

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date of Decision:	16 November 2016
Title:	Application for a Public Path Diversion Order for Bishops Waltham Footpath No.10
Reference:	7909
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 Bishops Waltham Footpath No.10. The application has been made in the interests of the landowner to take the path away from the immediate vicinity of their property "Beeches" for reasons of privacy and security.
- 1.2. Officers recommend 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 existing route. Members are therefore requested to authorise the making of an Order under s119 of the Highways Act 1980 for this diversion.

2. Legal Framework for the Decision:

Orders for the Diversion of footpaths, bridleways and restricted byways may be made under Section 119 of the Highways Act 1980, in the following circumstances:-

"(1) 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. Mr & Mrs Stevenson
Beeches
The Hangers
Bishops Waltham
Southampton
SO32 1FZ

4. Description of the Routes (please refer to the map attached to this report):

4.1. Current Route of Footpath

The section of Bishops Waltham Footpath No.10 affected by this proposal commences at Point A (SU 5671 1904) adjacent to the B3035, The Hangers. There are 8 shallow stone steps which bear right to a stile. The path proceeds in a south-easterly direction for approximately 100 metres to a second stile and a further 70 metres to Point B (SU 5682 1890) where a third stile leads down a small slope to continue in a south-westerly direction to Point D (SU 5676 1886). The length of this current route (A to B) is approximately 170 metres. The path from point B to D will remain as it is an ancient track and there are enhanced views across the valley at point B.

4.2 Proposed Route of Diversion

The proposed route for diversion of this section of Bishops Waltham Footpath No.10 commences at the same position as the existing path, Point A (SU 5671 1904) adjacent to the B3035. The stile at point A will be replaced by a gate, the path will proceed in a south-westerly direction for approximately 60 metres before turning to the south east at point C and continuing in a south easterly direction to Point D (SU 5676 1886). The proposed route will have a width of 2.5 metres, grass surface with a 3ft high post and wire fencing to the east and 4ft hedging to the west. There will be a requirement for shallow steps to be put in place at Point D, these will be the same width as the footpath.

5. Background to the Application:

- 5.1. The landowner has applied for this diversion to take the path away from the immediate boundary of their property for reasons of privacy and security.
- 5.2. The proposed route will benefit path users in that there are currently 3 stiles on the existing route and no requirement for any on the diversion replacing the one at Point A with a gate.

- 5.3. The view will be enhanced across the countryside on the proposed route and is approximately the same length. It will have a firm and level grass surface with fencing to the left, low level hedging to the right. It joins footpath 10 approximately 75 metres south-west of the original path.

6. Compliance with the County Councils Diversions Criteria:

- 6.1. The Countryside Access Team of Hampshire County Council has published Guidance Notes for landowners who are considering an application for diversion in order to ensure that the proposal for a diverted route should be no less convenient to use than the existing route and should not adversely affect the public's enjoyment of the path as a whole. The recommendations contained in the Guidance Notes have been taken into account in developing this proposal.
- 6.2. The diverted route A to D via C offers an improved experience for the users with no stiles and views over the countryside.

7. Costs:

- 7.1. The cost of advertising the Diversion Order, the administrative costs up to the point at which an Order (if contested) may be referred to the Secretary of State for determination, and the cost of any physical works required on the proposed route will be met by the applicant.
- 7.2. Should it be decided that an Order be made for this diversion, it is required that the made Order is then 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 do so. If it is decided that it is not expedient to refer an application, the made Order must be rescinded.

8. Consultations with Other Bodies:

- 8.1. Local Member – Councillor R Humby
Councillor Humby has been made aware of this proposal.
- 8.2. Winchester City Council
Winchester City Council has been consulted on this proposal, but has made no comment.
- 8.3. Bishops Waltham Parish Council
Bishops Waltham Parish Council has been consulted on this proposal and has no objection to it.
- 8.4. Area Countryside Access Manager
The Area Countryside Access Manager has been consulted on this proposal and has specified the works that will be required to bring the proposed route up to a condition suitable for use by the public.

8.5. South Downs National Park

The South Downs National Park has been consulted on this proposal, but has made no comment.

8.6. The Ramblers

The Ramblers has been consulted on this proposal and expressed no objections.

8.7. The Open Spaces Society

The Open Spaces Society has been consulted on this proposal and has no objections

9. Comments on Consultation Replies:

9.1. Of all of the respondents to this proposal, none has any objection to it.

10. Criteria for Assessment of the Proposal:

10.1. The County Council, as the Highway Authority, has the power to make a Public Path Diversion Order under s119 of the Highways Act 1980, if it is considered expedient to do so in a particular case, and if it is in the interests of either the landowner or of the public.

10.2. 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 not altered.

10.3. 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 may then be expedient to confirm the order, having regard to the effect which:

10.3.1. the diversion would have on public enjoyment of the path or way as a whole;

10.3.2. the coming into operation of the order would have as respects other land served by the existing public right of way; and

10.3.3. 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 are not the criteria to be applied at the order-making stage, subject to any matters that may be raised should the Order be made and advertised, Officers feel that the proposal meets these tests.

10.4. 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. Officers confirm that the requirements of those with limited mobility have been taken into account when developing the proposal for the new route, which will be more accessible to those users, as the route will include one gate rather than three stiles.

11. Conclusions:

- 11.1. Officers are of the opinion that the proposed diversion of Bishops Waltham 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;
 - 11.1.1. the termination points are not altered.
 - 11.1.2. the proposed route will not be substantially less convenient than the existing route and offers an improvement in terms of structures and general character.
 - 11.1.3. it is unlikely that there will be any material increase in the cost to the County Council of maintaining the route at public expense.

12. Recommendations:

- 12.1. It is recommended that an Order is made under section 119 of the Highways Act 1980 to divert Bishops Waltham Footpath No.10, as shown on the accompanying plan.

CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	No
Maximising well-being:	No
Enhancing our quality of place:	No

This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because:

The proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the proposal is an application for a public path diversion order and requires determination by the County Council in its statutory role as the highway authority.

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.)

DocumentLocation

General
Correspondence

Countryside Offices, Castle Avenue, Winchester

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:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) 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:

In determining this application, the County Council is exercising its functions as the highway authority and as such must give due consideration to the statutory tests set out in s119 Highways Act 1980. These statutory tests have to be considered in conjunction with the overarching duty of s149 Equalities Act. The existing path contains steps and 3 stiles. The diverted path will remove these stiles, but the steps will remain and additional shallow steps will be constructed near point D. On balance, the removal of the stile will make the route more accessible for some users, whilst the additional steps at point D will not make the route any less convenient than it currently is for others given the fact the steps already form part of the legal line at point A. Additionally, the diverted route A to D via C offers an improved experience for the users with no stiles and views over the countryside.

2. Impact on Crime and Disorder:

2.1. It is unlikely that this proposal will have any impact on reported crime in this area.

3. Climate Change:

- a) **How does what is being proposed impact on our carbon footprint / energy consumption?**

No impact identified.

- b) Environmental: The proposed change will improve public enjoyment of the route by providing enhanced views of the surrounding landscape.