

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date of Decision:	16 November 2016
Title:	Application for a Public Path Diversion Order to divert Braishfield Footpath 712
Reference:	7922
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 Braishfield Footpath 712. The application has been made by Sir Harold Hillier Gardens in the interests of security and public safety, and offers additional opportunities to better connect the rights of way network with two new housing developments situated to the south of the site.
- 1.2 Officers consider that it is expedient to divert this footpath in the interests of the landowner. The diversion route is not, when assessing all relevant factors, considered to be substantially less convenient to the public than the definitive route, and Members are therefore recommended to authorise the making of an Order under Section 119 of the Highways Act 1980.
- 1.3 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.

2. Legal Framework for the Decision

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 so specified 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'.”

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 This application was received by **Sir Harold Hillier Gardens**, whose sole trustee is **Hampshire County Council**.

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

4.1 Current Route of Footpath 712

Braishfield Footpath 712 (A-B on the Committee Plan) commences at a junction with Braishfield Road at Point A (SU 3717 2383) and proceeds in a generally south-easterly direction through Crookhill Farm and the grounds of the Gardens before bearing southward to meet Jermyns Lane at Point B (SU 3755 2351).

The path is approximately 560 metres in length and has a recorded width of 2.5 metres.

4.2 Proposed Route of Diversion

The proposed diverted route (A-C-B) runs inside the boundary of the Gardens' land and has the same termini as the definitive line described above. From Point A it proceeds southward and then north-eastwards, parallel to Braishfield Road and Jermyns Lane on a route that meanders between trees and shrubs which is set well back from the road. A further extension of the path (to be constructed by Hampshire Highways) will run northwards along the highway verge from Point A as far as the Dog and Crook public house is also proposed, but falls outside of the

scope of this application. The new route will have a sealed surface and will be adopted by Hampshire Highways. Construction of the route is to be funded by developer contributions derived from the nearby Abbotswood development.

The proposed diversion route is approximately 855 metres in length, and will have a surfaced width of 2 metres throughout (although the available width between boundary features will for the majority of the route be closer to 5 metres).

5 Background to the Application

- 5.1 The landowner has applied for this diversion for a number of reasons, as follows:

Security – Currently the definitive line of Braishfield Footpath 712 runs through the site of Sir Harold Hillier Gardens, and as a result it is not possible to restrict public access to the site, even outside the Gardens' opening hours. The Gardens have suffered instances of plant and art theft as well as criminal damage in recent years, and it is considered that the risk of any further such incidents would be reduced if public access to the site could be limited to Garden opening hours.

Safety – Part of the path runs through a busy yard which is in daily use by heavy machinery and vehicles for maintenance purposes. SHHG considers that it would be prudent to move the path away from this area to improve public safety.

Improved Amenities – Currently Braishfield Footpath 712 terminates at each end on junctions with busy roads which have no ongoing off-road connections. This application would not alter this position, but it would provide an additional point of access at the roundabout junction of Braishfield Road and Jermyns Lane. The realigned footpath would improve connectivity to the Gardens from the Abbotswood and (imminent) Ganger Farm developments immediately to the south, whilst also providing safer off-road access between these developments and Braishfield (there is currently no off-road access alongside Braishfield Road).

In addition, the proposed footpath would be segregated from the vehicular highway. Existing and proposed planting will contribute to making the route enjoyable for walkers (see the ramblers response at 6.4), whilst also minimising water spray from passing cars.

6 Consultation

- 6.1 County Councillor Alan Dowden (Local Member)

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

- 6.2 County Council Andrew Gibson (Executive Member)

Councillor Gibson supports the proposal.

- 6.3 Braishfield Parish Council

"The council support the reasons given by Sir Harold Hillier Gardens. The proposal will have the added benefit of providing a footway along part of Braishfield Road (from the roundabout at the junction with Jermyns Lane to the start point of Footpath 712, which is of benefit to the village of Braishfield. The council

recognises that this is part of a wider proposal to provide a footway along Braishfield Road at the Dog and Crook and connect it through to Jermyns Lane.

Pedestrian traffic along Braishfield Road seems to be increasing, and includes (among others) visitors to Braishfield from Romsey, people travelling to and from work, and school children. Currently these pedestrians must walk on the highway, which is hazardous. The safety of these pedestrians is of concern to the council, and a separate footway is a good solution.

The council supports the proposal as a path for pedestrians only. The proposed path is not wide enough to safely accommodate pedestrians together with bicycle or equestrian traffic. The council requests that consideration is given to including physical barriers to prevent non-pedestrian uses.

In view of the safety improvements that the proposed path will bring, the council requests that work should take place as soon as is practicable.”

6.4 The Ramblers

The local Ramblers representative has stated that:

“Together with a colleague we walked Braishfield FP 712 and the 5 metre strip between the gardens road boundary and the new deer fence recently. We found walking the mown grass strip quite an enjoyable experience, away from the road, between the existing shrubs and trees. It is my understanding the land either side of the proposed path will be owned and maintained as part of the gardens.

We note that Hampshire Highways will maintain the proposed footway from the boundary between The Gardens and the former Crookhill farm land to the entrance to Crookhill House and Cottage. It is our understanding that when a certain number of units on the Abbottswood development are completed funds will be provided to extend the footway to the existing footway outside The Dog and Crook public house.

We do not consider this path to be suitable for joint use due to meandering route and the existing trees and shrubs within the 5 metre strip. The section of Braishfield Road parallel with the proposed path is straight and has good visibility. It is relatively short and thought there would not be many cyclists that would use this section.

We would support a feeder cycleway along Jermyns Lane to link up with a proposed cycleway to Ampfield. We have noted section 3.4 of the proposed Ganger Farm development south of Jermyns Lane opposite, and parallel with the proposed FP 712 diversion that it is proposed there will be a joint footpath/cycleway/fitness path. We think this could be an excellent start to a cycleway/footpath leading out to the A3090.”

6.5 Cycling UK

During the consultation, Cycling UK queried the possibility of dedicating additional cycling rights on the diversion route. This issue is not relevant to the diversion of public footpath rights under s119, but lengthy discussions have been held with SHHG to establish whether they would be agreeable to such a dedication, and

officers have also re-consulted the Ramblers and Parish Council on the matter. Both groups have indicated that they would not support the addition of cycling rights (see their responses at 6.3 & 6.4), and although SHHG has indicated that the matter could be revisited in future, in light of the responses from representatives of the local community, it has opted not to pursue this option at the present time.

Responses have also been received from other members of the cycling community who have stated that they consider that the proposed diversion would not represent a good deal for walkers, as it would increase the distance between Points A and B.

6.6 Test Valley Borough Council

No objection.

6.7 The Open Spaces Society

No objection.

6.8 Hampshire County Council – Area Countryside Access Manager

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

6.9 Hampshire County Council – Highways

Hampshire Highways are aware of these proposals.

7 Comments on the Consultation Replies

7.1 The majority of the respondents either support this proposal, or have raised no objection to it, although some have raised the issue of an increased distance between Points A and B. Whilst this is true, officers would ask Members to consider the following:

- The likelihood of members of the public wishing to utilise the full length of A-B as a public highway, as opposed to using it to access the Gardens (it should be noted that public access to the Gardens from Jermyns Lane during current opening hours will *not* be affected by the proposed diversion). It is submitted that, given the lack of an off-road continuation at either Point A or B, the number of people using Footpath 712 as a through route is currently negligible.
- Although the distance walked between A-B will increase, it will create a new terminus at the Braishfield Road/Jermyns Lane junction. Given the large increase in pedestrian traffic anticipated from the Abbotswood and Ganger Farm developments in the coming years, it is arguable that any perceived disadvantage for those wishing to walk between A-B will be offset by the benefits provided for walkers by the diversion route.

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 Braishfield Footpath 712 satisfies the requirements of Section 119 of the Highways Act 1980, and that it is expedient for the County Council to make the order, given that:
- a) it is in the interest of the landowner for the route to be diverted, bearing in mind the safety and security issues posed by its current delineation;
 - b) both of the route's termination points would be unaltered by the diversion;
 - c) the proposed route will not be substantially less convenient for the public than the original route, bearing in mind the overall access improvements the alteration would bring about, and the superior standard to which the diverted route would be constructed;
 - d) it is unlikely that there will be any material increase in the cost to the County Council with regard to ongoing maintenance.

10 Recommendation

- 10.1 It is recommended that an Order is made under Section 119 of the Highways Act 1980 to divert Braishfield Footpath 712, 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	Room 0.01
PPO 5003: Braishfield FP 712	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 a neutral impact on equality and diversity in the area – the diverted route will have a sealed surface and be suitable for users of all abilities.

2. Impact on Crime and Disorder:

2.1. The proposal is likely to reduce occurrences of crime and disorder in the area, as it would route pedestrian traffic away from the garden centre outside of normal opening hours.

3. Climate Change:

N/A.