5.2, was made to facilitate development on Pelican Road in 1982. The effect of the order was to divert a section of the path that ran through what are now the sites of 64, 66 and 68 Pelican Road onto the road itself, but left the remainder of the route untouched.

7 Consultations with Other Bodies

7.1 Pamber Parish Council

No comment.

7.2 The Ramblers

No comment.

7.3 Open Spaces Society

“We looked at this on the ground from the West Berks point of view a few months ago. No sign of use, in fact it's got barbed-wire fence across as you probably know, with no sign of any attempts to get across it.

We would not object to the extinguishment.”

County Councillor Keith Chapman (Local Member for Calleva and Kingsclere)

Councillor Chapman has raised no objection to the proposals.

8 Conclusions

- 8.1 Given that there has been no complaint received from any member of the public wanting to use the path over a period of approximately fifty years, it is arguable that both sections A-B and C-D are not needed for public use. Further, given the detrimental effect of the legal line of Pamber FP 902 on several of the landowners on Pelican Road and Silchester Road, which is now causing difficulties for one particular resident, it is considered that it is appropriate for an order to be made to extinguish public rights, insofar as they affect these properties.
- 8.2 A public right of way on foot is reasonably alleged to exist on B-F and C-E as a result of deemed dedication at common law, based on use by the public since the 1960s.

9 Recommendation

- 9.1 That authority is given for the making of a Map Modification Order to record public footpath rights between B-F and C-E, as shown on the Committee Plan.
- 9.2 That authority is given for an order to be made extinguishing that part of Pamber Footpath 902 shown between A-B and C-D 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: Pamber FP 902	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 routes to be extinguished have not been used for a considerable period of time, and so no-one will be disadvantaged by this proposal.

2. Impact on Crime and Disorder:

The proposed extinguishment removes public rights from several properties, thus improving the security and reducing the real or perceived possibility of crime resulting from the path's 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